European Union Studies Association Biennial Conference 2009, LA

What's the use of arguing? European Union strategies for the promotion of human rights in the United Nations

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April 2009

Draft text: not for citation

Abstract:

This paper explores two themes raised by the recent ECFR *Audit of European Power in the UN*, where it is argued that a group of states constituting an 'Axis of Sovereignty' is frustrating European efforts to promote human rights in the multilateral framework of the UN. The first is the extent to which 'sovereignty' and 'multilateralism' are antagonistic concepts, drawing on the writings of Ruggie, Kratochwil and Reus-Smit. Through them it is shown that the relationship is more complicated than simple opposition, and instead the two have emerged from specific historical processes in the modern international system. The second part of the paper analyses the newly emerging EU process of human rights promotion in the UNGA through building a multi-regional constituency of states supporting progressive HR norms, firstly through common statements and later through UNGA resolutions. It is shown that one of the most important elements in explaining the successful outcome of these campaigns (to date) is the orchestrated defence of the resolution through carefully prepared arguments. The 'power' of argumentation is analysed through three prisms; as normative power (Manners), as the logic of argumentation (Risse), and as rhetorical action (Schimmelfennig). It is argued that each one contributes a level of explanation as to how the concentric circles of influence around the EU are influenced by the process of argumentation, according to (a) the degree to which norms are pre-existing, (b) willingly internalised at the national level, or (c) remain unaccepted but were unchallenged. The paper ended by offering some tentative suggestions towards an evolved set of fundamental institutions (Reus-Smit) in which a new concept of post-Westphalian sovereignty might be coupled to a norm of procedural justice favouring solidarist over pluralism.

Keywords:

European Union
United Nations General Assembly
Human Rights
Multilateralism
Sovereignty

In 2008 the European Council of Foreign Relations published *An Audit of European Power in the UN* (Gowan & Brantner 2008), arguing that over last decade the EU had slipped from more often being in the majority coalition on important human rights (HR) issues in the UN General Assembly, the UN Security Council, and the Commission for Human Rights (and its successor the Human Rights Council), to more often being in the minority. Conversely, China's trajectory has been in the opposite direction, and now finds itself on the winning side on many issues. The story is an alarming one, it is said, because European demise and Chinese rise, and with it the emergence of an 'Axis of Sovereignty', marks a watershed moment in international human rights protection and will lead to the erosion of fundamental human rights norms and practices as states less disposed to HR protection ascend. This analysis raises many interesting questions concerning the interpretation of the results, the methodology used, and the theoretical implications drawn from them.

The ambitions of this paper are limited to two things. The first is to critically assess the frequently used binary between 'sovereignty' and 'multilateralism', where the former is (in the opinion of this author) wrongly juxtaposed as the antithesis of the latter. While much of the recent literature on multilateralism and the EU has been polarised through the lens of 'effective multilateralism' described in the 2003 *European Security Strategy*, there is a richer International Relations literature that brings deeper insight to the concepts. The literature considered here are Ruggie (1993), Kratochwil (1993, 2006), and Reus-Smith (1997). The second ambition is to address the policy-relevant question raised in the ECFR *Audit*, namely how to go about winning the argument for greater human rights protection in the UN, and specifically in the UNGA. Using two cases studies from the last three UNGA Sessions (61-63) on (i) the Moratorium on the Use of the Death Penalty and (ii) the Promotion of Lesbian, Gay, Bisexual and Transgender (LGBT) Rights, the paper considers three EU strategies for promoting a 'progressive' human rights agenda. These are informed by (i) normative power Europe (Manners 2002), (ii) the logic of argumentation (Risse 2000), and (iii) rhetorical action (Schimmelfennig 2001). By way of conclusion the role of argumentation is presented as part of a reconfiguring of the fundamental institutions of the modern international society of states (Reus-Smit 1997).

I. 'Effective multilateralism' and ineffective sovereignty?

In December 2003 the European Council published the *European Security Strategy*, in which it stated that

> our security and prosperity increasingly depend on an effective multilateral system. … Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority. (Council of the European Union, 2003: 9)

Since then, the term has become a focal point for the study of the EU in the multilateral system, in effect kick-starting a new generation of literature ruminating on this concept and what it means for the foreign policy of the EU.[1] One angle of investigation has been from a pragmatic, policy orientation, exemplified in the edited volumes by the Foreign Policy Centre (2004) and the EUISS (Ortega 2005). Sven Biscop initially identified 'effective multilateralism' as a form of governance concerned with the delivery of global goods, stating that 'Effective Multilateralism = Global Governance' (Biscop 2004: 27). More recently his views have evolved and now regards it as 'enforceable multilateralism' (Biscop & Drieskens 2006: 273). A second approach found in the literature is edited case-studies across a range of UN bodies (thus excluding the WTO from analysis), such as Wouters, Hoffmeister and Ruys soliciting of practitioner accounts (2006) or Laatikainen and Smith's focus on the performance of the EU at the UN through the prism of 'intersecting multilateralisms' (2006). They provide a three-fold definition of 'effectiveness' as (i) the EU as an actor, (ii) the EU in the UN, and (iii) the EU's contribution to UN effectiveness (Laatikainen and Smith 2006: 9-10). This is becoming a widely accepted framework used in the literature (Oberthuer 2009). More recently, Jorgensen has edited a larger collection of essays looking at the EU in the wider multilateral institutional setting (2009). A third angle of investigation is the critical interrogation of the relationship between 'effective' and 'multilateralism' drawing on IR literature. Elgstrom, Gerlach and Smith (2007) choose to explore effective multilateralism through the lens of the EU's existing and considerable ongoing interaction with international regimes. They draw on work by John Ruggie to point to the constructed nature of regimes and the role of sociological institutionalism in explaining the performance of regimes over time. Elsewhere, Peterson, Aspinwall, Damro and Boswell (2008) have designed a research project exploring 'The Consequences of Europe: Multilateralism and the New Security Agenda', importantly introducing a historical dimension to the evolving nature of multilateralism over time. Despite this blossoming interest in effective multilateralism, Benjamin Kienzle points to the plurality of opinions over what it really constitutes, linking this to competing expectations about what it is intended to achieve (2008). In his view, effective

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[1] The first wave of literature on the EU in the UN system responded to the creation of the CONUN working group in 1973, spearheaded by Hurwitz (1975), Foot (1979) and Lindemann (1982). Luif revisited this work in 2003 and updated the findings, months prior to the ESS publication. The second wave focuses on the external representation of the EU through the Community competency, most obviously in the GATT and WTO, for example M. Smith (1998), Meunier and Nicolaidis (1999), Kerromans (2006), van de Hoven (2006), Young (2007). For further discussion see Kissack (forthcoming) *Majority, Consensus, Privilege and Persuasion: The European Union and Multilateralism*, Palgrave, London.

multilateralism is a self-serving concept that helped to unite the EU after the divisions over the 2003 invasion of Iraq.

The division between 'New' and 'Old' Europe, caused by differing national positions within the EU and accession states concerning the US invasion of Iraq in 2003 (and wilfully accentuated by the US administration at the time), casts a long shadow over the ESS.[2] The document was invariably read as an alternative *weltanschaung* to the 2002 US National Security Strategy (Berenskoetter 2005) and contextualised within the wider debate over the disintegration of the transatlantic alliance in particular and the West in general (Peterson and Pollack 2003, Calleo 2004, Cox 2005). Given that the neoconservative policy circles close to the White House were advocating US unilateralism, (and by 2005 the fervently anti-UN John Bolton had been appointed US ambassador to the UN), it is unsurprising that *multi*lateralism became a core theme resonating throughout the EU strategy. As a sticking-plaster applied to the gapping wound of the post Iraq fallout, which as the ECFR *Audit* notes was felt by EU member states for a number of years afterwards, 'effective multilateralism' was a obvious place to begin, not least because 'multilateralism is in the DNA' of Europe (Jorgensen 200X). The use of the multilateralism/unilateralism binary as a moniker for the differences between Europe and the US was reinforced by the Venus/Mars distinction used by Robert Kagan to describe Europe's aversion to the use of military force and American willingness (2003). It also fits Robert Cooper's thesis emphasising the centrality of international law in the relations between EU member states, and with European states with the wider world (Cooper 2000). By contrast American unilateralism regards international law as an unnecessary inhibition on US power and will ignore it when pursuing its national interests. The EU multilateral identity is consolidated by the othering of the US: unilateralism, *realpolitik*, military-minded, unencumbered by international law.[3] It is unsurprising with these shorthand notations in circulation that 'sovereignty' is seen in opposition to multilateralism. By extension, a vigorous assertion of sovereign rights is portrayed as hindering the effectiveness of multilateralism, summed up by the identification of the 'Axis of Sovereignty' mentioned above.

As I shall proceed to argue, the term 'Axis of Sovereignty', although catchy, is at best a misnomer and at worst orientates the discussion on how the EU should go about pursuing a progressive, pro-HR agenda in the UNGA in the wrong direction. Let us begin by finding a more appropriate name for the group of states intent on scuppering HR promotion. The argument about sovereignty revolves around the legal

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[2] The public divisions over Iraq are probably starker than the policy differences between EU member states, in terms of reconcilability. Gordon and Shapiro's in depth study of the build-up to the invasion note that a clash of the magnitude felt 'was far from inevitable. It resulted not just from structural trends, but also from a strong degree of contingency, personality, misguided diplomacy, poor leadership, Iraqi unpredictability and bad luck' (2004: 8). In this regard the replacement of Blair, Chirac and Schroeder with Brown, Sarcoxie and Merkel is very much the clean slate it appears.

[3] Robert Keohane challenges the assumption that 'effective multilateralism' and unilateral are immiscible. 'Indeed, one of the most striking features of effective multilateralism in the 20th century is that it has often been precipitated by *unilateral* actions by powerful states' (2006: 59) [emphasis in original].

and political interpretation of the phrase 'intervene in matters which are essentially within the domestic jurisdiction of any state' in Article 2(7) of the UN Charter.[4] The accepted exception to this rule is the implementation of UN Security Council resolutions passed under Chapter VII of the UN Charter, in response to threats to international peace and security. However, deciding what constitutes such a threat is a *political* decision taken by the members of the UNSC. Chinese refusal to sanction UNSC action in the wake of the floods in Myanmar in 2008, or in the civil war in Sudan exemplify the behaviour that Gowan and Brantner have in mind when they place it in the axis (2008: 11). Nevertheless, on these grounds 'Axis of non-intervention' would appear a more accurate label. The English School tradition of IR suggests the labels 'Axis of Pluralism' or 'Axis of Order', the former in opposition to solidarism and the latter opposed to the promotion of justice based on equality of individuals. Robert Keohane takes another line of attack against sovereignty, as part of a larger discussion of legitimacy in multilateral organisations.

> Many countries in the United Nations are either undemocratic or only partly democratic. We should not expect that the policies they enunciate will be in the interest of their publics, rather than simply of an unaccountable elite. (Keohane 2006: 70)

Due to the fact that membership of the UN is based on the 'doctrine of sovereignty that has profoundly anti-democratic origins' lying 'in monarchy not democracy' (Keohane 2006: 65/74), '[i]nclusiveness of states is not an unalloyed virtue if it means that non-democracies can express preferences that are not desired by, or in the interests of most people residing within their territories' (Keohane 2006: 74). In short, the problem is not sovereignty *per se*, but that particular (undemocratic) sovereign states are given an equal voice to democratic ones. This is indeed a problem if the EU is attempting to get its policies promoted through a recourse to voting, but as shall be discussed below, narrowly won and lost recorded votes are not the basis of sustained adherence to human rights norms.

Looking into IR constructivist literature we find a number of authors who do not accept that sovereignty and multilateralism are antagonistic or oppositional. John Ruggie's 1992 article *Multilateralism: the Anatomy of an Institution* sets out a definition of multilateralism that is widely cited to this day. He begins with the observation that multilateralism has quantitative and qualitative elements. The quantitative element is that multilateralism coordinated

> relations between three or more states' and rapidly incorporates the first of three qualitative elements 'on the basis of "generalized" principles of conduct for a class of action, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific moment.' (Ruggie 1992: 571)

Adding substance to this are two more qualitative elements, namely that 'generalized organising principles logically entail an *indivisibility* among members' [emphasis added] and that 'successful cases of multilateralism in practice appear to generate among their members what Keohane has called expectations of "diffuse reciprocity"

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[4] The article reads: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

(Ruggie 1992: 571). The 'qualitative' elements are not merely characteristics describing particular interstate relations, rather they reflect a deeper ontological position held by Ruggie that relations between states need to be understood through a social theory instead of an individual-rationalist perspective. The 'concept of multilateralism here refers to the constitutive rules that order relations in given domains of international life – their architectural dimension, so to speak. … In short, multilateralism here depicts the character of an overall order of relations among states; definitionally is says nothing about *how* that order is achieved' [Emphasis in original] (Ruggie 1992: 572). Elsewhere, Ruggie has used the same social construction ontology to argue that sovereignty is another constitutive rule of modern international relations (1993b), of crucial importance because it establishes the mode of differentiation between constituent units. As Christian Reus-Smit says, in 'societies of states, *the organizing principle of sovereignty* differentiates political units on the basis of particularity and exclusivity, creating a system of territorially demarcated, autonomous centres of political authority' (Reus-Smit 1997: 567). Ruggie 'draws a clear connection between the foundational principle of sovereignty, the social identity of the state, and the nature of fundamental institutions', of which multilateralism is one (Reus-Smit 1997: 562).

Friedrick Kratochwil (2006) takes the argument one step further than Ruggie, arguing that state sovereignty is a form of multilateralism because it is a 'status, that is, as ascription by others' (Kratochwil 2006: 144). The representation of sovereignty as an societal norm rather than an *a priori* attribute of the units of the system as assumed by realist theory has been one of the primary lines of argument advanced by English School scholars and constructivists alike, but Kratochwil here posits that the societal element of intersubjective norms and values is an early form of multilateralism. 'To that extent "multilateralism" in its earliest manifestations was part of the "politics of recognition" that characterized the "sovereignty" game subsequent to the Westphalian settlement' (Kratochwil 2006: 141). Also of importance are the 'anti-hegemonic and anti-imperial dimensions' derived from the separation of external and internal politics (Kratochwil 2006: 145). 'While the individual sovereign could rule by the grace of God – and indeed this formula continued to legitimize traditional rule well into the nineteenth century – no such pretentions were acceptable in the international realm' (Kratochwil 2006: 146). Thus the international relations of the Westphalian state system incorporating mutual recognition and non-interference in domestic politics were the first example of multilateralism in the modern era. The Concert of great powers initiated with the 1815 Congress of Vienna was the second. There multilateralism changes 'from a minimalist to a more institutionalized form: the notion of a "great power". Thus while multilateralism still retains in a way its counter-hegemonic dimension, it is now a multilateralism of a somewhat restricted scope' (Kratochwil 2006: 148). Great powers met frequently and performed particular roles that helped maintain the overall system stability, which while not bringing about an end to unilateralism, at least 'entailed some subsequent vetting of policies within the club for legitimization purposes' (Kratochwil 2006: 148). In summary, Kratochwil goes beyond Ruggie's argument that sovereignty and multilateralism are both intersubjective social constructs of states, positing instead that the practices associated with the emergence of Westphalian state sovereignty are examples of 'multilateralism's grammar' (Kratochwil 2006: 143).

Christian Reus-Smith also takes a constructivist approach to the study of multilateralism, conceptualising it as one of the two 'fundamental institutions' that structure modern international society, the other being contractual international law (Reus-Smit 1997: 555). He advances two criticisms of Ruggie's approach, as outlined above. The first asks why multilateralism only emerged 150 years *after* the modern Westphalian system emerged. His second is that in order to explain the type of multilateralism designed in the post-1945 world, Ruggie resorts to 'a "second image" argument about the institutional impact of American hegemony[5]' that at the end of the day 'elaborated institutional principles that were first embraced and implemented by the great powers almost a century earlier' (Reus-Smit 1997: 563). Kratochwil's contribution resonates with these critiques, addressing the first one through his assertion that mutual state recognition during the 150 years of absolutism after 1648 constitutes a form of multilateralism preceding the period considered by Ruggie, and reiterating the second in his interpretation of the concert system. Yet for Reus-Smit Kratochwil's answers are insufficient and instead he presents a more detailed explanation of why multilateralism is one of the fundamental institutions of modern international society, based on an analysis of the 'constitutional structure of international society'. His argument is informed by the observation that 'fundamental institutions differ from one society of states to another' and that ancient Greek city-states 'developed a sophisticated and successful system of third-party arbitration to facilitate ordered interstate relations', which he characterises as "authoritative trilateralism" (Reus-Smit 1997: 555). What links Greek city states to our interest in sovereignty and multilateralism is that it alerts us to the fact that multilateralism is the result of a specific set of social forces located around state sovereignty but not exclusively a product of sovereignty alone. For the purposes of this paper's argument much of the detail can be sidestepped and a brief explanation of 'constitutional structures' and their impact on modern multilateralism will suffice. Later towards the end of the paper this model will be returned to in order to present a radical proposal for EU action in the multilateral system.

> Constitutional structures are coherent ensembles of intersubjective beliefs, principles, and norms that perform two functions in ordering international societies: they define what constitutes a legitimate actor, entitled to all the rights and privileges of statehood; and they define the basic parameters of rightful state action. (Reus-Smit 1997: 566)

Reus-Smit identifies 'three intersubjective normative elements: a hegemonic belief about the moral purpose of centralized, autonomous political organization; an organizing principle of sovereignty; and a norm of pure procedural justice' (Reus-Smit 1997: 566). As Reus-Smit goes on to demonstrate in his comparison of ancient Greece and the modern state system, the three elements are linked because the moral purpose of the state, as defined by the principle of sovereignty, generates particular norms of procedural justice. The 'raison d'être undergirding the sovereignty of ancient Greek city-states involved a "discursive" norm of justice, whereas the moral purpose sustaining the sovereignty of modern states has involved a "legislative"

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[5] Ruggie's claim is that it was '*American* hegemony that was decisive after World War II, not merely American *hegemony*' [Emphasis in original] (Ruggie 1992: 593).

conception of justice' (Reus-Smit 1997: 568). He characterises political life in ancient Greece as revolving 'around public speech and debate, the principal aim of which was the rational pursuit of justice', which led to an approach to dispute settlement in international affairs between sovereign units through arbitration by a third party embodying 'the same discursive norm of procedural justice that informed city-states' domestic legal processes' (Reus-Smit 1997: 572). By contrast, in the modern state system the hegemonic domestic norm spread through the Enlightenment, liberal political theory and capitalism production broadly definable as C. B. Macpherson's 'possessive individualism' (1962). 'As the nineteenth century progressed, the state's moral purpose was increasingly identified with augmenting individuals' purposes and potentialities. This, in turn, generated a new legislative norm of procedural justice' (Reus-Smit 1997: 577). Paralleling the emergent norm of the equality of all men was, as Kratochwil also argues, a move to recognise the sovereign equality of all states and regulate relations between them by rule and contract. Thus Reus-Smit arrives at his two fundamental institutions that structure modern international society: multilateralism and contractual international law.

All three authors ask us to consider the deeper linkages between sovereignty and multilateralism, and if one is prepared to accept their social-constructivist ontologies then the binary opposition of the two becomes unsustainable. As I shall now turn to discuss, the 'problem' of how the EU should promote a progressive HR agenda in the UN is not 'solved' by reigning in sovereignty and in its place asserting more multilateralism. Instead I will consider three ways the EU can engage in dialogue with the wider membership of the UN, in the words of Gowan and Brantner to 'erect a big tent' (2008: 7). Informing this discussion are the 2006 Statement on the Death Penalty, the 2007 and 2008 resolutions in the UNGA on a Moratorium on the Death Penalty and the 2008 Statement on Sexual Equality.

II. Promoting a moratorium on the death penalty and LGBT rights

In this section I shall consider how the EU could enter into dialogue with the wider membership of the UN in order to build a broad coalition in support of progressive human rights norms. This membership is, as Gowan and Brantner point out, heterogeneous insofar as it can be conceptualised as concentric circles around the core EU position.[6] The closest circle is composed of SAA and accession states to the East, as well as EEA members such as Norway, Switzerland, Iceland and Lichtenstein. Depending on the issue area, non-European OECD states constitute the next circle, with whom the EU share many common interests yet failure to reach out to them in coordination meetings is well documented (Smith 2006a,b).[7] South and Central American states are often closely aligned with the EU on human rights issues, constituting a wider circle of cooperation.[8] Beyond that in Asia and Africa individual states are targeted according to the likelihood they will be supportive, and as such are 'cherry-picked'. There is a degree of momentum associated with this method, and overcoming the first-mover dilemma can lead to gradual build-up of support. The first problem to explore is how can the EU move from inside the comfort-zone of a coalition of the 'greater North' mustering around 50 votes, to one that extends significantly outwards into the more distance spheres where 100+ states join the sponsoring coalition? Gaining the support of South and Central American states (GRULAC) is important but ultimately insufficient if not supplemented with members from the Africa and Asia regions. Once achieved, the second concern is how to move towards 130+ states' support that puts the minority below the one-third level.[9] With each step the potential for a 'dialogue with the deaf' increases substantially, but in order to bring about significant improvement to human rights protection globally there must be more done than simply winning majority votes in the UNGA.

The European Union first attempted to pass a resolution for the worldwide abolition of the death penalty in 1999, one year after successfully passing such a resolution in the Commission on Human Rights (Bantekas & Hodgkinson 2000, Kissack 2008b). That degenerated into an unmitigated failure in the eyes of everyone bar a few optimistic Italian commentators, whose opinion was coloured by the fact that Italy was not only the major driving force behind the drafting process, but also the reason why it came so close to being counterproductive and damaging

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[6] Reaching a 'core EU position' is in itself no easy feat, as I have described in detail elsewhere for the drafting of the Death Penalty resolution in 2007. (Kissack 2008b)

[7] On the issue of the death penalty, Japan and the USA do not support the EU moratorium.

[8] The GRULAC members are opposed to the EU on economic development questions, siding with the G77. Caribbean states are among the strongest advocates of retaining the death penalty.

[9] The figure '100' is significant because with 192 members in total, a resolution requires 97 votes in favour to be adopted by simple majority, and is the number cited by Amnesty International as needed before it would endorse a resolution on the death penalty. 130 is the threshold for a two-third majority, regarded by some as more legitimate than one-third (mostly G77 states that can gather this many votes). However, the extent to which either is legitimate is debatable, complicated by the questions of 'legitimacy' and 'consensus'. On these see Claude (1966), Buzan (1981), Franck (1990), Clark (2003), Keohane (2006) and for a discussion Kissack (2009b).

abolitionists' plans. In the UNGA Third Committee (Social, Humanitarian and Cultural) a group of retentionist states attempted to insert an amendment into the text of the resolution asserting the primacy of Article 2(7) of the Charter. Such amendments, referred to colloquially by diplomats as 'wrecking amendments', seek to secure the primacy of state sovereignty and deny that there is a human rights element to the issue. In the words of a leading Amnesty International campaigner, this would set their death penalty project back ten years.[10] Italy, according to Bantekas and Hodgkinson's account, were on the cusp of agreeing to this when the resolution was instantly dropped and there was no further discussion (Bantekas & Hodgkinson 2000: 29). In their defence, the supporters of Italian actions argue that putting the item on the agenda on the Third Committee was an important achievement. However, the EU retreated to the relatively permissive environment of the CHR and continued authoring resolutions against the death penalty until the Commission's reform in 2005/06. These events cemented the reputation of the UNGA as being under the sway of the global South, while the numerical skew on CHR membership towards the WEOG and GRULAC members gave the EU and its closest circles of 'friends' the ability to win recorded votes (Smith 2006b, 2008; Gowan and Brantner 2008: XX) However, when the newly formed Human Rights Council emerged with its reweighted regional representation favouring Asia and Africa over WEOG, Eastern Europe and GRULAC, the EU found itself in repeatedly in the minority.

In 2006 the Finnish EU Presidency began circulating a draft statement to be read out in the UN General Assembly setting out the reasons for seeking to abolish the death penalty. The statement read out by Finland in the General Assembly was on behalf of 84 other states, establishing that there was sufficient concern for the issue to place it on the agenda of the Third Committee the following year.[11] The German Presidency of the first semester of 2007 held preliminary discussions on how to maintain momentum, but progress was limited and there was still no agreement on a common position as the Portuguese assumed the Presidency and preparations for the 62nd Session began in New York. Against the advice of Amnesty International (who demanded evidence of at least 100 states willing to co-sponsor the resolution as a sign of certain success), and from a very slow start the EU member states began

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[10] This view is also expressed by EU and non-EU diplomats working in the UNGA Third Committee. I would like to thank the 22 diplomats and NGO representatives who talked to me during the week 31 March - 4 April 2008, and 16 -20 February 2009. Personal interviews were carried out under the Chatham House Rule, and thus to maintain their anonymity no references to their nationalities are made.

[11] http://www.un.org/News/Press/docs/2006/ga10562.doc.htm (Accessed 8 April 2009) The 84 states were: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, France, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Tuvalu, United Kingdom, Ukraine, Uruguay, Vanuatu and Venezuela.

establishing a common position between the staunch abolitionists (led by Denmark, the Netherlands, Sweden) and the pragmatists willing to accept less (led by Italy). Importantly, however, the decision was made to form a group of ten co-authors consisting of two states from each of the five UN regions.[12] Firstly, this demonstrated that lessons had been learnt from the 1999 episode because draft resolutions are received with greater hostility when they are perceived as being authored exclusively by the EU. One African diplomat summed up the credibility problem facing the EU by saying that their national position was to disagree first and then decide why later, and said the same approach is often taken by the African Group and Organisation of the Islamic Conference too. Secondly, the decision that only Portugal would participate in the co-authorship meetings gave important leverage to the Presidency to galvanise agreement within the EU. Early co-authors meetings left the nine non-EU states frustrated by the negotiation constraints placed on the Portuguese and unconvinced about their actual authorship of the resolution. Upmost in their minds was avoiding the accusation of being 'puppets' of the EU and consequently asserted their own will on the text of the resolution, changing Portugal's role from that of a highly constrained intermediary between two authorship groups into an equal player among the ten and more of a messenger back to the 27. Some diplomats amongst the 27 felt that the EU lost control of the authorship process; however, what cannot be denied is the ultimate success of the resolution. Widely recognised among EU and non-EU diplomats alike are the factors that contributed to the successful passing of the resolution. The first was the cross-regional co-authorship that framed the resolution as a universally acceptable human rights norm, rather than allowing detractors to portray it as Western. Secondly, the Portuguese Presidency orchestrated a choreographed and comprehensive defence of all conceivable amendments that the retentionist states could have tabled, preparing the interventions for a wide spectrum of co-authoring and co-sponsoring states. The pitfall of 1999 was avoided and when put to a recorded vote in the General Assembly the resolution was passed.[13]

In 2008 the process was repeated with a view to consolidating support rather than upping the pressure on retentionist states by calling for an outright ban in the place of a moratorium, contrary to some of their expectations. One unexpected difference was the relatively minor role played by the French Presidency, at times seeming almost invisible to both EU and non-EU states.[14] Chile assumed the role of *primus inter pares* in the co-authors and coordinated the defence of the resolution from hostile amendments. On reflection many EU diplomats were surprised that the retentionist states did not offer any new lines of attack, and the same responses sufficed as for last year. Once again, the resolution was passed, with a slightly large

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[12] The ten states were: Angola and Gabon (Africa), Philippines and Timor-Leste (Asia), Albania and Croatia (Eastern Europe), Brazil and Mexico (South America) New Zealand and Portugal (WEOG).
[13] The resolution calling for a moratorium on the death penalty (A/62/439/Add.2) was adopted by a recorded of vote of 104 in favour to 54 against, with 29 abstentions. 18 December 2007, (76th & 77th Meetings). See UN press document GA10678.
[14] This is put down to the fact that shortly before the beginning of the 63rd Session a new French diplomat was posted to New York and thrown in at the deep end. What is surprising about this is that in 2007 EU member states were considering whether to postpone action on the death penalty until the 2008 French Presidency under the assumption that it could muster considerably more resources than the Portuguese.

vote in favour, and a noticeable shift from votes against to abstentions.[15] Key to our analysis is the strategy of EU action, from statement to resolution, and then the consolidation of the majority behind it in the following year. To what extent is this a model for future action, and how does it work?

At the 63rd Session of the UNGA in 2008 a group of 66 states (including all EU member states, many WEOG and GRULAC members, as well as a few African and Asian states)[16] presented a statement to the General Assembly calling for the full implementation of fundamental human rights irrespective of sexual identity.[17] The statement was intended to raise awareness of the discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) people around the world, and presented this as a failure to respect the human rights of *all* people and as such a failing of the universal aspirations of human rights norms. In a manner similar to that of the death penalty, the promotion of a distinct LGBT resolution was initiated by Brazil in 2003 in the Commission on Human Rights, and more recently New Zealand and Norway have authored resolutions in the HRC. Building on this initiative a core group of states (France, the Netherlands, Argentina, Brazil, Croatia, Gabon and Norway) began drafting a statement for the 2008 UNGA with the intention of canvassing co-signatures from like-minded states (from the five UN regions). The EU was 'represented' by the French and the Dutch but diplomats who worked on the statement note that the EU presence was barely noticeable at times, and the project was driven forcefully by the French from Paris and Rama Yade, the Minister of State with responsibility for Foreign Affairs and Human Rights, as well as the Dutch Minister for Foreign Affairs Maxime Verhagen.[18] The statement was read to the General Assembly by the Argentine Ambassador and minimised the visibility of the EU in the process.[19] This is a fair reflection of the actual drafting process; EU involvement was insufficient for this to be accurately described as an EU initiative in the way that the death penalty resolution can be. This is partly due to non-EU co-authors learning from the death penalty drafting experience that they must be fully active from the beginning, and partly also due to the political capital invested in this issue by France and the Netherlands granting them a high-profile role.

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[15] The resolution before the plenary (A/63/430/Add.2) was adopted on 18 December 2008 by a recorded vote of 106 in favour to 46 against, with 34 abstentions.

[16] Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

[17] http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/826.html (accessed 31 March 2009)

[18] The French Presidency set up a website dedicated to this: http://www.droitslgbt2008.fr/acueil/index.php (accessed 31 March 2009).

[19] http://webcast.un.org/ramgen/ondemand/ga/63/2008/ga081218am.rm (accessed 31 March 2009).

Is the LGBT statement of 2008 where the death penalty was in 2006? Given the successful adoption of the resolution in 2007, will the EU and the likeminded co-authors choose to follow the same pathway and present a resolution in the Third Committee in 2009? Two factors at present suggest that this will not be the case at least this year. Firstly there are nearly twenty fewer signatures on the LGBT statement than there were in 2006, although that statement called for an abolition of the death penalty that was subsequently 'weakened' to a call for a moratorium, making it easier for wavering states to accept it. Secondly, the IOC coordinated a very strongly worded counter-statement setting out their objections to the LGBT statement that took its supporters by surprise; although they expected a response they did not envisage it to be so blunt.[20] For pragmatic states within the LGBT coalition, some wonder if it is worth spending the political capital on fighting this battle if it will raise such ill will among UN members.[21] Diplomats involved in the core-drafting process are non-committal about the prospects of a resolution next year, while opponents are firmly of the opinion that this is the beginning of another drive towards a resolution and that the incremental 'death penalty process' will be repeated. Despite the similarities in the process, there remains a categorical difference between the death penalty and LGBT rights, with the latter framed as ensuring universal application of existing, accepted human rights norms (and targeting discrimination leading to systematic violation of those rights of the LGBT minority). By contrast, the former has been presented by retentionists as an intrusion into the domestic legal affairs of a state and a contravention of UN Charter Article 2(7), and as such challenges the legitimately of norm of state sovereignty of UN members (Kissack 2009). The long-term success of both cases depends on establishing in the first instance a majority of states willing to adopt a resolution, and in the second instance a gradual increase in the level of support beyond the simple majority needed to pass a resolution in the UNGA towards consensus. Thus the question turned to in the final section is why are non-EU states willing to support an EU-sponsored resolution,[22] and how can we explain the increasing willingness of more states to support it over time?

III. Negotiating membership of the 'Big Tent'

The first reason why non-EU states are willing to support EU-sponsored human rights resolutions is because they are in their own national interest. The concentric circles model of relations between EU and non-EU states is based on the assumption that those in nearest circles are 'like-minded' and national interests are more likely to be complementary and shared. For example, Mexico's keen advocacy against the death penalty is partially explained by the disproportionally high number of Mexicans on death row in the United States, as a percentage of the total population of those

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[20] Syria read the 'counter' statement, as did Ethiopia, Russia and the Holy See. http://www.un.org/news/Press/docs/2008/ga10801.doc.htm (accessed 8 April 2009).
[21] Interviews, New York, 16 -20 February 2009.
[22] As discussed, the LGBT statement cannot be fairly labelled 'EU-sponsored', not least because it is disingenuous to the actual authors. However, opponents find it convenient to label statements and resolutions as EU-sponsored because it makes organising a unified position against it easier, as noted above in the comments concerning oppose first, reason why later.

sentenced to death. Similarly, the top five destinations for Filipinos working abroad are Saudi Arabia, Japan, Hong Kong, the UAE and Taiwan, of which only Hong Kong has abolished the death penalty. Both Mexico and the Philippines were among the ten co-authors of the 2007 death penalty resolution. Winning over each new member into the 'big tent' becomes progressively harder at the national interest of each state is more divergent from those of the EU core. Focusing on insight from the defence of the death penalty resolution from 'wrecking amendments' in the Third Committee, the EU must be able to demonstrate the most convincing arguments for why their position should be supported. Through the orchestration of responses to the various lines of attack, the EU (and its co-sponsors) demonstrated that within the rational discourse of the multilateral framework, they have the better-reasoned arguments. How significant is this approach in the construction and maintenance of the 'big tent'? On the one hand no diplomat enters the Third Committee or the General Assembly without a national position on an issue as important as the death penalty or LGBT rights – there are no 'undecided voters' up for grabs. On the other hand, a number of theories tell us that discourse does affect outcomes in negotiated settlements over normative issues. I shall briefly consider three avenues of explanation drawn from the theoretical literature. There is insufficient space to analysis the role of the death penalty and LGBT rights in the bilateral relations between the EU and third states, nor the linkages between national foreign, development and aid policies and these issues, which are considered in Balfour (2006) and Lerch and Schwellnus (2007).

The useful place to start is with Ian Manners seminal essay *Normative Power Europe: A contradiction in terms*, which not only considers the ability of the EU to shape norms by having the 'ability to define what passes for 'normal' in word politics' but also specifically addresses promoting the abolition of the death penalty (2002: 253). To recap the central tenants of the thesis, Manners argues firstly that the debate between civilian power (championed by Duchene) and military power (championed by Bull) that has polarised the study of the EU in international relations actually have some important commonalities. These include firstly their 'shared interest in the maintenance of the status quo in international relations which maintained the centrality of the Westphalian nation-state', secondly their shared valuing of 'direct physical power in the form of actual empirical capabilities', and finally they 'both saw European interests as paramount' (Manners 2002: 238). The civilian-military power debate also has a natural tendency to slide into a discussion about the EU's state-like qualities, or lack thereof. The second stage of the thesis argues that in the post Cold War world in which victory over the USSR was due to the 'collapse of [Soviet communist] norms rather than the power of force' we should reflect 'on what those revolutions tell us about the power of ideas and norms' (Manners 2002: 238). The study of normative power Europe in the international system is appropriate in the post-Soviet world, and leads beyond the discussion of state-like qualities inherent in the civilian-military debate towards assessing the unique identity of the EU. Thus the third stage of the thesis considers how the unique constitution of the EU lends itself to being a normative power. Through the identification of five core norms and four minor norms located within the emergent

legal output of the Union,[23] the EU is able to 'present and legitimate itself as being more than the sum of its parts' and this is manifested in its intra- and inter- national relations (Manners 2002: 244). Manners presents the abolition of the death penalty as an example of the EU's normative power agenda, arguing that while it is based on UN and Council of Europe norms, the EU took ownership of the norm itself and started promoting it in reference to its own moral and legal framework after it 'was legalized through the Amsterdam declaration' (Manners 2002: 252). He goes on to show how the abolitionist norm was firstly internalised among member states, then incorporated in the accession agreements of Central and Eastern states, and later adopted by states in the EU's neighbourhood amidst the milieu of intensifying institutional dialogue. In the wider world, the EU 'contributes towards raising the issue to the international level' (Manners 2002: 248). Does this help to explain how the EU attracts support among the wider UN membership?

'Normative power Europe' can certainly help explain why Europe is one of the densest spheres of support for the moratorium resolution, based on the fact that many states have already ratified the relevant Council of Europe (CoE) based European Convention on Human Rights (ECHR) Protocol 6 to abolish the death penalty. Manners argues that accession to the CoE was insufficient to bring about state ratification of Protocol 6, and only subsequent EU pressure to do so brought compliance, thus attributing the adoption of CoE laws to EU influence.[24] Thus within the European neighbourhood support for the UNGA resolution is likely to come as a result of prior normative action. Beyond the geographic scope of the CoE the EU has promoted its abolitionist norm through its bilateral and regional dialogue and 'through its engagement with the "super-executioners", China and the USA', although he concedes that what 'is self-evident about this engagement is the extent to which the EU is clearly not going to change the minds of the governments concerned' (Manners 2002: 248). The ambitions of the EU have been tempered in the UN system, as seen in the shift in focus from abolition to a moratorium. One of the biggest hurdles faced by the abolitionist camp is that the death penalty is not illegal under international law and is tackled in an optional protocol (no.2 of 1989) of the International Covenant on Civil and Political Rights. This is all the more a problem for Manners argument given the centrality of law within it, both in codifying norms at the European level that enables the EU to promote those norms externally, and in the EU's demands upon neighbouring states that they demonstrate their commitment through accession to the ECHR protocol. What remains unexplained is whether *arguing* the EU position in the UNGA is a strategy worthy of pursuit. Perhaps this is no more than should be expected given the fact that, according to Manners, 'the most important factor shaping the international role of the EU is *not what it does or what it says*, but what it is' [emphasis added] (Manners 2002: 252). While the 'ontological quality' of normative power provides ontological security to the EU (Manners 2002: 252), it exposes the Union to hostility from other UN members who cite its 'holier than thou' approach to politics as a reason for distrust and resentment. For this reason we must look

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[23] These are: peace, liberty, democracy, the rule of law, respect for human rights, and the minor norms: social solidarity, anti-discrimination, sustainable development, good governance (Manners 2002: 242-243).

[24] Russia is one of the examples discussed by Manners, and it has voted in favour of the UNGA resolutions both years, despite being in Gowan and Brantner's 'Axis of Sovereignty'.

elsewhere for a useful theoretical framework to understand the EU's argumentative strategy in the UNGA beyond its closest spheres of allies.

Thomas Risse has theorised a 'logic of argumentation' in which 'processes of argumentation, deliberation, and persuasion constitute a distinct mode of social interaction to be differentiated from both strategic bargaining – the realm of rational choice – and rule guided behaviour – the realm of sociological institutionalism' (Risse 2000: 1). He demonstrates how March and Olsen's 'logic of consequentialism' and 'logic of appropriateness' are complemented by the logic of argumentation. Risse uses Habermas' critical theory of communicative action as a meta-theoretical framework and shows how some of the core assumptions of a 'common lifeworld' and 'ideal speech situations' can be relaxed to the extent that is applicable to world politics (Risse 2000: 14-19). Risse tackles the first criticism by rehearsing the constructivist explanation of the anarchical international system as an intersubjectively understood and experienced phenomenon. He also articulates a second line reasoning that 'dense interaction patterns within highly regulated international institutions' help construct common lifeworlds, of which the diplomat networks working on Third Committee issues in the UN is just such an institution. The second criticism is also dealt with by arguing that although power relations intervene to disrupt the assumption of an ideal speech situation, they do not explain outcomes of argumentation. Risse asserts that we can 'still maintain that truth-seeking behaviour leading to a reasoned consensus is possible in international affairs' (Risse 2000: 19). He moves on to illustrate his example with an analysis of how human rights norms are socialised into domestic practice, noting three stages. Initially 'norm-violating governments not only deny the validity of the international norms but also ridicule their accusers as ignorant "foreigners"… [and] [m]any Third World governments engage in an anti-colonial and anti-imperialist as well as nationalist discourse at this stage' (Risse 2000: 29). We have seen examples of this in the arguments presented by retentionist states. Over time and under pressure norm-violating governments are forced into making tactical concessions and change their rhetoric to 'no longer deny the validity of the international norm. … The more norm-violating governments accept the validity of international norms, the more they start arguing with their critics over specific accusations (Risse 2000: 29). During this second stage 'a discursive opening is created for their critics to challenge them further: If you say you accept human rights, then why do you systematically violate them?' (Risse 2000: 32). Risse notes that the discourse shifts from being focused on validity claims toward being focused on interpreting law, and in our case it is the interpretation of international law around the UN Charter and existing HR law. Ultimately this results in a final stage in which state behaviour changes to accommodate the norm domestically, leading Risse to conclude that this demonstrates 'a process of argumentative "self-entrapment" that starts as rhetorical action and strategic adaptation to external pressures but ends up as argumentative behaviour […] as if they were engaged in a true moral discourse' (Risse 2000: 32). In summary, for Risse, argumentation matters because it does bring about a change in national policy making through a change in identity and interests. In this sense it leads to substantial and robust human rights protection through an internalisation of the norms. This provides a means to understand the changing interests and identities of the states on the lower levels of influence around the EU position.

Frank Schimmelfennig has written extensively on 'rhetorical action' and 'rhetorical entrapment' as a way of bridging the explanation-gap between rational choice and sociological institutional approaches to the study of decision-making in international organisations. As he says in relation to the EU enlargement from 15 to 27 states:

> Although rationalism can explain most actor preferences and much of their bargaining behaviour, it fails to account for the collective decision for enlargement. Sociological institutionalism, in turn, can explain the outcome but not the input. To provide the missing link between egotistic preferences and a norm-conforming outcome, I introduced "rhetorical action", the strategic use of norm-based arguments. (Schimmelfennig 2001: 76)

Behind the puzzle of the decision to enlarge the EU that provides the case study, Schimmelfennig wants to bring the role of norms and legitimacy into the equation without buying the idea that actors interests and identities change as a result of debate. He wants to explain why actors are forced to behave *against* their interests, contra Risse who sees argument leading to a change in interests. Schimmelfennig's 'rhetorical actors do not engage in a "cooperative search for truth" but seek to assert their own standpoint and "are not prepared to change their own beliefs or to be persuaded themselves by the 'better argument''" (Schimmelfennig 2001: fn.55 quoting Risse 2000: 8). The binding commitment on states to act against their self-interest is derived from membership of a community that has its own legitimate normative framework, and when state action is demonstrated to at odds with community norms, deviant states are said to become 'rhetorically entrapped'. All members of the community seek to frame their own interests in accordance with community norms and their opponents in contravention, resulting in 'the strategic use of norm-based arguments' (Schimmelfennig 2001: 62).

To what extent is this model applicable to the EU's argumentation in the UNGA? The much lower level of socialisation of member states to the norms and principles of the UN than the 15 EU member states to European institutions is not the problem that it would initially appear to be. According to Schimmelfennig, 'rhetorical action presupposes weakly socialized actors' and the theoretical purchase of the theory is that socialisation is insufficiently strong to influence state interests because 'it is not expected that collective identity shapes concrete preferences' (Schimmelfennig 2001: 62). Thus the shift of focus from the EU to the UN is not a problem. However, in order for entrapment to take place and for naming and shaming to affect behaviour 'actors are assumed to belong to a community whose constitutive values and norms they share' (Schimmelfennig 2001: 62). The community places obligations on members (states) to behave in accordance to its 'standard of legitimacy', although they 'do not take the standard of legitimacy either for granted or as a moral imperative that directly motivates their goals and behaviours. They confront the standard of legitimacy as an *external institutional resource and constraint*' [emphasis in original] (Schimmelfennig 2001: 63). Within the UN the standard of legitimacy is more minimal than in the EU, where for example state sovereignty is the primary determinant of membership, but not on the type of political regime inside the state, or the geographic location, as in the EU. In the case of the death penalty, the debate between abolitionists and retentionists centred upon whether

the issue belonged within the Third of Sixth Committees, i.e. whether it was a human rights issue or a domestic legal question. By differing over the relationship between the death penalty and the UN Charter, states sought to 'argumentatively back up their selfish goals and delegitimize the position of their opponents' (Schimmelfennig 2001: 63). The extent to which legitimacy matters is seen through the effectiveness of 'shaming' those states that have 'declared their general support of the standard of legitimacy at an earlier point in time' (Schimmelfennig 2001: 64). Schimmelfennig carefully constructs his argument so as to demonstrate that 'even if community members only use the standard of legitimacy opportunistically to advance their self-interest, they can become entrapped by their own arguments and behave *as if they had taken them seriously*' [Emphasis added] (Schimmelfennig 2001: 65). In short, successful 'rhetorical action silences opposition to, without bringing about a substantive consensus on, a norm-conforming policy (Schimmelfennig 2001: 65).

Rhetorical action is an important tool for understanding the interaction between the EU and those states on the periphery of its circle of influence and those outside its sphere of influence all together. These states are not likely in the short term to change their national positions regarding progressive human rights standards such as the death penalty or LGBT rights. There is weak socialisation to the extent that the preservation of plurality between states (and differences on HR issues is an important loci of pluralism) *is* the primary social norm, manifested in sovereign autonomy and non-interference. However, for rhetorical action to work there must be an opportunity cost to being shamed in order for the community to have leverage over dissident members. The ability to label community norms as 'imperialist' or 'western' is an escape clause from rhetorical entrapment, thus making the regional constellation of co-authoring and co-signing states is important. Overall Schimmelfennig contributes to understanding how the EU can build a 'big tent' that while unable to accommodate all states, has a reliable way of silencing those who in the short and medium term will not adhere to the standard in practice as it is against their interests. This is the best that can be reasonably hoped for given the non-binding nature of UNGA resolutions on the law and practice of the member states. Nevertheless is provides the majority with the opportunity to pursue a progressive agenda unimpeded by the petitions of the minority.

Each of these three theoretical perspectives sheds light on one part of the 'big tent' assembly process, Manners with the inner most circle, Risse applied to those predisposed to be generally sympathetic to arguments about HR norms, and Schimmelfennig explaining the more peripheral states that change neither their interests or identities, but become rhetorically entrapped. However, all of this assumes working within a Westphalian framework of sovereign states as the primary actors, under the fundamental institutions of international law and multilateralism as defined by Reus-Smit. Given the fact that modern nation-states are the core component of the UN system and that their mode of multilateralism is intergovernmental (compared to the supranational bent of the EU states noted by Laatikainen and Smith 2006), this is entirely appropriate.

However, there is another way of looking at the role of arguing in the UN context, taking as its departure point Reus-Smit's foundational premise that the constitutional structures determine fundamental institutions. To what extent is it possible to reformulate the intersubjective normative elements that make up the constitutional structure? By showing that in ancient Greece all three elements took different forms we are made aware of their temporality, although Reus-Smit does not offer any thoughts on how they might change in the future. Reus-Smit demonstrates how the 'norm of pure procedural justice' is derived from domestic legal orders and their concept moral purpose that underpins their political organisation. In ancient Greece it was a process of justice through rational discourse towards the truth, while in the modern state is centred on the protection of property rights and liberal values of individual freedom. As advocates of a more just and equitable world order have long argued, there must be a recalibration of the notion of justice to become global in focus and solidarist in purpose. Such an intention to promote a new norm of procedural justice among the intersubjective constitutional structures will have repercussions for the other two components. The European Union has long been recognised as at the vanguard of redefining the Westphalian concept of state sovereignty, and as Manners has shown there are a core of norms at the centre of the Union that reflect solidarist principles beyond its borders, *inter alia* the Petersburg Tasks, human rights and core labour standard promotion, commitment to legislation combating climate change (Manners 2006). This preliminary sketch of the EU's challenge to the constitutional structure of the modern sovereign state system is wholly consistent with Reus-Smit argument because as he says, we need to 'facilitate systematic comparison across historical societies of states' (Reus-Smit 1997: 556). How does this detour into meta-theory help understand the role of argumentation in the UNGA? Argumentation, rhetoric and persuasion were central to the life of the polis in ancient Greece political society, where it was virtuous for free men to debate and sophists was held in esteem for their power to convince the 'mob', although Plato showed through Socrates that the pursuit of truth and the ability to win an argument were not always compatible (Plato 1979). The forthright defence of the values of the EU in the UNGA through the rhetoric and persuasion mimics a classical pursuit of justice in the ancient polis. Successful outcomes are based on the power of argument and the strength of the reasoning, as well as reiterating the fundamental equality of all parties present in the debate. Non-EU diplomats agreed with the view that it was preferable for the EU to promote its human rights agenda through the use of transparent argument in front of all UN members with the arrogant aloofness currently perceived by the Global South. One area for further research is the potential for a transformation of the fundamental institutions of modern international society into those reflecting a new constellation of constitutive structures, hinted at by the recognition that argumentation, persuasion and rhetoric are found across different historical societies of states and may be incorporated into future ones too.

IV. Conclusion

This paper has made two arguments. The first is that while the dichotomy between 'sovereignty' and 'multilateralism' may be a useful shorthand notation for the different positions of UN member states on the issue of human rights promotion, it is

theoretically inaccurate. Instead through the work of Ruggie, Kratochwil and Reus-Smit sovereignty was shown to be consistent with multilateralism. It was further argued that multilateralism in the modern international system is the result of a specific set of historical processes and intersubjectively constructed societal norms between states. The second part of the paper analysed the newly emerging EU process of human rights promotion in the UNGA of building a multi-regional constituency of states supporting progressive HR norms, firstly through statements and then through resolutions. It was noted that one of the most important elements in explaining the successful outcome of these campaigns was the orchestrated defence of the resolution through carefully prepared arguments. The 'power' of argumentation was considered in three ways, as normative power (Manners), as the logic of argumentation (Risse), and as rhetorical action (Schimmelfennig). It was argued that each one contributed a level of explanation as to how the concentric circles of influence around the EU are influenced by the process of argumentation, according to the degree to which norms are pre-existing, willingly internalised at the national level, or remain unaccepted but unchallenged. The paper ended by suggesting that the use of rhetoric and persuasion in international organisations was compatible with the form of procedural justice used in ancient Greek between city states. While this does not signify a 'return to the past' within the fundamental institutions of the international system (Reus-Smit), it does make us aware of the possibility that future changes to fundamental institutions are possible and new conceptions of justice that feature more prominently solidarist human rights norms are also possible. The reconfiguration of the norm of sovereignty already underway inside the EU is a conduit for such change.

V. References

BALFOUR, R. (2006) 'Principles of democracy and human rights' IN LUCARELLI, S. & I. MANNERS (eds) *Values and Principles in European Foreign Policy.* London, Routledge.

BANTEKAS, I. & P.HODGKINSON (2000) 'Capital Punishment at the United Nations: Recent Developments' *Criminal Law Forum* Vol. 11, No. 1, 23-34.

BERENSKOETTER, F. (2005) 'Mapping the Mind Gap: A Comparison of US and European Security Strategies.' *Security Dialogue* Vol. 36, No. 1, 71-92

BISCOP, S (2004) 'Effective Multilateralism: Bringing the European Way into Practice.' in *Egment Paper 3: Audit of European Strategy* Brussels**.**

BISCOP, S & E. DRIESKENS (2006) 'The European Security Strategy: confirming the choice for collective and comprehensive security' IN WOUTERS, J., HOFFMEISTER, F. & RUYS, T. (Eds.) *The United Nations and the European Union. An Ever Closer Partnership.* T.M.C. Asser Press.

BUZAN, B. (1981) 'Negotiating by Consensus: Developments in Techniques at the United Nations Conference on the Law of the Sea', *American Journal of International Law* Vol. 75, No. 2, 324-348.

CALLEO, D. (2004) 'The Broken West', *Survival, Vol.* 46, No. 3, 29-38.

CLAUDE, I. (1966) 'Collective Legitimization as a Political Function of the United Nations' *International Organization,* Vol. 20, No. 3, 367-379.

CLAUDE, I. (1984) *Swords into Plowshares: The Progress and Problems of International Organization.* (4th ed.) New York, Random House.

CLARK, I. (2003) 'Legitimacy in a global order' *Review of International Studies,* Vol. 29, No. 1, 75-95.

COOPER, R. (2000) *The post-modern state and the world order.* (2nd ed.) London, Demos.

COUNCIL OF THE EUROPEAN UNION (2003) A Secure Europe in a Better World European Security Strategy. 12 December 2003

COX, M. (2005) 'Beyond the West: Terrors in Transatlantia' *European Journal of International Relations*, Vol. 11, No. 2

ELGSTROM, O., GERLACH, & M. SMITH (2007) *The European Union and International Regimes – Effective Multilateralism in Action?* CSIG and UACES Workshop, Loughborough University, 27 April 2007.

ELGSTROM, O & M. SMITH (2006) *The European Union's Roles in International Politics*. London, Routledge.

FOREIGN POLICY CENTRE (2004) edited by Espen Barth Eide '*Effective Multilateralism': Europe, Regional Security and a Revitalised UN*, FPC, London.

FOOT, R. (1979) 'The European Community's voting behaviour at the United Nations General Assembly'. *Journal of Common Market Studies*, Vol.17, No. 4: 350-360.

FRANCK, T. (1988) 'Legitimacy in the International System' *The American Journal of International Law,* Vol. 82, No. 4, 705-759.

GORDON, P. & J. SHAPIRO (2004) *Allies At War*. New York, McGraw-Hill.

GOWAN, R. & F. BRANTNER (2008) *A Global Force for Human Rights? An Audit of European Power at the UN*, European Council on Foreign Relations, Brussels.

HURWITZ, L. (1975) 'The EEC in the United Nations: The voting behaviour of eight countries, 1948-1973' *Journal of Common Market Studies*, Vol. 13, No. 3: 224-243.

JORGENSEN, K.E: (200X)

JORGENSEN, K.E: (2009) *The European Union and International Organizations* London, Routledge.

KAGAN, R (2003) *Of Paradise and Power: America and Europe in the New World Order*. New York, Alfred Knopf.

KEOHANE, R. O (2006) 'The Contingent Legitimacy of Multilateralism' in NEWMAN, E., THAKUR, R. & TIRMAN, J. (Eds.) *Multilateralism Under Challenge? Power, International Order, and Structural Change,* Tokyo, United Nations University Press.

KERREMANS, B. (2006) 'Proactive policy entrepreneur or risk minimizer? A principal-agent interpretation of the EU's role in the WTO' In SMITH, M. & ELGSTROM, O. (Eds.) *The European Union's Roles in International Politics*. London, Routledge.

KIENZLE, B (2008) *'Effective Multilateralism'? The EU and International Regimes in the Field of Non-Proliferation of Weapons of Mass Destruction* paper presented at GARNET Conference, Brussels, April 2008.

KISSACK, R. (2008a) 'EU Actorness in the International Labour Organisation: Comparing declaratory and voting cohesion' *Global Society,* Vol. 22, No. 4, 469-489.

KISSACK, R. (2008b) *Outreach, Overstretch or Underhand? Strategies for cross-regional consensus in support of a UN General Assembly Resolution on a Moratorium on the use of the death penalt*y. LSE EFPU Working Paper 2008:2.

KISSACK, R. (2008c) 'Writing a new normative standard? EU member states and ILO conventions' IN ORBIE, J. & TORRELL, L. (Eds.) *The European Union's Role in the World and the Social Dimension of Globalisation.* London, Routledge.

KISSACK, R. (2009) 'How to lose friends and alienate people? The EU as a global social power' *European Journal of Social Policy* Vol. 19, No.2, 99-116.

KISSACK, R. (2009b) *Multilateral legitimacy and the promotion human rights: Is the EU's abolitionist aspirations for the death penalty killing the UN?* paper presented at the International Studies Association (ISA) Convention, NY.

KRATOCHWIL, F. (1993) 'Norms Versus Numbers: Multilateralism and the Rationalist and Reflexivist Approaches to Institutions - a Unilateral Plea for Communicative Rationality' In RUGGIE, J. G. (Ed.) *Multilateralism matters: the theory and praxis of an institutional form.* New York, N.Y, Columbia University Press.

KRATOCHWIL, F. (2006) 'The Genealogy of Multilateralism: Reflections on an organizational form and its crisis' in NEWMAN, E., THAKUR, R. & TIRMAN, J. (Eds.) *Multilateralism Under Challenge? Power, International Order, and Structural Change,* Tokyo, United Nations University Press.

LAATIKAINEN, K.V & SMITH, K. E. (2006) *The European Union at the United Nations: Intersecting Multilateralisms*. London, Palgrave.

LERCH, M. & SCHWELLNUS, G., (2007) 'Normative by nature? The role of coherence in justifying the EU's external human rights policy' IN H. SJURSEN (ed) *Civilian or Military Power? European Foreign Policy in Perspective.* London, Routledge.

LINDEMANN, B. (1982) European Political Cooperation at the UN: a challenge for the Nine. In ALLEN, D., RUMMEL, R. & WESSELS, W. (Eds.) *European Political Cooperation: Toward a foreign policy of Western Europe.* London, Butterworth Scientific.

LUIF, P. (2003) *EU Cohesion in the UN General Assembly* 79. Paris, Institute of Security Studies.

MACPHERSON, C. B. (1962) *The Political Theory of Possessive Individualism: From Hobbes to Locke*, Oxford, Clarendon Press.

MANNERS, I. (2002) 'Normative Power Europe: A Contradiction in Terms?' *Journal of Common Market Studies*, Vol. 40, No. 2: 235-258.

MANNERS, I. (2006) 'The Constitutive nature of values, images and principles in the European Union' IN LUCARELLI, S. & I. MANNERS (eds) *Values and Principles in European Foreign Policy.* London, Routledge.

MEUINER, S. & NICOLAIDAS, K. (1999) 'Who Speaks for Europe? The Delegation of Trade Authority in the EU' *Journal of Common Market Studies*, Vol. 37, No. 3, 477-501.

OBERTHUER, S. (2009) *The Performance of the EU in International Institutions: Negotiating Climate Change,* paper presented at the International Studies Association (ISA) Convention, NY.

ORTEGA, M. (2005) *The European Union and the United Nations: Partners in effective multilateralism.* Paris, Institute for Security Studies.

PETERSON, J. & M POLLACK, (eds) 2003, *Europe, America, Bush: Transatlantic Relations in the twenty-first century.* London, Routledge.

PETERSON, J., M. ASPINWALL, C. DAMRO & C. BOSWELL (2008) *The Consequences of Europe: Multilateralism and the New Security Agenda.* Mitchell Working Paper Series, Europa Institute, University of Edinburgh.

PLATO, (1979) *Gorgias*. (Translated by T. Irwin) Oxford, Clarendon Press.

REUS-SMIT, C. (1997) 'The Constitutional Structure of International Society and the Nature of Fundamental Institutions' *International Organization* Vol. 51, No.4: 555-589.

RISSE, T. (2000) 'Let's Argue! Communicative Action in World Politics' *International Organization* Vol. 54, No.1: 1-39.

RUGGIE, J. G. (1992) 'Multilateralism: The Anatomy of an Institution' *International Organization* Vol. 46, No. 3, 561-598.

RUGGIE, J. G. (1993b) 'Territoriality and beyond: problematizing modernity in international relations' *International Organisation,* Vol. 46, No. 1: 139-174.

SCHIMMELFENNIG, F. (2001) 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union.' *International Organization* Vol. 55, No.1: 47-80.

SMITH, K.E. (2006a) 'Speaking with One Voice? European Union Coordination on Human Rights Issues at the United Nations.' *Journal of Common Market Studies*, Vol. 44, No. 1, 113-137.

SMITH, K.E. (2006b) 'The European Union, Human Rights and the United Nations.' IN LAATIKAINEN, K.V & SMITH, K. E. *The European Union at the United Nations: Intersecting Multilateralisms*. London, Palgrave.

SMITH, K.E. (2008) 'Speaking With One Voice but Having Little Impact: The EU at the UN's Human Rights Council' paper presented at 49th International Studies Association Conference, San Francisco March 2008.

SMITH, M. (1998) 'Does the flag follow trade?: 'politicisation' and the emergence of a European foreign policy' IN PETERSON J. & H. SJURSEN *A Common Foreign Policy for Europe: Competing visions of the CFSP*. London, Routledge.

van den HOVEN, Adrian (2006) 'European Union regulatory capitalism and multilateral trade negotiations' IN LUCARELLI, S. & I. MANNERS (eds) *Values and Principles in European Foreign Policy*. London, Routledge.

WOUTERS, J., HOFFMEISTER, F. & RUYS, T. (Eds.) (2006) *The United Nations and the European Union. An Ever Closer Partnership.* T.M.C. Asser Press.

YOUNG, A. R. (2007), -The Politics of Regulation and the Internal Market' in K. E. JORGENSON, M. POLLACK & B. ROSAMOND (eds), *Handbook of European Union Politics*, London: Sage.