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The European Union: Patterns of Collaboration with
International Environmental and Climate Institutions

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¹ This working paper is an amended version of the author's Chapter 12 in the 'Research Handbook on the EU's Engagement with International Organizations' edited by Jed Odermatt and Ramses A. Wessel (Edward Elgar, forthcoming, 2018).

Abstract

The EU and its Member States have had substantive and institutional influences on the UN environmental institutions UNEP and UNFCCC. The EU and its Member States are among the largest funders of the UNEP and the 'Team EU' coalition formed during UNFCCC COP21 contributed significantly to the result of the Paris Climate Agreement. While the European Community was a bit behind at the time of the introduction of UNEP (1972), the EU conversely assumed a leadership position when it came to the formation of the UNFCCC in the 1990s. Since 'Copenhagen' (2009) the EU moved away from its ambition of legally binding instruments towards more soft yet universal agreements, such as the Paris Agreement and the UN Agenda 2030 with 17 Sustainable Development Goals (SDGs). On an institutional level, one could identify very peculiar institutional arrangements. These arrangements primarily resulted from the unique legal status of the EU as well as the particular legal status of the 'Program' and 'Convention' within the UN system.

The EU and Member State cooperation in these international institutions is mainly driven by legal (shared) competences, but it is also the result of political pragmatism. This combination could have positive effects on EU-Member State cooperation, as the ingenious 'Team EU' arrangement in UNFCCC makes clear. However, the cooperation arrangements also deviate from what is prescribed in the EU Treaties, which is making coordination more time-consuming. Examples include the negotiation mandate based on unanimous Council conclusions, as well as a large coordinating role for the Presidency of the Council of the EU in UNFCCC. By means of the unusual arrangements, as well as the Treaties, the Member States are keen to keep their discretionary autonomy on fiscal issues, land use and energy mix choices.

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Introduction²

The EU is committed to the ‘sustainable development’ of Europe and ‘the Earth’ as enshrined in its Treaties.³ One of the cornerstones of the EU’s sustainable development policies is worldwide environmental protection and the combating of climate change by means of multilateral cooperation.⁴ To contribute to these overarching objectives, the EU and its Member States have committed themselves from the beginning to the UN Environment Program (UN Environment or UNEP⁵, since 1972) and the UN Framework Convention on Climate Change (UNFCCC, since 1992). The year 2015 represented a turning point in the EU’s engagement with these international institutions with the conclusion of two landmark international agreements: the Paris Climate Agreement⁶ and the United Nations 2030 Agenda for Sustainable Development with its 17 Sustainable Development Goals (SDGs)⁷. UNEP and UNFCCC are the most influential environmental and climate institutions of the UN with which the EU has a rich history of participation through respectively a ‘Program’ and ‘Convention’. The UN also lists several other major international environmental conventions such as the Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants (POPs), the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD). Other international environmental bodies of note include the Basel Convention, the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on the Conservation of Migratory Species of Wild Animals (CMS), the Convention on Wetlands (Ramsar), the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (Ozone Secretariat), the High Level Political Forum on Sustainable Development, the Intergovernmental Panel on Climate Change (IPCC) and the UN Forum on Forests.⁸

² The author would like to thank Ulf Björnholm (Head of the UN Environment Brussels office) and Sebastian Gil (Deputy Permanent Representative to UNEP and UN-HABITAT, European External Action Service, EU Delegation to Kenya, Nairobi) for sharing their practical insights on EU-UNEP relations. For EU-UNFCCC relations this working paper builds on analysis and interviews for the PhD Thesis of the author (Play by the Rules?

Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context, 2018, forthcoming). Special thanks to Prof. Dr. Madeleine O. Hosli for comments on earlier versions of this working paper.

³ Art 3(3) and Art 3(5) TEU, Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C 326.

⁴ Art 191(1) TFEU: Union policy on the environment shall contribute to pursuit of the following objectives (...) promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. Cf Art 21(2) TEU.

⁵ UNEP and UN Environment will alternatively be used in this working paper to refer to the same international institution.

⁶ United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, accessed 13 December 2016.

⁷ United Nations General Assembly (2015) ‘Transforming Our World: The 2030 Agenda for Sustainable Development’, UN Resolution A/RES/70/1, adopted on 25 September 2015, available online from <<https://sustainabledevelopment.un.org/post2015/transformingourworld>>, accessed 12 January 2017.

⁸ Website UN Library, <http://research.un.org/en/docs/environment/bodies>, Accessed 29 March 2018. Cf <http://www.un.org/depts/los/Links/UN-links.htm>, Accessed 29 March 2018.

The EU and its Member States are among the largest funders of the UN Environment,⁹ the 'Team EU' coalition formed during COP21 contributed significantly to the result of the Paris Agreement¹⁰ and the EU's leadership status in global environmental governance has been highlighted in many academic contributions¹¹. However, there have also been many challenges and opportunities arising, due to the (legal) status of the organizations and agreements and the internal struggles between the EU and its Member States. The environment and climate change policy areas mostly relate to the EU's shared competences.¹² However, as will be made clear, this competence category and the link with other policy areas makes coordination between the EU and its Member State actors all the more challenging and based on ad-hoc decisions and peculiar coordination arrangements.

The working paper is focused on the EU's engagement with these international institutions, the UN Environment and the UNFCCC. It examines the substantive effects on EU policies and internal cooperation challenges between the EU and its Member State actors within these institutions.¹³ The paper starts with a general overview of the UN Environment and UNFCCC and the EU's legal status in these international institutions (1). This is followed by a discussion of the substantive and institutional influences of the EU upon these international institutions and vice versa in section 2. Some of the political and legal cooperation challenges between the EU and its Member States within the UNFCCC and UNEP will be dealt with in the next section 3. In the concluding section (4), a future research agenda for the EU's engagement with the UN Environment and UNFCCC will be sketched.

1. UNFCCC and The UN Environment: historical context, EU participation, legal status

Ever since the nascence of the UNEP/UN Environment (1972) and the UNFCCC (1992) the EU (previously the EC) and its Member States have played a role in the development of these institutions. The legal status of these institutions within the UN system as well as the

⁹ Website UN Environment 'Funding for UN Environment'. The EU is the largest contributor of 'earmarked contributions' (39,163,731 USD). Legally it is not possible for the EU to contribute to the (voluntary) UN Environment Fund, but the largest contributors are EU Member States such as Germany (#1), France (#2), The Netherlands (#3), Sweden (#5), Belgium (#6) and the United Kingdom (#7). Cf <http://web.unep.org/about/funding/our-funding/overview/adequate>, accessed 8 December 2017.

¹⁰ Sebastian Oberthür and Lisanne Groen, 'Explaining goal achievement in international negotiations: the EU and the Paris Agreement on climate change' [2017] *Journal of European Public Policy*, pp. 1-20 (published online).

¹¹ John Vogler and Hannes R. Stephan, 'The European Union in global environmental governance: Leadership in the making?' [2007] *International Environmental Agreements: Politics, Law and Economics* 7(4), pp. 389-413. Sebastian Oberthür and Claire Roche Kelly, 'EU leadership in international climate policy: achievements and challenges' [2008] *The international spectator* 43(3), pp. 35-50. Karin Bäckstrand and Ole Elgström, 'The EU's role in climate change negotiations: from leader to 'leadiator' [2013] *Journal of European Public Policy* 20(10), pp. 1369-86. Charles F. Parker and Christer Karlsson, 'Climate change and the European Union's leadership moment: an inconvenient truth?' [2010] *JCMS: Journal of Common Market Studies* 48(4), pp. 923-43.

¹² Art 4(2) TFEU. 'Climate change' is only referred to in the 'Environment' title (Art 191 TFEU) and not in the catalogue of competences Art 2-6 TFEU.

¹³ Related institutions, conventions and facilities are the Global Environmental Facility GEF, the Green Climate Fund, UNCCD, CBD, WMO and FAO among others. There are also environmental discussions in the WTO and ICAO. The policy area of energy is also highly relevant for environment and climate change.

EU's participation in the legal and political UN processes have been subjects of debate.¹⁴ This section reflects on the historical context and participation of the EU in *de jure* and *de facto* decision-making processes.

1.1 UNEP/UN Environment (1972-)

By the start of the 1970s, many experts believed that the issue of environmental protection and sustainability had received too little attention in the UN system and the UN Charter. Following the UN Conference on the Human Environment in Stockholm in 1972 the UN Environment Program (UNEP) was created as the main UN environmental body.¹⁵ Interestingly, the UNEP offices were located in Nairobi, Kenya, becoming the first UN institution with a head office on the African continent. The UN Environment has general and overall responsibility for environmental issues among UN agencies but, as indicated below, there are also more specialized issues such as addressing climate change, that are overseen by other UN organizations, such as the UNFCCC. The 1972 Stockholm meeting and the creation of UNEP has bolstered environmental diplomacy and the list of multilateral environmental agreements has grown dramatically since then. The accords on environmental problems inspired by the creation of UNEP include a wide list of topics such as acid rain, ocean pollution, trade in endangered species, biodiversity, the ozone layer and environmental protection.¹⁶ UNEP has had a 'dual coordination mandate', coordinating both the multilateral environmental agreements (MEAs) as well as environmental activities of UN agencies.¹⁷

The legal status and significance of UNEP has sparked academic debate as it is often identified as being too weak. When formed in 1972, UNEP was intended to simply be a 'catalyst', promoting and encouraging government action, without a formal mandate to develop international environmental law.¹⁸ Ultimately, it therefore depended on states to execute its guidelines. From the beginning UNEP had a voluntary structure, with, for example, a voluntary Environment Fund to support environmental programs and an 'Environmental Coordination Board' to ensure cooperation with other UN bodies. In contrast to bodies such as the World Trade Organization and its predecessors there were no arrangements in place for the settlement of disputes.¹⁹

The history of UN Environment is marked by ever more frequent calls for an upgrade of its organizational profile and legal status within the UN system. The UN Environment depends on (voluntary) funding from contributors, unlike UN specialized agencies that receive

¹⁴ Marjanneke J. Vijge, 'The promise of new institutionalism: explaining the absence of a World or United Nations Environment Organisation' [2013] *International Environmental Agreements: Politics, Law and Economics* 13(2), pp. 153-76

¹⁵ UN General Assembly Resolution 2977 (XXVII)

¹⁶ Ken Conca, 'Greening the United Nations: Environmental organizations and the UN system' [1995] *Third World Quarterly* 16(3), pp. 441-458.

¹⁷ Maria Ivanova, 'UNEP in global environmental governance: design, leadership, location' [2010] *Global Environmental Politics* 10(1), p. 44.

¹⁸ Mark Allan Gray, 'The United Nations Environment Programme: An Assessment' [1990] *Envtl. L.* 20, p. 295.

¹⁹ Maria Ivanova, 'Assessing UNEP as anchor institution for the global environment: Lessons for the UNEO debate' [2005] *Yale Center for Environmental Law & Policy Working Paper Series*, 5(1), p. 5.

earmarked funding from assessed contributions. The 'underfunded' image of the UN Environment might affect its actual position in the UN system.²⁰ As Ivanova argues, UNEP has the image that it 'flattered in its role as the UN's leading agency for the environment'.²¹ In February 2007, the French president Chirac, supported by forty-six other countries, launched the 'Paris Call for Action' to replace the Environment Program with a 'new and more powerful' UN Environment Organization (UNEO) or Global Environment Organization, with the same legal status as specialized agencies such as the World Health Organization.²² Following the Rio+20 summit the UN General Assembly did indeed 'strengthen and upgrade' UN Environment by, for example, establishing universal membership in the UN Environment Assembly, which meets every two years.²³ It is questionable whether such changes will indeed translate into 'significant new resources', as UNEP is still dependent on contributions from its Members.²⁴

The European Community/European Union, and its Member States have always actively supported UNEP, at least financially.²⁵ However, as will be outlined below, they also felt that the international institution is in dire need of an upgrade within the UN system. The EU is also a full member of the Committee of Permanent Representatives at UNEP, represented by the EEAS delegation in Nairobi. In Brussels, a UNEP office was installed in 2001, which 'works closely' with the EU (especially DG Development Cooperation) on policy dialogue and strategic partnerships in order to 'fulfil shared goals'.²⁶ A more structured cooperation also includes the signing of a Memorandum of Understanding (MoU) in 2004, underpinned by financial and technical cooperation and regular dialogues.²⁷ The MoU was revised in 2014 and an Annex on substantive cooperation between the European Commission and UNEP was signed in 2015.²⁸

1.2 United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol and Paris Agreement

The United Nations Framework Convention on Climate Change (UNFCCC) emerged from the 1992 UN Conference on Environment and Development (UNCED) and entered into

²⁰ Laurence D. Mee, 'The role of UNEP and UNDP in multilateral environmental agreements' [2005] *IEA:PLandE* 5(3), pp. 227-263.

²¹ Maria Ivanova, 'UNEP in global environmental governance: design, leadership, location' [2010] *Global Environmental Politics* 10(1), pp. 30-59.

²² Marjanneke J. Vijge, 'The promise of new institutionalism: explaining the absence of a World or United Nations Environment Organisation' [2013] *International Environmental Agreements: Politics, Law and Economics* 13(2), pp. 153-76. Frank Biermann, 'Reforming Global Environmental Governance: from UNEP towards a World Environment Organization' in Lydia Swart and Estelle Perry, *Global Environmental Governance: Perspectives on the current debate* (Center for UN Education Reform, NY, 2007).

²³ United Nations, 'The Future we Want: Outcome document of the United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 20–22 June 2012', para 88.

²⁴ Steven Bernstein, 'Rio+ 20: sustainable development in a time of multilateral decline' [2013] *GEP* 13(4), pp. 12-21.

²⁵ Website UN Environment 'Funding for UN Environment', Cf footnote 5.

²⁶ Website UN Environment, Regional Office Europe, <http://web.unep.org/europe/who-we-are/contact-us>, Accessed 29 March 2018.

²⁷ Memorandum of Understanding between the European Commission and the United Nations Environment Programme http://ec.europa.eu/environment/international_issues/pdf/com_unep_mou_final.pdf, accessed 4 December 2017.

²⁸ Ibid.

force in March 1994, after receiving the necessary number of ratifications.²⁹ UNFCCC is the main multilateral framework where discussions on climate action take place with almost universal membership. The annual Conference of the Parties (COP, since 1995) is recognised as the supreme decision-making body of UNFCCC where climate change challenges are discussed and multilateral agreements are made.³⁰ The Intergovernmental Panel on Climate Change (IPCC) functions as the scientific backbone underpinning the UNFCCC discussions. The discussions within the UNFCCC are technical and have a large substantive scope with a focus on climate change mitigation, climate adaptation and the 'means of implementation', including finance and capacity building.

Strengthening the climate action commitments of both developing and developed nations has been the focus of the UNFCCC. Questions of legal substance and form have been central to these discussions.³¹ Two documents stand out in this respect. First, the Kyoto Protocol, a major international agreement linked to the UNFCCC that committed its signatories to binding emission reduction targets.³² It included the notion of so-called 'Annex-I' countries, which stipulated that developed nations should make proportionately greater efforts to reduce emissions to account their history of industrialisation since the 1850s. The Protocol was adopted in Kyoto, Japan, in 1997 and entered into force in 2005. The first 'commitment period' for industrialised nations lasted from 2008 to 2012. Some nations, including the EU, then went on to pursue a second commitment period from 2013 to 2020. For industrialized nations, in contrast to developing countries, the Kyoto Protocol constituted 'relatively hard law' with legally binding emission reduction commitments as a percentage from base year emissions.³³ With the non-ratification of the United States and the withdrawal of Canada (2011) the thirty-six remaining countries only constituted twenty-four percent of the global GHG emissions in 2010.³⁴ Moreover, the 2009 Copenhagen COP, intended to create a more effective Treaty than the Kyoto Protocol, 'collapsed in acrimony' with negative repercussions for the general trust in multilateral climate diplomacy.³⁵

²⁹ Website UNFCCC, webpage 'Issues in the negotiating process: A brief history of the climate change process', <http://unfccc.int/cop7/issues/briefhistory.html>, Accessed 4 December 2017.

³⁰ Ries Kamphof, Thijs Bonenkamp, Joren Selleslaghs and Madeleine O. Hosli, 'External competences in energy and climate change' in Rafael Leal-Arcas and Jan Wouters (eds) 'Research Handbook on EU Energy Law and Policy' (Edward Elgar Publishing, 2017), pp. 30-47.

³¹ Daniel Bodansky, 'The legal character of the Paris Agreement' [2016] *Review of European, Comparative & International Environmental Law* 25(2), pp. 142-150.

³² Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 10 December 1997, entered into force 16 February 2005) FCCC/CP/1997/7/Add.1 (Kyoto Protocol).

³³ Jana Von Stein, 'The international law and politics of climate change: Ratification of the United Nations Framework Convention and the Kyoto Protocol' [2008] *Journal of Conflict Resolution* 52(2), p. 247.

³⁴ Igor Shishlov, Romain Morel and Valentin Bellassen, 'Compliance of the Parties to the Kyoto Protocol in the first commitment period' [2016] *Climate Policy* 16(6), p. 769.

³⁵ Robert Falkner, 'The Paris Agreement and the new logic of international climate politics' [2016] *International Affairs* 92(5), p. 1107.

The second document that is of importance in the history of the UNFCCC is the Paris Climate Agreement, which was signed in 2015 and entered into force in November 2016.³⁶ Compared with the Kyoto Protocol, the Paris Agreement is more inclusive with differentiated goals for developed and developing countries.³⁷ The agreement is partly a 'binding' document specifying rules for an 'ongoing procedure of goal making and reporting', but with voluntary, non-binding substantive commitments and is therefore less stringent than the Kyoto Protocol.³⁸ The construction of the Paris Agreement was characterised by a 'bottom-up' process of 'intended' or voluntary nationally determined contributions focusing on transparency, accountability and precision. As demonstrated in a recent UNFCCC synthesis report these aggregated Intended Nationally Determined Contributions (INDCs) will not prevent a more than 2°C temperature rise, the overall objective of the climate agreement.³⁹ They are, moreover, conditional on the availability of climate finance for many developing countries, which was only loosely promised.⁴⁰ A structural 'stocktake' is required to update commitments with the overarching goal to stay within a maximum of a 1.5 to 2 degree temperature rise. As Falkner puts it, the Paris Agreement "managed to transform the international negotiations from a distributional conflict over legally binding targets into a bottom-up process of voluntary mitigation pledges".⁴¹

The EU as well as its Member States have been Parties to the UNFCCC in their own right from the earliest days of the UNFCCC.⁴² The EU has been involved since the creation of the UNFCCC and has been one of the leading actors in its adherence to a multilateral climate change regime, for example by supporting and implementing the Kyoto Protocol.⁴³ The emission reduction target of 40 percent in 2030 as compared to 1990 is the most far-reaching commitment by a developed nation. The EU Member States have been among the organisers of important COPs such as COP1 (Berlin, 1995), COP15 (Copenhagen, 2009) and COP21 (Paris, 2015). During COP21, the 'Team EU' delegation of EU and Member

³⁶ United Nations Framework Convention on Climate Change (2015) Paris Agreement, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf, Accessed 13 December 2016.

³⁷ Lavanya Rajamani, 'Ambition and differentiation in the 2015 Paris Agreement: Interpretative possibilities and underlying politics' [2016] *International & Comparative Law Quarterly* 65(2), pp. 493-514.

³⁸ Jennifer Jacquet and Dale Jamieson, 'Soft but significant power in the Paris Agreement' [2016] *Nature Climate Change* 6(7), pp. 643-46.

³⁹ UNFCCC (2015) 'Synthesis report on the aggregate effect of the intended nationally determined contributions', <<https://unfccc.int/resource/docs/2015/cop21/eng/07.pdf>> Accessed 26 July 2017.

⁴⁰ Art 9(3): "(...) mobilizing climate finance from a wide variety of sources, instruments and channels".

⁴¹ Robert Falkner, 'The Paris Agreement and the new logic of international climate politics' [2016] *International Affairs* 92(5), pp. 1107-1134, 1124.

⁴² UNFCCC website (2017) Parties to the Convention and Observer States' http://unfccc.int/parties_and_observers/parties/items/2352.php, Cf http://unfccc.int/tools_xml/country_EU.html. The date the Climate Change Convention entered into force for the EU (21 March 1994) happened to be the same date as many of the EU Member States such as Germany, The Netherlands and even before France (23 June 1994).

⁴³ Sebastian Oberthür and Claire Roche Kelly, 'EU leadership in international climate policy: achievements and challenges' [2008] *The international spectator* 43(3), pp. 35-50.

State representatives was influential in building a coalition of both developed and developing nations, to secure the international climate agreement.⁴⁴

2. Substantive and institutional influences

The EU's engagement with the international institutions- the UNEP and the UNFCCC - has developed significantly since the 1970s. One can clearly observe the institutional influences of the EU and its Member States upon these international institutions and vice versa. This section distinguishes three periods in which the EU's engagement with the institutions changed: 1972-1992, 1992-2009 and the period from 2009.

2.1 1972-1992: U.S. Leadership, some Member State forerunners

In the 1970s, the European Community and most of its Member States were not in the driving seat when it came to UN environmental initiatives. Kelemen and Vogel argue it was the United States that was most in favor of international environmental treaties and agreements and that the European states were 'laggards'.⁴⁵ In fact, the formation of UNEP in 1972 was essentially the result of the leadership of (non-EC Member State) Sweden and the United States, who designed the blueprint for the organizational structure and functions in the UN system.⁴⁶

The UN environmental initiatives, as well as publications such as 'The Limits of Growth' by the Club of Rome⁴⁷, did have a substantive effect on EC policies in the 1970s. Right after the creation of UNEP, EU environmental policy formally began with a European Council declaration in Paris.⁴⁸ In 1973, the European Economic Community adopted its first Environment Action Program, which led to the development of a vast body of environmental legislation, and the establishment of environment ministries in the Member States. The EEC Action Program on the environment was not only motivated by the changing international setting, but it also sought to harmonize environmental standards and counter competitive distortions in the Common Market. The Commission took the initiative and the Council of Environment Ministers agreed on the proposals.⁴⁹ Directives such as the Waste Framework Directive (1975) and the Birds Directive (1979) were adopted in Europe, informed by earlier US legislation such as the Endangered Species Act (1973).

⁴⁴ Sebastian Oberthür, 'Where to go from Paris? The European Union in climate geopolitics' [2016] *Global Affairs* 2(2), pp. 119-130. Cf 'How the EU helped build the ambition coalition' (EUClimateAction Storify, January 2016) <<https://storify.com/EUClimateAction/how-the-eu-helped-build-the-coalition-ambition>> accessed 30 November 2016.

⁴⁵ R. Daniel Kelemen and David Vogel, 'Trading places: The role of the United States and the European Union in international environmental politics' [2010] *Comparative Political Studies* 43(4), pp. 427-56.

⁴⁶ Maria Ivanova, 'UNEP in global environmental governance: design, leadership, location' [2010] *GEP* 10(1), p. 32.

⁴⁷ Donella H. Meadows et al. *The limits to growth* (New York: Universe, 1972).

⁴⁸ Statement from the Paris Summit (19 to 21 October 1972). "The Heads of State or of Government emphasized the importance of a Community environmental policy.

To this end they invited the Community Institutions to establish, before 31 July, 1973, a program of action accompanied by a precise timetable".

⁴⁹ Andrew Jordan. *Environmental policy in the European Union: actors, institutions, and processes* (Earthscan, 2012), p. 2.

Although the earliest environmental policies were first introduced in the 1970s, they received particular attention in the Treaties with formal attributed Community powers only after the signing of the Single European Act (1986), when the Single Market was launched.⁵⁰ Interestingly, certain Member States such as Denmark, the Netherlands and Germany were hesitant to transfer competences to the EC for fear of diluting their own ambitious policies. However, it became increasingly necessary to articulate external competences as environmental policies with regards to trade policies, because trade policies started to touch upon environmental issues.⁵¹ Also internationally, the EC became more and more interested and involved in broad environmental policies with greater attention being paid to the topic of 'sustainable development' following the famous Brundtland report 'Our Common Future' (1987).⁵²

UNEP accomplished a historical achievement at the end of 1980s, with the drafting of the Montreal Protocol to protect the ozone layer.⁵³ This success has mainly been attributed to the strong leadership of UNEP's executive director Dr Mostafa Tolba (1976-1992).⁵⁴ His leadership led to many binding environmental agreements and the establishment of the influential scientific Intergovernmental Panel on Climate Change (1988). However, his political turf battles to win UNEP responsibilities also had a negative consequence for the organization, as UNEP was intentionally removed from the preparations for the important 1992 Earth Summit.⁵⁵

2.2 1992-2009: EU Leadership

The year 1992 marked a shift in substantive and institutional influences, as it is from this year on that the EU has had more influence over the international institutions and even received an international leadership position. In comparison with the Single European Act, the Maastricht Treaty (1992) went a step further in making environmental protection an explicit responsibility of the European Community, also granting the Commission greater powers to represent the Member States in global environmental forums.⁵⁶ This rapid development of its external dimension has improved its international leadership position

⁵⁰ Christian Zacker, 'Environmental Law of the European Economic Community: New Powers Under the Single European Act', [1991] 14 B.C. Int'l & Comp. L. Rev. 249, <http://lawdigitalcommons.bc.edu/iclr/vol14/iss2/4>.

⁵¹ Eleonora Russo, 'Towards an Exclusive Competence of the EU to Conclude Climate Agreements?'. [2017] *European Foreign Affairs Review* 22(2), p. 203. Russo even states that 'before the entry into force of the Single European Act the European Community concluded its international environmental agreements on the basis of an implicit external competence'.

⁵² United Nations, 'Report of the World Commission on Environment and Development: Our Common Future', A/42/427, 1987. The concept of sustainable development means to 'ensure that development meets the needs of the present generation without compromising the ability of future generations to meet their own needs'.

⁵³ The Montreal Protocol on substances that deplete the ozone layer, adopted in 1987, entry into force 1989.

⁵⁴ Maria Ivanova, 'UNEP in global environmental governance: design, leadership, location' [2010] *GEP* 10(1), p. 51. Laurence D. Mee, 'The role of UNEP and UNDP in multilateral environmental agreements' [2005] *IEA:PLandE* 5(3), p. 235.

⁵⁵ *Ibid.*

⁵⁶ Miranda A. Schreurs and Yves Tiberghien, 'Multi-level reinforcement: explaining European Union leadership in climate change mitigation' [2007] *GEP* 7(4), p. 27. Cf Art 191 TFEU.

since then.⁵⁷ Interestingly and in parallel, the Maastricht Treaty also introduced the principle of subsidiarity in the Treaties, so that besides from the Union's exclusive competences, the Union 'shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States'.⁵⁸ These parallel developments have had considerable effects on the legal and political cooperation between the EU and its Member States, as the next section (4) will show.

As has been discussed above, the dynamics of international environmental politics changed in the 1990s, with the EU becoming a global environmental leader and the United States beginning to oppose (binding) multilateral agreements.⁵⁹ It became in the EU's competitive interest to pressure other jurisdictions and to 'globalize' environmental regulation in line with its own ambitious environmental policies and stringent regulations.⁶⁰ In this way, it traded places with the United States in terms of its support for binding international environmental agreements.⁶¹ This change of leadership became vividly when the U.S. renounced its signature of the Kyoto Protocol in 2001.⁶²

The EU pushed strongly for the institutional development of the UNFCCC, taking into account the (regulatory) decline of UNEP since the 1990s. The substantive and institutional influence of the EU on the UNFCCC and UNEP in the 1990s and 2000s is a matter of academic debate. With regards to the UNEP, the EU has been pushing for a stronger profile in the UN system, for example, by upgrading it to a specialized agency instead of a program. However, the EU 'did not find allies' in the debate on upgrading the UNEP's status.⁶³ With regards to the international climate change regime, the Kyoto Protocol has indeed been a binding instrument, but with far from universal membership.⁶⁴ Notwithstanding this fact, a vast amount of scholars have analyzed and often praised the EU's global climate leadership in this timeframe⁶⁵, although its leadership has also been questioned as 'merely symbolic'⁶⁶, 'incoherent'⁶⁷ and 'inconsistent'⁶⁸, especially in its

⁵⁷ Sandra Lavenex, 'EU external governance in 'wider Europe' [2004] *JEPP* 11(4), p. 691. Sebastian Oberthür and Claire Roche Kelly, 'EU leadership in international climate policy: achievements and challenges' [2008] *TIS* 43(3), pp. 35-50.

⁵⁸ Art 5(3) TEU.

⁵⁹ R. Daniel Kelemen and David Vogel, 'Trading places: The role of the United States and the European Union in international environmental politics' [2010] *CPS* 43(4), pp. 427-56

⁶⁰ R. Daniel Kelemen, 'Globalizing European union environmental policy' [2010] *JEPP* 17(3), pp. 335-49.

⁶¹ R. Daniel Kelemen and David Vogel, 'Trading places: The role of the United States and the European Union in international environmental politics' [2010] *CPS* 43(4), pp. 427-56

⁶² John Vogler and Charlotte Bretherton, 'The European Union as a protagonist to the United States on climate change' [2006] *International Studies Perspectives* 7(1), pp. 1-22.

⁶³ Tom Delreux, 'The EU and multilateralism in the environmental field: UNEP reform and external representation in environmental negotiations' in Edith Drieskens and Louise G. Van Schaik, *The EU and Effective Multilateralism: Internal and External Reform Practices* (Routledge, New York, 2014), p. 69.

⁶⁴ Cf section 2 and Igor Shishlov, Romain Morel and Valentin Bellassen, 'Compliance of the Parties to the Kyoto Protocol in the first commitment period' [2016] *Climate Policy* 16(6).

⁶⁵ Sebastian Oberthür and Claire Roche Kelly, 'EU leadership in international climate policy: achievements and challenges' [2008] *The international spectator* 43(3), pp. 35-50. Rüdiger Wurzel and James Connelly (eds) *The European Union as a leader in international climate change politics* (Routledge, 2010). Karin Bäckstrand and Ole Elgström, 'The EU's role in climate change negotiations: from leader to 'leadiator'' [2013] *JEPP* 20(10), pp. 1369-86.

⁶⁶ Susan Baker, 'Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union' [2007] *Environmental Politics* 16(2), pp. 297-317.

⁶⁷ Maurizio Carbone, 'Mission impossible: The European Union and policy coherence for development' [2008] *European integration* 30(3), pp. 323-42.

implementation⁶⁹. In reality, the EU and its Member States have indeed been ambitious as regards climate change mitigation, but more silent on adaptation and even sometimes divergent on the 'means of implementation' such as climate finance and capacity building.

2.3 From 2009: the EU as a mediator for universal non-binding agreements

The year 2009 marked a turning point in the EU's engagement with the UNEP and UNFCCC. This was caused by both internal and external developments. The greatest failure of EU climate diplomacy in Copenhagen almost exactly coincided with another major institutional change, namely the entry into force of the Lisbon Treaty. The inability to agree upon a universal climate framework at Copenhagen represented a major diplomatic failure. The EU had been too ambitious, too strict in its mandate to interact with other major emitters and too internally divided during COP15 in 2009. The EU and its Member States were sidelined in the last phase of the negotiations with other Heads of State instead taking the lead.⁷⁰ 'Copenhagen' changed the EU's climate and environmental diplomacy in that since then it has been less oriented towards legally binding agreements, and more towards universal membership.⁷¹ This attitudinal change has moderated its (regulatory) ambitions and changed its role from leader to mediator.⁷² The EU still has the most far-reaching environmental and climate legislation and policies as compared to other parts of the world, but is now more open to less ambitious countries and regional blocs and more oriented on cooperation with developing countries.⁷³ This change in attitude contributed to the success of a universal climate agreement in Paris during COP21. In The UN Environment, the EU equally settled for a less binding (and more universal) solution in its quest for an upgrade of the program during Rio+20. Moreover, the 'Team EU' approach in the UN Environment Assembly is largely similar to the arrangement in the UNFCCC with a large role for the Council Working Party on International Environmental Issues (WPIEI) and representation of the EU and its Member States on account of expertise instead of institutional background. Despite the EU's efforts to upgrade the monitoring system of sustainability commitments, the change from the Commission on Sustainable Development

⁶⁸ Stavros Afionis and Lindsay C. Stringer, 'European Union leadership in biofuels regulation: Europe as a normative power?' [2012] *Journal of Cleaner Production* 32, pp. 114-123.

⁶⁹ Joyeeta Gupta and Lasse Ringius, 'The EU's climate leadership: reconciling ambition and reality' [2001]. *IEA:PLandE* 1(2), pp. 281-99.

⁷⁰ Lisanne Groen and Arne Niemann, 'The European Union at the Copenhagen climate negotiations: A case of contested EU actorhood and effectiveness' [2013] *International Relations* 27(3), pp. 308-24.

⁷¹ Sebastian Oberthür and Lisanne Groen, 'Explaining goal achievement in international negotiations: the EU and the Paris Agreement on climate change' [2017] *JEPP*, pp. 1-20 (published online).

⁷² Karin Bäckstrand and Ole Elgström, 'The EU's role in climate change negotiations: from leader to 'mediator'' [2013] *JEPP* 20(10), pp. 1369-86.

⁷³ Sebastian Oberthür, 'Where to go from Paris? The European Union in climate geopolitics' [2016] *GA* 2(2), pp. 119-30. Cf Louise van Schaik and Ries Kamphof, 'Now or never: using the EU's trade power as leverage for a climate deal in Paris' [2015] Clingendael Policy Brief.

(CSD) to a High-Level Political Forum (HLPF) was too weak and the EU still did not have enough substantive and institutional influence to amend this situation.⁷⁴

With regards to the Lisbon Treaty, it is interesting to note that there are very few references to climate action. As such, it is part of the EU's 'environmental' policies, but there is no clear reference to climate in the catalogue of competences (art 2-6 TFEU), only in the Environment Title (Art 191 TFEU) where it is stated that Union policy on the environment (191(1) TFEU) "shall contribute to pursuit of the objective (..) 'promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change". It is fascinating that there are so few references to climate action, seeing that this issue has been designated as a 'salient issue' for the EU's political future.⁷⁵ Such legal uncertainty paves the way for peculiar arrangements and ad-hoc decisions, as the next section will make clear. These environment and climate change arrangements might set the stage for a new 'shared' EU and Member State diplomacy in UN assemblies and organs. This section made clear that over the years European environmental policy has been driven by both international developments as well as the internal drive to look for environmental standards in the Common Market. The EU gradually became an international leader but changed its leadership status in the 2010s to mediate for universal agreements. The EU and its Member States share the concern that the legislation and policies within the EU are not fully matched by other regional blocs.

3. EU and Member State legal and political cooperation in UNEP and UNFCCC

The cooperation between the EU and its Member States in the context of the international institutions, the UN Environment and the UNFCCC is only partially prescribed by the EU Treaties and is often the result of ad hoc arrangements. This is not per se negative, as the ingenious, socialized 'Team EU' approach in UNFCCC will tell. The question is whether the new The UN Environment upgrade and 'stock take' of intended climate contributions after the Paris Agreement will alter this path?

3.1 Legally defined powers EU and Member States

The EU only has the competences conferred upon it by the Treaties.⁷⁶ This is true for both its internal and external policies.⁷⁷ The broad policy area of 'environment' is one of the policy areas where the EU and its Member States 'share' competences, which means that both the Union and the Member States have legislative power although EU policy does

⁷⁴ Ries Kamphof, *Play by the Rules? Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context*, PhD Thesis Leiden University, 2018, forthcoming.

⁷⁵ Louise van Schaik and Simon Schunz, 'Explaining EU Activism and Impact in Global Climate Politics: Is the Union a Norm-or Interest-Driven Actor?' [2012] *JCMS* 50(1), pp. 169-86.

⁷⁶ Art 5 TEU.

⁷⁷ Art 3(6) TEU.

pre-empt Member State action.⁷⁸ One of the key objectives of the Union policy on the environment is to promote “measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”.⁷⁹ As mentioned above, this is the only specific reference in the EU Treaties of climate change. This leaves space for legal discussion, as some suggest that climate change may be an exclusive competence of the EU.⁸⁰ With respect to EU-UN environmental cooperation, it is interesting to read the Treaty article on EU-UN relations which clearly outlines the EU’s aspiration to “establish all appropriate forms of cooperation with the *organs of the United Nations and its specialized agencies*”. The legal status of UNEP within the UN system could therefore also affect the legal basis of EU-UNEP relations, although the Article continues “the Union shall also maintain such relations as are appropriate with other international organisations”.⁸¹

Besides the competences as categorized in the Treaties one could also identify other forms of ‘legally defined powers’ such as the case law of the Court of Justice.⁸² The Court has been strict when it comes to cooperation between the EU and Member State actors in international institutions.⁸³ As a result and in parallel, (internal) regulations and directives on the environment might have external effects and change the power play of the EU and its Member States.⁸⁴ Some authors distil the category observing shared ‘pre-emptive’ competences in this regard, a category that is also applicable to environment (and climate change). This category denotes that EU and Member State actors may both engage with third (state) partners and international institutions, as long as EU action has not led to the pre-emption of Member State initiatives.⁸⁵ Furthermore, the status of the EU in the international organization could be seen as a legally defined power.⁸⁶ As Kulovesi and Cremona summarize it: “under most multilateral environmental agreements, the Union participates alongside its Member States, with complex implications for both EU and international law”.⁸⁷

⁷⁸ Art 4(2)(e) TFEU. Other policy areas in this ‘category’ include e.g. transport, energy and consumer protection.

⁷⁹ Art 191(1) TFEU.

⁸⁰ Eleonora Russo, ‘Towards an Exclusive Competence of the EU to Conclude Climate Agreements?’. [2017] *European Foreign Affairs Review* 22(2), pp. 197-212.

⁸¹ Art 220(1) TFEU.

⁸² Tom Delreux, ‘The European Union in international environmental negotiations: a legal perspective on the internal decision-making process’ [2006] *IEA: PLandE* 6(3), p. 235.

⁸³ Art 4(3) TEU is a result of the Court’s case law. Cf Andrés Delgado Casteleiro and Joris Larik, ‘The Duty to Remain Silent: Limitless Loyalty in EU External Relations?’ [2011] *European Law Review* 36, pp. 522-39.

⁸⁴ Case 22/70, Commission v. Council, [1971] ECR 263 (ERTA) started a case law saga on ‘implied powers’. Cf Ida J. Koppen, ‘The role of the European Court of Justice’ in Andrew Jordan, *Environmental Policy in the European Union: actors, institutions and process* (Earthscan, London, 2005), pp. 67-86 for a more general overview of the role of the Court of Justice in the development of EU environment policy (and external policy).

⁸⁵ Bart van Vooren and Ramses A. Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge University Press 2014) p. 103.

⁸⁶ Cf Ries Kamphof, *Play by the Rules? Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context*, PhD Thesis Leiden University, 2018, forthcoming.

⁸⁷ Kati Kulovesi and Marise Cremona, ‘The Evolution of EU Competences in the Field of External Relations and its Impact on Environmental Governance Policies’ in Christine Bakker and Francesco Francioni, *The EU, the US and Global Climate Governance* (Ashgate Publishing, 2014), p. 81.

3.2 Cooperation in UN Environment in practice

The Union's contribution to UNEP has been 'disproportionate' when compared to other regional blocs and the EU has always been one of the greatest supporters of The UN Environment despite its weak UN status.⁸⁸ However, the cooperation between the EU and its Member States on the one hand and the UN Environment on the other seem restricted to some specific Member States and some specific departments of the European Commission. Certainly, countries such as Sweden and the Netherlands, but also larger Member States such as Germany and France have a higher (financial) interest in the UN Environment, compared to some of the 'EU-13' Member States. The Union is UNEP's main supporter in voluntary contributions, especially from DG Development Cooperation and DG Research and Innovation.⁸⁹ While the new 'Annex on substantive cooperation between the European Commission and UNEP'⁹⁰ broadened the substantive focus of cooperation, historically EC-UNEP relations were especially development-oriented. This entails DG Environment and DG Development playing a large role in EU-UNEP cooperation.

One of the main coordination challenges in the framework of the UNEP relates to the vast amount of multilateral environmental agreements (MEAs) that have been signed since the 1970s, which has led to problems of 'institutional interaction'.⁹¹ This has been problematic for the EU and its Member States as the Union is not always a party to these agreements and is sometimes only represented by its Member States. The amount of MEAs is one of the main arguments to 'cluster' the agreements with compliance oversight of a 'World Environment Organization', which is supported or even driven by the EU and its Member States.⁹² Another reason why the EU has called for an upgrade has been because of the difficulties with recognition encountered by the EU within UNEP, as the Union has for a long time only enjoyed observer status.⁹³ Since the universal membership changes and the upgrade of the UN Environment Assembly (UNEA) the EU and its Member States are now cooperating more, as in the case of the UNFCCC (see below). This includes a large role for the Presidency in coordinating the Working Party on International Environmental Issues (WPIEI) to prepare the UNEA as well as the possibility of the EU to speak 'on behalf of the EU and its Member States'.

⁸⁸ John Vogler and Hannes R. Stephan, 'The European Union in global environmental governance: Leadership in the making?' [2007] *IEA:PLandE* 7(4), pp. 403-407.

⁸⁹ Cf https://ec.europa.eu/europeaid/sites/devco/files/info-note-multidonor-trust-fund-eu-support-2003-2016_en.pdf as an example.

⁹⁰ Annex to the Memorandum of Understanding between the European Commission and the United Nations Environment Programme http://ec.europa.eu/environment/international_issues/pdf/ec-unep_mou_annex.pdf, Accessed 4 December 2017.

⁹¹ Thomas Gehring and Sebastian Oberthür, 'Introduction' in Sebastian Oberthür and Thomas Gehring (eds) *Institutional interaction in global environmental governance: Synergy and conflict among international and EU policies* (MIT Press, London, 2006), p. 2.

⁹² Ibid. Cf Frank Biermann, 'Reforming Global Environmental Governance: from UNEP towards a World Environment Organization' in Lydia Swart and Estelle Perry, *Global Environmental Governance: Perspectives on the current debate* (Center for UN Education Reform, NY, 2007).

⁹³ John Vogler and Hannes R. Stephan, 'The European Union in global environmental governance: Leadership in the making?' [2007] *IEA:PLandE* 7(4), p. 394

3.3 'Team EU' cooperation in UNFCCC in practice

The Union is even more of an equal partner alongside its Member States in the UNFCCC as compared to UNEP, which could be explained by its 'Party' status in the UNFCCC. Internally, 'Team EU' cooperation within the UNFCCC is now one of the flagship projects of 21st century diplomacy.⁹⁴ This unique institutional arrangement contains an assortment of representatives from EU institutions (primarily DG CLIMA) and Member States, who have become 'lead negotiators' or 'issue leaders' independent of their institutional background. Importantly, the lead negotiators mainly originate from the larger Member States, or Member States with a particular interest in climate issues, and the EU's lead negotiator is based in DG CLIMA. An important coordinating role is played by the Council Working Party on International Environmental Issues (WPIEI) and, slightly surprisingly, the six-month Presidency of the European Union. The continued role of the Presidency (and WPIEI) can be explained by the desire of the Member States to stay involved to the fullest in UNFCCC negotiations. This ingenious arrangement socializes its participants into a strong common EU structure.⁹⁵ The Member States nevertheless keep their discretionary autonomy on issues such as capacity-building, financial means for developing countries, nominations to UNFCCC bodies, fiscal issues, land use and the energy mix.⁹⁶

While the 'Team EU' approach in UNFCCC is often hailed as one of the most promising cooperation structures of EU external relations, there are two peculiarities that need specific attention. First, the 'negotiation mandate' of the EU and its Member States in UNFCCC COP negotiations is based on (unanimous) Council conclusions and is therefore a legal 'elephant in the room'.⁹⁷ According to the Treaties one would expect the following logic for a mixed agreement: a Proposal by the Commission, followed by a Council Decision with negotiating directives, and then European Commission and Member State representation.⁹⁸ The unanimity obligation of the Council conclusions means that the Member States have a disproportionate impact compared to what one would expect from the Treaties and shared (pre-emptive) competences. From a negotiating perspective with third parties it is remarkable that these Council conclusions/ negotiation mandates are openly accessible. This arguably contributed to the weakened role of the EU during COP15 in Copenhagen.⁹⁹ Secondly, the Presidency of the Council of the EU has a strong coordinating and representing role. This has meant for instance that Luxembourg, one of the smallest Member States, had a disproportionately strong impact on 'Team EU' negotiations during COP21 in Paris.

⁹⁴ Piotr Maciej Kaczyński, 'A Gordian Knot or Not? EU Representation in UN Climate Negotiations' in Finn Laursen, (ed) *The EU's Lisbon Treaty: Institutional Choices and Implementation* (Routledge, 2012), pp. 265-284.

⁹⁵ Martijn L.P. Groenleer and Louise G. Van Schaik, 'United we stand? The European Union's international actorness in the cases of the International Criminal Court and the Kyoto Protocol' [2007] *JCMS* 45(5), pp. 969-998.

⁹⁶ Art 192(2) TFEU.

⁹⁷ Ries Kamphof, *Play by the Rules? Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context*, PhD Thesis Leiden University, 2018, forthcoming.

⁹⁸ Art 17(1) TEU.

⁹⁹ Per Meilstrup, 'The runaway summit: the background story of the Danish presidency of COP15, the UN Climate Change Conference' in Nanna Hvidt and Hans Mouritzen (ed) *Danish foreign policy yearbook 2010* (DIIS, 2010), pp. 113-135.

From a legal perspective, the Commission could stand firm when presenting questions about the 'Team EU' procedure to the Court of Justice of the EU. However, the political assessment is unlikely to start these infringement proceedings, as the issue of climate change is too treacherous for the future of the EU,, and the current wieldy procedure is at least successful when it comes to political acknowledgement of this salient issue.¹⁰⁰ The legal uncertainty about the 'Team EU' approach in UNFCCC could nevertheless be a Damocles' sword for EU-Member State cooperation in international institutions.

3.4 Upcoming coordination challenges

The EU and Member State cooperation, especially in the UNFCCC, will be a subject of political and legal debate in the coming years. While some authors already make the case for EU exclusive competences on climate change,¹⁰¹ Delreux is probably mostly right in his assessment that in the field of EU environmental policy, competences are 'most of the time shared'.¹⁰² However, as indicated above, there are many substantive issues, important for the implementation of the Paris Climate Agreement, that stay primarily within the discretionary autonomy of the Member States. Examples include fiscal measures, energy mix choices and land use planning. With a new global 'stocktake' of intended contributions in 2018 it is expected that the EU and its Member States need to upgrade their ambitions, especially taking into account the US' announced withdrawal from the Paris Agreement¹⁰³. This means that the EU and its Member States will have to (again) negotiate their commitments. In light of Brexit, and the discussion on scenarios for the future of the EU¹⁰⁴, this could be a moment for the European Commission to claim more legal coordination powers through litigation before the Court of Justice. The Court might be more responsive to the argument of increased (exclusive) powers for the European Commission considering its recent 'Singapore Agreement' opinion in which it stated that the objective of sustainable development 'forms an integral part of the (exclusive) common commercial policy'.¹⁰⁵ Politically, however, it remains to be seen whether this is the preferred route or whether the 'Team EU' approach will be indulged.

Apart from the high politics of the UNFCCC, the UN Agenda 2030 and the Sustainable Development Goals might also upgrade the environment and climate change profile of the UN, and The UN Environment. When compared to the Millennium Development Goals (MDGs), the SDGs have a more environmental profile. With seven out of the seventeen

¹⁰⁰ Ries Kamphof, *Play by the Rules? Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context*, PhD Thesis Leiden University, 2018, forthcoming.

¹⁰¹ Eleonora Russo, 'Towards an Exclusive Competence of the EU to Conclude Climate Agreements?'. [2017] *European Foreign Affairs Review* 22(2), pp. 197-212.

¹⁰² Tom Delreux, 'The European Union in international environmental negotiations: a legal perspective on the internal decision-making process' [2006] *IEA: PLandE* 6(3), p. 236.

¹⁰³ Announced withdrawal Paris Agreement by the United States President Donald Trump. Cf <<https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>> accessed 26 July 2017.

¹⁰⁴ European Commission, 'White Paper on the Future of Europe: reflections and scenarios for the EU27 by 2025' COM(2017)2025.

¹⁰⁵ Case C 2-15, Opinion 2/15 EU-Singapore Free Trade Agreement [2017] ECLI:EU:C:2016:992, Para 147.

SDGs relating to the environment, compared with one out of the eight MDGs, it is clear that the combination of poverty reduction and sustainable development could upgrade environmental development policies.¹⁰⁶ However, it remains to be seen what this would mean for the legal position of The UN Environment within the UN.

4. Conclusion

The implementation of the Paris Agreement, the upgrade of The UN Environment and the more environmentally focused SDGs leave ample room for a more up-to-date 'politico-legal' assessment of the EU's engagement with the international institutions; the UNFCCC and the UN Environment.¹⁰⁷ Furthermore, a research agenda that explicitly incorporates the interests and positions of other global actors, including other regional integration organizations as well as the private sector, could definitely add value to the current study on the EU's engagement with the UN Environment and UNFCCC.

Environmental protection and combating climate change is at the heart of the EU's sustainable development policies and multilateral cooperation. This commitment is enshrined in the EU Treaties.¹⁰⁸ The EU and Member State's strong engagement with the international institutions UNFCCC and the UN Environment in this respect are telling. While the European Community was a bit behind at the time of the introduction of UNEP (1972), the EU conversely assumed a leadership position when it came to the formation of the UNFCCC in the 1990s.¹⁰⁹ The EU's ambitions for legally binding international commitments on environmental protection and combatting climate change since the 1990s are the result of ever more stringent internal policies that the EU and its Member States would like to see matched by other jurisdictions.¹¹⁰ While there certainly have been substantive and institutional influences of the EU on the development of the international institutions, there are nevertheless some serious deviations from the EU Treaties in practical arrangements to UNFCCC and the UN Environment Assembly. These arrangements primarily resulted from the unique legal status of the EU within this part of the UN system as well as the shared competence and legally defined powers-issues within the EU itself.

¹⁰⁶ The SDGs that relate to environmental policies are SDG 13 (Climate action), SDG 14 (Life below water), SDG 15 (life on land), SDG 2 (zero hunger), SDG 6 (clean water and sanitation), SDG 7 (affordable and clean energy) and SDG 12 (responsible consumption and production). For the MDGs the only real environment-focused MDG has been MDG 7: ensure environmental sustainability.

¹⁰⁷ For a more elaborated analysis of the need of comprehensive assessment frameworks and 'politico-legal' analyses, cf Sebastian Oberthür and Lisanne Groen, 'The Effectiveness Dimension of the EU's Performance in International Institutions: Toward a More Comprehensive Assessment Framework' [2015] *JCMS* 53(6), pp. 1319-1335. Ries Kamphof and Ramses A. Wessel, 'Analysing Shared Competences in EU External Action: The Case for a Politico-Legal Framework' [2017, forthcoming] *Europe and the World: a Law Review* 1(2).

¹⁰⁸ Art 3(3), Art 3(5) TEU, Art 191 TFEU.

¹⁰⁹ R. Daniel Kelemen and David Vogel, 'Trading places: The role of the United States and the European Union in international environmental politics' [2010] *CPS* 43(4), pp. 427-56. Sebastian Oberthür and Claire Roche Kelly, 'EU leadership in international climate policy: achievements and challenges' [2008] *The international spectator* 43(3), pp. 35-50. Karin Bäckstrand and Ole Elgström, 'The EU's role in climate change negotiations: from leader to 'leadiator'' [2013] *JEPP* 20(10), pp. 1369-86.

¹¹⁰ R. Daniel Kelemen, 'Globalizing European union environmental policy' [2010] *JEPP* 17(3), pp. 335-49.

The legal position of UNEP within the UN system is a thorn in the EU's side. For a long time, the EU and many Member States have been pushing for an 'upgrade' from a UN program to a specialized UN agency or even a 'World Environment Organization'.¹¹¹ However, so far little progress has been made in this regard. As a result, the program remains financed by voluntary contributions, primarily from the European Commission and EU Member States and there is no strict compliance oversight on many of the multilateral environmental agreements.¹¹² The EU proved to be more successful as a Party in UNFCCC alongside the Member States. One of its successes was the adoption of the legally binding Kyoto Protocol. However, this Protocol was far from universal in its membership.¹¹³ The international agreements in 2012 (Rio+20) and 2015 (Paris Agreement and UN 2030 Agenda) proved to be a pragmatic compromise for the EU in which the 'legally binding' objective was sacrificed for the objective of universal environmental and climate change agreements.

The EU and Member State cooperation in the international institutions is mainly driven by legally defined powers and shared competences. This could have positive effects, as the ingenious 'Team EU' arrangement in UNFCCC makes clear. The representatives are socialized in a structure of lead negotiators and issue leaders.¹¹⁴ However, the solid structure also has peculiar consequences that are not tackled in the EU Treaties. Examples include the negotiation mandate based on unanimous Council conclusions as well as a large coordinating role for the Presidency of the Council of the EU. The Member States are keen to keep their discretionary autonomy on fiscal issues, land use and energy mix choices, related to the implementation of multilateral environment and climate change agreements.¹¹⁵

¹¹¹ Marjanneke J. Vijge, 'The promise of new institutionalism: explaining the absence of a World or United Nations Environment Organisation' [2013] IEA:PLandE 13(2), pp. 153-76. Frank Biermann, 'Reforming Global Environmental Governance: from UNEP towards a World Environment Organization' in Lydia Swart and Estelle Perry, *Global Environmental Governance: Perspectives on the current debate* (Center for UN Education Reform, NY, 2007). Maria Ivanova, 'UNEP in global environmental governance: design, leadership, location' [2010] GEP 10(1), pp. 30-59.

¹¹² Thomas Gehring and Sebastian Oberthür, 'Introduction' in Sebastian Oberthür and Thomas Gehring (eds) *Institutional interaction in global environmental governance: Synergy and conflict among international and EU policies* (MIT Press, London, 2006), p. 2.

¹¹³ Igor Shishlov, Romain Morel and Valentin Bellassen, 'Compliance of the Parties to the Kyoto Protocol in the first commitment period' [2016] CP 16(6), pp. 768-782.

¹¹⁴ Martijn L.P. Groenleer and Louise G. Van Schaik, 'United we stand? The European Union's international actorness in the cases of the International Criminal Court and the Kyoto Protocol' [2007] JCMS 45(5), pp. 969-998. Tom Delreux and Karoline Van den Brande, 'Taking the lead: informal division of labour in the EU's external environmental policy-making' [2013] JEP 20(1), pp. 113-31.

¹¹⁵ Ries Kamphof, *Play by the Rules? Coordination of EU Sustainable Development Policies and the Importance of the Politico-Legal Context*, PhD Thesis Leiden University, 2018, forthcoming.



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