AmbigEUity

The EU and the Solidarisation of International Society

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1 Introduction

The political world has for a long time been marked by a – presumably increasing – tension between state-centrism and alternative structures which exceed classical state-boundaries and thus push the political realm beyond classical Westphalianism. This tension is in various forms at the core of many crucial political issues which we are – willingly or not – confronted with today. Climate change, for instance, clearly exceeds the realm of state-centrism as the detrimental effects of global warming occur independently from state borders. Whether or not CO_2 has been emitted into the atmosphere in a particular territory, is just irrelevant for where the most severe consequences will materialise. At the same time, it is difficult to imagine that in addressing and regulating global warming we could overcome state-centrism. States matter. The evolvement of the Responsibility to Protect (R2P) is a manifestation of a development towards greater international concern for human rights which are invoked on a universal level and thus claim validity beyond state borders. This evident development notwithstanding, contestation about legitimate invocations of human rights and about the legitimacy of intervening in sovereign states persist. Trends subsumable under the somewhat imprecise label of 'globalisation' have increasingly fostered the permeability of state borders for goods, for financial flows, for people. States have cherished this development and have for instance promoted free trade to generate economic growth and benefit. Increased migration flows, which is just the other side of the same coin called 'globalisation' has called states into action in a completely different manner and we have witnessed questionable attempts to diminish the effects of globalisation and to re-emphasise national borders and sovereignty. The rise of populist movements, parties and prominent political figures throughout Europe and beyond is based on the same tension: One possible reading of this trend is that it constitutes an attempt to revert to national borders and less permeability as a putative solution for any kind of internal or external problems that people feel being exposed to. Populism plays with a diffuse feeling of unease within some parts of the society which seem to feel threatened by increasing transboundary activity and exchange and misguidedly take national belonging as a way to restore a sense of security that probably never existed.

For quite a while, it seems to me, whether in academia or in (dominant) political circles many have not paid sufficient attention to this tension but have rather thought along the lines of a straightforward and presumably linear shift from state-centrism to more open and most

likely more liberal structures that increasingly render state boundaries less important. More often than not, such thinking was rooted in a more or less explicit normative preference for a post-Westphalian order. Maybe more than anything else, the European Union (EU) and the overall evolvement of European integration constitutes an epitomisation of such thinking. The imagination or analysis of the EU as a different kind of power, a postmodern one with a predilection for a Kantian world order comes to mind in this context. Following this logic, the EU would in principle be the most suitable candidate to engage with the outlined tension and to actually contribute to moving the world closer to a post-Westphalian, post-state-centric order as some kind of post-Westphalian avant-gardist.

Now, it seems to me that the most enthusiastic era regarding the EU's post-Westphalian endeavour lies behind us and a number of developments also within the EU fundamentally challenge this idea and are grist to the mill for those who have actually never believed in any possibility of overcoming or fundamentally changing a state-centric and power driven world of international affairs. The already mentioned refugee crisis and the EU's inability to agree on and to implement an adequate common EU migration policy impinges on fundamental values that lie at the core of the EU's raison d'être. Likewise, Brexit and the way the British withdrawal from the EU was promoted in the UK speaks volumes about how state-centric thinking persists and in these obvious cases even prevails. Is the state back at centre stage even within Europe, where we thought that alternative forms of political organisation had gained ground most clearly?

Where to go from here? – Two obvious options suggest themselves from the previous discussion. Surrendering to some kind of underlying normative preference for post-Westphalianism, we might either be inclined to turn a blind eye on these conflicting developments and continue to emphasise how post-Westphalian ideas matter within the EU as well as in its external action – and I am convinced, we will still find examples for it. Alternatively, we might jettison the idea of post-Westphalianism including a crucial role of the EU in it and take the above examples as clear evidence for the failure of any such ideas. Both options, as I want to argue here, would be analytically unfounded and academically dubious and are consequently discarded here. Instead, we have to analytically engage with the fact that there is a deeply entrenched tension in – as stated at the beginning – a multitude of issues in international relations and maybe much more than anywhere else within the EU's internal set-up and its external action on the global level. Despite the fact that the EU has often been seen as *the* symbol for a postmodern or post-Westphalian order, it has actually never constituted such

a thoroughly postmodern structure itself. Instead, from the onset of European integration there was a parallelism of contradicting structures, which are until today deeply entrenched in the EU as an institutional structure and as a global actor. World War II had brought the political and social order in Europe to a complete breakdown. Excessive nationalism was at the core of this outright collapse and had forcefully and in shattering terms proven its disastrous effects. The founding narrative of the EU[1], thus was to create a new political order which transcends the sovereignty of nation-states as the fundamental ordering principle, hoping that this would henceforth facilitate peace. "The Treaty of Rome is a conscious and successful attempt to go beyond the nation state" (Cooper 2003, 26). The EU's raison d'être therefore entails a transformative impetus and this impetus is a thoroughly normative one. In spite of the nearly complete breakdown of order, however, the early proponents of a European transformative, i.e. federalist order (such as Altiero Spinelli or Jean Monnet) were not necessarily welcome with open arms by everybody (Ahrens 2019). Instead, there was also resistance to the idea of overcoming a state-centric political order. This poses a fundamental tension: The EU was founded on the endeavour to overcome and transform a particular structure, yet in order to develop any capacity to act, it had to become part of this very structure. Completely ignoring the still prevailing idea of national sovereignty as a major ordering principle in the international realm, most likely would have brought the European integration project to an early and unsuccessful end. And indeed, much of the history of European integration is informed by this tension between a transformative impetus and the necessity to engage with existing state-centric structures and to incorporate the concerns of those who were looking sceptically at the idea of a fundamental transformation of political order. The focus of this thesis, however, will not be on internal integration processes. Yet, the underlying tension is the same regarding the EU's external action. The transformative impetus of the EU also builds the cornerstone of Ian Manners' (2002) idea of a *Normative Power Europe (NPE)*. His contribution and the debate that it launched considers the EU's transformational effects not to be regionally bound, but explicitly claims that it has an impact outside the EU's own borders. Thus, what later became the European Union, was always meant to bring about change also in the wider international realm. The ultimate basis of EU foreign policy is that it is on the

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[1] Throughout this thesis, I use 'EU' not only to refer to the international organisation which was established with the Maastricht Treaty in 1992, but also its predecessors in the history of European integration. I only explicitly refer to EEC or EC where this makes a relevant difference to the argument.

one hand directed at overcoming state-centrism. Yet on the other hand, the EU is itself embedded in and therefore reflects a state-centric order at the same time.

For this kind of parallelism of contradicting, conflicting structures I want to put forward the concept of *ambiguity*. While I will provide a more thorough definition of ambiguity in the theoretical framework (section 3.1), suffice it to say for the moment that the most significant feature of ambiguity is an *undissolvable parallelism of or undecidability between seemingly conflicting structures.*

This parallelism of contradicting structures – as I will illustrate in this thesis – is extremely well captured in the English School of international relations, which has the potential to address it on two levels: First, part and parcel of an English School approach is the triad of *international system – international society – and world society.* These concepts provide three fundamentally different theoretical ideas to look at international relations. The international system represents a realist picture of classical interest-driven politics among power-seeking states. World society on the other end of the spectrum denotes a political order which has largely overcome state-centric anarchy and takes individuals and humanity as a whole as its major referent point. International society is located between the other two and builds on the conviction that in spite of anarchy, a certain order among states can be established which mainly rests on a consciously shared set of common values and norms. International society has attracted most attention from English School scholars and the theory is thus also known as the *international society approach.* What is most important for the moment is that in spite of a certain primacy of international society, it is a crucial English School argument that all three concepts are relevant at all times and actually operate in parallel. International society being the middle ground, thus incorporates and is under constant influence from both poles. This tension is constantly in flux, but can never be resolved. The idea of ambiguity as briefly introduced above can therefore easily be linked to the English School. Aligning myself with the core idea of English School theorising that there is indeed some form of order in the international realm which the majority of actors most of the time seeks to maintain by building on a consciously shared set of values and norms, I will henceforth use the term *international society* whenever I refer to the overall structure of the international realm. Second, and following from the classic triad, the English School differentiates two versions of international society. This differentiation is captured in the pluralist-solidarist debate. A pluralist international society is closer to the system pole and is based on only a very thin and weak basis of shared norms and values. Pluralism emphasises difference among members of international

society and hence promotes a rather classical idea of national sovereignty as core ordering principle. In contrast, a much thicker basis of shared norms underpins a solidarist international society, in which the universalisation of ideas beyond national borders becomes possible and desirable. Solidarism, thus, entails a transformation of a classical state-centric conceptualisation of the international realm. This characteristic, evidently exhibits manifest similarities with the EU's transformational impetus that I have just outlined. As I will discuss in more detail in the theoretical framework, pluralism and solidarism are not exclusive categories, but rather represent divergent poles on a spectrum, in which international society can be located. It is therefore possible to use the two ideal type categories as analytical tools to examine whether a particular event, problem, structure, actor in international society reflect more or less pluralist or solidarist features, and more importantly, it becomes possible to trace the evolvement over time and thus change. It is not possible, however, to identify pure pluralism or pure solidarism in political realities. There is, thus an inevitable undissolvable tension between the two, which again links back to the concept of ambiguity.

1.1 Research Question and Argument

The previous discussion has raised a number of questions:

1) There are obviously conflicting trends and tendencies in international society, most of which reflect a tension between classical state-centric structures and alternative forms of political organisation which exceed state-centrism. The question that follows from this is whether and to what extent it is possible to identify change in international society in one or the other direction. This changing nature of international society has indeed been a constant issue of interest in English School research, which has always put great emphasis on the (historical) evolvement of the fundamental structure of international society.

2) Focusing more closely on the aspect of change, the question is what the exact role of the identified underlying tension is, for which I have put forward the concept of ambiguity. What is the relation between ambiguity as basic undissolvable parallelism between opposing structures and structural change? Does ambiguity prevent more fundamental transformations because eventually change can only occur in a seesaw version, as some form of constant back and forth?

3) The EU has often been seen as a postmodern entity that exceeds the boundaries of strict state-centrism. Its raison d'être clearly entails an impetus towards the fundamental transformation of a purely state-centric order within its own borders, but also – and this is the focus of this thesis – in the wider international society. At the same time, recent developments seem to challenge this idea and call the EU's transformative impact into question. Can the EU in spite of these challenges contribute to change in international society?

The first question is rather a broad underlying interest that will resonate in much of the following work. Change, its possibility and limits as well as its overall conditions and characteristics obviously has been a recurrent theme throughout much of the history of IR as a discipline. More specifically, however, the other two questions and indeed their combination constitutes the core research interest of this thesis. Assuming that ambiguity (i.e. the undissolvable parallelism of opposing structures) is an inevitable core feature of international society, of many problems and issues that we are confronted with in this international society and lastly also of the EU itself in its raison d'être and its role as a global actor, what does this mean for the EU's potential to contribute to change in international society? In particular, can the EU as "the most developed example of a postmodern system" (Cooper 2003, 36–37) contribute in any meaningful way to what in English School terms we would call the solidarisation of international society? In the brief introduction to the pluralist-solidarist debate I have pointed out that essentially pluralism is close to a classic state-centric understanding of international society, whereas solidarism entails a move towards the transformation of state-centrism. In this sense, change as studied in this thesis is largely conceptualised as the *solidarisation of international society*. This is not supposed to exclude the possibility of change as pluralisation of international society. However, taking the EU's allegedly postmodern demeanour and transformative impetus as the starting point, the possibilities and limitations of solidarist change are of major concern in this thesis. In the theoretical framework I will develop clear criteria of solidarisation. Doing so is helpful in two ways: First, it will help to capture the rather broad and diffuse meaning of 'moving towards Post-Westphalianism', thereby filling it with content, which ultimately helps to pin down the expected change to a conceptualisation that actually lends itself to empirical and analytical examination. Second, as neither solidarism nor pluralism are thoroughly distinct categories, but poles on a continuum, this conceptualisation is well suited to account for the parallelism of conflicting structures and to study the effects of such ambiguities on change.

Such a conceptualisation helps to study the EU's role as a global actor and as a driver for change in an alternative way. After all, this thesis takes Manners' NPE argument as its starting point, because it puts the EU's potential to contribute to a fundamental transformation of state-centric international politics under scrutiny. And this indeed, for Manners (2008, 60) seems the ultimate litmus test for normative power. However, classical analyses from an NPE perspective have tended to define the particular norms that the EU would ideally promote as a normative power in order to subsequently identify successes or failures of EU action regarding norm promotion. In all likelihood, though, such analyses will bring to light failures as well as successes of particular norm promotion. Put differently: EU action more often than not is inconsistent. The assessment whether the EU ultimately acts as a normative power seems to arbitrarily depend on the researcher's overall sympathy towards the argument. Frequently, inconsistent policy action of the EU is taken as evidence for the EU's eventual inability to contribute to fundamental change. To put it in a nutshell, the problem with NPE is that it is not very well suited to map, but also to theoretically make sense of seemingly inconsistent policy action. The English School approach put forward here and its particular focus on the concept of ambiguity, in contrast, from the outset does away with the expectation that the EU could/ must/ should be an ever coherent and thoroughly consistent promoter of change. Taking ambiguity as an overall and inevitable condition of international society, in fact challenges the often implicit assumption that consistency is a fundamental precondition to effective policymaking and to exerting a transformational impact on international society.

The overall argument of this thesis, in a nutshell, is that the EU ultimately can and does contribute to solidarisation in international society. Yet, this solidarisation is never – and cannot be – a linear and straightforward process. Change in and of itself inevitably bears tensions and ambiguities of various kinds. Two such tensions stand out: First, any actor promoting and fostering (solidarist) change, necessarily needs to address and engage with the existing structures that are meant to be transformed. Change, thus, can hardly be radical but inescapably needs to connect with and take into consideration previously existing structures. Second, solidarist change is not per se normatively superior or inherently good. Admittedly, if I had to position myself in the normative dispute between pluralists and solidarists, I would not deny a certain sympathy towards the solidarist angle. However, being aware of such a normative positioning does not mean to let the research be guided by it. Quite the contrary, it is not possible anyway as a researcher to discard one's own normative stance, but the awareness about it prevents you from turning a blind eye on alternative arguments. In this sense, when analysing trends of solidarisation in the empirical chapters, the discussion of

normative downsides of particular solidarising tendencies – and these absolutely do exist – will be crucial.

1.2 Structure of the Study

The final part of this introduction (1.3) provides the state of the art on the EU's role as global actor with a specific focus on its potential or limits to contribute to a transformation of international society. Part I of this study contains three chapters: In chapter 2, I briefly discuss conceptualisations of structural change in a number of classical IR approaches, in order to make a case for the English School as the most convenient and suitable approach with respect to the research project at hand. Chapter 3 provides the major theoretical framework and as such contains firstly a more detailed definition and discussion of ambiguity as useful analytical lens to study the EU and change; and secondly, a comprehensive account of my English School inspired understanding of change which is based on the core assumption that primary institutions constitute the substance of international society; this leads me to argue thirdly, that structural change in international society occurs as a move on the pluralist-solidarist continuum and can ultimately be traced in primary institutions; fourthly, the chapter introduces concrete indicators of solidarisation, which will guide the empirical analysis in the case studies. Chapter 4 details the methodological approach adopted for this research. In particular, I argue that the concept of international society on a methodological level requires a differentiation approach, which makes the case for issue-specific variation within international society. This step ultimately leads to my case selection, which I introduce and discuss in this chapter. Furthermore, the chapter outlines the methodological approach that I have adopted to identify instances of solidarisation as well as to analyse the EU's contribution to such processes of change. The analytical part II of this study consists of three chapters, each of which is a case study of the EU's contribution to the solidarisation of international society in a particular issue-area: Chapter 5 discusses the EU's transformative impact in the global human rights regime; chapter 6 analyses the EU's contribution to solidarisation in climate change; and chapter 7 addresses the EU's role as driver for solidarist change in international trade. Finally, chapter 8 summarises the results of the case studies, addresses the issue-specific variation, draws overall conclusions about the EU's contribution to the solidarisation of international society, discusses potential blind spots of this study, which reveal pathways for future research and finally provides some reflections of the political implications for EU foreign policy.

1.3 The State of the Art: The EU as an Actor for Change in International Society

> One impression predominates in my mind over all others. It is this: unity in Europe does not create a new kind of great power; it is a method for introducing change in Europe and consequently in the world (Monnet 1963, 210).

Many reflections about the EU's role in international society or its standing as a global actor have centred on the question which kind of power the EU is or will be able to represent in an overall shifting global order. In a basically unipolar world with the United States as the only remaining hegemonic power after the end of the Cold War, the expectations were high that Europe would become an ever more important partner of the US when it comes to questions of shaping a new global order. At the same time, due to its considerably different nature the EU has also been perceived as a convenient corrective with respect to US dominance (Hurrell 2007b, 139; Nye 2007; Whitman 2010, 25).

Within this overall shifting global order, however, US and European dominance have been thoroughly challenged or indeed declined throughout the past two or three decades (Ferguson 2012; Kappel 2011; Renard and Biscop 2012b). Increasingly, new emerging powers, such as China, India or Brazil "together with other regional powers [...] are influencing global energy, climate security, trade, currency and development policies" (Kappel 2011, 1). The world is now marked by greater multipolarity or an "increasing polycentrism" (Boening et al. 2013, 5), which has led various authors to diverging conclusions about the EU's potential role. Among these are statements that try and explain "[w]hy Europe will run the 21st century" (Leonard 2005) or voices that mirror quite some scepticism about a strong future role for the EU, but still state with some careful restraint that it is "too soon to rule out the emergence of the EU as a major global actor" (Boening et al. 2013). Others make a more normative claim about the necessity of the EU as a powerful actor in the global order: "The more we move towards a multipolar world, the more Europe will need to offer a unipolar front, which can only be embodied by the EU" (Renard and Biscop 2012b). In his contribution to this debate, where he discusses whether the EU is "standing aside from the changing global balance of power", Richard Whitman (2010, 31) points out: "[T]he EU has the potential, through the capabilities of its Member States, to be considered a candidate for great power status but does not envision itself as an active participant in forging a new global balance of power".

While these kinds of considerations are by all means interesting, it is not the core interest of this thesis to discuss the great power potential of the EU or its overall status vis-à-vis the US or the BRICS. In fact, precisely, because there is an overall change in the global order towards more diversity and multipolarity, towards a principally more complex, confusing and

miscellaneous order, I find the question of the EU's potential to become a new great power no longer adequate. It is out of date, it seems to me, and essentially does not address an adequate analytical level. Studying the impact of the EU on international society requires to focus on more fundamental levels because in light of the overall shifts in global order, such impact might still well be fundamental, but necessarily must be cautious and reflective. After all, this is a consequence from the argument made earlier: a transformative impetus and attempts to induce change must always take the existing structures and conditions into consideration. Therefore, my intention is to examine the possibility, limitations and overall kind of change that the EU – intentionally or not – induces in international society through its presence as international actor as well as through the distinct way of acting at the global scene. This is a different focus from the one that asks whether the EU can achieve and maintain an howsoever defined great power status. In this sense, this thesis follows Monnet's view that the main concern is not with great power status but with a particular kind of change that the EU epitomises and potentially induces outside its own borders.

The idea or expectation that the EU has a transformative impact on international society is at the core of the *Normative Power Europe* debate (see exemplarily for many others: Diez 2005, 2013; Diez and Manners 2007; Forsberg 2011; Manners 2013; Merlingen 2007; Pace 2007; Parker and Rosamond 2013; Scheipers and Sicurelli 2007; Tocci 2007, 2008; Whitman 2011, 2013). Essentially, Ian Manners discusses the EU's role in international society as that of a "promoter of norms which displace the state as the centre of concern" (Manners 2002, 236). He thus, sets his understanding of the EU in direct opposition to Hedley Bull who had argued 20 years before that the EU will either become a state itself – which he considered an unlikely case – or that its members will continue being what they are, i.e. fully sovereign national states (Bull 1982). For Bull, thus, there was no fundamental role to play for the EU at the international level, which is why he discarded the idea of Europe as a civilian power. Manners (2002, 239), on the contrary, focuses on the EU's

> ideational nature as characterized by common principles and a willingness to disregard Westphalian conventions […] [and] its ability to shape conceptions of 'normal' in international relations.

The second part of the quote epitomises a rather neutral definition of 'normative'. In that sense any powerful actor would qualify as 'normative', as long as it makes any noticeable impact on international relations. Such a broad definition of normative power seems nonsensical (Tocci 2007, 2). The aspect about change *towards* post-Westphalianism, is therefore crucial to the understanding of normative power. A later contribution by Manners (2008, 65)

reflects this transformative impetus of the EU towards a post-Westphalian order even more clearly:

> [T]he European Union changes the normality of 'international relations'. In this respect the EU is a normative power: it changes the norms, standards and prescriptions of world politics away from the bounded expectations of state-centricity.

To corroborate this core argument, Manners introduces six pathways of norm diffusion which help to trace how the EU actually exerts its normative power (Manners 2002, 244). Empirically, his arguments rest on the EU's international promotion of the abolition of the death penalty. While the analysis is persuasive, the focus on a particular norm entails a narrowing down of the theoretical implications of the initial argument. This is because the successful promotion of a very specific norm might well have a further impact on the overall structure of international society, but this link would need further elaboration, which Manners fails to provide.

Also other publications which engage with NPE are clearly reflective of the criterion that a normative power is directed at transforming international relations towards less state-centrism. For instance, Sjursen (2006, 249) argues that as a normative power the EU

> seeks to overcome power politics through a strengthening of not only international but also cosmopolitan law, emphasising the rights of individuals and not only the rights of states to sovereign equality. It would be a power that is willing to bind itself, and not only others, to common rules.

Similarly, Eriksen (2006, 253) argues that

> [a] robust criterion can only be derived from the constraints set by 'international law', here taken to mean *the cosmopolitan law of the people* [...]. A cosmopolitan order is one where actors subject their actions to the constraints of a higher ranking law [...].

While many contributions to the NPE debate explicitly endorse a broader transformational impact on international society as a core criterion for normative power, the empirical focus is all too often restraint on very particular norms or specific values and principles (Lucarelli and Manners 2006) so that broader conclusions about an ultimate impact on the fundamental structure of international society are hardly possible. Nonetheless, these works have provided valuable contributions to the debate: Eriksen (2006) puts his criterion under scrutiny by analysing the EU's record in democracy promotion and the abolition of the death penalty; Lerch and Schwellnus (2006) analyse the coherence of justification strategies regarding particular policy fields, such as again the death penalty and minority protection. Smith (2004b) tries to

capture the normative stance of the EU by contrasting it with the US approach to world order. Regarding the antithetic relation between the EU and the United States, Kagan (2003) has famously argued that the EU is only able to act as a non-classical, normative power *because* the US is playing the tougher part and provides the military backup. Kagan sees this as a European weakness, while others have argued against him that European military restraint is much more a conscious choice than a necessity (Menon et al. 2004; see also Duchêne 1973).

These works – and many more, which I have not the space to discuss in detail – have used NPE to make an argument about the EU being different from other international actors and use this argument to explain the EU's action outside its own borders (e.g. Whitman 1998; he still uses 'civilian power', since he writes before Manners has coined NPE). Or NPE has been applied as conceptual framework in order to examine particular EU policies and to come to an assessment whether ultimately – and if so to what exact extent – the EU is a normative power. Somewhat unsurprisingly, the results are normally mixed; the EU sometimes acts as a normative power and sometimes fails to do so. This research has yielded many interesting, valuable and relevant insights about the EU as an international actor. My argument, however, is that we should give even more consideration than hitherto to the core argument that a normative power ultimately brings about change at a more fundamental level of international society. In that sense, this thesis focuses not primarily on the question whether the EU's action does ultimately correspond to a normative power or not. To the contrary, I take the assumption that it sometimes does so and sometimes not as my starting point. The question then ultimately focuses much more on the consequences of sometimes seemingly inconsistent EU action than on this action itself. More specifically, the initially outlined criterion of a contribution to a transformational change of international society is the eventual research interest.

This research focus, in fact, figures more prominently in a limited number of contributions, which I shall briefly discuss. In a project led by Nathalie Tocci (2007, 2008) the broad claim that the EU in one way or another is a 'normative' actor has been put under more crucial scrutiny. To do so, Tocci sets out three dimensions of a normative foreign policy, to wit normative goals, normative means and normative impact. The theoretical framework which I develop in more detail below, indeed bears a number of similarities with the dimensions of normative foreign policy as set out by Tocci. For instance, normative goals are defined as "those which aim to shape the milieu by regulating it through international regimes, organi-

sations and law" (Tocci 2007, 4). Indeed, the advancement of international cooperation in re-gimes and the enhancement of international law regulations build one important indicator in my framework. Ultimately, normative power – and I largely agree to Tocci's definition of 'normative' – is the starting point of my research. The focus, however, is changed and broad-ened to include the very fundamental question of the possibility of change in international society. In that sense, my interest is not to find out whether the EU ultimately is normative or not, but I am interested in its transformational impact in spite of its often acknowledged, but likewise contested normativity. For this reason, it is in contrast to Tocci's framework not crucial for my argument, whether the EU has actually *intended* (ibid., 8) a certain impact. The debate about the EU's contribution to change in international society, thus, bears a number of similarities with the normative power Europe debate, but it is eventually detached from the question whether the EU consistently and at all times *is* and *acts as* a normative power.

Apart from Tocci, a number of works have more closely engaged with the question of the EU's contribution to a transformation of international society. Hanns Maull (2005, 777) consi-ders the EU to be "a post-modern actor, [...] neither a great power nor a quasi-state". Based on this characterisation, he argues that it is "right to point out that the EU is oriented towards a transformation of international relations in a post-modern direction [...]" (ibid., 789). Maull, thus, clearly identifies a certain endeavour of the EU to contribute to structural change in international society, he is less outspoken, however, about the EU's actual success in doing so and indeed warns against an overestimation of the EU's capabilities in this regard (ibid., 789).

In line with what I consider to be NPE's ultimate litmus test, also Diez claims that NPE as a concept implies that "the EU will fundamentally transform the structure of the international society" (Diez 2012, 523). In comparison to Maull, he seems to be even more sceptical about the chances of such a transformation. His core argument is that the EU due to tensions within some of its core values will rather reproduce a state-centric order on a higher level (ibid., 534) instead of contributing to a fundamental change in the international society's basic structure. Diez uses strong examples in order to corroborate his argument, namely the EU's behaviour pertaining to a Turkish EU membership as well as EU policies at its external borders. Another article, written in cooperation with Manners and Whitman, concludes that

> there are indications that the EU uses normative power to put its weight in favour of a transformation towards a more solidarist international society on the global scale. Yet the evolving practices of the EU and its member states on

> the EU outer borders suggest that it falls short of a more fundamental transformation towards a truly post-territorial form of international society [...] (Diez et al. 2011, 135).

The authors convincingly point to the problematic external borders issue and how it poses a limit to the transformative impact of the EU. They, nonetheless, also do mention 'indications' for structural change induced by the EU. My argument does not go so far to deny that such limits to the EU's transformational impact do exist. In the first part of the introduction I have already raised the argument that change necessarily needs to engage with the existing structure which is supposed to be changed. This alone points to limits of change. However, my argument is that there is much more to learn about the at times contradicting, unclear and puzzling dynamics of change. Assuming that inconsistent policy action simply limits or even prevents change seems logical and common-sensical at first glance, but the argument does not hold in its simplicity. It is empirically necessary and theoretically worthwhile to try and engage with a more fundamental level of change including the role of inconsistency or as I have called it ambiguity in it. In this respect, the English School, and in particular the framework of change as the solidarisation of international society provides a suitable toolkit. To be better able to carve out the advantages of such a framework, the following chapter will briefly discuss different understandings of structural change from the perspective of classical IR approaches.

2 What is Structural Change?

There are two major points of criticism which can be drawn from the literature overview presented in the last section and which I will use as points of departure in order to develop this project's theoretical framework. These two aspects are:

(1) The literature engaging with Manners' NPE argument for the most part only implicitly deals with the EU's structural impact on international society. The focus is on whether the EU has helped to promote certain norms and mostly the norms under review do not allow for any far-ranging conclusions about structural change to the extent that they rather concern states' internal behaviour (with the abolition of death penalty as the most prominent example). What is needed in contrast to that is a framework which takes such norms into consideration that affect interstate behaviour and the overall conception of how states and their sovereignty are conceived of, since this perspective would put the international society's structure in the foreground of the analysis. (2) The second aspect concerns the part of the literature that explicitly deals with the question of EU's structural influence (Diez et al. 2011; Maull 2005; Diez 2012). As shown above, these works draw rather sceptical conclusions about the EU's potential for a transformative structural impact and the scepticism is mainly based on the following argument: The EU's potential to induce fundamental structural change is limited by the fact that the EU's behaviour and actual policies (e.g. at its external borders) contravene this expected change. Although this argument cannot simply be dismissed, it contains a problematic aspect which can lead to different conclusions when adequately taken into account. The problem at hand is an almost exclusive focus on the actor and on the question whether its behaviour and its intentions are consistently directed at the asserted structural change. To address these problems, I develop a conceptualisation of change that is based on an English School understanding. Before doing so, the following chapter briefly discusses alternative conceptions, while the following caveat is needed: The respective portrayals of the neorealist, neoliberal and social constructivist understanding of structural change will pick out the mainstream proponents and their arguments and thus the summaries make no claims to be complete. This would by far exceed the scope of what this chapter is supposed to achieve. Whole books could be and have been written on each of the approaches' understanding of structural change. This necessarily shortened presentation notwithstanding, the chapter still contributes to locate my theoretical approach in the wider debate and to extrapolate its added-value vis-à-vis alternative conceptions.

2.1 Conceptualisation of Structure and Change in Classical Approaches

The English School of international relations provides useful tools to address the identified problems and shortcomings in the literature. It provides an extremely helpful conceptualisation of the 'deep structure of the international sphere' as well as tools to study the question of change including the role of ambiguous structures and tendencies within it. In order to be better able to carve out the added-value of an English School approach, I will briefly discuss the conceptualisation of structural change in other approaches.

2.1.1 Neorealist Understanding of Structure and Change

In *Theory of International Politics* Kenneth Waltz (1979) sets forth the neorealist understanding of structure:

> A structure is defined by the arrangement of its parts. Only changes of arrangement are structural changes. A system is composed of a structure and of interacting parts. Both the structure and the parts are concepts, related to, but not identical with, real agents and agencies. Structure is not something we see (ibid., 80).

Based on this general definition, Waltz identifies three basic features of the structure of the international system: First, anarchy is the basic ordering principle, i.e. there is no actor with system-wide authority standing above the individual and sovereign states (ibid., 88), whose main concern it is to enhance their security in order to be able to survive in this anarchical environment. Second, the operating actors are 'like units'. That is to say, states cannot agree to any kind of functional differentiation among them (ibid., 93) because they would have to fear to weaken their position within the international arrangement and thereby they would put themselves at an enormous risk. The third feature refers to what Waltz calls the 'distribution of capabilities' (ibid., 97). While all states are like units, they are nevertheless featured with different military and economic capabilities, which determine how they can fulfil the functions that they all have in common. The distribution of capabilities can materialise as a unipolar, a bipolar or a multipolar system. Thus, the third property of structure reflects the number of great powers in the system.

Regarding the possibility of change in the system structure, the third dimension provides the only option. Anarchy as the ordering principle as well as the lack of functional differentiation between the units are basically unchangeable in the perspective of Waltz and other neorealists:

> The structure of a system changes with changes in the distribution of capabilities across the system's units. And changes in structure change expectations about

how the units of the system will behave and about the outcomes their interactions will produce (ibid., 97).

Within this theoretical framework the possibilities to think about structural change induced by the EU are very limited. On the one hand this is because the underlying conceptualisation of structural change is thought within extreme narrow confines, as structural change in this regard would basically mean a shift in the balance of power (BoP). On the other hand the very idea of a non-state actor having any major impact on the international system is at odds with neorealist core assumptions (Hyde-Price 2006, 218). In this regard, Hill and Smith point out: "Neorealism, given its highly systemic perspective and its stress on the balance of power, seems to have relatively little to tell us about the EU's place in the world" (2011, 460). Let me nevertheless briefly engage with this endeavour: We could, for instance, ask whether the EU changes an existing balance of power by becoming one of the system's major powers itself or even by striving for hegemony within the system. A hegemon in a neorealist conception is an actor that is able to impose major norms and institutions on the system and the other operating units. The emergence of such a hegemon in the first place would exactly depict what we have identified before as the neorealist conception of structural change (i.e. a shift in BoP). The consequence would be that the EU would have a major impact on what expectations towards the units' behaviour as well as towards the outcome of their interactions exist in the system (Waltz 1979, 97). While it definitely constitutes an interesting endeavour to investigate the EU's potential to shift the BoP or to gain a hegemonic status (and I have pointed to such attempts in chapter 1.3, e.g. (Boening et al. 2013; Kappel 2011; Renard and Biscop 2012a; Whitman 2010), it is still problematic to follow this path within a neorealist perspective because it contradicts neorealism's claim about states being the principal actors. Hence, applications of neorealist theory to European foreign policy or the international role of the EU are rather limited. Even if such attempts are undertaken the focus is still on how the system structure permitted or caused a certain outcome, since of course the systemic level of analysis is the decisive one in neorealism (Waltz 1959). The prevailing question in a neorealist perspective thus is rather how changes in the distribution of capabilities allowed e.g. the European integration process or more specifically the Common Foreign and Security Policy (CFSP) to develop. But the reverted question whether or to what extent progress in the integration process changes the overall international system is simply not one that neorealists would raise.

In this context Adrian Hyde-Price puts forward the argument of the EU as an "instrument of collective hegemony" (Hyde-Price 2006, 227 see also Pedersen 2002). In his view, bipolarity

during the Cold War constituted the primary permissive condition for European integration to come into being, while later US unipolarity served as an "exogenous stimulus" to further develop Europe's own courses of actions as well as resources (Hyde-Price 2006, 229). Additionally, a system of balanced multipolarity (Mearsheimer 2001, 5) within Europe provided for a sufficient degree of stability to enable cooperation between great powers. Hyde-Price himself acknowledges that neorealism can only shed light on Europe's international role to a quite restricted degree (2006, 218). What definitely remains unanswered is the question of how a European hegemony in turn would alter the structure of the international sphere. According to Robert Gilpin's *Hegemonic Stability Theory* it is possible that from a certain distribution of capabilities a temporary situation arises in which the international system is under control of a hegemon, who is then in turn capable of imposing certain norms and institutions. But in doing so, the hegemon himself is of course still determined by the overall structure. That is to say that the kind of norms that can be imposed are limited and they can never fundamentally alter the system's structure. As Gilpin puts it in *War and Change in World Politics*:

> [...] the fundamental nature of international relations has not changed over the millennia. International relations continue to be a recurring struggle for wealth and power among independent actors in a state of anarchy (Gilpin 1981, 7).

Thus, the kind of change that neorealism is willing and able to capture is restricted a priori and this point of criticism even carries more weight than neorealism's reluctance to take non-state actors into account. Even if a neorealist analysis came to the conclusion that the EU changed the BoP, a neorealist world view is not able to envision a more fundamental change in the structure of international relations and thus an anarchical structure in which only successful power-seekers have a chance to survive is continuously reproduced. This exclusive focus on the distribution of capabilities as the only source for change is also the main aspect in John Ruggie's (1983) critique of Waltz. Ruggie argues that neorealism ignores another important source of change, which does not emanate from the third, but from the second feature of structure – the differentiation of the units. Differentiation for Ruggie does not only denote *whether* a system's units are different or similar, but *on what basis* the units are separated from each other (ibid., 274). With this argument, Ruggie illustrates the difference between the medieval and the modern states system, which Waltz was not able to capture with his framework. While in medieval times the feudal system was marked by overlapping territories of rule and authority, the modern system – based on the idea of property – exhibits very clear

demarcations between separated territories. The modern concept of sovereignty can be understood as the international equivalent to the domestic idea of property rights which makes the whole difference between the medieval and the modern system. In both cases different units do exist so that anarchy is the underlying feature, but the principle on which the separation of units was undertaken had changed. Ruggie thus criticises Waltz' conceptualisation of structural change as too narrow and – which is all the more intriguing – Ruggie demonstrates this narrowness while his arguments still rest on a strictly neorealist logic. He does not question Waltz' understanding of structure in the first place, but he clearly shows that even within this logic another idea of change is possible and necessary to take into account.

To sum up, although Waltz explicitly uses this term, it is actually misleading to speak of structural change within the neorealist paradigm, since this contradicts the very assumption of the steady and immutable structure of the neorealist international system. It is inherent to the very basic assumptions of neorealism that anarchy will prevail under all circumstances (ibid., 272) and consequently the same holds true for the absence of functional differentiation. The very premise of the self-help character of the international system which cannot be fundamentally transformed and even less so overcome, restricts the way in which change can be conceived of and conceptualised from the outset. This narrow notion of structure and the resulting inability to adequately deal with change has of course widely been discussed and criticised (see for instance Ruggie 1983; Keohane 1989). Regarding the EU, the only question we could raise from a neorealist perspective is whether Europe – assumed it can take the shape of a state-like entity – would be able to accumulate capabilities to the extent that it is enabled to build a new pole in the system. As Ruggie (1983, 271) notes, Waltz, however, does not see much potential in that regard.

In a nutshell, with a review of a neorealist conceptualisation of structural change I have demonstrated that the way change is conceptualized does hardly ever refer to fundamental change that is able to affect the structure of the international sphere. While this finding is neither seminal nor surprising, the discussion illustrated to what extent the persistence of structure rather than its change is at the core of the neorealist theoretical framework.

2.1.2 Neoliberal Understanding of Structure and Change

Neoliberal institutionalism ties in with the criticism on the neorealist notion of structure that I have pointed to in the previous section. As Keohane puts it:

> [W]e find the neorealist conception of structure too narrow and confining. Neorealism can account only for changes that result from shifts in relative state capabilities. [...] Waltz's conception of structure is unduly truncated, as well as static (Keohane 1989, 8).

The crucial difference in neoliberal theory is that in its core assumptions it provides for the possibility of changing the effects of the anarchical system structure on state behaviour. A "self-help-system" as delineated by Waltz, thus, is not the only compelling outcome. It is the concept of "complex interdependence" as originally set out in Keohane and Nye's *Power and Interdependence: World Politics in Transition* (1977) that constitutes the major basis for these kinds of change and that poses a change in itself. Interdependence means that state actors are mutually determined by each other or significantly affected by external factors (Keohane and Nye 2001, 7). This situation generates costs for these actors, as it constrains the options for acting and decreases the degree of autonomy (ibid., 8). As a consequence, the use or threat of force as a natural course of action becomes questionable and instead state interests to establish institutions and regimes (Keohane 1989, 9) increase considerably, in order that the emerging costs be reduced. The reason for the diminished importance of force as a policy instrument is also the mitigating effect that complex interdependence has on the hierarchy among policy issues (absolute priority of military security) that is assumed in neorealism (Keohane and Nye 2001, 21). In addition, by acknowledging the relevance of a transgovernmental and a transnational dimension of international politics in addition to the interstate one as a third characteristic feature of interdependence, neoliberals mitigate the neorealist assumption of states as the only actors that matter and that always act coherently as units (ibid., 22). However, at least in a rather traditional version of neoliberalism, they do not go so far as to completely abandoning these assumptions and it even seems that Keohane later back-pedals on the mitigation of the state-centrism premise:

> Subsequent research, especially that for Power and Interdependence (1977), persuaded me that these actors [non-state ones] continue to be subordinate to states, although states may act in nontraditional ways due to changing systemic constraints. So I turned my attention back to states (Keohane 1989, 8).

There are, however, later strands within the neoliberal school of thought, which take into account the criticism of state-centrism (Genschel and Zangl 2008; Zürn 1998, 2002; Zürn et al. 2007). State-centrism as well as these works' potential to address the problem will be discussed in more detail in the assessment of neoliberalism's usefulness and adequacy for the analysis of the EU's structural impact and I will, thus, get back to this aspect later. As a last

aspect to mention here, I shall note that a necessary condition for the effects of interdependence to occur, such as the refraining from force, is that states – based on cost-benefit calculations – come to the conclusion that they would indeed profit from such arrangements. In contrast to realism, also absolute and not exclusively relative gains are considered in these calculations.

Having clarified the concept of complex interdependence, the relevant question in the given context is how this idea relates to the neoliberal understanding of structure and change. As said before, neoliberalism criticises the neorealist conception as too narrow. So, it seems obvious on the one hand that in the neoliberal perspective there must be more to structure than differently distributed capabilities and resources. On the other hand, however, Keohane and Nye seem to reproduce exactly the neorealist notion, when stating that the "structure of a system refers to the distribution of capabilities among similar units" (Keohane and Nye 2001, 18) or in their definition of structure as "the distribution of power resources among states" (ibid., 18). As a first point of criticism, thus, we can put on record that the neoliberal conceptualisation of structure and change is imprecise and ambiguous to the extent that its demarcation from neorealism is not completely convincing. However, the key concept of complex interdependence as outlined above indeed does allow for a more fundamental conceptualisation of structural change in the neoliberal paradigm. Thus, taking complex interdependence as the starting point, I suggest to analytically distinguish two dimensions of structural change in neoliberalism:

Firstly, complex interdependence is the underlying and crucial feature of the international system's structure – in analogy to and actually supplementing the neorealist depiction of anarchy. This becomes clear in the formulation of one of the major research questions in *Power and Interdependence*, which reads: "[W]hat are the characteristics of world politics under the condition of extensive interdependence?" (ibid., 17). Interdependence, thus, constitutes the overall underlying condition, a major determining factor, for international politics. In contrast to the neorealist notion of anarchy, however, complex interdependence is not a thoroughly fixed and unchangeable concept. It can vary in degree and IR literature overflows with analyses that assume an ever more intensifying degree of interdependence (for instance through an increasing "space-time compression" (Harvey 1989)). Hence, this fundamental feature of structure, I shall argue here, is in itself already a manifestation of structural change.

Secondly, complex interdependence is the basis for the establishment of international regimes understood as „more or less loose set[s] of formal and informal norms, rules, and procedures relevant to the system" (Keohane and Nye 2001, 18). The development of international institutions becomes possible because of interdependence as the underlying condition. Because of interdependence, states have a common interest in overcoming the severest consequences of the anarchical structure and in finding mutually beneficial arrangements which facilitate coping with the anarchical structure and the mitigate the resulting security threat. Structural change in a neoliberal conception, thus, on a secondary level means the increasing establishment of institutions as well as changes within these regimes that help to better cope with and to "govern interdependence in various issues" (ibid., 19). To Keohane and Nye, indeed, the understanding of changes within regimes is crucial to understand international politics altogether (ibid., 33).

That there are indeed developments going on that constitute a more fundamental change in the international sphere than mere shifts in the balance of power, becomes clear in parts of the literature that point to an increasing density of institutionalisation (Genschel and Zangl 2008, 7; Hasenclever and Mayer 2007; Zürn 2002; Zürn et al. 2007, 142–143) as well as to the increasing legalisation of world politics (Abbott et al. 2000). Hence, structural changes become obvious in a growing number of different international institutions, regimes, treaties and agreements as well as in their ever strengthened consolidation, differentiation and deepening. More and more issue areas and fields of action are concerned, while increasingly also stretching out over those issues that used to belong to the traditional core area of national sovereignty. I suggest to understand these developments as a second dimension of structural change from a neoliberal perspective.

While it makes analytically sense to distinguish these two dimensions of structural change – interdependence as the underlying condition and institutionalisation on a secondary level – both aspects can actually be understood as two sides of the same coin. To the extent that the creation of international institutions in turn intensifies the degree of interdependence, both dimensions eventually are mutually re-enforcing.

How does the outlined neoliberal institutionalist understanding of structure and change relate to the central question of this thesis, which is the EU's contribution to change in international society?

The EU itself enforces institutional structures and takes part in setting up multilateral agreements, treaties etc. In that regard one could argue that the EU contributes to the described

development of an ever stronger and more differentiated web of institutions, conventions and regimes to the extent that the Union for example is explicitly directed at promoting multilateralism (European Commission 2003) and participates actively in international negotiations. From a neoliberal perspective, however, this line of argument would be difficult as it is exactly here where the problem of state-centrism which I have alluded to before comes into play: Neoliberalism – at least as it has been originally set out by Keohane and Nye – shares with neorealism the assumption of states being the core actors in international relations. I have already in the last section pointed to the fact that there seems to be some openness, indeed, towards departing from state-centrism. However, this idea is not followed all the way down, but instead in the end even left behind, since "states are at the center of our interpretation of world politics, as they are for realists" (Keohane 1989, 2). Linking that aspect to the major question of this research project, it turns out that neoliberalism tells us more about structural change than neorealism is able to do. But still, the idea of structural change induced by the European Union cannot satisfactorily be accounted for in this theoretical approach. In the neoliberal perspective, it is states that deliberately and intentionally create, i.e. they "design" (Onuf 2002) institutions and the EU itself as an international organisation is a product of rational state preferences (whether these are assumed as being relatively fixed or as being the result of domestic negotiation processes (Moravcsik 1993)). Institutions are basically seen as tools in the hands of state actors that are trying to reduce the costs of interdependence. That Moravcsik opens up the black box and actually endogenises state preferences by explaining their emergence through the involvement of sub-national actors (ibid.) does not at all solve the problem of state-centrism: Once the process of national preference formation is completed, it is again states – understood as units that coherently represent the assertive national preferences – which conduct the bargaining on the international level. Alexander Wendt does not even consider the term 'endogenous' applicable in that case. As he emphasises, preference formation in Moravcsik's approach, indeed, is part of what is to be explained by the theory. However, preference and identity formation still take place outside from and prior to interaction on the international level:

> In the analysis of interaction they [identities, preferences] are constants, not processes or outcomes, even if they change outside interaction. With respect to the purely systemic causes of structural change, therefore, rationalism directs us to treat states as given (Wendt 1999, 316).

There is, however, a strand within the neoliberal institutionalist tradition that explicitly addresses the problem of "methodological nationalism" (Zürn 2002, 224) which seems no

longer adequate for the analysis of international politics. The reason for the inadequacy of a theoretical perspective which sees states represented by their governments as the main subjects of analysis is that statehood more and more exceeds a traditional national conception ("postnationale Konstellation" (ibid.)) and this thought clearly is a consequence of taking the idea of interdependence and its effects seriously and of pushing it further forward. Likewise, Genschel and Zangl (2008) argue that the state is no longer the only entity exercising political authority, but that instead it has changed its role to a "manager of political authority" (ibid., 2). Hence, the concept of statehood and the functions associated with it can no longer be clearly tied to the nation state (Zürn 2002, 224). In this line of thought Zürn et al. (2007) have argued that international institutions can indeed exhibit typical qualities and features of discrete and autonomous actors. These developments exceed the traditional neoliberal argument outlined before that a higher degree of interdependence provides for a more intense international cooperation (ibid., 137). Institutions in this perspective turn from mere instruments in the hands of state actors to actors of their own. While this argument, thus, definitely responds to the problem of state-centrism in neoliberal theory to a certain degree, it does not solve it. In contrast, I argue that although international institutions become actors in Zürn's approach, the theoretical background from which this conclusion is drawn still entails the adherence to a state-centric conceptualisation: The basic assumption remains that institutions are to be understood in functional terms. That is to say, in the first place they are still created by states in anticipation of a more effective management of international problems under the condition of interdependence (Wiener 2007, 188). Zürn et al. refer to the establishment of the Bretton Woods institutions after World War II as the point of departure for this development (2007, 130). In a second step, institutionalisation leads to further supranationalisation and thus to the undermining of the original goal: the maintenance of national sovereignty (ibid., 131). Zürn et al. – and this constitutes the core of their argument – conceive of trans- and supranationalisation and the development of independent dynamics within institutions as "unintended consequences" (ibid., 130). Yet another – again unintended – result of these developments is that international institutions become normatively relevant. Once actor qualities are ascribed to institutions, problematical questions of legitimacy arise, because people begin to raise expectations towards these institutions (ibid., 149).

Both aspects – the intensifying supranationalisation as well as its normative implications – constitute an important contribution to and enhancement of neoliberal institutionalism as analytical approach, as both have been basically "invisible" (Wiener 2007) in the traditional

neoliberal conception. The fact that these aspects are conceptualised as unintended conse-
quences is due to the adherence to functionalist regimetheoretical assumptions at the core of
which again lies the sovereign national state. While the value-added of Zürn's perspective in
granting institutions a rationality of their own (ibid., 184) cannot be overemphasised, on re-
flection we find that even the notion that Zürn et al. (2007) apply to their findings reflect and
reproduce a state-centric conception: The verb 'to intend' implies that an actor exists who
has a certain scheme in mind even if he is not able to completely stay in control of develop-
ments. And who else could be the actor that did not have the intention of allowing institutions
to develop their own dynamics? The "neo-regimetheoretical" perspective – as Antje Wiener
(2007, 184) calls it – indeed ascribes a certain degree of actorness to institutions, but even in
its language does the state resonate as the principal actor whose identity is not fundamentally
challenged.

Neoliberalism's inability to conceptualise the role of a non-state entity is in itself theoreti-
cally problematic. Yet, the crucial point in our context is that the conceptualisation of change
emanating from this shortcoming is necessarily restricted because a certain concept of state
identity and state interests is never fundamentally challenged. As we have seen, in neoliberal
theory, states remain what they have always been: the principal actors of international poli-
tics that strive for the autonomous exertion of their sovereign rights. The major difference to
realist assumptions is that neoliberalism convincingly argues that the pursuit of autonomous
sovereignty is more than ever doomed to failure in the face of growing interdependence. By
discarding the theoretical possibility that state identities themselves are subject to change,
the kind of change that can be conceptualised is confined so that we are likely to lose sight of
structural changes that are potentially more fundamental. The changes the EU might be able
to bring about according to the NPE argument, however, should indeed be more fundamental.
A neoliberal analysis of the EU's potential to induce structural change in the international
arena might thus only be able to carve out a certain degree of change by pointing to the
unintended development of independence and autonomy of the EU's institutional structures
vis-à-vis national states.

Finally, another point of criticism has famously been put forward by Friedrich Kratochwil
and John Ruggie (1986), who have pointed to the necessity of paying attention to the inter-
subjective quality of institutions: "The emphasis on convergent expectations as the constitu-
tive basis of regimes gives regimes an inescapable intersubjective quality" (ibid., 764). To take

the intersubjective quality of institutions seriously means to take into consideration that actors do not simply create institutions, which subsequently restrict their behaviour. Instead, actors and institutions are in co-constitutive relationship. And it is exactly this step that ultimately puts the concept of fixed identity of states under challenge. Not following this path, which is inherent to the neoliberal framework, is the basis for Kratochwil and Ruggie's critique that regime theory actually constitutes an "art of the state" because neoliberal theory does not account for the fact that state actors themselves undermine state structures through their action. This indeed is an aspect of structural change – stemming from intersubjectivity – that neoliberalism is not able to conceptualise.

To conclude, the conceptualisation of structural change in neoliberal institutionalism much more clearly deserves that label than it is the case for neorealism. Change in the neoliberal perspective indeed refers to change in the structure of the international system by conceiving of institutionalisation and the degree thereof as a fundamental part of the international structure. As Keohane states: "I believe that conventions in world politics are as fundamental as the distribution of capabilities" (Keohane 1989, 8). Or, as Wendt puts it: "Neoliberals see it [structure] as capabilities plus institutions because they have added to the material base an institutional superstructure" (Wendt 1999, 5). Scholars such as Zürn and Zangl have contributed to a further elaboration of neoliberal theory and to its actual transformation in the 21st century by taking into consideration obvious changes of statehood and the role of non-state actors. Such enhancements notwithstanding, the failure to account for changes within state identities remains problematic because this ultimately prevents a more fundamental conceptualisation of change. Most notably, it is this last aspect which brings me to the conclusion that the neoliberal concept of structural change is not radical enough to the extent that the prevalence of the anarchical system is never really fundamentally challenged. But instead neoliberalism pinpoints ways how in interest-driven processes state actors can deal with security concerns stemming from the anarchical structure. As John Ruggie puts it, neoliberals (just as neorealists) do not look at those mechanisms that are constitutive of international relations in the first place, but their focus is restricted to analyse how regulative rules constrain behaviour in a world of exogenously given actor identities (Ruggie 1998, 23).

As with neorealism this paragraph is a rather short discussion that is in no way capable of doing justice to the different spectrums of neoliberal perspectives and the valuable insights that have been provided through this theoretical approach over the decades. I tried, though,

to point to some major shortcomings in the neoliberal conceptualisation of structural change that I intend to address in the course of this theoretical discussion.

2.1.3 Social Constructivist Understanding of Structure and Change

"It may only be a slight exaggeration to say that if constructivism is about anything, it is about *change*" (Adler 2012, 123). The most prominent constructivist conceptualisation of structure and change has been developed by Alexander Wendt (1999) and I will thus start by outlining his main ideas.

Alexander Wendt: Structural Change through Social Interaction and the "paradox of change"

"Anarchy is nothing, and nothings cannot be structures" (ibid., 309). It is Wendt's understanding of anarchy (see also Wendt 1992) as opposed to the neorealist one that builds the basis for structure and change in constructivist terms. "The key […] is conceptualising structure in social rather than in material terms" (Wendt 1999, 249). Wendt certainly does not deny that anarchy is a characteristic feature of international politics. He does, however, object to the argument that anarchy must necessarily lead to a Waltzian "self-help system". Instead three different logics can follow from an anarchical environment and these logics are informed by the ideas, beliefs and perceptions that actors have in mind about themselves and about others. "'[K]nowledge' held by members of the system" (Wendt 1996, 49) is added as an essential ingredient of structure. The variable anarchical structures – a Hobbesian, a Lockean and a Kantian one – are based on role relationships between actors that are constituted by representations of Self and Other. Wendt ascribes one such role to each of the possible types of anarchy. Consequently, actors can assume themselves and perceive others as acting in the roles of enemy, rival or friend vis-à-vis each other (Wendt 1999, 258).

> A key aspect of any cultural form [i.e. a specific occurrence of anarchy, BA] is its role structure, the configuration of subject positions that shared ideas make available to its holders. Subject positions are constituted by representations of Self and Other as particular kinds of agents related in particular ways, which in turn constitute the logics and reproduction requirements of distinct cultural systems (ibid., 257).

Such a role as constituted by the representations of Self and Other is a micro-level aspect at first, but if in a second step actors in a system progressively represent themselves as e.g. enemies, then the specific logic of an anarchy in which the role of enemy dominates becomes a general feature of the system and consequently a Hobbesian culture comes into being.

In this very brief description of structure it becomes already clear that this conceptualisation provides a remedy for the problem of fixed state identities that I have raised in the previous section about the neorealist as well as the neoliberal understanding of structure and change: Structure in the constructivist approach has "construction effects on states" (ibid., 248). In this respect, identities themselves become subject to change in and through interaction. Thus, a constructivist understanding of change addresses and is able to capture more fundamental changes in international relations than neorealist or neoliberal approaches.

We can now put on record that structure in a social constructivist world view is first and foremost formed by social factors. Consequently, intersubjectivity constitutes a core feature of social constructivist understandings of the international realm. How then, do social constructivists envision actual processes of structural change? For Wendt the process of change is rooted in interaction, because "social structures do not exist apart from their instantiation in practices" (ibid., 313). While interacting with each other, actors constantly interpret one another's behaviour, they assume specific roles for themselves, ascribe roles to their counterparts and react according to their own perceptions and expectations to the actions of the other. In this process, conceptions of Self and Other are on the one hand reproduced time and again. Thus, there is a certain basis for a rather constant development. But on the other hand, since identities are not assumed as being given prior to interaction,

> boundaries of the Self are at stake in and therefore may change in interaction,
> so that in cooperation states can form a collective identity (ibid., 317).

This process of "social learning" (ibid., 326) clearly reflects the idea of the mutual constitution of agents and structures (Berger and Luckmann 1966; Giddens 1984; Wendt 1987) and to this extent exceeds the rationalist approach, which can only account for constraints that structures impose on actors' behaviour.

In a nutshell, structural change in Alexander Wendt's approach is closely connected – though not identical – to identity change and ultimately means the emergence of "collective identities" (Wendt 1999, 336). The respective collective identities become manifest on the macro-level in the different cultures of anarchy which is why Wendt equates structural change with cultural change (ibid., 314). Interestingly, Wendt explicitly denies the promotion of a specific direction or teleology of structural/ cultural change (Wendt 1996, 54), but in fact his work allows for a different interpretation. Wendt suggests to understand structural change as transition from functional equality to differentiation and from traditional anarchy

to more authoritative relations among states (ibid., 47). Furthermore, he argues that the current international system has already changed from Hobbesian to a Lockean one and that since the end of the 20th century there is increasing evidence for change towards a Kantian culture (Wendt 1999, 314). A certain degree of a teleological understanding of change resonates at least implicitly in Wendt's writings and is even more explicitly brought to the fore in Wendt (2003) and (2005), which make the case for the inevitability of the development of a world state. Interestingly, referring to the EU, Wendt (2003, 506) argues:

> The EU is already not far from meeting these requirements [for a world state, BA] on a regional level. Were a 'completed' EU to be globalized, it would be a world state.

To think of the EU as the cradle of a world state is obviously a radical idea and – I should add – in its radicalness not necessarily a desirable one. It is an interesting one, though, because it clearly epitomises the notion of the EU as a transformational actor for change. Wendt's use of a subjunctive verb form, indeed indicates that this world state ultimately might not materialise. What is problematic in Wendt's idea of the EU as an already quite developed world state on a regional level, is that he ignores the inherent tensions and ambiguities of the EU and its transformational impetus. Hence, the idea of a significant EU contribution to structural change is clearly present in Wendt's thinking. It is, however, less well equipped to think about the prospects of such transformational endeavours in view of structural tensions and fundamental underlying ambiguities – a task for which the English School is much better suited, as I will argue in chapter 3.

Before engaging in more detail with some shortcomings of Wendt's social constructivist understanding of structural change, I shall provide some reflections on the probability of structural change in Wendt's account. As illustrated, structural change plays a crucial and much more fundamental role for social constructivism as opposed to neorealism and neoliberalism. Yet, the fact that social constructivists have put great effort in theorising about change does not mean that they think change is automatically everywhere. Wendt repeatedly emphasises that structural change does in no way come about easily. Rather the contrary is the case: Precisely the fact that structural change implies shifts in identity formation and thus is fundamental in character, indicates that structural change indeed "should be quite difficult" (Wendt 1999, 315), but not an easy, quick and self-evident automatism. In this context, Wendt distinguishes three degrees to which a certain culture can be internalised – coercion/force, price and legitimacy (ibid., 250). In the first case the degree of internalisation of a particular norm is low. Thus, actors follow this norm reluctantly, because they are externally forced to

do so. Price indicates a situation in which norm following becomes useful, for instance because not doing so would cause reputational damage and therefore be costly. Lastly, a specific norm can be found to be legitimate and actors behave accordingly by conviction, that is to say a particular structure has infiltrated an actor's identity to the highest degree. Under this condition change would be a lot more difficult to achieve, though not impossible. This aspect also holds true for structural change in international society induced by the EU.

The recapitulation of Wendt's understanding of structure and change clearly reveals some advantages compared to the other two more rationalist approaches: By adding social and intersubjective components to structure and by conceptualising identity and how it can change on the basis of interaction, Wendt provides a much more elaborate ontology which is more suitable to capture the social world of international relations. To the extent that anarchy can lead to different kinds of structures, this approach is more complex and thus better able to account for different events, developments and changes in the international sphere that are likely to be overlooked by approaches with a strictly materialist ontology.

However, Wendt's social constructivism has also drawn criticism. Two critical aspects stand out and will be briefly discussed: One is Wendt's adherence to a state-centric approach, the other arises from epistemological issues. Regarding the state's role in international relations theory Wendt is convinced that states "should be the primary unit of analysis for thinking about the global regulation of violence" (ibid., 9) and that "system change ultimately happens *through* states" (ibid., 9). Also, the title of his famous article "Anarchy is What *States* Make of it" (1992, emphasis added) points in the same direction. Regarding the EU one would have to act on the assumption that if structural change occurs, it has its origins in interactions of EU member states. While this makes sense with regard to the early beginnings of European integration and hence the internal processes, it seems to restrict the theoretical framework to a subordinate level. Only by referring to the EU as a relevant international actor in itself, it becomes possible to think about whether and to what extent the EU itself induces structural change in international society. Wendt's state-centrism constitutes a limitation to his conceptualisation of structural change because it eventually prevents to think about change, which exceeds the logic of a purely state-centric order.

The second problem with Wendt's approach is his recourse to scientific realism which takes a prominent place in his social theory (Wendt 1999, 51). Scientific realism claims that there is a reality existing independently from human thought and descriptions and most notably that this reality is recognizable. Wendt's endeavour is to use scientific realism in order to be able

to combine an idealist, post-positivist ontology with an epistemology that is still inclined to positivism (Wendt 1999, 90; Smith 2000, 152). Maja Zehfuß, for instance summarises Wendt's position as follows: "[T]here is a social reality out there, independent of our thoughts about it, and Wendt is committed to explaining it" (2001, 56). According to this idea, Wendt is eager to look for causal mechanisms. Suggesting four master variables (1999, 343–366) Wendt claims to be able to scientifically *explain* how change is being brought about. As Kratochwil illustrates, the crucial problem with this account is not the assumption of the existence of a certain reality, but it is the epistemological issue of how one is able to recognise this reality. Reality needs to be described and those descriptions are not objective, but they contain particular ideas and interests that in turn create meaning and thus contribute to the construction of reality (Kratochwil 2000, 95). The crucial question then is, how the assumption of an independently existing social reality can be reconciled with the central role of intersubjectivity in Wendt's approach and his idea that social structure is generated in interaction and based on ideas. As Drulák (2001, 2006) puts it concisely: With Wendt's account of structural change we actually have to deal with a "paradox of change" (2006, 148) because on the hand reflexivity plays a major role in his account of structural change and on the other hand scientific realism is not adequately capable of dealing with reflexivity.

Constructivist Alternatives: Heading towards Institutionalism

This is also where different constructivist approaches depart from each other. Nicholas Onuf and Friedrich Kratochwil, for example, emphasise the role of language for the creation of intersubjective meaning. Since language, i.e. "words spoken" (Onuf 1989, 36), have an impact on reality, there can never be a neutral observer who simply discovers existing knowledge and it is this idea which builds the basis for their different epistemological stance compared to Wendt. Neither can I discuss both their approaches at length here nor can I engage in more detail in the epistemological debate within constructivism. I shall, however, as a last aspect briefly introduce an article by Rey Koslowski and Friedrich Kratochwil (1994), which explicitly deals with structural change. As it will become clear in a second, their ideas bring us already quite close to an institutional framework that captures change on a very fundamental level. The authors summarise their concepts of structure and change as follows:

> [S]tructures are dependent for their reproduction on the practices of the actors. Fundamental change of the international system occurs when actors, through their practices, change the rules and norms constitutive of international interaction. [...] Therefore, fundamental changes in international politics occur when beliefs and identities of domestic actors are altered thereby also altering the rules and norms that are constitutive of their political practices (ibid., 216).

Structural change in this account is based on rules and constitutive norms that constitute and are constituted by political practices. The authors understand institutions as "settled or routinized practices established and regulated by norms" (ibid., 222) and thereby as the basic structure of the international system. Therefore, they are committed to developing a "constructivist approach to change that emphasizes the institutional nature of social systems" (ibid., 216). Their core argument is based on structuration theory: On the one hand actors and their identities are constituted by the basic structures in which they operate. On the other hand actors reproduce these structures through their practices. When domestic actors change their basic beliefs and ideas this will in turn alter the norms and rules which are constitutive of practices, and thereby fundamental structural change can be induced also on the international level. By conceiving of fundamental rules, principles and institutions as constitutive elements of international structure, Koslowski and Kratochwil indeed develop a strong and comprehensive concept of structure and change. With this concept they were able to demonstrate that ideational and normative changes on the domestic level induced change on the international level and thus the authors valuably contributed to an explanation of the events that led to the end of the Cold War and the collapse of the Soviet Union.

The crucial relevance of concepts such as institutions, practices, rules and norms in Koslowski and Kratochwil's definition of change points to obvious similarities with an English School approach to structural change as will become clear in the following chapter. These similarities between social constructivism and the English School should not come as a surprise, as Tim Dunne has comprehensively argued more than 20 years ago that "the theoretical work of Charles Manning, Martin Wight and Hedley Bull should be thought of as an example of social constructivism" (Dunne 1995, 368) and that there are "close echoes of Bull and Wight's thinking in his [Wendt's] work" (ibid., 372). In particular, constructivists share with English School thinkers that anarchy is not a fixed feature of the international realm, but that the social character of international society allows for developments towards cooperation and a sense of a common bond (ibid.). Both approaches, thus clearly entail the possibility of change. After all, thus, I am sympathetic to a social constructivist understanding of structural change and as will become clear in the next chapter a lot of it resonates in the English School framework suggested here.

There are, however, two aspects in which approaches that are normally subsumed under the label 'social constructivist' and the English School differ. The first is that the English School in its foundational claims (i.e. the parallelism of all three parts of the triad and the

pluralist-solidarist debate) provides more suitable tools to deal with ambiguous structures and therefore to conceptualise and identify processes of change, even if these processes are not linear, straightforward or devoid of inconsistencies. This argument is admittedly not perfectly compelling. The contention here is not that social constructivism would not at all be able to accommodate such tensions and ambiguities, but rather that the English School lends itself more easily and in a more straightforward manner to such an endeavour.

The second argument, however, is compelling and constitutes the most crucial difference between classical social constructivists like Wendt and the English School approach as developed in this thesis.

The English School contends that "IR is fundamentally a normative enterprise" (Dunne 2013, 136). Norms and values matter – not only, as indicated in the introduction, as a constantly relevant element between the researcher and the subject matter – but also as inherent in the subjects themselves, which we study. Rather than only examining the most adequate way of analytically conceiving of the international realm, in his Anarchical Society, Bull puts a great deal of effort in engaging with the central question of order and justice. How is international society supposed to be constructed and developed in order to achieve both these values – order and justice – in the best possible way?

Within the English School, Martin Wight counts as the pioneer of putting a strong normative, ethical emphasis on the study of international relations (Dunne 1998, 9). The classical English School triad links back to Wight's three traditions of international theory (i.e. realism, rationalism and revolutionism; Wight 1991) and each of the traditions and related concepts indeed comes with a number of normative assumptions about how the international realm should be ideally organised. The same holds true for the specific differentiation between a pluralist or a solidarist international society. Both strands of the English School entail a particular moral positioning about whether order and justice are better realisable in a structure that puts greatest emphasis on the differences between sovereign states or whether it is more desirable to promote universal ideas of justice and order. As Buzan (2004, 14) summarises:

> This normative approach to English school theory has been the dominant one, strongly influenced by the core questions of political theory ('What is the relationship between citizen and state?' 'How do we lead the good life?' and 'How is progress possible in international society?')

Buzan clearly acknowledges this strong normative traditions within the English School. His main endeavour, however, with From International to World Society (2004) has been to detach the English School from this normative orientation and to more clearly separate an analytical and a normative strand within English School theorising. Buzan's contribution to the further theoretical development of the English School is beyond dispute. However, I argue against him that a strict separation of analytical and normative purposes is not only difficult to realise, but more importantly it deprives the English School of one of its major assets. This thesis, hence, explicitly engages in both enterprises. There is an analytical dimension to the question of the EU's potential to contribute to (solidarist) change in international society. But it would necessarily remain a half-baked project if the obvious normative implications of both, the promotion of such change as well as the resistance to it – were not addressed.

3 Ambiguity and Change – An English School Framework

> But to find the basic causes of such order as exists in world politics, one must look not to the League of Nations, the United Nations and such bodies, but to institutions of international society that arose before these international organisations were established, and that would continue to operate (albeit in a different mode) even if these organisations did not exist (Bull 2002, xxxiv–xxxv).

> If we are looking for evidence that European integration is bringing qualitative change in the states system, it is more profitable to look not to the imagined end-product of this process, a European super-state which is simply a nation-state writ large, but at the process in an intermediate stage (Bull 2002, 256).

The above quotes from Bull's *Anarchical Society* are programmatic for the theoretical argument that I develop here. In particular, they contain three major aspects, which set out a useful roadmap for this chapter.

First, it is the quintessence of English School theorising that order in international society comes into being through *institutions*. These institutions build the substance, the fabric of international society and they are therefore reflective of a deep and fundamental level of the international realm. Bull hints at a differentiation which was later coined by Buzan and which is in the meantime a well-established and largely undisputed assumption within the English School. There are on the one hand *primary institutions*, which can preliminarily be defined as "durable and recognised patterns of shared practices rooted in values held commonly by the members of interstate societies" (Buzan 2004, 181). *Secondary institutions* on the other hand, denote international regimes or organisations. The English School has traditionally focused on primary institutions, because they are the ones that build the basic structure of what international society ultimately is and constitutes. The study of order, how it comes into being, how it is maintained and how it changes over time, has always built the English School's centre of concern. Primary institutions by definition display a remarkable degree of stability. Such stability is a necessary and logical requirement of any institution and consequently also of the structure of international society, which is constituted by the entirety of primary institutions and their interplay. These institutions are "durable" to some extent, as also Buzan's definition illustrates. This does not mean, however, that primary institutions cannot change. They do and English School inspired research has engaged a great deal with the question what exactly has changed in different points of history and how. This thesis ties in with this tradition of thought and I will set forth further below how exactly we can conceive of such change in primary institutions.

Second, while primary institutions have formed the major interest, secondary institutions, i.e. international organisations matter, too. And they do so probably in a more significant way than Bull had envisioned. The focus on primary institutions, which also Bull promotes in the above quote, is the most obvious advantage of the English School vis-à-vis a neoliberal conception of change: While neoliberalism focuses on increasing institutionalisation in terms of growing density of regimes and international organisations, this conceptualisation is more fundamental in that it aims at capturing developments on a deeper level. In contrast to Bull's request, the NPE debate from which I took the general claim that the EU should be able to induce structural change, suffers from the drawback of focusing too much on the EU itself and the specific norms it promotes. It has thus tended to lose sight of the more fundamental levels of structure and change that are so significant for the English School. Yet, I argue that by taking Bull's advice too seriously, we likewise run the risk of overlooking important processes in international society, because secondary institutions would hardly play a role in these considerations. Even if this might not have been Bull's intention, the quote still points to the necessity of a closer assessment of the relation of primary institutions and secondary ones, such as the EU: The fundamental institutions, Bull argues implicitly, would operate "in a different mode" without the existence of secondary ones. Thus, Bull's remarks clearly indicate that a theoretical connection can be established between more fundamental institutions and international organisations. Accordingly, the declared goal here is to look at "the contribution [the EU] make[s] to the working of more basic institutions" (Bull 2002, 35) and hence to structural change. In so doing, this thesis engages with and contributes to a debate, which has emerged more recently amongst English School scholars and that aims at more elaborate theorising about the nexus between primary institutions and international organisations (Ahrens 2019; Friedner Parrat 2014b; Knudsen and Navari 2019; Knudsen 2015; Spandler 2015).

Third, the second of the above quotes clearly relates to the idea that the EU potentially has a transformative impact on international society, because "European integration [might bring] qualitative change in the states system". Yet, this quote entails another aspect, which is crucial for the overall theoretical framework: When engaging with such alleged change, Bull points out, we might need to look "at the process in an intermediate stage". As is known, Bull himself took a rather sceptical stance on the EU's potential to change the international order, because, if successful, Bull thought, European integration would rather lead to the reduction of the number of sovereign states, but it would not challenge the overall structure of international order. Whether such a European super-state is indeed the imagined end-product of European integration can be doubted. And Bull took into consideration that this end-product might not materialise. The

intermediate stage which he refers to, relates well to the concept of ambiguity as briefly presented in the introduction. It is the concomitance of societal structures of a European Community in parallel to the persistence of sovereign nation states. This parallelism is relevant to the EU's internal institutional set-up, as well as to its external action and its interaction with and within the global international society. This exactly forms one of the core objectives of this thesis: To engage with the role of such parallel structures – i.e. ambiguity – for the prospects and dynamics of change in international society.

Embarking upon these three aspects, the chapter proceeds as follows: Section 3.1. elaborates on the concept of ambiguity and illustrates its added-value for the analysis of change in international society, and more precisely the EU's contribution to such processes. Section 3.2 provides the broader English School framework, in particular by introducing core concepts of the English School (3.2.1), by defining institutions as the underlying social fabric of international society (3.2.2) and by discussing the concept of change in English School theorising for which institutions as underlying patterned practices constitute the crucial object of analysis. Summarising the arguments and aspects from the previous sections, 3.3 sets out the understanding of structural change as move on the pluralist-solidarist continuum and more specifically, details indicators of solidarisation. These indicators form the pivotal analytical tool to examine the EU's contribution to transformational change in the empirical chapters.

3.1 Ambiguity as Analytical Lens[2]

> The Union shall *ensure consistency* between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative for Foreign Affairs and Security Policy, shall *ensure that consistency* and shall cooperate to that effect (TEU 21 (3); emphasis added).

> [Member states] shall refrain from any action which is contrary to the interests of the Union or likely to impair *its effectiveness as a cohesive force in international relations* (TEU 24 (3); emphasis added).

In the context of EU foreign policy it is easy to detect requests for consistency and coherence, as demonstrated by both extracts from the Treaty on European Union (TEU). Also earlier legal documents, such as the Single European Act (SEA) reflect this idea: "Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act

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[2] This section heavily draws on Ahrens 2018.

with consistency and solidarity in order more effectively to protect its common interests and independence [...]". Likewise, the academic literature calls for consistency, in order that the EU would no longer "punch below its weight" (Thomas 2012). Academics as well as EU officials frequently go so far as to clearly establish a causal connection between the absence of inconsistency in EU external relations and its actual effectiveness as an international actor. Interestingly, however, when directly asked about the significance of coherence and consistency, EU policy makers frankly admit that consistency might indeed be less important than is generally assumed (Interview 2016b, 2017e).

Such claims for coherence and inconsistency, more broadly, seem to reflect a tendency that has been called the *Flight from Ambiguity* (Levine 1985) in modern times. It reflects a certain unease with ambiguous situations, statements or deeds as well as the resulting normative assumption that we should do our best to avoid ambiguity wherever this seems feasible, even if eradication is impossible. Policies should be consistent and unambiguous, otherwise they are likely perceived as deficient and non-effective at best or as damaging at worst. Ambiguity in this sense is a disrupting inconsistency and as such, it seems to reflect a crisis that should be addressed and solved. The negative connotation of ambiguity seems pervasive in the context of EU foreign policy, whereas for example the literature on norm development partly acknowledges positive effects of ambiguity (Chayes and Chayes 1993; Wiener 2004).

Regarding the EU's potential to have a transformational impact on international society, Nicolaïdis and Nicolaidis (2006, 348) have been very explicit in arguing that "[f]undamentally, normative power can only be applied credibly under a key condition: consistency between internal policies and external prescriptions and actions". In this thesis, my aim is to put this common-sense assumption into question and thus to detach ambiguity from its wide-spread negative connotation. While authors often implicitly support the indispensability of consistency in EU foreign policy (e.g. Smith 2004a; Smith 2014), they cast doubt on the general validity of this claim elsewhere (Thomas 2012; Smith 2006, 2010). Hence, it seems necessary to put the request for consistency under scrutiny.

To this end, I introduce the concept of ambiguity as a specific analytical lens. I do not claim that ambiguity and inconsistency denote two empirical phenomena, which are always clearly distinct. Such a claim would require to set out exact criteria to differentiate between inconsistent and ambiguous policies, which I think is impossible. My endeavour is a more modest one: I claim that the concept of ambiguity provides an analytical perspective (on seemingly inconsistent policies), which points us to unavoidable underlying tensions in international

society and in processes of change. The ambiguity lens, therefore, helps to debunk the common-sense assumption that consistency and effective foreign policy (or consistency and the EU's transformative agenda) must always go hand in hand. It allows us to identify processes of change in international society which are likely to be overlooked if we stick to the notion of inconsistency or the common sense understanding of ambiguity and their negative normative connotations. It is important to note that ambiguity in this sense entails particular theoretical assumptions which are not always implied in the usage of the word in everyday language. As its core feature, the concept entails an inevitable *undecidability* between two different options. An ambiguity perspective on EU foreign policy acknowledges the unavoidable existence of such *undecidability* and thus accepts it as a core structural condition. Taking this structural condition seriously allows for an alternative assessment of the prospects for the EU's transformative impact on international society. Thus, the ambiguity perspective challenges those arguments, which dismiss the idea of the EU's transformative impact based on the observation of inconsistent policies. Instead, by taking the EU's embeddedness in the existing structure of international society seriously, an ambiguity lens leads us to acknowledge that the EU's inherent ambiguity is rather a necessary precondition than a detriment to change and what is perceived as inconsistency in its policies should not come as a surprise. At the same time, change in and of itself is a highly ambiguous phenomenon because its normative implications are diverse and mostly not exactly clear. The fundamental change of the basic structure of international relations from strict state-centrism to a more thoroughly developed societal dimension, therefore, entails normative tensions in itself. Such transformations necessarily involve changes of power structures and consequently, a reconfiguration of positions of different actors in the game and most clearly such transformations cannot be normatively neutral. The norms and principles that are affected by such change are in themselves normatively ambiguous. There are, thus two dimensions of ambiguity in the given context: One is the *institutional or structural ambiguity* of the EU as global actor and the other is a *normative ambiguity* of norms, principles and of processes of change in and of themselves.

Taking up these two dimensions of ambiguity, this section develops the following argument: Ambiguity does not necessarily prevent change. In contrast, change is indeed not conceivable without ambiguous structures and constellations. Ambiguity – defined in more detail below – is understood as the parallel existence of particular structures, principles and ideas, in which this parallelism leads to tensions. Those tensions can be the source of change, instead of being necessarily detrimental to such change. In any case, they are inevitable in processes of change. Applying this idea to the EU's potential to pursue a transformative agenda in international

society, the argument can be specified as follows: The EU's internal structure and consequently its posture as global actor is ambiguous. Given the fact that processes of change to which the EU might contribute are in most cases normatively ambiguous, too, ambiguity within the EU and its policies is not necessarily detrimental to its transformative impact. Instead, when analysing change and the prospects of an EU contribution, it is necessary to uncover such ambiguities.

3.1.1 Defining Ambiguity

In order to define the concept of ambiguity in more detail, it is revealing to look briefly into theories of ambiguity as they are discussed in linguistics and literary studies. In a widespread common usage of the term, ambiguity is often understood as a piece of language or in broader terms a situation, which allows for a multitude of different interpretations and meanings. Etymology, however, suggests otherwise: The Latin origin of the word clearly entails a binary logic; a literal translation would be close to 'double meaning'. "*Amb-iguitas* is a condition in which something vacillates between two options, both equally close and far" (Weimar 2009, 55; my translation). The oscillation between two options that seem equally valid, important or persuasive is extremely significant to fully understand what ambiguity entails: Ambiguity not only means that there are two different interpretations available, but it essentially means that there is an undecidability between these options. The two sides, poles, meanings or whatever it is that causes the ambiguity, are permanently present and it is impossible to ultimately and definitely decide between them. This presence of two options paired with the impossibility to decide between them indeed is what gives ambiguity its specificity and what adds an additional layer to the notion of mere inconsistency. The undecidability leads to a tension as a particular characteristic of ambiguity. This emanating tension is not just some sort of side-effect, but it constitutes the genuine core and essence of ambiguity which entails its own and particular effects. To illustrate this, we can use a simple everyday life example: a pun. Ambiguity is the core mechanism of puns. They gain their humorous effect exactly from the fact that there are two meanings of a word constantly present. The very moment the addressee of the pun would decide for one of the two options or in case she is not even aware of the existence of both options, the humorous effect vanishes into thin air or is prevented in the first place. What the example of a pun illustrates very well is that ambiguity is indeed the existence of two different meanings – quite often mutually exclusive ones – which leads to the emergence of something new. An instance of ambiguity entails that the two different

options are no longer conceived of as independent from each other; but the undecidability between them combines them to something new (Scheffler 1979, 17). Ambiguity, thus, entails emergence, i.e. a process which means that new features of a system come into being which are not clearly reducible to its parts, but arise from the interaction and the simultaneous presence of these parts (Brodocz 2005, 193). It is this process of emergence, which marks the difference between the ambiguity lens and mere inconsistency. Ambiguity may well convey the impression of inconsistency, but looking at a phenomenon through the ambiguity lens, draws our attention to something new, which is more than just the two seemingly inconsistent meanings or interpretations.

Apart from defining ambiguity, language and literary theory is likewise instructive regarding the assessment of ambiguity in normative terms: As indicated before, there is a longstanding tradition of scepticism, which conceives of ambiguity as an instance of inconvenience in situations of communication, a disturbing factor in social relations, in short, a problem to be tackled and solved. For this sceptical position we find famous supporters as early as in ancient times: Cicero sees ambiguity merely as a misfortunate inability of a speaker. A skilled rhetorician, in contrast, will always contribute to clarification when confronted with the risk that ambiguity conceals clear and distinct meanings (Cicero [1962], II, XXVI, 111). As outlined earlier, Donald Levine traces this scepticism in modern times. At the same time, he criticizes what he calls the *Flight from Ambiguity*, because, as he points out, ambiguity indeed serves particular social and cultural purposes (Levine 1985, 29). One such purpose stands out as particularly relevant for the context of this thesis: "[a]mbiguity serves to promote community" (ibid., 42). The transformation of state-centrism which lies at the alleged core of the EU's normative power, is exactly this – a form of community building on the global level. This indicates a presumably more significant role for ambiguity in processes of change than assumed hitherto.

Writing in the 1980s, Levine was not the first to discover that there may be more to ambiguity than a merely disturbing effect in social relations. There is, for instance, the tradition of early 20th century language scepticism, which rests on the core assumption of radical and omnipresent ambiguity because meaning can never be fixed (Wittgenstein 1971, 41). Following this line of thought, Ivor A. Richards argues that ambiguity is an inevitable and omnipresent phenomenon because meaning can always only be generated in dependence of a particular context: "The context theorem of meaning will make us expect ambiguity to the widest extent and of the subtlest kind nearly everywhere" (Richards 1965 [1936], 40). In Richards'

view there is an "old Rhetoric" which has seen ambiguity as a fault in language, but the "new Rhetoric" should instead accept ambiguity, embrace the controversies that arise from it and benefit from them (ibid., 39).

To sum up, this brief digression into theories of language has helped to develop two major points: First, the established understanding of ambiguity draws our attention to aspects, which are likely to be overlooked if we stick to the narrower label of inconsistency. Second, there is a theoretical basis in language theory for a rather positive, less sceptical assessment of ambiguity. Interestingly, the idea that ambiguity has positive effects has been taken up in different arguments brought forward in the context of social science or international relations more specifically (see for instance Carstensen 2011; Gioia et al. 2012; Mérand 2012; O'Mahoney 2014; Sandholtz 2008). More often than not these arguments suggest a positive connection between ambiguity and (social, institutional, normative) change. Thus, the idea of ambiguity as the source of a productive dynamic towards change is not an entirely new one. As stated earlier, in the context of EU foreign policy, however, demands for consistency and coherence as assumed precondition for effective change prevail. The ambiguity lens offers an alternative analytical perspective on the EU's potential to contribute to change in international society.

3.1.2 Two Dimensions of Ambiguity

I have suggested above that ambiguity in the context of the EU's transformative potential in international society comes in two different, but interrelated dimensions: a) the *structural ambiguity* of the EU itself as also reflected in its institutional set-up and b) *normative ambiguity* – meaning that norms in themselves and consequently also normative change bears ambiguities because the consequences of such change are diverse. Even a process of change that seems without any doubts normatively desirable, most likely brings normative downsides with it. An obvious example is that the strengthening of human rights norms can on the other hand also lead to a re-enforcement of existing power structures and inequalities.

In the following, I will elaborate on both dimensions of ambiguity, before I then flesh out two ways in which the ambiguity lens provides a valuable alternative perspective on processes of change in international society.

The EU's structural ambiguity: As indicated before, the EU's founding narrative and raison d`être entails a transformative impetus, which aims at overcoming a classical state-centric

order, hoping that this will henceforth facilitate peace. Yet, assessing the EU's potential to live up to these expectations, doubts have increasingly been raised based on the argument that instead of contributing to a transformation of state-centric structures, the EU would rather reproduce these structures on a higher level (see for instance Borg 2014; Shore 2004; Tiilikainen 2014). Dealing with European citizenship, Shore (2004, 28), for instance, indicates that in order to bring the idea of European integration closer to the people, typical national ideas and symbols, such as a flag or a hymn are reproduced. So far, so true. Yet, does this reproduction of state-centric features really prevent change? Or is it not much more a precondition to such change because legitimate change needs to tie in with previously existing structures? Tiilikainen (2014, 130), who is herself sceptical of the EU's potential to induce fundamental change, points to this argument: In order to be able to change the norms and principles of the existing structure, the EU has to become part of this structure and acquire sufficient actor capacity within it to be recognised as a legitimate actor in the first place. Taking this argument seriously, the ambiguity between a transformative agenda directed at overcoming state-centric structures and the reproduction of those very structures is not a detriment to change, but its explicit precondition. Working in a thoroughly consistent manner towards change without such elements of reproduction of the order that is to be changed, thus, would most likely not strengthen the EU's transformative impact, but undermine it and eventually deprive the EU of its capacities as an actor for change in international society.

Thus, the EU is and must necessarily be built on the parallel existence of societal and of classical state-centric structures. Both dimensions are constantly present structural elements within the EU and within its external action. In addition, they are deeply entrenched in the EU's self-understanding and institutional structure. Thus, there is no option to dissolve this dualism once and for all – resulting in the undecidability between two poles, which I have identified before as the characteristic feature of ambiguity.

Normative ambiguity: Norms and normative change are in themselves ambiguous. The kind of change entailed in the idea of the EU as a normative power seems at first glance desirable – according to a liberal logic it aims at promoting lasting peace. But this normative desirability is not self-evident. As mentioned above, the promotion of human rights is one such example that seems on the one hand normatively beneficial, but on the other hand, it also comes with normative downsides, such as the re-enforcement of existing power structures and related to this, accusations of neo-colonialism. It is impossible to solve this tension. Neither a complete

renunciation of the promotion of human rights, nor a simple ignorance of its potential down-sides appears to be a viable option. After all, this tension is undissolvable, undecidable.

Based on these two dimensions of ambiguity, I suggest that the ambiguity lens offers a valuable alternative perspective on change in international society in two ways.

First, ambiguity in both variations implies the emergence of tensions, which need to be debated and dealt with in one way or another. This necessity to deal with such tensions brings about a potentially dynamic picture because – as the definition of ambiguity entails – an ultimate solution to these tensions is not possible. Thus, this requires constant debates and disputes which entail the option for change. In this sense, the undecidability between two poles constitutes a constant source of change.

Second, regarding the EU's potential to contribute to change in international society, it is crucial to understand the potential interrelatedness of both dimensions of ambiguity. In the interaction between these different dimensions, seemingly inconsistent EU action in specific policy contexts is not necessarily detrimental to change. Instead, to the extent that such alleged inconsistencies are a reflection of deeper underlying ambiguities, it might prove beneficial to embrace such ambiguities and the resulting contestation rather than to push forward with a strong and clear agenda, which veils such contestation. This allows for greater legitimacy in processes of change, whereas attempts to pretend the absence of ambiguity where this is just not given and to enforce absolute clear positions where actually contestation prevails, rather risk to impair the legitimacy of processes of change and thus the change itself. In short, in light of prevailing normative ambiguity, ambiguous EU action – which results from its own ambiguous nature as well as from normative ambiguities – can be conducive to change. This is because a seemingly unitary EU with a strong agenda for change, which is based on an alleged moral superiority, would lead to a strong inequality within the relation between the promoter of change (the EU) and the object of change (international society). Such a constellation would most likely evoke even more resistance, which would eventually slow down or inhibit change.

3.2 Introducing the English School

This section provides an introduction to the English School of International Relations and ultimately develops an English School inspired understanding of structural change. This un-

derstanding is ideally suited for accommodating the outlined central role of ambiguity in international society and thus provides further theoretical elaboration, by incorporating the concept of ambiguity into established IR theorising.

3.2.1 The Triad, the Pluralist-Solidarist Debate and their Relation to Ambiguity

'A Study of Order in World Politics' is the subtitle of Hedley Bull's *The Anarchical Society* (1977) and it immediately points to the central idea of English School thinking: Anarchy as described by neorealists is only one of three possible pictures of the international realm. The other two come into being because it is possible to bring about *order* among international actors which is established and maintained through institutions. The English School, as Murray puts it, "is a three-fold method for understanding how the world operates" (2013, 8). These three concepts comprise the key part of English School theory (Buzan 2004, 6–8) and are closely related to Martin Wight's *Three Traditions* – Realism, Rationalism and Revolutionism (Wight 1991).

The realist (also associated with a Hobbesian or Machiavellian) tradition is closely connected to the *international system.* Anarchy in a neorealist sense is this concept's major component and classical power politics between sovereign national states result from it.

Revolutionism, on the opposite end of the spectrum, is the (Kantian) tradition upon which *world society* rests. In this picture a cosmopolitan kind of order has superseded anarchy, which takes individuals, or humanity as a whole as its main referent object.

Rationalism (the Grotian tradition) is located between the two other pictures and it is marked by the emergence of institutions based on shared identities and common values and hence, the establishment of *international order* – beyond or in spite of anarchy – constitutes a central outcome. This line of thought is the basis for *international society.*

Compared to the other two, the concept of international society has certainly received the most attention in English School literature. As some authors note, the English School as a whole has even been referred to as the "international society approach" (Navari 2013, 15; Waever 1992, 98). Barry Buzan (2004) and Richard Little (2000) have criticised this focus on international society as an undue simplification of English School thinking. They have called for ontological and methodological pluralism instead (Linklater 1990). Regardless of whether one agrees with Buzan and Little or not, the focus on and even a remarkable sympathy towards the Grotian tradition in normative terms, is obvious within the English School literature: "[T]here is no doubt that the English School saw as their principal aim the foregrounding

of the societal dimension" (Dunne 2003, 305). The centrality of international society within English School theory explains why international institutions have become the paramount object of interest in this perspective, since it is through institutions that international order comes into being and is preserved. A common interest in maintaining order – also as basic means of survival – and at the same time the consciousness about certain values and ideas that are shared by different actors constitute the primary reason why these actors see themselves bound to certain common rules and norms. Thus, institutions are the constitutive elements of order in international society (Buzan 2006, 75) and they thereby contribute to overcome or at least manage the severest and most dangerous consequences of an anarchical system. Schouenborg (2011, 2014) in this context argues that we can even conceive of English School scholars as (new) institutionalists and Hidemi Suganami had suggested in 1983 that there is a school of thought in mainstream British IR, which can be labelled 'the institutionalists' (Suganami 1983, 2003). Given the centrality of institutions within this theoretical approach, they will also be fundamental in conceptualising structural change.

This rough overview of an English School approach to international relations, and its classic triad in particular, provide a first link to the concept of ambiguity. This may come as a surprise because linking up the triad and ambiguity seems to contradict the binary logic which ambiguity entails. This contradiction, however, exists only at first sight. On reflection, the prioritisation of international society as the most central concept within the triad not only explains the centrality of institutions, but also invites an ambiguity perspective. If we imagine international system, international society and world society to represent points on a continuum, and we assume that international society is the one that is closest to depict how the international realm today effectively works, than we are essentially concerned with a conceptualisation that is under constant influence of two opposing poles. International society – sitting in the middle – is the locus in which influences from both extreme poles become manifest and take shape as the concrete and ambiguous structure of international society.

This idea, in turn, crystallises in the pluralist-solidarist debate, which figures prominently within the English School (Bain 2014; Buzan 2004, 2014; Weinert 2011; Wheeler 1992; Williams 2005). At the core of this controversy – which is crucial for the understanding of structural change developed here – lie two different conceptualisations of international society. The English School differentiates between *pluralism* and *solidarism* as "ends of a spectrum" (Buzan 2004, 49) which serve to characterise different types of international society. A plu-

ralist conception means that there is only a thin basis of shared norms. Pluralism leans towards the international system pole and focusses on (cultural) differences and the distinctiveness of nation states as core constituents of international society. The main purpose is to maintain a stable international order, which protects difference and diversity amongst its members. States, thus are the only bearers of rights and duties and more fundamental rights can only be granted through them. A pluralist perspective attaches greatest importance to the principles of sovereignty and non-intervention. In contrast, a much thicker basis of shared norm and values underpins a solidarist international society, in which the universalisation of ideas beyond national borders becomes possible and desirable. In this view, individuals have rights that need to be protected – if necessary also against the state. Thus, individuals become themselves subjects of international law so that the consideration of their rights is no longer restricted to domestic contexts, but becomes possible beyond and independent from states. For Bull, who first introduced the distinction between pluralism and solidarism in *The Grotian Conception of International Society* (1966b) and in the *Anarchical Society* (2002, 230–232), solidarism ultimately means transferring classical features of domestic societies to the international level. This definition illustrates to what extent the EU itself reflects a considerably high degree of solidarism. The integration process can be described as an attempt to introduce a domestic logic in the relations between EU member states. As Cooper has put it bluntly (Cooper 2003, 27): "The European Union is a highly developed system for mutual interference in each other's domestic affairs, right down to beer and sausages."

The main issues within the pluralist-solidarist debate have been e.g. human rights or more specifically humanitarian intervention (Bain 2014; Bull 1966b; Wheeler 1992, 467–468, 2000). The relevance of this debate, however, clearly exceeds the realm of human rights, as the empirical chapters illustrate. As indicated in the introduction, pluralism and solidarism lend themselves as useful analytical categories in order to provide a deeper characterisation of international society. At the same time, both concepts come with distinct normative positions about how order in international society should be organised. This in turn, leads again to a fundamental normative ambiguity, because solidarism and pluralism are not distinct categories. Similar to the three traditions, both concepts are not exclusionary, but they must be understood as a continuum, along which particular structures, actions and agents in international society can be characterised (Buzan 2004, 49;59; Weinert 2011). On normative grounds, this is relevant in the following way: Pluralists argue that international society cannot be based on more than on a rather thin basis of shared norms and values. Lacking large-scale solidarity amongst states, such a basic order is all that is feasible and therefore desirable.

Solidarists in contrast try to promote a thicker basis of shared norms, including individuals' rights. While the normative desirability of such endeavours seems compelling on the one hand, pluralists reject it on the ground that attempts to enlarge the shared norm basis of international society puts the overall order into jeopardy. Some argue, therefore, that a pluralist conception is indeed not only the more realistic one, but also the one that is ethically more desirable (Williams 2005). The major point to take away from this is that there is no way out of the pluralist-solidarist debate. Both positions have their valuable and valid arguments. And while it still makes sense to lean towards one or the other pole when debating particular issues, both positions will be constantly present – and rightly so. Most likely, we are well advised to accept the normative tensions that emanate from the undecidability between these two possible and defendable positions.

To sum up, the English School triad and the pluralist-solidarist debate as a refinement of this classic triad link up neatly with the concept of ambiguity as introduced and defined in section 3.1.1. Furthermore, institutions have been identified as a constitutive feature of international society – and this applies to pluralist and solidarist versions alike. Institutions are at the core of what constitutes the structure of international society. Solidarism and pluralism as versions and as constantly present dimensions of international society become manifest and visible and therefore must be captured *in and through* institutions. A more elaborate understanding of institutions, their definition and their position in international society is therefore crucial to develop a thorough understanding of structural change. Before engaging in more detail with institutions and their role for change, the following section briefly demonstrates that the English School although often misleadingly seen as just another form of realism (Dunne 1998, 1), has as a matter of fact always been interested in thinking about and conceptualising change.

3.2.2 Change as Leitmotif in English School Theory

In the preface to *International Theory – The Three Traditions* (Wight 1991) Adam Roberts comments on Wight's ideas as follows:

> There is at least an implication in it that international relations are considered forever to be an interplay between these traditions, and that nothing fundamental changes very much (Roberts in Wight 1991, 25).

Accepting Roberts' statement as it stands would lead us to the conclusion that the English School is more about continuity instead of picking out change as a central theme. To Richard

Little, for example, it seems that "Bull is interested in the statics rather than the dynamics of world politics" (Little 2006, 115). On the one hand, this may be true, since Bull was looking sceptically at the prospects for fundamental change towards solidarism. This scepticism, however, was clearly also rooted in Bull's normative preference for a pluralist international society. Yet, this did not prevent him to think about how change occurs in international society. Hence, I disagree with Roberts and argue instead that change has always been a leitmotif for English School theorising. Indeed, it has become crucial to English School thinking that Wight's three traditions and the corresponding pictures of international politics do exist in parallel and that they continuously interact with each other, thereby generating tensions (Bull 2002, 39). Wight himself made this point very clear:

> Thus, the three traditions are not like three railroad tracks running in parallel into infinity. They are not philosophically constant and pure like three stately, tranquil and independent streams [...]. They are streams, with eddies and crosscurrents, sometimes interlacing and never for long confined to their own river bed. [...] They both influence and cross-fertilize one another, and they change, although without, I think, losing their inner identity (1991, 260).

I do agree with Roberts to the extent that it is rather unlikely that one element of this three-fold picture will disappear completely. If it is this what he refers to when indicating that "nothing fundamental changes very much" I take the point that change in international relations might be limited. However, this confinement is likely to be misleading if it is not complemented by another aspect: The parallelism and the interplay between the three traditions are the foundation for a thoroughly dynamic conception of international relations. Precisely the fact that there are three different perspectives in play and that they interact generates room for dynamic developments and indeed for change. The question immediately arises whether in a certain period of time we can identify shifts from the prevalence of one perspective to another or whether the challenges from one tradition towards the currently dominant one are increasing.

The focus in this thesis clearly is on changes within international society and as said before this privilege of the Grotian tradition runs through most of the English School literature (Wight himself included). But nevertheless the point made here illustrates that Wight's three traditions upon which English School theory rests to a remarkable degree apparently entail the idea of change and it continues to resonate in English School works more or less explicitly.

Bull picks up the same aspect in his *Anarchical Society*. He points to the possibility of identifying different historical phases, in which the three perspectives' interplay leads to different constellations with another perspective being prevalent in a respective period (Bull 2002, 39).

More specifically, Bull's seminal work also includes the idea that primary institutions change over time (Buzan 2004, 169), but Bull does not elaborate in more detail how these processes of change take place.

The work of Andrew Linklater (1997, 1998, 2010; Linklater and Suganami 2006) exemplifies an approach, which entails a clear normative agenda towards change. In *The Transformation of Political Community* (1998) Linklater distinctly draws on an English School framework and seeks to combine it with critical theory in the tradition of the Frankfurt School. His objective is to promote further change towards more cosmopolitan conceptions of international relations and to advance world society, while at the same time accommodating difference and diversity. Linklater's aim is to "analyse the prospects for achieving progress towards higher levels of universality and difference in the modern world" or to "reconstruct it [the critical project, B.A.] in the wake of contemporary social and political change" (ibid., 5).

Reus-Smit (1997), too, makes the case for the relevance of change for an English School analysis. He develops a model which aims at explaining variation amongst different international societies in their constellations of fundamental institutions (ibid., 557). Exemplifying his argument, he traces the change from the Ancient Greek to the modern international society and identifies this change in a shift from arbitration to international law as fundamental institutions.

John Williams (2005) introduces his article as one "about conceptions of change in English School theory" (ibid., 19). In particular, he deals with changes from international towards world society, arguing that these mostly are understood as enhancements of solidarism (ibid., 21), which he finds misleading. Williams instead contends that pluralism's significance for the development of world society, without good reason, has been widely ignored in the debate. He, akin to Linklater, takes up an explicitly normative position. In contrast to him, however, it is Williams tries to make a case for pluralism as an ethically desirable foundation of world society.

As Williams' article illustrates, the pluralist-solidarist debate is reflective of how deeply the possibility of change is built into the English School. The differentiation of both concepts as well as their understanding as poles on a continuum, which serves to characterise different types of international society give rise to the question of whether, how and under what conditions these different types evolve and which normative consequences this entails.

To sum up, English School theory provides us with several concepts to think about change in international relations. The three perspectives brought into the debate by Martin Wight stimulate thinking about when, why and how change from a mechanistic international system to an international society based on consciously shared values takes place or has taken place. Likewise, the same questions apply to the passage from international to world society. With the pluralism versus solidarism debate we have another concept at hand, which allows for a more specific engagement with changes within international society.

Essentially, the English School's potential to engage with change can be summarised as follows:

> [S]tates inhabit a society, and as any sociologist or historian would tell us, societies are always subject to change as are the individuals living in them – although change might be very incremental at times. Moreover, though it may not seem evident, it also means that the actors in international society, states, may change character and adopt new interests and that the social institutions evolved between them may change as well. In fact, it is not impossible to imagine that international society, in time, will undergo a more fundamental change […] (2014, 78).

Hence, the concept of change is closely linked to English School theorising and has been taken up by scholars working in that tradition in various ways. Kalevi Holsti has suggested that primary institutions need to be used as "metrics and markers of change" (2004, 18). Taking up this argument, the following section elaborates on institutions and their role in the analysis of change.

3.3 Institutions, Change and Ambiguity

Throughout this thesis my contention has been that it is a premature and undue claim to dismiss the idea of the EU as a transformative power in international society based on the fact that its policies and actions are at times inconsistent. I have argued that the transformative impetus which is at the core of the NPE debate needs to be linked to a more fundamental level of structure. Engaging with change on such a more fundamental level facilitates the identification of processes of change, notwithstanding the inconsistencies and ambiguities which constitute an inevitable and omnipresent structural condition of international society. The aim of this section therefore finally is to provide a theoretical foundation for the argument that change occurs in spite of ambiguities and ultimately to develop a conceptualisation of structural change, which lends itself to put the EU's contribution to change in international

society under empirical scrutiny. To this end, the remainder of this chapter unfolds the following arguments:

- International society is the social structure of the international realm and primary institutions constitute the substance, the fabric of this social structure (Buzan 2004, 161). The English School's basic understanding of institutions is a sociological one and intersubjectivity is therefore a characteristic feature of institutions.

- Constituting the basic structure of international society, primary institutions are necessarily durable and stable to some extent. Due to their intersubjectivity, however, they are also changeable. Primary institutions are thoroughly social and intersubjective in character (Neumann 2002, 630–631; Reckwitz 2002, 2003) and they do not have ontological status apart from their instantiation in practices because they depend on being constantly reproduced (Adler and Pouliot 2011; Navari 2011, 613; Schäfer 2013; Wendt and Duvall 1989, 60).

- Thus, primary institutions do not only constitute international society, they are themselves constituted by the actors within international society. An international organisation, such as the EU therefore, is a secondary institution which contributes to reproduce, but also to change primary institutions. Reproductive practices are a necessary part of processes of change because without engaging in the reproduction of existing primary institutions, it would not be possible to develop legitimate actor capacity in the first place. Change and continuity, therefore become closely intertwined, which ultimately leads to the argument that ambiguity is not detrimental to change, but a necessary aspect of processes of change.

3.3.1 Defining Primary Institutions

Hedley Bull has defined institutions as "a set of habits and practices shaped towards the realisation of common goals" (Bull 2002, 71). With this definition he suggests a broad understanding of institutions, which later resulted in the differentiation of primary vs. secondary institutions, as suggested by Barry Buzan (2004, 167). As Buzan points out, "there is no disagreement about the English school's institutions reflecting something 'more fundamental'" (2004, 137). Bull's definition of *international society* provides a first clarification about the role of institutions in the broader English School framework:

> A *society of states* (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in

their relations with one another, and share in the working of common institutions (Bull 2002, 13).

Bull's general approach, thus, follows a functionalist logic: The premise for order to be established is that actors share basic interests in achieving certain goals. Three such goals, for Bull, are key to any society (domestic as well as international ones): the limitation of violence and regulation for the use of force (LIFE), some degree of reliability regarding the adherence to basic agreements and treaty obligations (TRUTH) and the mutual recognition of sovereignty (PROPERTY) (Bull 2002, 13; Keene 2009, 114). These shared goals lead the members of a society to establish rules, which are supposed to enable the achievement of these goals and which are constantly reproduced verbally and through action. Institutions, finally, help to make these rules effective by "serv[ing] to symbolise the existence of an international society" (Bull 2002, 71).

This understanding of institutions has been criticised as being too vague. Peter Wilson, for instance, contends that this definition's fuzziness is at odds with the concept's centrality in English School theory (2012, 568). Buzan notes that "Bull never gives a full definition of what constitutes an institution" (2004, 169). Institutions, as Bull explains in less than half a page, are the context in which states operate to carry out the respective functions (Bull 2002, 68–71). This may indeed not be a very detailed and elaborate definition, but it still conveys the significant aspect that institutions build the fundamental structure of international society. Similarly, Holsti – while agreeing that Bull remains imprecise – points to the importance of practices, ideas and rules within Bull's conceptualisation of institutions and emphasises the significance of these elements to understand the fundamental character of institutions in the English School (2004, 20–21). Holsti, however, does not share the explicit functionalist or as he calls it "teleological" character of Bull's conceptualisation[3].

The more fundamental character of the English School's understanding of institutions is also underlined by a differentiation of institutions as deliberately "designed" or emerging over time (Onuf 2002). Indeed, it is crucial for the English School that institutions evolve over time through practices instead of being deliberately created and designed as if this process was under perfect control by state actors (Buzan 2004, 167).

Martin Wight outlines his understanding of institutions as follows:

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[3] In that context it remains unclear why Holsti contends elsewhere that "Bull rejects any functional explanation of order" (Holsti 2009, 131).

> [W]here there are *institutions*, there is a society; 'Institutions' here does not mean determinate organizations [...] but rather [...]: 'recognized and established usages governing the relations between individuals or groups' [...]. An institution in this sense is an 'enduring, complex, integrated, organized behaviour pattern through which social control is exerted and by means of which the fundamental social desires or needs are met' (Wight 1991, 140–141).

Although Wight's definition appears more detailed and elaborate than Bull's, Wilson still criticises it for not being sufficiently clear-cut – a detriment that in his view inhibits a sound empirical application of the concept (2012, 570). I agree that critics have a point in calling for specification. Nonetheless, Bull's and Wight's definitions clearly exhibit a deeply sociological understanding of institutions marked by a high degree of intersubjectivity. They point to the fundamental character of institutions in the English School sense that exceeds the classical understanding of institutions as regimes or international organisations (Schouenborg 2014, 77; Wendt and Duvall 1989, 53–54). These definitions, thus, provide the basis for the first part of the argument, to wit that institutions constitute the substance of the international realm's basic structure, which is international society. This line of thought has been taken up widely in the English School literature:

Barry Buzan who is said to have opened up "a new chapter in the international society debate" (Schouenborg 2011, 26) sees the English School understanding of institutions in the tradition of John Searle, thereby emphasising that institutions are a social fact rather than a material one and that they are closely connected to practices, since "each use of the institution is a renewed expression of the commitment of the users to the institution" (Buzan 2004, 166). Based on these premises he sees institutions as "constitutive of both states and international society in that they define the basic character and purpose of any such society" (ibid., 166).

Christian Reus-Smit (1997, 1999) is concerned with foundational and fundamental institutions which encompass basic values and criteria for legitimate actorness and action as well as basic rules of practice. Reus-Smit formulates a three-tiered hierarchical model to carve out his understanding of institutions: At the bottom are foundational institutions which he also calls constitutional structures. These are "coherent ensembles of intersubjective beliefs, principles and norms" (Reus-Smit 1997, 566) that fulfil two functions, namely the definition of what constitutes a legitimate actor in international society as well as guiding principles for "rightful state action". Constitutional structures bring about the second layer: fundamental institutions which Reus-Smit defines as "elementary rules of practice" (1997, 557).

Holsti (2004, 21–22) lists three major components of institutions, i.e. "patterned practices", "coherent sets of ideas and/or beliefs" and "norms [which] include rules and etiquette". Furthermore, akin to Reus-Smit's model, Holsti differentiates between different kinds of institutions: Foundational institutions, such as sovereignty and territoriality, define the status of legitimate actors as well as fundamental principles and rules; procedural institutions regulate in more detail how international relations are conducted. As examples he mentions diplomacy, trade or war (ibid., 24–25). While Holsti's foundational institutions seem to be the same as Reus-Smit's constitutional structures, the relation between fundamental and procedural institutions is less clear (Buzan 2004, 173). The exact relation between both models is negligible in our context. Crucial to note, however, is both authors' general understanding of institutions, which clearly reveals their fundamental character in English School thinking. Institutions, in sum "are the context within which the games of international politics are played" and they "contain the essential rules of coexistence between states and societies" (Holsti 2004, 18). In institutions in this sense it becomes manifest how international relations work in principle, what the central behavioural patterns are, which basic rules the conduct of international relations follows, and not least, which actors are considered legitimate to take part in the game. It is exactly this line of thought that makes it reasonable to conceptualise institutions as international society's basic structure.

3.3.2 The Durable and Changeable Nature of Institutions

As stated above, Holsti has suggested to use primary institutions as "metrics and markers of change" (ibid., 18). At first glance, this idea seems at odds with Buzan's observation that institutions are "relatively fundamental and *durable* practices" (2004, 167). Essentially, both scholars are right and this brings us to the second part of the argument: Primary institutions are stable to some extent – in fact, if they did not display some degree of durability, it would make no sense to understand them as the substance of international society's basic structure. But they are also changeable due to their intersubjective character and their instantiation in practices. Durability must not be equated with a static conception. As Buzan (2004, 181–182) points out:

> Although durable, primary institutions are neither permanent nor fixed. They will typically undergo a historical pattern of rise, evolution and decline that is long by the standards of human lifetime. Changes in the practices within an institution may be a sign of vigour and adaptation (as those in sovereignty over the last couple of centuries) or decline (as in the narrowing legitimacy of war over the last half-century). One needs to distinguish between changes <u>in</u> and changes <u>of</u> primary institutions.

The question of whether and how primary institutions change has recently attracted more attention amongst English School scholars (Friedner Parrat 2017; Knudsen 2013a; Knudsen and Navari 2019; Spandler 2015). Yet, it also resonates in the classics, such as Bull's *Anarchical Society*. Bull deals with his list of five core institutions – Balance of Power, International Law, Diplomacy, War and Great Powers – in the whole central third of his book. He dedicates one chapter to each of his institutions and in each case he ends his remarks with a discussion of the respective institution's relevance for international order *at present times*. If Bull considers it important to carve out the present significance of institutions, he obviously suggests that change has taken place and is likely to occur. To give an example, Bull describes how by the mid-1970s, the institution of *Diplomacy* has changed to the extent that the relevance of professional diplomats has declined because direct contacts between heads of governments or other members of the political elite became more common and because the significance of multilateral meetings increased (Bull 2002, 166–172).

Thus, while Bull seems to have been aware of the fact that institutions can change, he remains rather silent on the details of such processes of change (Buzan 2004, 169).

Bull's suggested list of five core institutions has had and continues to have significant impact on the English School debate and it has indeed been the starting point for intensive disputes about which institutions matter to map the core of what constitutes international society today or at a certain point in time. While it is widely accepted that Bull's list rather reflects the political circumstances of his time and to a certain degree his normative preferences – which Buzan locates "firmly within the Westphalian straitjacket" (2004, 169), there is no exact consensus of what today would be an adequate set of institutions.

It is not necessary here to further engage in this discussion, nor can I review the different suggestions that have been made (but see for instance Buzan 2004, 174; Schouenborg 2014, 80–82; Wilson 2012, 568–577). The point to be made here is simply that the debates about which institutions matter at a certain point in time constitute another indication of primary institutions' potential to change.

In *Taming the Sovereigns* Kalevi Holsti (2004) introduces a set of six different *concepts of change* to characterise and specify what exactly has been going on within particular primary institutions and in the entire set of institutions. His objective in doing so is to provide for more adequate and detailed specifications of what we exactly mean when we identify change, since his major critique of well-established theories of International Relations is that they "neither describe nor explain the phenomenon of change" (ibid., 3).

It is, thus, a well-established assumption in English School literature that primary institutions, while being durable to some extent – can and do indeed change. Their social and intersubjective character as well as their instantiation in practices help to illustrate why and how such processes of change can occur. I will explain this aspect in the remainder of this section.

3.3.4 Practices – A Gateway for Change

The above discussion of definitions of primary institutions has revealed that in all definitions, *practices* play an essential role. For Bull (2002, 71) institutions are "sets of habits and practices"; "patterned practices" are one of the three core elements in Holsti's (2004, 21) definition. Similarly, Suganami (1983, 2365) conceives of practices as a constitutive element of institutions; Wight (1991, 140–141) establishes a more implicit connection to practices when he refers to "behaviour patterns" or "usages" and Andrew Hurrell (2007a, 59) describes institutions as being "embedded in stable and on-going social practices". Even more obvious is the central role that Buzan and Reus-Smit ascribe to practices for the conceptualisation of primary institutions. The latter (1997, 558) explicitly equates his fundamental institutions with institutional practices and Buzan (2004, 166), referencing John Searle, emphasises that an institution depends on being reproduced through its usage. Maurice Keens-Soper (1978) even seems to equate practices with institutions in the English School sense (cf. Navari 2011). To give an example, Keens-Soper states that practices "embody and establish the States-System [i.e. the international society, B.A.]" or that the identity of the European States-System becomes apparent in the "reiteration in practice of shared precepts and rules of conduct" (1978, 29).

Although it has been explicitly suggested that the incorporation of social practice theory (see for instance (Reckwitz 2002, 2003, 2008; Schäfer 2013; Schatzki 2001) into IR literature is beneficial (Navari 2011; Neumann 2002), this is not my intention here. To my mind, practice theory is one – amongst many other attempts in social theory to address and ultimately to overcome the dichotomy between structure and agency (Schäfer 2013, 18). Essentially, this is achieved by arguing that the level of social practices is the place where individual actors and society are mutually constituted (ibid., 20). I am not claiming that such an argument has only been brought forward by practice theorists. Yet, I think that this formulation is very well suited to understand the relation of international society and an international organisation, such as the EU within it. Both are mutually constitutive to the extent that international society is the basic structure that defines how the game of international relations is played and who can legitimately claim to participate in it. On the other hand, the EU as an actor within this international society contributes to constitute this society through its action, because it needs

to be instantiated in social practices. The centrality of practices in all definitions of primary institutions, thus, are the underlying reason why primary institutions can change and why the EU can contribute to such change.

The core argument to be made here is that the interconnectedness of institutions and practices (Adler and Pouliot 2011; Wendt and Duvall 1989, 61–63; Wilson 2012) constitutes the basis for change in primary institutions. On the one hand primary institutions are rooted in practices. They depend on being constantly produced and reproduced in such practices conducted by actors. This is exactly where change becomes possible because if institutions are instantiated in practices, it is immediately evident that this relation cannot be static, but must potentially be dynamic in character. On the other hand actors' practices are not independent from primary institutions, but they are embedded in the latter. Primary institutions as the underlying structure build a restricting as well as enabling context within which certain practices develop and others are inhibited. Adler and Pouliot, for instance, define practices as

> dynamic material and ideational processes that enable structures to be stable or to evolve, and agents to reproduce or transform structures (2011, 5).

The important aspect to note in this definition of practices is the reference to *processes*. Acting on the assumption that practices are central to the conceptualisation and definition of institutions, *process orientation* as well as a focus on structure as an *ongoing event* become inherent attributes of this structure. A crucial consequence from the centrality of practices in the definition of primary institutions, thus is a rejection of a static conception of structure (2013, 37).

This does not mean, however, that there is no continuity and that change occurs easily. Practices also entail a reproductive element. An important feature of practices is that they are "patterned" (Adler and Pouliot 2011, 6), meaning that they exhibit regularities and iteration. This conceptualisation has consequences for how one assesses the likeliness of continuity or change to occur. If practices are the foundation for both continuity and change, neither is more likely than the other. Hence, we have to refrain from the assumption that continuity is the rule while change is the exception. It is rather the case that continuity is an impression of stability that for a certain period of time emanates from reproductive processes. Process, not stagnation, thus builds the foundation for change and continuity alike and hence even in a moment of apparent stability, the chance that change occurs in the next moment is omnipresent. The concept of practices and its centrality in the establishment of social order thus suggests that there is a very close relationship between continuity and change. Practices on the

one hand serve as "vehicles of reproduction" (ibid., 18), but at the same time they are the principal starting point from which change can emanate. This ambiguous relation leads Adler and Pouliot to argue that the understanding of change and continuity as a strict dichotomy must be overcome (ibid., 18). Or, as Schäfer has put it concisely: We can understand social practices as "iteration [...] in which recurrence and change are paradoxically intertwined" (2013, 12; my translation).

Navari points in a similar direction. She argues that practices can be understood as the theoretical basis of institutions in the English School sense (2011, 613). And she argues that practices imply the possibility of change because in reproduction there is the "ever-present possibility of slippage" (ibid., 617). Practices are social, not private: Practices do change because they are rooted in interaction between different agents and entities and because they depend on being *socially* recognised in interaction processes by different actors. Hence, the social dimension of practices is directly linked to the potential for change.

3.3.5 Linking Primary Institutions and the EU

As stated at the beginning of this section (3.3.), the aim was to provide a theoretical foundation for the argument that the EU can contribute to change in international society although its action is not always consistently directed at a particular kind of change. Such ambiguities are not a detriment to change, but a necessary part of it.

More specifically, it has been argued in the literature that a transformative impact of the EU on international society towards a more solidarist conception is very unlikely because at least in partly the EU emulates classical state-like behaviour. Thus, it would rather contribute to the reproduction of a classical Westphalian system and not to its overcoming as the idea of NPE implies. Thus, the focus is not to argue generally that the EU as a non-state actor can in principle bring about change in international relations – I take this for granted. But the aim in particular is to refute those lines of reasoning which suggest that inconsistencies automatically inhibit any forms of more fundamental change.

Secondary institutions, such as the EU, are actors that through their practices contribute to the instantiation of primary institutions, which build the substance of international society. The EU, to put it simply, can potentially contribute to change in primary institutions because it engages in those practices that produce and reproduce primary institutions. Yet, this mechanism only tells us half the story. Secondary institutions do not only contribute to practices and thus to the instantiation of primary institutions, but secondary institutions also are embedded in the existing structures. I have illustrated earlier that primary institutions constitute

the basic rules of the game of international politics and that they define who counts as legitimate actor in the first place.

This conceptualisation bears the following consequences for the EU's potential to induce change in international society: The EU can in principal contribute to solidarist change in international society by influencing practices. In doing so, however, the EU is not independent from those structures that have existed hitherto and which still exhibit quite influential pluralist elements. It therefore cannot come as a surprise that the EU's endeavour to transform international society is marked by inconsistencies, which reflect the conflicting interplay of old and new structures. Change necessarily must entail such an ambiguity because the underlying condition is that the EU is embedded in and constituted by the overall structure that it aims to change. Ambiguity from this perspective is not a problem per se, but a virtual necessity in processes of change. Change that is not initiated by external shocks which lead to a radical and abrupt restructuring – and I think that such a change is rather exceptional in international relations – must necessarily come along with ambiguities and discrepancies. The endeavour to bring about change towards a more solidarist conception of international society entails as a prerequisite to engage with the existing predominant pluralist structures in order to be recognised as legitimate entity capable of acting in the first place (Tiilikainen 2014, 130). Thus, this conception takes the EU both, as a potential force for change in international society, but it acknowledges that the EU at the same time is embedded in existing structures. And this understanding of a dualism of changing and persistent structures has an additional advantage: Much of this work may at first sight be reminiscent of the classical expansion story that has been told within the English School, where the emergence of the global international society has widely been understood as the incremental transfer of European values, norms and practices to the global level (Bull and Watson 1985; Watson 1990, 1992). But there is a crucial difference in this thesis to this classical expansion narrative: True, my aim is to look at the changing impact that the EU has on global structures, but in doing so I am aware that the impact works in both directions. The EU is not able to act independently of existing structures, but it is at the same time embedded in and thus influenced by these structures. Taking this mutual constitution of the EU has a secondary institution and the global level into account, allows me to avoid a simple remake in an updated version of the expansion story that has been told before.

What is more, every tendency towards change entails that power relations are affected because these are reflected in existing and reproduced structures. Yet, if change in the fundamental structure most likely also implies a change in power relations, it does not come as a surprise that endeavours to bring about change

> will be met with counter-reactions to resist change and hold intact the existing set of preconditions for practice (Neumann 2002, 641).

Following this line of thought, I disagree with Holsti who argues that speaking of a post-Westphalian international order is only adequate if this order is completely independent from the Westphalian system that has existed before (2004, 17). To my mind, the contrary is the case: Even the term *post-Westphalian* implies that the order it signifies can only be understood against the background from which it is supposed to be demarcated. Yet, if meaning comes into being through demarcation from something else, this production of meaning automatically leads to the – at least partial – reproduction of the old structure. In lieu of taking for granted that discrepancies and ambiguities – which undoubtedly exist – are under all circumstances problematic, IR should focus on the analysis of the parallelism of structures and on what indeed follows from ambiguity. Emanuel Adler, for instance, brought to light that in the transformation of NATO after the end of the cold war it was the fact that the NATO "created a set of hybrid practices [...] that enabled [it] [...] to become an almost pan-European collective security arrangement" (2008, 213). As Adler illustrates, NATO on the one hand adopted cooperative security practices, but on the other hand adapted them to its military nature. Hence, for the analysis of the EU's contribution to change, it will be compelling to put specific attention on the question of the consequences of ambiguities in EU action, instead of following the maybe intuitive, but arbitrary claim that ambiguities are a detriment in either case.

3.4 Change as Solidarisation – Moving on the Pluralist-Solidarist Continuum

In the previous paragraphs I have outlined the overall argument of this theoretical framework in three steps: First, it has become clear that primary institutions constitute the social fabric of international society and thus the basic structure of the international realm. Second, these institutions exhibit a certain degree of durability – as a necessary feature of structure. Yet, it is nevertheless reasonable and indispensable to assume that they can change. Thus, structural change becomes manifest in primary institutions. Finally, the co-constitutive relation between the structure of international society (primary institutions) and the actors,

which are embedded in, but also contribute to instantiate these institutions, provides a theoretical foundation of the argument that ambiguity does not prevent change. Using ambiguity as analytical lens (cf. section 3.1) helps to account for the complex relation between the EU as an international organisation with a transformative impetus and its own embeddedness in the structure of international society. Most certainly, change becomes anything but easy or straightforward in such a conceptualisation. Yet, as the empirical part of this thesis will demonstrate, dismissing the EU's potential to contribute to change simply because its policies are at times inconsistent does not do justice to the initial argument of normative power Europe, which addresses a more fundamental level. The outlined approach captures such a fundamental level.

In order to finally develop a framework which lends itself to put the EU's contribution to change in international society under empirical scrutiny, I conceptualise change as movement on the pluralist-solidarist spectrum, which becomes visible in primary institutions.

Rather than a broad and general analysis of change in international society, this thesis aims at examining more specifically the EU's changing impact. As discussed in the introduction, at the core of the NPE debate lies the assumption that the EU should be able to fundamentally transform the basic structures of the Westphalian state system (Manners 2008, 60) towards structures that exceed strict state-centrism. Thus, the empirical part of this thesis will trace the EU's contribution to the solidarisation of international society.

As outlined before, solidarism means a conception of international order that is marked by a higher degree of solidarity between states. Hence, there is a thicker basis of norms and values which states (and other actors) share and which build the basis for their action. There are a number of criteria for solidarisation that result from the theoretical discussion of the concepts solidarism and pluralism and that have also been explicitly written out in the literature. In setting forth my criteria for solidarisation, I thus proceed deductively. A review of the secondary literature suggests the following concrete indicators that shall serve to identify processes of solidarisation:

(1) **Extension of rules of cooperation:** A first indicator of solidarisation we can deduct from Bull's tripartite typology of rules that is so central to his overall understanding of international society (Bull 2002, 64–68). For Bull three different types of rules are crucial to establish and maintain any kind of order, and these three types can be understood as being hierarchically ordered: The first, most basic level are "constitutional normative

principle[s] of world politics" that define the basic ordering principle, such as the organisation of international relations as an international society, i.e. in the existence of territorially differentiated, sovereign states. The second level are "rules of coexistence" which are only minimal in scope and primarily serve to fulfil the three basic goals that any society needs to provide for: limitation of violence, some property rights and a certain degree of reliability of agreements. Taking only these two levels of rules into account would be sufficient for a pluralist conception of international society, and as is known, Bull clearly puts the focus on these two. He did not stop here, though, and Bull's third level – "rules concerned to regulate cooperation" – thus are the gateway for thinking about solidarism (Buzan 2006, 83) that Bull himself, notwithstanding his normative preference for pluralism, has provided for:

> Rules of this kind prescribe behaviour that is appropriate not to the elementary or primary goals of international life, but rather to those more advanced or secondary goals that are a feature of an international society in which a consensus has been reached about a wider range of objectives than mere coexistence (Bull 2002, 67).

Thus, whenever there is the endeavour to go beyond mere rules of coexistence and to push for the development of more far-reaching regulations within the relations of international actors, and when it seems that these endeavours are at least in parts successful, this is a clear indication of solidarisation.

Before moving on, a note upon Bull's expression of "mere coexistence" is necessary in order to prevent that the first indicator does not set the standards for solidarisation too low. "[M]ere coexistence" cannot denote a situation in which states or other international actors literally exist side by side without any kind of cooperative or communicative contacts. Even an international society which seems closest to the pluralist pole of the continuum is maintained and safeguarded by common primary institutions, which in a sense must transcend "mere coexistence". "Mere coexistence" as meant by Bull, thus must entail a situation in which actors via conscious decisions and active cooperation preserve such existence next to each other – it is not to be confused with the absence of common action, cooperation and communication. For solidarisation indeed, it is crucial that such rules of cooperation are more far-reaching in their objectives than simply to preserve the existence of international society as a society of sovereign states.

A further important characteristic of solidarisation as captured by this first indicator is that the extension of rules of cooperation happens with states' consent. This will be an important feature to differentiate this indicator from the third one.

(2) **The enhanced role of non-state actors:** This indicator's meaning is twofold. First, and on a more general level, different kinds of non-state actors play an increasingly important role in international politics and thus challenge the primary role of the state as legitimate actor in international politics. As Buzan (2004, 48) puts it: Solidarism "ties together state and non-state actors". More precisely, if for instance non-governmental organisations' (NGOs) importance in processes of international politics as well as their substantive contribution to outcomes of multilateral negotiations is increased, this entails solidarisation. On a second, more specific level, this indicator means that the significance of individuals is increased vis-à-vis the state to the extent that individuals themselves become subjects of international law:

> Another way of making the same point is to say that we are making a transition from one principle of international legitimacy, based purely on the rights of states, to another, based partly on the rights of individuals (Armstrong 2006, 132).

On these grounds individuals' rights can also be claimed against the state. Thus, the status of states as the primary bearer of rights and duties and their role as dominant and most crucial entities in international society is mitigated (Bain 2014, 160; Linklater and Suganami 2006, 64; Weinert 2011, 29; Wheeler 1992, 468; Wheeler and Dunne 1996, 95; Vincent 1986). The relevance of individuals as bearers of rights and duties is already reflected in the writings of Hugo Grotius, the forerunner and major reference point for a solidarist conception of international society: In outlining the main features of Grotian thought, Lauterpacht points to an analogy between states and individuals, by which Grotius does not imply that states per se are like individuals, but

> that behind the mystical, impersonal, and therefore necessarily irresponsible personality of the metaphysical state there are the actual subjects of rights and duties, namely individual human beings. [...] The individual is the ultimate unit of all law [...] in the double sense that the obligations of international law are ultimately addressed to him and that the development, the well-being, and the dignity of the individual human being are a matter of direct concern to international law (Lauterpacht 1946, 27).

(3) **Re-interpretation of national sovereignty:** Sovereignty as the constitutive principle of international society is not abolished, but its meaning changes fundamentally: In a solidarist conception the exertion of sovereign rights through states is more and more tied to states' responsibility for their own people (Vincent 1986; Reus-Smit 2001; Wheeler 2000). In that sense, sovereignty transforms itself from an absolute to a conditional (Vincent 1986, 113; Buzan 2014, 124) principle. This materialises in Vincent's

words, for instance if "a state by its conduct outrages the conscience of mankind" (Vincent 1986, 125). This change of the meaning of sovereignty is for example evident in the founding document of the International Criminal Court, the *Rome Statute*, or in the *Responsibility to Protect* as adopted by the international community at the World Summit in 2005 (General Assembly 2005). In both examples the primary responsibility or duty to act is with states, but in cases where states are not able or not willing to provide for adequate prosecution of war criminals or to protect its own population from atrocities respectively, the international community has the responsibility to act even if this entails a breach of the principle of state sovereignty. Again, this idea becomes already crystal clear in the writings of Hugo Grotius: Grotius stated that by breaching international law provisions states put themselves "in a position of inferiority to other states" (Lauterpacht 1946, 21) resulting not only in a right of other states, but in their responsibility to react to such violations. This inferiority emerges exactly from the restraint of sovereignty in case that certain conditions are not fulfilled. Moreover, there is a second way in which solidarisation entails a reinterpretation of the principle of state sovereignty. This can be captured by what Robert Keohane (2002) named "pooled sovereignty", but it is also reflected in what Richard Falk (1998) describes as a shift from consent to consensus as the basis of international law. Keohane (2002, 748) points out:

> Sovereignty is pooled, in the sense that, in many areas, states' legal authority over internal and external affairs is transferred to the Community as a whole, authorizing action through procedures not involving state vetoes.

Thus, pooled sovereignty means that agreements in international society can come into being – including the claim for their universal validity – even though not every state has given its explicit consent. Most interestingly in our context, Keohane points to the EU as an example where such a reinterpretation of sovereignty has most clearly happened. Thus, to the extent that the EU contributes to a similar development also outside its own borders, it would foster the solidarisation of global international society. In a similar vein, Richard Falk claims that there is a shift from consent to consensus in international law. While consent means that literally every state would need to actively agree to a particular arrangement, consensus is less strict to the extent that the general support of a broad majority is sufficient (Falk 1998; cf. also Bull 2002, 142 and Armstrong 2006, 130). That General Assembly (GA) resolutions, which are not legally binding, can gain the status of customary law reflects a similar principle.

At first glance, the exact difference between this and the first indicator might not be entirely clear. They are indeed related to the extent that the more rules of cooperation are extended, the more likely it is that this can only happen if sovereignty is pooled to an ever greater degree and that consensus becomes an ever more legitimate principle. However, the mere extension of rules of cooperation might very well render the pooling of sovereignty more likely, but it does not imply it as a necessary condition. It is in principle thinkable that states agree upon extending rules of cooperation without sovereignty being changed significantly. The difference between indicator one and the pooling of sovereignty, thus, is nicely captured by a distinction of different kinds of solidarism that Barry Buzan has suggested: *State-centric solidarism* means that "states can collectively reach beyond a logic of coexistence to construct international societies with a relatively high degree of shared norms, rules and institutions among them" (Buzan 2014, 116). Solidarisation which follows the logic of the first indicator can remain strictly state-centric, the principle of national sovereignty remains untouched. This is different for the third indicator which takes a redefinition of sovereignty as its core feature. Buzan has introduced *cosmopolitan solidarism* as a second type, indicating a "disposition to give moral primacy to 'the great society of humankind' […] [and] a desire to establish foundations for a moral critique of the state" (ibid., 118). If sovereignty is pooled in the sense that responsibility, which exceeds national boundaries is ascribed to the community, this clearly implies such a moral critique of the state. It is exactly the doubt about states' impeccable morality, which motivates endeavours to pool sovereignty. Again, we find the precursor to the principles of cosmopolitan solidarism in Grotius' writings, to wit in "the view that the law thus binding upon states is not solely the product of their express will", but that "the will of states cannot be the exclusive or even, in the last resort, the decisive source of the law of nations" (Lauterpacht 1946, 21–22). To sum up, I understand my first indicator as reflecting state-centric solidarism; once the necessity of state consent is relativised and a reinterpretation of sovereignty is implied, this is captured by the third indicator (in the sense of pooled sovereignty in particular), which is closely related to cosmopolitan solidarism.

Interestingly, for the indicators two and three, I was able to point to equivalent aspects in the writings of Hugo Grotius, whereas no such reference was made for the first indicator. Considering that Grotius' ideas constitute a 17th century blueprint of the solidarist conception of international society, the lack of a Grotian reference for the first indicator suggests that this criterion reflects only a narrow version of solidarisation. Thus, there

is a qualitative hierarchy between solidarisation as captured by the first indicator compared to the other two. Linking the first indicator to Buzan's concept of state-centric solidarism similarly points to this qualitative hierarchy.

4 Analysing Structural Change – Methodological Remarks

> "I must begin with a confession. I am a reluctant methodologist. Indeed, it seems to me that the English School serves its method when it wears it lightly" (Mayall 2009, 209).

Admittedly, when it comes to methods, the English School does not seem to stand out as the most advanced and sophisticated approach. The above quote by James Mayall is symptomatic of a certain reservation amongst English School scholars towards an all too extensive, detailed and explicit engagement with methodology. Thus, the accusation of lacking an adequate and full-fledged approach to methodology has been there for a long time. A prominent example is an article by Roy Jones which contains scathing criticism of the English School – but ironically helped to form the self-understanding of the English School as distinct approach in the first place – and coined its (at times inconvenient) name. There, Jones (1981, 8) argues that "[t]he essence of scientific method is the formulation of precise questions to which exact and falsifiable answers are possible. The question 'what is the nature of the society of sovereign states?' is not scientific". Jones' criticism as well as the rather reluctant methodological engagement within the English School constitute an epitomisation of the 2nd debate within the history of IR as a discipline, that is the dispute between behaviouralists and traditionalists (Kurki and Wight 2013, 17–18). Bull (1966a) participated in that debate and attacked proponents of a positivist, empiricist social science, most notably Morton Kaplan, harshly and partly polemically. As a consequence from these early disputes, especially Wight and Bull, have tended to associate methodology with positivism – which they did not consider to be a viable approach to the study of the social world (Navari 2009a, 2).

As Navari (ibid., 2) notes, Bull and Wight rejected positivism on different grounds: For Bull, it was mainly an epistemological inadequacy to conceive of the social world of international relations as if its features were akin to nature and thus to claim that direct observation could generate knowledge. Wight found that the concepts which are crucial to understand international society were social and intersubjective so that international society would ontologically not lend itself to positivist research, which systematically omits social and intersubjective factors. Both arguments are still valid today and even though Barry Buzan (2004) has tried with his social structural re-reading of the English School to create closer links to positivist approaches, I take sides with those who contend that interpretive methodology is still a characteristic feature of English School theory (Dunne 1995, 1998; Epp 1998). Akin to Buzan, Little (2000), too, argues that the prioritisation of interpretive methodology is not a necessity be-

cause the parallelism of the three traditions would eventually call for methodological pluralism depending on which of the three related core concepts is emphasised. Yet, "[Little's] proposition is arguable" (Navari 2009a, 5). As discussed in the theory chapter, the prioritisation of the middle ground concept – international society – seems theoretically and empirically reasonable and this, in any case, applies to this thesis and its major research interest. In the theory chapter I have argued that the ontology of primary institutions as the substance of international society is thoroughly intersubjective and social in character. An interpretive approach in contrast to an engagement in causal explanation is thus required:

> In other words, the causal element cannot be the sole explanator. Her [i.e. the English School researcher's; BA] subject is international society, and her theory is that conscious engagement is a central element in the production of such a society. The evidence she seeks is, finally, evidence of such a conscious engagement. This evidence may be in the form of expressive utterance or in the form of practices. In either case, the requirement for this sort of evidence keeps the English School analyst not only outside the reign of positivism, but opposed to non-subjective approaches generally (Navari 2009b, 55).

The empirical part of this thesis will analyse the EU's contribution to the solidarisation of international society in three different policy fields, to wit human rights, climate change and international trade. Embarking upon the contextualising remarks on the role of methodology within the English School, the remainder of this chapter thus addresses the following issues: First, I present in section 4.1 a differentiation argument in order to defend that I analyse the EU's contribution to solidarisation in international society in different issue areas. The argument anticipates the possible objection that such a move challenges the usefulness of the concept of a global international society altogether. Furthermore, I provide a justification for the respective case selection. Second, the indicators of solidarisation (as outlined in 3.4) need to be linked to primary institutions and to the specific issue areas. This requires a selection of primary institutions for the analysis and a corresponding justification (4.2). Finally, I detail my methodological approach to identify processes of solidarisation as well as the EU's contribution to them based on issue-specific indicators (4.3).

4.1 Differentiation of International Society and Resulting Case Selection

The aim of the empirical part of this thesis is to identify the EU's contribution to the solidarisation of international society in different policy fields. The concept of international society as I use it here, thus, entails two dimensions of differentiation: The first one is the dif-

ferentiation along the lines of the regional versus the global level. Early English School literature has largely understood international society as a global concept. In fact, Hedley Bull acknowledges that some institutions, to wit the balance of power, can evolve on the "general", i.e. global or on the local level (Bull 2002, 98). He did, however, not engage with the broader idea of regional international societies. By now, the argument that international society can exist at the same time on the regional and on the global level is well-established in English School literature (see for instance Buzan 2004, 16–18; Buzan and Gonzalez-Pelaez 2009; Diez et al. 2011; Hurrell 2007b; Schouenborg 2017). The early omission of the regional level has led to a growing interest in the regional level from an English School perspective and this has given rise to a more fundamental questioning of the global international society: If there are particular regional international societies which exhibit their own social structure to the extent that they are made up by different practices, norms and values that amount to primary institutions, is there such a thing as a global international society, after all (Costa-Buranelli 2015)?

I endorse this recently emerged interest in the regional level and my own work rests on the assumption that a particular and 'thick' European international society exists (Ahrens and Diez 2015; Diez and Whitman 2002; Diez et al. 2011; Stivachtis 2008, 2012). To challenge the concept of a global international society in order to foster our understanding of it, is reasonable, but it would be premature to abandon the idea of a global international society altogether. Instead, this thesis aims at examining how exactly a particular regional order – epitomised by the EU – affects global international society. Albeit being under pressure from various regional orders, I argue that it is still possible to spot global international society under the following condition: The rather abstract concept needs to be pinned down to more concrete settings. Such settings or instantiations of global international society, I argue, do exist in particular policy fields, in which the existence of global international society manifests itself. This is the second dimension of differentiation. In addition to the distinction of a regional versus a global level, I argue, international society can also be differentiated along the lines of diverse policy fields. This argument may be less sophisticated than the four models of differentiation in global international society, which Buzan and Schouenborg (2018) have recently suggested. In addition to regional and functional differentiation, which correspond to the two dimensions which I have alluded to, they add hierarchical and segmentary differentiation. My proposal of two dimensions of differentiation, however, provides a clearer and for the purposes of this thesis certainly suitable answer to the question, what global international society ultimately is: Global international society becomes *manifest and visible in those specific*

issue-areas, in which *members of that society representing a variety of areas and regions* indeed come together, "conscious of certain common interest and common values [...], conceve[ing] themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions" (Bull 2002, 13).

Notwithstanding the fact that the idea of issue-specific differentiation largely stems from methodological considerations, it is likewise compatible with the core theoretical assumptions outlined in chapter 3. I have presented an English School framework for structure and change, at the core of which lies the assumption that international society constitutes the basic structure of the international realm and that primary institutions build the social fabric of this structure. Primary institutions have been characterised as being thoroughly intersubjective and social in character as well as being instantiated in practices. Taking these features of primary institutions seriously, however, it follows logically that the structure that forms international society varies among different policy fields because the respective practices and intersubjectively held meanings are not necessarily identical in different settings. There is no good reason to assume that the dissemination of social structure is unvarying and homogenous at each realm of the system, and this holds true for a geographical as well as for an issue-specific dimension. Likewise, and even more importantly, it would not be reasonable to assume that change in general, or solidarisation more specifically, always occurs to the same degree throughout the structure. Hence, an analysis which takes different policy fields as empirical case studies is well suited to serve the purpose of this thesis, which is to examine where and to what extent the EU contributes to change in the structure of international society.

To sum up, the argument of differentiation of international society along the lines of diverse policy fields, thus, is methodologically necessary and theoretically sensible. What is more, it provides us with the opportunity to compare changing dynamics in different fields, which most likely helps to generate further knowledge on the question to what extent and how change in international society occurs.

This leaves me with the task to justify my concrete case selection, i.e. human rights, climate change and international trade.

The following criteria were crucial for this selection: (1) The respective policy fields have to be sufficiently developed on the global level, to allow for the assumption that they constitute instantiations of global international society. With all of them providing for a comprehensible degree of formal and informal institutionalisation, this clearly seems the case for the selected

three. (2) Since the overall aim of this research is to study the EU's impact on global international society, the prerequisite is that the EU as an actor is sufficiently active in the respective fields and accordingly that these issues are in some way or another on the EU's agenda. Again, that this is the case for all three issues, is beyond contestation. (3) To make the analysis of the EU's changing impact a feasible objective, there should at least be some prior evidence that change is indeed going on in the selected cases. The secondary literature suggests that all three policy fields meet this criterion. David Armstrong (2006, 138), for instance, mentions exactly these three as examples where a transition from pluralism to solidarism seems to be in progress. (4) While all three of the selected issues meet the criteria 1-3, there still seems to be sufficient variation in each of them to provide for interesting insights under a comparative aspect. Human rights rank high on the EU's agenda, but although there is a persistent narrative asserting that this has been the case since the early beginnings of European integration, human rights have only made it onto the agenda in the course of the years (cf. section 5.1.1). In contrast, taking into account that the EU started out as a project of economic integration in the first place, trade has been extremely important from the beginning. The fact that the EU as a non-state actor is a regular member of the World Trade Organization (WTO), provides an initial indication that solidarisation in this field presumably is more pronounced than in others. The Paris Agreement of 2015 has brought some progress in the climate change regime, which had for a long time been largely deadlocked. Some argue that the breakthrough in Paris was only possible through a reversion to pluralism (Falkner 2016). The EU is said to have played a major role in this process. What does this mean for the EU's contribution to solidarisation?

Moreover, all three issues vary in terms of their normative implications. Regarding human rights, the EU is often accused of double standards and the promotion of solidarisation in the human rights regime most likely evokes accusations of neo-colonialism. Climate change is normatively sensitive because of the significant discourse of historical responsibilities. Trade, finally, is maybe normatively the most problematic or delicate case because to foster solidarisation in trade seems to be closely linked with the promotion of a neoliberal agenda, which is likewise prone to criticism. In particular, it is hardly possible to dismiss the fact that the EU still engages in thoroughly protective measures if this serves the economic interests of powerful actors within the EU. For instance, high import tariffs on chicken meat in addition to extensive exports of parts of chicken and offal, for which there is no big market within the EU, have detrimental effects in particular on economic structures in Sub-Saharan Africa (Goodison 2015). Thus, all three cases seem to be "most likely cases" in terms of the probability

to identify processes of solidarisation and an EU contribution to them. However, while none of the cases is normatively unproblematic or straightforward, the trade case, in particular constitutes a "hard case" in terms of its normative implications and presumably in terms of the limits of the argument that ambiguity can also foster solidarist change.

Finally, a brief comment on the consequences of choosing three cases rather than a single case study or even a broader range of cases seems necessary (Klotz 2008, 46–47). A single case study would obviously allow for a much more in-depth analysis and greater detail. For instance, in the human rights case I discuss the EU's contribution to the promotion of R2P as one solidarising process amongst several others. It is easy to imagine a whole book being written on the EU's relation to R2P. Similarly, the climate change case touches upon decarbonisation as ultimate goal of climate politics. In this case, there is already a whole book on the EU and decarbonisation (Dupont and Oberthür 2015a). Because I look at three cases and at several processes of solidarisation within those cases, the respective sections must necessarily be simplifying. However, this approach still serves the purpose to examine the claim that the EU contributes to solidarisation on a broader level. Moreover, as discussed above, the cases provide considerable variation, which likewise enhances the level of knowledge that can be generated.

Including even more cases, on the other hand, would definitely provide a broader, but more superficial understanding of the prospects and limits of the EU's solidarising impact on international society. Yet, this would exceed this thesis' scope and length.

Having selected three issue areas, leaves me with the task of justifying the concrete delineation of the respective policy fields, as I will discuss them in the empirical chapters. With such a delineation comes another inevitable restriction of the analysis. Human rights, climate change and trade play a tremendous role in many aspects and areas of global governance as well as in a huge number of different institutional settings. In order to render the analysis feasible, I have focused the analysis largely on the most eminent secondary institutions within the regimes. For climate change the analysis thus concentrates on the multilateral negotiations that have brought about the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and most recently the Paris Agreement. This at the same time also provides me with a reasonable time frame for the analysis. In order to be able to investigate the question of the EU's solidarising impact, it is important to begin the analysis with when, why and how a particular issue has made it on the EU's agenda. This is fully in line with the historicist approach of the English School.

Similarly, for trade I largely focus on the GATT/WTO regime. Again, reflecting the English School's inclination towards a historicist approach, it is important to outline how the regime and the EU's engagement within it have developed. In terms of the time frame, thus, the analysis covers the period from 1947 until today. This does, evidently, not mean that I can provide a full-fledged portrayal of 70 years of international trade, but I focus on cornerstones of the regime's and the EU's policy's development within this period.

The issue is slightly more difficult for human rights. Again, the empirical chapter provides a brief historical outline of how EU human rights policy and its engagement with the international human rights regime have emerged. While the modern international human rights regime dates back to the aftermath of WW II with the establishment of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, a more institutionalised EU human rights policy did not emerge until the 1980s. In terms of delineation of the policy field, similar to trade and climate change, the analysis mainly focuses on the most eminent secondary institution, i.e. the Human Rights Council (HRC) and its predecessor, the UN Commission on Human Rights (CHR). Yet, there have been outstanding developments in *International Law* and *Diplomacy* that are often mentioned as striking changes in the issue area of international human rights, that it would have been unjustified to ignore them, although they are only indirectly related to the HRC: the establishment of the ICC and the evolution of R2P.

4.2 Selecting Primary Institutions

In the theoretical framework, I have argued that change in the structure of the international realm becomes manifest and identifiable in primary institutions. Furthermore, I have conceptualised change as a move on the pluralist-solidarist continuum as well as justified, why regarding the EU a focus on the solidarisation of international society is sensible. Thus, the indicators of solidarisation, which serve to guide the analysis in each of the specific issue-areas, need to be linked with primary institutions. Solidarisation, ultimately, becomes visible in primary institutions. This requires to select particular primary institutions for the analysis. In principle, it would be possible and certainly interesting to apply the indicators of solidarisation to a highest possible number of such institutions. Practically, this is not possible.

I will focus in each of the case studies about solidarising processes on two primary institutions, to wit *International Law* and *Diplomacy*.

Within the English School, there is a longstanding debate about which are the relevant primary institutions that ultimately form the entirety of what is called international society. There is, basically, Bull's (2002) famous list of five core institutions: Balance of Power, International Law, Diplomacy, War and Great Power Management. This list has been controversially discussed, sometimes rejected and often extended. A number of authors provide summaries of various suggested lists (Buzan 2006, 85, 2014, 174; Schouenborg 2014, 80–82; Wilson 2012, 568–577). Wilson (2012) contends that the ongoing controversies on primary institutions are detrimental to the overall concept and he criticises that the definitions of institutions that underpin the various lists are "logical on the abstract plane but empirically entirely ungrounded" (ibid., 573). He thus calls for an empirically grounded approach to primary institutions. Assuming, however, that primary institutions are just empirical facts which we can discover through observation seems at odds with the proposition that they are socially constructed (Dunne 1995; Friedner Parrat 2014a, 5–6). Thus, there are a number of potential candidates, of which Buzan provides a useful overview:

Wight	**Bull**	**Mayall**	**Holsti**	**James**	**Jackson**
Religious sites and festivals Dynastic principles Trade			Trade		
Diplomacy	**Diplomacy**	**Diplomacy**	**Diplomacy**	**Diplomacy**	**Diplomacy**
Alliances War Neutrality Arbitration BoP	War BoP, GPM	BoP	War		War
Int'l Law	**Int'l Law**	**Int'l Law**	**Int'l Law**	**Int'l Law**	**Int'l Law**
Sovereignty	(The State)	Sovereignty Territorial Integrity Nonintervention Self-Determination Non-Discrimination Human Rights Nationalism	The State Sovereignty Territoriality Colonialism	Sovereignty Political Boundaries	Sovereignty

Table 1: Candidates for Primary Institutions of International Society by Author. Adapted from Buzan (2004, 174).

A first obvious reason to focus on *International Law* and *Diplomacy* is that these two institutions stand out as appearing on each and every list. Indeed, this does not come as a surprise. We can easily find examples in the literature which indicate that the status of most other institutions is contested. For instance, in his discussion of war as an institution, Bull himself somewhat took into consideration that the institutional status in this case might be questionable, even if he rejects this idea in the end (Bull 2002, 183–193). GPM and BoP are both rejected as institutions by Holsti (2004, 25–26) on the ground that they would lack "patterned practices", which constitute one of the definitional features of institutions in Holsti's approach. Buzan, while not going as far as Holsti, points out that GPM has been "largely ignored" (2006, 85) in the debate and that the significance of BoP shrank considerably after the end of the Cold War (2014, 145). In contrast, however, it is hard to think about any conception of international society in the absence of *International Law* and *Diplomacy*. Indeed, I would argue that the idea of international society crystallises most clearly in exactly these two institutions.

Having said this, I do not per se question the institutional status of GPM, BoP, War or of less common suggestions, such as nationalism (Mayall 1990) or colonialism (Holsti 2004). I am more hesitant though to constantly increase the list and to mix up norms and primary institutions. In my view, this is what happens for instance, when Buzan and Falkner (2017) suggest that 'Environmental Stewardship' is a new primary institution.

I agree that solidarisation can occur in more institutions than *International Law* and *Diplomacy*, but I consider these two as more fundamental and I argue that solidarist changes occurring in other institutions can rather be understood as consequences of changes in *International Law* and *Diplomacy* respectively. For instance, the debate about humanitarian intervention in particular in the context of human rights points to solidarist changes in the institution of war. Yet, these changes are closely connected to the development of the R2P norm or the establishment of the ICC, which both clearly constitute changes in *International Law* in the first place.

Thus, given that the institutional status of *International Law* and *Diplomacy* is largely beyond controversy, it seems sensible to take these two as the substantive core of each empirical analysis. Focusing on two primary institutions and applying three indicators of solidarisation leads for each case study to a six-fold matrix of indicators:

	Primary Institutions	
	Int'l Law	**Diplomacy**
Coop- eration	IL₁	D₁
Non-State Actors	IL₂	D₂
Sover- eignty	IL₃	D₃

Table 2: Solidarisation in Primary Institutions – A Sixfold Matrix

For each of the three case studies, I present issue-specific indicators in the respective empirical chapters, which follow the logic of this generic sixfold matrix.

4.3 Identifying Solidarisation and the EU's Contribution

To determine the indicators of solidarisation as spelled out in 3.4, my approach was a close reading of the relevant secondary literature on solidarisation. The three indicators build the essence of solidarisation as debated in the literature. Transferring them to the specific policy fields in each case study provides me with issue-specific indicators, which are helpful to identify where and to what exact extent processes of solidarisation have been occurring in the respective policy field. The examples of, for instance Buzan (2004, 2014) or Holsti (2004) illustrate that the analysis of international society as instantiated in primary institutions requires a thick narration of intersubjectively held norms, values and practices which primary institutions entail. The indicators, more specifically, help to uncover ongoing processes of solidarist change. More specifically, to trace such processes and the EU's contribution to them, the analysis relies on three types of sources:

First, given the broad thematic scope of the analysis (i.e. three policy fields and various distinct processes of solidarisation within each of them), I necessarily need to draw on secondary literature. In particular, there is a wide range of research on the international human

rights, the climate change and the trade regime, which addresses how these instantiations of global international society have initially emerged and how they developed over time. More specifically, for each of the respective policy fields, there is likewise a large body of literature which deals specifically with the role of the EU in each policy field. While my theoretical focus of solidarist change in international society is mostly not reflected in this literature, the empirical insights it provides are an important basis for my analyses.

Second, to assess the EU's role in forming the primary institutions that instantiate global international society in these policy fields, EU documents provide a second source to identify specific positions and objectives of the EU within these settings. I, thus draw on strategic communications of EU institutions, Council decisions, resolutions or position papers to carve out, what kind of activity the EU is engaged in and what kind of impact it tries to make on the respective policy fields. I have basically used two strategies to identify relevant EU documents: The secondary literature about EU policies in the respective fields point to many of them. Secondly, if the EU issues general strategies regarding a particular policy field, these constitute obvious candidates, such as for instance three major trade strategies (European Commission 2006, 2010, 2015a). Certainly, if the EU claims to promote specific solidarist ideas or developments in a given issue-area, this does not yet provide sufficient evidence for an actual impact on the concrete practices, which form primary institutions and hence underpin international society. Yet, such discursive interventions are still an important indicator, as they potentially contribute to processes of change:

> The hatching of discourses may be preconditions for new actions, and those new actions may, if they take on enough regularity to count as practice-creating, actually add up to change (Neumann 2002, 651).

As outlined earlier, a positivist approach and the related search for straightforward causal explanation would be at odds with the English School's social ontology and with its objective to study how international society and change within it is socially and intersubjectively constructed. Thus, I shall be explicit about the following methodological caveat: It is extremely difficult to trace with any accuracy the exact pathways of influence of the EU in such complex processes of social structural change because it is not possible to meticulously separate the EU's exact impact from other factors. It is nonetheless possible and conventional to rely on a heuristic argumentation to make a plausible case for the EU's contribution to solidarist change. This is the likewise modest and ambitious aim of the empirical analyses.

Finally, I conducted 14 qualitative interviews in most cases with EU policy makers, but also to a lesser extent with representatives of civil society organisations. Most of these interviews were conducted in May 2017 in Brussels, yet some of them on other occasions, such as during a visit to the EU delegation to the UN in New York in March 2015 or by phone. The purpose of those interviews has been to further substantiate insights that I have gained in my research, for instance by hearing EU policy makers' views on processes that I had previously identified through my indicators as solidarisation. Furthermore, the interviews also helped to identify such processes in the first place. Finally, the interviews also served to put research results about the EU's contribution to solidarisation that I gained for instance from the study of secondary literature under scrutiny and to check whether the views of practitioners matched these findings. Certainly, an even broader basis of interviews with more EU policy makers and also with representatives of third states to systematically include external perceptions, would have been desirable. As usual, also this research has been subject to time and resource constraints. It is important to note though the function which the interviews are supposed to perform in this research: They are not meant to be the one reliable source for data as basis for the analysis. Rather they served to provide additional insights and a supplementary source to broaden the heuristic plausibility of the empirical claims.

5 The EU's Role in the Solidarisation of Human Rights Policies

> The European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union (EU Council 2012, 1).

These lines are taken from the *EU Strategic Framework and Action Plan on Human Rights and Democracy* issued by the Council of the European Union in 2012[4]. The paragraph contains two obvious claims pertaining to the EU's self-understanding: First, the EU sees human rights as a fundamental principle on which the Union itself is based. Second, exceeding its own orbit, it is the EU's core objective to promote the respect for and to enhance the effective implementation of human rights on a global scale. The endeavours expressed in this strategic framework reflect what Lisbeth Aggestam (2008, 1) has described as a "shift in the EU's role and aspirations […] from simply representing a 'power of attraction' and a positive role model to proactively working to change the world in the direction of its vision of the 'global common good'". Human rights, thus, today are at the core of EU policies and it seems hardly disputed that they form a cornerstone of EU identity. And nonetheless, hundreds of drowned refugees on Europe's doorstep are only the most recent and presumably most alarming example of tremendous deficiencies and failures of EU human rights policies. Thus, it seems highly debatable indeed whether the EU is actually able and politically willing to live up to the high expectations (Hill 1993; Roth 2007) that are directed towards it. Although things have changed since Alston (1999) has edited a comprehensive volume on the EU's role in human rights policies and much has been written since then, a basic insight from this work seems still valid: Any assessment of the EU's performance in the field of international human rights is likely to turn out paradoxical: While "a strong commitment to human rights is one of the principal characteristics of the European Union" (Alston and Weiler 1999, 6), it "lacks a fully-fledged human rights policy" (ibid., 7). This paradox runs as a recurrent theme throughout the literature that deals with the EU and human rights.

As discussed in the theory chapter, such a paradox poses problems to the Normative Power Europe (NPE) approach as analytical tool. Evidently, there are even extreme examples which

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[4] Regarding the implementation of the Strategic Framework, the most current document is the *EU Action Plan on Human Rights and Democracy 2015-2019* (EU Council 2015c)

testify to the Union's failure in acting as a normative power in the field of human rights. On the other hand, there is also evidence that the EU has developed a quite strong human rights agenda and has at times been successful in strengthening effective human rights protection also outside its own borders. After all, Manners (2002) himself has illustrated his original argument with an example from the issue area of human rights: the EU's significant role in promoting the global abolition of the death penalty.

As set out in the theoretical framework, analysing the EU's contribution to structural change in international society through the solidarisation lens allows me to study the EU's transformative potential on a deeper level in spite of such ambiguous policies. In this endeavour it is by no means my aim to whitewash EU human rights policies. There are tremendous failures and every single drowned refugee in the Mediterranean bears a distressing witness to such deficiencies. The argument, however, is that we should not equate such ambiguities with the absence of a transformative impact of the EU on international society because this would most likely lead us to overlook more fundamental processes of change. In the following, I will thus apply the outlined solidarisation framework in order to answer the question whether the EU contributes to structural change in the global human rights regime, which constitutes an issue specific manifestation of global international society.

The chapter proceeds as follows: I will first provide an overview on the evolution of EU human rights policies, regarding both the internal regime as well as the promotion of human rights in its external relations (5.1). Subsequently, I discuss the relevance of the pluralist-solidarist debate for the concrete issue area of human rights and develop issue-specific indicators of solidarisation (5.2). Using these indicators, I will finally identify instances of solidarising processes in the global climate change regime and analyse the EU's contribution to such movements towards solidarisation (5.3).

5.1 Evolution of EU Human Rights Policies

5.1.1 The Myth about a Founding Myth

There are widespread narratives that suggest that "the EU and fundamental rights are intrinsically linked" (Smismans 2010, 45). In this respect, the given quote from the Strategic Framework is indicative because the formulation "is founded on…" implicitly conveys the impression that human rights protection and promotion is so inextricably linked to the EU's identity that it is hardly conceivable that this has ever been different. Regarding the founding

history of the EU, it is correct to say that two devastating world wars which had their seeds on the European continent and the disastrous human rights violations that they involved, have sparked a 'never again' attitude amongst those who were engaged in the rebuilding of a European political and social order. The idea that enhancing the respect for fundamental human rights as a necessary basis for sustainable peace, presumably was not completely absent from the discourse back then. Nonetheless, the founding document of the European Economic Community, the *Treaty of Rome* (1957) did not mention human rights as founding principles nor did it establish the respect for such rights as a membership condition (Alston and Weiler 1999, 9; Smismans 2010, 46; Smith 2014, 96). This insight is somewhat surprising in the light of the extent to which the EU is seen and establishes itself as fully fledged and committed promoter of human rights. Andrew Williams (2004) has called the idea of human rights as core drivers behind European integration a "myth". Accordingly, this has provoked many to point to an existing gap between human rights rhetoric and actual policy implementation (Smith 2008, 137; Balfour 2012, 3; Smith 2010, 235). More specifically, the academic literature has also identified a certain mismatch between human rights claims that the EU asserts in its external relations vis-à-vis third countries and the internal institutional setup for the protection of human rights (Heinz 2006; Williams 2004; see also Basu 2012, 86). While this criticism is not unfounded and has frequently led to the EU being accused of double standards, the absence of an explicit human rights reference in the founding treaties also needs to be understood against the background of the wider European integration project and its mainly functionalist logic: After all, European integration was first and foremost – and deliberately so – an economic project, assuming that this would create conducive circumstances for further political integration, including the implementation of fundamental rights. It is thus a reflection of this economic orientation that the only reference to particular rights in the Treaty of Rome occurs in a very specific and limited context: Articles 48-51 stipulate those rights that are crucial to the idea of market liberalism, to wit the free movement of persons, services and capital. Interestingly, there have been early attempts to exceed the boundaries of a solely economic integration and to establish a stronger human rights regime. In the early 1950s, proponents of far-reaching federalist structures, such as Altiero Spinelli and Paul Henri Spaak, tried to spur early political integration by pushing for the establishment of a European Political Community (Ahrens 2019). The respective draft treaties envisaged much stronger references to human rights protection (Búrca 2011, 652) and even suggested a mechanism that would have allowed individuals to take judicial steps (ibid., 658) – a proposal that would have been far-reaching and of particular interest in terms of solidarisation. But with the failure of

ratification of the European Defence Policy in 1954 in France, the project of the European Political Community collapsed as well and with it the early provisions for a strong EU human rights framework.

The founding myth thus is indeed exactly this: a myth. Human rights protection was not formally built into the European institutional architecture from its inception, but since then the institutionalisation of human rights promotion and protection has advanced within the EU's internal setup. This section presents some of the major steps in this development.

In what follows, the focus will be on developments regarding the European Union. It is important to note, though that the formalisation process of human rights policies is not confined to the Union. Instead it has obviously occurred in a broader context of "hugely increased normative ambitions of international society" (Hurrell 1999, 277). The Council of Europe had adopted the *Convention for the Protection of Human Rights and Fundamental Freedoms* in 1950 – only one year after its own establishment. In 1959 – and hence only two years after the adoption of the *Treaty of Rome*, the European Court of Human Rights (ECrHR) was founded based on Art. 19 of the Convention. It might well be that the early establishment of a human rights regime in Europe under the auspices of the Council of Europe has made it appear less urgent to quickly institutionalise human rights into the emerging European Communities. Being embedded in a broader European human rights system presumably had a legitimising effect for the strong economic orientation of the early phase of European integration. Such an effect notwithstanding, human rights were eventually integrated in the institutional structure of the European Communities.

Interestingly – and yet somewhat unsurprisingly, a crucial actor behind this process was the European Court of Justice (ECJ) (Douglas-Scott 2011, 649). The ECJ had started early in its decisions to make references to international human rights agreements that the member states had become party to (Balducci 2013, 186). After the primacy of EC law vis-à-vis national legislation had been established, "in 1970 the ECJ affirmed that fundamental rights were general principles of Community law" (ibid., 188). Apart from the ECJ, also the Commission and the EP played an important role in advancing the consideration of human rights policies. In the context of the accession of Greece, Portugal and Spain in the 1980s, for the first time human rights and democracy criteria were explicitly applied as conditions for membership. This was fuelled through the establishment of the European Political Cooperation (EPC) in 1970. Thus, while the treaties for a long time did not provide any formal legal basis for a common human rights policy, such a policy nevertheless emerged during the 1980s with the

ECJ and the EP taking a leading role in these processes. Eventually, the formalisation of human rights policies was accomplished with the adoption of the Maastricht Treaty, which confirms the Union's commitment to human rights in its preamble and stipulates in its Article F that "the Union shall respect fundamental rights". The *Amsterdam Treaty* in 1997 further enhanced the EU's role to also internally promote human rights (ibid., 190), by stating in an amendment to former article F that "the Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States".

A further step in this formalisation process was taken with the proclamation of the *Charter of Fundamental Rights of the European Union (CFR)* in 2000 and more importantly with its acknowledgement as legally binding EU law with the entry into force of the *Lisbon Treaty* in 2009 (Defeis 2010). The Charter makes reference to traditional civil and political as well as economic and social rights and even introduces more innovative rights pertaining to issues, such as data protection, cloning or a clean environment, thereby emphasising the indivisibility of different types of human rights and exceeding the scope of the ECHR (Douglas-Scott 2011, 651). A crucial step forward that still needs to be accomplished is the EU's accession to the ECHR, for which the Lisbon Treaty has not only laid the legal foundations, but it even made it an obligation (Art. 6(2), TEU). As Douglass-Scott (2011, 659) points out, this step would indeed constitute an adequate answer to accusations of double standards because it would subordinate the EU as a whole (instead of a restriction to its member states) to the jurisdiction of the ECrHR and thus provide for a better possibility to monitor the compliance of EU institutions with fundamental human rights. Hence, with EU accession to the ECHR, one of the major points of criticism identified by Williams (2004, 13), namely the lack of effective means of internal monitoring, can potentially be remedied. EU accession to ECHR is, though, a highly complex process holding a multitude of difficulties (Douglas-Scott 2011, 662; Defeis 2010). An agreement between the EU and the Council of Europe on the EU's accession to the ECHR, was rejected by the ECJ in 2013 on the ground that it "did not provide for sufficient protection of the EU's specific legal arrangements and the Court's exclusive jurisdiction" (European Parliament 2017b, 1). Since then no new attempt has been made to implement the accession obligation, which follows from the Lisbon Treaty and the issue seems contested within EU institutions as well as amongst European law experts (ibid., 7). The EP still points to the accession as an obligation, Jean-Claude Juncker had mentioned the conclusion of the accession amongst his political guidelines prior to the inception of the new Commission (Juncker 2014, 9). The objective was not included, however, amongst the 10 political priorities

of the Commission. Essentially, the EU's accession to the ECHR is a highly complex legal issue, which cannot be comprehensively addressed here. The issue does illustrate, however, that the formalisation of human rights policies into the EU's institutional structures remains an ongoing process, which has achieved much progress over time, but likewise faces further difficulties and contested issues.

While this chapter's main objective is to study processes of solidarisation in international society and the EU's contribution to them, the brief outline of the internal development illustrates that similar dynamics of solidarist change and pluralist reservations have also shaped the internal integration process (Ahrens 2019). Initially, there have been clear pluralist reservations against an all too political orientation of European integration. The clear economic focus of the initial integration measures and the consequential omission of institutionalised human rights policies is a concession to pluralist concerns. As Balducci (2013, 188) notes: There was considerable "diffidence of the major member states towards including political provisions, which would reduce their sovereign prerogatives". In this sense it does not surprise that more supranational institutions, such as the EP, the ECJ and the Commission were the more decisive driving forces behind the formalisation of human rights policies as opposed to the Council, where pluralist concerns, to wit matters of national sovereignty figure more prominently. The evolvement of internal human rights policies, thus, is a first evidence for the argument that solidarist change can happen incrementally in spite of the enduring presence of pluralist structures. What is more, solidarist change even seems less feasible if such pluralist reservations were completely ignored.

5.1.2 The External Dimension – Human Rights in EU External Action

In its section on EU external action the Treaty on European Union clearly establishes in the very first article that the respect for and global advancement of human rights build a cornerstone of EU external action:

> The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the UN Charter and international law (TEU, Art. 21 (1)).

The idea of human rights as a founding myth of the EU evidently resonates in this article and is furthermore used as a foundational argument for the prominent position of human

rights in the Union's external relations. Some have actually criticised that the EU has put an early focus on the promotion of human rights in its external relations, while being less determined with advancing the internal human rights regime (Heinz 2006; Williams 2004). The last section has illustrated how also the internal development of human rights policies can be understood against the background of solidarising processes and pluralist hesitations. The same holds true for the external dimension of EU human rights policies. Similar to the internal formalisation, it was not until the end of the 1980s/ early 1990s that human rights considerations were systematically and formally included in the Union's external relations. The Maastricht Treaty of 1992 was the first one to include an explicit reference to the promotion of human rights in external relations as a core objective. In this context, King has identified a certain "resistance to promote human rights in external relations until 1991" (King 2011, 78; see also King 1997). That this has changed only shortly after the end of the Cold War is not surprising, but illustrates how the overall structural conditions have also enabled the EU to be more outspoken and more active in human rights policies.

Effectively, human rights have occurred on the external agenda in the context of development aid. The prerequisite for this to happen was a broader normative change in the international sphere at the end of the 1980s, which has led to the general assumption that it is necessary and legitimate to tie aid to the adherence to basic human rights und good governance principles (Balducci 2013; Balfour 2012). Before that, declarations and communications in the context of the EPC – an intergovernmental structure established in 1970 as a precursor to the Common Foreign and Security Policy (CFSP) – were used to point to the importance of fundamental rights, but the activities hardly went beyond rhetorical condemnation of human rights violations in third countries. In anticipation of allegations of neo-colonialism, the pursued development approach was explicitly meant to be unpolitical (Smith 2001, 186). The Commission repudiated interventions by the EP, which tried to push for the integration of human rights references in trade agreements including options for sanctions in cases of non-compliance (Smith 2014, 100). Thus, initiatives to change the non-political approach to development aid did not only come from the wider international sphere within the context of "normative globalization" (Aggestam 2008, 4), but were also explicitly spurred on from within the EU with the EP playing a decisive role in implementing the idea of conditionality in the field of development aid (Balducci 2013, 193; Smith 2001, 187).

While the debate about including human rights objectives in development policies already started in the 1970s, the first Lomé Conventions between the EU and the group of African,

Caribbean and Pacific states (ACP) did not yet include human rights considerations, but Lomé IV in 1989 became the first multilateral agreement to include political conditionality (Balducci 2013, 194; Smith 2008, 120). Subsequently, the external promotion of human rights was also included as an explicit objective of the newly established CFSP in the Maastricht Treaty in article J.1 as well as under article 130u, outlining basic guidelines for development cooperation. Since 1995, there is a general regulation (European Commission 1995) about the inclusion of provisions for human rights protection in each and every association or economic agreement with third countries. As Balducci (2013, 194) notes, there is no other country with a similar instrument, which highlights the significant symbolic value. Since then the EU has continuously incorporated human rights objectives in its relations with third countries and it basically makes use of three different instruments to externally promote human rights (Balfour 2012; Smith 2001, 188–192), which I briefly introduce below.

In sum, human rights promotion through EU external action has become a cornerstone of the EU's identity as global actor. The just outlined evolution of human rights as a crucial aspect of EU external action constitutes a process of solidarisation within the EU. Similar to the internal dimension, some actors promoted solidarist moves more than others. The disagreement between the Commission and the EP in the early 1970s points to a normative ambiguity which is inherent to any endeavour of external human rights promotion: It is hardly possible to promote human rights without giving boost to anti-colonial reflexes and accusations of an undue Western domination. Rather than either belittling the problem of neo-colonialism or refraining from human rights promotion altogether, it is in my view crucial to acknowledge and accept this ambiguity and to encounter it with a certain degree of reflexivity. The debate between solidarists and pluralists within the English School provides a suitable framework for such an endeavour because it has broached the normative benefits and downsides of both angles (see section 5.2.1).

Today, the incremental inclusion of human rights considerations in EU external action has led to a widely ramified field of actors and structures which contribute to the external promotion of human rights mainly through the instruments listed above. While this presumably also holds true for other fields of EU policy, human rights policy seems extremely decentralised. For instance, in contrast to the other two issues-areas addressed here (i.e. climate change and trade), the Commission has not established a particular DG for fundamental rights. As King (2011, 99) explains, the rather decentralised structure of human rights policies and actors

within the EU system did not emerge by accident, but follows a particular reasoning. As outlined in a communication by the Commission in 2001 (European Commission 2001), the idea is to mainstream human rights into all aspects of EU external policies rather than establishing a very specialised human rights debate which is uncoupled from other aspects of external relations (see also EU Council 2006).

Against this background, it is extremely difficult to present a comprehensive overview of where, how and by whom exactly the external promotion of human rights is enacted. The following section, hence, makes no claim to provide a complete portrayal, but still intends to highlight some of the major actors, processes and instruments of EU human rights policies in its external relations in order to provide an account of what of kind of human rights actor the EU is. Rather than providing an in-depth analysis of all details of the promotion of human rights through EU external action, however, the focus in this chapter is on the EU's contribution to the global human rights regime. Since the main research goal pursued here is to study the EU's transformational impact on the primary institutions of international society, it is necessary to locate this international society somewhere, to wit in the global human rights regime for this chapter. The focus of the analysis thus will be on processes of interaction between the EU and an explicitly multilateral and global context. A considerable number of the EU's activities in the human rights field, however, are bilateral in character. Among these are for instance human rights dialogues that the EU conducts with third countries as well as the broad field of human rights promotion through conditionality in trade relations with third countries. While it is certainly possible to study processes of solidarisation in these examples, this would not yet tell us a lot about more fundamental changes in the structure of international society. This latter example of conditionality in trade relations could certainly be studied in a framework that engages with the EU's transformational impact on international society. Doing so, however, would mean to investigate the EU's contribution to the solidarisation of international society in the issue are of trade relations through human rights, but not in the issue area of human rights per se. This aspect will therefore be omitted here, but addressed in chapter 6. The EU's overall activities in human rights policies are, however, still of interest here, because they form sort of a basis for the EU's overall performance as an international human rights actor and I shall therefore present a short overview of the main general instruments and the involved actors, before going into more depth regarding the EU's engagement and contribution to the global human rights regime. The following brief overview highlights some tensions and normative ambiguities that are inherent to some of the major tools and structures of external human rights promotion.

Applying Conditionality: As the historical outline has revealed, conditionality in trade and development agreements was the first context, in which structures for external human rights promotion have emerged. The inclusion of a human rights clause in every agreement as practiced since 1995 (European Commission 1995) enables the EU to withdraw from an agreement or to suspend it temporarily without breaching the international law principle of 'pacta sunt servanda' as enshrined in the Vienna Convention on the Law of Treaties (1969).

Furthermore, the EU has established in its trade policies a number of mechanisms which create preferential tariff systems for developing and most vulnerable countries. The 'Generalised Scheme of Preferences' (GSP), the 'Special Incentive Arrangement for Sustainable Development and Good Governance' (GSP+) as well as the 'Everything But Arms Scheme' (EBA) all tie the provision of aid as well as the granting of particular trading preferences to the protection of core human rights as well as to the implementation of some major international human rights treaties (European Commission 2017a).

While these instruments certainly testify to the EU's general commitment to promote the respect for human rights through its external action, their concrete implementation proves difficult at times and also reveals a considerable degree of contestation emanating at least partly from an inherent normative ambiguity of the concept of conditionality itself. As Smith (2014, 107–108) notes for instance, effectively, there were only two cases of GSP suspensions (Myanmar 1997 and Belarus 2007). Furthermore, as a matter of fact, the EU has established special trade relations and agreements with a huge number of countries, amongst them many with questionable or obviously extremely poor human rights records (ibid., 110) and nonetheless strict suspensions of such trade agreements based on the human rights clause are rather rare. Also, as is known, certain arms exports as conducted by EU member states time and again call into question the principled commitment to a coherent and continuous external promotion of human rights. Regarding arms exports in particular, accusations of double standards can hardly be dismissed and should be brought up and put under critical scrutiny. In relation to the rare suspensions of GSP regulations or agreements based on the human rights clause, the situation is slightly more complex and ambiguous: A very principled approach on the part of the EU, which would lead to stricter suspensions of preferential trade agreements might well contribute to theoretically cherishing human rights norms. In practice, however, such an approach might obstruct further dialogue and thus ultimately do a huge disservice to more effective human rights promotion. The suspension of GSP+ trading concessions towards Sri Lanka in February 2010 is a case in point: Rather than engaging with the

conditions that the EU had brought forward in order for GSP+ preferences to be resumed, the Sri Lankan government has rejected the EU's application of conditionality as unjustified intrusion into matters of national sovereignty. As a consequence, Sri Lanka terminated all human rights talks with the EU. Since then, China has stepped in as a major aid provider (Dennison and Dworkin 2010, 4).

Using diplomatic means: First of all, under the CFSP framework the EU can issue *Common Positions, Joint Actions* (both instruments in place since 1992)*,* as well as *Common Strategies* (additional tool provided by Amsterdam Treaty 1997) (Balfour 2012, 37). Common Strategies are formulated with regard to specific countries or regions and issued by the European Council, Common Actions mostly refer to concrete situations and involve concrete decisions on the provision of finances for a particular common action, Common Positions define the Union's broader approach towards a particular issue and member states shall ensure that their national policies are in line with such provisions. Furthermore, the EU has classical diplomatic tools at its disposal, such as démarches and statements.

Another diplomatic instrument is the conduct of human rights dialogues with third countries, which occur in diverse forms (EU Council 2017c): human rights dialogues in the context of other agreements or bilateral relations (e.g. with candidate countries, in the context of association or trade agreements, in the context of the Asia-Europe-Meeting or the Cotonou Agreement, etc.); dialogues with exclusive focus on human rights on the level of human rights experts (e.g. with China or the African Union); ad-hoc dialogues on the level of heads of mission (e.g. with Sudan); and dialogues in the context of special relations with other countries aiming at identifying commonalities and options for cooperation in international human rights bodies such as the HRC or the GA Third Committee (e.g. with USA and Canada).

The EU currently conducts over 40 such dialogues (European Parliament 2017a; King 2011, 87); and this does not yet include the 78 ACP countries that are part of the Cotonou Agreement. Similarly to the human rights clause in agreements, this instrument is contested and some of its addressees merely see it as "just another way for the EU to exercise pressure and conditionality" (Smith 2014, 115). This scepticism is again a reflection of pluralist reservations against solidarising elements which potentially infringe upon matters of national sovereignty – or are at least perceived in that way. Likewise, they give proof of the inherent normative ambiguity of external human rights promotion, which can hardly be exempt from accusations of domination and neo-colonialism. Whether such dialogues ultimately bear concrete results, is difficult to measure. This is all the more true since often it is nowhere clearly defined which

concrete follow-up steps should result from such dialogues. Yet again, the EU's overall approach has been to work towards long-term socialisation processes rather than trying to enforce short-term changes (ibid., 115). In spite of considerable shortcomings inherent to this human rights instrument, "the resilience of human rights dialogues even with difficult partner countries thus demonstrates the extent to which human rights has become an unavoidable component of EU foreign policy" (King 2011, 89).

Since 2012 the EU has appointed an *EU Special Representative (EUSR) for Human Rights*, in office since then is Stavros Lambrinidis, former Greek Minister of Foreign Affairs. In close cooperation with the EEAS, the EUSR shall enhance the effectiveness of EU human rights policies and increase its visibility outside the Union through public diplomacy. Whether the appointment of the EUSR has up to now contributed to improving the effectiveness of EU human rights policies and to enhancing human rights dialogues, is an empirical question, which I cannot address here. It does, however, convey a symbolic significance and is thus "indicative of the EU's new emphasis on human rights" (Smith 2014, 115).

Within the EU Council, the Council Working Party on HR (COHOM) is the most important body (King 2011, 82) for the development and implementation of EU human rights policies in external action as well as for supporting decision-making processes at the Council. While COHOM has been chaired by the rotating presidency until 2012, it is now permanently based in Brussels and headed by a permanent chair, which again testifies to ongoing developments within the EU which aim at further streamlining EU human rights policies. Most notably, COHOM engages in the development of the *EU Guidelines on Human Rights*, which constitute another diplomatic tool to promote human rights. The EU has published such guidelines since 1998 on a variety of specific issues, such as amongst others the abolition of the death penalty, human rights defenders or freedom of religion and belief (EEAS 2017a). As Smith (2014, 107) points out, the Guidelines generally reflect a certain prioritisation of civil and political rights as opposed to economic and social rights (For a detailed list of which exact thematic, country-specific and institutional priorities the EU has set for its human rights policy in past years, see Baranowska et al. 2014, ch. IV).

Finally, the EU issues *Annual Reports on Human Rights and Democratisation* (for the latest version see EU Council 2017b) which each provides a detailed account of EU human rights efforts regarding particular thematic issues as well as its human rights engagement with third countries.

The EP, which "views itself as the human rights champion within the EU institutions" (King 2011, 85), issues another annual report on human rights, which traditionally is much more outspoken in terms of criticising violations of fundamental human rights – within Europe and in third countries – than the Report prepared by COHOM (ibid.). Furthermore, the EP's *Subcommittee on Human Rights* is very active in conducting regular debates on human rights situations in specific countries. Such a country-specific focus in human rights policies in particularly interesting in terms of solidarisation and I will get back to this in the analysis, where I will discuss in more details the EU's stance towards country specific mandates in the international human rights regime.

Support for human rights projects and civil society: The European Instrument for Democracy and Human Rights (EIDHR) is the main practical tool for promoting human rights in third countries. It was once more the EP, which has pushed the EU to create an institutionalised budget for human rights and democracy promotion rather than allocating aid on an ad hoc basis. Thus, the EIDHR was established in 1994 (back then called the European Initiative) and has ever since increased its budget to 1.3 billion Euro for the period 2014-2020 (EIDHR 2017) as compared to 60 million in 1994 (Smith 2001, 190). The EIDHR is supposed to be in line with the EU Guidelines on Human Rights. Furthermore, its focus for aid distribution is on civil society projects (Smith 2014, 114), which are implemented directly by NGOs without going through the respective partner governments (Balfour 2012; King 2011, 94). This is interesting in terms of solidarisation as captured by the second indicator (involvement of non-state actors, IL_2 and D_2). It is, however, rather a reflection of the EU's own inclination towards solidarism than an instance of a solidarising process in international society to which the EU contributes – although it might well advance international law provisions (IL_1) in the global regime.

This concludes the brief summary on different actors, processes and instruments of EU external human rights promotion. Albeit the cursory character of this overview, let me point to the following tentative conclusions: Human rights promotion figures prominently on the EU's external action agenda and resonates in all aspects of its foreign policy. Over the years, the EU has developed extensive structures and processes in order to accommodate ambitions for human rights protection and promotion. Thus, there is little doubt that the EU is a very active international human rights actor. Notwithstanding this extensive activity and obvious commitment of the EU, even this brief sketch has revealed that there are shortcomings and inconsistencies in the EU's human rights policies, which make it prone to criticism. In the

following section I will address this criticism, arguing that it would be an undue conclusion to construe from such shortcomings that there is no scope for a broader transformative impact of the EU on international society in the issue area of human rights. Instead, I argue, we must focus on a more fundamental level of change than an analysis of the effectivity and consistency of the listed instruments and actions would allow.

5.1.3 Double Standards as Far as the Eye Can See?

The last section has alluded to various modes of criticism of EU human rights policies. There are inconsistencies in terms of internal coherence as well as a mismatch between internal claims and external action. While it is necessary and important to study these processes and to time and again criticise e.g. the obvious lack of human rights considerations in arms trade of EU member states, I argue that in spite of these issues, it is possible to study a more fundamental way of how the EU influences the global human rights regime, to wit its solidarising effects on the primary institutions of international society as they become manifest in this very issue area.

Expanding into this deeper level of structural change reveals processes that would remain uncovered otherwise. Inconsistencies at the level of concrete EU policies are important to address and interesting to study, but they are on the other hand not surprising. There is no foreign policy actor in the field of human rights or anywhere else which indeed acts in a thoroughly consistent and coherent manner, since "any value-based foreign policy is vulnerable to charges of inconsistency. [...] These challenges are magnified at the level of the EU" (King 2011, 97).

Apart from internal inconsistencies within EU human rights policies or between internal and external human rights promotion, the EU is also often accused of pursuing strategic interests rather than following a purely normative orientation in its political agenda. For example, Gowan and Brantner (2010, 2) point out in a study on the EU's human rights performance within the UN framework that "[f]or Western powers, immediate security considerations [...] are crowding out human rights issues to an ever greater degree". In a similar vein, Richard Youngs (2004) criticises that the academic focus on ideational elements of EU's foreign and security policy has been way too strong so that the extent to which strategic considerations inform or even inhibit normative ones have been ignored. While Youngs does not dispute the relevance of norms and ideas altogether, he concludes that the EU in "*the way in which* certain norms have been conceived and incorporated into external policy reveals a certain security-

predicated rationalism" (ibid., 421). Similarly, also Hyde-Price (2006) and Smith (2001, 193) argue that there is a certain tendency that economic or security interests override the normative focus on human rights.

And yet, it should not come as surprise that the EU in its external action does not blindly follow ideational objectives. That strategic considerations matter is forthrightly expressed in core documents on the EU's foreign policy. For instance, the European Security Strategy of 2003 as well as the 2016 Global Strategy openly present human rights and democracy promotion as a means to an end, namely the preservation of international order:

> The best protection for our security is a world of well-governed democratic states. Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order (European Commission 2003, 10).

And similarly, in the Global Strategy:

> A multilateral order grounded in international law, including the principles of the UN Charter and the Universal Declaration of Human Rights, is the only guarantee for peace and security at home and abroad. A rules-based global order unlocks the full potential of a prosperous Union with open economies and deep global connections, and embeds democratic values within the international system (European Union 2016, 15–16).

This is particularly interesting with regard to the overall argument presented in this thesis, namely that the EU contributes to the solidarisation of international society: The preoccupation with the strengthening and preservation of international order at first sight seems to indicate a quite pluralist perspective. However, the quotation clearly reveals that for the purpose of safeguarding international order, the interference into internal affairs of sovereign actors is not inadmissible. And this indeed is what among other things characterises a solidarist approach to the complex relationship of human rights and sovereignty (Reus-Smit 2001; Scheipers 2009). As Smith puts it, "the EU rejects claims that promoting human rights is unwarranted interference in the domestic affairs of other states" (Smith 2008, 112).

With regard to the relation between strategic, interest-driven and ideational considerations it is not conclusive to argue that the relevance of interests rules out the possibility of normative effects. Karen Smith is one of the more critical researchers when it comes to the assessment of the EU's human rights performance and she points out: "The EU indeed promotes human rights as a means to security and stability, but also as an end in itself" (ibid., 121). In another analysis about whether European foreign policy is rather determined by human

rights considerations or geostrategic, power political interests, Joachim Kreutz admits that geostrategy is a crucial factor to explain regional variation of the EU's engagement for human rights. Kreutz, however, clearly finds that "[t]he stated commitment of humanitarian concern goes beyond rhetoric and is visible in the EU's foreign policy behaviour" (Kreutz 2014, 20). Finally, as Diez clarifies, the idea of 'normative power Europe' was never meant to say that the pursuit of self-interests does not matter, but instead:

> The point is not that normative power is not strategic, but that strategic interests and norms cannot be easily distinguished, and that the assumption of a normative sphere without interests is in itself nonsensical. The criticism of normative power as being driven, at least in part, by strategic interests, therefore runs into self-contradictions if it is presented as an objective analysis rather than a political intervention (Diez 2005, 625).

What is more, for the argument of solidarisation it is even not relevant whether the EU's solidarist aspirations are driven by interests or by ideational concerns as long as the result is indeed a solidarising process, which can be captured by one or more of the outlined indicators. In Barry Buzan's (2014, 135) words: "The move beyond coexistence [i.e. solidarisation in his understanding] might happen for either pragmatic calculation or convergence in values, or both". Being exclusively based on or induced by idealistic considerations, thus, is not a precondition for solidarising processes to emerge. Focusing on the relevance of economic liberalism, also Ben Rosamond (2014) challenges and rejects the claim that a clear-cut distinction between normative and interest-driven action is helpful for the understanding of the EU as a normative power. To put it straight: "Strategy is not an ugly word for us". With these words a member of the EU delegation to the UN in New York explained that without pursuing a strategic approach the EU would not be able to reach any of its human rights objectives because without strategic decisions about how and where to focus the work, but also about the degree of straightforwardness in human rights related criticism, the EU's action in the field would turn out ineffective and fruitless (Interview 2015a).

We can conclude therefore that the dichotomisation of strategic interests versus normative motivations is too simplistic and the argument that the obvious relevance of such interests necessarily inhibits transformative solidarising effects of EU action does not hold.

To sum up, this section has demonstrated that although ambiguities and inconsistencies exist, it is still reasonable to look for transformative effects that the EU potentially brings about in international society through its action in the human rights field.

Finally, it might well be true that practitioners' as well as researchers' discourses pertaining to the EU's human rights policy and institutional framework are rife with myths, as Andrew Williams (2004) and Stijn Smismans (2010) have argued. But it is still worthwhile to further look into the effects of such policies and Smismans himself has given the ultimate reason why this is the case:

> One may not believe all the narrative's claims on reality, but believe that the use of the narrative may contribute to how reality ought to be (ibid., 58).

On this note, it is this chapter's objective to bring to the fore solidarist changes that the EU has induced in the human rights field of international society in spite of all well acknowledged ambiguities, acts of mystification and inconsistencies that have been discussed in this paragraph.

5.2 What is Solidarisation in the Human Rights Regime?

5.2.1 The Relevance of the Solidarist-Pluralist Debate for Human Rights Policies

In much of what Buzan (2014) describes as solidarism it implicitly resonates that the promotion of human rights per se means solidarisation to the extent that universal human rights constitute the prototypical set of shared values around which a solidarising international society is built and can potentially converge. There is much truth in this statement due to the very nature of human rights. Indeed, human rights and the closely related issue of humanitarian intervention have always been at the core of the pluralist-solidarist debate (Bain 2014; Bull 1966b; Buzan 2004, 46). In a nutshell, from a pluralist point of view the odds are that the promotion of universal human rights is detrimental to the order and stability of international society. Since political and cultural diversity is a given fact in international society and a normative good which is considered worthy of protection, any attempt to reach consensus on a comprehensive set of universal rights is likely to fail and therefore potentially disruptive. Bull expresses these pluralist reservations against human rights very explicitly:

> [T]he doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organized as a society of sovereign states. For, if the rights of each man can be asserted on the world political stage over and against the claims of his state, [...] then the position of the state as a body sovereign over its citizens [...] has been subject to challenge, and the structure of the society of sovereign states has been placed in jeopardy (Bull 2002, 146–147).

From such a pluralist view, the only way to promote respect for human rights, if any, thus is within a national framework, provided that a state takes the sovereign decision to implement human rights. This would come close to Buzan's (2014, 114–120) conception of state-centric solidarism, which entails only a very limited departure from the pluralist pole:

> State-centric solidarism rests on a juridical view of sovereignty, in which the right to self-government derives from international society. [...] In this view, so long as one does not insist that individuals have rights apart from, and above, the state, there is no contradiction between development of human rights and sovereignty.

It becomes obvious here that pluralists or "light" state-centric solidarists are inclined to strictly think along the lines of positive, instead of natural law (cf. Bull's (1966b) comparison between Oppenheim and Grotius). In contrast, a more advanced solidarist position contends that the adherence to basic human rights – including mechanisms which protect these rights also against a state, where necessary – is not detrimental, but a necessary precondition for the stability of international order. Solidarists do not see human rights and sovereignty as opposing concepts, but as mutually constitutive (Barkin 1998; Reus-Smit 2001; Scheipers 2009; Wheeler 2000, 11).

From this, we can already conclude that some degree of solidarism is inherent to the concept of human rights in international relations. As Hurrell points out: Human rights and their emergence on the international agenda per se constitute a reflection of "increased normative ambitions of international society" (Hurrell 1999, 277). Similarly, the increased mainstreaming of human rights policies into many aspects of foreign policy and particularly into *Diplomacy* as a primary institution of international society, is indicative of a solidarist core that is inherent to any thinking that sees human rights as essential aspect of international politics. At its core, *Diplomacy* is a pluralist primary institution, which epitomises a world of differentiated and diverse states. As such, these states make use of various diplomatic means and practices to communicate distinct *national* positions and interests. Doing this, finding common ground is certainly a fundamental objective of diplomatic practices, as well as a crucial one in order to be able to enact and invigorate an international society in the first place. Yet, *Diplomacy* is never – and by definition can never be – devoid of a pluralist core, which is a howsoever defined national interest. Human rights diplomacy, by contrast, does not evolve from such a specifically national context, but aims at promoting particular norms and values as *transnational* basis of international society. As King (2011, 80) explains: "Traditional diplomacy is based on the promotion of the national interest, while human rights diplomacy transcends the national."

Amongst those who have worked on the link between human rights and solidarism, John Vincent stands out as someone who's approach to human rights differs from other solidarist works on the issue because he develops an even more radical solidarist account of human rights in global politics. His 1986 book "remains one of the most thorough attempts to work through the complexity of debate on the subject" (Griffiths et al. 2009, 237). At the core of his solidarist account of international society he puts basic rights (Gonzalez-Pelaez and Buzan 2003; Linklater 2011; Vincent 1986). Doing this, his focus is not on defending a politics of intervention on the basis of human rights protection. Interestingly, his previous work even justified "*Nonintervention and International Order*" (1974) as a core principle. Vincent is not a supporter of an obligation to intervene in a state that does not enable its citizens to enjoy basic rights. Instead, his concern is about flaws in the global political economy and about international society's responsibility to get to grips with such global economic structures which prevent marginalised people from enjoying their right to subsistence. Thus for him it's not about the exceptional cases of gross and severe and most devastating human rights violations, but it's about the daily "routine of deaths by hunger" (Gonzalez-Pelaez and Buzan 2003, 325–326). As Vincent writes: "[I]t is not this or that government whose legitimacy is in question but the whole international economic system in which we are all implicated" (Vincent 1986, 127). Vincent's solidarism thus is on the one hand and only at first sight less of a challenge to the pluralist international society because he does not advocate for an obligation to intervene in sovereign states to protect human rights. On the other hand, his thinking is even more radical than other solidarist thought on human rights in two ways: First, essentially his ideas call for a fundamental transformation of the overall international economic system and would thus evoke a fairly fundamental change in international society. Second, Vincent's point of reference for thinking about human rights in international society is not even the state anymore. Thus, he exceeds the classic debate about human rights as either in need of a national framework or as inherently and inevitably transcending such a framework.

Thinking about human rights in international politics does not necessarily require to go as far as Vincent does, but as this brief discussion illustrates, the pluralist-solidarist debate is indeed at the core of international human rights and some degree of solidarisation is inherent to the idea of an international human rights regime.

Furthermore, apart from the general finding that some degree of solidarism seems inherent to human rights, the English School's conceptual categories of pluralism and solidarism lend themselves to examine and understand a number of related questions. First, it does not take

a hard core pluralist to acknowledge that Bull's analysis of human rights as a "symptom of disorder" (Bull 2002, 147) bears some truth. Yet, I do not endorse the inescapability of Bull's statement. The potential disruptive effects of human rights policies are often a consequence of their perceived legitimacy – or more precisely, the lack thereof. As King (2011, 81) argues in the context of the EU human rights diplomacy: "At worst, the EU when acting as a human rights advocate may be perceived as attempting to stir up domestic forces against the government, at best, as tiresomely self-righteous". This points to another inherent normative ambiguity of human rights themselves and in particular of any attempts to promote them in external relations. The pluralist-solidarist debate is able to capture dynamics that flow from this ambiguity. In this respect, Gonzalez-Pelaez and Buzan (2003, 334–335) have made an intriguing observation in Vincent's writing: "Even more important for Vincent's argument is the observable dynamic of international society where a solidarist normative consensus is initially coupled with a pluralist practice, but later followed by more solidarist actions". The underlying dynamic is indicative of the significance of the perceived legitimacy of any processes of change. The perceived legitimacy of solidarist change might be enhanced through the initial adherence to some pluralist practices. As a consequence, processes of solidarisation can hardly occur without the seemingly ambiguous parallelism of pluralist and solidarist structures. This aspect is extremely important to note and I will come back to it in the analysis of the EU's contribution to solidarisation.

Second, the pluralist-solidarist debate is a useful tool when it comes to study the particular dynamics of the potential as well as the limits of change in international society in relations to human rights. To put it more clearly, whether and to what extent the EU is able to exert a transformative impact on international society in the human rights field, also depends on the overall international context in which the EU's human rights policy evolves. Reflecting the assumption of a co-constitutive relation between the EU as a secondary institution and the primary institutions of international society, the EU has an impact on how this international society develops, but the overall context is likewise decisive in enabling and restraining EU action. This aspect is, in fact, closely related to the issue of perceived legitimacy. It therefore does not come as a surprise that the literature frequently emphasises that the increasing importance and legitimacy of human rights considerations has provided an enabling context for the EU to further develop its own human rights agenda, but also to engage itself in fostering this process of "normative globalization" (Aggestam 2008, 4). Following the very same argument, we have to acknowledge that with the diversification of states that are perceived or

claim themselves to be recognised as great powers, the pluralist-solidarist continuum of international society is on the move. Such dynamics are extremely important to understand and to take into consideration when analysing the EU's transformative impact on international society. It would be premature and indicative of a too narrow and simplistic understanding of structural change to conclude from such power shifts that the solidarist idea of international human rights is endangered or has ground to a halt. It has, however, rendered solidarisation in the issue area of human rights anything but less complicated. As a consequence, to a lesser extent than ever, is it possible for the EU to promote human rights in a very principled manner and in a position of moral superiority. The assumption that support of human rights would naturally carry the day, just because of the normative persuasiveness, does not hold. The EU, thus, cannot but engage with pluralist setbacks and reservations and take them into account when pursuing solidarist aspirations.

Finally, this leaves me with the task to clarify, how exactly the EU can potentially contribute to the solidarisation of international society in the issue area of human rights. Based on the finding that any promotion of international human rights inherently entails solidarist moves, the EU indeed contributes to solidarisation as long as it successfully promotes human rights in one way or another on the international level. Such an insight, however is rather limited in its scope and significance. More importantly, it would presumably again leave us with the unsatisfactory result that the EU in some cases successfully promoted human rights, while tremendously failing to live up to its own standards elsewhere. The following analysis, thus, claims to go beyond such a narrow understanding of processes of solidarisation.

As I have argued in the theory chapter, one obvious advantage of an English School framework is that it enables us to expand into deeper levels of analysis. Thus, exposing to what extent the EU successfully promotes human rights is interesting. And all research that has been accomplished in that regard is highly welcome and I will gladly draw on it. Yet, since the claim has been to look at the deep-seated structure of international society, the question to be addressed here is, to what extent the promotion of human rights has further consequences. These further consequences are captured in terms of the impact that EU action in the human rights field has on the primary institutions of international society. The next section, thus fleshes out the indicators of solidarisation in the context of international human rights.

5.2.2 Issue-Specific Indicators

This paragraph's objective is to make use of the three indicators of solidarisation and to spell out in detail how exactly processes of solidarisation might occur in the issue area of human rights. Furthermore, the aim is to scrutinise how exactly the EU can and does contribute to such processes. For reasons that I have discussed in the methodology chapter (section 4.2), the focus is on solidarisation as traceable in the primary institutions of *International Law* and *Diplomacy*. This does not mean that other primary institutions are not affected, but for matters of feasibility and length I will restrict the analysis to two such institutions. Given their central and significant position within the concept of international society, this still allows for an adequate analytical basis to draw more general conclusions about the EU's contribution to solidarisation in international society. At the end of this section, *Table 3* summarises the issue-specific indicators.

(1) **Enhancement of the degree of cooperation amongst states:** As pointed out before, the first indicator of solidarisation entails a rather light version of solidarisation. If this was the only form of solidarising processes that the analysis gives proof of, we would be concerned with a rather restricted degree of fundamental change – though it was still fundamental to the extent that primary institutions are affected. This indicator entails solidarisation even if it is not as far-reaching as to challenge the primacy of states as international actors. Regarding *International Law*, this type of solidarisation would mean that provisions under international law are extended in terms of an expansion of the addressed issues as well as the scope and impact of the specified regulations. Thus, the EU would contribute to solidarisation as captured by this indicator if it actively participated in the international human rights regime and if this engagement was geared towards advancing human rights regulations, be it in scope or depth. The analysis will thus look at the record of EU activity in the HRC.

In the primary institution of *Diplomacy* this indicator means that such diplomatic practices are promoted and fostered which help to regularise and further institutionalise cooperation between international actors on various human rights issues. Considering, that the HRC is the central body of the UN system for human rights protection, it is in this body where particular diplomatic practices directed at cooperation in the human rights field are institutionalised. A reform process, launched by Kofi Annan in 2005 (An-

nan 2005) which amongst other things led to the transformation of the former Commission on Human Rights into the Human Rights Council in 2006, was aimed at ameliorating the effectiveness of the body and at providing a remedy for problems such as politicisation and selectivity which tremendously hindered the effective work of the Commission (Basu 2012, 87; Davies 2010, 451). Hence, if the assumption is that the EU indeed promotes processes of solidarisation in the human rights field, we should find in the analysis that the EU effectively tried to work towards a reform that made the body more efficient as compared to its predecessor, since this would facilitate cooperation and thereby constitute solidarisation. More specifically, it will be revealing to look at the EU's position on one of the major elements of the reform, to wit the establishment of the *Universal Periodic Review (UPR)*. This mechanism requires that each and every UN Member State is assessed in terms of its human rights record on a regular basis of about 4,5 years. In defining and institutionalising such a regular review mechanism, the rules of cooperation are literally extended and it is seen as the most important innovation of the new HRC (Wouters and Meuwissen 2013, 3; Sweeney and Saito 2009). The UPR, however, fosters solidarisation in several ways, and I will thus once again return to it in the context of the other two indicators.

(2) **Strengthened role of individuals and other non-state actors:** Regarding *International Law* and according to this indicator, we would need to find evidence that the EU commits itself to fostering changes in international law, which challenge the primacy of the state as the principal actor in the international sphere and more specifically as the only bearer of rights and duties in international law provisions. In this context, two developments in international law stand out as exceptionally significant: The creation of the *International Criminal Court* with the adoption of the 1998 *Rome Statute* as well as the emergence of the *Responsibility to Protect* as an acknowledged, albeit contested principle of international law. Both cases have a tremendous impact on the role of non-state actors in international society. The ICC clearly enhances individuals' significance vis-à-vis states by making them subjects of international law. With the aim of implementing the norm of international jurisdiction, this international court persecutes *individual persons* who are suspects of war crimes, crimes against humanity or genocide. Likewise, R2P makes individuals' rights protection a matter of direct concern for the international society and its international law practices. The EU as a transformative

force towards solidarisation, thus should play a meaningful and supportive role in these developments.

Regarding *Diplomacy*, this indicator would mean that the EU promotes the active, efficient and constant inclusion of civil society actors in practices of international human rights diplomacy. Two interrelated issues stand out as particularly relevant for the analysis: First, on a more general level, it will be crucial for the argument of this thesis that the EU takes an active role in advocating the rights of *Human Rights Defenders (HRDs)*. According to a declaration adopted by the GA in 1998, HRDs are those individuals, groups or associations that contribute to the effective elimination of human rights violations and that promote fundamental freedoms at the national or international level (General Assembly 1998). Hence, the debate about HRDs within the UN system is key to processes of solidarisation as captured by this indicator, since at its core is the very idea that non-state actors assume a decisive and critical role in the implementation of an effective human rights system and that they are fundamentally protected while conducting their activities. It is paramount to the debate about HRDs that non-state actors are involved in diplomatic processes within the issue area of human rights. The EU's particular stance on related debates and its commitment as well as actual contribution to the improvement of HRDs' situation, thus, is crucial for this thesis' argument about transformative effects of the EU on international society.

Second and now more specifically, another look at the UPR is revealing: Whereas under the first indicator the question is whether the EU has generally promoted the establishment of a regular review mechanism in order to provide a better framework for cooperation, for the second indicator the core question is how the EU positioned itself in the debate about the role of non-state actors in the UPR. If the EU promoted a strong role of such actors in the process and if there was at least some success in the implementation of such an enhanced role of non-state actors, this would indicate solidarisation.

(3) **Reinterpretation of national sovereignty:** The third option to find an EU induced solidarising effect in *International Law* in the human rights field would be if the EU was committed to establish and strengthen institutions that provide for standardised procedures and mechanisms that clearly define the conditions that are attached upon the full right to sovereignty. Such conditions need to be human rights related to the extent that they try to regulate and define what an adequate and legitimate relation between states

and their citizens looks like. Once more, the ICC is crucial in this context. This international institution fosters the implementation of the norm of international justice and thereby it clearly reflects a redefinition of sovereignty in terms of conditionality. According to the Rome Statute, the ICC is granted the competence to act if a state is "unwilling or unable" (Rome Statute 1998, 17) to investigate a case that requires prosecution. Furthermore, a reinterpretation of sovereignty is also involved if mechanisms are institutionalised, which equip the international community with the competence to take action where it considers this appropriate without that the procedures involve the option of a state veto. The most obvious form of such a pooling of sovereignty is implied in practices of humanitarian intervention to the extent that such practices are considered as legitimate even against the will of a concerned state in order to protect human beings from atrocities. R2P, on the one hand enforces the validity of sovereignty and non-intervention, yet at the same time it also transfers the responsibility to prevent gross human rights violations to the community level in case that a particular state does not live up to its responsibility. Hence, the EU's contribution to the promotion of R2P as valid international law principle as well as to the establishment of the ICC will also be relevant in the context of this third indicator and thus the form of solidarisation that is spurred by both, the ICC and R2P, is multidimensional in character. Both examples constitute "a transformation of considerable legal and diplomatic significance" (Holsti 2004, 161).

The third indicator, that is the reinterpretation of sovereignty, provides for another manifestation of solidarisation in *Diplomacy*: The HRC's *Special Procedures.* The overall objective of this diplomatic instrument is to gather information on particular human rights situations and violations. It therefore helps to create the paramount preconditions for the UN human rights machinery to work effectively. In gathering information about the adherence to existing human rights standards and in pointing to violations of such standards on a regular basis, the Special Procedures help to further define and specify exactly those conditions that need to be fulfilled in order to legitimately claim the right to sovereignty, even if no clear sanctioning mechanisms are automatically implied yet. Nevertheless, it is paramount to the implementation and enhancement of the principle of conditional sovereignty that a certain degree of transparency is achieved about what these conditions are, and where they are met or violated respectively. To this transparency the Special Procedures do make a contribution. The EU's role in creating, maintaining and advancing the Special Procedures will therefore offer valuable clues to the EU's potential as solidarising force in international society.

The following table summarises the indicators of solidarisation as they potentially play out in *International Law* and *Diplomacy* in the human rights field. They shall guide the analysis of the EU's role in solidarising processes.

		Primary Institutions	
		International Law	**Diplomacy**
Solidarisation in the Issue Area of Human Rights	**Extension of Rules of Cooperation**	- EU's general contribution to increasing elaboration and codification of Int'l Law provisions - EU's contribution to increasing the scope of human rights law	- Promotion of practices which help to regularise and improve cooperation on various HR issues. → EU's position on HRC reform and in particular the UPR as regular review mechanism
	Strengthened Role of Non-State Actors	- EU's contribution to enhance the role and status of individuals as direct concern for Int'l Law considerations - EU's role in promoting initiatives that make individuals themselves subjects of Int'l Law	- The EU promotes the active, efficient and constant inclusion of civil society actors in practices of international human rights governance. →EU's role in debate about HRDs → EU's position and influence in the debate about the role of NGOs/ HRDs in the UPR mechanism
	Reinterpretation of Sovereignty	- The EU's commitment to establish and strengthen institutions that provide for standardised procedures and mechanisms which define the conditions that are attached upon the full right to sovereignty → EU's commitment to the ICC - The EU's contribution to the effective implementation of a normative framework for human rights protection which allows the international community to act against aggressors without that the procedures involve the option of a state veto → EU's commitment to R2P	- The EU actively and successfully promotes procedures that help to systematically implement conditional sovereignty → Substantive contribution to the functioning of the HRC's Special Procedures

Table 3: Issue-Specific Indicators – Human Rights

According to the logic provided in this table, and as introduced in section 4.2, I will henceforth use abbreviations to mark a reference to a particular indicator. IL_1 refers to the cooperation indicator pertaining to the primary institution of *International Law*; D_3 denotes the sovereignty indicator in the context of the primary institution of *Diplomacy; etc.* The same logic is applied to all three case studies.

5.3 Processes of Solidarisation in Human Rights Policies and the EU's Contribution

In this section, I will apply the outlined indicators to examine various processes of solidarisation in the international human rights regime and in particular, the EU's role in and contribution to such processes of change. The broad spectrum of international human rights as an issue area requires to proceed in a somewhat eclectic manner, because it is impossible to systematically discuss all policies and instruments that relate to human rights. As the discussion of the issue-specific indicators has illustrated, there will be a certain focus on developments within the HRC, as the major body within the UN human rights machinery. Moreover, with the analysis of the processes evolving around the establishment of the ICC as well as the formation of R2P two milestones in *International Law*, which relate closely to human rights are addressed. Thus, in particular the following subtopics will be addressed in the following subsections:

- the general advancement of the international human rights regime → IL_1, D_1

- diplomatic procedures at the HRC, the reform process leading to transformation of the Commission to the HRC and HRC's most crucial instrument, i.e. the Universal Periodic Review → D_1, D_2, D_3, IL_1

- Human Rights Defenders → IL_1, D_2

- The International Criminal Court → IL_1, IL_2, IL_3

- the Special Procedures → D_1, D_2, D_3

- the Responsibility to Protect → IL_1, IL_2, IL_3

5.3.1 The EU and the General Advancement of the Human Rights Regime

In section 5.1, I have outlined the evolution of EU human rights policy regarding its internal framework for human rights protection as well as the integration of human rights into its external action. This section has already indicated that the EU is a very active human rights actor in the international arena. It has developed a number of instruments to promote and to actively protect human rights and it has made efforts to an ever increasing degree to streamline human rights aspects and considerations into all aspects of its foreign policy. While this happened neither always consistently nor without flaws, this development is in itself considerable and the EU has certainly left its mark on the structures and institutional set-up of the international human rights regime. Hence, without going out on a limb, it is fair to note that the EU has made some contribution to solidarisation according to IL_1. At the same time, the section has also revealed that the EU has not necessarily been the genuine source of such solidarist change, but that a broader development towards greater normative ambitions in international society has occurred. This caveat notwithstanding, the EU has taken up these developments and has subsequently taken action to their advancement. To refrain from too much repetition, this section focuses on the EU's overall activity in the human rights regime and illustrates that – somewhat counterintuitively – more activity, stronger visibility, firm coherence as a regional bloc are not necessarily the most effective means to contribute to advancing cooperation in the human rights regime.

Overall, the EU is fairly active in terms of resolution initiatives in UN human rights forums. The literature, however, also raises criticism stating that measured against its overall priorities, the EU actually would need to be far more active in tabling resolutions and in issuing statements during debates (Smith 2006, 2010). Frequently, the EU's activity is compared in these cases to that of the Organisation of Islamic Cooperation (OIC) (Smith 2010, 225). If one focuses exclusively on mere EU initiatives, the record is indeed less than ideal. For instance, for the period of 1999-2013, Baranowska et al. (2014) have counted 18 EU initiatives, 3 of them being thematic, 15 having a country focus.[5] Yet, the picture is a different one if initiatives of EU member states are included (ibid., 145). To do so seems reasonable because coordination processes still take place even if a resolution is formally initiated by a member state. Such activities complement EU action and both levels cannot be seen as independent or separate – and importantly, are not perceived as independent by third actors within the regime (ibid.,

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[5] 18 refers here to the overall number of addressed topics during this period. It is a common practice that resolutions are tabled on a regular basis every year or every second year.

144). Taking the 8th HRC session as an example, Basu (2012, 92) illustrates that out of 13 resolutions, 9 have been initiated by the EU or its member states.

In sum, the EU is active in initiating resolutions in the HRC and hence contributes to solidarisation according to IL_1. However, the following is important to note: More often than not, in studies that assess the EU's performance in UN human rights forums, it is taken as an indication for strong EU activity if the EU is visible, issues statements that are as outspoken as possible on human rights violations and is in the lead of new initiatives. The following example illustrates that this way of assessing EU performance is myopic. The UN human rights regime is marked by strong dividing lines that largely run between the West and the Global South. As a consequence, all human rights debates, instruments, action is prone to politicisation. In such a context, it can be wise and actually more effective for the EU to back off from leadership aspirations in certain situations. For instance, in the context of a draft resolution on the abolition of the death penalty, the EU deliberately

> lowered its profile so that the cross-regional character of the proposal would come to the fore. It was realised in the EU, that strong leadership might sometimes be less effective than constructive team-work, and that an 'overtly EU signature' might contribute less to the success of an initiative, than a truly cross-regional package (Baranowska et al. 2014, 125).

Over time, the EU has indeed tried to invest in cross-regional outreach to other countries in order to gain broader support for particular initiatives (ibid., 128). While there is no indication hitherto that the underlying divide within the human rights regime between developed and developing states can be overcome in the foreseeable future, the EU has started to address this problem by more actively reaching out to countries from other regional blocs and by actively seeking to build coalitions with countries from the developing world. This activity is by far not as well-developed as in the issue-area of climate change (cf. section 6.3.5), but some promising steps have been taken. Notably, more active cross-regional outreach is on the agenda of the EUSR on Human Rights, Stavros Lambrinidis (EU Council 2017b, 6), but also the EP has recently emphasised the significance of cross-regional initiatives (European Parliament 2017c). Also Wouters and Meuwissen (2013) provide some initial evidence for a stronger awareness within EU policymaking for the necessity of fostered cross-regional activity. By strengthening such cross-regional approaches within the human rights regime, the EU contributes to solidarisation as captured by D_1, because this implies an enhancement of cooperation between different states. Furthermore, such an approach seems also crucial to foster solidarisation according to IL_1 because in light of fundamental dividing lines within the

international human rights regime, the scope of international law provisions can only be extended and deepened if broader majorities are involved. It is beyond this thesis' scope to go into more detail here. The issue, however, illustrates that simplified calls for more coherence in the EU's human rights policy at international forums are problematic. As Brantner (2010, 176) notes: "While the first dimension of the EU unity trap would suggest increasing unity even further, e.g. limiting the actions of individual EU member states [...], the second dimension could recommend loosening coordination and calls for more cross-regional outreach". Thus, we find once again that ambiguous structures need to be taken into account and that non-ambiguous, fully coherent action of the EU is presumably not a viable solution.

5.3.2 The EU and the Special Procedures[6]

At the core of the HRC's diplomatic toolbox are the so-called *Special Procedures (SPs)* (OHCHR 2017b; Scannella and Splinter 2007, 56). The SPs mandate certain experts (e.g. Special Rapporteurs, Independent Experts or Working Groups) to explore and report either on thematic or country-specific issues. The SPs' major objective is to gather information on particular human rights situations and violations as well as to provide recommendations and technical support to improve such situations. To this end, SPs can conduct country visits, undertake expert consultations, send communications to states or carry out thematic studies. The SPs therefore are key for the UN human rights machinery to work effectively and they provide the necessary preconditions for diplomatic cooperation in the field of human rights protection. As of late 2017, there are 44 thematic and 12 country-specific mandates in place.

Ensuring the well-functioning of and strengthening the SPs entails solidarisation as captured by all three indicators with regard to the primary institution of *Diplomacy*: As just outlined, they build a crucial and basic framework for diplomatic cooperation in human rights protection (D_1); they strengthen the role of individuals by anchoring a concrete instrument in the global human rights regime that aims at individuals' rights protection and thus making the well-being of individuals a matter of concern for international society (D_2); furthermore, to the extent that non-state actors are involved as stakeholders in the processes related to the SPs this reflects a second dimension of D_2. And finally, the SPs help create transparency and

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[6] The section draws partly on Ahrens 2019.

thus to expose sovereign states' particular human rights records to the scrutiny of the international community (**D₃**).

In terms of processes of solidarist change, it is important to note that in the beginning, the human rights machinery was not equipped to actually *protect* human rights. As approved in an ECOSOC resolution in 1947 that the Commission on Human Rights (CHR) "has no power to take any action in regard to any complaints concerning human rights" (ECOSOC 1947, 20). Instead, the mandate was restricted to *promoting* human rights by advancing legal norms (Limon and Power 2014, 4). In that sense, the existence of the SPs in and of themselves is indicative of a solidarising process in the international human rights regime. The CHR initially focused its work on the creation and advancement of international human rights standards. It was only in 1967 that ECOSOC through its resolution 1235 (XLII) mandated the Commission to examine and monitor human rights on a country-specific or a thematic basis. Since then, the SPs have evolved incrementally rather than following any particular designed logic (Gutter 2007; Limon and Power 2014; Limon and Piccone 2014, 8). From the outset, this process was accompanied by a very high level of contestation which is emblematic for the existence of pluralist-solidarist tensions within the human rights regime. For instance, in the context of the 2011 review of the HRC's mechanisms the conflict between pluralist reservations and solidarist aspirations re the SPs became particularly evident (HRC Extranet n.d.)[7]. Essentially, a group of Western and Latin American states has been eager to preserve and to reinforce the SPs' independence from state influence. In contrast, the African Group, the Organisation of Islamic Cooperation (OIC) and the Non-Aligned Movement (NAM) have been advocating for much stronger control mechanisms for mandate holders in order – as they argue – to diminish the risk of a politicised and selective application of SPs. Indeed, politicisation and selectivity were the main issues that had paralysed the former Commission for Human Rights and led to the establishment of the HRC (Basu 2012, 87; Davies 2010, 451). The following exemplary statement is a clear reflection of some states' reluctance to support any moves that contribute to a re-definition of sovereignty in the HRC's diplomatic instruments (**D₃**). On country-specific mandates and resolutions, the NAM stated that it

> refuses any selective, politicised, or confrontational approach in this regard and emphasises the necessity of respecting the views of the concerned country and

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[7] The HRC Extranet keeps records of debates and outcomes. The relevant positions quoted here can be accessed via the ‚Review Section')

> not imposing country resolutions or mandates against its will (NAM Position
> Paper on the Review of the Work and Functioning of the HRC, Sep 24, 2010).

Others, such as Pakistan on behalf of the OIC or Cuba have issued statements along the same lines, which all illustrate that the SPs and their country-specific mandates in particular are highly contested because of their solidarising effects. In this context, Gutter (Gutter 2007, 104) has identified a certain "negative reform agenda" regarding the SPs, referring to active attempts to undermine the SPs' effectiveness and to re-establish sovereign control of states over the SPs. Such moves on the one hand clarify the distinctive tensions between pluralist and solidarist structures in the human rights regime. On the other hand, however, they also illustrate that solidarising processes have already occurred, because otherwise we would not see such a considerable degree of resistance. As Neumann (2002, 641) points out: "[A]ctions to innovate will be met with counter-actions to resist change and hold intact the existing set of preconditions for practice".

Undoubtedly, there are particular political interests behind such positions. Nonetheless, it is correct that especially country mandates entail the risk of politicisation, which points to another normative ambiguity. It is, thus, crucial for advocates of a more solidarist agenda to take such pluralist reservations into account while promoting the independence and effectivity of the SPs. Simply dismissing pluralist concerns is not a viable option because it is not even decisive whether politicisation actually takes place. If such accusations fall on fertile ground, this will impair the SPs' perceived legitimacy and consequently render solidarist change even more difficult. Given this context of forthright pluralist resistance, solidarist change is anything but easy to achieve. Notwithstanding such politically difficult circumstances, the EU has indeed contributed to the promotion of SPs and has helped to prevent major pluralist setbacks. Especially, it has always been a strong promoter of country specific initiatives (Wouters and Meuwissen 2013, 2). Three aspects shall be mentioned in the context of the 2011 reform debate in which the SPs were at stake:

First, the EU indeed cautiously, but clearly defended the crucial role that the SPs have been playing within the UN human rights regime:

> The EU will not be able to consider proposals that would undermine the independence of the Special Procedures or reduce the value of their work in the Council (EU statement for the 1st meeting of the OEWG on the review of the Council, Oct 12, 2010).

More specifically, the EU stated that interactive dialogues with all stakeholders (including non-state actors) should be held for each SP mandate (D₂); that states should absolutely co-operate with mandate holders (D₁) which includes in particular the acceptance of country visits (D₃); and that states' record of such cooperation should constitute a decisive criterion for membership in the HRC (D₃). It is difficult to establish with any accuracy that such EU interventions have made the decisive impact on the negotiations. But it is likely to assume that they contributed to ultimately establish a majority in favour of safeguarding the SPs' independence. Most importantly, the pluralist camp did not succeed in undoing country mandates or to make their implementation dependent on a 2/3- majority in the HRC, as suggested by the NAM and the OIC (Smith 2011, 26). Another indicator for the EU's successful diplomatic activity in the context of country-specific approaches to human rights protection is its success in initiating several special sessions on particular countries, such as Myanmar (5th special session), DRC (8th) and Sri Lanka (11th) (Wouters and Meuwissen 2013, 8).

Second, the EU has been a strong supporter of the practice of issuing so called 'Standing Invitations' to the thematic SPs. Such invitations are strongly encouraged by OHCHR, which sees them as an indicator for states' commitment to cooperate with the SPs (OHCHR n.d.). Among the 118 countries (as of Dec 18, 2017) that have issued standing invitations are all 28 EU member states (OHCHR 2017c), thus testifying to the EU's solidarist commitment. The timely documentation about the status of the standing invitations further contributes to expose states' sovereign decisions to the international community's scrutiny (D₃).

Third, a more concrete intervention of the EU in the HRC review debate gives evidence of EU impact that help to sustain and advance solidarist objectives in the international human rights regime: An early compilation of contributions to the 2nd Session of the Working Group on the Review of the Work and Functioning of the HRC (3.2.2011) contained very strong language about states' obligation to cooperate with the SPs (para C.15). In contrast, the text put forward by the HRC president as a basis for the final negotiations only notes in a very weak manner that the obligation for cooperation involves *SPs* and states alike and otherwise rather explicates how *SPs* shall facilitate such cooperation (para II.B.31). The EU argued that states' obligations had been watered down in the text and requested the re-insertion of stronger language (statement 17.02.2011). Ultimately, the final outcome document (A/HRC/WG.8/2/1) indeed re-inserted stronger language and explicitly urges states to cooperate. Such an example, of course does not prove that the EU was the one and only actor behind this achievement. It does illustrate, however, the active part that the EU played and provides plausible evidence that

solidarist moves were successful even in the light of pluralist reservations. The overall findings based on the documentation of the review process do suggest a strong and effective role of the EU in the negotiations and a noticeable solidarist influence, leading to the implementation of an alternative understanding of sovereignty: Diplomatic practices in the context of human rights increasingly link sovereignty to responsibilities and duties (**D₃**).

In sum, in the context of the 2011 HRC review process, the EU advocated effective and strong SPs, including their independence from state control. Doing this, the EU clearly defended an approach that "rejects claims that promoting human rights is unwarranted interference in the domestic affairs of other states" (Smith 2008, 112). The EU "continues to be one of the staunchest defenders of country mandates and resolutions at the UN" (Baranowska et al. 2014, 223) and has repeatedly expressed its conviction that such mandates

> allow the United Nations to attract international attention to serious human rights violations and that they can have a protective and preventive impact for victims of human rights violations on the ground (EU Council 2003b, 50).

The EU, thus has made a successful contribution to defending and to promoting support for such a solidarist element within the international human rights regime.

5.3.3 The EU and the Universal Periodic Review (HRC Reform)

In contrast to the SPs which have now been in place since more than 50 years, the Universal Periodic Review (UPR) is a rather new instrument that was only established in the context of the reform process that transformed the former Commission on Human Rights into the Human Rights Council (General Assembly 2006). The UPR, in fact, stands out as the HRC's most significant innovation (Sweeney and Saito 2009), which must also be seen in the context of the criticism that the country-specific mandates under the SPs had provoked. Essentially, the UPR harks back to Kofi Annan's suggestion (Annan 2005) of a regular review mechanism that would in contrast to the country-specific mandates under the SPs address the human rights record of *all* countries on a regular basis, thus being less prone to accusations of politicisation (Scannella and Splinter 2007, 49).

Through the UPR each UN member state's human rights record is reviewed on a regular basis. This happens through the UPR Working Group, although all states can participate in the discussions and raise questions to the state under review. Essentially, the review process is based on three documents, i.e. a national report; a report on the state's performance under the SPs, the UN human rights treaty bodies as well as other UN entities; and a report that

compiles information by national human rights institutions and other stakeholders, including NGOs. Both latter reports are composed by OHCHR. During the UPR Working Group meeting, a dialogue is conducted between the state under review and all other member and observer states. The outcome of this dialogue is recorded in the outcome report, including the recommendations that were made. This report will then be discussed and adopted in a regular HRC session, in which the state under review has to clearly indicate which recommendations it accepts or only takes note of. Apart from the information that NGOs can provide for one of the initial reports, this HRC session is the only occasion for NGOs to actively take the floor in the discussions. In the follow-up of the review, it is the respective state's own obligation to implement recommendations in an adequate manner, which obviously testifies to the preservation of pluralist structures. Nonetheless, as the review process is conducted on a regular basis, states have to provide information on the implementation during the next review cycle. This regularity creates certain pressure for states to engage with recommendations and to produce some progress. Currently, the third UPR cycle (2017-2021) is ongoing (since May 1, 2017).

The UPR constitutes a solidarist change in the international human rights machinery because it establishes another mechanism of institutionalised diplomatic cooperation for the purpose of enhanced human rights protection (D_1). Similarly, it strengthens cooperation among states in order to be better able to implement and advance human rights law provisions (IL_1). Regarding the strengthened role of non-state actors, the UPR incorporates another institutionalised mechanism into the international human rights system that considers the protection of individuals' rights. It, thus, contributes to making individuals a matter of direct concern in diplomatic practices of international society (D_2, IL_2). Furthermore, to the extent that the UPR provides rules and procedures which allow non-state actors to actually take part in the otherwise state-driven review process, this contributes to solidarisation, too (D_2). Finally, and most importantly, the UPR exposes states' sovereignty to the scrutiny of the international community because it clearly establishes that states have to cooperate with the existing human rights mechanisms and have to adhere to existing human rights law provisions. In cases of non-compliance, the UPR compels state actors to justify their action, which illustrates that the respective human rights record of each state is not a matter of its boundless and unconditional national sovereignty anymore (D_3).

Regarding the EU's contribution to the UPR, generally speaking, the EU

has consistently been a strong supporter of this process [the reform process including the establishment of the UPR] and has aspired to take on an active role to ensure that the new Council will be a strong and effective body. It has invested a great deal in this forum, spanning from the negotiations to its actual functioning (Wouters and Meuwissen 2013, 1).

When assessing the EU's action with regard to the UPR in more detail, one has to take into account the overall dynamics at the HRC, which still is – as its predecessor and as many other UN forums – deeply politicised and marked by relatively strong divisions between the West and the Global South (Gowan and Brantner 2010). Thus, in parallel to the debates on the SPs, the dividing lines regarding the UPR run primarily between the EU and other Western countries on the one side and the African Group, NAM and OIC on the other. Accordingly, the negotiations leading to the HRC establishment were very difficult (Wouters and Meuwissen 2013, 2), which again gives proof of deep underlying tensions between pluralist and solidarist ideas within the human rights regime. The same holds true for the 2011 review process of the HRC's functioning. Regarding the reform process that created the HRC and in particular the UPR as its most important innovation, among the most contentious issues were (Scannella and Splinter 2007, 64; Smith 2011, 22–23):

- whether the UPR should substitute or complement country specific mandates

- the nature of information on which the review process should be based

- NGO participation in the review process

- the composition of the new council (criteria for membership based on performance in the human rights regime)

The 2011 review process of the HRC and its functioning still reflects similar divisions. The pluralist camp advocated for instance for an extension of the review cycle from 4 to 5 years as well as a one year gap between cycles. Furthermore, they were in favour of keeping the time slot for particular reviews at three hours in order to restrict the time in which states could contribute to the debate and raise criticism to the state under review. In contrast, the EU promoted to maintain 4-years cycles without a gap in between and to extend the review time. Furthermore, the EU emphasised the importance of strengthening the role of civil society and tried to foster the UPR's efficiency by reinforcing states obligation to respond to recommendations (Smith 2011, 22-23; 42). Overall, the EU's positions testify to its solidarist agenda within the HRC and give proof of its serious commitment to create and advance diplomatic practices which render human rights protection in international society more effective and less prone to politicised state impact.

Looking at the concrete outcome of negotiations, the results are mixed: For instance, within the UPR procedures, active civil society participation is restricted to the discussion of the outcome report at the regular HRC session (NGOs cannot take the floor during the UPR working group session). On the other hand, it is a clear sign of a solidarist move that the reviews includes as its basis a report which compiles information by civil society actors and national human rights institutions. Overall, the EU has made a considerable contribution to ensure the functioning of the HRC, in particular through its constant and active support of NGO and civil society participation in the process (Wouters and Meuwissen 2013, 8).

Regarding the composition of the HRC, the EU was successful in enforcing that states' membership is made conditional on their overall commitment to and performance within the human rights system and can even be suspended in cases of gross human rights violations (Ghanea 2006, 701; Scannella and Splinter 2007, 48). Concerning the time frames, against the EU's preference, cycles now last four and a half years, but in line with its priorities, there is no gap between cycles and the review time for the interactive dialogue at the UPR Working group has been extended to three and a half hours (Smith 2011, 23).

The EU's overall support of as well as activity and participation in the UPR mechanism has been assessed positively. The EU has very early expressed its support of a review mechanism (Wouters and Meuwissen 2013, 2; Basu 2012, 95). In particular, the EU and its member states do not shy away from taking the floor and raising critical concerns also when another EU member states is under review (Pfäfflin 2011). This is particularly crucial since some states have tended to undermine the UPR by filling speakers' lists and using their speaker's time to compliment the respective states under review (Sweeney and Saito 2009, 210).

Most importantly, the UPR ultimately did not substitute but complement the country-specific mandates under the SPs, although there was strong advocacy for a substitution (Scannella and Splinter 2007, 64; Smith 2010). This would have considerably weakened the HRC's capacity to effectively protect human rights and to concretely address urgent and severe cases of fundamental rights violations. Indeed, it must at least partly be credited to EU resistance that ultimately the UPR did complement, but not replace country mandates under the SPs (Baranowska et al. 2014, 128). In this context, the establishment of the UPR provides another illustration of how dynamics of ambiguity form, but also enable processes of change: As outlined, the HRC as well as the overall UN human rights regime is thoroughly marked by a high degree of political tension as well as normative ambiguity. In particular, the country-specific approach presumably reflects a Western liberal approach to human rights and – whether one

agrees to this criticism or not – is thus prone to accusations of Western domination and neo-colonialism. The UPR addresses this problem by creating itself a thoroughly ambiguous structure: The UPR is a state-driven process. It is mostly states that act. The state under review is massively involved in the procedure (Gaer 2007, 128) and it is this state's responsibility to take measures for the implementation of recommendations through national action plans. And yet, this pluralist state-centrism is at the same time challenged through the UPR mechanism: First, through their participation in the process, albeit its limitations, NGOs contribute to put pressure on states and to bring non-compliance with existing standards as well as gross human rights violations to light (D_1; D_2). Second, at its core, the UPR upholds and institutionalises a country-specific approach to international human rights protection, thus promoting a conditional rather than absolute interpretation of sovereignty (D_3). To achieve the necessary support for such solidarist elements, it was crucial that the UPR remains a state-driven process and that its universal character ensures the equal treatment of all states. Thus, being responsive to pluralist reservations, while promoting solidarisation through the backdoor is crucial to induce solidarist change. This change is ultimately limited through pluralist realities, but it is not absent. In that sense, what Basu criticises as the EU's "'tip-toe' approach" (Basu 2012, 92) when it comes to country-specific action in the HRC, can hardly be taken as unwillingness or incapacity to foster solidarist change. Instead it is a reflection of ambiguous political realities as well as of the inherent normative ambiguities of the solidarist agenda, which both need to be taken into account to promote any solidarisation.

5.3.4 The EU and Human Rights Defenders

Human Rights Defenders (HRDs) are people, who as individuals or in groups act to concretely promote or protect human rights on the ground (OHCHR 2017a). This can include for example journalists or civil society actors. The significance of HRDs within the international human rights regime, thus can hardly be overstated. HRDs are crucial to render human rights protection efforts that are conducted at the level of international diplomacy effective in concrete local contexts. As the former UN Commissioner for Human Rights, Mary Robinson, has put it: "[H]uman rights defenders are the 'vital bridge between the theory and practice' of human rights protection" (quoted in Baranowska et al. 2014, 172). Pursuing the goal of more concrete and effective human rights protection, HRDs are often hindered and thus become themselves a target of human rights violations. Thus, an institutional and legal framework to protect HRDs and their work has been developed over time at the UN level. The objective of

protecting HRDs and by this means allowing them to contribute actively to the effective protection of human rights, contributes to solidarisation in a twofold sense: The issue emphasises that non-state actors *must* play a pivotal role in the international human rights regime. The existence of HRDs in the international human rights regime as well as the incrementally advanced framework to protect them, thus contributes to foster cooperation for effective human rights protection (IL$_1$, D$_1$), but evidently also enhances the role of non-state actors in the regime and its diplomatic practices (D$_2$).

Hence, if the EU acts as an effective force for solidarisation in international society regarding the issue area of human rights, we should expect that the EU has incorporated the issue of HRDs in its human rights policies and also works towards enhancing HRDs protection within the international human rights regime.

An assessment of how the EU addresses the situation of HRDs reveals that it indeed constitutes an important issue on its agenda and that over time the attention to it has been increased. Furthermore, the EU has acted as an active and decisive force within the UN human rights regime to advance the protection of HRDs. Yet, similar to other issues, also in this field solidarist engagement has been met with pluralist resistance, leading ultimately even to the EU's withdrawal from co-sponsorship of the respective UN resolution.

More precisely, the issue of HRDs ranks high on the EU's human rights agenda and the EU considers it to be one of its major priorities in external human rights policies. It is for instance among those issues, for which the EU has published particular guidelines (EEAS 2017b). The guidelines have been issued in 2004 and revised in 2008, but for instance the EP has started addressing the situation of HRDs in resolutions as early as in 1988 (Baranowska et al. 2014, 174). The EU's guidelines on the one hand draw on the existing UN framework, in particular the *UN Declaration on HRDs* (United Nations 1999), but also exceed its provisions, for instance by providing a more detailed definition of who counts as HRD and most notably by stipulating that individuals or groups using violence are not considered HRDs (Baranowska et al. 2014, 175). Generally speaking, "[t]he EU and its Member States have been a driving force behind the gradual evolution of a global UN framework for protecting HRDs [...] and they raise this issue more frequently than members of other regional groups" (ibid., 154; 179).

In 2000, the UN has appointed a Special Rapporteur on HRDs under the SPs (Commission on Human Rights 2000), which the EU and its member states have consistently supported.

From this we can conclude that in line with its aspiration for solidarist change, the EU has indeed contributed to promote the role and the protection of HRDs within the international human rights regime, thus contributing to IL_1, D_1 and D_2. However, similar to other human rights issues addressed here, the political dynamics within the UN human rights machinery make it increasingly difficult for the EU to reach progress and to withstand pluralist setbacks. For example, Baranowska et al. (2014, 183) point to a situation where the EU and its member states eventually decided to withdraw their sponsorship of a resolution on HRDs because during the negotiations its content (in particular regarding women HRDs) was considerably watered down. This incident illustrates that the EU is not independent from existing structures and in particular from resistance that emerges from pluralist reservations when pursuing its solidarist agenda.

5.3.5 The EU and the International Criminal Court[8]

The establishment of the ICC in 2002 following the adoption of the Rome Statute in 1998 stands out as a core example of a solidarising process in international society with far-reaching effects in the primary institution of *International Law*. As such, the establishment of an international court, which constitutes an important step towards the enhancement of the norm of international justice, contributes to solidarisation largely along the lines of IL_1, IL_2 and IL_3. The ICC enhances international cooperation in the field of international jurisdiction. Cooperation in this field was already well under way since several decades with the Nuremberg and Tokyo Trials in the aftermath of the Second World War, as well as with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in the early 1990s. The institutionalisation of a *permanent* court instead of ad-hoc structures, however, is indicative of a further enhancement of such cooperation. Furthermore, the ICC clearly strengthens the role of individuals, and it does so in two ways: First, it aims at improving individuals' rights protection (Ralph 2005, 2007; Scheipers 2009) by ending impunity for gross human rights violations. Second, it makes individuals subjects of international law not only in terms of their rights, but also regarding their duties by prosecuting individuals who have become perpetrators of the most severe crimes in international law. This constitutes an immense departure from a classic understanding of the institutions of *International Law*, which by definition can only bind states, but not individuals.

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[8] This section draws in parts on Ahrens and Diez (2015).

And finally, the ICC entails solidarisation as captured by the third indicator, too, because at its core lies the principal of conditional sovereignty: The ICC clearly reaffirms sovereignty as a core principal of international society. It does not transfer the right to jurisdiction to the community level per se, but only in those cases in which a state "is unwilling or unable genuinely to carry out the investigation or prosecution" (Rome Statute 1998, 17). In this sense, the Statute enacts the principle of complementarity, which is a reflection of how solidarist aspirations have to connect to existing pluralist structures – advancing international jurisdiction is only possible through the endorsement of national prerogatives. The Rome Statute, thus, defines those conditions to which the full and legitimate enjoyment of national sovereignty is tied: the willingness and capability of providing a functioning and reliable system of criminal prosecution in the context of the four core crimes as set out in article 5 of the Statute (genocide, crimes against humanity, war crimes, aggression).

In sum, the ICC entails a quite remarkable move towards solidarism and this is traceable through all three indicators. As Holsti (2004, 161) puts it: "In this area related to human rights, old ideas, conventions, and laws have been overturned. This is a transformation of considerable legal and diplomatic significance". Regarding the effectivity of the court, it has obviously not remained without criticism (see amongst others Goldsmith 2003; Goldsmith and Krasner 2003; Mueller 2014). Yet, in spite of such sceptical voices, also more recent research finds evidence for substantial successes of the ICC, for instance in terms of its deterrent effects to commit atrocities (Jo and Simmons 2016) or a correlation between reduction of human rights violations and the ratification of the Rome Statute (Mitchell and Powell 2011).

Having established the extraordinary significance of the ICC for the solidarisation, the EU's contribution to this "culmination of international law-making of the twentieth century" (Weller 2002, 693) needs to be examined. To corroborate the claim that the EU exerts a transformative, solidarising influence on the primary institution of *International Law*, we should expect the EU to support and promote the ICC effectively.

> Since 1995, the European Union (EU) has been a leading force in the establishment and the strengthening of various international justice mechanisms, including the International Criminal Court (ICC) (Coalition for the ICC 2017).

Confirming the constructive role of the EU that the Coalition for an International Criminal Court (CICC) puts forward in the given quote, also the academic literature, generally speaking, draws a positive picture about the EU's role in the process of the ICC establishment. Groenleer and van Schaik, for instance, point to the high degree of coherent actorness that the EU

demonstrated with regard to the ICC and conclude that the EU in the ICC case "can be seen as an international actor and even a leading one" (Groenleer and van Schaik 2007, 991). This coherence and agreement amongst all EU member states, however, has not been put in place from the outset. A common EU position towards the ICC was not reached until the end of the Rome conference, when also France and the United Kingdom voted in favour of the statute (Groenleer and Rijks 2009, 174–175), which created a strong and independent court. Both permanent members of the Security Council had allied with the US position before, insisting that prior Security Council approval was mandatory in order to initiate investigations and prosecutions by the ICC. But subsequent to the victory of the Labour Party in the 1997 national elections, the United Kingdom changed its position already during the preparatory negotiations to the Rome Conference and joined the 'Like-Minded Group'. This coalition, consisting of more than 60 states, had strongly advocated a prosecutor who could launch investigations independently from the Security Council (Ralph 2007, 154). France was still taking sides with the USA at the beginning of the Rome Conference in June 1998, but likewise became a member of the LMG during the last days of the conference (Groenleer and Rijks 2009, 175). Thus, joint EU engagement for the ICC indeed was only launched during the Rome Conference. Nevertheless, the EU-13 without France and the UK actively supported the negotiation process and worked closely together with the LMG and the CICC – an NGO alliance, which promoted the most progressive and far-reaching objectives for the court's institutional design (Fehl 2004, 375). Besides, in spite of the lack of coherence, there were early EU statements indicating EU support for the ICC, such as one before the GA, in which the Spanish Representative speaking on behalf of the EU clearly expresses that the EU considers the establishment of an ICC a crucial step for the international community and also already argues for the principle of complementarity as outlined above (General Assembly 1995). Thus, notwithstanding the deviant positions of France and the UK, we can identify a certain degree of EU support even before the Rome Conference. After EU internal divergence had been cleared out, the EU's engagement for the ICC became even stronger: Efforts were made to support the worldwide ratification process (Groenleer and Rijks 2009, 170) and European member states as well as the EU itself indeed "had been instrumental in creating the impetus behind the process of ratification leading to the early creation of the court" (Ralph 2007, 155). What is more, the EU increasingly tried to make a stand against the US opposition towards the court (Groenleer and Rijks 2009, 171). An incidence described by Sadat (2003, 559–560) vividly testifies to the EU's persuasive commitment: Attempting to exclude US citizens from ICC jurisdiction, the US exerted pressure on other states to sign bilateral immunity agreements that

would prevent those states to transfer US personnel to the court. The US explicitly warned EU countries to stop lobbying against those agreements, threatening that this would otherwise entail a severe deterioration of US-EU relations (ibid., 560). The EU, however, in reaction to that reaffirmed clearly that

> [e]ntering into US agreements – as presently drafted – would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties (EU Council 2002).

This examples illustrates that the EU was ready to accept growing tightness of transatlantic relations (Scheipers 2009; Groenleer and van Schaik 2007, 979; Deitelhoff and Burkhard 2005, 23) which underlines that ICC support had become a foreign policy objective that carried weight.

The EU's support did not cease with the successful adoption of the Rome Statute and the subsequent inception of the court in 2002. In contrast, the EU has continuously provided assistance and promoted the court in order to further enhance its functioning and effectiveness.

Ever since the adoption of the Rome Statute, the EU continued this support for the ICC and in doing so, was particularly active to reach out to and to seek cooperation with NGOs (Interview 2016a), which is a manifestation of the EU's inclination towards IL_2 and D_2. Moreover, the EU has incorporated the objective of promoting the ICC into a considerable number of policy communications: The EU issued a first Common Position on the ICC in 2001 (EU Council 2001, 2001/443/CFSP), which clearly sets the effective promotion of the Rome Statute as a core objective. This Common Position was subsequently revised and updated with Common Positons 2003/444/CFSP and 2011/168/CFSP (EU Council 2003a, 2011a).

Furthermore, the EU and its member states work very closely together with NGOs and this in turn as Groenleer and Rijks (2009, 175) suggest, has had a positive effect on the 'Europeanization' process of member states' policies towards the ICC. Furthermore, the support for civil society action also becomes manifest in considerable funding that the EU accorded civil society organisations, such as the CICC (Groenleer and Rijks 2009, 179; Coalition for the ICC 2017). That the EU draws heavily on civil society activity as a core means to promote international justice and the ICC in particular, is also indicative of its inclination toward solidarist structures as captured by D_2.

Regarding the overall financing of the ICC, the EU and EU's member states' contribution constitutes the biggest share. But this is also under criticism because it is taken as indication that the ICC is under Western control (African Business 2011).

Moreover, the EU takes remarkable efforts in coordinating ICC related policies on both EU and member state levels. In 2003, it issued an Action Plan (EU Council 2004) as follow-up on the implementation of EU Council decision 2003/444/CFCP. The Action Plan aims at promoting the effective functioning of the ICC. Amongst other measures, it established an EU focal point on the ICC and determined that every member state will set up a focal point, too, in order that effective coordination and information exchange can be achieved. Through a revised Action Plan in 2011 (EU Council 2011c), the EU focal point was re-established under the auspices of the EEAS.

Amongst EU activities for the promotion of the ICC are also awareness-raising initiatives, such as the annual *EU Day Against Impunity* on 23rd May, organised since 2016 by the Council Presidency (Eurojust 2017).

As a last example for EU engagement in support of an effectively functioning ICC, I shall mention the "Complementarity Toolkit", which focuses in particular on the concrete implementation of the principle of complementarity in order to further "bridging the gap between national & international justice" with the ultimate goal of ending impunity (European Commission 2013a). This focus of EU's support on the principle of complementarity is indicative of a certain awareness on the EU's part about how important it is to connect more solidarist structures with existing pluralist structural conditions. International jurisdiction would hardly be perceived as legitimate in international society if it did not re-enforce the sovereign right to national jurisdiction in the first instance. This is a precondition for subsequent engagement to foster further solidarisation by the concurrent implementation of a community responsibility for jurisdiction.

In sum, this section has demonstrated that the EU has contributed fundamentally to the process leading to the establishment of the ICC in 2002. Moreover, also in the aftermath of the court's inception, the EU and its member states were amongst the most active promoters of an independent and effectively functioning ICC. The analysis has demonstrated that in the case of the ICC the EU indeed contributed fundamentally to a process which constitutes a tremendous solidarising move within the primary institution of *International Law.*

5.3.6 The EU and the Promotion of the Responsibility to Protect[9]

More than ten years have passed since the international community endorsed the R2P at the 2005 UN World Summit (General Assembly 2005). Although Kofi Annan has called this step a "'precious' one" (Wheeler and Egerton 2009, 115), it is not easy to assess whether in those past ten years we have already seen R2P's "sunset" (Weiss 2004) or whether today R2P is indeed "alive and well" (Weiss 2011). That the same scholar comes to such different conclusions is indicative of the rather non-linear development of this norm in international law.

In particular, discussions evolving around the intervention in Libya in 2011 and the non-intervention in Syria illustrate the thoroughly contested nature of R2P. Whereas some celebrate the Libya intervention as the first promising application of R2P (Thakur 2013, 69; Weiss 2011), others point to the detrimental effects that the overstretching of the mandate has had on the principle's legitimacy (Evans 2014). Some authors blame non-action in Syria at least partly on de-legitimising effects of the 2011 intervention (Evans 2014, 19–20; Morris 2013, 1275; Thakur 2013, 69, 2014). Others argue that the Syria case simply lacks the necessary prospects for success of such an intervention (Weiss 2014) and that in spite of non-action in Syria "it would be premature to conclude that R2P can be branded "RIP" (Thakur 2013, 61). Most certainly, R2P is far from being a perfectly functioning principle which thoroughly enhanced the world's and its peoples' well-being and the 2005 global endorsement notwithstanding, it is still a deeply contested norm (Bellamy 2009; Focarelli 2008; Luck 2009; Wheeler and Egerton 2009).

Yet, I argue that R2P still constitutes a significant process of solidarisation and that its contestedness is largely a reflection of the inherent ambiguities that the principle itself entails. R2P therefore cannot be promoted in a very principled, uncompromised manner, but any solidarising move in this context needs to be reflective of this ambiguity and the resulting contestation. This is all the more important if its ultimate consequence, to wit the use of force is involved. As I will demonstrate in this section, the EU has made a very clear contribution to the norm development, but its action seems more ambiguous when it comes to concrete crisis response, including the use of force. Rather than essentially seeing this as a weakness of the EU's promotion of R2P, I argue that it is a reflection of R2P's inherent normative ambiguity and as such contributes to enhancing its legitimacy or at least to preventing further impairing effects.

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[9] This section draws in parts on Ahrens (2019)

Before exploring the EU's contribution to R2P, let me briefly explain how exactly R2P constitutes solidarisation as captured by IL_1, IL_2, IL_3 in spite of the considerable level of contestation.

R2P as initially introduced in the report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001 has been a new principle in international law and as such constitutes an enhancement of cooperation (IL_1). While the UN Charter already comprised both seemingly conflicting principles of sovereignty/ non-intervention and human rights protection (Bellamy 2015), the previously existing international law regulations prioritised the former. The codification of the R2P now calls for cooperation of the international community also in those cases that concern so called internal affairs of states. Furthermore, R2P upgrades the status of non-state actors by enhancing individuals' rights protection at the community level (IL_2). Specifically, in this context, there is a significant difference between the concepts of R2P and Humanitarian Intervention (HI). Also HI entails solidarist dimensions because it makes individuals a matter of direct concern of international law. The focus in this debate, though, has rather been on the intervening state itself. In contrast, when the ICISS developed the R2P, it was their declared goal to broaden the concept. As a consequence, R2P comprises three different pillars, to wit prevention, protection/ intervention and rebuilding (Murray and McKay 2014, 13; Ban Ki-Moon 2009). The focus, thus, was changed from the intervening state to the individuals in need of protection because R2P leads us to think more thoroughly about which exact kind of action might be the adequate one to indeed improve protection (Thakur 2002, 328; Weiss 2004, 138). As Bellamy (2008, 2009) points out, the dissociation of R2P from the focus on military force has not been very successful so far, leading him to argue that a much stronger focus on prevention is needed in the discourse in order to enhance R2P's legitimacy. Finally, the idea of conditional sovereignty (IL_3) as firstly spelled out by Francis Deng (Wheeler and Egerton 2009, 116) is key to the concept of R2P. This norm redefines the relation between the two acknowledged principles of national sovereignty and human rights protection and it transfers the apparent opposition between them in a relation of mutual constitution, which is indeed a core feature of a solidarist conceptualisation of international society (Reus-Smit 2001; Scheipers 2009). Now, it is one thing to simply re-enforce the theoretical claim that sovereignty in principle is or should be conditional. Another thing is to indeed contribute to further implement this idea. I argue here that R2P does so because in spelling out four core crimes (General Assembly 2005, § 139) that define the scope of R2P, the conditions are fleshed out in more detail that need to be respected in order to legitimately claim the full right to sovereignty. Certainly, this could have happened in a more detailed

way. The formulation that R2P should apply where "national authorities are manifestly failing to protect their populations" (ibid., § 139) bears vagueness that might make R2P's effective implementation more difficult (Gallagher 2014). But again, the fact that there is still a long way to go until effective implementation and consistent application of R2P are achieved, does not preclude that first steps in a process of solidarisation are undertaken.

Having established to what extent R2P constitutes solidarisation in spite of its contested nature, I will illustrate in the following the EU's contribution to this process of change.

Regarding norm development at the international level, there is ample evidence for a considerable EU contribution. Generally speaking, the literature points to the indispensable role that the EU has played in this process of change. In particular, the EU and its normative context provided a beneficial environment for the evolution of R2P (Knudsen 2013b). More explicitly, Bellamy confirms that "the EU supported the adoption of R2P" (2009, 114) and that it actively promoted R2P for instance in a debate about the protection of civilians in armed conflicts in 2007 (ibid., 115). Overall, the EU constituted an important source of change regarding the re-conceptualisation of sovereignty in the context of R2P evolvement (Thakur 2002, 329). A civil society report summarises:

> EU member states were at the forefront of the successful diplomacy that resulted in the UN World Summit accepting the 'responsibility [to protect] [...]'. In the run-up to the Summit, EU states worked closely with members of the African Union whose own Constitutive Act had declared their 'non-indifference' to these mass atrocities (Oxfam 2008).

Furthermore, a debate at the UNSC exemplifies the EU's crucial role. Resolution 1674 (2006) for the first time provided a reaffirmation of the 2005 agreement by the Security Council. The debate preceding the adoption of this resolution was highly controversial and some delegations actively tried to backpedal on the consensus achieved in 2005 (Bellamy 2009, 113–116). The debate's records (Security Council 2005), however, reveal strong EU advocacy for R2P. The UK delegation held the SC presidency at that time and the overall initiative for an R2P reference in a resolution on the protection of civilians was seized by the UK. The UK, however, was explicitly speaking "on behalf of the EU" and all other EU member states as well as ten other countries aligned themselves with the EU's statement. It is certainly not possible to prove that R2P's reaffirmation in resolution 1674 would under no circumstances have been possible without the purposive action of the EU and its member states. In light of the severe contestation, however, it seems likely to assume that the EU's promotion of R2P in the context of this debate has contributed to this outcome.

Thus, the EU has certainly been an active and important promoter of R2P as a new principle in international law and has a part in the process through which "RtoP has made its way onto the international diplomatic agenda" (Bellamy 2010). The EU therefore has made a contribution to a solidarising process.

Moreover, since the international community has approved of R2P, the EU has also repeatedly incorporated R2P references in EU documents and policy communications, such as its 2006 *European Consensus on Development* (European Union 2006, Art. 37) or the 2008 *Report on the Implementation of the European Security Strategy* (European Union 2008, 12). Moreover, each and every year since 2006 in its *Priorities for the UN General Assembly* (EU Delegation to the UN n.d.), the EU has expressed and reaffirmed that the promotion of R2P ranks particularly high on its agenda. Likewise, the 2016 Global Strategy (European Union 2016, 42) includes the promotion of R2P under its provisions for 'Global Governance for the 21st Century'. As an interviewee from the EEAS, who deals with R2P, has reported, such a reference in the Global Strategy, was not self-evident (Interview 2017c). Admittedly, the inclusion of R2P references in EU documents does not yet tell a lot about potential changing effects of such action, but we must acknowledge that such discursive interventions are a first necessary step in fostering a "norm cascade" (Finnemore and Sikkink 1998) and thus crucial to the further promotion and implementation of R2P. Such interventions by the EU therefore are important instances of discursive practices that ultimately contribute to a particular instantiation of the primary institution of *International Law.*

At this point, sceptics of the EU's solidarist impact might raise the concern that the EU presumably did contribute to the ideational development of R2P as a new norm, but that it ultimately fails to advance the concrete implementation of R2P (Franco et al. 2015), as for instance seemingly evident in its discordant and unassertive action in the context of the 2011 Libya intervention. Such criticism mainly draws on two arguments: (a) The overall degree of R2P's contestedness prevents actual solidarist change and (b) the EU's own hesitation and internal disagreement when it comes to concrete applications of R2P keeps it from acting as an effective driver for solidarist change. Let me illustrate by discussing two R2P related incidents that both arguments fall short of the underlying intricacies which largely emanate from R2P's inherent ambiguity. Apart from the Libya case, the following paragraphs also look at the discussion of the Darfur crisis at the HRC (Bellamy 2009, 116–117).

In 2006, the HRC had mandated a High-Level Mission to assess the human rights situation in Darfur (HRC Decision S-4/101). The HLM's final report uses R2P as a framework for its

investigations and concluded very explicitly: "[T]he Government of Sudan has manifestly failed to protect the population of Darfur from large-scale international crimes [...]. As such, the solemn obligation of the international community to exercise its *responsibility to protect* has become evident and urgent." (Human Rights Council 2007a). The debate about the report at the HRC's session[10] then reveals widespread pluralist reservations against an R2P reference. Furthermore, some state representatives challenged R2P's overall legitimacy. EU member states defended an R2P reference, but not necessarily in a very outspoken manner. Germany submitted a draft resolution on behalf of the EU (Human Rights Council 2007b) which only "takes note" of the HLM report in extremely weak language. Furthermore, a report with recommendations compiled as a follow-up instrument to the HRC's debate (General Assembly 2007) does not make any clear R2P reference anymore. The described situation would have been an opportunity to corroborate the solidarising process that has been initiated with the implementation of R2P in international law regarding an obvious breach of a state's responsibility to protect civilians in a concrete case. The EU tried to do exactly this, however, with only limited success. The Union had to backpedal on its obvious outspoken and principled promotion of R2P because it had otherwise risked that the HRC would have remained completely silent on devastating atrocities that were committed in Darfur. This would have impaired the idea of sovereignty as responsibility to an even greater degree. Thus, the EU has definitely been restricted in its promotion of R2P by the broader international context. Yet, it still did what was possible in this particular situation. While theoretically, the promotion of R2P in a more principled and outspoken manner would constitute a stronger solidarist move, the prospects of success would be more limited. Thus, a pragmatic approach that takes into account existing structures and patterns of contestation constitute the more modest, but ultimately more successful contribution to solidarist change.

Finally, I will be briefly discussing the EU's action in the context of the 2011 Libya crisis to illustrate the following argument: The inherent normative ambiguity of R2P renders processes of solidarisation more complicated, it does however not prevent them. In light of such ambiguities and of potential normative downsides of solidarisation, EU action that seems in itself *ambiguous* presumably has a greater solidarising impact.

Clearly, when the decisive resolution 1973 was passed at the Security Council in March 2011, which on the basis of R2P authorised the international community to establish a no-fly zone

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[10] Available through the HRC Extranet; 4th regular session of the HRC, 16 March, 10th Meeting, Segment 4.

in Libya to protect civilians, the EU was not cohesively supporting this decision. Germany as a then non-permanent Security Council member abstained. Three major aspects need to be considered in order to evaluate the effects that this disagreement has on the EU's potential to further enhance solidarisation in *International Law* in the context of R2P.

First, in spite of its non-cohesive voting behaviour at the UNSC, the EU did not remain inactive in the Libya crisis. First, the EU collectively endorsed the adoption of S/RES/1973 (EU Council 2011b). Furthermore, in the same document the Union agrees to a "military operation in support of humanitarian assistance operations in response to the crisis in Libya" (EUFOR Libya). Although EUFOR Libya was ultimately never launched, because a necessary request by OCHA never came, the willingness to do so testifies to the EU's principled commitment. Moreover, the focus on "support of humanitarian assistance" is indicative of the EU's reservations when it comes to the use of military force. While a meaningful R2P principle needs to involve this option, this points to an inherent normative ambiguity and tension within the solidarist principle of R2P, which I will discuss in more detail below.

Second, the reaction pillar of R2P must involve the use of force as a last resort instrument. Yet, this automatically raises concerns of legitimacy. As pointed out before, a major problem of HI in general has been its discursive entanglement with military intervention (Bellamy 2009). For this reason, the ICISS aimed at developing a broader concept which would help to detach the idea of sovereignty as responsibility from a merely military interpretation. To ensure that the use of force in a particular instance is considered legitimate, it strictly needs to remain within its original mandate. The Libya intervention was tremendously criticised for having overstretched its mandate from protection of civilians to regime change. The odds are that this has led to a protracted impairment of R2P's overall legitimacy (Evans 2014) because it has been grist to the mills of those who fear that R2P is a power political instrument in humanitarian disguise. And ultimately, this might have also played a role in the context of non-action in Syria (Evans 2014, 19–20; Morris 2013, 1275; Thakur 2013, 69, 2014).

Finally, related to this aspect is another dimension of R2P's normative ambiguity: Essentially, solidarisation implies the transformation of the classical state-centric Westphalian system. A certain hesitation of proponents of solidarist change to resort to classical means of state-centric power, i.e. military force, thus is not necessarily an indication of reservations against the solidarist agenda, but quite the contrary. R2P, thus is inherently ambiguous because it also entails a re-enforcement of previously existing pluralist structures by providing

particular states with new capacities to act. Needless to say, the international community's responsibility to protect, is eventually enacted by certain states.

I would not go so far as to claim that the EU's action with regard to Libya is a consequence of conscious considerations of those ambiguities. Yet, I argue that the seemingly unassertive and non-coherent behaviour is a reflection of these ambiguities. Moreover, in light of the inherent tensions of R2P as well as the high degree of contestedness, a more cohesive, principled agenda of the EU on R2P, which seems exempt from moral doubt, would most likely do a disservice to the enhancement of solidarism in the context of R2P. In this sense, with its *narrow but deep approach* to R2P, the EU seems to be on the right track, as this approach acknowledges the importance of promoting R2P including the use of force as last resort, while prioritising peaceful means and focusing on the preventive pillar (Ban Ki-Moon 2009; EU Delegation to the UN 2010).

5.4 Conclusion

In this chapter, I have identified a number of solidarising processes that have occurred or are still taking place in the issue area of international human rights. Such processes became traceable and visible as a number of changes in two core primary institutions of international society, to wit *International Law* and *Diplomacy*. Furthermore, it has become clear that the EU has quite frequently played an active and crucial role within these processes. This is true although the EU is not necessarily the one and only driving force behind these processes of change. In all solidarising processes, which I have discussed here, ambiguity played a decisive role. Most notably, there has been ample evidence that more often than not, it has been conducive to the solidarist agenda to take pluralist reservations into account rather than to push a solidarist agenda forward no matter what the overall circumstances and conditions were. In particular, the examples of the Special Procedures and the establishment of the UPR have illustrated that in light of considerable pluralist reservations, which not only but to some extent also stem from underlying normative ambiguities, a cautious approach to solidarisation is appropriate. This certainly scales down the overall solidarising effect, but it still allows for such an effect to take place after all. The ICC case has not explicitly revealed that the EU has consciously incorporated pluralist reservations in its promotion of the court, but the EU was very active and considerably successful in advocating a Rome Statute, which entails tremendous moves towards solidarisation, while at the same time re-enforcing the primacy of

national jurisdiction. The R2P case bears severe normative ambiguities. The EU has made a noteworthy contribution to the initial norm promotion. The example of the debate about the Darfur crisis at the HRC has illustrated that in light of fierce pluralist resistance, a cautious approach to the promotion of a solidarist idea is more effective. The Libya case has revealed that the EU's action is less straightforward when it comes to the use of force, which R2P ultimately has to imply to be meaningful in any way. Yet, the example has also demonstrated that the EU did not remain inactive and more importantly, it has become clear that some cautious restraint when it comes to interventions can ultimately enhance the legitimacy of solidarist change.

Altogether, the discussion of the EU's contribution to solidarisation in international society in human rights provides some evidence that "[r]ather, by recognising the limitations of its influence, [the EU] could bring about greater tangible improvements in the lives of people around the world" (Dennison and Dworkin 2010, 11).

Alluding to "improvements in the lives of people" here, shall not suggest that solidarisation is at all times equal to such improvements. To this effect, I have throughout this chapter also pointed to potential normative downsides of solidarising processes. In any case, having identified solidarisation in these various examples does not mean that the addressed institutions and mechanisms are perfectly functioning instruments of human rights protection. There are evident weaknesses, for instance in the instruments and mechanisms of the HRC. Yet, denying that there is a lot going on in terms of human rights protection and ignoring further solidarisation just because there are obvious flaws, seems to me like throwing out the baby with the bath water. Establishing and maintaining an effective international regime for human rights promotion and protection is a cumbersome and arduous project – and so is solidarist transformation within this regime.

6 The EU's Role in the Solidarisation of Climate Policy[11]

> They said Europe is too complicated to agree quickly. They said we had too
> many hoops to jump through. They said we were all talk. They even started to
> question whether our heart was really in it. Today we clearly showed that we
> mean business. [...] Today's agreement shows unity and solidarity as Member
> States take a European approach, just as we did in Paris. This is what Europe is
> all about. In difficult times, we get our act together, and we make the difference.
> [...] We are reaching a critical period for decisive climate action (European
> Commission 2016b).

With these words Miguel Arias Cañete, Climate Action and Energy Commissioner, commented on the ratification of the Paris Agreement by the EU's Environment Council on 30 September 2016. The quote epitomises the EU's strong self-identification as a decisive and progressive leader in the climate change regime. At the same time, it illustrates that there is also scepticism amongst other actors as regards the potential of the EU to live up to this self-image. The EU's role in the international climate change regime is discussed widely in the academic literature as well as in policy circles. That the EU is a relevant actor in this regime seems beyond question. Since the 1990s at the latest, the EU is said to have played a leadership role in the global climate change regime (Gupta and Grubb 2000; Oberthür 2009, 192; Schunz 2015; Vogler and Bretherton 2006, 2; Wurzel and Connelly 2011, 3). Accordingly, expectations that it will carry on assuming this role are extraordinarily high (Wurzel and Connelly 2011, 9). These expectations as well as the EU's own aspirations as a climate change vanguard reflect the idea of Normative Power Europe: The EU as a normative power should in theory be a likely candidate to indeed shape and potently influence the global climate change regime towards more effective mitigation of global warming and ultimately the de-carbonisation of the global economy. In line with normative power Europe, the EU's approach in achieving these goals has been described as reflecting a

> predilection for establishing a Kantian world order, in which contentious issues
> are addressed, and potential conflicts resolved, through the establishment of
> suitably empowered global structures of governance (Schmidt 2008, 94).

And yet, while the EU in some cases certainly assumes the role of an environmental front runner, it lags behind in others: The EU's role in the implementation phase of the Kyoto Protocol, for instance, in particular after the US withdrawal, was crucial (amongst many others: Schunz 2012; Torney 2015). In contrast, COP-15 in Copenhagen in 2009 reminds us of a tremendous backlash of the global climate change regime that the EU was not able to avert.

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[11] This section draws partly on Ahrens (2017).

During the negotiations the EU was sidelined (Kremer and Müller-Kraenner 2010) and was therefore unable to contribute to moving the international community towards a new legally binding agreement which would have committed states to the clear target of limiting the global rise in temperature to less than 2°C compared to pre-industrial levels (Oberthür 2011, 670). More recently, the EU also faces internal struggles over the implementation of ambitious climate change policies: Poland for instance, which heavily depends on coal for electricity supply (Fuchs and Feldhoff 2016, 60), back-pedalled on the commitments of the 2030 climate and energy framework (Euractiv 2017), which was agreed in 2014 (European Council 2014). Thus, it seems that the EU internally faces similar obstacles that are also formative on the global level: There is reluctance on the part of some member states to wholeheartedly move beyond matters of immediate national economic interests and of national sovereignty in order to get to grips with global warming. Such a transformation of state-centric politics, however, is the most crucial criterion for normative power Europe (Manners 2008, 60). As outlined in the theory chapter, the mixed picture of the EU as a climate actor poses analytical problems to a classical NPE approach: The mixed record in climate change action leads to the rather trivial conclusion that the EU sometimes acts as a normative power in climate politics and sometimes fails to do so effectively. I have outlined in detail in the theory chapter, why an English School perspective provides a remedy to this flaw. The following chapter, hence, applies the solidarisation framework to answer the question whether the EU contributes to structural change in the global climate change regime.

The chapter proceeds as follows: I will first present a brief overview on the development of the legal bases and institutional structures of EU climate policy. Besides, this section gives an overview on particular EU positions in international climate negotiations as well as internal policies (6.1). Second, I will elaborate on the relevance of the solidarisation framework for the issue-area of climate change, followed by a discussion of what solidarisation in climate change means exactly. This leads to the formulation of detailed issue-specific indicators (6.2). Using these indicators, I will finally in section 6.3 identify movements towards solidarisation in the global climate change regime and analyse the EU's contribution to such processes of change. As I will demonstrate, there have been solidarist moments in the climate change regime from its outset. As I argue already in 6.2.1, the nature of climate change is such that it inevitably necessitates solidarist elements to combat global warming. While not always acting consistently, the EU has contributed to such developments. Most notably, the analysis illustrates that processes of solidarisation – as any processes of structural change – can never come about

without tensions and ambiguities. Moves towards solidarisation more often than not are resisted or encountered with pluralist reservations which have to be taken into account by those actors and forces that wish to promote a more solidarist agenda. Whether this happens unconsciously or strategically out of considerations of political feasibility is an interesting empirical question. For the solidarisation argument, however, it is subordinate. The fact that solidarisation cannot but evoke tensions and ambiguities helps to likewise put the EU's own inconsistent political action into perspective. It corroborates the fundamental claim of this thesis that a contribution to solidarist change in international society by the EU is possible in spite – and sometimes precisely through – such ambiguous political action.

The Paris Agreement, as the regime's latest cornerstone, is especially revealing in terms of its meaning for the pluralist-solidarist debate. Constituting a shift from a top-down regime of binding emission reduction targets to a bottom-up system of nationally determined contributions, at first sight seems to constitute a clear reversion to pluralism. And yet, as I will argue, the Paris Agreement still constitutes a solidarist move not in spite of, but enabled by this pluralist reflection. Embracing this ambiguity has been crucial to achieving progress in the deadlocked climate change regime. The EU played a significant role in this process and actively promoted this "ambiguous" or "hybrid" (Interview 2017f) strategy. The analysis, thus, will corroborate the central argument of this thesis, that there is an EU contribution to structural change in spite of ambiguous developments and ambiguous EU policies.

6.1 Evolution of EU Climate Change Policy

The EU nowadays is widely acknowledged as a climate change vanguard, pertaining to both its contribution to international negotiations as well as its internal pursuit of progressive climate change policies (Gupta and Grubb 2000; Jordan et al. 2010a; Oberthür 2009, 192; Oberthür and Pallemaerts 2010b; Oberthür and Roche Kelly 2008; Schunz 2015; Vogler and Bretherton 2006, 2; Wurzel and Connelly 2011, 3). Yet, the EU was not always considered an outstanding leader in environmental and climate politics. It has rather been the US assuming such a leadership role in the 1970s and 1980s with the then European Community still struggling for clear and decisive action towards environmental protection (Vogler 2005, 837; Vogler and Bretherton 2006, 2; Jordan and Rayner 2010, 53). But towards the end of the 80s scientific knowledge on climate change and its anthropogenic causes increasingly carried the day and it was also by this time that the EU began to establish itself as a visible and progressive climate

change actor. With the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988, the hitherto rather scientific debate about climate change started to be transferred to the political level with the IPCC serving as a forum to discuss, accumulate and spread knowledge about causes and effects as well as required reactions to global warming (Bäckstrand and Elgström 2013, 1375). Climate change by this time became an acknowledged and widely debated issue of global governance. This development coincides with the formation of a more systematic and institutionalised EU climate change policy (Wurzel and Connelly 2011, 5) culminating in the recognition of the EU as a "fully fledged actor in UN climate negotiations until 1995" (Bäckstrand and Elgström 2013, 1375). In the following, I will give a brief overview on the legal bases and institutional structures of EU Climate policy, on particular EU positions in international negotiations and on internal policies, programmes and objectives.

6.1.1 Legal Bases and Institutional Structures of EU Climate Policy

Climate change has made it on the EU's institutional agenda at the end of the 1980s, at a time when the scientific debate about global warming and its anthropogenic causes had just gained momentum on a global scale. In 1988, the same year of IPCC establishment, the Commission issued what counts as its very first communication (European Commission 1988) on the issue of climate change (Jordan and Rayner 2010, 54). In the previous year, the Single European Act (SEA) had entered into force and had laid the cornerstone for an institutionalisation of a common European environmental policy which had not existed hitherto (Vogler 2005, 836). Climate change policy was initially mostly seen as part of environmental policy and thus with the SEA and subsequent treaties the EU had acquired considerable competences (Delreux 2014, 1019). However, with the further evolvement of climate change policies, it became clear that matters of energy as well as taxation are likewise relevant for an effective climate policy. In these areas, however, EU member states are much more hesitant until today to transfer competencies to the Union level. An early example for this is the Commission's proposal in 1992 to introduce an EU wide CO_2/energy tax, which the UK, however, declined (Wurzel and Connelly 2011, 6). This constellation is one aspect that makes EU climate policies a matter of *shared competences* (Oberthür 2011, 670; Vogler 2014, 72). What is more, in its current version, the EU treaty clearly ascribes competence in environmental affairs to the Union, yet it likewise emphasises that member states have the competence "to negotiate in international bodies and to conclude international agreements" (Art. 191 (4) TFEU; see also Delreux 2014, 1019). The consequences of such an arrangement are twofold: On the one hand, member states clearly are involved in negotiations and their consent is needed to pass an

agreement. While this seems at first sight to reflect rather pluralist structures with considerable power in the hands of states, Delreux (2014, 1020) has found that more often than not there is a certain "compellingness" for states to agree, because member states do not want to be responsible for bursting a negotiated agreement. Ultimately, *shared competences* not only guarantees the involvement of member states, it otherwise also prevents that states can simply negotiate on their own. The constellation of *shared competences* therefore clearly limits pluralist aspirations. External environmental competences are shared between the Union level and the member states and therefore, multilateral environmental agreements like the latest Paris Agreement are signed and ratified by both, the EU as such and the individual member states. Apart from Art. 191 TFEU, Vogler (2014, 72) points to a second article that establishes EU competences in external representation during international negotiations: Art. 216 TFEU enables the Union to conclude an agreement with other international actors, if such an agreement serves to achieve the objectives provided for in the Treaties. Art. 191 (1) clearly names the combat against climate change as such an objective.

The decision-making process within the EU involves a multitude of actors and therefore reflects the complexity of the arrangement of *shared competences* and the overall hybrid nature of the EU as a foreign policy actor. As defined in the Lisbon Treaty, the Commission has the right to initiative and hence brings the Council to open talks on particular issues (Kaczynski 2014, 63). The Environment Council thereafter is the most crucial institution to prepare the negotiation position. Under its auspices, a working group has been formed in the mid-1990s, which is the main body for the preparation of EU positions and mandates for international negotiations. The structure of the "Council Working Party on International Environment Issues" (WPIEI) once again reflects the mixed competences characteristic: It comprises both member states and Commission representatives and is chaired by the rotating Council Presidency (Kaczynski 2014; Oberthür 2011, 671; Schunz 2012, 13; Schunz et al. 2009, 5).

The system of external representation in international negotiations has improved over time leading to increased coherence of the EU as a climate policy actor on the global scene (Schunz 2012). Overall, the mechanisms of representation have evolved from practice rather than following a fully-fledged deliberate design. During the negotiations for the UNFCCC, mostly it was still member states taking the floor. This had already considerably changed in the run-up to Kyoto, when mainly the Presidency was in charge, assisted by the so called Troika – the previous, the current and the future Presidency, since the Amsterdam Treaty the current and future Presidencies and the Commission (Schunz 2012; Wurzel and Connelly 2011, 11).

In international negotiations, a system of joint representation by both, the Commission and member states has been established. In 2004, a major change was introduced which had become necessary due to two major problems: a lack of institutional memory because of the changing Presidencies and a lack of outreach to third parties because of a too strong focus on the time-consuming internal negotiation and coordination process. Consequently, a new system of representation was put in place: For each agenda item, the Presidency appoints a "lead negotiator" and three additional "issue leaders" who play a central role in the formation and promotion of particular EU positions. These leaders come either from the Commission or from the administrative level of the member states and exhibit a significant level of expertise. Furthermore, they are in office for a longer time than the six months period of the rotating Presidency. Thus, the increased levels of expertise and of continuity enhance the negotiation capacities (Kaczynski 2014; Oberthür 2011, 672; Oberthür and Pallemaerts 2010a, 41; Schunz 2012, 16; Torney 2015). It is important to note, though that the system of lead negotiators is an informal practice that is formally still operated under the authority of the Presidency.

The entry into force of the Lisbon Treaty in 2009 brought about some further changes, the system of "lead negotiators" for external representation, however, remained largely in place. Yet, from 2010 on, EU negotiators would speak from behind the EU name plate rather than the national placard of the respective Presidency (Torney 2015). Most notably, with the Lisbon Treaty, the Commission tried to claim more competence in external representation in environmental and climate change issues (Oberthür 2011, 672; Torney 2015). In this context, the Commission also established two new DGs, which since then deal explicitly with matters of Climate Change: While Climate Change hitherto was dealt with as one amongst many issues by the broader DG Environment, a particular DG Climate Action was established in 2010. Moreover, DG Energy was separated from DG Transport.

The Lisbon Treaty also created the post of the High Representative for Foreign Affairs and Security Policy as well as the European External Action Service (EEAS). The latter had initial difficulties in finding its role in Climate Diplomacy (Oberthür 2011, 672; Torney 2015). In accounts of EU Climate policy and its institutional structures, the role of the EEAS gets strikingly little attention. While this might well be ascribed to its limited formal role in international negotiations, it is still surprising and possibly unjustified for one particular reason: The EEAS's major task is to "lead[...] the process of the climate dialogue with third partners" (Kaczynski 2014, 65). The malfunctioning outreach to third parties, however, was one of the major problems at COP-15 in Copenhagen and tackling this problem has been crucial for

greater diplomatic success of the EU in the negotiations of the Paris Agreement. As part of the efforts to boost diplomatic activity and to build coalitions more effectively prior to major conferences, the Green Diplomacy Network (GDN), initially established in 2002, was re-launched. The GDN is coordinated by the EEAS since 2012. Its major objective is to initiate outreach campaigns and consultations in third countries in order to gather information on other stakeholders' positions and to spread and promote the EU's position. In the analysis of the EU's solidarising impact, I will go into more detail about the GDN and its role, primarily in the run-up to COP-21 in Paris.

Finally, a brief note on the role of the EP in climate policy is appropriate: The EP was initially without formal competences in environmental affairs. This has changed: Following Art. 192 (1), the EP and the Council have equal decision-making powers in environmental affairs. However, the EP's effective influence on environmental and climate policy has nonetheless so far been limited (Wurzel and Connelly 2011, 11–12) because it has no genuine possibility to have an impact on international negotiations. This is all the more noteworthy, as the EP "has developed a reputation over the years of being the EU's 'environmental champion'" (Burns and Carter 2011).

6.1.2 Cornerstones of EU Positions in International Climate Negotiations

From the outset, three central features of EU action in the international climate change regime can be identified. First, the EU has always put a strong focus on a multilateral approach. Thus, its preference has always been to develop comprehensive and universal agreements within the UN regime. Second, the EU has continually favoured a regulatory approach, aiming for clear-cut objectives, such as defined and binding emission reduction targets. Third, in order to induce action in the international climate change regime, the EU pursued a role model strategy, assuming that other actors would follow suit if the EU pushed forward with ambitious emission reduction targets. While the regulatory approach, in principle, is still an EU priority, the Union adapted its strategies later and became more flexible. This increased flexibility was crucial in order to account for matters of political feasibility. The Climate Summit in 2009 had blatantly failed and the EU saw itself sidelined on the international stage. COP-15, therefore became a turning point after which the EU changed its diplomatic strategy, while not completely abandoning its initial preferences. This causes an intriguing tension which I will discuss in more detail below, when analysing the EU's contribution to solidarisation in the climate change regime. In the first instance, the following paragraph shall serve to give a

brief summary of particular negotiation positions that the EU has been putting forward in the course of the international climate change regime's development. For more detailed accounts of this, see for instance Schunz (2012, 2015).

Already in the run-up phase to the Rio Summit in 1992, where the UNFCCC was finalised and adopted, the EU put forward its objective of including clear targets into the convention. The EU's preference was to stipulate in the agreement the stabilisation of Greenhouse Gas Emission (GHGE) on 1990 levels by the year 2000 (Bäckstrand and Elgström 2013, 1375; Oberthür 2011, 669; Oberthür and Pallemaerts 2010a, 29). The formulation of such a clear target was mainly opposed by the United States. The agreed document ultimately represents a compromise between US and EU positions. Rather than setting a clear-cut target, the convention, instead, only uses very broad language to determine in a non-binding manner that parties to the agreement should strive for the "stabilization of greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (United Nations 1992, Art. 2). The EU, thus, had failed (facing primarily opposition from the United States) to include such clear objectives in the UNFCCC. Nevertheless, the more general stabilisation goal, even if formulated in a non-binding manner, still has been the baseline for further cooperation on the issue (Oberthür 2011, 669). Moreover, there were two other issues on which the EU defended a particular position in the UNFCCC negotiations: on the 'Common but differentiated responsibilities'-principle (CBDR) and the precautionary principle.

As regards the latter, it was the EU (back then EC) delegation that suggested and ultimately successfully implemented principle 15 of the Rio declaration, which reads: "Where there are threats of serious and irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective action". This principle indicates that the absence of scientific consensus about the harmfulness of particular actions shall not be used to legitimise non-action on the matter. This was particularly crucial to the climate change regime at a time, when scientific evidence for the anthropogenic causes of global warming was well underway, but not yet fully accepted. And it remains important until today. The precautionary principle turns the logic of the need for action upside down by transferring the burden of proof to those who purport that GHGE might not cause global warming and detrimental effects. As long as there is no clear evidence that global warming *is not* harmful, there is a responsibility to combat climate change. This principle is still crucial for the global climate change regime and has

also become part of general EU law (Art. 191 (2) TFEU). I will come back to the precautionary principle and its relevance for processes of solidarisation below.

As for the CBDR, the EU took a more sceptical stance. While the EU has always been in favour of differentiation within the climate change regime (Interview 2017b), it feared that the CBDR would rather lead to a problematic bifurcation of the regime than to an adequate, helpful and eventually just differentiation. After all, the EU had to accept the incorporation of the CBDR into the convention (Art. 3 UNFCCC), in order to safeguard its completion. But it did so reluctantly (Bäckstrand and Elgström 2013, 1675). As is known, the EU was quite right in anticipating a problematic bifurcation of the regime, which has later also contributed to the regime's deadlock and ineffectiveness. Again, I will return to the implications of the CBDR for solidarisation later when I discuss the EU's contribution to processes of solidarisation.

For the next milestone of the global climate change regime, the EU's positions had not tremendously changed: During the negotiations for the Kyoto Protocol, the EU continued to promote a top-down or regulatory approach, to wit clear and legally binding targets without flexibility on the actual commitments that states make by signing the protocol. In the negotiation phase, the US was reluctant to follow such an approach, but then followed the EU's lead (Bodansky 2013, 40). On the other hand, the EU did not support the idea of flexible mechanisms, such as international emission trading, which the US promoted emphatically. Ultimately, the EU agreed in order to keep the US on board. As is known, this strategy worked initially, but ultimately could not prevent the US withdrawal from the Kyoto Protocol under President Bush jr. in the early 2000s. Furthermore, somewhat ironically, the EU was later the one to develop the first fully-fledged emission trading scheme (ETS) (Wurzel and Connelly 2011, 8), which became a cornerstone of its internal climate change policies as well as a model to other actors (see section 6.1.3 for further details).

After the adoption of the Kyoto protocol in 1998 the focus turned immediately to an effective implementation of the new treaty. In this phase, the EU's role was crucial. While the US withdrawal from the Protocol in 2001 put the whole process in serious jeopardy, it at the same provided an opportunity for the EU to finally assume a leadership role in order to fill the void that had emerged. Rescuing the Kyoto Protocol in spite of missing US support, therefore became its major mission, which it accomplished for instance by ensuring Russia's ratification in exchange for support for its WTO candidacy (Bäckstrand and Elgström 2013, 1376; Zimmermann 2007). The EU's effort and overall political activity in convincing other actors to

ratify the protocol was paramount (Vogler and Bretherton 2006; Falkner et al. 2010) to secure the Kyoto Protocol's survival.

With the entry into force of the Kyoto Protocol in 2005, post-Kyoto negotiations started promptly. The international community had planned to proceed with the negotiations in a way that would have allowed to adopt a new comprehensive and binding agreement at the 2009 Climate Summit in Copenhagen (Bodansky 2013, 43; Falkner et al. 2010, 256; Schunz 2012, 17–18). As is known, COP-15 eventually turned out as a tremendous failure and three years before the expiration of Kyoto's first commitment period a follow-up agreement did not seem within reach. Instead of a new binding agreement, the *Copenhagen Accord*, largely drafted by the United States and the BASIC countries (Falkner et al. 2010, 257) is hardly more than the least common denominator, on which the rather non-reformist, non-progressive actors had left their clear mark. The EU with its preference for a binding treaty with clear commitments of all countries for climate change mitigation, was not reflected whatsoever in the outcome document. Hence, most observers and commentators consider the 2009 summit in general and the EU's performance in that context as failure (ibid., 252). Bodansky (2013, 42), in contrast, asserts that "the Copenhagen meeting was far from the flop often portrayed". While COP-15 certainly was unable to fulfil the high expectations that had been raised for this meeting, he argues that it still constitutes an important step in the development of the climate change regime. It introduced a crucial change in the regime which paved the way for the agreement reached in Paris in 2015. COP-15 was a huge disappointment for those who had expected a major breakthrough for Copenhagen, but nonetheless "it did not cause the international process to collapse altogether" (Falkner et al. 2010, 253). Instead of the regulatory, top-down logic of clear targets, the Copenhagen Accord introduced the bottom-up architecture of voluntary pledges, which was part and parcel of the breakthrough reached in Paris. Falkner is certainly correct when he points out that the Paris Agreement acknowledges the dominance of states in climate change politics and, as a consequence, the fact that it is not possible to simply force states in a top-down logic to reduce GHG. His assessment of the Paris Summit outcome therefore is that it entails "a reassertion of a pluralist logic of decentralised coordination that protects national sovereignty" (Falkner 2018, 40). While his argument cannot be fully dismissed, I will argue later in this chapter that the reproduction of pluralist structures depicts only half of the Paris Agreement's story. It likewise entails solidarising moves, which I will demonstrate below (see section 6.3.6). At this point, the aim is a more basic one, namely to describe the positions that the EU has put forward in the shift that the development from Kyoto via Copenhagen towards Paris entails.

A considerable part of the blame for the Copenhagen failure is often put on the Danish Presidency of the Summit. Yet, beyond that the EU's strategy in pursuing its objectives was flawed. Two interrelated aspects are worth mentioning: Until COP-15, the EU continued promoting clear targets and based its strategy mainly on the assumption that its own ambitious normative agenda combined with efforts at persuasion would bring others to follow suit. Moreover, the EU seemed to ignore the fact that power structures had tremendously changed and that newly emerging powers would have the capacities to successfully promote their own, much less reformist agenda (Hurrell and Sengupta 2012). In such circumstances, marked by highly dispersed power structures, leading by example turned out to be extremely difficult (Wurzel and Connelly 2011, 9). Hence, rather than relying on the normative persuasiveness of its own position, the EU would have had to put much more effort in coalition-building and the active organisation of outreach to other actors (Bäckstrand and Elgström 2013; Oberthür and Groen 2017a; Biedenkopf 2016; Schunz 2012, 2015).

It seems that the learning effect from Copenhagen for EU diplomacy could not have been greater: In the aftermath of COP-15 and the run-up phase to the Paris Summit, the EU clearly changed both these aspects. It became more flexible on its principled normative approach and it enhanced its engagement in systematic coalition-building and external outreach.

Regarding its strategy in the aftermath of Copenhagen and the run-up to Paris, the EU changed its diplomatic strategy and improved its efforts on coalition-building and outreach to third actors significantly (Bergamaschi et al.; Biedenkopf 2016; Davis Cross 2017; Kaczynski 2014; Oberthür 2016; Oberthür and Groen 2017a; Oberthür and Wyns 2014).

In a nutshell, the following points summarise neatly, the major positions that the EU has (at times successfully) promoted in the global climate change regime from UNFCCC to Paris:

- Focusing the work towards an agreement on multilateralism and thus on the UN framework instead of other fora.
- Striving for a comprehensive and binding treaty that commits all countries to GHGE reduction.
- Stipulating clear-cut emission reduction targets (the EU became more flexible in the immediate run-up phase to Paris).
- Establishing rules and review mechanisms that help ensure transparency and potentially foster the effectivity of the agreements.

- Overcoming the dichotomisation of the climate change regime between developed and developing states by repelling the CBDR or at least an all too state-centric interpretation of it.
- As regards the diplomatic strategy, the EU initially focused on a leading-by-example approach reckoning that the EU's own normative vanguardism would allow others to follow this model. When this strategy had turned out to be ineffective, the EU directed its diplomatic activity much more on effective coalition-building as well as early and effective outreach to third actors.

6.1.3 Cornerstones of EU's Internal Climate Change Policies

While the EU has already played a significant role in setting up the UNFCCC in 1992, for some time it has been lagging behind in developing a corresponding internal climate change policy framework (Wurzel and Connelly 2011, 5) – a circumstance for which the EU has garnered considerable criticism. Such a clear-cut and ambitious internal climate policy, however, is crucial if the EU wants to present itself as a credible climate change actor on the international scene. At the same time, the EU's ambitious external climate change agenda is likewise essential because the benefit of pursuing ambitious policies single-handedly would be extremely limited due to the EU's relatively small share in global GHGE (10% of global emissions in 2015; (European Commission 2017c). The internal policies and the external role in the global climate change regime therefore are closely linked. In the course of the time, the EU has put some efforts in reducing the gap between external enthusiasm and internal idleness (Oberthür and Pallemaerts 2010a, 28). The following section aims at briefly illustrating the development of internal EU climate policies. It cannot provide, however, more than a short overview of the most important decisions and implemented measures. There exist excellent and more detailed accounts of these developments (Oberthür and Pallemaerts 2010a; Jordan and Rayner 2010).

As early as in 1990, the EU formulated a clear target: The stabilisation of CO_2 emissions until the year 2000 on 1990 levels, on condition that other actors would follow suit and commit themselves in a similar way (Jordan and Rayner 2010, 56). For the UNFCCC negotiations, the EU advocated the same target to be included in the agreement. This course of action exemplifies two characteristics of early EU strategy in the climate change regime: First, the preference for a regulatory approach with clearly formulated targets and second, the assumption that setting an example and acting as a role model would trigger progress in building an

effective regime. With this concrete suggestion, the EU indeed gave proof of its principally progressive agenda: No other actor had by that time brought forward any comparable proposal (ibid., 56). The problem, however, was that the EU's formulated commitment was not backed up by appropriate internal implementation measures. At the time, the EU failed to specify concrete steps, such as burden sharing mechanisms and concrete action plans, how to achieve this goal (Oberthür and Pallemaerts 2010a, 29). This lack of implementation impinged on the EU's overall credibility as a progressive and committed climate change vanguard. Ultimately, EU adoption and ratification of UNFCCC went by without appropriate internal policies that would guarantee UNFCCC's effective implementation (Wurzel and Connelly 2011, 5–6).

A far-reaching attempt to internally foster the implementation of the agreed target was the Commission's suggestion to introduce the already mentioned European CO_2/ energy tax, which however did not gain the required unanimous support by member states (ibid., 6). During most parts of the 1990s, progress towards a more effective internal climate change policy was rather limited. In fact, an emission reduction was nonetheless achieved in the 1990s. Yet, this was largely due to German unification and changes in the UK energy market (from coal to gas) (Jordan et al. 2010b, 10) and can thus not be attributed to climate change policies.

In 1996 a significant change in wording occurred in EU policies: Instead of a "stabilisation" of emissions, the Environment Council now explicitly formulated the objective of considerable "reductions" as well as the concrete limitation of global temperature rise to not more than 2° C above pre-industrial levels (Jordan and Rayner 2010, 62). Until today, the 2° target is a major baseline, not only for the EU, but for the international climate change regime.

In terms of implementation, a step forward was reached towards the end of the decade, when – initially in 1997, followed by an adjustment to provisions of the Kyoto Protocol in 1998 – the first burden sharing agreement amongst EU member states was successfully negotiated. With this agreement reduction targets were distributed amongst member states (including the permission for some countries to increase GHGE) amounting to an overall reduction within the EU of 9.2% by the year 2012 as compared to 1990 levels (but see Haug and Jordan 2010 for difficulties and downsides of burden sharing). The 1997 agreement, thus, was slightly more ambitious than the EU's 8% reduction commitment under the Kyoto Protocol. Yet, it was still less than the 15% reduction that the EU had aimed for during the negotiations of the Kyoto Protocol (Oberthür and Pallemaerts 2010a, 33–35).

After the adoption of the Kyoto Protocol in 1998, the EU urgently needed to boost its internal measures for emission reductions and more efficient energy use, in order to be able to deliver on their own commitments under Kyoto. The 2000s brought about some progress. That EU climate policies really got off the ground by that time, is also due to the fact that climate change was discovered as an effective issue to boost the weakening internal enthusiasm for European integration (Dupont and Oberthür 2015b, 4). In June 2000, the Commission launched the *European Climate Change Programme (ECCP),* which was mandated to develop policy measures that would allow the EU to ratify the Kyoto Protocol quickly after its adoption as well as to contribute to its implementation. Most notably, the EU Emission Trading Scheme (EU-ETS), launched in 2005, was envisioned within the ECCP. The EU-ETS became the cornerstone of the EU's regional climate change regime and also served as a model for others. This is all the more remarkable, as such a *cap-and-trade* instrument constitutes a renunciation of previous policy preferences, as it sets aside a traditional regulatory approach in favour of a market-based, cost-effective instrument as major tool to achieve emission reduction targets. Similar to the CO_2 tax, which had been suggested by the Commission in the early 90s and rejected by some member states, an ETS puts a price on emissions. In contrast to it, an ETS does not affect taxation policies and therefore could be adopted with simple majority voting.

While the EU had still been extremely suspicious about the US preference for flexible market mechanisms during the Kyoto negotiations, the Commission put forward a first proposal (European Commission 1998) for an EU-ETS as early as in 1998, thus immediately after the Kyoto Protocol's adoption. The proposed directive (COM (2001) 581) was then adopted in 2003 (EU Council 2003c). The quintessence of an ETS is that it sets an overall emission cap. In its first two phases (2005-2007 and 2008-2012), the EU-ETS though faced some problems, which emanated mostly from the fact that the overall cap was not determined centrally by the Commission, but by the member states. Whether the ETS has led to effective emission reduction, is much contested in the literature. Less debated, however, is the fact that member states tended to overallocate emission allowances so that the reduction effect was limited (van Asselt 2010, 129–130). This problem was addressed in a revision of the EU-ETS brought about by directive 2009/29/EC (EU Council 2009a) as part of the 20-20-20 targets (see p. 146 of this work). This regulation mainly stipulates that from 2013 onwards the definition of the emission target is centralised within the Commission and has to decrease annually by 1.74% (until 2020) and by 2.2% (from 2021 onwards) (Meadows et al. 2015, 30). In addition, the directive enhances the role of auctioning in emission trading and states that 50% of the revenues are to

be used for mitigation and adaptation purposes (van Asselt 2010, 131). As regards the effectivity of the EU-ETS to induce real emission reductions, the assessment varies amongst different scholars. The ETS covers approximately 50% of EU CO_2 emissions and was extended further with the inclusion of all flights between European airports (Meadows et al. 2015, 38). An inclusion of international aviation has been proposed by the Commission in early 2017 (European Commission 2017d).

Likewise in 2005, the Kyoto Protocol entered into force (see above for the EU's crucial role in safeguarding the actual ratification of the Kyoto Protocol after US withdrawal) and henceforward the focus for internal policies as well as external strategies was on the post-2012 period, i.e. after the expiration of the first commitment period under the Kyoto Protocol. Since that time, the EU has brought forward three major internal policy frameworks for tackling climate change.

(a) The *2020 climate and energy package* got off the ground in 2007 with the adoption of the so called 20-20-20 targets by the Council in March (EU Council 2007). In detail, EU leaders had agreed to a 20% reduction of GHGE by 2020 (compared to 1990 levels); a 20% share of renewable energies in overall EU energy consumption by 2020 and 20% improvement of energy efficiency by 2020. Moreover, the EU again pursued the idea to act as a model and to bring others to follow their example. Hence, beyond the 20% emission reduction target, it committed to a 30% reduction, on condition that "other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capacities" (EU Council 2007, 12). These targets became EU law in 2009 with the adoption of several directives (2009/29/EC → emission trading; 2009/28/EC → renewable energy; 2009/31/EC → storage of carbon dioxide). Except for energy efficiency, the targets are binding (Dupont and Oberthür 2015b, 3). The package testifies to the EU's rather ambitious targets, since at the time no other developed countries and major emitters had published any comparable targets (Bürgin 2015; Skovgaard 2014, 3). The 20-20-20 target also served as the basis for the main negotiation position of the EU at the 2009 Climate Summit.

(b) The *2030 climate and energy framework* builds on the 2020 package and was adopted in 2014 by EU leaders. It includes the following targets: 40% emission reductions by 2030 compared to 1990 levels; 27 % share of renewable energy in overall energy con-

sumption and an improvement of energy efficiency of 27 % (the energy efficiency target is non-binding). Whether these targets are ambitious enough, is still contested. Bürgin (2015) argues that the shift from the 2020 targets to the 2030 framework, which he thinks constitutes a tremendous decrease in ambitions, debunks the Commission as a "brakeman". Likewise, in the follow-up negotiations to the 2020 package, Skovgaard (2014) observes an increasing divide within the EU amongst those who expect climate change policies to be beneficial to economic growth and those who fear detrimental economic effects. This divide, which is partly as consequence from the financial and economic crisis in 2008/09, Skovgaard argues, hampers ambitious climate policies. While acknowledging that the crisis has lowered the enthusiasm for climate change policies in the EU, Dupont and Oberthür (2015b, 6) in contrast, point out that "the EU's 2030 targets still nominally are the most far-reaching among the major international players" (see also Oberthür 2016, 4). Certainly, the ultimate assessment will depend on the success of the concrete implementation measures for reaching these targets.

(c)   Both the 2020 and the 2030 policy frameworks constitute intermediate targets on the way towards the long-term objective of decarbonisation. This objective has been more clearly formulated in the *2050 low-carbon economy roadmap* (European Commission 2009), which sets out the following targets: 80% emission reduction by 2050 compared to 1990 levels (with 40% by 2030 and 60% by 2040 as intermediate objectives). Hitherto, the 2050 roadmap has not been backed up by appropriate policy measures, but it still serves as a long-term political goal. It "remains in line with scientific estimates of the effort to combat climate change [...] [and] provides a suitable benchmark for assessing the state and progress of EU climate policy" (Dupont and Oberthür 2015b, 7).

Finally, setting targets and adopting policy measures is one thing, whether implementation is effective and the targets are accomplished, is another. So, what stage is the EU at in terms of target achievement? In 2012, the end of the first commitment period of the Kyoto Protocol, the EU-15 had not only fulfilled their 8% GHGE reduction commitment, but even had lived up to its original 15% objective (ibid., 4). Moreover, the EU-28 had already achieved a 22.12% emission reduction in 2015 as compared to 1990 levels (Eurostat 2017a). It is therefore likely, that the 2020 target will be achieved. The same holds true for renewable energies and energy efficiency: As of 2015, the share in renewable energies increased to 16.7% (compared to 8.5% in 2004) (Eurostat 2017b) and the energy efficiency has improved up to 12% in 2014 compared to 2004 (Dupont and Oberthür 2015b, 6).

6.2 What is Solidarisation in the Climate Change Regime?

6.2.1 The Relevance of the Pluralist-Solidarist Debate for Climate Change Politics

> In the long run it is unlikely that action at the purely state level will be sufficient to cope with environmental dangers, and the functionality of the states system […] will depend upon the emergence of a greater sense of human cohesion than now exists. However, the idea that the states system should be regarded as obstacle to the development of this greater sense of cohesion, rather than as the means through which it may come to take shape, is an unhelpful one (Bull 2002, 284).

The above quote represents a snapshot of a debate amongst English School scholars whether a pluralist international society can accommodate institutionalised mechanisms for environmental protection or whether some movement towards solidarism is required. Is international cooperation that aims at protecting the environment or more specifically at combating global warming, per se a manifestation of a solidarist move in international society? Or should also a pluralist international society provide some possibility for environmental protection, as Buzan (2004, 145) argues?

In setting out his classical anarchical society, Hedley Bull asserts that environmental issues in most cases come along with invocations of solidarism (Bull 2002, 81). As also indicated by the above quote, cooperation for environmental concerns entail solidarism to the extent that it exceeds basic forms of cooperation (ibid., 67; 284; see also Falkner 2018, 34). And yet, also from a pluralist perspective which prioritises the value of order on a state-centred basis, the complete ignorance of environmental concerns most likely puts this very order into jeopardy. Bull identified three primary goals of any kind of society, including an international one. These are LIFE (some level of protection against death or bodily harm → restrictions to the use of force), TRUTH (some level of reliability as regards promises, agreements and contracts → *pacta sunt servanda* as core principle in *International Law*) and PROPERTY (some level of stability in the distribution of ownership → mutual recognition of national sovereignty as inalienable right of states) (Bull 2002, 4; cf. section 3.3.1). The conscious pursuit of such elementary goals is part and parcel of any social order, including Bull's classical pluralist international society (ibid., 13). Clearly, the devastating effects of global warming severely impinge on the pursuit of at least two of these goals: Rising sea levels, for instance, pose an immediate threat to some members of international society, notably, small island states. If these threats are ignored, their survival is put to risk, which possibly entails a remarkable disruption of the international order. As Bull points out, both the preservation of the international society as a whole, as well as of particular states are an elementary goal (ibid., 16). But even less extreme

scenarios affect the ability of international society to pursue its elementary goals. For instance, the increase of severe natural disasters and resulting flows of migration induced by climate change affect international order – and in particular a pluralist conception of such order, since increased migration flows transcend state borders. It is in this sense that climate change has increasingly been represented by various actors and to various degrees as a security issue rather than a purely ecological one (Diez et al. 2016). Against this backdrop, it is indeed persuasive to argue that a pluralist international society, too, needs to provide for environmental protection to a certain degree. It is possible to justify cooperative measures to fight global warming purely based on arguments that refer to the persistence of pluralist international society and its members, i.e. states. Thus, some measures for adaptation to and mitigation of climate change are fully in line with a strictly state-centric, pluralist order. It is, however, much more questionable whether a pluralist order without any remarkable moves towards solidarism would indeed be able to effectively deal with climate change and to produce comprehensive solutions to the problem. As Hurrell claims, some level of solidarism is indispensable:

> Whatever view one takes about the state itself, the ecological challenge has undoubtedly served to call into question both the practical viability and the moral acceptability of state-based pluralist international order (Hurrell 2007a, 222).

The reasons for the indispensability of solidarism in environmental matters and in climate change in particular, are threefold: First, the problem of climate change per se is transnational and therefore exceeds the pluralist logic of a state-centric order. Neither the detrimental effects of Greenhouse Gas Emissions (GHGE) nor the benefits of GHGE reduction follow any territorial logic. States with the highest emission rates are not necessarily those who suffer the most from the consequences. And it is not possible to exclude states that are not willing to cooperate from the benefits of mitigation measures. Second, the norm of environmentalism per se entails solidarist elements. On the one hand, environmental protection is invoked as a means to foster individual rights. The link between climate change and the fulfilment of individual human rights is increasingly acknowledged on the international agenda (OHCHR 2015). Thus, while a strictly state-centric reasoning for climate policies is in principle conceivable, the reality looks much different and we find many references in public and political discourses that put individuals and their rights in the centre of the climate change debate, thereby enhancing the role of individuals as subjects in international society. On the other hand, Falkner points out that environmentalism has a second solidarist dimension, which

even exceeds the classical notion of solidarism: Environmental protection cannot only be framed as focusing on individuals' rights, but it can take the planet as such as its referent object. In this second version, not only human beings are entitled to certain rights, but the earth itself would be considered a legitimate bearer of rights in international society (Falkner 2018, 31). A third reason why climate change in particular necessitates some movement towards solidarism, is the degree of complexity of the required cooperation. There are three central issues at the core of the climate change problematique that require an extraordinarily high degree of cooperation. It is therefore barely conceivable that international society deals with climate change without that it moves further towards its solidarist pole as captured by the first indicator. These highly complex issues, firstly, evolve from normative tensions and dilemmas that are inherent to climate change as a problem of global governance: Who exactly should bear the biggest share of the costs for adaptation to and mitigation of climate change as induced by past emissions? On the one hand, it seems appropriate to argue that rather those actors should be in charge who have historically contributed the most to climate change. Yet, on the other hand, this raises further questions: Would this logic also apply to today's GHGE? Should those whose historical GHGE are lower, be entitled to more GHGE today for the sake of equal benefit and in order to prevent the further amplifying of existing economic and developmental inequalities? Even in the unlikely case that one is still apt to answer both these questions with a clear and confident 'yes', one would still need to take into account questions which allude to intergenerational justice. The right to development as agreed upon by the UN General Assembly in 1986 (A/RES/41/128) is indicative in this context: To insist on the right to development today by pointing to historical disadvantages, yet without adequately taking into account the consequences of ongoing global warming, disentitles future generations of the exact same right. Their right to development as well as a whole list of further human rights are put in jeopardy by such reasoning. The same holds true if the planet as such is considered a legitimate claimant of rights and thus worthy of protection in and of itself. These considerations only introduce the most crucial and fundamental dilemmas that lie at the core of the climate change regime.

The non-territorial logic of GHGE and climate change poses a second difficulty for cooperation: The incentives for free-riding are extremely high for individual states because the negative effects of their non-cooperation will automatically be carried by everyone, whereas the efforts to reduce GHGE will be for the benefit of every state, regardless of their particular contribution.

And thirdly, the fundamental character of change that is needed to effectively get to grips with global warming renders cooperation extremely complex: Ultimately, a fundamental change in the structure of the international political economy towards de-carbonisation is crucial (ibid., 35).

To sum up, while the norm of environmental protection is not necessarily a manifestation of solidarism in international society, the specific features and qualities of climate change as an issue of global governance, exceed the boundaries and logics of a state-centric conceptualisation. Climate change, therefore, constitutes an external condition that has the potential to force international society towards a more solidarist structure (Buzan 2004, 261–262).

At the same time, however, the current structure of international society in general and in the issue-area of climate change in particular, still is relatively pluralist in character. A quite extensive regime has evolved with a broad variety of different institutional structures, bodies, agreements, standards and arrangements (Abbott 2012; Keohane and Victor 2011). The IPCC, founded by the World Meteorological Organization (WMO) and the UN Environment Programme (UNEP) in 1988, is supposed to provide scientific knowledge on Climate Change and to feed it into the political processes. Over time, it has gained a good reputation of being a credible and objective resource on the scientific basis of climate change. Resorting to leading scientists' expertise and providing transparent procedures for the creation of their scientific reports (IPCC 2017), the IPCC appears as relatively independent source of information and also over time has become more internationalised so that individual states' influence has decreased (Siebenhüner 2003). However, already the name captures that also the IPCC reflects pluralist traits of international society: It is *intergovernmental* and made up of representatives of member states, who alongside the scientific experts have the chance to comment on the drafting procedure of the scientific reports and assessments. This illustrates that although climate change entails considerable solidarist elements, the regime structure that is supposed to govern the problem, is still mostly state-centric, i.e. pluralist in character. This raises an interesting tension between pluralist realities in the structure of international societies and the requirements to move further towards solidarism in order to tackle pressing problems of global concern. Thus, the pluralist-solidarist debate is extremely well-suited to analyse the regime and change within it.

As argued throughout this thesis, the EU embodies an extremely similar inherent ambiguity between state-centric structures on the one hand, and a transformational impetus towards

solidarisation on the other hand. This makes the EU's contribution to solidarisation in the issue-area of climate change a highly interesting field of research.

6.2.2 Issue-Specific Indicators

This section draws on the three indicators of solidarisation as abstractly deduced from the literature (section 3.4) to spell out how processes of solidarisation might occur in the issue-area of climate change. What exactly does it mean to say that international society in its concrete manifestation in the climate change regime has moved towards its solidarist pole? How precisely could the EU contribute to such processes? At the end of this section, *table 4* summarises these issue-specific indicators.

(1) **Enhancement of the degree of cooperation amongst states:** As in the human rights case, this indicator embodies a rather light version of solidarisation. It is not as fundamental as the other two indicators because it neither implies the challenging of states as primary and exclusive constituents of international society nor a re-interpretation of sovereignty as the most elementary principle of international society. In the issue-area of climate change and pertaining to *International Law*, solidarisation along the lines of this indicator means that cooperation to strengthen the regime is enhanced. Thus, any push for the development of more far-reaching regulations to bolster the combat against global warming constitute solidarisation. The EU would, for instance contribute to such processes, if it acted as a leader in international negotiations, pursuing ambitious targets to be agreed upon by the international community. Any moves of the EU that aim at strengthening international cooperation in climate change or at enhancing existing international law provisions would constitute a solidarising move.

As regards the primary institution of *Diplomacy*, this indicator means that cooperation is enhanced by increasing diplomatic contacts and by intensifying the overall diplomatic activity.

(2) **Strengthened role of individuals and other non-state actors:** In the issue-area of climate change and with reference to the primary institution of *International Law*, solidarisation in this sense occurs if a thoroughly state-centric logic of the regime (and its underlying international law provisions) is challenged or partly overcome. Solidarisation in this sense would materialise, for example if individuals and non-state actors became a reference point for the debate about global warming, including considerations

of global justice. Recalling a formulation quoted earlier: A solidarist version of international society entails "that the development, the well-being, and the dignity of the individual human being are a matter of direct concern to international law" (Lauterpacht 1946, 27). Thus, to foster solidarist elements in the international climate change regime, the EU would need to promote the idea that there is an obligation to combat global warming in order to save people from its harmful effects. It is not required, though, that individuals are the exclusive reference point of such reasoning. But concern for individuals would at least complement other arguments, such as the necessity to protect the international order from collapsing or to avert severe detrimental effects on financial and economic systems. To be quite clear: The protection of the international political order or of particular economic systems can likewise serve the well-being of individuals. Thus, it would still constitute a solidarising move if the EU pursued the safeguarding of the international order *in order that* the well-being of individuals is ensured or enhanced. This discussion therefore has a direct link to the debate about the relation between climate change and human rights. While this link is meanwhile widely discussed and figures high on the agenda of e.g. the HRC and the UNFCCC, the Paris Agreement of 2015 was the first legally binding multilateral environmental agreement to include a direct reference to human rights (see the preamble). Environmental organisations promoting the relevance of climate change for individual rights protection, have considered this a "watershed moment" (Human Rights and Climate Change Working Group 2017). Such a change of language definitely constitutes a process of solidarisation and the analysis will have to bring to light, whether the EU has played any proactive or supporting role in this context.

As regards *Diplomacy*, the EU would contribute to solidarisation following this indicator if it promoted the active inclusion of non-state actors in the diplomatic process. In contrast to the first indicator, this inclusion would be more fundamental in character and thus challenging the primacy of state actors in the diplomatic activities. Concrete possibilities for such involvement would be for instance, if the EU focused their diplomatic action and outreach activity not only on states, but also on non-state and civil society actors. Even more so, active coalition-building with civil society in order to pursue its agenda and implement its objectives in the regime or in order to increase pressure in negotiations would constitute solidarisation in this context.

(3) **Reinterpretation of national sovereignty:** The EU would contribute to solidarisation in *International Law* according to the third indicator if it worked successfully towards

stipulations in international law that decrease the opportunities of states to use national sovereignty concerns as excuse for non-action. The *precautionary principle* which I have introduced above (see p. 138) as a cornerstone of the EU's position in the international negotiations points in this direction. The analysis in 6.3 will elaborate in more detail on how this principle constitutes solidarisation and the EU's role therein. Another option for the EU to enhance solidarism in the climate change regime, would be to work towards the implementation of principles in international law provisions that emphasise commonalities between states and similarities of how they are affected by global warming rather than constantly pointing to differences amongst them.

A re-interpretation of national sovereignty in the *diplomatic process* would occur, for instance if the EU worked towards the establishment of institutional mechanisms in the regime that aim at exposing states' action regarding climate change to the scrutiny of the international community. Such a mechanism as institutionalised diplomatic practice implies solidarisation in that it entails the exposure of the sovereign autonomy of states to the community.

		Primary Institutions	
		International Law	**Diplomacy**
Solidarisation in the Issue Area of Climate Change	**Extension of Rules of Cooperation**	- Moving cooperation forward (or safeguarding its continuation) - Promoting ambitious regulations and clear emission reduction targets - Working towards strengthening the regime through reaching agreement on clear regulations and universal treaties - Promoting the precautionary principle in order to move cooperation forward where it is at risk to break down	- Enhanced diplomatic activity - Intensification of diplomatic contacts and outreach
	Strengthened Role of Non-State Actors	- Challenging of a purely state-centric logic of the regime - Promoting individuals as reference point and as legitimate claimants of rights (e.g. in justice considerations) - Promoting the precautionary principle in IL as an obligation to act for the well-being of people/ preventing harmful effects of global warming for individuals - Promoting the idea that there is a clear link between climate change and the protection of individual human rights	- Fostering the active involvement of non-state actors in the diplomatic process - Active outreach towards civil society and non-state actors - Effective coalition-building with civil society in climate change negotiations
	Reinterpretation of Sovereignty	- Promoting the precautionary principle in order to prevent national sovereignty concerns being used as excuse for non-action - Overcoming a regime logic that emphasises differences between sovereign states rather than commonalities in how they are affected by global warming	- Working towards the establishment of institutionalised diplomatic practices that expose states' sovereignty by putting their action within the regime under scrutiny of the international community

Table 4: Issue-Specific Indicators – Climate Change

6.3 Processes of Solidarisation in Climate Policies and the EU's Contribution

This section will provide an account of the EU's role in the climate change regime using the solidarisation lens as developed in the theory chapter as well as in the previous section, in which I suggested issue-specific indicators for solidarisation on the climate change regime. The analysis is bound to resort to the preceding sections time and again. The focus will be explicitly on where and to what extent we can identify processes of solidarisation in the climate change regime as well as whether and how the EU has contributed to such change. Rather than following a chronological structure, I will in the following discuss milestones in the climate change regime and the EU's contribution to them. The following subtopics, which will be covered in the analysis, arise from the issue-specific indicators:

- the general advancement of the climate change regime → IL_1
- the precautionary principle → IL_1; IL_2; IL_3
- the CBDR principle → IL_1; IL_3
- the link between climate change and human rights → IL_2
- the change in diplomatic strategies towards broader outreach and coalition-building → D_1; D_2; D_3
- the implications and effects of the regime's latest cornerstone, i.e. the Paris Agreement → IL_1; IL_3; D_1; D_2; D_3

6.3.1 The EU and the General Advancement of the Climate Change Regime

Section 6.1 has already revealed that the EU from the late 1980s onwards assumed an active and at least partly also influential role within the international climate change regime. Climate change figured high on the EU's own agenda and the Union has been committed to pursue this agenda on the international level. With some delay, the EU also moved its internal climate change policies forward in order to add authority to its international activity and to enhance its own credibility. For the EU's acting on the international level as well as the furthering of its internal agenda, we can put on record evident successes (e.g. ensuring the ratification of the Kyoto Protocol), difficulties and obstacles (e.g. the bifurcation of the regime through the non-commitment of emerging economies under Kyoto) as well as failures (e.g. no follow-up agreement to Kyoto reached at the Copenhagen summit).

To avoid too much repetition, I will not re-narrate the history of the global climate change regime and the EU's role therein in more detail. From the previous sections, we can take for

granted that the EU indeed contributed to advancing the climate change regime on several occasions. Thus, the conclusion that the EU has contributed to solidarisation according to IL_1 does not come as a surprise. While this conclusion is indeed correct and noteworthy, it is revealing to take a closer look at how exactly the EU has contributed to move the climate change regime forward.

'Advancing the climate change regime' can mean at least two different, sometimes opposing things: On the one hand, as captured by IL_1, enhanced cooperation can be put into practice by agreeing on regulations that are as clear-cut and as strict as possible. In that sense, an international treaty, which stipulates for each party an unequivocal emission reduction target and ideally sets out sanctioning mechanisms in case of non-compliance, would constitute an extreme high degree of solidarisation. Evidently, this did not materialise. The EU has for a long time fought for the inclusion of clear reduction targets into international agreements, though with only limited success. The UNFCCC negotiations are a good example: The EU promoted clear reduction targets, but only a general agreement on "the stabilization of greenhouse gas concentrations [...] that prevent dangerous anthropogenic interference" (United Nations 1992, Art. 2) could be reached. With its solidarising move, the EU had aimed for a greater level of solidarisation but faced opposition. Some level of solidarisation, however, was reached nonetheless. On the other hand, 'advancing the regime' carries another, more modest meaning: Reaching a new agreement at all and if possible one that is binding on and finds support by as many parties as possible. Even if such a universal agreement does not impose clearly defined reduction targets for all states, it can still enhance the degree of cooperation by setting out pathways and mechanisms for such cooperation in the future. These two meanings correspond to *depth* vs. *scope* of the solidarising process and unsurprisingly, there can be a certain tradeoff between them (Voigt 2016, 161). Up until COP-15, the EU took a very principled stance on both these dimensions of the solidarising process. As is known, this was not successful. The Copenhagen Accord hardly entails any solidarisation, neither in terms of its scope, nor in relation to the depth of its regulatory power. As Schunz (2012, 18) points out: "With its substantive proposals oriented at problem-solving, the Union was unable to react flexibly to the continued reluctance of other players to decisively engage on global climate policies in the final stages of the talks." In the aftermath of Copenhagen and in the run-up phase to Paris, the EU compromised about the depth dimension by being more flexible on its position about a top-down regulated approach (Oberthür 2016, 4). It did not at all, however, weaken its solidarist agenda with regard to the scope dimension and worked constantly towards reaching a universal and binding agreement that would be endorsed by all parties.

I will come back to this aspect below when discussing the implications of the Paris Agreement. Here, I shall focus on the time frame prior to the Paris negotiations. I have outlined in 6.1 that a thoroughly multilateral approach within the climate change regime, aiming at universal agreements on the UN level, is one of the major cornerstones of the EU's position in international negotiations. Such an approach has been put under jeopardy with the growing bifurcation of the regime. There were points in time when a splitting up of different strands of cooperation in the climate change talks was likely to happen: The Bali Action Plan (UN-FCCC 2007), the outcome document of the 2007 climate summit, established two different negotiation tracks under the auspices of two Ad hoc working groups – one on 'Long-term Cooperative Action' (AWG-LCA) and one on 'Further Commitments for Annex I Parties under the Kyoto Protocol' (AWG-KP)[12]. Both working groups focused on different parts of the negotiations: Whereas the AWG-KP mainly focused on reduction commitments of industrialised countries under a second period of the Kyoto Protocol, the AWG-LCA was concerned with issues, such as commitments for emerging economies, obligations of industrialised countries to support adaptation measures as well as technology transfer and cooperation from industrialised to developed countries (Bals 2009, 7; Jordan and Rayner 2010, 72; Schunz 2012, 17). It remained unsettled in Bali, whether these two tracks should co-exist for the time being, but then be merged in one comprehensive legally binding agreement to be reached in Copenhagen or whether after all, they should result in two differentiated agreements (Bäckstrand and Elgström 2013, 1377). As this illustrates, it was by no means self-evident that the climate talks would lead to a single comprehensive treaty at some point, which was the clear EU preference (Oberthür 2011, 669). Two statements illustrate the conflictive positions in the negotiations. A statement on behalf of the G77 and China at an AWG-LCA session in 2008 expounds that "[t]he AWG KP and the AWG LCA are two complimentary parallel processes" (G77/China 2008). The speaker furthermore emphasises that both AWGs are based on a *different* mandate and pursue *different* tasks. He, thus, voices the reluctance of developing countries to pursue "a single outcome or one-track approach as it would undermine the dichotomy between developed and developing countries" (Bäckstrand and Elgström 2013, 1377). In contrast, the EU has insisted on merging both negotiation tracks in order to reach a common and universal agreement:

> We are committed to reaching a global, ambitious and comprehensive agreement here in Copenhagen. An agreement which keeps global warming below

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[12] The AWG-KP was already in place since 2005, whereas AWG-LCA was newly established by the Bali Action Plan (UNFCCC).

2 degrees and which encompasses all nations of the world. It should be detailed, cover all the Bali building blocks, enable immediate action and build the best possible foundation for a long term cooperative effort. (EU Council 2009b, 15).

The EU made clear that it "can not see a scenario coming out of Copenhagen where there is a new binding agreement solely in the Kyoto Protocol" (ibid., 14), meaning that eventually only the AWG-KP negotiation track would lead to an agreement with new commitments being confined to industrialised countries.

Thus, the establishment of two different negotiation tracks, endangered also the scope dimension of the solidarising process, because it impinged upon the level of cooperation by furthering the bifurcation of the regime. Eventually, a major change was achieved in Durban (COP-17) in 2011 and the EU has played a crucial role in shaping the Durban outcome. The *Durban Platform for Enhanced Action* sets out to end the Bali negotiation tracks by 2012 and initiates a new negotiation process to be finalised in Paris 2015. This new process "makes no obvious distinction between developed and developing nations" (Hurrell and Sengupta 2012, 472) and instead demands "the widest possible cooperation by all countries" (Durban Platform, quoted in ibid., 472). This formulation illustrates well that the overcoming of the regime's dichotomisation entails solidarisation along the lines of $\mathbb{IL}_1$, because it enhances the level of cooperation. For the EU, agreeing in Bali to the establishment of two negotiation tracks, was a necessary concession that enabled the continuation of the negotiations at all. Meanwhile, the EU has, however, never abandoned the aim of overcoming this split and constantly promoted the goal of reaching a comprehensive agreement, universal in scope, as the above given quote illustrates. As Oberthür (2016, 3–4) points out, the EU played a decisive role in the creation of the Durban mandate and thus in paving the way for a comprehensive international treaty.

Thus, with respect to the 'General advancement of the climate change regime', we can put on record that the EU brought forward far-reaching solidarising moves in terms of its preference for a regulatory approach, which faced opposition and were therefore less successful. Yet, in terms of the strengthening of cooperation through reaching universal and comprehensive agreements, the EU was more successful. Once again, rather than inflexibly insisting on its preference for a one-track approach, an ambiguous concession, i.e. the split established by the Bali mandate, was essential for this outcome.

In this section, I have discussed the dichotomisation of the regime under the aspect of enhanced cooperation (IL_1). It is likewise closely connected to the CBDR principle, which I now turn to.

6.3.2 The EU and CBDR

The CBDR has for a long time been a core principle of the international climate change regime and it remains to be one. It constitutes a major cornerstone and has been reconfirmed by the majority of actors time and again, most recently in the Paris Agreement. It has, however, never been an uncontested principle and its exact meaning and implications are a matter of debate.

This section elaborates on the implications of the CBDR for solidarisation and I argue that the CBDR as it is enacted in the climate change regime reflects and underpins a rather pluralist order. The EU's sceptical stance on the CBDR and its attempts to repel the principle's fundamental significance in the regime, therefore constitutes a solidarising move and this has partly led to successful solidarisation processes, mainly along the lines of IL_3.

The CBDR builds a centrepiece of the climate change regime since the early 1990s and is enshrined in the UNFCCC (preamble; articles 3 and 4). The principle clearly reflects a crucial dilemma that lies at the core of the climate change regime: States have historically contributed in varying degrees to global warming and they have unequal capacities to combat the consequences of climate change nowadays. Thus, the CBDR was meant to promote "equity" (United Nations 1992, art. 3 (1)) within the regime. From a justice point of view, there are good reasons to defend the CBDR. On the other hand, the CBDR poses severe problems to the regime's effectiveness. To accommodate the CBDR, UNFCCC has introduced different annexes that differentiate countries in disparate groups: Developing countries are supposed to focus on adaptation and are entitled to appropriate financial and technical support due to their restricted capacities. Developed countries, in contrast, shall concentrate on mitigation measures and thus on actual emission reduction. This split is still the basis for the Kyoto regime. While differentiation must certainly be a legitimate concern in international climate negotiations, this clear cut classification of different kinds of countries is problematic. It reproduces an international society that is marked by severe differences between particular kinds of sovereign states, rather than taking into full consideration that global warming is a problem that affects the international community as a whole. In this sense, the concrete realisation of the CBDR principle in the climate change regime reflects a pluralist and thoroughly state-centric

international society.[13] The resulting dichotomy within the climate change regime has over the years prevented further progress and effective change towards effective mitigation of global warming and has ultimately been a major source for the deadlock of international climate talks. As a commentator of the European Centre for Development Policy Management has pointed out shortly before the Paris summit, where the CBDR was on the agenda: "CBDR, however, could be a huge barrier to a strong settlement" (ECDPM 2014).

The EU, as most representatives of the Global North, has always taken a sceptical stance on CBDR and only reluctantly agreed to its incorporation in the UNFCCC (Bäckstrand and Elgström 2013, 1675). Nonetheless, the EU supports the idea that the climate change regime must accommodate different responsibilities and capacities (Interview 2017a, 2017b, 2017f). Yet, it rejects the rigid dichotomy that had been put in place and that had been further reinforced by the Kyoto Protocol. The EU, therefore tried to repel the dominant pluralist form of differentiation as manifest in the CBDR. An important partial success was reached at the Durban summit (COP17) in 2011, as the Durban Platform for Enhanced Action makes no reference to the CBDR and to equity as core principles of the regime (Hurrell and Sengupta 2012, 427). As discussed above (see 6.3.1), the EU played an essential role in the Durban process.

The CBDR also was a major source of contestation in the negotiations that led to the adoption of the Paris Agreement. The latest climate change treaty does in contrast to the Durban Platform, mention the CBDR again (preamble; art.2+4). However, Paris "makes no fundamental distinction between developed and developing countries and provides that all Parties shall account for their contributions" (Obergassel et al. 2016, 35). Most notably, while acknowledging differentiation as a legitimate and necessary part of an international climate deal, the Paris Agreement does not mention the Annex-I and non-Annex-I categories and therefore manages to incorporate developing states' concern for historical responsibilities of industrialised countries while at the same time not exempting developing states from reduction commitments. In this sense, the Paris Agreement has manages to pay attention to "dynamic aspects of differentiation" and "has struck a careful balance between the need for ambitious climate action and for fair effort sharing among parties based on differentiation" (Voigt and Ferreira 2016, 285).

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[13] Such a state-centric interpretation of the CBDR is not a logical necessity, as the more philosophical and theoretical debate on climate justice suggests (see e.g. Neumayer 2000 for an individualistic approach to climate justice).

As regards the EU's contribution to this outcome, it is again difficult to trace with any accuracy the exact pathways of influence by the EU. Evidently, the US was likewise active in pushing back the CBDR and its resulting binary distinction between developed and developing states. My more modest claim here is to argue that still the EU amongst others has contributed to reaching this outcome and thus to overcoming the regime's strong bifurcation. During the Paris negotiations, the EU rejected "unacceptable bifurcated proposals [by the G77] for quantified commitments for public finance by developed countries only" (internal delegation document quoted in Dimitrov 2016, 5). In promoting this position, however, the EU was less hard-line than the US (ibid., 5), which again corroborates the claim that a seemingly ambiguous, pragmatic attitude can be more effective. As Oberthür (2016, 4) notes, the EU "taking a moderately progressive stance" was crucial in reaching both, the Durban and the Paris outcome.

As became clear, the underlying issue of the debate about the CBDR are concerns for social justice on domestic but also on global levels. In that respect, it is noteworthy that the Paris Agreement contains an innovative wording when it refers to the "imperatives of a just transition" (United Nations 2015, preamble) to low-carbon economies. "Just transition" is a manifestation of the attempt to overcome the severe dichotomisation of the climate negotiations. It re-enforces, on the one hand, the absolute necessity of such a transition, but it entails at the same time that such processes must take into account "those countries, social groups, economic actors etc. that may result as net losers from climate policies" (Interview 2017a). Up to the present, I have not found any evidence that the EU endorsed the new concept in official documents. However, EU policy makers from EEAS and DG CLIMA alike have highlighted that "just transition" as an innovative concept in climate discourse is significant (Interview 2017a, 2017b, 2017f), which indicates that the concept has been taken up favourably on the level of policy makers.

6.3.3 The EU and the Precautionary Principle

In section 6.1.2, I have pointed to the precautionary principle as a cornerstone of the EU's position in international climate negotiations. A comprehensive definition has been suggested, for instance, by the UNESCO: "When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish harm." (UNESCO 2005, 14). In the context of climate change, essentially, it means that there

is an obligation to take effective measures against global warming, if there is the risk – however uncertain this risk may be – that global warming might cause harm to the environment or to human beings (Bourguignon 2016). Thus, the principle prevents that the lack of full scientific evidence for the harmfulness of global warming can be used as a legitimising reason for non-action. The precautionary principle is a manifestation of solidarism in the primary institution of *International Law* on several levels, as all three 𝕀𝕃 indicators suggest. According to 𝕀𝕃₁, the precautionary principle calls for further cooperative action amongst states even in case of scientific uncertainty. It follows therefore not only a preventive logic (averting an imminent danger), but a pre-emptive one (averting a potential danger, even in light of uncertainty whether this danger will materialise). To the extent that invocations of the precautionary principle refer to individuals' well-being and the necessity to protect those individuals from harmful effects, also 𝕀𝕃₂ points to solidarising effects of the principle. Finally, and most importantly, the precautionary principle establishes a close link between sovereignty and responsibility and is thus reflected in 𝕀𝕃₃. If the precautionary principle takes effect in the practice of international law, it creates an obligation for states to act, even if such action is in conflict with their immediate interests as sovereigns. Both, its pre-emptive logic as well as its implications for sovereignty make precaution a "quite radical principle[...]" (Hurrell 2007a, 225) in *International Law.*

The precautionary principle has its seeds in environmental policies indeed, but has spread to other fields, such as health as well. Moreover, the principle has gained in importance for trade relations. On several occasions the EU has taken measures against particular products (e.g. genetically modified food) on the basis of precaution. Resulting disputes with trading partners were brought to the WTO (Euractiv 2002).

The first codification of the precautionary principle in EU law appeared in the Maastricht Treaty in 1993, which stipulates that environmental policy of the Union shall follow this principle. In contrast to the Union level, the principle was more contested in some of its member states (Douma 2000, 132) with Germany acting as a frontrunner in favour of precaution (Bourguignon 2016, 1;4). Since then, precaution is a deeply entrenched principle in internal EU policy (European Commission 2000) and has also on several occasions influenced disputes before the ECJ (Bourguignon 2016, 10–11). Based on its role in ECJ case law, Douma (2000, 141) even concludes that within the EU "it is preferable to describe [the precautionary principle] [...] as a legally binding norm" rather than simply a general policy guideline. It is today included in Art. 191 TFEU, which states core principles of European environmental policy.

According to the enormous significance of the precautionary principle in EU law (treaties, secondary regulations as well as ECJ case law), the EU was also a very strong – if not the strongest promoter of the principle in international environmental negotiations. Precaution is relevant to any environmental policy and the EU was also, for instance, the leading force behind the inclusion of precaution in the Cartagena Protocol to Convention on Biodiversity in 2000 (Vogler 2005), but the focus here will be on international climate change negotiations.

In this context, most importantly, during the Rio summit in 1992 it the EC delegation suggested and promoted the precautionary principle most actively. Following the EC's suggested formulation, it was finally included as principle 15 in the Rio Declaration (ibid., 843). During the same meeting, the international community adopted the UNFCCC, including its Art. 3(3), which reads:

> The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures […] (United Nations 1992, 9).

The EU's action in international climate change negotiations, thus, seems to correspond to the fact that "European policy on climate change is in fact grounded on the precautionary principle" (Schmidt 2008, 85). Outside the EU, I am not aware that any other country except for Australia (Bourguignon 2016, 6) has incorporated the precautionary principle in its environmental policy. This fact provides further evidence that the acceptance of the precautionary principle is most advanced in Europe. Taking into account, on the other hand, that the principle is still contested on the international level, makes it plausible to assume that the EU is an important driving force behind inclusions of the principle in international agreements. The Paris Agreement makes no explicit reference to the precautionary principle. Yet, the Paris process as a whole reflects the idea of precautionary action as its purpose is to set forth institutional mechanisms and pathways to respond to the uncertainties of an unhalted rise in global temperature. As some observers have pointed out (Morales 2015), the precautionary principle is implicitly entailed in the Paris Agreement through its ambition mechanism, whose relevance for solidarisation as well as the EU's role for its promotion, I will discuss in more detail in section 6.3.6.

The discussion about the issue specific indicators for solidarisation has revealed that the establishment of a clear link between human rights and climate change entails a process of solidarisation. This link bears several interrelated dimensions: First, as outlined before, it constitutes an act of solidarisation if *International Law* increasingly recognises that climate change is not only an environmental issue, but a social one that has an impact on the lives of individuals and their well-being. Second, not only climate change itself affects human rights, but also policies that are implemented to combat global warming do so. Therefore, incorporating human rights considerations into climate change policies constitutes a process of solidarisation, too (Duyck and Gouritin 2017, 6).

The issue has been on the international agenda for quite some time, but it was only recently with the Paris Agreement that a major step towards an official acknowledgement of the link between human rights and climate change was made because the Paris Agreement is the first legally binding treaty that recognises such a link. Within international climate negotiations, the Cancun Agreement of 2010 was the first document that made explicit reference to human rights in the form of a rather broad vision (UNFCCC 2011, 2; 4). Yet, this remained largely without any impact on implementation (Interview 2018). Prior to Cancun, for instance the HRC (Human Rights Council 2009) had recognised the severe impact that climate change can have on the enjoyment of human rights. Being the first legally binding stipulation of such a link, the Paris Agreement is considered a "watershed moment" (Human Rights and Climate Change Working Group 2017) by those civil society organisation that had advocated for such a reference for a long time. Regarding the way this reference came about in the final agreement, an interview with a civil society representative was revealing (Interview 2018): The interviewee who has been following climate negotiations closely for a long time and who attended all COPs in the last 10 years reported that the EU has indeed often been a strong promoter of a link between human rights and climate change. More specifically, in the Paris negotiations, the debate had developed in a way that the option of having no human rights reference at all, was off the table. However, there were still disputes about what kind of reference should be made and where exactly in the Agreement this should be placed. The strongest advocates for the human rights-climate change link promoted a reference in the operative part of the Agreement, ideally in its Art. 2. In February 2015, the EU still "was one of the champions promoting human rights very ambitiously" (ibid.) and it thus sided with this position. This changed in September 2015, when the EU was only in favour of a human rights

reference in the preambular part of the Agreement. This solution carried the day. As the interviewee reported, the reason for the change in the EU's position were considerations of political feasibility. The argument was that insisting on a human rights reference in the operative clauses would put the overall outcome and other crucial features of the Paris Agreement, such as the ambition mechanism, into jeopardy because of the intense politicisation this this entails. While it is not a groundbreaking insight that compromises are sometimes needed in order to bring about agreements, this particular adjustment is intriguing under the ambiguity lens. We have noted that it is a clear contribution to solidarisation along the lines of IL_2 if the EU promotes a strong link between human rights and climate change. It is also plausible that an inclusion of such a reference in the much more specific and concrete operative part of the Paris Agreement would have been a stronger political signal. The EU's shift towards supporting an inclusion in the preamble thus can be interpreted as backpedalling on its solidarist agenda. Indeed, civil society organisations that were strongly promoting a more forceful reference were slightly disappointed by that shift (ibid.). However, as explained, this was done to safeguard the overall outcome of the Paris negotiations and in particular the ambition mechanism, which constitutes a pivotal part of the solidarising dimension of the Paris Agreement (see section 6.3.6). The EU's change of position thus ambiguously constituted a step back in terms of solidarisation in order to ensure stronger prospects for more solidarisation.

Subsequent to Paris, other COP decisions of Marrakesh (COP-22) and Bonn (COP-23) have moved on and have also included human rights references in a more operative sense and the overall discourse has changed in a way that "negotiators are no longer rolling their eyes" (ibid.) if confronted with the link between human rights and climate change.

The EU itself further supports a rights-based approach to climate change, as for instance in Council Conclusions on Climate Diplomacy (EU Council 2016, 2018). Yet, it has also been noted that for instance the EU's most recent report for the UNFCCC only includes a rather marginal human rights reference (European Commission 2017f, 111), and misses to flesh out a more comprehensive account of how to further advance this link. Such mixed results notwithstanding, we can put on record that the EU contributed to bring about a human rights reference in the Paris Agreement. Its strategy to do so was ambiguous to the extent that it compromised over where to include the reference, but eventually this has contributed to enhance further solidarisation through the Paris Agreement.

6.3.5 The EU and its Change of Diplomatic Strategies

Partly as a consequence from the failure in Copenhagen, the EU has re-arranged its diplomatic activity in the run-up phase to Paris. In this section, I argue that the readjustment of EU climate diplomacy constitutes a solidarisation of the EU's diplomatic practice. This process was paramount to the EU's contribution to solidarisation in the global climate change regime (D_1; D_2; D_3). As an interviewee from the EEAS has pointed out, with a change in its diplomatic strategy in the run-up phase to Paris, "the EU became a grown-up" (Interview 2017d) in climate diplomacy.

Two ways in which the EU could contribute to solidarisation in the primary institution of *Diplomacy* suggest themselves: First, the EU could promote the active inclusion of civil society actors in the diplomatic process and enhance outreach to civil society (D_2). Second, the EU could deliberately gear its diplomatic activity towards the overcoming of structures that emphasise a strong dividing line between particular states, i.e. between developing and developed states. In this sense, active coalition-building that aims at underlining commonalities between different states constitutes a solidarising move (D_3). On a more general level, this also contributes to D_1 because this ultimately leads to an intensification of diplomatic contacts and overall activity. This second aspect, thus, corresponds to what I have discussed in 6.3.2 under IL_3, but covers here change in diplomatic practices that enabled solidarisation under D_3 and D_1.

As discussed in 6.1.2, prior to the Copenhagen summit the EU's diplomatic strategy relied mostly on the normative persuasiveness of its own position. This has led to a lack in active coalition-building and outreach campaigns. This section illustrates, how the EU revised its diplomatic strategy after COP-15 (although it did not fully abandon the leadership by example approach (European Commission 2013c, 10)) and how this has contributed to solidarisation.

Regarding the inclusion of non-state actors at the Paris summit, there is, first of all, evidence for a non-solidarist development: Access to negotiation sessions at COP-21 was extremely restricted. NGOs were excluded and were only enabled to follow these sessions from the outside through video transmission (Dimitrov 2016, 2). While this constitutes a non-solidarist element in terms of D_2, I have no data about the EU's particular position on this practice, such as whether the EU supported it or tried to prevent NGO exclusion. Moreover, this does not mean, that there was no civil society involvement at all in the Paris process or that no solidarising move whatsoever according to this indicator was undertaken. In contrast, active outreach to and through non-state actors was essential in the EU's realignment of diplomatic

activity in the run-up phase to Paris. It was the EU's declared goal to enhance elements of public diplomacy, i.e. outreach to foreign publics (Davis Cross 2017, 10; 16; EEAS and European Commission 2013). In this process, the EU also promoted the role of celebrities in gaining public support for a strong and far-reaching new international climate deal (Neslen 2015). Prepared by the EEAS and its Green Diplomacy Network (GDN) as well as DG CLIMA, the EU implemented the *EU Climate Diplomacy Action Plan* of early 2015 (European Commission 2016a; Oberthür and Groen 2017a, 13). The action plan outlines a strategy which is very explicit about the significance of addressing and involving non-state actors to achieve political mobilisation:

> We must also target and involve national parliaments, local authorities, civil society, the private sector and journalists at home and abroad. These actors are playing an ever increasing role in the climate debate and must be included in our dialogues to ensure the securing of a transparent and inclusive post-2020 international climate change agreement. Particular focus should be put on mobilizing the private sector as a major source of financing and of innovation to tackle climate change (EU Council 2015a, 1).

As part of its diplomatic activity for climate change, the EU had also established the *Global Climate Change Alliance (GCCA)* already in 2007. In 2014, a new phase of GCCA was launched under the *GCCA+ flagship initiative*. This updated version of the GCCA testifies to the solidarisation of the EU's diplomatic activity by explicitly promoting "[e]nhanced cooperation with Non–State Actors and Civil Society Organisations as well as new alliances with new stakeholders such as the private sector" (GCCA 2015, 3) as a new feature.

Thus, there is evidence that solidarising processes took place in EU climate diplomacy according to D₂. This solidarising process was a deliberate part of a general realignment of EU diplomatic activity which aimed at ensuring an ambitious climate deal in Paris. The exact impact of such measures is hard to demonstrate. Nonetheless, it seems plausible to assume that these activities have contributed at least to some extent to enabling a new international climate agreement. The evidence for such a facilitating impact of solidarisation in EU diplomacy is much greater with regard to D₃ and D₁, i.e. bridge-building outreach to third actors in order to overcome structures in the climate change regime that used to emphasise difference among sovereign states.

I have illustrated above, how the EU through its particular stance on the CBDR has contributed to minimise the climate change regime's bifurcation between developed and developing states. Another aspect of the EU's realignment of climate diplomacy has served this very pur-

pose. Much more than prior to Copenhagen, the EU organised active outreach and close exchange to third actors, in particular a number of developing and most vulnerable countries, such as Small Island Development States (SIDSs) and Least Developed Countries (LDCs). This happened through various diplomatic channels and fora.

For instance, the above mentioned GCCA/GCCA+ aims at strengthening dialogue and cooperation with developing countries by providing an exchange structure, but also financial support to developing countries. Through a number of programmes in more than 30 countries, the GCCA intends to mainstream climate change considerations in development processes at an early stage (Davis Cross 2017, 12). This contributes to D_1 in that it intensifies diplomatic cooperation, but also to D_3 because it aims at overcoming major differences.

Furthermore, the GDN is crucial in this context and a significant manifestation of D_1. Initially established in 2003, it was relaunched as part of the broader diplomatic renewal prior to the Paris summit (Torney 2015). Since the entry into force of the Lisbon treaty, the EEAS is in charge of the GDN. Through local branches in third countries, the GDN aims at initiating outreach campaigns and consultations in these countries in order to gather information about other stakeholder's positions on climate issues as well as to promote the EU's position. This improved dialogue with third countries rather than relying solely on the persuasiveness of its own normative position, has enhanced the EU's impact on the negotiations (Davis Cross 2017, 11) and played a crucial role in establishing the Durban Platform – a first significant step towards overcoming the regime's dichotomisation (Davis Cross 2017, 11; Obergassel et al. 2016, 35; Oberthür 2016, 3–4).

Another crucial network for bridge-building between developed and developing states was the *Cartagena Dialogue for Progressive Action* (Biedenkopf 2016; Oberthür 2016). The same informal structures and diplomatic links culminated during the Paris summit in the formation of the *high ambition coalition*, which played a major role in bringing about the Paris Agreement (Oberthür and Groen 2017a; Interview 2017b, 2017f). Together with Norway, the EU played a crucial role in forming this group of ambitious countries from different regions (Brun 2016, 121) – a process that was already being prepared since the Durban summit in 2011. Initially an alliance between the EU and a number of smaller developing countries, the coalition managed to gain support by the US, Japan and Brazil, the latter being particularly important because it split up the traditionally non-progressive BASIC group (Obergassel et al. 2016, 10). As an EU official reported, "even China was on board [of the high ambition coalition] – even if not formally" (Interview 2017b). To take "the lead in bridging between developed

and developing states" (ibid.) was the EU's major objective behind such activities. By this means, the EU enhanced solidarisation according to D_1 and D_3 and thus contributed to bringing about the Paris Agreement, which constitutes a solidarising moment in and of itself, as I will discuss below under the next section.

6.3.6 The EU and the Paris Agreement

COP-21 with the adoption of the Paris Agreement has been praised as the "most successful climate change conference ever" (Kinley 2016, 1). The expectations were immense and the pressure on the international community to produce real progress and to demonstrate its willingness and ability to address global warming, accordingly, was enormous. The following discussion of the Paris Agreement's implications for solidarisation provides an interesting and revealing perspective on the question how and to what extent the new treaty has advanced international climate protection.

Robert Falkner argues: "But it is clear that the outcome of the Paris COP in 2015 signals a retrenchment of solidarist ambition and a reassertion of a pluralist logic of decentralised co-ordination that protects national sovereignty" (Falkner 2018, 40). In this section, I argue – at least partly – against Falkner. The Paris Agreement does indeed tie in with pluralist structures. It seems to incorporate pluralist reservations against far-reaching solidarist change. But Falkner's argument – while not entirely wrong – is only the first part of the Paris Agreement's story. Allowing for a pluralist logic looks like a retrenchment of solidarism only at first sight. On closer inspection, we find that a certain degree of a pluralist logic has *enabled* rather than *prevented* further solidarisation. Specifically, solidarisation in the Paris Agreement is captured by IL_1 and IL_3 as well as D_1, D_2 and D_3. The Paris Agreement, thus, is the most striking example for how ambiguity facilitates change.

Kinley (2016, 1) identifies a "shift in emphasis towards national action" in the Paris Agreement and this seems to correspond to what Falkner has interpreted as a "reassertion of a pluralist logic" (Falkner 2018, 40). The most evident pluralist element of the Paris Agreement is the shift from the regulatory Kyoto regime, based on established reduction targets towards a pledge and review system. This constitutes indeed a profound turnaround in the regime. This switch, however, is not a spontaneous one, but the regime was heading towards such a change already since the Copenhagen Summit (Bodansky 2013, 36; Falkner et al. 2010). The eventual agreement reached in Paris was nonetheless a breakthrough and could not be expected to happen with any certainty. Part and parcel of the new agreement are the so called

Nationally Determined Contributions (NDCs)[14]. Thus, instead of establishing emission reduction targets for all countries in a centralised manner, it is up to the states themselves to determine how much of a contribution they will make to achieve the overall goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change (Paris Agreement, Art. 2a).

In contrast to the Kyoto Protocol, the Paris Agreement therefore acknowledges that "none of the major powers can be forced into drastic emissions cuts" (Falkner 2016, 1108). The pluralist bit consists in the fact that states take a fully sovereign decision about their individual contribution to climate change mitigation and adaptation. By this means, the treaty accommodates the relevance of states as sovereign actors and of the diversity among them. The Paris Agreement, thus, sets out to embracing the political realities of an international society, which still holds considerable pluralist features. This, however, does not preclude solidarising tendencies in the Paris Agreement. The NDCs represent only the "pledge" part of the "pledge and review" system. As discussed in section 6.2.1, it is a characteristic feature of the climate change problématique that its transnational nature calls for solidarism, while at the same time the structure of international society is such that states will inevitably need to play a decisive role. Solidarism as understood throughout this thesis is not synonymous with the dissolution of an international society of states. But it means that alternative structures which entail a different understanding of cooperation, of the role of states and other actors and of state-sovereignty underpins this society of states. And this solidarist underpinning can be more or less radical. In this sense, the Paris Agreement is not – and cannot be – devoid of pluralism and at the same time entails many pathways towards solidarisation.

What are these solidarist elements and how are they captured by the indicators provided in this framework?

The Paris Agreement entails a number of obvious aspects, which constitute solidarisation according to IL_1: To begin with, while the 2°C goal had been agreed prior to 2015 by the international community, the above quoted article 2a constitutes its first stipulation in a legally binding international treaty (Kinley 2016, 2). It thus clearly constitutes an advancement

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[14] Countries had started submitting *Intended* NDCs (INDCs) already in preparation of the Paris conference. Once a respective country ratifies the Paris Agreement, INDCs become NDCs, unless the country indicates otherwise or submits an updated NDC (Keohane and Oppenheimer 2016, 147).

of international law. Moreover, the treaty entails a commitment to de-carbonisation of the international economy and to work towards ending the era of fossil fuels by "aim[ing] to reach global peaking of greenhouse gas emissions as soon as possible" (United Nations 2015, art. 4.1). However long-distance this goal may be and in spite of the apparently difficult concrete implementation, the inclusion of such objectives in an international agreement exceeds the basic rules of cooperation and therefore entails solidarisation.

The more intriguing incidence of solidarisation, however, lies elsewhere: Art. 4 establishes a mechanism which puts the NDCs under international review. The Paris Agreement obliges states to submit NDCs on a regular basis. i.e. every five years (Art. 4.9). The submissions are put on public record (Art. 4.12; UNFCCC 2017). Furthermore, the Paris Agreement establishes an ambition mechanism by requiring that successive NDCs "will represent a progression [...] and reflect [a Party's] highest possible ambition" (Art. 4.3). This mechanism is extremely significant, since it ensures that "backsliding from past pledges is explicitly outlawed" (Bergamaschi et al., 11). Moreover, Art. 15 establishes a mechanism to facilitate implementation of such a review system. This mechanism largely consists of an expert-based committee, the exact functioning of which still needs to be negotiated. With Art. 15, the Paris Agreement clearly addresses the issue of compliance, but does so in a cautious way in order not to endanger overall support. "This balance has seemingly been struck by the establishment of 'a mechanism to facilitate implementation of and compliance with the provisions of the agreement'" (Voigt 2016, 162).

The review/ambition mechanism constitutes a solidarising effect according to several indicators: First, it exposes national sovereignty to the scrutiny of the international community (IL₃). States are formally entitled to take a fully sovereign decision about their respective contribution to global GHGE reduction. There are no specifications about how detailed particular types of action have to be stated, allowing relatively great latitude to each state. On the other hand, "it was virtually impossible to refuse to submit [INDCs]" (Keohane and Oppenheimer 2016, 146). And the unanticipated number of submissions prior to the Paris summit (Keohane and Oppenheimer 2016, 146; Kinley 2016, 2) testifies to the fact that states indeed felt bound by the core idea of the new regime setup. NDCs have to be submitted by Parties on a regular basis and with an increasing degree of ambition, which further restricts the sovereign decision-making authority of states. To put it simply, states do not have the – sovereign right – to reduce their commitment over time, and they are even obliged to raise and upgrade their activities gradually. The public record of NDCs constitutes a solidarising element because it

clearly exposes states' sovereign decision to the international community's and the public's scrutiny. The solidarising effect would have been even greater if the Paris Agreement had also determined that the national pledges shall be assessed systematically rather than just published. Such an individual assessment would have provided for greater transparency, but was very much contested, because "major developing countries […] perceived this system as infringing their national sovereignty" (Brun 2016, 119). Instead, article 14 of the Paris Agreement stipulates a system of regular global stocktakes in order to assess collective progress towards effective implementation and towards achieving the long-term 2°C goal. The global stocktaking is supposed to take place "two years ahead of each new national pledging cycle" (ibid., 119). A direct review of national pledges would have been an even stronger incident of solidarisation according to IL_3, but the combination of collective tracking with public record of national pledges, is still considerable.

In addition to IL_3, this also relates to D_3, since the public recording affects the diplomatic process to the extent that it creates a system of institutionalised pressure on states to actually live up to their commitments and to provide increasingly ambitious NDCs. Furthermore, the review/ ambition mechanism also clearly aims for solidarisation according to D_2, in particular because it creates opportunities as well as the need for a stronger role of non-state actors in the climate change regime. The just outlined system of institutionalised pressure strongly depends on civil society actors and transnational NGOs to contribute to this pressure by creating a discourse that indeed challenges states to come up with ambitious objectives and to actually live up to them. As Falkner points out, the increasing importance of local initiatives and of e.g. multinational enterprises who pursue low-carbon business models has induced a transnationalisation of the climate change regime since the late 2000s (Falkner 2016, 1111–1112). The Paris Agreement clearly seems to build on such developments, thus providing opportunities for stronger solidarisation according to D_2.

Such a solidarist move towards a stronger role of non-state actors seems in principle desirable in terms of regime effectiveness and in terms of making the review mechanism work. However, debates at COP-22 in Marrakesh in 2016 have brought to the fore potential downsides of such a solidarising process (Interview 2018): At this meeting, concerns were raised that states would try and simply transfer responsibilities to the non-state actor level. As long as the fundamental underlying structure is still an international society that consists of states (even if not exclusively), such a tendency would imply an impairment of the regime's effec-

tiveness, because states might be tempted to abdicate from their own responsibilities. A solidarist move towards an enhanced role of non-state actors (D_2) thus is only a normatively desirable and progressive move, if it implies a clear connection to the state level. The review/ambition mechanism provides such a connection. This allows once more for the conclusion that the parallelism of pluralist and solidarist structures is paramount and ultimately constitutes the more crucial step towards change than a complete detachment from a state-centric international society would mean. Whether and in what exact way non-state actors will indeed increase their impact on the global climate change regime remains to be seen. But the Paris Agreement certainly opens up for further solidarisation in terms of D_2.

This is also the only pathway towards solidarism that Falkner acknowledges in his discussion of the Paris Agreement. The greater involvement of non-state actors, he argues, is a response to the retrenchment of solidarism that he otherwise sees in the Paris Agreement (Falkner 2018, 40–41). Yet, as I have demonstrated, the Paris Agreement entails solidarist elements also according to other indicators than D_2, which are, however, overlooked by Falkner or underestimated at least. This illustrates the added-value of the differentiated indicators of solidarisation which allows us to identify solidarising processes on various levels and in diverse forms.

Having established that the Paris Agreement entails solidarising elements in parallel to the NDCs, which indeed embody a pluralist logic of international society, the question is to what extent and how the EU has contributed to the outcome of the COP-21 in general and more specifically to solidarising processes in the Paris Agreement.

In 6.3.5 I have illustrated how a solidarist change in the EU's diplomatic strategy in the run-up to and during the Paris conference has contributed considerably to the agreement that was ultimately reached. Rather than on the diplomatic process, which has led to the adoption of the Paris Agreement, this section focuses on the content and the substantive provisions that the new treaty establishes.

As pointed out, since the early 1990s the EU has promoted a strong regulatory approach in international climate talks, aiming for the inclusion of clear emission reduction targets in legally binding agreements. With the NDCs as the new regime's cornerstone, the Paris outcome seems to be a renunciation from such a regulatory approach, which forms the basis of the Kyoto Protocol. Thus, the conclusion suggests itself that the EU was not able to carry its point and that other, presumably less ambitious actors overruled its core positions. This, however, is too narrowly considered.

While the EU after Copenhagen would still have preferred a binding, non-flexible agreement with clear targets, it was more attentive of the overall political structural conditions and the resulting political feasibility. The EU now took a "moderately progressive stance" (Oberthür 2016, 4) and pursued a more "pragmatic strategy" (Bäckstrand and Elgström 2013). Essentially, the EU had departed from its objective of agreeing on binding international targets and got into the new structure of NDCs. This change in strategy is a direct consequence of the EU's failure to influence the Copenhagen negotiations in a way that would have led towards an effective agreement in 2009. The regime, basically, was gridlocked at that time. And the EU's negotiation strategy up until that point had proved ineffective: "With its substantive proposals oriented at problem-solving, the Union was unable to react flexibly to the continued reluctance of other players to decisively engage on global climate policies in the final stages of the talks." (Schunz 2012, 18). Thus, the EU's quite principled, absolute and non-flexible position had inhibited further solidarisation in the climate change regime.

Some have interpreted the shift towards more flexibility and towards another regime structure as a renunciation of the EU's objectives in the climate change regime and thus as failure of EU climate policy. Yet, while the initial strategy was different and in general the EU still prefers clearly formulated, binding targets for all states, it was not simply overruled by actors with opposing preferences. Instead, acknowledging that their initial preference is not politically feasible, it actively promoted the idea of a hybrid regime (Interview 2017f), which is now entailed in the Paris Agreement. The review/ ambition mechanism was one of the top priorities of the EU for the Paris negotiations (EU Council 2015d; Interview 2017f). The EU had proposed such a mechanism and advocated for its inclusion in a new agreement already long before the Paris summit (European Commission 2013c, 4). There was severe opposition to the incorporation of such a mechanism in the final agreement, mainly by a group of like-minded developing countries (Obergassel et al. 2016, 33). That the mechanism is now enshrined in the Paris Agreement, thus, was by no means self-evident, but is a result of the negotiations, to which the EU had contributed considerably and effectively (amongst other things, through its increased cooperation with and outreach to developing states. See 6.3.5).

Apart from the essential ambition mechanism, the EU's further priorities for Paris (EU Council 2015d) were the adoption of a comprehensive international treaty binding all states and addressing all relevant issue areas (such as mitigation, adaptation, finance and technology transfer) in one treaty as well as clear and steady rules in order to enhance transparency and accountability (Oberthür and Groen 2017a, 8). Both is now reflected in the Paris Agreement,

although it had been predicted that with Copenhagen the time for a comprehensive and universal climate treaty had passed (Falkner et al. 2010).

A communication of March 2013 (European Commission 2013c) gives a comprehensive summary of the EU's objectives for the new agreement to be adopted in 2015 and illustrates well the considerable match that exists between the EU's priorities and the actual outcome. Thus, as core objectives, the document points to a single, comprehensive and legally binding treaty (p. 3; p. 5), the ambition mechanism and a regular review in a five years cycle (p. 4), the importance that mitigation measures involve all countries (p. 5). The communication also clearly reveals that the Paris Agreement's hybridity in terms of pluralist along with solidarist elements was not something the EU haphazardly had to accept. But it deliberately and presumably strategically promoted a hybrid approach (p. 3). This is even more explicit in another communication which was published only a few months before the Paris Summit (European Commission 2015b). This publication unequivocally states that "[t]he process for reviewing and strengthening mitigation commitments will be facilitative, non-intrusive and respect Parties' sovereignty" (p. 11). It, thus, takes into consideration pluralist reservations and nonetheless sketches out clear provisions for the inclusion of the ambition/ review mechanism as well as the global stocktaking. What is more, the resemblance of concrete suggestions for the Paris Outcome, as presented in this document (pp. 22-30) to the actually adopted Agreement are remarkable.

Thus, we can put on record that the EU has contributed to solidarisation in particular by advocating successfully for an ambition mechanism (IL₃) and by promoting that the outcome of the Paris Summit is a single, comprehensive treaty rather than multiple agreements for different issue areas (IL₁). Things are different with regard to other issues than mitigation, such as finance and adaptation. In spite of its successful bridge-building approach towards developing countries, the EU was less eager to support developing countries' requests for quantified legal obligations on financing (Oberthür and Groen 2017b, 3). Most clearly, such binding provisions would have entailed strong solidarising effects according to IL₁ because they would have implied enhanced cooperation. Furthermore, legal financial obligations for adaptation, but also loss and damage concerns, would have fostered the notion of sovereignty as responsibility. The EU, however, was not willing to pursue this solidarising pathway. As regards financing, however, the EU has pushed for a stronger focus on private investment in

climate protection (European Commission 2013c, 8). While this entails solidarisation according to IL_2 and D_2, I have already pointed to the potential downsides of a too excessive responsibility shift from states towards non-state actors.

In sum, in the negotiation process of the Paris Agreement, the EU has contributed to solidarisation mainly with regard to its mitigation objectives as well as the fact that there is an agreement in the form of a legally binding and comprehensive treaty at all. The system of NDCs rather than centrally determined reduction targets, is a pluralist concession, but has subsequently opened up the way for further solidarisation. The ambition mechanism was the EU's response to the fact that the INDCs which were submitted prior to COP-21 would not be sufficient to meet the 2°C goal. The EU itself has submitted the most far-reaching INDC of the major emitters, aiming for a 40% emission reduction by 2030 as compared to 1990 levels (EU Council 2015b). The ambition mechanism provides a tool to achieve progress over time and thus to uphold the long-term 2°C goal. The EU „realized its policy objectives to a greater extent than it may have anticipated itself" (Oberthür and Groen 2017b) and has therefore indeed influenced the Paris Agreement towards greater solidarisation. In particular, in terms of mitigation objectives, the adopted Paris Agreement is extremely close to what the EU had advocated against opposing positions (Obergassel et al. 2016, 53; Oberthür and Groen 2017b, 4).

Obviously, whether the Paris Agreement will generate the required degree of political action to meet the goal of limiting global warming to less than 2°C or even to 1.5°C as Art. 2 aims at prospectively remains to be seen. The INDCs as submitted prior to the Paris Summit would be just about sufficient to limit the global rise in temperature to 3-4°C (Oberthür and Groen 2017a, 1; Young 2016). The ambition mechanism aims at gradually closing the gap between the envisioned 2°C goal and the insufficient national submissions. Without such a mechanism, the Paris Agreement would be dead on arrival. It is only through the institutionalised pressure towards progress, that the possibility to reach the long-term goal is left open. The significance of the ambition mechanism for processes of solidarisation in and through the Paris Agreement, therefore, cannot be overestimated. The EU's crucial role in advocating for such a mechanism thus constitutes the strongest contribution to solidarisation in the context of the Paris negotiations. In sum, as it stands, the Paris Agreement might well be insufficient to reach the 2°C goal and thus must not be the endpoint of the climate change regime. Effective implementation and concerted political action needs to follow. And yet, the Paris Agreement did indeed exceed the expectations (Obergassel et al. 2016, 3; Oberthür and Groen

2017a, 14). Furthermore, it "forms a rare example of successful European diplomacy and significant achievement in contemporary multilateral diplomacy" (Bergamaschi et al., 11).

6.4 Conclusion

This chapter has demonstrated that there are a considerable number of different, but inter-related processes of solidarisation occurring in the issue-area of climate change. The EU has developed over time towards an active and very committed actor within the international climate change regime. This holds true in spite of the EU's most obvious failure, to wit the abortive negotiations in Copenhagen. Regarding particular processes of solidarisation, it has become clear frequently that solidarist change can only be introduced cautiously and in consideration of existing pluralist ideas, reservations or concerns. The EU, thus was more successful to contribute to change when it changed its strategy from highly principled calls for strong regulation towards a more moderate progressive stance. Most notably, I have argued that the Paris Agreement entails massive ambiguities that consist in the parallel invocation of pluralist and solidarist structures. More specifically, my contention was that after a long time of deadlock in the climate change regime which effectively had put solidarist change on a halt, the re-introduction of a pluralist logic as the centrepiece of a new agreement, has eventually enabled noticeable solidarist change. This is a prime example for the core argument of this thesis that seemingly opposing structures do not prevent change, but can ultimately facilitate it. The EU, after the failure of Copenhagen, has not only geared all its diplomatic power and activity towards overcoming the deep dichotomisation which informed the deadlocked climate change regime, but it has also strategically sought to promote the hybrid nature of the Paris Agreement as the way forward. As indicated before, much depends on the concrete implementation processes of the Paris Agreement and it would be naïve to assume that the conclusion of such a treaty automatically wipes away all pluralist concerns for national sovereignty or national economic interests. Quite the contrary, a major contention of this thesis is that dissolving pluralist structures is not possible, but that their persistence notwithstanding solidarist change is possible. In this respect, the Paris Agreement gives clear evidence.

Regarding its normative implications, solidarisation in climate change seems slightly more straightforward than in human rights. Yet, also this policy field is not devoid of normative ambiguities. Most notably, the debate about the CBDR and its broader implications for global justice is a case in point.

7 The EU's Role in the Solidarisation of Trade

> It is clear Europeans want trade to deliver real economic results for consumers, workers and small companies. However, they also believe open markets do not require us to compromise on core principles, like human rights and sustainable development around the world or high quality safety and environmental regulation and public services at home (European Commission 2015a).

This is how Cecilia Malmström, EU Commissioner for Trade since 2014, summarises the expectations of European people towards an EU trade policy in the EU's current trade strategy entitled "Trade for all". This list of expectations, it seems to me, is ultimately quite close to demanding the squaring of the circle since it envisions, to put it bluntly, a trade policy that benefits everyone and moreover upholds core values which the EU traditionally is crediting itself with. Such ambitious aims notwithstanding, Malmström goes on to say that the EU's new trade policy approach strives to "take all these lessons on board". It is probably impossible and will therefore not be the aim of this chapter to find an irrevocable and definite answer to the question whether the EU indeed complies with this challenging agenda. The quote, however, points to important aspects of and potential tensions within international trade in general and EU trade policy in particular which are worth investigating if we want to gain insights about the EU's contribution to solidarisation of international society in the issue area of trade. The latter poses the major objective of this chapter.

There are three reasons why the EU and trade lends itself as a relevant issue-area to study the EU's contribution to solidarisation in international society.

First, the EU is obviously a major trade power on the international stage and thus has considerable weight in international trade negotiations. Even after the European economic and financial crisis, the EU still is the largest economic power and the largest trading bloc in the world. For instance, in 2016 its share in world exports was at 15% for merchandise and 25% for services (For comparison: The US share was 9% (merchandise) and 15% (services); China's share was 13% (merchandise) and 4% (services) (see the World Trade Organization's (WTO) trade profiles for each member: WTO 2017). Furthermore, the EU has bilateral trade agreements in place with 78 countries, 4 waiting for signature or ratification and is currently conducting negotiations with 18 other countries[15] (European Commission 2017b). Consequently, the EU must be considered a major trade power and thus as a highly significant actor within

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[15] These numbers do not yet cover all countries with which the EU has agreements through diverse regional agreements, such as for instance the Cotonou Agreement with 79 ACP states (European Commission 2018a).

the WTO (Bache et al. 2015; Hoffmeister 2015; Meunier and Nicolaïdis 2011; Mortensen 2009; van den Hoven 2006). It seems thus sensible to assume that EU trade policy has a considerable impact on international society and its fundamental structure. As Mortensen (2009, 80) rightly points out:

> What the European Union does in the World Trade Organisation (WTO) [and in its bilateral trade relations, one may add; BA] is a matter not only for the Europeans but also for the rest of the world.

Second, trade has always been one of the most, if not *the* most preeminent topic on the EU's agenda. In contrast to the other two issue-areas addressed in this thesis, there has been a centralised trade policy since the early beginnings of European integration. The Rome Treaties of 1957 have established the *Common Commercial Policy (CCP)* and have thus provided for an early legal basis to supranationalise trade policy. Trade thus is probably the policy field in which the community method is most advanced. Trade policy, in a nutshell, is "at the heart of the identity of the EU and of its presence in the world" (Conconi 2009, 156).

Third, and this now leads more directly to the concept of solidarism and its inherent ambiguities: As already the initial quote indicates, certain tensions may potentially arise from the EU's pursuit of economic growth and wealth through a particular trade policy and its inclination towards promoting other values, such as human rights or environmental protection. Having said this, I am not suggesting a simple opposition between (economic) interests and normative values here. On the contrary, it is one of the foundational aspects of this thesis to argue against such a simplified dichotomy. It is nonetheless necessary and worthwhile to put the concrete dynamics and tendencies, which arise from these potential tensions, under scrutiny. From a certain point onwards, the EU has largely pursued a policy of trade liberalisation and has considerably contributed to building an international regime that fosters such liberalisation (see section 7.1. for details). Internally, however, the EU has always been ambiguous about this development and consequently, there have always been aspects and moments of more protectionist behaviour, with the *Common Agricultural Policy (CAP)* being the most evident example. At the core of such seemingly inconsistent behaviour lie certain ambiguities. There are, firstly, internal differences amongst EU member states, which have led to traditional cleavages between more liberal and free trade oriented countries (e.g. the UK) and those that have historically pursued more mercantilist trade policies (e.g. France) (Devuyst 1995, 463). A similar conflict line also runs through different EU institutions, with the Commission generally being a more vivid promoter of free trade and understandably arguing for extended community competence, whereas the Council occasionally has had a more sceptical stance

on the ever-increasing scope of liberalisation (Siles-Brügge 2014, 9). And thirdly, trade liberalisation itself is normatively ambiguous. It is assumed and meant to contribute to the generation of growth and wealth and in particular, in the history of European integration this has been closely associated with the promotion of peace. In the logic of this liberal argument, interests and values become closely entwined. At the same time, however, liberalisation if not guided in certain regularised pathways runs the risk of leaving particular groups or individuals behind by creating inequalities which effectively exclude significant parts of a (domestic or international) society from the participation in wealth, growth and well-being. The concept of solidarism is extremely well suited to capture and understand this ambiguity. Trade liberalisation on the one hand is thoroughly solidarist in character because it inevitably entails the permeability of state borders (IL_1, IL_3, D_1, D_3). On the other hand, a certain regularisation and hence limitation of free trade is crucial for solidarisation which we have also defined as increasingly making the well-being of individuals a matter of concern for the international community (Lauterpacht 1946, 27) (IL_2, D_2).

Those tensions are neither new, nor have they remained unaddressed in the academic literature as well as the political debate about international trade. Nonetheless, I argue in this chapter that the solidarisation framework put forward in this thesis adds to the understanding of such ambiguities and their consequences for dynamics of change within international society regarding the issue area of trade and in particular the EU's contribution to such change.

To corroborate this claim, the chapter proceeds as follows: I first briefly introduce EU trade policy, including its institutional set-up as well as cornerstones of its historical development in multilateral and bilateral contexts (7.1). The subsequent section discusses in more detail the relevance of the pluralist-solidarist debate for international trade in order to then derive issue-specific indicators of solidarisation (7.2). Following the logic of the previous empirical chapters, these indicators serve as the basis for the analysis of EU trade policies and the EU's contribution to solidarisation in international society in this issue-area (7.3). 7.4 summarises some core results about the EU's contribution to solidarisation of international society in international trade.

7.1 Evolution of EU Trade Policies

7.1.1 Legal Bases and Institutional Set-up of EU Trade Policy

International trade has played a major role on the EU's agenda ever since the European integration project gained momentum. The legal basis for a centralised trade policy was created with the establishment of the CCP in the Rome Treaties in 1957 (Conconi 2009, 156). Today, Art. 206 and 207 TFEU (formerly Art. 133) build the legal foundation for EU trade policy. There, the treaty stipulates that

> [...] the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers. (Art. 206 TFEU)

Art. 207 TFEU explicates the allocation of competences in detail and largely grants exclusive competence to the EU level, including the conduct of external negotiations both, in the multilateral context as well as for bilateral agreements. Since the CCP's inception, the EU spoke for all member states on the international level. This does not mean, however, that there have not been disputes about competences within the EU or changes over time. Most notably, the incremental extension of the multilateral trade agenda within the framework of the General Agreement on Tariffs and Trade (GATT) and later within the WTO brought such disputes to the fore (Meunier and Nicolaïdis 2011, 278–281). New issues, such as trade in services and intellectual property rights were initially dealt with on the basis of shared competences between the Commission and the member states. These disputes were not settled until the entry into force of the Lisbon Treaty, which, after all, established exclusive EU competence and also extended EU trade policy to clearly include services and importantly, also foreign direct investment (FDI) (Hoffmeister 2015, 140; Meunier and Nicolaïdis 2011, 281; Woolcock 2010). Technically, the concrete procedures for international negotiations involve an interplay between different institutions: The Commission makes recommendations to the Council to issue a negotiation mandate. The Council authorises the Commission to conduct international negotiations in the course of which the Commission is consulted by the so called "Trade Policy Committee" (appointed by the Council). After an agreement in international negotiations has been adopted, it needs ratification in the Council by Qualified Majority Voting (QMV). Regarding services, some issues of intellectual property rights and FDI, there is still unanimity as the voting rule (Bache et al. 2015, 479; Art. 207 (4) TFEU). Furthermore, since the entry into force of the Lisbon Treaty, the EP needs to give its consent to a negotiated agreement and the Commission is also obliged to inform the EP about the conduct of negotiations prior to the

conclusion of an agreement (Woolcock 2010, 12). The role of the EP has thus been considerably enhanced with the Lisbon Treaty, but its concrete impact on EU trade policy remains limited until today.

Regarding the development of EU trade policy, it is particularly important to note, how the formation of the EU (and the EEC/ EC as its predecessors) was interwoven with the evolution of the post-war international trade regime. Some authors have pointed to co-constitutive dynamics in the formation of the EU and GATT (Mortensen 2009, 83; van den Hoven 2006, 186). These interlinkages between the formation of EU trade policy and GATT carry two sets of consequences. On the one hand, the emergence of a European market, a European Customs Union and a regional preferential trade agreement (PTA) has always been an issue for international trade negotiations because of the risk that an ambitious regional integration project potentially undermines core principles of global free trade, most notably the most favoured nation principle (MFN). On the other hand, in case of the EU, more often than not, further integration steps have coincided with new negotiation initiatives within GATT/WTO (Conconi 2009, 169), suggesting that regional integration can ultimately also bolster multilateral trade agreements. There is thus, another ambiguity inherent to the EU as the most advanced project of economic regionalism and its preeminent role as global actor within the international trade regime. The following section will examine this ambiguity further by looking at how the EU's positions and objectives within the international trade regime have evolved and shifted over time.

7.1.2 EU's Objectives and Strategies as Global Actor in International Trade

This section will briefly introduce major cornerstones of EU trade policy, focusing on its primary objectives and strategies in multilateral trade rounds and their evolvement over time. Interestingly, it has been noted in about 10 years ago that there is surprisingly little literature on EU trade policy and in particular its role in international trade negotiations (Dür and Zimmermann 2007, 772). Regardless of its accuracy back then, this statement definitely seems not valid anymore today. There is a an enormous body of literature providing detailed accounts of the EU as an international trade actor in its various aspects (see for instance Bache et al. 2015, 475–493; Damro 2007, 2012; Dee 2015; Devuyst 1995; Elgström 2007a; Hoffmeister 2015; Meunier 2007; Meunier and Nicolaïdis 2006, 2011; Mortensen 2009; Siles-Brügge 2014; van den Hoven 2006; Woolcock 2012, 2010; Young 2007; Young and Peterson 2006). Neither will it be possible nor is it the aim of this section to give a detailed account of this academic debate.

For the purpose of this chapter, I will mainly focus on three aspects of the EU's role in international trade: a) a brief sketch of its historical development will reveal a shift from a rather reactive and protectionist actor towards a proactive promoter of liberal free trade in international trade rounds. In this context, the role of the CAP and EU-US relations as major trading powers are paramount; b) the complex and changing relation between the EU's use of multilateral and bilateral strategies; and c) the relation between the EU's pursuit of liberal free trade and other values, including the use of trade policy as diplomatic tool and instrument of foreign policy.

From Defensive Protectionism towards Proactive Promoter of Free Trade

In the first decades of the multilateral trade regime as constituted by the adoption of the GATT in 1947, the EU was largely playing a reactive role, being forced to develop a stance on new initiatives mostly promoted by the US within the global trade regime. Amongst such new initiatives was an extension from the focus on tariffs to 'beyond-the-border' instruments as well as later on from classic trade in merchandise to services and intellectual property (Woolcock 2012, 47). For the EU, since the inception of the CCP, the focus was on incrementally building a Customs Union and later an internal market by abolishing internal tariffs, which came along with the establishment of a common external tariff (CET). During much of the 60s and 70s, the EU certainly did not act as the driving force of international trade liberalisation, but it nonetheless engaged with the liberal agenda largely promoted by the US and it was actively engaged in the emerging multilateral trade order. The Customs Union and CET equipped the EU with a noteworthy market power, which enabled it during the Kennedy Round (1964-1967) to put pressure on the US to lower tariffs (ibid., 47). Being already an export power back then, indeed strengthened the EU's self-interest in trade liberalisation. Nonetheless, the 1970s were still mainly marked by relatively strong interventionist and protectionist policies within Europe. On the international level, this led the EU in the Tokyo Round (1973-1979) to continue its defensive strategies, trying to avert US initiatives for stronger liberalisation, in order to safeguard structures that allow such nationally focused policies (Mortensen 2009, 84; Woolcock 2012, 48). Efforts to further develop the internal common market, while at the same time developing certain standards and regulations for the entry into this market, had fuelled the impression of a 'fortress Europe' (Meunier and Nicolaïdis 2011, 288).

The protectionist demeanour of the EU was most evident in the field of agricultural policy. Article 39 of the Rome Treaty had granted the CAP a crucial role within the CCP (Conconi

2009, 161) and CAP was until then the only policy area that was truly centralised. In the Kennedy and Tokyo Rounds as well as in much of the Uruguay Round (1986-1994) the EU deployed all its skills to defend its protectionist CAP and exclude it from liberalisation. The cornerstone of the CAP was a target price for agricultural products, meaning that agricultural imports to the European market were tariffed in order to prevent that these products could be sold for a lower price than the targeted one. Furthermore, government purchases of agricultural product helped to artificially sustain targeted prices if the market price fell below the target. Inglorious 'butter mountains' or 'milk lakes' were the result (New York Times 2009). While these practices helped to guarantee Europe's independence from food imports, they caused the EU's agricultural budget to explode – the expenditure on agriculture amounted to 72% of the overall budget in 1984 (European Commission 2013b). Furthermore, the protectionist CAP led to relatively high prices for European consumers and most notably had severe consequences for non-European producers of agricultural product, in particular in developing countries (Conconi 2009, 161–162). This impaired on the EU's credibility as a progressive and responsible actor within international trade negotiations. It was not until the early 1990s that reforms of the CAP were gradually introduced. In spite of reforms, however, the agricultural sector remains a normatively problematic part of EU trade policy until today.

In a nutshell, the exact assessment of EU policy in the multilateral trade regime up until the 1980s seems slightly contested. Meunier and Nicolïadis (2011, 288) find that the EU has always played a very central role and list early examples of an EU contribution to trade liberalisation, such as "a new radical tariff-cutting formula" and the EU's efforts in the 1970s to "[lead] the way in attacking so-called non-tariff barriers". At the same time, they point to increased regulations, which hampered the options of other trade partners to export to the European market. Woolcock (2012) and Mortensen (2009) seem more inclined to call the EU's role in this period mostly, defensive and protectionist. The latter, however, with the restriction that the EU "never played the part of an aggressive neo-mercantilist power. Its strategy was reactive. It was about bending the letter of the law without undermining the GATT regime altogether" (ibid., 84). The CAP is widely mentioned as a highly protectionist as well as normatively problematic field within the EU's trade policy.

There is much clearer agreement in the literature that the EU changed its strategy in the 1980s and opened up much more clearly towards market liberalisation. Internally, the perception gained ground that a still fragmented market with various domestic national interven-

tions was confining the competitiveness of the European economy rather than being subservient to it (Woolcock 2012, 48). The Single European Act (SEA) of 1986, thus set the objective of creating a single market until 1993. The internal integration process also strengthened the EU as an international actor and "[t]his leverage enabled the EU along with the United States [...], to shape the international trade regime throughout the Uruguay Round of the 1980s and early 1990s" (ibid., 66–67). Rather than simply reacting to US initiatives, the EU itself was now much more in the drivers' seat. With agriculture still being the notable exception, the EU promoted the extension of the trade agenda through the inclusion of new issues under the WTO (Meunier and Nicolaïdis 2011, 288). When engaging in more detail with the EU's contribution to solidarisation in the international trade regime, I will come back to some of the concrete positions and objectives of the EU in the Uruguay Round. Suffice it to say for the moment that except for agriculture, "EC diplomats played a leading role in all other areas of the Round" (Mortensen 2009, 85).

With the conclusion of the Uruguay Round and junction of GATT, GATS and TRIPS in the newly established WTO in 1994, the EU tried even more actively to establish itself as a leader in international trade. The push towards a new negotiation round after the WTO inception was largely due to EU initiative (van den Hoven 2006, 53) and the EU acted as the "most consistent promoter of a comprehensive round, even if [...] it was not always successful" (Woolcock 2012, 51).

The Doha Round or Doha Development Agenda (DDA) was launched in 2001, but has since then not been brought to a successful conclusion. The preeminent conflict line in the negotiations runs between industrialised and developing countries. With the increasing membership of developing countries in the GATT/ WTO regime this cleavage had incrementally emerged, but has become most evident in the latest negotiation round, which has broken down in 2008. While developing countries had ultimately agreed to the Uruguay conclusions, it turned out that their benefit from the agreed regulations was, in fact, much lower, particularly because industrialised countries still benefit immensely from protectionist policies in exactly those sectors, where developing states technically could benefit the most, to wit agriculture and textiles (Helmedach 2012, 290). While the DDA explicitly tried to address developmental issues, it has not yet been possible to settle the major disputes and several attempts to revive the negotiations have failed so that the round is considered to be stuck in a dead end since the Ministerial meeting of 2015 in Nairobi (DIE 2015). Section 7.3.1 goes into more detail about the EU's positions within the Doha round. Suffice it say here that the EU was a strong

promoter of a broadened agenda in the new round (Young 2007, 801) as well as of the inclusion of developmental aspects. Nonetheless, the EU has so far not been successful in contributing to a successful conclusion of the negotiations and it is unlikely that is will happen any time soon.

<u>The Ambiguities of Multilateralism and Regionalism</u>

The EU has early on been a vigorous promoter of developing a strong multilateral framework for the international trade regime. Persisting tendencies of protectionism in some fields of international trade notwithstanding, the EU's engagement for multilateral trade rules has always been strong. Nonetheless, the EU has at the same time build up a considerable bilateral and regional network of preferential trade agreements (PTAs), which stand in a certain tension with a purely multilateral trade regime. To conclude PTAs with selected trading partners poses a certain contradiction to the 'most favoured nation'-principle (MFN), which builds the WTO's cornerstone. In that sense, the very existence of the EU itself as an extremely advanced free trade area constitutes an encroachment of the MFN. WTO rules, however, have provided for such exceptions and at least ensure some degree of transparency through the obligation of its members to report on the conclusion of PTAs (Conconi 2009, 164).

Regarding the use of multilateral or bilateral/ regional approaches to trade, the literature identifies different phases in EU policies: The initial focus was strongly set on the multilateral GATT/ WTO regime, in particular since the 1990s (Bache et al. 2015, 480). Somewhat unsurprisingly, this focus on a multilateral approach was especially strong under the aegis of Pascal Lamy as trade commissioner (1999-2004), who subsequently became Director-General of the WTO. He promoted the so called "multilateralism-first approach" (Siles-Brügge 2014, 2), which implied a self-imposed moratorium on bilateral trade agreements. The new trade strategy "Global Europe" (European Commission 2006), however, led to the abandonment of this informal moratorium and (re-)introduced a stronger focus on bilateral agreements, while in principle still emphasising a priority for multilateral trade negotiations. Yet, the DDA, by that time, had already run into a stalemate so that revived bilateralism was a strategic choice to further foster the liberal trade agenda, in spite of the multilateral deadlock (Siles-Brügge 2014, 16–17). The combination of multilateral and bilateral approaches in trade policies creates a hierarchical system of EU trade preferences (Conconi 2009, 164):

 i. EU membership;

 ii. Association Agreements (e.g. with Norway);

 iii. FTAs (e.g. with ACP states);

iv. non-reciprocal agreements (the Generalised Scheme of Preferences (GSP) as standard or as GSP+; 'Everything but Arms' initiative for LDCs);

v. MFN Treatment (In 2009 only 9 countries were in this category (ibid., 165) and their number has been further reduced since then, e.g. with the conclusion of an FTA with Canada (CETA), which is provisionally in force since September 2017). In spite of the small number of countries with which trade is conducted solely on MFN basis, this is still the major part of international trade. Only 30% of trade in merchandise are based on bilateral agreements (Rudloff 2017, 9).

EU bilateral trade agreements (for details see European Commission 2017b) are currently in place or partly in place with 78 countries, some of them in the framework of regional agreements, such as the CARIFORUM-EU Economic Partnership Agreement (EPA) or the SADC EPA. Negotiations with four other countries have been concluded, but the ratification process is still pending. Negotiations with 18 countries are currently ongoing, listed amongst them the United States. The negotiations on the Transatlantic Trade and Investment Partnership (TTIP), however, were stopped at the end of 2016 and it remains unclear whether and under what circumstances they will be resumed (European Commission 2018b). In addition, within the framework of the Cotonou Agreement with ACP states, some further EPAs have been negotiated, but in times, the implementation process seems to remain static. Interestingly, while the EU itself remains rather silent on why in some cases the ratification process has been lasting for almost four years (EU Council 2017a), other sources reveal severe underlying disputes in spite of the seemingly successful completion of the negotiations. For instance, in October 2014, an agreement has been adopted with the East African Community (EAC). While amongst the participating African states, Kenya has quickly signed the agreement, others were more hesitant. Tanzania, Burundi and Uganda have withheld their signature on the grounds that the entailed liberalisation of the EAC market would not be to their benefit. They feared that EU exports to their market would do more harm to their own process of industrialisation (Global Risks Insights 2017).

Trade Liberalisation and the Promotion of Core Values

A third significant aspect of EU trade policy is the tendency to link trade policy to the promotion of other values, which rank high on the EU's agenda. In this sense, the EU is said to use its standing as the largest trading actor in the world as diplomatic tool and to make trade policy "the principal instrument of foreign policy" (Conconi 2009, 159). The chapter on solidarisation in the issue-area of human rights has already pointed to the fact that the EU's

human rights policy has largely emerged in the context of conditionality in trade and development agreements, which gives proof of exactly this aspect. The just outlined shift from a stronger focus on multilateralism to a renewed bilateral agenda in the mid-2000s is likewise relevant in this context, as it entailed an increased entanglement of the EU's developmental and its commercial trade agendas (Siles-Brügge 2014, 4).

In particular, the promotion of values through and within the EU's trade policy involves for instance the following aspects (Interview 2017h):

The EU tries to link trade negotiation to environmental protection, labour standards and human rights and consequently pushes for the inclusion of respective chapters when negotiating FTAs. Furthermore, the EU considers it acceptable and necessary to promote limits to international trade for moral reasons. An example is the EU ban on seal products, which Norway brought to the DSB. The WTO ruling, however, provided overall support of the ban and only imposed minor changes on the EU.

Regarding the linkage of trade policies with the promotion of certain values, the latest EU trade strategy is important (Rudloff 2017, 9). In 2015, the Commission has issued a new trade communication entitled "Trade for All – Towards a More Responsible Trade and Investment Policy" (European Commission 2015a). Comparing the title to the previous strategy "Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy" (European Commission 2010), the notion of responsibility stands out and EU policy makers have tried to emphasise a shift towards a more value-based trade policy of the Union (Interview 2017h).

As set out in the introduction to the strategy:

> Fundamentally, the debate [the one on TTIP] has asked the question: 'Who is EU trade policy for?' This communication shows that EU trade policy is for all. It seeks to improve conditions for citizens, consumers, workers and the self-employed, small, medium and large enterprises, and the poorest in developing countries, and addresses the concerns of those who feel they are losing out from globalisation. While trade policy must deliver growth, jobs and innovation, it must also be consistent with the principles of the European model. It must, in short, be responsible. [...] It must promote and defend European values (European Commission 2015a, 7).

As the next section reveals, much of what this quote alludes to entails a solidarist agenda. The same is true for the EU's overall interest in and promotion of free trade. Sure enough, claiming such an agenda in a strategy communication is not the same as indeed implementing and advocating it. But for the moment we can put on record that the EU formulates a solidarist

agenda. To what extent it indeed follows this agenda as well as potential normative implications this entails, will be subject to scrutiny in section 7.3. Before addressing this issue, the subsequent part discusses in more detail the meaning of solidarisation in the issue-area of international trade.

7.2 What is Solidarisation in the Trade Regime?

7.2.1 The Relevance of the Solidarist-Pluralist Debate for Trade Policies

> If the rise of the market as an institution of international society is accepted as solidarist (because it goes well beyond agreements about mere coexistence), then suddenly a huge area opens up between pluralism and solidarism which is not visible if pluralism and solidarism are viewed only through political lenses as about the opposition between state's rights and human rights" (Buzan 2002, 366).

The above quote brings us immediately to the centre of a hitherto limited, but as I will argue valuable debate about the economy within the English School. Buzan's statement entails three more or less explicit claims: a) 'The market' entails an inherent solidarism; b) Using solidarism and pluralism as analytic tools to study the market as an institution or broadly speaking economic aspects of international society is worthwhile; and c) The reverse argument is likewise valid: an application of the pluralist-solidarist debate to the economy provides for further theoretical insights about these concepts, which are frequently reduced to the issue-area of human rights.

The focus of this section is on the first two claims and I will further below illustrate in more detail the significance of the solidarist-pluralist debate for the issue-area of trade. The third claim is equally valid as will become clear in the further course of this chapter. In particular, the analysis of the international trade regime and the EU's role therein will – probably in a much more blatant way than the other two case studies under consideration – reveal inherent normative ambiguities and indeed contradictions of solidarisation. It is meanwhile an established argument within the English School that pluralism and solidarism are not exclusive categories but are better understood as poles on a continuum (see section 3.2.1). I am less aware though of academic work that has dealt in more detail with cases in which particular policies at the same time contribute to promoting as well as to undermining solidarisation. This exactly is the case in the international trade regime, as the analysis reveals. In that sense, the issue-area of international trade poses a particular challenge to this framework and can thus be considered a 'hard case' for solidarisation. Yet, at the same time these challenges

render such an endeavour particularly interesting and as a side effect are well suited to highlight the English School's potential to also engage in the study of normative issues – an undertaking that has increasingly been pushed aside with Buzan's revival of the English School as primarily analytical approach.

As indicated above, the debate within the English School about economic aspects of international society has so far been limited. This, however, has already been identified and noted as a deficiency, which calls for rectification (Buzan 2002, 365, 2004, 2014, 136; Gonzalez-Pelaez and Buzan 2003, 336–337; Little 2003, 454). While there is still not an extended literature that makes use of English School concepts to study economic issues, there are some notable exceptions, the earliest being James Mayall's reflections on a liberal economy (Mayall 1982) and on the return of economic nationalism (Mayall 1984). Moreover, Little (2003, 454–456) offers some general reflections on the link between free trade and international society; Holsti (2004) has identified trade as one of his fundamental institutions and thus as an important "marker of change" in international society; and finally Buzan has on several occasions argued to include the market in the list of relevant primary institutions of contemporary international society (Buzan 2002, 2004, 196-197; 233-235, 2014, 136–139) and has also provided a more general English School perspective on the economy and globalisation (Buzan 2005).

For reasons outlined in the methodology chapter, in the following analysis I focus on the core institutions of *International Law* and *Diplomacy*. International trade constitutes a crucial issue-area in which international society becomes manifest and in which, we can therefore study the analytical dimensions as well as normative implications of structural change. All of the mentioned authors do suggest that international trade is inherently linked to solidarist change in international society. Subsequently, I follow this line of argumentation, but I will at the same time point to persistent pluralist elements in international trade, which once again reveals an interesting ambiguity.

Since 1945, the significance of international trade for the structure of global international society has dramatically increased and a global liberal market economy as a core feature of modern international society has emerged. As outlined in the previous sections, the formation of the European Union is closely linked to this development and a focus on trade is at the very core of European integration. These developments bear an inherent move towards solidarisation, as the growing importance of free trade on a global scale has increasingly contributed to a certain autonomy of the economic sector from the state. As Buzan has pointed out (2014, 136): "While nationalism quite easily reinforced (while also changing) classical pluralist

institutions, the market was much more directly disturbing them". It is important to note, thus that solidarism as an inherent feature of international trade is tied to particular forms of such trade, to wit liberal free trade as it has emerged after WW II. In contrast, international trade practices in the 17th and 18th centuries did not even embody a pluralist international society and much less a solidarist one. Instead, practices were closer to an international system situation, marked by the state of nature as war and a lack of rules, norms or any form of regulative constraints (Holsti 2004, 211–212). Trade in that era of mercantilism (ibid., 216) was "integrally related to the more general foreign policy purposes of the dynastic states, which included building up naval and military power, making alliances, establishing colonies abroad, and conducting war" (ibid., 212).

The core objective of the GATT/ WTO regime is to build up and to maintain a functioning and stable multilateral trading system in order "to ensure that trade flows as smoothly, predictably and freely as possible" (WTO 2018b). Historically, the establishment of GATT and later the WTO brings an age-long struggle over whether to organise the political economy more along the lines of mercantilism or liberalism to an end (Buzan 2005, 125). Ongoing struggles about how exactly to shape the global trading system or the occasional resurgence of economic nationalism notwithstanding, liberalism has largely carried the day. The pluralist-solidarist debate is able to capture a great deal of the conceptual duality of mercantilism versus liberalism.

Mercantilism is closely tied to the state. National sovereignty is a core premise to mercantilism; at the same time mercantilist practices also aim at re-enforcing and increasing this national sovereignty through the accumulation of national wealth and power. Mercantilism therefore reflects a pluralist form of international society. Holsti's (2004, 211–212) account of how mercantilist practices in the 17th and 18th century have resembled the state of nature and eventually warfare, even challenges this link to pluralism, and moves these economic practices closer to the international system pole.

Liberalism in contrast, challenges such a nation-centred understanding of the international realm, and it does so in a number of ways. By definition, liberalism requires the permeability of national borders for goods, services as well as persons and therefore sits uneasily with nationalism. "It requires sovereignty/ non-intervention to be reinterpreted" (Buzan 2005, 125) and thus directly reflects solidarisation as captured in this thesis by one of the core indicators. Buzan continues by pointing out that liberalism "in practice greatly increases and extends the content of international law" (ibid., 126) and gives rise to multilateral forms of diplomacy

(indicator 1). Furthermore, liberalism weakens the largely pluralist institution of Balance of Power because it in practice often implies that particular forms of hegemonic order are admissible or at least inevitable. As neo-Gramscian approaches teach us, this hegemony most likely is not linked to nation states. But it has a cultural foundation, which rests on particular modes of production and is maintained through practices of consent and coercion, which weave civil society into the existing hegemonic order and transcends state borders (Cox 1983). Moreover, the role of non-state actors is another aspect in which liberalism clearly opens up for solidarising tendencies: At the heart of a liberal trading system lies the right of the individual (person or corporation) to decide independently about what to do with its property and to engage in investing and ideally magnifying this property. The significance of non-state actors thus inevitably increases in an international society in which liberal free trade has emerged as a core practice.

Finally, as a consequence from all this, liberal free trade or an open global market has an effect on the rationality of war as an instrument of foreign policy: "But when the market becomes global, war becomes a costly disruption to trade, production, and financial markets. As institutions, war and the market become increasingly incompatible in solidarist international societies" (Buzan 2005, 127). This thoroughly liberal thought – and this links up neatly with the EU – evidently is part and parcel of the history of European integration. Summarising the argument about the inherent solidarism of liberal free trade as institutionalised in the GATT/ WTO since the end of WW II, we can put on record that

> [w]ithin the West, and particularly so within the developing EU, sovereignty, territoriality and borders were adapted to meet the conditions created by a more extensive embracing of the market (Buzan 2014, 138).

Alternatively, in the words of a famous liberal political economist:

> [A] system of perfectly free commerce [...] binds together by one common tie of interests and intercourse, the universal society of nations throughout the civilized world" (David Ricardo quoted in Mayall 1982, 98–99).

Thus, the emergence of global free trade as such and the obvious crucial role that the emergence of the European Union has played in that, immediately points to the relevance of the pluralist-solidarist debate in this issue-area and furthermore, reveals that trade liberalisation inherently entails solidarising tendencies.

The quote by Ricardo, though, at the same time indicates that in spite of all solidarist tendencies in global free trade, pluralist aspects have not fully disappeared. Ricardo puts an emphasis

on "the universal society *of nations*" (emphasis added). And indeed, on the one hand the emergence of economics as a discipline has interestingly run in parallel to the consolidation of state power (ibid., 97). Moreover, pluralist aspects inform much of contemporary thinking about the global economy. The significance of national statistics about which *state* is the largest trading power, generates the largest GDP, or which country has superseded another one as the biggest net exporter speaks volumes. The WTO as the global trade regime's fulcrum is an intergovernmental organisation with mostly *states* as members. Mostly, not exclusively – because evidently the EU as an international organisation is a member to the WTO in its own right in addition to the individual membership of all EU member states. This is already a first notable idiosyncrasy in an otherwise intergovernmentally organised institution. After all, it is still *states* (plus the EU), which shape the global trading system through their bilateral practices and through attempts of multilateral regulation in trade negotiation rounds.

Thus, liberal free trade bears an interesting ambiguity because on the one hand it presupposes an opening towards more solidarist structures, on the other hand we also find a state-focused logic of competition in the constitutive practices of international society within the issue area of international trade. The development of EU trade policy has displayed a similar tension: While the EU has at an early stage started promoting liberal free trade and its regulation within a multilateral framework, there are also nationally focused dimensions, which at times lead to more protectionist tendencies within EU trade policy.

7.2.2 Issue-Specific Indicators

Following the logic as set out in the methodology chapter, this section links the three indicators of solidarisation to *International Law* and *Diplomacy* as core primary institutions and expounds how exactly processes of solidarisation might occur in the issue area of international trade. At the end of this section, *table 5* summarises the issue-specific indicators.

(1) **Enhancement of the degree of cooperation amongst states:** In the issue area of international trade, solidarisation along the lines of this indicator and pertaining to *International Law* means that the overall regime is strengthened and advanced. This happens for instance if the number of issues that are regulated within the regime is enhanced and if the density of such regulations is increased. Fostering progress in trade rounds to broaden the scope and thickness of cooperation within the issue area, thus

epitomises solidarisation of *International Law* in trade. To this effect, the general promotion of liberal free trade contributes to solidarisation, because – as argued above – it inevitably entails stronger cooperation. Moreover, the inception of the WTO as outcome of the Uruguay round is paramount because the establishment of a formal organisation to stabilise the cooperation framework clearly helps to advance the degree of cooperation and to perpetuate it. Due to flaws in the institutional structure of the GATT regime (Dymond and Hart 2000, 23), economic pressures in the 1970s and 80s had led to the re-emergence of neo-mercantilist strategies that aimed at protecting domestic industries (Lütticken 2006, 51). Resurgence of more protectionist policies, such as non-tariff barriers (e.g. quotas, voluntary export restraints, etc.) is indicative of a more pluralist approach to international trade, as it puts nation states at the centre stage again. A declared goal of the establishment of the WTO was to address the shortcomings of the GATT regime, which had enabled the reversion to neo-mercantilist practices. The EU would thus contribute to processes of solidarisation if it promoted the conclusion of negotiations in trade rounds and in particular if it advocated the establishment of the WTO. Furthermore, to assess the EU's contribution to such processes it is informative to look at what precise institutional configuration of the WTO the EU was promoting.

Regarding the enhancement of cooperation as manifest in the primary institution of *Diplomacy*, the WTO is likewise crucial: It is part and parcel of a formal organisation to also institutionalise particular diplomatic practices which help to create enabling basic conditions for permanent diplomatic encounter. Especially, the creation of standardised procedures to deal with cases of confrontation or violation of established trade law creates conditions that are conducive to continuing diplomatic relations. More specifically, the more advanced dispute settlement mechanisms are, the less likely it is that confrontations in international trade get out of hand and devolve into a commercial war. Besides, such legal processes most likely also bring about stronger cooperation between states and non-state actors (see the discussion of IL_2 and D_2 below). In this sense, the EU would have been contributing to the solidarisation along the lines of this indicator in *Diplomacy* if it promoted the establishment of an effective dispute settlement mechanism and if it continues resorting to such mechanisms in order to handle confrontations.

(2) **Strengthened role of individuals and other non-state actors:** To begin with, on a very basic level the promotion of a liberal free market economy is generally linked to an enhanced role of the individual. Free trade necessarily entails the idea that individuals and other non-state actors have the freedom to move, to take decisions and to act in the

international realm. Such a constellation "changes the composition of the actors who are in one way or another members of or at least participants in international society" (Buzan 2005, 127). The "growing relevance of issue-specific networks, transnational actors (firms and NGOs) and experts in EU trade politics" (Mortensen 2009, 81) is a direct consequence of the globalisation of trade and production. This aspect affects both, *International Law* and *Diplomacy* as primary institutions. On this general level, once again, the EU would contribute to solidarisation if it promoted trade liberalisation. More specifically, regarding *Diplomacy*, the significance and potential impact of private actors or public-private partnerships increases with the degree of legalisation in the trade system. As Shaffer (2006) illustrates, the more legalised the trade system is, the higher are the incentives for private actors to indeed engage such legal processes. Furthermore, in order to be able to make effective use of the legal procedures within the WTO system, "government officials need the specific information that businesses and their legal representatives can provide" (ibid., 832). Through such mechanisms, private actors are thus more or less directly involved in the diplomatic practices of international society in the issue area of international trade. As Shaffer indicates, states even depend to a certain extent on non-state actor involvement. It is therefore also relevant with respect to the second indicator, how the EU positioned itself vis-à-vis processes of legalisation in the WTO, in particular the dispute settlement mechanisms.

Regarding *International Law*, this indicator points to another dimension of solidarisation: The theory chapter has identified as one basic feature of solidarism that individuals become a direct concern of international law. This can happen in two ways, which I suggest to differentiate as the promotion of particular values *through* trade versus the promotion of values *in* trade[16]. Regarding the first option, trade policy has become a kind of foreign policy through which the EU can project its own values and principles on the world stage" (van den Hoven 2006, 186). This is related to aspects which were already raised in the human rights case: The EU explicitly uses its trade relations, for instance, to promote human rights outside its own borders. The inclusion of human rights clauses in PTAs is a classic example. The promotion of values *in* trade is a different story: Solidarisation in this sense would occur through a strengthening of a trade policy that pays attention to those individuals and their well-being who are directly affected by such

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[16] This differentiation is somewhat similar to Meunier and Nicolaïdis' (2006) thoughts about the EU as a power *in* trade versus a power *through* trade. For them, however, only the second one relates to the promotion of values, whereas power *in* trade refers to genuine trade power.

international realm. Such a constellation "changes the composition of the actors who are in one way or another members of or at least participants in international society" (Buzan 2005, 127). The "growing relevance of issue-specific networks, transnational actors (firms and NGOs) and experts in EU trade politics" (Mortensen 2009, 81) is a direct consequence of the globalisation of trade and production. This aspect affects both, *International Law* and *Diplomacy* as primary institutions. On this general level, once again, the EU would contribute to solidarisation if it promoted trade liberalisation. More specifically, regarding *Diplomacy*, the significance and potential impact of private actors or public-private partnerships increases with the degree of legalisation in the trade system. As Shaffer (2006) illustrates, the more legalised the trade system is, the higher are the incentives for private actors to indeed engage such legal processes. Furthermore, in order to be able to make effective use of the legal procedures within the WTO system, "government officials need the specific information that businesses and their legal representatives can provide" (ibid., 832). Through such mechanisms, private actors are thus more or less directly involved in the diplomatic practices of international society in the issue area of international trade. As Shaffer indicates, states even depend to a certain extent on non-state actor involvement. It is therefore also relevant with respect to the second indicator, how the EU positioned itself vis-à-vis processes of legalisation in the WTO, in particular the dispute settlement mechanisms.

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[16] This differentiation is somewhat similar to Meunier and Nicolaïdis' (2006) thoughts about the EU as a power *in* trade versus a power *through* trade. For them, however, only the second one relates to the promotion of values, whereas power *in* trade refers to genuine trade power.

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policies. The inclusion of a notion of responsibility in trade policies points in that direction. As already indicated in the previous section, the EU's latest trade strategy (European Commission 2015a) indeed fosters such a responsibility discourse. However, there is also evidence that the EU is less keen on accommodating responsibility concerns if its own core economic interests are at stake. Particular policies under the CAP are crucial in this respect. In the methodology chapter I have already introduced the trade case as a potential "hard case" – in particular on normative grounds. Section 7.3 therefore addresses this issue and tries to shed light on the EU's actual contribution to the promotion of values *in* trade policy. As the analysis reveals, the EU's trade policies with regard to certain agricultural products (e.g. poultry, basmati rice) pose a considerable challenge to the argument that ambiguity tends to accompany and often even fosters solidarist change. On the other hand, the discussion demonstrates that assessing the consequences of particular policies for the people on the ground is likewise extremely difficult and ambiguous. Finally, the following is important to note: While the differentiation between the promotion of values *through* or *in* trade makes analytically sense, this does not mean that both aspects are utterly independent. Clearly, if it turns out that the EU has a much more instrumental, interest-driven attitude towards responsibilities for individuals *in* trade, this would evidently impinge on the EU's credibility to promote human rights and other values *through* trade.

(3) **Reinterpretation of national sovereignty:** Again, as already indicated in the general discussion of the relevance of the pluralist-solidarist debate, the promotion of liberal free trade entails solidarisation as captured by this indicator because it presupposes but also nurtures the permeability of national borders. In this sense, trade liberalisation constitutes solidarisation because it contributes to the erosion of a classical understanding of sovereignty as a constitutive principle of *International Law*. More specifically, the institutional set-up of the WTO entails such a reinterpretation of national sovereignty, because the WTO's decisions are formally binding. Hence, with its inception WTO members have "agreed to withhold a fundamental tenet of sovereignty, the requirement of consent to all decisions made by bodies outside the state" (Holsti 2004, 226). In particular, if binding decisions can be taken without the explicit consent of the respective states, this entails "pooled sovereignty" (Keohane 2002; see also Falk 1998). Related to this, solidarisation of *International Law* in trade also occurs through the enhanced judicialisation of the regime, which was likewise sustained through the establishment of the WTO: "In short, WTO law involves greater legalization along the dimensions of binding

obligation, precision of rules, delegation to a dispute settlement institution, and use" (Shaffer 2006, 833).

Pertaining to the primary institution of *Diplomacy*, a re-interpretation of sovereignty means for instance that the regime enhances mechanisms, which expose the sovereign autonomy of states in relation to their trade policy to the scrutiny of international society. The WTO's DSB constitutes a clear exception to the otherwise intergovernmental organisational structure of the WTO and contributes therefore to the solidarisation of diplomatic practices within the trade regime to the extent that it introduces a distinctly supranationalist element. In sum, the EU would contribute to solidarisation as captured by the third indicator if it contributed to the promotion of trade liberalisation, if it helped to establish the WTO as a strong institutional framework to liberalisation and to regulate trade relations and if it advocated for mechanisms, which institutionalise those diplomatic practices that challenge and limit national autonomy.

		Primary Institutions	
		International Law	**Diplomacy**
Solidarisation in the Issue Area of Trade	**Extension of Rules of Cooperation**	- Promoting trade liberalisation - Moving cooperation forward - Broadening the scope and thickness of cooperation; including new issues - Creating structure which make the reversion to mercantilist policies more difficult → creation of the WTO	- Promoting trade liberalisation - Create enduring structures which facilitate diplomatic encounter also in cases of confrontation and trade disputes
	Strengthened Role of Non-State Actors	- Promoting trade liberalisation and therefore making non-state actors active participants of international society - Promotion of particular values *through* trade (e.g. human rights clauses in PTAs) - Promotion of particular values *in* trade (making well-being of affected individuals a matter of concern)	- Promoting trade liberalisation - Strong involvement of non-state actors in diplomatic processes (in particular the increased dependence on input by non-state actors in order that diplomatic mechanisms and legal procedures work effectively)
	Reinterpretation of Sovereignty	- Promoting trade liberalisation - Fostering compulsory dimension of trade law within the WTO	- Promoting trade liberalisation - Working towards the establishment of institutionalised diplomatic processes that expose states' autonomy to the international society's scrutiny

Table 5: Issue-Specific Indicators – Trade

7.3 Processes of Solidarisation in International Trade and the EU's Contribution

This section finally analyses the EU's contribution to solidarisation in the international trade regime as captured by the issue-specific indicators. The focus is on identifying and examining those processes of solidarisation in international trade, which the issue-specific indicators suggest and to explore the EU's contribution to such processes. As indicated in the methodology chapter, when introducing trade as a presumable *hard case* for my argument, as well as in the outline of the issue-specific indicators, there is some indication of potential limits of the overall argument that ambiguity is rather conducive than detrimental to solidarisation. These potential limits are addressed and discussed in detail in the final subsection of the analysis (7.3.3). The overall section, thus addresses the following subtopics:

- The general promotion of liberal free trade through the EU → IL_1, IL_2, IL_3, D_1, D_2, D_3

- The EU's role in trade rounds, with a particular focus on the Uruguay Round, which brought about the WTO, including its DSB → IL_1, IL_2, IL_3, D_1, D_2, D_3

- The promotion of values, such as human rights *through* trade policies → IL_2

- The promotion of values *in* trade policies; with a particular focus on potential limits of solidarisation → IL_2

7.3.1 The EU and Trade Liberalisation

In previous sections, I have argued that trade liberalisation inherently entails solidarisation and that this is the case according to all three indicators and pertaining to both core primary institutions. As described in more detail in 7.1, the development of the EU's trade policy indeed features an evolvement from a rather defensively acting and protectionist force towards a more active promoter of free trade. The EU was largely acting reactively on initiatives by the US to further promote liberalisation (Young 2007; Mortensen 2009; Woolcock 2012; Siles-Brügge 2014) in the early phase of the GATT regime. This definitely limits the solidarising effect which the EU has had on international society in the issue area of trade in that era to an absolute minimum. It is important to note, though, that the EU even back then on occasion promoted liberalisation, as for instance indicated by Meunier and Nicolaïdis (2011, 288). It is furthermore notable that the EU in spite of its rather defensive behaviour has always been in favour of cooperation within a multilateral framework to engage and deal with international trade. The EU has thus in spite of its defensive role always been considerate of not undermining the GATT regime as basic platform for cooperation in this field (Mortensen 2009, 84). De

facto contributions to solidarisation regarding the promotion of trade liberalisation are after all difficult to identify in the early phase of the GATT regime because the focus of EU trade policy during that time was largely on internal developments and defensive strategies towards the outside. In the course of the time, however, the EU was increasingly developing its own drive towards more liberalisation. Slowly, but steadily the conviction gained ground that the fragmentation in various domestic markets had adverse effects for the overall European economy. The EU was thus pushing forward the internal integration process, which culminated in the adoption of the SEA in 1986 – the same year when the Uruguay Round (UR) was kicked off. The 1980s, thus mark a considerable shift in EU trade policy towards greater liberalisation – with the CAP still being a notable exception (Woolcock 2012, 48). And the EU was increasingly trying to transfer its own experiences from internal economic integration to the international level (Young and Peterson 2006, 805). As indicated, this greater opening towards a more liberal free trade agenda in EU politics, coincides with the initiation of the UR. The negotiations took place from 1986 until 1994 and ended in the establishment of the WTO as umbrella organisation, which comprised the former GATT and in addition the GATS and TRIPS. The more detailed implications of the inception of a formal organisation and the entailed changes in the regime as well as the EU's role in these processes will be addressed in a separate section. Suffice it to say here that the EU assumed an overall leading role in pushing trade liberalisation within the UR further forward (Mortensen 2009, 85; Woolcock 2012, 66–67). Here, another aspect of the development in international trade in the context of the UR and its consequences is relevant. The Uruguay negotiations as well as the subsequent Doha Round mark a more fundamental shift in international trade policies. The newly emerging objectives and structures have been termed "post-modern trade policy" (Dymond and Hart 2000), "trade and... agenda" (Mortensen 2009, 86) or the "'deep' trade agenda" (Young and Peterson 2006; Young 2007).

All three terms try to capture similar shifts in international trade policy that occurred during and even more extensively after the UR and behind which the EU was a major driving force. More specifically, the 'deep' trade agenda (DTA)[17] entails stronger integration and an extension of multilateral trade rules. Regarding this shift, I argue that it entails fundamental and far-reaching processes of solidarisation according to several indicators, especially IL_1, IL_3, D_2, D_3. Furthermore, the EU has considerably contributed to bringing these processes about. This

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[17] This seems the most common term in the literature and I therefore stick to it. This choice is not meant to imply any more fundamental advantages of this term or disadvantages of the other two.

constitutes the first part of the argument, which I focus on in this section. The second part, however is, that the EU's policies in this context exhibit a remarkable number of problematic aspects, which put the EU's contribution to solidarisation into question. This second part of the argument will be discussed in more detail in section 7.3.3. There, I illustrate that at the core of the matter lies the fact that in international trade more than in the other case studies, solidarisation is normatively problematic because the same policies foster solidarisation according to one indicator, but hinder it according to another one.

Regarding the first aspect, to what extent did the EU contribute to solidarisation by pushing the DTA? After the conclusion of the UR, at the latest, the most paramount trade barriers were not anymore classical instruments, but so called 'behind-the-border' issues. Thus, rather than instruments, which are applied at borders (tariffs, quotas etc.), domestic rules had the more obstructive effects on free trade. This was mainly a consequence of the extension of the trade agenda to FDI and services (which in itself constitutes solidarisation according to IL_1). Yet, the increased relevance of 'behind-the-border' issues also applies to classic trade in merchandise. The DTA explicitly addresses trade barriers not *at borders*, which would allow for greater observance of a classical notion of sovereignty, but *behind borders*. It is, therefore decidedly directed at issues which had previously belonged to the domestic sphere. Significantly, a transfer of domestic issues to the level of international society has been mentioned as a core feature of solidarist structures (Bull 1966b). More specifically, the DTA implies to "develop[...] *common* multilateral disciplines on the making of domestic rules" (Young and Peterson 2006, 796). "These additional rules reach well behind national borders and engage public policy issues that transcend the relationship between national economies and the global economy" (Dymond and Hart 2000, 22). The EU has been promoting and advocating this agenda in "the most aggressive and persistent" (Young and Peterson 2006, 796) way throughout and ever since the UR. This entails solidarisation in a number of ways: First, as indicated, the inclusion of new issues, such as services and FDI in itself constitutes solidarisation because it extends the scope of cooperation (IL_1). Second, developing a multilateral framework to regulate, limit and control domestic rule-making, clearly entails solidarisation according to IL_3, because it is intrusive to the domestic level and makes national regulative policies subject to control and regulation by the international community. This, ultimately reenforces also general trade liberalisation (IL_1). Third, the DTA also brought about stronger legalisation of processes how trade policy is actually conducted and managed. Dymond and Hart (2000, 23) call this a "shift from negotiation to litigation" in trade policy. Such a shift has further consequences in terms of solidarisation. As already illustrated in 7.2.2, the increased

legalisation of trade policy also fosters the involvement of non-state actors in trade policies. Thus, if the general way of managing trade policy is changed in that sense, this must imply solidarisation along the lines of D_1 and D_2. Moreover, a fundamental shift from negotiation to litigation also effectuates D_3 because the focus changes from negotiation power in the hands of sovereign states to the subordination to a legal system under the auspices of international society.

Finally, the DTA provides for another process of solidarisation. Orienting trade policy toward addressing behind-the-border issues, changes the overall game to a considerable extent:

> When the focus was on at-the-border-measures, trade liberalization hurt the few (the protected producers) and benefited the many (consumers and user industries). When national rules are the focus of liberalization, however, the distribution of costs is quite different: the benefits of cheaper products compete with benefits from measures adopted to achieve desired public policy objectives, such as reducing consumer risk or containing environmental damage. (Young and Peterson 2006, 800).

The DTA and the addressing of behind-the-border issues, thus brings to the fore tensions between different policy goals: Fostering liberalisation and thus reducing prices for consumers on the one hand and environmental or other value-oriented issues on the other. Section 7.3.3 discusses this trade-off and its implications for EU policy and the solidarisation of international society in more detail. Here another point shall be raised: The above trade-off has triggered action by civil society actors who's attention was drawn to potential environmental or human risks through cases that were brought before the GATT/WTO (ibid., 800). Young and Peterson (2006, 800) point for instance to the beef hormone disputes between the US and the EU (see also Zangl 2008). I will elaborate further on the normatively ambiguous implications of issues such as trade barriers in the form of food security concerns in section 7.3.3. Here, the argument simply is that the DTA also fosters solidarisation according to D_2 in a second way, namely by sparking civil society engagement in trade policies (see also Dymond and Hart 2000, 31). What is more, such engagement has not remained without effect on EU trade policy. As Young and Peterson (2006, 806) indicate, the EU has indeed incorporated concerns of NGOs, for instance by working towards a change in the TRIPS agreement to allow the import of products that are crucial to deal with public health crises.

After the conclusion of the UR, the EU promoted the DTA even more vigorously and thus shortly after started to push for a new negotiation round in order to promote its objectives even further. The Doha Round started in 2001 and is after all "an EU inspired round" (van den Hoven 2006). During the DDA, the EU was the "most consistent promoter of a comprehensive

round" (Woolcock 2012, 51). The EU is said "to be one of the main beneficiaries of the Uruguay Round" (Devuyst 1995, 462) and in contrast, especially developing countries and emerging economies increasingly felt that they were losing out in the evolvement of the international trade regime (Baldwin 2006; Dymond and Hart 2000, 21). At the same time, however, these countries gained increasing influence and negotiation power (Young and Peterson 2006, 802). Through concerted action of developing countries, resistance against the DTA started to grow immensely after the conclusion of the UR. And it became clearly evident when at the 1999 Seattle Ministerial Meeting of the WTO developing states refused to agree to the launch of a new round. That ultimately the Doha Round could be launched in 2001, was also due to the fact that as a concession, an explicit development focus was given to the negotiations (ibid., 802). Reflective of this development focus, the EU tried also unilaterally to increase the support of developing countries for an overall trend towards further liberalisation: The launch of the EBA initiative falls in the same period and is interpreted as such a means (Young 2007, 801).

As part of the broad and comprehensive DTA (which also included the so called Singapore Issues on investment, competition and public procurement (Woolcock 2012, 77)), the EU was also increasingly promoting labour and environmental standards within the negotiations. Whether such objectives follow from sublime motives or not, is to some extent irrelevant for the fact that they can easily be perceived – and presumably with good reason – as factual trade barriers. Thus, especially developing countries were resistant to such objectives because they felt that they had to bear much more costly obligations from the previous round, whereas the industrialised countries were still taking a very reluctant stance on liberalisation in sectors, such as agriculture and textiles (Young and Peterson 2006, 802). At the 2003 Ministerial Meeting in Cancun, the developing states ultimately succeeded in removing major issues of the DTA, such as environmental and labour rights, from the agenda (Woolcock 2012, 76). As is known, the DDA has not been brought to a successful end since then, but has run into a stalemate, at the heart of which lies the just outlined dispute.

While this brief account of the developments from the UR onwards is necessarily fragmentary, it is nonetheless revealing in terms of solidarising processes and the EU's contribution. It has become clear that the EU has increasingly tried to foster trade liberalisation. It did so even more actively with and after the UR. This is a clear indication of solidarisation in terms of IL_1 and IL_3 with implications, as demonstrated also for D_1 and D_3. The inclusion of for in-

stance, environmental and labour standards is thoroughly ambiguous. On the one hand, regulating such issues on the multilateral level, contributes to IL_3 because it entails the intrusion into the domestic sphere. The EU was clearly promoting such objectives. Furthermore, environmental and labour standards regulated on the international level clearly constitute solidarisation according to IL_2 because they aim at protecting or enhancing the well-being of the individuals (as consumers or as beneficiaries of a safe and sound natural environment). On the other hand, while contributing to IL_2, the promotion of such standards can also inhibit further liberalisation and must thus be seen as contravening solidarising processes in terms of IL_1 (and as a consequence also all other indicators). As we have seen, it became increasingly difficult for the EU to promote these objectives successfully, environmental and labour standards in particular. This is also a consequence from a more general shift in the global balance of power. This corroborates the argument that the promotion of solidarist change can never be independent from the broader existing structures. However, in spite of resistance some movement towards solidarisation was still possible. The origin of such resistance is twofold: There are most likely pluralist concerns which nourish a sceptical stance on multilateral rules that are intrusive to the domestic sphere. However, even the most full-hearted solidarist can have legitimate concerns against such an agenda, because it likewise entails a non-solidarist dimension. I shall come back to this aspect in section 7.3.3.

In sum, the assessment of the EU's contribution to solidarising processes through its general promotion of trade liberalisation is varied. The EU has in the course of the years clearly emerged as a strong and decisive promoter of free trade regulated through and within a multilateral framework. Mortensen points out: "[N]ot even a breakdown of the Doha Round, I argue, can overshadow the historical significance of the transformation of Europe from a defensive player to proactive leader" (Mortensen 2009, 80). And van den Hoven states: "[L]iberalism appears to be the primary economic value underpinning the European project. With the notable exception of the agriculture sector, the EU progressively liberalised its economy and is expected to continue to do so in the future because of the multilateral trading system" (van den Hoven 2006, 186). While the EU had to make concessions also regarding agriculture, this still remains a highly problematic field, in which the EU is prone to criticism. Yet, as indicated, some of these problematic policies might still be in line with solidarisation, albeit in different dimensions. Section 7.3.3 shall take up this issue again by discussing some more specific examples. At the heart of this ambiguity lies a controversy, which ultimately also plays a fundamental role in the enduring stalemate of the Doha negotiations.

This brings me to a final aspect: The deadlock of the multilateral negotiations has led the EU after 2006 to ease its prioritisation of a multilateral approach to international trade and to boost bilateral or regional approaches through concluding PTAs with as many trading partners as possible (see 7.1.2). This has mainly happened through the 2006 trade strategy (European Commission 2006; see also Siles-Brügge 2014). What is the significance of the shift from multilateralism to a bilateral approach in terms of solidarisation? First of all, the 2006 strategy reaffirms a thorough commitment to free trade liberalisation: "Rejection of protectionism at home must be accompanied by activism in opening markets abroad" (European Commission 2006, 7). The EU is thus still committed to liberal free trade and in this sense to a solidarist agenda. In principle, a multilateral framework entails the more far-reaching consequences in terms of fundamental cooperation which exceeds the pursuit of only basic objectives in international society (IL_2, D_1). In that sense, a multilateral approach would constitute a stronger move towards solidarisation. (The same has been the case for climate change, where I have argued that it was a crucial aspect that the EU promoted a comprehensive and universal multilateral agreement). However, if the prospects for progress in the multilateral negotiations are low – and this we may assume, as effectively the Doha negotiations have been paralysed since their breakdown in 2008 – a bilateral approach might ultimately constitute a more effective solidarising move. Through bilateral PTAs, trade liberalisation is further enhanced (IL_1, IL_3). Moreover, through bilateral agreements, the EU has much more leverage to also promote other values ($\rightarrow$ values *through* trade), for instance via the human rights clause, which is an obligatory feature in all agreements since 1995 (European Commission 1995; see also section 5.1.2). Through its trade policy, the EU "is trying to get others to talk about human rights" (Interview 2017g). This indicates solidarisation according to IL_2. In sum, the shift towards bilateralism potentially confines solidarisation in terms of enhanced and broad multilateral cooperation, but contributes to solidarisation by providing the greater chances for liberalisation in the light of a multilateral stalemate and by enhancing the prospects of promoting other values *through* trade policy. Such a partial advancement of solidarisation in trade is less detrimental to overall solidarisation than in climate change because global warming ultimately can only be addressed on a global scale. The shift towards bilateralism, however, raises other normative problems: When the EU negotiates bilateral agreements with other states, most notably developing states, it is in a certain position of power. We have seen above that developing countries, when acting in concert were able to significantly intensify their leverage in the multilateral negotiations and thus to increase the chances that their particular concerns

are considered. This might be different in a bilateral context. Although closer empirical investigation would be necessary, my preliminary contention would be that a bilateral approach is more prone to re-enforce structures of inequality, because the EU in such a context would be under less pressure to make concessions on its part. Thus, it is probably easier for the EU in bilateral negotiations to maintain problematic policies, such as more protectionist ones under the CAP. In the multilateral framework, these practices play a crucial part for the overall stalemate.

7.3.2 The EU and the Creation of the WTO

The discussion of the issue-specific indicators of solidarisation for international trade (7.2.2) has revealed that the inception of the WTO and in particular the enhancement of dispute settlement mechanisms entails far-reaching processes of solidarisation. The WTO builds the cornerstone of the international trade regime and its establishment constitutes a remarkable example of states' willingness to subordinate integral parts of their national sovereignty to an international institution. Thus, if the EU is assumed to have a solidarising effect on international society in the issue area of trade, it would seem reasonable to expect evidence for a noticeable involvement of the EU in bringing about this outcome. And indeed, the overall finding is that "[t]he institutional design of the WTO itself has been much influenced by the European Union" (Mortensen 2009, 87). As Baldwin (2006, 933) points out: "But most of all, the WTO 'feels European' in its mission and even in its politics: starting from the opening of trade between members on a largely voluntary basis, arriving at binding rules (with consequences), and the pooling of sovereignty, but this time on a global scale".

The initial proposal to establish a formal organisation as an enhancement of the GATT was not made by the EU, but by Canada (Lütticken 2006, 56). In contrast to the US, however, the EU was promptly in favour of this proposal and emphatically supporting it (Preeg 1995, 114). Together with Canada, thus the EU made a considerable contribution to promoting much more institutionalised formal structures to govern international trade, and hence to a considerable solidarising process in international society according to IL_1, IL_3, D_1, D_2, D_3.

More specifically, as already indicated in connection with several aspects in this chapter, the new dispute settlement mechanisms of the WTO were a paramount and crucial development. As Conconi (2009, 168) emphasises: "[d]ispute settlement procedures were strengthened in an unprecedented way" in the Uruguay Round. Already the GATT regime had provided for dispute settlement procedures. Yet, these were so weak that a state could relatively easily

avert ruling against itself (Bache et al. 2015, 476; Dymond and Hart 2000, 28). The new dispute settlement mechanism under the WTO, essentially is a legalised, judicial system in contrast to the merely diplomatic mechanisms provided under the GATT (Zangl 2008). More specifically, the system was de-politicised in particular through the establishment of an Appellate Body, which is composed of independent legal experts rather than political representatives. The Appellate Body has the power to revise panel decisions. Furthermore, the newly established DSB, which ultimately adopts panel reports and Appellate Body decisions, can only reject them unanimously, which eventually means that the blocking of unfavourable decisions is ruled out. This principle of 'reverse consensus' constitutes the cornerstone of the WTO's "compulsory jurisdiction" (ibid., 831).

Similar to the overall development of the EU from a protective and defensive actor to an actively committed promoter of liberalisation, the EU was at first hesitant regarding the enhancement of dispute settlement (Ostry 1997, 87), but then started to vigorously support it. Shaffer (2006, 834) notes on the initial hesitation that the EU at first seemed to prefer a diplomatic over a legalistic approach. This changed and since their inception, the EU has actively and increasingly sought to make use of the international trade regime's legal and judicial procedures which are at the EU's disposal. This bears two consequences that are relevant in terms of solidarising effects: First, it contributes to further advance a liberal free trade agenda (IL_1, IL_2, IL_3, D_2). Second, in order to be able to work effectively through the WTO legal system, the EU has actively sought to enhance its cooperation with private business actors and trade associations (D_2) (ibid., 833). Again, the EU has not been the initial driving force behind the strengthening of the WTO's legal mechanisms, but once the idea was born, the EU became an indispensable advocate and in that sense has contributed to solidarisation. As Baldwin (2006, 933) notes:

> Indeed, what most symbolized European success in the Uruguay Round was a state of the art dispute settlement system. Not only were the rules binding. The system also had teeth, including the possibility to impose sanctions. The rule of law – with penalties to back it up – had arrived in the WTO.

While EU external action "is not concerned with the export of supranationality" (Interview 2015b), as a high-ranking EU official emphasised, "[t]he EU could live comfortably with the notion of supranational authority" (Baldwin 2006, 933).

Finally, another crucial instrument of the WTO is the "Trade Policy Review Mechanism (TPRM)". This instrument aims at putting members' trade policy to the scrutiny of international society on a regular basis. The TPRM, thus constitutes the WTO's main transparency

mechanism. Such an instrument entails solidarising effects, in particular according to D_1 because it creates permanent diplomatic procedures to organise a transparent exchange between members as well as to D_3 and IL_3 because it exposes sovereign members' trade policy to the scrutiny of the international society and thus entails a remarkable redefinition of sovereignty. While it is difficult to trace the exact positions and impacts on the Uruguay negotiations, during which the TPRM was established, we can put on record that there were considerable reservations towards such a review mechanism, but this came largely from developing countries, with India taking the lead. The EU supported such a mechanism and agreed that together with three other major trading powers, it would be reviewed most frequently, i.e. every two years. The differentiation of review cycles was an important step to reach agreement (Preeg 1995, 75; Croome 1996, 158–159).

In sum, while the WTO and its strengthened – and solidarising – mechanisms are certainly not an exclusive product of EU trade diplomacy, there is evidence that the EU has had a considerable impact on the concrete institutional design, which reflects EU preferences to a great extent.

7.3.3 Posing a limit to Ambiguity and Solidarisation?!

The previous analysis has revealed a fundamental trade-off between the promotion of a comprehensive trade agenda (i.e. the DTA), which also includes the promotion of values *in* trade, and the advancement of liberal free trade. Solidarisation in this context becomes an extremely complex, non-linear and obfuscating undertaking. In addition to such complexity, the EU's behaviour in trade policy is more often than not indeed awfully inconsistent. As Elgström (2007b, 455) – exemplary for many others – points out:

> As long as the Union is considered protectionist in agriculture, it is also seen as inconsistent and less than credible. So while the overall multilateralism of the EU, and its forceful defence of a multilateral system of rules in the trade area, are praised by many, it is still not conceived as a leader with a clear free trade profile.

It is of less interest for this thesis whether the EU is conceived as an ultimate leader in international trade. Nonetheless, it seems necessary to elaborate in more detail on the role of such inconsistencies – most notably in agriculture. More specifically, does the case study on international trade not – more than any of the other cases discussed in this thesis – provide irrevocable counter-evidence to the argument that inconsistencies – if understood through the ambiguity lens – can contribute to further solidarisation rather than clearly undermining

it? In order to engage with this question, this final section elaborates on some specific examples of EU action in trade policy which draw immense criticism. Specifically, this concerns trade in poultry as well as a recent regulation by the Commission (European Commission 2017e) on the reduction of a pesticide used by Indian farmers for the production of basmati rice. Both cases were brought to my attention because they were raised as acute and grave examples of problematic EU trade policy by project partners from South Africa and India respectively in the context of the H2020 project „GLOBUS – Reconsidering European Contributions to Global Justice" (GLOBUS 2018a).

The basmati rice issue is as follows: India is the world's biggest producer of basmati rice (about 60% of world production). The EU has issued a new regulation in 2017 which requests reducing the use of the pesticide 'tricyclazole' to 0,01mg/kg from January 2018 onwards (European Commission 2017e). The regulation itself, but also the short timeframe is said to severely hit Indian farmers, who are not able to adapt their production process and crop quality as fast. As a consequence, basmati rice prices in Europe are expected to rise substantially and trade in basmati rice might shift considerably to Pakistan (The Telegraph 2017; The Economic Times 2017; AIREA 2017).

A brief problem outline of EU poultry trade with Sub-Saharan Africa (SSA) is as follows (Goodison 2015): The demand for chicken meat in SSA has increased markedly, creating aspirations to develop a local, profitable chicken meat production sector. However, in spite of severely increased consumption, this economic sector has not grown accordingly. The EU is blamed to have undermined such development through a sophisticated system of trade restrictions – formally all in line with WTO laws. Specifically, there are no direct subsidies for poultry industry, but the sector benefits from direct aid to farmers, which helps reducing feed costs. Furthermore, a "tightly managed, high tariff, import regime" (ibid., 2) is in place for the European market. While in the EU the demand for poultry is limited to particular parts (chicken breast), other parts and offal are exported mostly to the SSA market because this has proven much more profitable than any other disposal of the unused parts. In addition, also food safety standards and health provisions seem to play a role as trade barrier (Goodison 2015; GLOBUS 2018c).

What is the relevance of both examples for solidarisation and for the overall argument of this thesis? In the basmati rice case, the EU regulation clearly puts a restriction on liberal free trade and is thus problematic with regard to solidarisation on at least three levels: Any restriction on free trade undermines solidarisation according to IL_1. Moreover, the EU seems to

make use of a 'sovereign' right to put in place regulations, which is in conflict with IL_3. And lastly, a ban on Indian basmati rice potentially hits Indian farmers severely and hence contravenes IL_2 because it harms the socio-economic well-being of individuals. On the other hand, a reasoning behind the regulation is the precautionary principle, which entails solidarisation – as argued with regard to climate change (cf 7.4.3). Precaution limits certain sovereign rights in the case of insufficient scientific evidence that a particular practice (i.e. the use of tricyclazole) is non-hazardous for consumers. It thus addresses the well-being of individuals and hence contributes to solidarisation according to IL_2. Furthermore, as respondents from India have reported, while the pesticide's effect on consumers may be limited, it has more harmful effects on local harvesters, for whom it causes health issues while working on rice plantations (GLOBUS 2018b). Finally, while the EU regulation restricts a certain aspect of free trade and thus hinders solidarisation, it likewise entails solidarising aspects. Furthermore, since the EU is not exporting basmati rice itself, it seems unlikely that economic self-interest is the mere motivation behind it. After all, a ban will lead to rising prices in Europe, which makes the regulation even politically inconvenient.

My knowledge of the case and of the effects of tricyclazole is certainly limited and I am thus not claiming any competence for a final evaluation of the issue. The case, however, provides an illuminating example of the complexity of solidarising processes in international trade.

The poultry case, certainly, is more problematic: The EU's action clearly undermines solidarisation according to several indicators. It limits free trade (IL_1). More importantly, it most likely has devastating effects on local industries in SSA and thus prevents people from making active use of their right to development, which evidently ranks high on the EU's developmental agenda (Goodison 2015, 12). This limits the chances of the local population to improve their socio-economic living conditions (IL_2). In contrast to the basmati rice case, here are evident economic interests of the EU and European producers at stake. The poultry case is highly problematic and it reveals EU action in trade policy that is normatively extremely questionable. However, even this case is not as clear-cut as it seems at first sight. Local respondents again have reported that the problems in the local poultry industry are at least partly self-made and that it seems questionable to fully blame the EU for this because there is also considerable import to the SSA market of chicken meat from other states, such as Brazil (GLOBUS 2018c). This is not meant to justify the EU's obvious problematic behaviour, but it still demonstrates that even seemingly clear-cut cases bear more fundamental complexities. Again, my knowledge is insufficient to provide a final assessment of the case, but it still serves

the purpose to illustrate the following: While food security and health provisions might also play a role in this case, this is certainly less evident and less persuasive than in the basmati rice case. The poultry case, thus suggests that economic interests, here indeed do obstruct more far-reaching solidarising moves of the EU.

7.4 Conclusion

"The problem is that leaving out the economic sector has seriously weakened the solidarist position, and in so doing has reinforced the more pessimistic, pluralist interpretation of international society" (Buzan 2005, 119).

Introducing the case study on solidarisation in international trade, I have made reference to an emerging English School debate which increasingly criticises the omission of economic aspects within this school of thought. As Buzan argues, such an omission has led scholars to considerably overlook solidarist structures in international society. Indeed, I think that the chapter has provided ample evidence that the pluralist-solidarist debate has much to contribute to the discussion of international trade. In particular, it has become clear that with the development of a global system of liberal free trade, tremendous processes of solidarisation have taken place. Rather than providing a summary of all aspects discussed in this chapter, I shall point to two major findings:

First, in the course of the time the EU has developed from a reactive and protectionist actor towards a major force for stronger trade liberalisation as well as for a multilateral framework to govern these processes. As part of such developments, I have identified a number of solidarising tendencies to which the EU has made noticeable contributions. At the same time, I have also identified aspects of EU trade policy, which seemingly hinder solidarisation. One such aspect can hardly be linked to any underlying ambiguity. The EU in some cases (mostly in the context of CAP) pursues policies, which clearly contradict solidarisation. This is highly problematic and important to note. However, it should not veil the fact that there has at the same time been clear evidence of an EU contribution to a number of processes of solidarisation. Another discovery, however is, that in some cases EU policies which evidently contravene solidarisation at the same time also entail solidarising processes. The example of the promotion of environmental standards or other values has illustrated that the same policy can contribute to and run counter to solidarisation. This is due to a fundamental underlying

ambiguity, which essentially is unresolvable. Solidarisation is liberalisation, but solidarisation also demands limits to liberalisation.

Second, the fact that from a solidarist point of view (and in particular pertaining to IL_2) it is necessary to limit liberalisation, raises more fundamental questions about the quality and kind of solidarisation that we encounter in international trade. Not only the increasing resistance of developing states as we have seen it in the context of the DDA, but also broader public protests against a trade liberalisation without restraint, as e.g. during the 1999 Ministerial Meeting in Seattle or, more recently in the context of the TTIP negotiations challenge the normative foundations of solidarisation in international trade. Who benefits and who loses out from solidarisation in trade? While the objectives and motives of protesters for instance in Seattle have been extremely diverse (Levi and Murphy 2016), the protests have generally addressed global justice concerns. There is a fundamentally problematic dimension to solidarisation in international trade, which crystallises in such civil society activism. Significantly, Williams (2005, 27) has pointed out:

> Anti-WTO protests, although hugely diverse in nature, have emphasised sovereignty and the idea of the WTO as relocating authority in an institution that operates on the basis of a different structural conceptualisation – that of capital and markets.

The quote is indicative of how advanced and far-reaching solidarisation in trade is – or at least it is perceived in such a way. The solidarisation that underpins the WTO and the international trade regime seems more radical than in other issue areas because of the fundamentally "different structural conceptualisation" it entails. Essentially, protesters "accused the WTO of trampling human rights, increasing global inequality, and undermining national sovereignty in the pursuit of capital gain for the few" (Murphy 2004, 27). Such criticism raises concerns about how democratic and legitimate decision-making procedures in the WTO and in the overall trade regime are and it has called the international society's attention to the potential hazard that the liberal trade agenda is not necessarily in line with matters of global justice. Obviously, the underlying narrative for a liberal free trade agenda is that "open trade is for the benefit of all" (WTO 2018a). One does not need to be a radical anti-globalisation activist to doubt that the international trade regime succeeds in living up to this ideal. This is not meant to say that all claims of protesters are automatically legitimate. As Dymond and Hart (2000, 32) argue, anti-WTO protests are not seldom "based on the astonishing assertion that democratically elected governments negotiating and entering into agreements are less representative and accountable than self-appointed civil society groups advancing self-

anointed claims of moral superiority". This dispute, once again, is a manifestation of fundamental underlying ambiguities: Solidarisation, mainly captured as the promotion of liberal free trade, is in itself problematic because it inevitably brings about normative downsides. While liberalisation might ideally aim at being to the benefit of everybody, solidarisation in trade is bound to also create and reproduce inequalities and at times even cause harm for some, rather than being to their benefit. Anti-globalisation protests, in turn evoke pluralist concerns by emphasising the need to safeguard national sovereignty. Yet, incorporating the concerns of civil society at least to some extent, would constitute a solidarising move on a procedural and on a substantial level. Regarding the EU's role in all of this, it would certainly be unfair to postulate that in order to have a transformative impact, it has to always consistently promote solidarisation. In light of such ambiguities and fundamental normative dilemmas this is essentially impossible. Even in the seemingly clear-cut case of the CAP the obvious easy solution, to wit large-scale and thorough liberalisation of the agricultural sector, proves problematic. As Young and Peterson (2006, 807) point out: "Extensively liberalizing the common agricultural policy (CAP) would not be an unadulterated boon to developing countries, not least those that would lose preferential access to the EU's market." Nevertheless, the empirical analysis has also brought to the fore inconsistent EU action which ultimately cannot be linked to such underlying ambiguities. The poultry example has illustrated that EU trade policy bears highly problematic aspects which run counter to solidarisation no matter what dimension or indicator of solidarisation is used as benchmark.

8 Conclusions

With this thesis, I have set out to examine the EU's contribution to change in international society. Embarking upon the assumption that there is un undissolvable parallelism of conflicting trends and structures in international society – which I have called ambiguity – my aim was to investigate the question whether and to what extent change is possible under such circumstances as well as whether and to what extent the EU can make a noticeable contribution to processes of change. More specifically, I have put forward the argument that the often implicit assumption that consistency is a fundamental precondition for change to occur and for the EU to have a transformational impact, does not hold. In the concluding chapter, a comparative perspective on the findings of the three case studies enables me to draw conclusions about the EU's overall contribution to the solidarisation of international society (8.1). These conclusions have further theoretical and normative implications, which I will elaborate

in section 8.2. More specifically, I will carve out consequences of my argument and my results for the English School tradition, but also for the Normative Power Europe debate. Furthermore, this section will also address potential shortcomings and points of criticism that may emanate from my research and I will outline potential pathways for further research. Finally, I argue that my theoretical argument as well as my empirical findings are also politically relevant – on a general level and more specifically for EU foreign policy. I will therefore end this thesis with some reflections on the political implications (8.3).

8.1 The Ambiguities of the EU's Contribution to Solidarisation of International Society

In all three empirical chapters, I have discussed a number of evident and crucial processes of solidarist change in international society. The discussed instances of solidarisation were significant on the theoretical level – to the extent that they epitomised somewhat fundamental shifts or transformations in the structure of international society – but also on the political level, because they mostly entailed relatively fundamental political consequences. All three chapters have brought to the fore aspects of EU policy that indeed convey the impression of inconsistency. Such inconsistency, however, shall not veil the fact that there still are visible EU contributions to solidarist change in international society. I argue that the analysis has indeed provided ample evidence to corroborate the claim that consistency cannot be an unquestioned precondition for structural change. To illustrate this point, I argue that the three case studies collectively provide three different examples of what would commonly be considered as inconsistent policy that potentially undermines the transformative impact of the EU as actor in international society. A closer look on all three of them allows a deeper understanding and thus more adequate assessment of such policies:

1) *Constrained solidarisation:* This type of solidarisation refers to a situation in which the EU indeed actively promotes a solidarist agenda, but at times appears as if it was not fostering solidarisation as much or as strongly as it probably could. The reason behind such *constrained solidarisation* is that there are eminent pluralist reservations against a thoroughly solidarist agenda. The human rights case, in particular has revealed instances of such *constrained solidarisation.* For instance, the analysis of the EU's promotion of R2P has uncovered that presumably, it is more effective after all, if the EU takes a rather cautious and reflective approach to R2P rather than advocating it from a position of moral superiority. This is because R2P is underpinned by a number of fundamental ambiguities, such as the fact that it ultimately implies the use of force as a last resort. Using force, however, can never be normatively neutral

and while it may be justifiable it cannot even be normatively unproblematic. The HRC's Special Procedures, and in particular country specific mandates, provide another example: The EU actively promoted such mandates and defended the continuation of the Special Procedures, including their relative independence from state control. This, however, required a cautious rather than a thoroughly forthright approach because the risk of a politicised use of such mandates cannot be simply dismissed. In instances of *constrained solidarisation*, the EU might well appear as a rather weak promoter of solidarism – especially as measured against the usually high expectations that are directed towards it. Yet, it still was such a promoter of solidarisation. As discussed in the theory chapter, (solidarist) change is most likely anything but easy to achieve because the overall structural context has to be taken into consideration.

2) *Contradictory solidarisation:* In this kind of solidarisation, EU policies appear as seemingly contravening solidarisation – but counter-intuitively, this ultimately helps to bring about solidarisation. The most evident example of this type is the EU's promotion of a bottom-up approach in the Paris Agreement. This has been interpreted as a reversion to more pluralist structures. However, as I have illustrated, this strategy, has eventually established many more crucial pathways towards solidarisation in the Paris Agreement. A clear consequence from this example is that in order to contribute to solidarisation it is indispensable to be considerate of existing pluralist structures. Incorporating such structures, more often than not enhances the prospects for solidarist change rather than undermining it.

Similarly, in trade, the promotion of environmental and labour standards as part of the DTA seems to have contravening effects on solidarisation, because it poses certain limits to trade liberalisation. On the other hand, the enhanced consideration of concerns of individuals – and this can at least be one possible reason behind such policies – enhances solidarisation on a different level. Here, two dimensions of solidarising processes are contravening each other to some extent. Nonetheless, solidarisation has still taken place. That the EU has after all not been very successful with the inclusion of such issues in the DTA and thus the DDA, is due to actual inconsistencies, which brings me to the last type of solidarisation.

3) *Inconsistent solidarisation:* This refers to a situation in which EU policies actually and strikingly undermine processes of solidarisation. This happens largely in trade. Policies, such as a sustained system of subsidies or import tariffs, for which there is no evidence that this serves any other higher-ranking goals, such as concerns for health or environmental issues, are not in line with a solidarist agenda. And they indeed diminish the EU's credibility as global trade power, but more specifically also its transformative impact. The EU's reluctance to also liberalise its CAP more thoroughly clearly is an important factor for the stalemate into which the Doha negotiations have run. *Inconsistent solidarisation* is the most problematic case. Why, if such policies ultimately contravene solidarisation, have I chosen to still use the term 'solidaristion' albeit with the qualification 'inconsistent'? The reason is that as we have seen in the issue area of trade, in spite of its more than questionable policies under the CAP, the EU did still contribute to solidarisation in the same issue area.

There are two major lessons to be learnt from this typology of solidarisation. First, while many aspects of EU foreign policy might indeed appear as inconsistent, we need to take a much closer look in order to be ultimately able to assess, whether the EU contributes to solidarist change in spite of these ambiguities. There are two cases of seemingly inconsistent EU action, which must be linked to underlying fundamental ambiguities. And in these cases the EU cannot only exert solidarist change in international society in spite of ambiguous policies, but even through them. Second, there are also aspects of EU policy that are essentially contravening solidarisation without that this is based on any underlying ambiguities. This is deeply problematic and should in each case be brought to the fore. However, even such deeply problematic and actually inconsistent policies, do not eliminate all other contributions of the EU to solidarising processes in the same field.

The ambiguity lens, thus, has provided me with a tool to develop a comprehensive and multidimensional conceptualisation of structural change that addresses different dimensions and levels of change. More specifically, in order to understand and assess the EU's role as a potential transformative actor in international society, undoubtedly, the concrete policies of the EU are important. For each of the three case studies, thus, the analysis did engage with the question to what extent the EU promotes human rights, contributes to combat global warming and commits to enhance global free trade. These aspects were mostly covered by the first indicator of solidarisation to wit the degree, that is the level of intensity and the scope of cooperation. Furthermore, the basic question of whether and how the EU contributes to

the outlined broad objectives of the respective international regimes, can mostly be covered by the first indicator in its *International Law* dimension. To really understand the role of the EU, however, I have argued in part I of this thesis that we need to address a more fundamental level of change. With the three indicators of solidarisation and their anchoring in two different primary institutions, the scope of the analysis has been broadened and it became possible to identify and further examine processes of change on other levels.

To sum up, ambiguity as an analytical perspective points us to understand, accept and to deal with tensions that are an inevitable feature of international society, of actors within this society and of processes of change. To dismiss the EU's potential of contributing to change in international society simply based on the observation that its policies exhibit inconsistencies and incoherence, seems unjustified. Ambiguity as analytical perspective helps overcoming the widely spread, yet theoretically unfounded assumption that change would require absolute consistency and clarity all the way down. Ignoring the insights that an ambiguity perspective provides, will more often than not lead us to underestimate or fully overlook ongoing processes of change.

Finally, the claim that the EU contributes to solidarisation – and that it does so in spite of inconsistencies and at times through ambiguous policies – should not be confused with the claim that the EU is a permanent force for good in international society. Solidarisation bears a multiplicity of normative consequences and thus does not entail an inherent normative desirability. Sure enough, my analyses of human rights and climate change, both convey some normative preference for a solidarist dimension in international society. While I will address the normative implications of my conceptualisation of solidarisation in more detail below, I shall point out here that I have time and again also addressed potential normative downsides of particular solidarist moves within these policy fields. In trade, the normative aspect is much more difficult. The underlying assumption that free trade is to the benefit of all is questionable, and hence solidarisation in trade raises even more fundamental and more problematic normative concerns. The ambiguity lens in combination with my different indicators of solidarisation have helped to bring such various and diverging normative consequences to the fore.

In terms of possible future research, I think that the analysis of three different issue areas has provided a valuable starting point. Yet, the overall role of the EU as a transformative power in international society could be refined through an extension of policy fields. For instance, an obvious candidate – and presumably another 'hard case' for solidarisation – would be migration policies. The migration crisis can be read as an acrimoniously fought

struggle between solidarist and pluralist structures. Within these struggles, there are countless attempts, also coming from within the EU and its member states, to re-enforce pluralist ideas and structures, such as restrictions of the permeability of state-borders as well as essentialist understandings of culture. At the same time, such attempts are questioned, challenged and sometimes de-legitimised. The migration crisis in and of itself, presumably demonstrates that thoroughly pluralist structures are not providing adequate solutions for the issues at hand, because the issues at hand in and of themselves have moved beyond the confines of pluralism. Migration policy, while having a stronger internal focus than the three cases discussed in this thesis, most likely also bears relevant implications for the EU's role as global actor in international society. Apart from migration, security policy or a more focused analysis of development policy (although this has played into all three cases discussed here) likewise constitute potential fields for investigation.

8.2 Further Theoretical and Normative Implications

Implications for the English School: The previous section has illustrated the added-value of my analysis vis-à-vis other approaches to structural change as discussed in chapter 2. This leaves me with the task to locate my contribution more precisely within the English School debate. In this context, I want to raise the following three points.

First, in line with a more recent research agenda within the English School tradition, this thesis has contributed to the debate about the role that international organisations or secondary institutions play for the establishment, maintenance and evolution of order in international society. As mentioned in the theory chapter, the thought that international organisations matter if we want to understand this order on a more fundamental level, had already been inherent in earlier English School writings, but was not explicitly addressed or elaborated. Hedley Bull and his contemporaries had a stronger focus on establishing the fundamental relevance of primary institutions in the first place. This thesis has contributed to these debates by developing a conceptualisation of change that still captures more fundamental levels by focusing on primary institutions, but that at the same time provides a link between this fundamental level and international organisations. The specific empirical analysis of the EU's contribution to structural change in international society is not meant to establish whether the EU is some kind of great power or might potentially become one. As stated in the introduction to this thesis, this kind of question seems outdated to me. But what I was

able to establish is that international society would look considerably different without the EU.

Second, in chapter four, I have made the case for the differentiation of global international society along the lines of different policy fields. This has proven worthwhile in the analysis and it has helped to pinpoint the rather abstract and contested concept of an international society at the global level. Yet, this also came with a downside: The separation in different policy fields occasionally veils connections and interlinkages between the respective issue areas. Such interlinkages were not completely invisible in the analytical part, but I have not addressed them more systematically. For instance, it has become clear that human rights have emerged on the EU's agenda in the context of development policy, which provides for certain links to the trade case. The promotion of values *through* trade clearly points in this direction. The same is true for the promotion of values in trade, which obviously can concern basic human rights. Human rights can also be a fundamental reasoning behind an ambitious climate policy, as I have briefly addressed in section 6.3.4. On a much more fundamental level, one could ask whether successful and far-reaching solidarisation in trade must not necessarily undermine solidarisation in climate change. Free trade requires goods and people to move freely and extensively around the globe, which evidently is a major cause for CO_2 emissions into the atmosphere. There are, thus certainly tensions between the different issue areas, which might be worth to be investigated more closely. On the other hand, as it has been the case so frequently in this thesis, the assumption that there is a simplistic antagonism between solidarisation in trade and solidarisation in climate change does not hold either, because solidarisation occurs at so many more levels than just at the one of primary policy goal achievement. In this sense, this thesis has provided a more elaborate and differentiated understanding of solidarisation. Examining the interlinkages between the different policy fields in more detail, would provide for even further elaboration on different dimensions and ambiguities of solidarisation.

Third, there are important lessons to learn about change itself – also for the English School. For one thing, an English School approach to structural change is not exempt from the risk of getting entrapped in a dichotomous logic of either pluralism or solidarism. The argument that both concepts form a continuum rather than being distinct components is well established, but the ambiguity lens helps to further underpin this theoretical conceptualisation and make sense of the specific dynamics that emanate from such a parallelism.

Furthermore, there is an unresolved problem within English School theorising. This concerns the differentiation between a solidarist international society and world society. Is there some definable threshold between the two? This thesis did not really engage with this question, but I think it has nonetheless generated an insight that might be relevant to this debate: In light of tremendous ambiguities on the structural and the normative level, change is anything but easy. Eventually, taking the ambiguity argument seriously, diminishes the likeliness of any concrete radical manifestation of world society that ultimately overcomes the organisation of political order around the existence of states. World society, thus remains important as a theoretical concept to capture ideas that frequently extend into the realities of international society. But it seems less relevant as a concept that could any time soon become a political reality. Regarding the EU, this might disappoint those who would prefer, for whatever reasons, a radical transformation of political order. On the other hand, it also helps to keep our expectations regarding the EU's transformative power within the realm of realistic possibilities. Am I now myself invigorating a sceptic attitude about change in the international sphere? This is not what I intend. Rather my contention is that the ambiguity lens sharpens our senses to focus on processes of change that actually take place instead of overlooking them in an unfounded expectation of radical change. Thus, taking ambiguity seriously, accepting and embracing it, enables us to see such change, prevents us from exuberant expectations regarding change and is well-suited to sensitise us for the normative tensions of any such change.

Implications for Normative Power Europe: The previous conclusions have already alluded to the significance of this research for NPE. The three indicators of solidarisation and their anchoring in primary institutions have helped to specify the transformational aspect that one would expect from the EU as a normative power and has furthermore helped to broaden the scope of the analysis and to identify and examine processes of change on levels where they might otherwise be easily overlooked. It is important to note that my research has focused on a particular aspect of normative power, i.e. the transformational impetus of the EU. I have used NPE as a starting point for my argument, but I am not suggesting to equate the contribution to solidarisation with normative power. My contention, however is that the solidarisation argument put forward in this thesis constitutes a useful complement to the NPE debate and has helped elucidating a crucial aspect of NPE that had not received adequate attention hitherto.

Normative implications – What kind of solidarisation? Regarding the normative implications, there are two interrelated and likely points of criticism that might be raised and that I want to address.

First, is my understanding of solidarisation not problematic to the extent that it is underpinned by a principled conviction that solidarisation is an inherently good and desirable process of change? And second, is my understanding of solidarisation not Eurocentric and thoroughly informed by a Western discourse, thus making myself prone to post-colonial critique?

In response to this criticism, I wish to raise two points. First, throughout this thesis I have emphasised that solidarisation is *not* inherently good or per se normatively desirable. More specifically, the trade case in particular has revealed a deeply problematic dimension of solidarisation and I have raised this issue before in these conclusions. Moreover, specific processes of solidarisation have clearly entailed normative downsides. For instance, R2P contributes to solidarisation and makes the well-being of individuals a matter of concern for the international community. Yet, likewise it potentially re-enforces pluralist structures because R2P is bound to also strengthen military structures, which still are closely linked to state power. And such state power can never be immune to misuse. After all, R2P might also lead to the re-enforcement of the primary institution of war, albeit in a changed version. The CBDR as discussed in the climate change chapter, entails pluralist structures and I have argued that overcoming a particular interpretation of the CBDR contributes to solidarisation. The underlying reasoning of the CBDR, i.e. the fact that the historical responsibilities for global warming vary, cannot be dismissed. A major point throughout this thesis, therefore was to use the framework of solidarisation and the ambiguity lens as a tool to identify normative problems. In this sense, a conceptualisation of structural change as solidarisation implies the necessity to constantly challenge the underlying notion of solidarisation and to expound the problems it entails.

This does not mean that my understanding of solidarisation is neutral. This thesis is undoubtedly informed by a certain sympathy towards the idea of a transformation of international society towards solidarism. This has especially been the case for the issue area of human rights and of climate change. And such sympathy is indeed more likely to be found in particular Western discourses. It would thus be presumptuous to claim that such criticism could not at all be legitimately raised regarding my argument and with respect to my understanding of solidarisation. Yet, as stated in the introduction to this thesis, the understanding of change, of norms and values can never be neutral. The argument that explicitly emanates

from my research is that in all processes of change and in any normative positioning towards such change, we have to be mindful of ambiguities and of the potential downsides that solidarising processes might entail.

Thus, eventually, the problem is not so much to take a particular normative stance. The problem – and this also applies to Eurocentrism or to neo-colonial attitudes in Western thinking – comes into being if a particular normative attitude is made one of absolute moral superiority and if it is hence promoted without an adequate degree of self-reflexivity. Such an approach appears as extremely questionable on normative grounds and would thus rightly draw legitimate criticism from a post-colonial perspective. What is more, as we have seen, such an approach would also come with poor prospects for success – because, as I have argued throughout this thesis, an agenda for solidarist change necessarily needs to take into account the existing structures and furthermore needs to be aware of the inherent normative ambiguities of any processes of change. This brings me straight to the political implications for EU foreign policy.

8.3 EU Foreign Policy – Political Implications

What does the overall argument of this thesis imply for EU foreign policy on a political level? Should the EU continue its normative engagement in and through external action? Should it in one way or another further pursue a transformational agenda? Or should it refrain from any such action, in recognition of the fact that ambiguity is omnipresent and that any normative stance is inevitably prone to criticism, and maybe increasingly so in a world that has left behind the assumption of a straightforward development towards more liberal, more democratic, more peaceful structures? Embarking from what I have discussed in this thesis, I argue the following: While this may seem somewhat dreary to those who are enthusiastic about radical change and pathbreaking transformations, the much invoked "middle ground" – that is also highly popular within English School thinking – seems to show the way forward.

Akin to the argument outlined earlier, a particular normative stance of the EU is not problematic or objectionable per se. Quite the contrary, the EU would mostly likely manoeuvre itself into a fairly insignificant position as a global actor, if it gave up on its normativity. And it would not be unlikely that those who accuse the EU of its neo-colonial attitudes today, would then criticise it as being more than ever devoid of meaning in international society.

The EU has a transformative role to play and it definitely should weigh in its normative convictions on the evolvement of international society. Yet, doing this, it needs to be considerate of the complexities and ambiguities of the existing structures as well as of the effects of change in these structures – and last but not least of its own ambiguous structure and the potential normative downsides of its own action. Openly accepting, addressing, embracing such ambiguities appears to me as an inevitable necessity in EU foreign policy. Such an approach surely is a constant and highly challenging balancing act. But it is one that eventually combines normativity with self-reflexivity and with due consideration of the existing structures.

This argument seems to be very much in line with the concept of "principled pragmatism" as put forward in the EU Global Strategy of 2016 (European Union 2016).

> Principled pragmatism seeks to move the debate away from false dichotomies and well known hypocrisies: be it the sterile debate on 'interests vs values' or on 'interventionism vs retrenchment'. The point it tries to make is that we should observe the world (and ourselves) as it is, not as we would like to see it. We must be more modest at times in what we believe we can achieve and what we cannot. But modesty should not translate into closure or passivity (Tocci 2016, 6).

And neither, I shall add, should modesty or calls for such modesty be confounded with the impossibility or the absence of change.

„Principled pragmatism" retrieves and re-confirms the EU's solidarist agenda. But it likewise detaches EU foreign policy from unrealistic, excessive expectations and instead calls for a certain degree of "sensitivity to contingency" (European Union 2016, 16). In a world of pervasive ambiguity, this strikes me as a wise suggestion.

List of Abbreviations

ACP	African, Caribbean and Pacific Group of States
AWG-KP	Ad-hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG-LCA	Ad-hoc Working Group on Long-term Cooperative Action
BASIC Countries	Brazil, South Africa, India, China
BoP	Balance of Power
CBDR	Common but Differentiated Responsibilities
CCP	Common Commercial Policy
CET	Common External Tariff
CFR	Charter of Fundamental Rights of the European Union
CFSP	Common Foreign and Security Policy
CHR	Commission on Human Rights
CoE	Council of Europe
COHOM	Council Working Party on Human Rights
COP	Conference of the Parties
CSDP	Common Security and Defence Policy
DDA	Doha Development Agenda
DSB	Dispute Settlement Body (within the WTO)
DTA	Deep Trade Agenda
EAC	East African Community
EBA	Anything but Arms-Initiative
ECCP	European Climate Change Programme
ECHR	European Convention on Human Rights, formally: Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
ECrHR	European Court of Human Rights
EEAS	European External Action Service
EEC	European Economic Community
EIDHR	European Instrument for Democracy and Human Rights
EP	European Parliament

EPA	Economic Partnership Agreement
EPC	European Political Cooperation
ETS	Emission Trading Scheme
EU	European Union
EUFOR	European Union Force
EUSR	European Union Special Representative
FDI	Foreign Direct Investment
GA	(United Nations) General Assembly
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCCA (+)	Global Climate Change Alliance
GDN	Green Diplomacy Network
GDP	Gross Domestic Product
GHGE	Greenhouse Gas Emissions
GPM	Great Power Management
GSP (+)	Generalised Scheme of Preferences
HI	Humanitarian Intervention
HR/VP	High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission
HRC	Human Rights Council
HRD	Human Rights Defender
ICISS	International Commission on Intervention and State Sovereignty
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
INDC	Intended Nationally Determined Contribution
IPCC	Intergovernmental Panel on Climate Change
LDC	Least Developed Country
MFN	Most Favoured Nation Principle
NAM	Non-Aligned Movement
NDC	Nationally Determined Contribution
NGO	Non-Governmental Organisation
NPE	Normative Power Europe
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights

OIC	Organization of Islamic Cooperation (formerly: Organization of the Islamic Conference)
PI	Primary Institution
PTA	Preferential Trade Agreement
QMV	Qualified Majority Voting
R2P	Responsibility to Protect
SADC	Southern African Development Community
SC	(United Nations) Security Council
SEA	Single European Act
SIDS	Small Island Development States
SPs	Special Procedures
SSA	Sub-Saharan Africa
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPRM	Trade Policy Review Mechanism
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UPR	Universal Periodic Review
UR	Uruguay Round
US	United States of America
WMO	World Meteorological Organization
WTO	World Trade Organization
WW II	World War II

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