

CHAPTER TEN

'NAME ME YOUR FRIENDS, AND I WILL TELL YOU WHO YOU ARE' – THE UNION AND THE MEMBER STATES IN THE GLOBAL ARENA

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I. INTRODUCTION: THE UNION'S INCREMENTAL GLOBAL PRESENCE

The past decades have been marked by a nearly irrepressible advance of the EU into the world of international organizations. As yet however, full Union membership of such organizations remains a relatively rare occurrence. It has obtained this status in the EBRD, the WTO, the FAO, the Hague Conference on Private International Law and the Codex Alimentarius Commission. It is not a member of the other specialized UN organizations, the UN itself, the IMF, the World Bank, NATO, or the Council of Europe. Also, it has not acceded either to the ILO or the IMO, which can be considered surprising in light of its broad powers as regards social and maritime policy.¹ Nevertheless, even when not integrally taking part, the EU has certainly achieved a greater visibility, and exerted a growing influence on the activities of its global partners.²

The relations between the Union and a select number of international organizations has been the subject of the research carried out in the foregoing chapters, with a view to exposing its position and participation, as well as the external perceptions of that position and participation. As duly realized in advance, the organizations concerned display a considerable substantive heterogeneity, and were not designed on the basis of a uniform institutional blueprint. This has overall resulted in a neat panorama, but impedes the drawing of too general conclusions. At the same time, several common trends and recurring patterns could all too easily be spotted, and at this stage deserve to be underscored.

¹ Piet Eeckhout, *EU External Relations Law*, Oxford: Oxford University Press 2011, p. 223.

² Frank Hoffmeister, 'Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies', (2007) 44 *Common Market Law Review*, p. 67.

As explained earlier, the international identity of the EU encompasses all the means and forms, both tangible and intangible, through which it manifests itself at the international level. Furthermore, since identity is a question of standpoint, a capturing of the entirety calls for the inclusion of different standpoints.³ In the preceding analyses, the construction and representation of the Union has been assessed from multiple angles. This has ultimately made it possible to juxtapose the different experiences, test our provisional assumptions, and draw some general conclusions with regard to the EU's emerging international identity.⁴

2. ADAPTABILITY AND CONTEXT-SENSITIVITY OF THE UNION'S PROFILE

A first expectation pertained to the adaptability and context-sensitivity of the Union's profile. From the outset, we assumed the EU's identity to have a chameleonic quality, and the viability of its emergence to be determined by the specific setting. This is perhaps exemplified most vividly in (the modalities of) its partaking in the OECD. As observed, the latter's decentralized structure is extremely sophisticated, resembling a complex amalgam of committees that pursue their own agendas in varying ways. Consequently, the EU's stature within the OECD has been seen to vary in tenor and significance, depending on the particular issue (and corresponding committee) at stake. A similar malleable *habitus* appears evident within the IMF, where a single Union identity as such is prevented from arising due to the absence of a truly unified system of representation. For one thing, the distinction between Euro and non-Euro area countries does not go unnoticed, with the situation being exacerbated further by the attendance of the Council, the ECB and the Commission, alongside the Member States (and their central banks). With respect to the WTO, the Union's identity is largely defined by its internal market activities, but the context of this organization offers sufficient flexibility for it to pursue non-trade values, which it has done quite emphatically, even before WTO dispute settlement bodies. The EU thus bases

³ Ian Manners and Richard Whitman, 'Towards Identifying the International Identity of the European Union: A Framework for Analysis of the EU's Network Relationships' (1998) 21 *Journal of European Integration*, pp. 237–8.

⁴ Of course, the inferences drawn in this chapter cannot and do not bear any pretense of universal validity.

its international trade identity on multilateralism, but simultaneously makes clear that other (internally endorsed) objectives can often take precedence.

Apart from this continual changing and adjusting from the side of the Union, in accordance with the needs and the possibilities within an organization, we assumed that the less politicized the specific environment, the more receptive the latter would turn out to be.⁵ This has held true for the UN, in view of the struggles to acquire the enhanced observer status, but there was more here that lent credence to the thought. For instance, within the Human Rights Council, the Union faces a predominant 'regional bloc mentality', and an especially strong presence of the Organization of the Islamic Conference and the African Group. All the same, cases such as the Human Rights Council's Special Session on Darfur and the EU's participation in the negotiations on the moratorium on the death penalty indicated that, in the end, the particular political constellation is decisive for the Union's potential to significantly impact on the decision-making process, rather than the legal and institutional architecture of the relevant forum. Similar thoughts prevail with respect to the NATO, where the EU at present is not and cannot become an official member either. As with the UN Charter, the Union itself, in contrast with its Member States, is not subject to the obligations of the NATO Treaty. So far, no attempts at a greater legal *rapprochement* have been made, with the 'Berlin Plus' arrangement constituting the only formal nexus.⁶ Within this context, there also exists no (reciprocal) support for moving beyond the 'living apart together' arrangement.

3. INTERLINKING THE UNION'S OFFICIAL POSITION, IDENTITY AND PERFORMANCE

One might believe the EU to cut a finer figure in forums where its position is more solidly anchored. Thus, its identity would be weaker to begin with in organizations where it merely holds an observer status, or

⁵ Moving beyond the obvious point here that not all international organizations allow for Union membership.

⁶ Apart from the commitments undertaken in the form of treaties on specific topics; see e.g. Agreement between the European Union and NATO on the security of information, [2003] OJ L 80/36.

(as such) does not take part at all.⁷ Indeed, the Union's official legal position seems to determine its stature and influence, but a more complete presence does not guarantee an actual 'speaking with one voice', and therefore does not guarantee a truly effective performance either.⁸ In the ILO for example, after the precursor of the EU had become an observer, instead of abating, the friction with the Member States increased. Especially in the 1983–2000 period, the views of the latter (often supported by their national social partners) diverged considerably from those of the Commission. Rather than functioning as a catalyst for greater harmony, the shared participation in this forum hampered the formation of a structural united front. The story of the WTO illustrates though that full membership offers no panacea. To this, the precedent of the FAO, discussed in the contribution on EU–UN relations, can be added. For despite the Union institutions and Member States taking pains to work out an internal arrangement to enable a smooth concerted practice there, this did not obviate the need for repeated statements with respect to the division of competences.⁹ Moreover, a substantial inequality is retained due to the EU being ineligible for election, designation or participation in FAO bodies where only countries are accepted.¹⁰

Conversely, a complete formal absence does not lead to outright invisibility, as evidenced by the analysis of the situation in the Council of Europe. There the EU is neither a member nor does it enjoy the status of observer, as the legal arrangements underpinning both organizations do not allow for this. What they do allow for is mutual assistance and cooperation, and over the years various forms of indirect contact have been established. In addition, the EU may send representatives to the meetings of several Intergovernmental Committees of the CoE, and it takes part in four CoE bodies which were set up as (enlarged) partial agreements. On top of this, the EU has signed and ratified numerous CoE treaties. Yet, we noticed a same discomfort here as flagged above, essentially arising from a fear

⁷ Even when the Member States are to act as its 'trustees' there, the likelihood of fragmentation is still invariably greater.

⁸ Cf. Knud Erik Jørgensen and Ramses Wessel, 'The Position of the European Union in (other) International Organizations: Confronting Legal and Political Approaches', in: Panos Koutrakos (ed.), *EU Foreign Policy – Legal and Political Perspectives*, Cheltenham: Edward Elgar 2011, pp. 282–3.

⁹ In the same vein e.g. Inge Govaere, Jeroen Capiu and An Vermeersch, 'In-Between Seats: The Participation of the European Union in International Organizations', (2004) 9 *European Foreign Affairs Review*, pp. 165–7.

¹⁰ See Article II(9) of the FAO Constitution.

of duplication, which was most palpable in the period surrounding the launch of the Union's Fundamental Rights Agency. After the EU accedes to the ECHR, the Union shall be entitled to take part in sessions of the Committee of Ministers of the CoE and obtain the right to vote there, but this might once again increase rather than diminish the potential for division. On the other hand, the failed attempt at creating a 'European Security and Defence Identity' within NATO could be taken to mean that, whenever the Union is unable to join, a unitary presence does not immediately follow from synchronized efforts from the collective of Member States.¹¹

In sum, the EU's profile in a certain organization may have a lot to gain from a more extensive involvement, but this cannot be called a hard and fast rule. Moreover, it hardly guarantees a truly unitary representation, mainly due to the fact that the environments in which the Union operates *to the exclusion of the Member States* are few and far between. In turn, whereas a 'European influence' might be quantifiably greater when the Union and the Member States operate alongside one another, this situation is anything but conducive to the rise of a uniform identity, and could just as well hamper the effectiveness of the performance. At the end of the day though, the importance of loyal cooperation and coordination between the Member States or (if applicable) the Union institutions and the Member States, could trump that of formal, partial or non-participation of the EU itself.¹²

4. INTERLINKING FORMAL COMPETENCES, IDENTITY AND EFFECTIVENESS

In the introductory chapter we already noted that, while the Union's external action mirrors its internal dynamics to a considerable degree, its internal decision-making and external representation are still different things. Naturally, at the heart of the matter lies the division of competences between the EU and the Member States, with a shared Union competence producing the mixed participation in international organizations

¹¹ Apart from the fact that, within NATO, such synchronized efforts have on the whole not been that regular an occurrence.

¹² But cf. Jørgensen and Wessel, *supra* n. 8, p. 285, who contend that *neither* formal membership *nor* improved coordination are sufficient preconditions for a higher EU impact within a given policy field.

described above. When the joint presence of the EU and the Member States does not do all that much to advance the emergence of structural common positions, the blame may logically be placed on the non-exclusive quality of the Union's powers – even when an exclusive power does not immediately yield *effective* performance either. The weak image within the IMF can be largely explained on this footing: despite the Council being tasked to ensure a unified representation within international financial institutions and conferences, matters are compounded by the EU's competence only being exclusive with regard to monetary policy for the Member States whose currency is the Euro.¹³ Internally as well, the EMU only requires cooperation from non-Euro area countries, but these get to keep their relevant external powers.¹⁴ To be sure, the legal duty to cooperate and coordinate in economic and monetary field did not cease to apply to these countries, but does not automatically iron out all possible conflicts of interest.

The study of the OECD partially corroborates this thesis, since the nature of the Union's competences on issues residing within the organization's scope of activities was found to have a marked impact on the Union's identity there. Especially when exercising its exclusive powers, the EU upholds a strong and often leading role in the OECD. Amazingly however, the Union occasionally even represents the Member States in areas where it lacks competences altogether, which suggests that even in the absence of formal authority, at least an impression of 'European homogeneity' can be conveyed. By the same token, in the WTO, in spite of the Court's determining that the EC did not have the competence to conclude agreements in the area of trade in services and trade related aspects of intellectual property rights, the Commission has made no bones about playing an active role in these fields.¹⁵ In contrast, while inside the EU, competences pertaining to the Area of Freedom, Security and Justice are shared,¹⁶ three Member States have secured a special position with respect to the adoption of internal acts. Ireland and the United Kingdom may decide ad hoc whether they participate in a specific measure; Denmark is not bound by such measures at all. Consequently, the EU is prevented from representing

¹³ See Art. 138(2) TFEU and Art. 3(1)(c) TFEU.

¹⁴ See Art. 141 and Art. 142 TFEU.

¹⁵ Opinion 1/94, *Competence of the Community to conclude international agreements concerning services and the protection of intellectual property*, [1994] ECR I-5267.

¹⁶ Art. 4(2)(j) TFEU.

the entire franchise in the Hague Conference on a certain dossier, even when it would otherwise be granted leave to do so, and is formally disconnected from these three countries from the very beginning. The discrepancy between the situation here and in the OECD is understandable when realizing that the latter functions in an advisory capacity, whereas 'hard law' is frequently brought about within the confines of the Hague Conference and the WTO.

It seems clear in any case that when competences are divided in an asymmetric fashion, the Union institutions and Member States should tread carefully, which holds *a fortiori* if the EU possesses exclusive competences in a certain field, but the relevant international organization does not permit it to join. The idea of letting the supranational interests be advanced and defended by proxy looks fine on paper, but reality has repeatedly demonstrated that the perceptions of the 'common interest' can vary radically in the eyes of the 'trustees'.¹⁷ The weakness of the theory becomes even clearer when we realize that it attempts to reverse the order of play posited by political scientists, as the Union seeks to hold the reins as a principal, employing the Member States as its agents. Rather, given the ubiquity of mixed participation, the Member States more often have the opportunity to use the Union as their conduit whenever that would work to their advantage – or if that cannot be achieved, obstruct the implementation of unwelcome proposals tabled by the Union acting on its own accord.¹⁸ Therefore, in line with what one would expect, an uneven internal distribution of powers raises the chance of garbled external perceptions, precluding the rise of an overarching identity, and reducing the chance that the EU successfully attains its goals.

5. DELINEATING THE UNION'S IDENTITY – VACUOUS, TRANSCENDENT, INDISSOLUBLE?

We argued before that various takes are conceivable in the delineation of the Union's identity. To begin with, the identity can be qualified as

¹⁷ When the nature of EU competences is intrinsically fuzzy, such as those pertaining to the CFSP and the CSDP, the Member States can arguably not even be obliged to pursue a common interest within a forum like the NATO.

¹⁸ See e.g. Eugénia da Conceição-Heldt, 'Variation in EU Member States' Preferences and the Commission's Discretion in the Doha Round', (2011) 18 *Journal of European Public Policy*, p. 403.

wholly vacuous in itself and merely derivative, coinciding (at most) with the sum of the individual identities of the Member States. Alternatively, a transcendent identity may be observed which arises from their combined actions, with the EU and its Member States being perceived as still separated, but strongly interconnected parts. Lastly, one could consider the latter as no longer separate and having dissolved within the greater whole, becoming part of an indissoluble Union construct. Although the views from the global arena collected in the previous chapters do not all point in the same direction, the detailed scrutiny performed there has enabled us to discern the main contours of the EU's identity in the eyes of its international partners.

The first option would probably be quite appropriate for typifying the view from the NATO. Once the Union as a polity started to become more active in the area of security, it ostensibly reached a new level of self-consciousness. Under the current Treaties, its intention to become a more prominent stakeholder in the military field is eminently visible. Hereby, the principal acknowledgment of 'NATO primacy' and the stressing of the importance of the Transatlantic Alliance could, on the one hand, be seen as an integral part of the EU's identity as an international actor. On the other hand, this abstract posture carries little practical relevance. For, as illustrated by the intervention in Libya, in the many situations in which NATO is chosen over the EU, this occurs *de facto*, not as a matter of law. Furthermore, even when one should attach value to the text *sec*, it expressly underscores that, at least at present, a common defense is not yet part of that identity. To be sure, beyond the legal realm, there are cautious signs of a more transcendent appreciation, predicated on the fact that when the EU started to bear arms, it remained a community based on the rule of law with a deeply integrated economy, which was flexible enough to respect the parallel identities of its Member States. However, with the Union's institutions completely sidelined, including the High Representative for Foreign and Security Policy, the non-European NATO members cannot be faulted for detecting little more than a collective of countries from roughly the same region, with occasional shared interests.

In a similar vein, as was demonstrated in relation to the UN, the Union's international identity inherently includes the respect for the principles of the United Nations Charter. What is more, the extensive references to the United Nations in the European Union's founding Treaties reflect a constitutional attitude from the side of the EU *vis-à-vis* the UN system. That attitude forms in itself part of an emerging international identity which, as testified by the award of enhanced observer status by its peers,

appears to have acquired a definitive transcendent quality.¹⁹ This thesis is readily extendable to the IMF and the Hague Conference for Private International Law.

On a broad reading, not limited to a narrow understanding that clings to its formal observer status, one can say that there exists an even more uniform Union identity within the ILO. Over the course of the past decades, the interaction between the two organizations has intensified forcefully, and is not impaired by the fact that many ILO labor standards provisions do not touch upon exclusive Union competences, but mainly deal with shared ones. Furthermore, its identity would seem to coincide with the emergence, between 2000 and 2010, of a more coherent and integrated European social model, combining economic, employment, social and environmental objectives, and the exploitation of its external dimension by both the EU institutions and the Member States. Together, they have managed to impress their conception on international partners, and can often be seen to speak with one voice, despite being firmly separate and unequal from a 'law in the books' standpoint. This is – *mutatis mutandis* – also the situation in the Council of Europe, in light of the prevalent European approach to fundamental rights.²⁰ Importantly, these experiences show once more that identity is not *per se* conditional on membership.

Within the framework of the WTO, the Union's profile looks to have superseded that of the Member States. In this context, it has profited from something that might be called a distinctly European approach to international trade, placing a keen emphasis on reciprocity, comfortably nesting itself alongside the ways of thinking of (inter alia) the US and Japan. Largely owing to its exclusive competence, this has arguably transformed the franchise into a hermetic and indissoluble whole. Hereby, the residual powers of the Member States, notably in the field of transport services, exemplify that the distribution of competences does not necessarily coincide with the nature of the emerging identity.²¹

¹⁹ Though not always to the liking of all EU Member States: for instance, October 2011 saw a harrowing quarrel when the British delegation to the UN blocked more than 70 EU statements to UN committees, because it insisted those statements should be delivered on behalf of the "EU and its Member States" instead of on behalf of the EU. See Julian Borger, 'EU Anger over British Stance on UN Statements', <<http://www.guardian.co.uk/world/2011/oct/20/uk-eu-un-statements-wording>>.

²⁰ Again, notwithstanding the handful of countries that prefer adopting the pose of 'persistent objector'.

²¹ Cf. Art. 207(5) and Art. 4(2)(g) TFEU.

An enigmatic picture arose in the discussion of the OECD framework, where the EU is represented as a full member in one of its major bodies, the Development Assistance Committee. In the multitude of other OECD committees, it enjoys a lesser position, which offers more leeway for the Member States to define and voice their own opinions. This results in the Union possessing a single distinctive identity in the DAC – but elsewhere, one that basically consists of the sum of the Member States' individual identities. For that reason, in this particular organization, the perceptions vis-à-vis the EU of non-European countries understandably waver between the first (vacuous) and the second (transcendent) reading.

6. UNION REPRESENTATION AND THE IMPACT OF THE LISBON TREATY

In the introduction to this volume, it was predicted that issues of representation were certain to crop up, considering the post-Lisbon proliferation of offices with external tasks or ambitions. Since the total number of actors did not witness any meaningful decrease, and the gap between CFSP and non-CFSP decision-making was not entirely closed, the friction was assumed not to have abated all that much, despite the evaporation of the Community.

The implementation of the Lisbon Treaty has indeed not been a perfectly smooth process, and was marked by an absence of political guidance with regard to EU representation at multilateral organizations. In addition, the EEAS has had a rough start, after a launch that was slightly overdue. Nevertheless, the first dust has begun to settle. The European Council President has, for example, worked out an (informal) understanding with the President of the Commission.²² The exact details of the agreement remain shrouded in secrecy, but a recurring pattern is emerging for some settings, with Mr. Van Rompuy and Mr. Barroso deciding on a case-by-case basis who will present the Union's views on other occasions.²³

²² As acknowledged by Mr. Van Rompuy himself in the general activity report 'The European Council in 2010' (available at <<http://www.european-council.europa.eu/media/161695/qc3010507enc.pdf>>), p. 12.

²³ For example, at G20 meetings, they form part of the EU delegation together, taking the floor depending on the subject of the discussions (CFSP or not). They also jointly participated in the 2010 and 2011 EU-US Summits. See also Peter Van Elsuwege, "EU External Action after the Collapse of the Pillar Structure: In Search of a New Balance between Delimitation and Consistency", (2010) 48 *Common Market Law Review*, p. 992; Henri de Waele and

The former has exercised the novel speaking rights at the United Nations, where his broader activities are adequately synchronized with those of the High Representative.²⁴ The Commission Delegation and EU Council Liaison Office have merged into a Union Delegation under the authority of the HR, representing the EU in both the CFSP field as well as in other matters. The newly merged EU Delegation is also in charge of coordination. Moreover, the EEAS has progressively taken up the chairmanship of the relevant EU meetings in Brussels, so that the coordination there mirrors that in New York.²⁵ The net result of this intensified attuning of views is that a common position of the Union can nowadays be established on almost 95 percent of UN resolutions.²⁶

In the OECD too, great advances have been made. With the Community erased from the picture and the EU finally receiving international legal personality, the nameplates at the OECD now display 'European Union' as well. The Commission Delegation in Paris was replaced by a Union Delegation, operating as a part of the EEAS. The latter's diplomats represent not only the EU institutions, but also issue statements or declarations every time a common position is reached on issues falling within areas of exclusive or shared competences. In reality, the Member States continue to take the floor quite often, but a convention has been established that, once there is a commonly agreed position, Member States will merely complement and not contravene it, besides permitting the Union Delegation to speak first.

In a diachronic perspective, the participation of the Union in the ILO underwent a remarkable intensification as early as 2003, despite the Commission partaking only as an observer on behalf of the Community. The alleged spur behind this development was the desire to promote the social dimension of globalization. From that point on, the Commission proved capable of presenting a plethora of common EU initiatives or

Hansko Broeksteeg, 'The Semi-Permanent European Council Presidency: Some Reflections on the Law and Early Practice', (2012) 50 *Common Market Law Review*, p. 1065.

²⁴ See e.g. Herman Van Rompuy, 'Address to the 66th United Nations General Assembly General Debate', 22 September 2011, EUCO 78/11; id., 'Address to the 67th General Assembly of the United Nations', 26 September 2012, EUCO 178/12.

²⁵ Emanuele Giaufret, 'The EU in the UNGA Third Committee', in: Jan Wouters, Hans Bruyninckx, Sudeshna Basu and Simon Schunz (eds.), *The European Union and Multilateral Governance. Assessing EU Participation in United Nations Human Rights and Environmental Fora*, Basingstoke: Palgrave Macmillan 2012, p. 73.

²⁶ The enhanced status has come at a diplomatic cost, in that it relegated the Union to speaking after the other nations; previously, the individual Member States holding the EU Presidency spoke higher in the 'pecking order'.

policies in the general debates at the International Labour Conference, in a Working Party of the ILO Governing Body, and succeeded in setting the agenda in various other committees. The provisions of the Lisbon Treaty did not lead to a real watershed, but gave rise to substantial confusion among the Union's partners. This confusion stemmed from the multiple interventions by different Member States in representing the Union position, pursuant to the 'burden-sharing principle'. Furthermore, around that time, Member States avidly began to pursue positions that were difficult to square with the Treaties, secondary legislation or vested practices. In these years, it also became ever more noticeable that beneath the surface, the vaunted European culture of social dialogue was not applied with equal rigor across the Union.

In comparison, matters have proceeded unperturbed at the Hague Conference. That no significant alterations were required here and no new representational conflicts arose might be testimony to the sterling character of the voting rules, which were established long before Lisbon's entry into force. As noted, whereas every delegation has one vote, the erstwhile Community was allowed to exercise a number of votes that corresponded to the number of Member States that had transferred their competence to it on the topic in question. Post-Lisbon, if the Union exercises that right, the Member States continue to refrain from exercising theirs, and vice versa. Of late, the attempts at actually aligning the positions on particular dossiers have turned out to be neither more cumbersome, nor less.

These samples make patently clear that, whereas the Lisbon Treaty appears duly operationalized in most respects, here and there the interplay between the EU and its constituent parts can still prove fractious. This is incontrovertibly caused, first and foremost, by the innate ambiguity of the Member States. On the one hand, they are willing to persuade international organizations to open up and grant the Union access when that strengthens their political leverage. On the other hand, they entertain few scruples about reducing the Union's visibility and undermining its actions when their interests would otherwise be jeopardized.²⁷ In certain forums they consciously strive to reduce the influence of the EU institutions, take distance from, or renounce their claims and statements.²⁸ Notwithstanding the ever-expanding duty of loyal cooperation, the Lisbon reforms have not eradicated this obstinacy, and quite possibly, no

²⁷ Govaere, Capiou and Vermeersch, *supra* n. 9, p. 167; Eeckhout, *supra* n. 1, pp. 233–4.

²⁸ Cf. *supra*, n. 19.

future Treaty amendment will ever manage to do so.²⁹ The sundry codes of conduct drafted by the Commission do alleviate the pain, and have facilitated coordination in some places, but have (alas) not been greeted with universal enthusiasm.

At the same time, the problem should probably not be overstated. It is rare for the Member States to oppose the Union institutions *en bloc*, and although their views regularly differ, one may notice a growing support for the emancipation of the EU as an actor in its own right.³⁰ Additionally, based on the accumulated evidence in the preceding chapters, it would be wrong to pit the two against one another, as if they were natural adversaries engaged in constant turf wars. If that were true, it would be impossible for any semblance of a European identity to take root; yet the WTO and ILO experiences, amongst others, point in a wholly contrary direction.³¹

All in all, perhaps the Lisbon Treaty has not produced sufficient new opportunities to ensure a structural harmony, or perhaps these opportunities have simply not been sufficiently explored yet. Evidently, the EU failed to rise to the challenge at the Libyan civil war in 2011 – but albeit too late, *did* eventually agree on the launch of a military operation.³² The setting up of the EEAS has so far proceeded sluggishly, but does hold a most notable promise. When deployed in full, the Union's external representation looks destined to take a great leap forwards.³³ As unlikely as

²⁹ Cf. Mauro Gatti and Pietro Manzini, 'External Representation of the European Union in the Conclusion of International Agreements', (2012) 49 *Common Market Law Review*, p. 1734, pointing out how the Member States, in the conclusion of mixed agreements, continue to rely on pre-Lisbon practices that no longer have any legal ground.

³⁰ In the same vein Scarlett McArdle and Paul James Cardwell, 'EU External Representation and the International Law Commission: An Increasingly Significant International Role for the European Union?', in: Steven Blockmans and Ramses Wessel (eds.), 'Principles and Practices of EU External Representation', *CLEER Working Papers* 2012/5, p. 101.

³¹ In the Union's external environmental action as well, specifically its policy on climate change and green biotechnology, the formation of its international identity has been seen to take place *across* the EU institutions and the Member States. See Kathrin Birkel, *We, Europe and the Rest – EU Discourse(s) at Work in Environmental Politics*, Enschede: Ipskamp 2009, pp. 179–80 and 184–5.

³² See Council Decision 2011/210/CFSP of 1 April 2011 on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya) [2011] OJ L 89/17.

³³ See further e.g. Steven Blockmans and Marja-Liisa Laatsit, 'The European External Action Service: Enhancing Coherence in EU External Action?', in: Paul James Cardwell (ed.), *EU External Relations Law and Policy in the Post-Lisbon Era*, Berlin-Heidelberg: Springer 2011, p. 135; Bart Van Vooren and Ramses Wessel, 'External Representation and the European External Action Service: Selected Legal Challenges', in: Steven Blockmans and Ramses Wessel (eds.), 'Principles and Practices of EU External Representation', *CLEER Working Papers* 2012/5, p. 59.

it seemed at the turn of the last century, the Member States have permitted the Union to develop a diplomatic arm, which has impacted with astounding force on the role of venerable Commission DGs, even in a hybrid organization like the OECD.

7. SUBSTANTIVE EU IMPACT ON ITS INTERNATIONAL PARTNERS

Now reverting once again from an outside-in to an inside-out perspective, one may wonder whether the international partners have undergone any modifications as a result of their dealings with the EU. Here, of course, the amendment of their constitutions to allow for Union accession, undertaken e.g. by the Hague Conference for Private International Law, forms a most striking occurrence. Admitting it as an observer was significant enough, but would prove just the first step, owing to the tenacious support of the Member States for a further upgrade. The negotiations leading to the Conference's 2005 Statute led to such an agreeable synergy that this trajectory could serve a broader purpose, as a handy model for the future. Naturally, the recognition of R(E)IOs had already become a fairly widespread practice before, with an entity like the WTO opening its doors for the participation of any willing regional trading blocs from the very beginning. Nevertheless, despite the many potential barriers to entry flagged at an earlier stage, the EU is somehow capable of giving rise to the thought, or actually manages to persuade other IOs, third countries, as well as its own members, that its joining would be mutually beneficial. For sure, some of those 'on the receiving end' are well aware of the legal or political advantages. The Union's accession to the ECHR is for example highly anticipated by the Council of Europe, since thereby, for the first time in history, a supranational organization voluntarily submits its acts to external supervision by a court of another international organization.

Even if in the long run, there is no reason to rule out full membership of the CoE, in certain external environments, the barriers to entry are extremely difficult to overcome. This goes above all for Article 4 of the UN Charter, which only allows states to join. Yet, with the UK and France occupying two out of the five permanent seats in the UN Security Council, the EU theoretically bags thirty percent of the votes there. Were the Union one day to secure full UN membership, its accession would be bound to bring an end to this situation. Conversely, the present setup entails an overrepresentation, which might have been the final straw to

set a reform in motion – but so far did not.³⁴ Paradoxically then, whereas the main gates to this grand keep are nigh impregnable (the UN Charter), an easier entry is provided via the backdoor (the operation of the Security Council). At any rate, this case demonstrates that the Union's impact on the institutional structure of partner organizations can sometimes be absolutely negligible.

Lastly, in the ILO, an invaluable political impact is apparent, as opposed to a legal one. For within the International Labour Conference and Governing Body, the EU has gradually become a positive force, capable of neutralizing or softening negative positions of third parties. Interestingly, here and in the Council of Europe, the contacts at the highest political level are premised on exchanges of letters. When the rules of the organization concerned preclude intenser forms of coordination, this may constitute an elegant middle road for the Union to assert its interests, and exert a waxing indirect influence.

8. REPERCUSSIONS OF THE SOVEREIGN DEBT CRISIS

Shortly before the sovereign debt crisis hit home, the EU had shaped up from a humble instrument of regional economic organization to a prominent global political presence. In the introductory chapter to this volume, the crisis was assumed to have appreciable consequences for the ways in which the Union relates to the world. After all, outsiders cannot fail to have noticed the tensions eating away at the foundations of the supranational edifice. In an ironic analogy, the widening internal ruptures were unavoidably to have an external counterpart.

The repercussions of the crisis are visible indeed, but on the whole, the fragmentation is less severe than we presumed, by leaving the core of the European identity unaffected. Also, the impact is not perceptibly greater in organizations where the Member States continue to partake individually (e.g. the OECD), in comparison to those where the EU wields virtually exclusive competence (e.g. the WTO). The emerging international solidarity, coinciding with the desire to prevent a cataclysmic domino effect, has assuaged imminent clashes within the International

³⁴ Cf. Eric Suy, 'Certain Other Perspectives for a Reform of the United Nations Security Council', in: Eva Rieter and Henri de Waele (eds.), *Evolving Principles of International Law* (Queen Mary Studies in International Law: 5), Leiden: Martinus Nijhoff Publishers 2012, p. 91.

Monetary Fund. Unpropitiously though, this had the oblique effect of shifting the prime interest to EMU reforms, away from the – equally pressing – IMF reforms.³⁵

As described, the European Commission worked together with the ILO Office in exploring adequate responses to the impending financial catastrophe. The crisis strained the Union's identity most heavily during its 'second phase', when the promotion of austerity was prioritized by (inter alia) the Eurogroup, Commission and ECOFIN Council. Elsewhere, this changed the perception of the EU's agenda, and confused third parties with regard to the centrality of the Union's social model. International partners believed that employment and social policy had been sidetracked as dimensions that were subordinate to the economic and financial priorities. It was only at the subsequent stage that the message came through that key provisions in the Treaties, such as the horizontal social clause and the article spelling out the role of social dialogue, had not in fact been suspended.

While the EU aspired to play a greater role in international financial institutions, its attempts had little success before the crisis, for the Member States did not believe Union participation to have much added value for this policy field.³⁶ The tables are turning now, for better or for worse. As already indicated in an earlier chapter, it remains to be seen whether, after the imminent refurbishment of the EMU, the continued individual presence of the Member States on that echelon still makes legal and political sense.

9. CONCLUSION: 'NAME ME YOUR FRIENDS...'

Ten years ago, two eminent political scientists posited that the EU's international identity can be broken down into several elements. For starters, despite its newly gained competence for military action and the acquisition of the necessary resources, they argued that it is pacific. Second, with its liberal-democratic agenda centered on peace, liberty, democracy, the rule of law and human rights, it was alleged to be principled. Third, with its preference for deliberation and dislike of polarization, one may label it consensual. Fourth, with its variety of governance modes sprawled across

³⁵ Chiefly necessitated by the current overrepresentation of European countries and institutions within the IMF.

³⁶ Jørgensen and Wessel, *supra* n. 8, p. 283.

different levels and locations, it predominantly carries a network-character. Fifth, its decision-making, consultation and legislation processes render it a politically open rather than a closed system. In combination, these elements ought to signify that the Union's identity not merely defies classification in Westphalian terms, but is consciously counter-Westphalian.³⁷ Though the approach in the foregoing chapters was decidedly more legal than political science oriented, a number of these features did indeed come to the surface. At the very least, this gives a boost to the credibility of the inferences that were drawn in the previous paragraphs.

Regardless of whether the Union construct is non- or counter-Westphalian, and notwithstanding the rise of ASEAN, Mercosur, the Andean Community or the African Union, it knows no true equivalent at the present day and time. In that light, some might be disappointed at the finding that still today, in various forums, its identity retains a derivative quality. Probably most grievously, in that most general of international organizations, the United Nations, the EU is often viewed as a cohesive group of UN members rather than an actor in and of itself. Exactly in an organ like the 'Third Committee', where the Union is expected to be most visible as a 'soft power' and maximally make its influence felt, it is quintessentially perceived as the expression of the political will of its Member States.³⁸ To an extent, this is also reflected in Resolution 65/276.³⁹ In all other milieus where the EU's profile is articulated weakly, or even appears entirely vacuous, the political reality represents a hard break with the legal theory, making a mockery of the autonomy postulate cherished by the European Court of Justice. Occasionally, the founding Treaties corrode this axiom themselves, for instance in the repeated stressing of NATO primacy in the TEU. Such principled subservience is not reflected anywhere in the case law, shedding doubt on whether juxtaposed analyses of the legal and the political sphere can truly complement one another, or convey the impression of excessively arcane disciplines irrevocably placed at loggerheads.

³⁷ Ian Manners and Richard Whitman, "The 'Difference Engine': Constructing and Representing the International Identity of the European Union (2003) 10 *Journal of European Public Policy*, pp. 398–9.

³⁸ To the 'Third Committee', the General Assembly allocates those agenda items that relate to social, humanitarian affairs and human rights issues which are thought to affect people all over the planet.

³⁹ A/RES/65/276, particularly in point 1(d) of the Annex, where EU representatives are expressly permitted to "present proposals and amendments orally as agreed by the States members of the European Union; such proposals and amendments shall be put to a vote only at the request of a Member State".

All the same, the two walk together in their acknowledging of the Union's systemic specificity and its unique contribution to the international institutional landscape. Moreover, the emancipation of the EU as an actor in its own right is an incremental process, as the experiences recorded in the foregoing chapters corroborate.⁴⁰ If the Union were eventually to gain a universal formal recognition among its external partners, the observations of political scientists could finally be (re-)aligned with the position of the supranational judiciary. In this scenario, at long last, its identity hinges less on internal perceptions and pronouncements, but becomes chiefly discernible on the basis of the nature and quality of the relations it maintains with other global players. That outcome would confirm the classic wisdom that who you are is determined just as well by where you decide to manifest yourself.

⁴⁰ Cf. McArdle and Cardwell, *supra* n. 30, p. 101.