

# United We Stand? The European Union's International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol\*

MARTIJN L.P. GROENLEER

Delft University

LOUISE G. VAN SCHAİK

Netherlands Institute of International Relations 'Clingendael'

## Abstract

In this article we examine the relationship between the institutional set-up of the EU foreign policy-making process and the international actorness of the EU in two particular cases: the International Criminal Court and the Kyoto Protocol. Whereas in both cases policy-making is organized along intergovernmental lines, the EU has shown a relatively high degree of international actorness. We argue that this is the combined result of the considerable congruence of EU Member States' initial preferences and the social interactions between EU Member States, third countries and non-state actors, through which preferences converged even further over time.

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## Introduction

When it comes to foreign policy issues, the European Union (EU) is often markedly divided.<sup>1</sup> Consider, as examples, its inability to end ethnic cleansing in Kosovo without the assistance of the United States, the unresolved policy

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<sup>1</sup> EU foreign policy here includes the CFSP and all other external policies of the EU, i.e. the external dimension of Community policies and the Justice and Home Affairs policies. In this article, we only discuss the CFSP and the external dimension of Community policies.

towards the Israeli–Palestinian conflict and the political rift between particularly the larger EU Member States on the war in Iraq.

Despite the much publicized discord, the role of the EU as an actor in the international arena has rapidly evolved in recent years. The EU appointed a High Representative for the Common Foreign and Security Policy (CFSP) to enhance consistency and coherence in EU representation in the world. It also agreed on the deployment of troops in Macedonia for its first-ever military mission and it progressively developed the European Neighbourhood Policy to strengthen ties with countries on its eastern and southern borders. Moreover, the scope of external Community policies, such as trade and environment, has broadened considerably over the last decades. Even Justice and Home Affairs policies now have apparent external implications concerning issues such as asylum, immigration, organized crime and terrorism.

In the past decade, many studies have focused on EU foreign policy and the role of the EU as an actor in the world (Allen and Smith, 1990; Allen, 1998; Hill 1993, 1998; Bretherton and Vogler, 2006; Nuttall, 2000; Ginsberg, 2001; Smith, 2003, 2006; Peterson and Smith, 2003; Knodt and Princen, 2003; Elgström and Strömvik, 2005; Hill and Smith, 2005). Scholars generally point out that in some policy fields the international ‘actorness’ of the EU is hardly developed, whereas it is highly developed in other areas. It is – often implicitly – assumed that the degree of the EU’s international actorness is related to the institutional set-up of the policy-making process (Nuttall, 1997; Vanhoonacker, 2005; Chaban *et al.*, 2006). The more centralized or ‘supranational’ the EU policy-making process is, the higher the likelihood of international actorness. Likewise, more intergovernmentalism in foreign policy-making would lower the likelihood of EU international actorness, particularly since it allows each of the 27 EU Member States to block decisions using their veto power.

Although recent findings demonstrate that the relationship between the degree of the EU’s international actorness and the institutional set-up of the policy-making process is not so straightforward (Young, 2003; Vogler, 2005; Rhinard and Kaeding, 2006; Chaban *et al.*, 2006), the assumed link is still widely used in arguing in favour of institutional reform of EU foreign policy-making.<sup>2</sup> The straightforward relationship is also cited by the European Commission in court cases where it claims an extension of its competence in the

<sup>2</sup> For instance, some of the members of the European Convention working group on ‘external action’ argued ‘that the Community method, which had been successful for many areas, notably trade policy, should be introduced to the widest extent possible into all areas of external action’ (Convention 459/02, 2002).

external representation of the EU in international negotiations and organizations (Meunier and Nicolaïdis, 1999; Meunier, 2000; Griller and Weidel, 2002; Eeckhout, 2004).

This article examines the relationship between the institutional set-up of the EU foreign policy-making process and the international actorness of the EU in two particular cases where an intergovernmental set-up does not seem to have hindered the EU to speak with a single voice: the establishment of the International Criminal Court (ICC) and the negotiations in the United Nations Framework Convention on Climate Change (UNFCCC) regarding the implementation of the Kyoto Protocol.

In both cases, policy-making is organized along intergovernmental lines, with states being the prime actors. The field of international criminal justice falls under the CFSP, where policy is primarily made by the Council of Ministers and individual Member States. Supranational EU institutions, such as the European Commission and the European Parliament, have only limited competences here (Smith, 2003; Peterson and Smith, 2003). Climate change belongs to the Community pillar, but is a field where the European Community (EC) shares competences with the EU Member States. In the early 1990s, Member States declined the Commission the authority to negotiate environmental treaties and decided instead that the Council Presidency would represent the EU externally (Lacasta *et al.*, 2002). This makes policy-making more intergovernmental than in cases where the Community has full competence, such as trade negotiations (Dutzler, 2002; Lavranos, 2002; Van Schaik and Egenhofer, 2005).

Yet, in both the ICC and Kyoto Protocol cases the EU has shown a relatively high degree of international actorness. We argue that this is the combined result of the considerable congruence of EU Member States' initial preferences and the social interactions among EU Member States and between EU Member States and non-EU and non-state actors, through which preferences converged even further over time. Whereas the role of the EU in the negotiations regarding the implementation of the Kyoto Protocol has increasingly been the subject of study, literature on the role of the EU in the establishment of the ICC is scarce. This article is an attempt to fill that void by comparing the cases of the Kyoto Protocol and the ICC with regard to the EU's international actorness.

To assess the degree of EU international actorness in both cases we adjust a model originally developed by Jupille and Caporaso (1998). The model distinguishes four dimensions of EU international actorness: cohesion, authority, autonomy and recognition. Whereas this model can help us describe what international actorness is and how it comes about, it does not help us to explain why EU international actorness emerges, nor in which

circumstances it is more likely to occur. In order to explain the emergence and occurrence of EU international actorness in our cases, we adopt an institutional perspective that not only focuses on formal rules, but also attends to informal practices and routines based on shared social norms and values (Héritier, 2001; Smith, 2001, 2004; Stacey and Rittberger, 2003; Mak and Tatenhove, 2006).

Our empirical observations, as presented in the case studies, are based on data from several sources, including official documents, media articles and interviews held between September 2002 and December 2006 with officials of the European Commission and the Council Secretariat and with representatives of EU Member States, non-governmental organizations (NGOs) and business groups.<sup>3</sup> We evaluate the empirical observations on the basis of rational choice and sociological institutionalist approaches, as discussed in the theoretical section. The article concludes with a short summary of our findings and a reflection on the implications of these findings for the influence of intergovernmentalism on the EU's ability to act as an international actor. The conclusion also suggests directions for further research in the area of EU foreign policy-making.

## **I. Towards an Analytical Framework for Explaining EU International Actorness**

We broadly define EU international actorness as the EU's ability to function actively and deliberately in relation to other actors in the international system (Sjöstedt, 1977; Smith, 2003). To assess the degree of international actorness, we use the four dimensions of EU actor capacity developed by Jupille and Caporaso (1998): cohesion, authority, autonomy and recognition. According to Jupille and Caporaso, *cohesion* refers to the degree to which an entity, i.e. the EU, is able to formulate and articulate internally consistent policy preferences. *Authority* pertains to the legal competence of the EU to act. *Autonomy* implies institutional distinctiveness, meaning that the EU can operate relatively independently from individual EU Member States. *Recognition* refers to acceptance of and interaction with the EU by others.

These four dimensions of international actorness are, of course, interrelated. The EU, for instance, cannot have a high degree of international actorness if it is autonomous but not recognized by other actors; nor can it have a high degree of international actorness if it has authority delegated in a

<sup>3</sup> The data on the ICC also originate from direct observation by the first author, who participated in the EU foreign policy-making process as a member of the Netherlands Ministry of Foreign Affairs' ICC Task Force.

certain area but, for example, no common position to act upon. We use indicators derived from the four dimensions to determine the relative degree of EU international actorness.

To explain the emergence and occurrence of EU international actorness, we adopt an institutional perspective assuming that both formal and informal institutions have an effect on EU foreign policy-making and that they influence the EU's capacity to act in the international arena. We therefore apply both rational choice and sociological institutionalist approaches (Hall and Taylor, 1996; Bulmer, 1997; Peters, 1999; Aspinwall and Schneider, 2000; Jupille *et al.*, 2003; March and Olson, 2004). We expect, on the basis of these approaches, that EU international actorness in our cases occurs as a result of social interaction through which preferences converged, while emerging because of the congruence of initial preferences.

### *A Rational Choice Perspective*

Rational choice institutionalists see institutions foremost as the formal rules, legal competences and decision-making procedures that structure the policy-making process. Institutions, in this perspective, constrain and regularize the EU's ability to function as an international actor (Garrett, 1992; Garrett and Weingast, 1993; Moravcsik, 1995, 1998; Pollack 1997, 2003). Although rational choice models treat individuals as the unit of analysis, scholars often deal with collective actors, such as states (Jupille *et al.*, 2003). The behaviour of such actors is directed towards the consequences it is intended to have; in situations of interdependent choice they, therefore, behave strategically. Institutions mediate between actors' interests and policy outcomes. Rational choice scholars consider preferences as given, i.e. exogenous to actors and explain outcomes on the basis of the mediating effect of institutions.

Argued along this line, a high degree of international actorness would result from the fact that the preferences of EU supranational institutions and Member States with regard to foreign policy are congruent. Whenever there is no such congruence of initial preferences, the EU would only be able to function as an international actor through the mediation of formal rules, legal competences and decision-making procedures. Divergent views could also be aligned through trade-offs, issue linkage or side payments.<sup>4</sup>

In a rational-choice perspective, *cohesion* is the result of the similarity or compatibility of Member States' preferences on basic goals. It also applies in instances that require linking issues to other issues and negotiating package

<sup>4</sup> As, according to Van Selm-Thornburn and Verbeek (1998), happened in the case of the Greek opposition to the EU position on the Balkans. After having received additional funding from the EU budget, Greece was able to accept a compromise with regard to the recognition of Macedonia.

deals in which goals are fitted. Member States do not necessarily have to agree on each specific issue for cohesion to be achieved. Cohesion can imply EU international actorness as long as Member States succeed in making policies that serve their basic goals. Moreover, in case voting applies not all Member States have to share the same views, as long as the required majority of Member States, as specified by the voting rule, agrees on a common position.

The formal *authority* that Jupille and Caporaso refer to matches the rational choice focus on formal-legal competences. In areas of full Community competence and in some areas of shared competence, authority is delegated to the EC with the Commission as its main representative.<sup>5</sup> The EU may, however, also be represented by the Council Presidency, the High Representative for the CFSP, or individual Member States. We thus extend Jupille and Caporaso's concept of authority to comprise all cases in which EU external representation is delegated to a single European actor on the basis of a Treaty provision or agreement in the Council.

From a rational-choice point of view, *autonomy* follows from the discretionary powers of the EU actor to which representation has been delegated. We note that exclusive EC competence in a particular field does not necessarily mean the EU can act entirely independently from Member States in that field. For, as a complex multi-level system of governance, the EU is characterized by an intermingling of levels of political authority. Moreover, while the EU's independence from state actors may result in a high level of formal autonomy and thus EU actorness, it does not necessarily lead to optimal outcomes, as it can also work to the negotiators' advantage to operate with a 'hands tight' approach (Meunier, 2000; Young, 2003).

The Commission negotiating an international treaty on behalf of the Member States or EC membership in an international organization can be considered demonstrations of formal *recognition*. Formal recognition is also implied when the EU limits its counterparts (both non-EU states and non-state actors) to approaching only the EU's main representative, as opposed to having access to individual EU Member States.

### *A Sociological Perspective*

Sociological institutionalism focuses on the social environments in which institutions are embedded (March and Olsen, 1989, 1998, 2004; Jepperson *et al.*, 1996). Actors' choices are structured by values and norms prevailing in

<sup>5</sup> The EC competence to act externally is stipulated in Treaty provisions and was also established by the European Court of Justice through the ERTA case in areas where the EC has legislated internally (Eeckhout, 2004).

society; their interests are endogenous to interaction with institutional structures, such as the EU (Christiansen *et al.*, 1999). They undergo socialization, leading to the internalization of prevalent values and norms (Checkel, 1998, 1999, 2005; Johnston, 2001, 2005). Institutions, in this perspective, 'constitute' the EU's ability to behave as an international actor (Kerremans, 1996). Action guided by the social environment is often not outcome-oriented, but process-oriented; behaviour is considered appropriate in a specific environmental context, but is not necessarily instrumental in attaining a given end (March and Olsen, 1989, 1998, 2004).

Along this line of argument, a high degree of EU international actorness would result from the fact that preferences, instead of being fixed, can converge over time through social interaction processes, such as learning and socialization.<sup>6</sup> The effect of social values and norms on the behaviour of Member States and the development of informal practices and routines (i.e. institutionalization) in a particular field of EU foreign policy-making would explain the degree of EU international actorness (Stone Sweet *et al.*, 2001; Smith, 2004).

When we consider the four dimensions of international actorness from a sociological institutional point of view, concentrating on informal institutions, *cohesion* would be normative and cultural, rather than formal and strategic. A high level of cohesion is the result of the emergence, over time, of a set of shared values and norms with regard to the basic goals and the means by which these goals are realized.

The EU's *authority* is informal when it is not based on formal rules or legal competences, but instead relies on the normative acceptance of the EU as a single actor representing the Member States (Manners, 2002, 2006). A high level of authority occurs when the EU speaks with a single voice and where EU Member States have declined their formal right to voice their respective positions, for instance, because they have learned doing so does not always lead to better results or think this will not be appreciated by other Member States.

*Autonomy* in decision-making at the EU level is considered informal if the main decision-makers on the EU's position, i.e. the participants in the Council of Ministers and notably Member States' representatives in the Council Working Groups, consider themselves as not just national representatives, but as 'European actors' (Kerremans, 1996) and if they act upon commonly accepted 'European values and norms'. A high level of autonomy

<sup>6</sup> Previous research has demonstrated that socialization processes have been apparent in the Committee of Permanent Representatives (Lewis, 1998, 2003, 2005), the Council (Hayes-Renshaw and Wallace, 1995) and the Commission (Hooghe, 1999).

Table 1: The EU's International Actorness: A Framework for Analysis

	<i>Rational-choice institutionalism</i>	<i>Sociological institutionalism</i>
<b>Cohesion</b>	Officially agreed upon common positions resulting from similar initial preferences, a trade-off, issue linkage, side payment or a voting rule that has made it possible to outvote an opposing minority	Shared norms and values leading to both procedural and substantive agreement among EU Member States
<b>Authority</b>	Legal authority to represent the EU delegated to one EU actor, as stipulated in formal provisions	Authority based on acceptance by EU Member States that their position is represented by a single EU actor
<b>Autonomy</b>	Actor representing EU can act relatively independently from the Member States	Main decision-makers on the EU position and the EU's representative consider themselves European actors
<b>Recognition</b>	EU's representative is officially recognized as such and the EU (EC) is party to an international agreement or member of an international organization	Interaction by third states and non-state actors with EU instead of, or in addition to, individual Member States

Source: Authors.

involves processes of learning and socialization in the Council of Ministers, or its Working Groups for that matter (Beyers and Trondal, 2004).

Informal *recognition* of the EU, finally, stems from interaction with other non-EU actors. When non-EU actors recognize the EU by approaching actors that represent the EU (such as the High Representative for the CFSP, the Council Presidency or the European Commission) rather than, or in addition to, approaching individual Member States, a process of social interaction takes place that leads to a high degree of international actorness. Table 1 summarizes our framework for analysing EU international actorness.

## II. Courting Consensus: The EU and the International Criminal Court

On 17 July 1998, during the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held in Rome, 120 countries decided to establish an International Criminal Court (ICC). EU Member States were among the first to become Parties to the Statute. On 1 July 2002, the Rome Statute of the ICC entered into force. Since

this time, the ICC can prosecute individuals for the most serious offences of global concern, such as genocide, war crimes and crimes against humanity. When in 2003 the Court's judges had been sworn in and the prosecutor had been appointed, the Court started its first investigations. In 2006, these investigations led to the arrest of the first suspect and his transfer to The Hague, the seat of the Court. Today, the EU plays an important role in supporting the Court in its operational activities.

### *Cohesion*

EU Member States are generally committed to promoting international criminal justice, the ICC being one of the few issues of the CFSP on which they most often agree. All EU Member States, except France, were part of the like-minded group of states that actively lobbied for the creation of an ICC in advance of the Rome Conference on the basis of a common set of positions (Edgar, 2002; Nel, 2002; Fehl, 2004).<sup>7</sup>

Yet, no common position was formulated before the negotiations on the Statute in Rome. Controversial issues such as the independence of the Prosecutor, the role of the UN Security Council and the Court's jurisdiction over internal armed conflicts, split the EU (Human Rights Watch, 1998a). Particularly, the positions of the UK and France on these issues differed from those of the other Member States. These two countries, apparently fearing investigation or prosecution of their nationals, instead allied with the US and other permanent members of the Security Council. During the Rome Conference, the UK and France effectively negotiated the possibility of deferral of investigation or prosecution by the UN Security Council and also negotiated an opt-out clause with respect to investigation or prosecution of war crimes. This eventually also made the British and the French choose the side of the 'EU-13' (Human Rights Watch, 1998b, 1999).<sup>8</sup>

Hence, in Rome, EU Member States all voted in favour of the Statute of the ICC. Within barely four years, the required number of 60 countries, again including all 15 EU Member States, ratified the Statute. The ten Member States that joined the EU in 2004, with the notable exception of the Czech Republic,<sup>9</sup> have also become a party to the Statute. As a result, EU Member States form one of the largest groups of States Parties from one region and

<sup>7</sup> France only joined the other EU Member States as members of the group of like-minded countries during the last week of the Rome Conference when it had effectively negotiated a proposal allowing states the possibility of blocking prosecution of their nationals for a period of seven years after the entry into force of the Statute.

<sup>8</sup> Interview with NGO representative.

<sup>9</sup> In 2001, the Chamber of Deputies of the Czech Parliament rejected a bill for ratification of the Statute, because of the bill's precarious relationship to the Constitution of the Czech Republic. The Government

account for the majority of the financial contributions to the ICC. The ICC has therefore sometimes been referred to as an 'EU Court' (*Washington Post*, 2002).

The EU's commitment to the ICC is demonstrated by the unanimous adoption of a (non-legally binding) CFSP Common Position.<sup>10</sup> Its commitment is also shown by the formulation of an Action Plan that outlines strategies and actions to be undertaken by the EU and its Member States toward implementing the Common Position.<sup>11</sup> In accordance with the Common Position and the Action Plan, the EU and its Member States have furthered the ratification and implementation of the ICC Statute. The EU does so through diplomatic demarches and statements in multilateral forums, such as the United Nations (UN),<sup>12</sup> and in negotiations or political dialogue with third states that have not yet ratified the Statute, including Russia and China.<sup>13</sup> The Action Plan also makes it possible to deploy EU legal experts to third states that lack the capacity to implement the Statute.<sup>14</sup>

Whereas the UK and France could have their own policy positions before and during the 1998 Rome Conference, this has gradually become less acceptable by other Member States. Particularly at the level of the Council Working Group sub-area dealing with ICC matters, representatives appear to have developed a close identification with the issue of the ICC. They worked together in the framework of the Preparatory Commission meetings for the ICC. Moreover, they had frequent informal contact, for instance, in the margins of the many conferences, workshops and seminars organized for the establishment of the ICC. The development of a common understanding among Member State representatives seemed to have been reinforced by the pioneering character of their work.<sup>15</sup>

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has expressed its commitment to submit a request for ratification as soon as the Parliament passes a constitutional amendment. This, however, is not very likely to happen in the near future, as a number of parliamentarians are still opposed to ratification.

<sup>10</sup> See Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court; Council Common Position 2002/474/CFSP of 20 June 2002 amending common position 2001/443/CFSP on the International Criminal Court; Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court.

<sup>11</sup> Action Plan of 15 May 2002 to follow-up on the common position on the International Criminal Court; Action Plan of 4 February 2004 to follow-up on the common position on the International Criminal Court.

<sup>12</sup> See, for instance, EU Presidency Statement on the Establishment of the ICC, 14 October 2002; EU Presidency Statement on behalf of the EU at the 58th UNGA, Sixth Committee, 20 October 2003.

<sup>13</sup> Japan ratified the ICC Statute in 2007, at least partly thanks to the efforts of the EU. See, for instance, EU-Japan dialogue on the ICC. Meeting with members of the Diet on 1 December 2004. Introductory remarks by Edmond H. Wellenstein, Director General Ministry of Foreign Affairs, the Netherlands.

<sup>14</sup> The proposal for this initiative originated from NGOs (Groenleer and Rijks, forthcoming).

<sup>15</sup> Interview with Member State official.

The US put EU unity to the test. Relations between the EU and the US on the ICC had been tense ever since the Rome Conference. As Wedgwood (1998) stated:

The European Union had [. . .] hailed an independent Court as the hallmark of its post-Bosnia try at a common foreign and security policy. The Germans, French and even the British (citing the 'Ethical dimension' of Tony Blair's foreign policy) went to Rome ready to abandon America in their race for European leadership. (p. 1)

Although US President Clinton signed the Rome Statute on 31 December 2000, he made it clear that he had no intention to submit the treaty to the US Senate for ratification.<sup>16</sup> On 6 May 2002, the Bush administration announced that, accordingly, the US had no legal obligations arising from its signature. The EU reacted with a statement expressing its disappointment with this action and its hope that the US would not foreclose future co-operation with the Court.<sup>17</sup>

After the so-called 'unsigned' of the Rome Statute, US Secretary of State Colin Powell sent EU foreign ministers a letter asking them to draw up bilateral agreements that would exclude US nationals from ICC jurisdiction.<sup>18</sup> In September 2002, EU foreign ministers responded to the US demarche by unanimously adopting a set of guiding principles that would restrict the scope for concluding bilateral agreements with the US.<sup>19</sup> While they are free to do so under the guidelines, none of the EU Member States has negotiated an agreement with the US thus far, even though some countries – the UK, Italy and Spain – had initially indicated that they would perhaps do so.<sup>20</sup> Other countries party to the ICC entered into agreement with the US, however. Most of these countries relied on the US for economic or military support, which

<sup>16</sup> *Public Papers of the President*, 'Statement on the Rome Treaty on the International Criminal Court', 8 January 2001.

<sup>17</sup> Statement of the European Union on the position of the United States towards the International Criminal Court, Brussels, 14 May 2002, 8864/02 (Presse 141).

<sup>18</sup> On the US proposed bilateral non-surrender agreements, see Tallman (2003).

<sup>19</sup> Council of the European Union, GAERC Conclusions with annexed thereto the EU Guiding Principles Concerning Arrangements between a State Party to the Rome Statute of the International Criminal Court and the United States Regarding the Conclusions to Surrender of Persons to the Court, Brussels, 30 September 2002; Presidency Statement on reaffirming the EU position supporting the integrity of the Rome Statute, 27 July 2004. See further Rijks (2004) and Thomas (2005).

<sup>20</sup> However, applicant country Romania entered into agreement with the US. At the time of writing, ratification of the agreement is still pending. Moreover, the extradition treaty between the UK and the US that was agreed upon in 2004 has been said to grant immunity to US service members by prohibiting the handing over of US service members to the ICC when extradited to the UK (Interview with Member State official).

was said to be frozen in case they were not willing to conclude an agreement. The EU condemned the US freezing its support to third countries on those grounds.<sup>21</sup>

Furthermore, the EU reacted against a US-initiated Security Council resolution (1422) that granted immunity from ICC jurisdiction to UN peacekeepers.<sup>22</sup> In June 2004, the US withdrew a draft resolution that would extend such immunity because several Security Council members, including France and Germany, had signalled they would abstain on the vote. Another difference of opinion followed after a resolution tabled by France in March 2005 that would refer the situation in Darfur to the ICC. The US only conceded after it was guaranteed that US nationals would be exempted from the Court's jurisdiction (*EU Observer*, 2005; *New York Times*, 2005).

### *Authority*

In accordance with Article 19 of the Treaty of European Union, EU policy-making in the field of international criminal justice is primarily co-ordinated in the Council of Ministers, with a key role for the Presidency in setting the agenda and preparing draft EU positions. The Presidency also represents the EU externally, often together with the incoming Presidency and the Commission in the so-called troika; only seldom do individual Member States, for instance, make separate statements on the ICC in multilateral forums such as the UN.

Although the European Commission, according to the EU Treaty, is fully associated with CFSP activities, this does not entail the delegation of formal authority by the Council. The actual influence of the Commission in the ICC, therefore, largely depends on how it manages to stretch its formal-legal mandate. To that effect, the Commission, within the framework of the European Initiative for Democracy and Human Rights (EIDHR), funds the initiatives of non-governmental organizations (NGOs) that support the universal acceptance of the ICC.<sup>23</sup> Moreover, the Commission exerts influence through

<sup>21</sup> See, for instance, the declaration by the Dutch Presidency on behalf of the European Union on the Nethercutt amendment. Council of the European Union, Declaration by the Presidency on behalf of the European Union on the Nethercutt Amendment, Brussels, 15864/1/04 REV 1 (Presse 353), 10 December 2004.

<sup>22</sup> Declaration by the Presidency of the European Union on the UN Security Council's unanimous decision concerning Bosnia-Herzegovina/International Criminal Court, 13 July 2002; EU Presidency Statement on the proposed renewal of the provisions of SCR 1422, 12 June 2003. See further Weller (2002) and Jain (2005).

<sup>23</sup> This funding is not merely technical, for it implies political support for the ratification and implementation of the Statute in third countries. See <[http://ec.europa.eu/europeaid/projects/eidhr/themes-icc\\_en.htm](http://ec.europa.eu/europeaid/projects/eidhr/themes-icc_en.htm)>.

the mainstreaming of ICC issues into external issues falling under the Community competence. It, for instance, took the initiative to include a reference to the ICC in the revised text of the Cotonou Agreement.<sup>24</sup>

The European Parliament (EP) is almost absent in the EU policy-making process in the field of international criminal justice. The Council Presidency and the Commission are supposed to keep the EP updated and take into account the views of the EP. In practice, the contacts between the Presidency and the Commission, on the one hand and the EP, on the other hand, are rather limited. That being said, the EP has always been a staunch supporter of budget allocations for the ICC (and also supports increasing them year after year). Moreover, within the EP a group of like-minded Members of the European Parliament (MEPs) consistently draws attention to the ICC resulting in a number of (activist) resolutions on the ICC and several parliamentary questions being submitted to the Council and the Commission.<sup>25</sup>

### *Autonomy*

Although EU decisions are formally the Council of Ministers' responsibility, issues of international criminal justice are mainly dealt with by the Council's Public International Law Working Group, the so-called *Comité Juridique* (COJUR). COJUR is subordinate to the Political and Security Committee (PSC). Initially, ICC issues were also dealt with by COJUR. In May 2002, however, a special sub-area of COJUR devoted to the ICC was created as ICC-related agenda items took too much of COJUR's time and required specific (legal) expertise. The so-called ICC 'sub-area' consists of senior representatives from foreign ministries (and sometimes ministries of justice) and convenes around four times a year to co-ordinate on matters relating to the ICC.<sup>26</sup>

Formally, the mandate of the sub-area is limited. It has no powers delegated from COJUR; it merely advises COJUR. When it comes to politically sensitive issues, the PSC determines the EU position. This is, of course, not to say that representatives in the sub-area do not try to broaden legal issues to also include political matters, such as the proposed bilateral agreements with the US.<sup>27</sup> This politicization of legal issues is strengthened by the fact that not

<sup>24</sup> 'The International Criminal Court, Transatlantic Relations and Co-operation with Third Parties to Promote the Rule of Law', Speech by Dr Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy, "Parliamentarians for Global Action" – ICC Round Table, Strasbourg, 14 April 2005; Interview with Commission official.

<sup>25</sup> See, for instance, the EP resolutions of 19 November 1998 (OJ C 379, 7.12.1998, p. 265), 18 January 2001 (OJ C 262, 18.9.2001, p. 262), 28 February 2002 (P5\_TA(2002)0082), 4 July 2002 (P5\_TA(2002)0367), 26 September 2002 (P5\_TA(2002)0449) and 24 October 2002 (P5\_TA(2002)0521).

<sup>26</sup> Interview with Council Secretariat official.

<sup>27</sup> Interview with Council Secretariat official.

all representatives are legal experts; some are policy advisers. Moreover, COJUR usually adopts recommendations proposed by the sub-area, which are subsequently endorsed by the PSC without much discussion.<sup>28</sup>

In February 2004, EU Member States also established the position of a Focal Point for ICC issues in the Council Secretariat. In practice, this meant designating the official that was already dealing with issues related to the ICC as the Focal Point person. Among other tasks, the Focal Point prepares a list of target countries according to whether they have ratified or implemented the Statute, co-ordinates demarches carried out with these countries and assists in drafting policy documents such as the Common Position and Action Plan.<sup>29</sup> While the High Representative (HR) for the CFSP is usually not directly involved in issues related to the ICC,<sup>30</sup> the increased role of the Council Secretariat on ICC-issues squares with that of the HR and his staff in preparing and executing other parts of the CFSP.

### *Recognition*

The European Community is not a State Party to the Rome Statute and, hence, the Commission cannot represent the Member States in the ICC's Assembly of States Parties, as it does in, for instance, trade negotiations. However, the EU has concluded an Agreement on co-operation and assistance with the ICC, the first ever legally binding agreement of this kind between the EU (not the EC) and another international organization (Groenleer and Rijks, forthcoming).<sup>31</sup> This agreement completes the EU framework for support of the ICC by laying down a legal obligation (as opposed to the non-legally binding Common Position and Action Plan) for the EU to co-operate with the Court. Furthermore, the recognition of the EU as an international actor has been implicitly demonstrated by the interaction between the EU and both non-state actors and third states, in particular the US.

Initially, the US attempted to conclude bilateral agreements with individual Member States, such as the UK, Spain and Italy. Considering that its approach was not very successful, the US suggested to conclude an EU-US bilateral non-surrender agreement, a suggestion not seriously considered by the EU. Also, a US demarche carried out with the Council Secretariat complaining about the EU's diplomatic efforts to prevent third countries from

<sup>28</sup> Interview with Council Secretariat official.

<sup>29</sup> Interview with Council Secretariat official.

<sup>30</sup> Yet, see, for instance, 'International Court Signals New Era', an article by the HR in the *International Herald Tribune*, 11 April 2002.

<sup>31</sup> Council Decision of 10 April 2006 concerning the conclusion of the Agreement between the International Criminal Court and the European Union on cooperation and assistance (2006/313/CFSP).

concluding a bilateral agreement with the US may testify to the US regard of the EU as a formal entity and not merely a collection of loosely connected individual states.<sup>32</sup>

Other countries often look at EU Member States for guidance on the ICC. Notably, the EU Council Conclusions on bilateral agreements and the guiding principles annexed thereto seem to be considered an important policy direction by many third countries, in particular developing countries. Although the EU Council Conclusions and guiding principles were originally intended for internal policy co-ordination, their use in relations with third states has become common practice.<sup>33</sup> Moreover, intensive interaction with NGOs, notably the Coalition for an International Criminal Court (CICC),<sup>34</sup> undoubtedly has increased the pressure on the EU to keep its ranks closed. The EU has acknowledged the important role played by NGOs in the creation and the promotion of the ICC by inviting them to share their views with Member States during ICC sub-area meetings, which is not common practice in other Working Groups.

### **III. The EU in International Climate Negotiations: Keen on its Green Credentials**

The Kyoto Protocol, signed in 1997 within the context of the United Nations Framework Convention on Climate Change (UNFCCC),<sup>35</sup> is the most important international agreement on climate change that contains greenhouse gas (GHG) reduction commitments for industrialized countries. From 1998 onwards, negotiations in the UNFCCC centred on the implementation details of the Protocol, which led to a rejection of the treaty by the US in 2001,<sup>36</sup> the successful negotiations of the Marrakech Accords in the same year and ultimately to a positive ratification decision by 141 other states – resulting in the entry into force of the Kyoto Protocol in February 2005. As the Protocol expires in 2012, the EU's current focus is on negotiating a new agreement for the period post-2012.<sup>37</sup>

<sup>32</sup> Interview with Council Secretariat official.

<sup>33</sup> Interview with Member State official.

<sup>34</sup> The CICC – covering over 2,000 NGOs worldwide – is the largest NGO solely directed towards the promotion of the ICC. The Coalition has an office in Brussels.

<sup>35</sup> The UNFCCC is one of the conventions of the 1992 Earth Summit of Rio de Janeiro.

<sup>36</sup> In 2001 the US rejected the Kyoto Protocol because of its non-universal coverage and its negative effects to the US economy; Letter from President Bush to three US Senators, March 6, 2001, available at: <<http://www.whitehouse.gov/news/releases/2001/03/20010314.html>>.

<sup>37</sup> See, for instance the Presidency Conclusions of March 2007, 7224/07.

*Cohesion*

The ultimate aim of the EU in the climate negotiations is to establish a multilateral climate agreement with binding commitments. This is in line with the EU's overall commitment to multilateralism<sup>38</sup> and sustainable development.<sup>39</sup> In a so-called 'Burden Sharing Agreement', the EU Member States have broken down their common Kyoto target of reducing GHG emissions by 8 per cent by 2010–12 from 1990 levels. Under this agreement, some Member States have a higher reduction target than others. This reflects foremost the higher greenhouse gas reduction potential and the projected economic growth<sup>40</sup> in some Member States, but also, to some extent, states' willingness to reduce greenhouse gases.

The relationship between security of energy supply and reduction of greenhouse gases from fossil fuel combustion makes climate change policy strategic. As the EU is an energy importer,<sup>41</sup> one can argue that it is in its interest to reduce its dependency on oil and gas from, for instance, the Middle East and Russia. The transformation to alternative non-fossil fuel energy sources (e.g. renewable or nuclear energy), however, requires high levels of political and societal support as it is likely to involve a need for accelerated investments, as well as infrastructural and lifestyle changes.

Although not all EU Member States were firmly on track with regard to their target, the EU did pledge in 2001 to reach its Kyoto target unilaterally if necessary.<sup>42</sup> From a rational perspective, the EU Member States, responsible for less than 15 per cent of global greenhouse gas emissions, would have little incentive to reduce greenhouse gases unilaterally, since greenhouse gases are a common pool resource characterized by the collective action problem (Carraro and Siniscalco, 1998). An EU-only reduction strategy could, moreover, result in a competitive disadvantage for the EU's energy-intensive industry that would become subject to greenhouse gas reduction policies with accompanying costs, while, at least partly, operating in global markets.

The choice to proceed with the Kyoto Protocol was made by the European Council in a direct reaction to the Bush administration's withdrawal from the Kyoto Protocol (Vogler and Bretherton, 2006). The EU made a clear political choice for a progressive climate change policy by binding itself to the treaty.

<sup>38</sup> European Council, Presidency Conclusions, December 2003; Commission Communication COM (2003) 526 final.

<sup>39</sup> European Council, Presidency Conclusions, June 2001; Commission Communications: COM (2001) 264 final, COM (2002) 82 final, COM (2003) 829 final.

<sup>40</sup> Higher economic growth usually implies an increase of greenhouse gas emissions.

<sup>41</sup> See, for instance, the Commission's energy green paper: A European Strategy for Sustainable, Competitive and Secure Energy, COM (2006), 105 final

<sup>42</sup> European Council, Presidency Conclusions, June 2001.

Only Italy had reservations during the preparation of the statement, but eventually it also changed its tune in favour of the common statement (Agence Europe, 2001).

Once the EU had decided to tie its political faith to the Kyoto Protocol, it clearly became in its interest to convince other parties to follow; both to increase environmental effectiveness and to minimize competitiveness losses caused by greenhouse gas abatement policies. Therefore it is not surprising that the EU operated as a united block in its diplomatic efforts to convince particularly Canada, Japan and Russia, but also developing countries to follow the Kyoto Protocol, despite US opposition.<sup>43</sup> The EU succeeded in doing so, although concessions made, for instance, on how to count the greenhouse gas emissions of individual countries, did diminish the environmental effectiveness of the Kyoto Protocol (Den Elzen and de Moor, 2001).

### *Authority*

Climate change, as part of the environment chapter of the EC Treaty, is a shared competence between the EU Member States and the European Community (Van Schaik and Egenhofer, 2005). Accordingly, Article 174 of the Environment chapter of the EC Treaty explicitly gives the EU Member States the competence to negotiate by themselves in international bodies.<sup>44</sup> In the field of climate change, the EU Council of Ministers has decided to use this competence, i.e. not to authorize the Commission to conduct the negotiations. Its lead negotiator is the Presidency, which is assisted by the Commission and the incoming Presidency in the troika.<sup>45</sup> The troika operates with a relatively strict mandate from the Environment Council of Ministers, which decides on the basis of consensus. Unanimity is not strictly necessary to decide upon the position of the EC, but it is an implicit consequence of the theoretical possibility for the EU Member States to negotiate on their own behalf. In the Council of Ministers, it is usually the Presidency that prepares the agenda and draft Council conclusions on the EU position. The European Parliament has a limited influence. Officially it has to be consulted, but the Council is not obliged to follow its recommendations.

Although the policy-making process is dominated by the EU Member States, the Presidency is in a special position as it has the delegated authority

<sup>43</sup> For instance, in 2001, the EU undertook a diplomatic *'tour du monde'*.

<sup>44</sup> Article 174, paragraph 4 (TEC), refers to Article 300 (TEC), which states that with regard to Community policies the Commission will be authorized by the Council to negotiate international agreements with third countries. However, the last sentence of Article 174, paragraph 4, reads as follows: 'The previous subparagraph shall be without prejudice to member states' competence to negotiate in international bodies and to conclude international agreements.'

<sup>45</sup> Legally speaking, the troika only exists in the CFSP.

to represent the EU. A positive side effect of the Presidency having the lead is that all EU Member States are in this position on a rotating basis, which has forged the identification with the common position and with the issue of climate change in general.

The position of the Presidency was challenged at the political level at a crucial climate summit in The Hague in December 2000, when the UK tried to craft a deal with the US at the eleventh hour (Grubb and Yamin, 2001; Buchner, 2001; Ott, 2001; Lacasta *et al.*, 2002). This attempt failed, which led to a row between the UK and the French Presidency on the reasons for failure of the meeting and which, in turn, created negative press coverage on the performance of the EU at the The Hague Summit. Pressured by the situation, the EU Ministers realized the importance of presenting a unified front. This might be one of the reasons why the European Council, in March 2001, acted in such a unified way in its reaction against the US withdrawal.

### *Autonomy*

The EU does not negotiate independently of its Member States. Instead, the Member States, in their collective capacity and with assistance of the European Commission, negotiate as a single actor on the basis of their common position. The EU Member States form their common position in the Council of Ministers through a lengthy and intensive policy-making process.

In the Council there is an important role for the Council Working Party International Environmental Issues (WP IEI, climate change formation) that prepares most of the work for the Council of Ministers. The WP IEI is composed of national officials and representatives of the European Commission and meets monthly or bi-monthly in Brussels. During the official UNFCCC negotiations,<sup>46</sup> the participants of the WP IEI – with the exception of the few days that the Ministers themselves are present – have the delegated authority to decide in daily co-ordination meetings how to adjust the EU position to reach agreement with other negotiating parties. The representative of the EU Presidency, usually just one of the EU delegation leaders, becomes a key figure in co-ordinating and representing the EU during the climate negotiations.

The decision-making process on the EU's position for international climate change negotiations takes place rather independently from non-environmental interests in the EU. In the Environment Council of Ministers, the EU position can be decided upon relatively autonomously from economic,

<sup>46</sup> Within the UNFCCC, an annual Conference of the Parties (COP) is organized. To prepare this COP, the so-called 'meetings of the Subsidiary Bodies' (SBs) take place. Both 'conferences' last for about two weeks.

general foreign affairs, development aid and energy interests (Van Schaik and Egenhofer, 2005).<sup>47</sup> Much time is devoted to climate change and it is often debated during Council meetings lunches, as well as on the sidelines of the many other environmental summits where the Ministers meet. Also, the strong involvement of the Commission's Directorate General Environment contributes to the emphasis on the environmental side of climate change.

Indeed, the European Commission, although it is not the EU's lead negotiator, does have a special role. Its influence is based on its right of initiative with regard to the Community policies (including legislation put in place to reach the EU's greenhouse gas reduction target), its permanent position in the troika and its role as official EC representative. Its knowledge of the EU's performance in reducing emissions and existing and proposed policies is essential for the EU's credibility on the international level. In the Council of Ministers, the European Commission is seen as an 'extra Member State' with expertise, viewpoints and positions on almost all issues on the table, based upon its permanent place in the troika and extensive contacts with other state and non-state actors. Due to these factors the informal role of the Commission, i.e. DG Environment, can be considered larger than its formal competence.

### *Recognition*

The European Community as such is recognized within the UNFCCC as a party, which means that the European Commission, as the European Community representative, has signed the Kyoto Protocol, just like the individual EU Member States. For most non-EU states, for the NGOs and for the media, it is clear that the EU is operating with a single voice in the UNFCCC negotiations and that the Presidency, with assistance of the troika, is in charge of representing the EC and the EU Member States (in their view: the EU). When the EU formulates its positions, it aims to take into account the expected position of other parties in the negotiations. In reality, the intensive internal EU negotiations have sometimes led to fixed positions embodying a primarily European view. Nevertheless, the EU did manage to convince a high number of other parties to proceed with adopting the Kyoto Protocol.

Environmental NGOs, such as Greenpeace and the World Wildlife Fund, played an important role in The Hague in 2000, where they urged the EU and particularly its green environment ministers, not to give in to the demands of the US (Carpenter, 2001; Grubb and Yamin, 2001; Buchner, 2001). The

<sup>47</sup> Although decision-making on climate change is not explicitly linked to other issues, there have been occasions when other issues were linked to climate change. In the 2004 trade negotiations with Russia, for instance, the EU appears to have linked Russia's Kyoto ratification to support by the EU for its accession to the WTO.

breakdown of the negotiations led to a shift in emphasis by the NGOs from more specific issues in the negotiations (e.g. sinks and complementarity) toward the overall goal of 'saving the Kyoto Protocol'. Business groups, in general, had less access to the EU's environment ministers than the NGOs.<sup>48</sup> The attention of business groups has been primarily directed toward domestic EU climate change policies (such as the EU emissions trading scheme covering CO<sub>2</sub> emissions of large industrial sites) and less on the EU's stance in the international negotiations. However, where business groups tried to influence the EU's international position, they did so with a focus at the EU level, not at the national level.

#### **IV. Discussion: Explaining EU International Actorness**

The empirical evidence presented in the sections above demonstrates the EU's ability to function both actively and deliberately in the international arena in the fields of international criminal justice and global climate change. Although we did find instances where the EU did not speak with a single voice, overall and over time the EU stood united. It managed to enhance and maintain cohesion on policy positions, to delegate the authority to represent the EU to a single actor, to work relatively autonomously from individual Member States and, perhaps most importantly, to become recognized as a single actor by third states and non-state actors. In the discussion below, we explain this relatively high degree of EU international actorness based on the framework elaborated in the theoretical section.

##### *EU International Actorness as Congruence*

The congruence of Member States' initial preferences appears to have played an important role. Both cases illustrate the importance of initial similarity of Member States' preferences for a high degree of EU international actorness.

We find that the formulation of common positions in both cases, first of all, reflects Member States' adherence to similar basic goals with regard to the issues at stake. Initial differences of opinion on particular provisions of the Statute of the ICC and on the specific commitment of EU Member States in terms of greenhouse gas reduction were accommodated. The unanimity requirement for decision-making did not hinder the formulation of firm common EU positions, although one could argue that the guiding principles for bilateral agreements with the US should be seen as a lowest common denominator decision.

<sup>48</sup> Interviews with business representative and EU Member State official.

That said, the motives behind the support for the ICC Statute and the Kyoto Protocol diverge. In the ICC case, EU unity seems to be foremost based on moral arguments. This is, perhaps, not surprising given that the domestic human rights situations of EU Member States are not likely to result in a case being referred to the Court; most Member States feel they have nothing to fear from a strong ICC (cf. Moravcsik, 1995; Groenleer and Rijks, forthcoming). While in the case of the Kyoto Protocol strategic considerations on energy security are significant, EU leaders also seem politically convinced of the importance of tackling climate change. The EU's decision to proceed with the Kyoto Protocol, despite US withdrawal and to do so unilaterally if necessary, meant moreover that there was no longer an alternative to encouraging other countries to ratify the Kyoto Protocol.

In both cases, the EU did not operate completely independently of its Member States. Whereas on the basis of its formal competences one might expect the EU to be less autonomous in the CFSP case (ICC) than in the Community pillar case (Kyoto Protocol), we found no substantial differences in the level of formal autonomy. In the Kyoto Protocol case, the representatives of the Member States kept a close eye on the activities of the EU's lead negotiator. Yet, this did not lead to an inability to reach deals with negotiating partners. It rather strengthened the EU position *vis-à-vis* others, as the EU's lead negotiator was clearly supported by all EU Member States.

With regard to the formal recognition of the EU, the cases differ. The EC membership of the UNFCCC gives the EU formal recognition in the climate change case. The EC is not a party to the ICC, but it could be argued that conclusion of the formal agreement between the ICC and the EU has granted the EU also formal recognition in the ICC case.

### *EU International Actorness as Convergence*

While the congruence of initial preferences serves as a prerequisite for the EU to function as an international actor, both cases show that preferences converged even further over time through social interaction processes. This convergence can provide an additional explanation for the relatively high degree of EU international actorness in both cases.

Our empirical research demonstrates that Member States, on the basis of similar basic goals, developed a common way of realizing these goals. In both cases, Member State representatives appear to have been 'socialized' by the interaction during the frequent meetings taking place in Brussels and the EU co-ordination meetings at international conferences. Although we lack clear evidence showing the impact of socialization of these Member State representative on policy outcomes, it seems that the internalization of values (e.g.

prosecuting individuals for international crimes and reducing greenhouse gas emissions) and norms (e.g. preserving the integrity of the ICC Statute and upholding the Kyoto Protocol) has contributed to the institutionalization of the EU's position and resulted in it speaking with a single voice.

Paradoxically, perhaps, the experience of internal EU conflicts seems to have made EU Member States realize the importance of keeping their ranks closed. In both cases, differences of opinion occurred early in time and were followed by periods of relative unity. As such, internal conflicts seem to have had a learning effect: Member States learned that they would be stronger as a collective actor. Furthermore, US opposition, increasingly fierce after the 'unsigned' of the Rome Statute and the withdrawal from the Kyoto Protocol, drove EU Member States closer together. The EU formulated strong statements and reacted in concert against the US to preserve the integrity of the ICC Statute and uphold the Kyoto Protocol. In fact, EU Member States seemed more willing to formulate common positions and undertake joint actions because of, rather than in spite of, the US (op)position.

The Commission played an important role in strengthening the EU's ability to function as an international actor. In the ICC case, the Commission stretched its competence by elaborating on the links with issues (e.g. development and trade) on which it does have a clear competence. The Commission also used several subtle techniques to influence EU policy-making on the ICC, of which directly liaising with the ICC, therewith circumventing the Council is perhaps the most notable. In the climate change negotiations, the role of the Commission is connected to its larger competence in Community policies in the field of climate change. The European Parliament in both cases has trifling formal powers although, especially in the ICC case, its informal influence and agenda-setting role has been considerable.

Both cases are characterized by a high degree of informal recognition. Interaction with non-state actors and non-EU Member States seems to have had an important influence on the behaviour of the EU and its Member States. Especially in the case of the ICC, NGOs can be said to have acted as so-called 'norm entrepreneurs' (Finnemore and Sikkink, 1998; Fehl, 2004), marketing their view on the appropriateness of Member States' positions. In turn, the EU's policy on the ICC has had a strong impact on third states, which often aligned themselves with the EU position and also adopted the EU guidelines for dealing with US pressure. In the climate change case, the EU is closely followed by other states and non-state actors as well. It can, for instance, rightly be doubted if Japan, Canada and particularly Russia – without US participation – would have continued with the Kyoto Protocol, had the EU not been such a staunch supporter.

## Conclusion

This article set out to examine the relationship between the institutional set-up of the EU foreign policy-making process and the international actorness of the EU in two particular cases where an intergovernmental set-up does not seem to have hindered the EU to speak with a single voice: the establishment of the International Criminal Court (ICC) and the negotiations in the United Nations Framework Convention on Climate Change (UNFCCC) on the implementation of the Kyoto Protocol.

In both cases the EU can be seen as an international actor and even a leading one. The EU and its Member States were instrumental in supporting the establishment of the ICC and in keeping in motion the climate change negotiations. Non-EU countries often looked to the EU before determining their positions and non-governmental organizations also focused their efforts on the EU level. The (op)position of the US to the ICC and the Kyoto Protocol drove the EU and its Member States closer together.

Our analysis revealed that both rational choice and sociological institutional approaches have considerable explanatory power with regard to the EU's international actorness. Member States have started to co-ordinate their foreign policies on the ICC and the Kyoto Protocol on the basis of their initial preferences. Over time, their policies have become increasingly 'Europeanized' through processes of institutionalization (Stone Sweet *et al.*, 2001; Smith, 2004). This has resulted in a relatively high degree of EU international actorness, even though the policy-making process is organized in a rather intergovernmental way, with states still being the prime actors and supranational EU institutions only having limited competences.

Our analysis seems to suggest that a minimum degree of commonality with regard to preferences, however, is a prerequisite for processes of institutionalization to occur. That is, EU international actorness is less likely to emerge if there is no such initial agreement of preferences, for the very fact that within the current Treaty framework unanimity is still the rule for most foreign policy decisions and the powers of supranational EU institutions to represent the EU externally remain confined. Further empirical research is needed to investigate whether institutionalization processes can also take place in cases where there is no such agreement of initial preferences. This research suggests that formal rules, legal competences and decision-making procedures are not very useful to bring about a minimal level of agreement if preferences are not already congruent.

By pursuing a dialogue between rational choice and sociological institutionalism, we enhanced the explanatory power of Jupille and Caporaso's original framework of analysis (Jupille and Caporaso, 1998; Jupille *et al.*,

2003). The rational-choice perspective demonstrated that the EU can function as an international actor or, rather, 'intergovernmental' actor (Groenleer and Van Schaik, 2005). In contrast to what is sometimes claimed by both scholars and institutional reformers as an obstruction of EU functioning in international affairs, the intergovernmental set-up of policy-making appeared less of an impediment for international actorness to occur. This is in line with the findings of other recent empirical research on areas of EU foreign policy that are characterized by an intergovernmental set-up (Young, 2003; Vogler, 2005; Rhinard and Kaeding, 2006; Chaban *et al.*, 2006).

The rational choice perspective with its focus on national interests is often unable to explain the occurrence of international agreements on social, environmental and human rights issues, i.e. the focus areas of the EU's foreign policy (Smith, 2003). Policies in these areas have a strong normative character, leaving more room for insights drawn from sociological institutionalism (Jupille *et al.*, 2003). Whereas the sociological line of reasoning may be particularly relevant for the type of foreign policy areas we discussed here, i.e. human rights and the environment, it is far from evident that international actorness can occur in all areas of external relations that are subject to an intergovernmental set-up of policy-making. More empirical work should therefore be done on cases in which the EU's interests are more strategic, such as energy or security policy.<sup>49</sup>

*Correspondence:*

Martijn L.P. Groenleer  
 Assistant Professor  
 Delft University  
 Faculty of Technology, Policy and Management  
 PO Box 5015  
 2600 GA Delft, The Netherlands  
 Tel + 31 15 278 3433  
 email: m.l.p.groenleer@tudelft.nl

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<sup>49</sup> Consider the example of Poland blocking the EU from commencing the negotiation of a new Partnership Agreement with Russia. See, for instance, Riccardi, Russia/Energy: Why the EU Needs to Start Singing from the Same Hymn Sheet, *Bulletin Quotidien Europe*, 28 November 2006, No. 9315.

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