Still Punching below its Weight?
Coherence and Effectiveness in EU Foreign Policy

Daniel C. Thomas

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About the Authors

Daniel C. Thomas is Associate Professor of European Governance in the School of Politics and International Relations and Director of the Dublin European Institute, both at University College Dublin. Contact: Daniel.Thomas@ucd.ie

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Abstract: Although scholars and practitioners have long argued that greater political coherence will make the EU a more effective international actor, the relationship between coherence and effectiveness has not been well defined or tested. This paper defines the two concepts, proposes three hypotheses regarding the relationship between them, and examines the extent and consequences of EU coherence on an issue that the EU has highlighted as essential to its foreign policy mission – the good functioning of the International Criminal Court (ICC). It finds that the EU exhibited considerable coherence in its response to the U.S. campaign for ICC ‘non-surrender agreements,’ yet failed in its effort to shape the behaviour of other states. Coherence may be necessary for the EU to exert its influence abroad, but it is not sufficient in a multi-centric world order where many others do not share the EU’s collective policy preferences and are ready to deploy vast resources in pursuit of their goals. The paper also considers the implications of this study for future research on EU foreign policy actorness, coherence and effectiveness.

Keywords: European Union, actorness, coherence, effectiveness, foreign policy, CFSP, International Criminal Court
Introduction

Given its population, economic size, military resources, and voting power in international organizations, the European Union is potentially capable of exerting great influence in world affairs. Nonetheless, EU officials have long bemoaned the gap between the Union’s size and its apparent influence in world affairs. In 1995, then European Commission President Jacques Santer observed that “the European Union is simply not punching its weight on the international stage in the foreign and security policy areas” (Cameron 1999). Just before her formal appointment as the EU’s High Representative for Foreign Affairs and Security Policy, Catherine Ashton told the European Parliament that the EU should do more to “punch its weight politically” (Ashton 2009).

Most statements of this sort attribute the weakness of EU foreign policy to a lack of coherence between member states, EU institutions, and the various policy instruments at their disposal. In 2000, the EU Council concluded that “reinforcing the coherence of the Union’s external action and realising its policy objectives are priorities if the Union is to pull its full weight in international affairs” (Council 2000). The EU’s original security strategy declared “Greater coherence is needed not only among EU instruments but also embracing the external activities of the individual member states” (Council 2003a). More recently, European Commission president Jose Manuel Barroso attributed the EU’s weakness in the Copenhagen talks on climate change to the bloc’s failure to “speak with one voice” (2010).

But is this coherence-effectiveness argument truly valid? Despite the pervasiveness of commentary on this issue, few scholars have addressed it in a systematic empirical

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fashion. To that end, this paper develops and illustrates the use of a parsimonious and
generalizable framework for analyzing the relationship between coherence and
effectiveness in EU foreign policy – that is, whether becoming a more coherent foreign
policy actor will enable the EU to play a role in world affairs commensurate with its vast
resources. In so doing, it casts new light on the meaning and dynamics of EU actorness,
understood as the Union’s “capacity to behave actively and deliberately in relation to other
actors in the international system” (Sjöstedt 1977:16).

The paper begins by proposing a two-dimensional definition of EU foreign policy
coherence emphasising policy determinacy and political cohesion, as well as a simple
definition of effectiveness related to the objectives agreed by the Union. It then introduces
the logic and observable implications of three possible relationships (positive, negative and
null) between EU coherence and EU foreign policy effectiveness. To test these hypotheses,
the paper examines the extent and consequences of EU coherence on a contemporary issue
that the EU has highlighted as essential to its foreign policy mission – the promotion of
international criminal justice through support for the International Criminal Court. It does
so by measuring EU coherence in response to the US quest for global immunity from ICC
prosecution during 2002-2008 and then presenting the findings of six quantitative tests of
EU effectiveness on this issue, based on data from official EU and US sources as well as
authoritative NGOs. In conclusion, the paper comments on the findings’ implications for our
understanding of the EU’s role in world affairs.

**Concepts and Measurement**

This section of the paper defines EU foreign policy coherence and effectiveness and
discusses how they can be measured empirically.
**Coherence:** The importance of speaking and acting as one is a prominent theme, both explicitly and implicitly, in the scholarly literature on EU foreign policy and especially EU ‘actorness’ in world affairs (Sjöstedt 1977, Jupille and Caporaso 1998, Jupille 1999, Meunier 2000, Missirolı 2001, Bretherton and Vogler 2006, Lerch and Schwellnus 2006, Smith 2006, Groenleer and Van Schaik 2007). Yet contributors to this literature disagree on how to define and measure the concept -- some scholars focus on the activities of member states while others focus on EU institutions; some focus on policymakers’ values, some on policymakers’ rhetoric, some on the policymaking process, and still others on policy choices or outcomes. This discord is worsened by the fact that the French term *cohérence* is often translated into English as *consistency* and is sometimes replaced by references to *cohesion* (for an overview, see Nuttall 2005).

Instead, EU foreign policy coherence is best defined simply as the adoption of determinate common policies and the pursuit of those policies by EU member states and institutions. This definition (elaborated below) satisfies five important criteria simultaneously – it is measureable, able to accommodate empirical variation, distinct from policy effectiveness (which is a separate variable), generalisable across issue-areas, and reasonably parsimonious given the organizational complexity of the EU.

The first dimension of coherence, *policy determinacy,* reflects how clearly a policy adopted by the EU articulates the Union’s goals and how narrowly it specifies the behaviours incumbent upon EU member states and institutions in order to achieve those goals. As established in scholarship on the jurisprudential sources of compliance and legitimacy (Franck 1988, 1992), high determinacy make it easier to distinguish between compliance and noncompliance, and thus reduces the likelihood of ‘creative misconception’ by actors (intra-EU or external) with contrary policy preferences.
Measuring determinacy is an interpretive exercise based on the formal wording of the policy adopted by the Union on the issue at hand. This includes attention to the balance between more and less constraining words and commitments within the adopted text, as well as the type of words and phrases that could have been used but were not. In the end, we would allocate a high score on determinacy if a common policy adopted formally by the EU articulates clear goals and sets tight limits on acceptable behaviour, and a low score if the common policy is vague on goals and allows significant space for member state and institutions to determine their own course of action. Situations in which the EU fails to adopt a common policy could not be placed on the determinacy scale.

Of course, if the purpose of EU foreign policy is to have an impact on world order, then the most determinate common policies matter little if member states and institutions pursue contrary agendas. The second dimension of coherence, political cohesion, thus reflects how fully EU actors support whatever common policy has been agreed. This challenge is addressed formally by two provisions in the revised Treaty on European Union: Art. 21(3) states that “The Union shall ensure consistency between the different areas of its external action and between these and its other policies,” while Art. 24(3) states that “The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union’s actions in this area.” The cohesive and faithful implementation of common policies by member states and EU institutions is thus a critical dimension of EU foreign policy coherence, no less important than policy determinacy. The irony (and challenge for the EU)
is that political cohesion may be less likely when common policies are highly determinate and thus more constraining.\(^2\) Measuring political cohesion requires familiarity with the content and nuances of the policy in question and detailed evidence of what member states and institutions actually do, including what threats or reassurances they communicate to others, where they commit resources, and what agreements they accept or reject. Because EU member states whose behaviour diverges from a common policy agreed at the Union level are unlikely to publicize this fact, and EU institutions have an interest in painting a rosy picture of compliance with Union policies, their declarations should be confirmed by independent evidence whenever possible.

EU foreign policy is thus most coherent when it scores high on both policy determinacy and political cohesion. In other words, coherence is greatest on any given issue when it belongs in the upper-right corner of the two-dimensional space represented in Figure 1.

\[\text{-- Figure 1 about here --}\]

Naturally, the EU’s score on policy determinacy and political cohesion is likely to vary across time, issue-area (trade, crisis management, human rights, etc.), relationship (EU-U.S., EU-China, etc.), and even across discrete episodes of policy choice. But taken together, the two components enable one to assess EU coherence on any given issue at any point in time: the higher the EU scores on each component, the closer it is to foreign policy coherence (and thus actorness).

\(^2\) This determinacy-cohesion trade-off is central to the sources and consequences of EU foreign policy coherence and thus merits further research.
**Effectiveness:** One might be tempted to define the effectiveness of EU foreign policy in terms of the EU’s ability to achieve outcomes that advance its collective interests. But the difficulty inherent in efforts to identify *a priori* the interests of territorial states with clear hierarchies of decision-making authority pale in comparison to the difficulties inherent in applying this exercise to a collective and multi-level body like the EU. It is therefore best to define EU foreign policy effectiveness as the Union’s ability to shape world affairs in accordance with the objectives it adopts on particular issues. These objectives could take many forms, including achieving certain material or environmental gains, promoting respect for certain values, shaping international institutions in a certain way, aiding a particular state, or shaping the outcome of a particular conflict. The EU pursues its objectives through the use of traditional policy instruments such as sanctions or demarches, through the persuasiveness of the arguments made by representatives of the Union, its institutions and member states, and simply through its example as a functioning union of states based on pooled sovereignty.

How one operationalises this definition of EU foreign policy effectiveness will vary according to the issue and forum in question. In most cases, measuring effectiveness requires evidence of the situation or outcome that the EU has sought to influence, both before and after the EU adopted its position, and evidence that links change or stability in those conditions to the existence and/or efforts of the EU. For example, Karen E. Smith (2006) measures EU effectiveness on human rights issues at the United Nations by examining voting outcomes on EU-sponsored resolutions within the General Assembly Third Committee and the Commission on Human Rights. However, to pick two other examples, assessing the effectiveness of EU economic sanctions on third states or the effectiveness of
the EU’s quest for a binding global deal on greenhouse gas emissions would require very different indicators.

Competing Hypotheses

As indicated earlier, EU policymakers tend to assume a positive relationship between EU foreign policy coherence and the Union’s ability to achieve its common objectives in world affairs. Although many scholars share this expectation (Thomas 2011), there are good reasons to expect otherwise. This section of the paper introduces the logic and observable implications of three possible causal relationships between EU coherence and effectiveness – positive, negative, and null.

Hypothesis 1: The conventional wisdom among most observers of EU foreign policy, as well as the standard rhetoric of EU policymakers, both assume a positive relationship between EU coherence and effectiveness. This expectation is based on several assertions. First, when EU member states and institutions act in support of a common policy (political cohesion), their collective material resources and persuasive powers are deployed on behalf of common objectives. Roy Ginsberg (1989) calls this the ‘politics of scale’ in EU foreign policy. Joseph Jupille (2006:409) explains the process in game-theoretic terms: “The EU can decisively shape international outcomes by concentrating the weight of its... member states on a single substantive position and rendering that position critical to any internationally negotiated agreement.” Moreover, a policy that narrowly restricts the behaviour of EU member states and institutions (high determinacy) will be seen by others as reflecting a stronger collective commitment to its stated objectives, especially since all know that any member state could have vetoed the policy in question. Others are likely to perceive such
strong commitments as durable and thus to conclude that satisfying them is necessary for good relations with the EU over time.

If these assertions are correct, then EU foreign policy is most likely to be effective on any given issue when the Union adopts a common policy that clearly specifies what outcomes it prefers and EU member states and institutions adapt their foreign policy actions to suit the common policy. By the same logic, we would expect that indeterminate common policies and inconsistent policy behaviour would undermine the effectiveness of EU foreign policy.

**H-1: EU coherence increases the effectiveness of EU foreign policy.**

If this hypothesis were accurate, we would expect the EU to achieve its foreign policy objectives when its member states and institutions act in a more coherent fashion. This expectation is probabilistic rather than deterministic in nature: it suggests that the likelihood of EU foreign policy effectiveness increases in the presence of determinate policies and political cohesion, but not that EU foreign policy will always be effective when these two conditions are present. After all, on any given issue, the EU may be opposed by a more powerful or more determined actor (or coalition of actors) with contrary policy preferences.

**Hypothesis 2:** On the other hand, there are good reasons to expect that greater coherence may actually reduce the effectiveness of EU foreign policy. To start, the policy preferences of the various member states may sometimes be so diverse that they can only reach agreement on a non-constraining common position, which makes it difficult to assert that the EU has been effective at achieving any particular substantive goal. Or, the lengthy intra-EU deliberations that are often necessary to achieve agreement on a common policy may make it difficult for the EU to respond to international events in a timely fashion. This
applies both to the process of crafting new positions on sudden crises and to the difficulty of participating in the give-and-take of international negotiations on the basis of a delicately-balanced and thus inflexible EU position adopted previously in Brussels. The length of intra-EU deliberations can also consume time that might otherwise have been devoted to finding allies abroad and/or applying pressure on a target state. Finally, the effectiveness of EU foreign policy may be reduced if the principal representative of a coherent EU position lacks credibility amongst friends and adversaries or the commitment to the representative prevents member states from using ‘good cop-bad cop’ tactics (Missiroli 2001, Smith 2006). For all these reasons, EU coherence may have a negative effect on EU foreign policy effectiveness:

H-2: EU coherence reduces the effectiveness of EU foreign policy.

If this hypothesis were accurate, we would expect the EU to fail to achieve its foreign policy objectives when its member states and institutions act in a coherent fashion – if not in every case then as a general tendency.

Hypothesis 3: Alternatively, it could well be that the factors determining outcomes in international politics are too complex or too powerful for the presence or absence of EU coherence to make any observable difference. Hence the ‘null’ hypothesis:

H-3: EU coherence has no impact on EU foreign policy effectiveness.

If this hypothesis were accurate, we would expect not to observe any consistent relationship across cases between EU coherence and the EU’s ability to achieve its foreign policy objectives.

EU Coherence on the International Criminal Court
As first step toward testing these hypotheses, this section of the paper measures EU coherence on a self-proclaimed priority issue for the Union: the promotion of international criminal justice through support for the Rome Statute and the good functioning of the International Criminal Court (ICC). The entry into force of the Rome Statute in 2002 catalyzed a global clash over ICC jurisdiction that posed a real challenge to EU foreign policy. The analysis of the EU’s role in this case is based upon empirical evidence from authoritative published reports and confidential interviews with key participants in the EU’s policymaking process.

**Background:** The ICC is the world’s first permanent court designed to ensure individual accountability for genocide, war crimes, and crimes against humanity. It was established by the Rome Statute in 1998 and now has 119 states-party (including all EU member states) while a further 32 states (including the US) have signed the Statute but not ratified it. President Clinton signed the Rome Statute, but the Bush Administration opposed the new court and set out in mid-2002 to shield the United States from ICC jurisdiction. Among other initiatives, they launched a global campaign to sign bilateral agreements with governments around the world ensuring that no U.S. citizens, government officials, military personnel or other employees would ever be transferred to the ICC. Such agreements, U.S. officials argued, were consistent with Article 98 of the Rome Statute, which addresses potential inconsistencies between obligations created by the Statute and those created by other international agreements. Most legal experts (including David Scheffer, the chief American negotiator of the Rome Statute) argued, however, that Article 98 had been crafted to accommodate status of forces agreements and extradition treaties that were already in effect when the Statute entered into force, but not to facilitate new agreements...
to limit the jurisdiction of the new Court (Scheffer 2002). The proposed agreements are referred to here as bilateral non-surrender agreements (BNAs).

As governments around the world began to receive U.S. overtures to sign such agreements, often accompanied by indications that doing so was a condition for continued U.S. military and economic aid, two questions arose in Brussels and member states’ capitals: were such agreements permitted under the EU’s formal commitment to support ‘the good functioning’ of the ICC, which had been reaffirmed just a few months earlier, and how should the EU respond to the global reach of the U.S. campaign? It was not long before the issue reached the foreign policy agenda of the European Union, forcing member states to weigh their oft-stated commitment to an international order based upon multilateral institutions, the rule of law, and respect for human rights, which underlay their commitment to the ICC, against their desire to maintain good relations with a superpower with which they shared many common interests, similar political values, and a long history of cooperation.

Unlike the question of whether or not to support the creation of the ICC, on which all EU actors easily agreed, the U.S. campaign for BNAs posed a specific and very difficult choice: whether to accept Washington’s argument that its request was justified by its special responsibility for international peace and security and the fact that it had never accepted ICC jurisdiction, or instead to insist that any such agreements would be contrary to the purposes of the Rome Statute, which the EU had committed itself to promote. Among the member states, Germany was outspoken in its opposition to the U.S. request, and was supported in this position (to varying degrees) by Austria, Belgium, Finland, France, Greece, Ireland, Luxembourg, the Netherlands, and Sweden. On the other side of the debate, Italy and the United Kingdom openly favoured a flexible response to Washington that would
permit bilateral agreements, and were supported (to varying degrees) by Denmark, Portugal and Spain. The British and Italian governments, despite strong domestic support for the ICC, were so strongly committed to this view that they threatened to veto any EU policy that would prohibit them from accommodating Washington. The Italian government even informed Washington that it was sympathetic to U.S. concerns and would consider signing a “one-sided” bilateral agreement shielding only U.S. personnel.

Although the EU’s supranational institutions have no voting power on CFSP issues such as this, they can express arguments that shape how issues are framed, both behind closed doors and through public exhortation. In this case, the ‘rejectionist’ camp (Germany and others) was supported unambiguously by the European Parliament, which passed resolutions strongly advocating a rejection of the U.S. campaign, and by the European Commission, which distributed to member states an unambiguous legal brief arguing that the agreements proposed by Washington were incompatible with the Rome Statute and thus with a pre-existing EU commitment. So when deliberations began in August 2002, ten member states plus the European Parliament and European Commission favoured a rejection of Washington’s demand, while five member states favoured a more accommodationist policy with sufficient intensity that they were willing to sacrifice domestic political capital in pursuit of this outcome.

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On 30 September 2002, after nearly ten weeks of contentious intra-EU discussions on how to respond to the U.S. campaign, the General Affairs Council issued two documents expressing the EU’s common policy. Despite the diversity of member state preferences, the determinacy of the eventual policy and the subsequent cohesiveness of EU member states and institutions indicate a fairly high degree of coherence on this issue.

*Policy Determinacy:* In order to assess the determinacy of the policy, we must judge whether the two documents adopted on 30 September clearly articulate the Union’s goals and strictly define the behaviours thus incumbent upon EU member states and institutions. First, the Council Conclusions clearly articulate the Union’s collective goals and beliefs on this matter – namely, support for the effective functioning of the ICC and the belief that the Rome Statute provides all the necessary safeguards against the use of the Court for politically motivated purposes. The Conclusions also signalled the EU’s readiness to discuss with the U.S. how existing agreements might accommodate its concerns, as permitted by Article 98 of the Rome Statute. In addition, the Council released a stringent set of principles designed to ensure that any state party to the Rome Statute wishing to reach an arrangement regarding the conditions of surrender of persons to the ICC do so in a manner consistent with its obligation under the Statute. This document presented the EU’s view that the terms of the bilateral agreements proposed by the U.S. were incompatible with the obligations incumbent on states party to the Rome Statute and it set strict conditions on any agreement related to the surrender of persons to the ICC that would be difficult for the United States to accept.

In particular, the EU principles stipulate that (1) existing international agreements (such as extradition treaties and status of forces agreements) should be taken into account; (2) the draft agreements proposed by the U.S. are inconsistent with the Statute; (3) any
arrangement must ensure that persons who have committed crimes covered by the Statute are investigated and punished; (4) no arrangement for non-surrender can apply to nationals of an ICC State Party; and (5) any such arrangement can only cover ‘persons present on the territory of a requested State because they have been sent by a sending State’ (such as government officials or military personnel). To satisfy the EU principles, the U.S. would have to stop seeking to shield U.S. citizens who were not sent abroad on government business, stop seeking to shield citizens of states party to the Rome Statute who were working for the U.S. government (most likely as private contractors), demonstrate that U.S. courts have jurisdiction over all crimes within the jurisdiction of the ICC as defined in the Statute, and commit to investigate in good faith all credible accusations of such crimes.

Emerging from the Council meeting, Joschka Fischer described the Conclusions as a virtual rejection of bilateral agreements: “We would have wished a clear rejection of the agreements. Because of the Principles we are very close to such a position.” By quickly expressing its displeasure with the EU’s guidelines, the U.S. State Department seemed to agree with Fischer’s analysis. Nonetheless, the determinacy of the policy was undeniably reduced by the fact that the EU did not declare that as states party to the Rome Statute, EU member states were obligated not to make any new agreement limiting or excluding the surrender of persons to the ICC. Furthermore, there was ambiguity regarding the EU’s intended audience: the Conclusions indicate that the Principles should “serve as guidelines for Member States,” but the Annex containing the principles has a more encompassing title “EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute

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of the International Criminal Court and the United States Regarding the Conditions of
Surrender of Persons to the Court,” and its contents focus on the obligations of all States
Party to the Rome Statute, without reference to EU membership. In response to this
apparent flexibility on substance and ambiguity on scope, Germany’s Foreign Office released
a detailed memorandum three weeks later detailing its view that the Conclusions and
Principles constituted a de facto prohibition on signing ICC non-surrender agreements.9 On
balance, with regard to the determinacy of the common policy, we would conclude that the
EU exhibited a medium degree of political cohesion.

Political Cohesion: The second dimension of EU coherence concerns the extent to
which the foreign policy behaviour of member states and institutions promotes the
outcome intended by the relevant common policy of the Union. As soon as the Conclusions
and Principles were agreed, the European Commission instructed its delegations around the
world to convey the EU’s position on BNAs to their host governments. In November, the EU
Council Presidency carried out formal démarches to 54 governments around the world,
urging them to ensure that their response to the US BNA campaign was consistent with the
Rome Statute and recommending that they consult the EU guidelines in this regard (Council
2003b).

However, the overriding question was whether any EU member state would sign a
BNA with the U.S., and if so, whether it would conform to the EU’s Guiding Principles. In the
immediate aftermath of the Council meeting, press reports indicated that Italy, Spain and
the UK intended to sign.10 In mid-October, an Under-Secretary from the British Foreign

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9 “ICC – Supportive Interpretation of and Commentary on the EU General Affairs Conclusions on the
International Criminal Court of 30 September 2002,” 24 October 2002, at:
10 “EU agrees to ICC immunity deal with US,” EurActiv, 1 October 2002; “EU deal to exempt US from new world
court,” The Scotsman, 1 October 2002.
Office told the House of Lords that the government was “beginning discussions with the United States on the possibility of a bilateral agreement.”¹¹ And at the next meeting of the EU Council’s ICC sub-committee, the UK expressed its strong displeasure with the German memorandum, which reinforced speculation that London was leaning toward signing an agreement.¹²

Nonetheless, a special U.S. ambassador who travelled to London, Madrid, Rome and Vienna in late 2002 failed to achieve any agreements. The Foreign Ministry of Portugal, which had tacitly supported the British and Italians during the negotiation of the Council Conclusions, rejected a bilateral agreement proposed by Washington after receiving a negative legal opinion from the General Attorney’s office and Lisbon decided to freeze further discussion of the issue.¹³ In the end, no EU member state signed a bilateral ICC non-surrender agreement with the U.S.

EU coherence on BNAs was apparently not affected by the lack of agreement among member states regarding UN Security Council resolutions in 2002 and 2003 that provided a one-year exemption from ICC jurisdiction for all UN peacekeepers from non-ICC states (Thomas 2009). Another agreement sometimes mentioned in this context is the 2003 U.K.-U.S. Extradition Treaty, which precludes the surrender to the ICC of any U.S. citizen extradited to the U.K. However, this simply reiterated the prohibition on ‘onward extradition’ contained in the pre-existing 1972 U.K.-U.S. Extradition Treaty, which was

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¹² Author’s interviews with European officials and NGO experts, November 2004.
covered by the EU guiding principles’ recognition that ‘existing agreements’ might limit surrender to the ICC.14

Considering the behaviour of both EU institutions and member states, we can therefore conclude that the EU exhibited a high degree of political cohesion in support of the common policy. In fact, political cohesion among member states was far greater than one might have expected given the limited determinacy of the policy agreed on 30 September 2002. If we weigh policy determinacy and political cohesion equally, we would conclude that the EU exhibited a medium-high degree of coherence on the issue of ICC bilateral agreements. But did the EU actually achieve its objectives on the BNA issue?

**EU Effectiveness on the International Criminal Court**

Within the EU Council Conclusions adopted on 30 September 2002, the annex containing the EU’s Guiding Principles was explicitly addressed not to the EU or even European states, but to any “State Party to the Rome Statute.” As indicated above, the European Commission quickly conveyed the EU’s position on BNAs to their host governments, and the Council presidency then carried out démarches to 54 foreign governments (varying widely by size, region and ICC status) urging them to follow the EU principles.15 The following year, an EU Presidency statement to the United Nations confirmed the EU’s global ambitions on this issue: “[The Guiding Principles] were addressed, in the first place, to Member States and Candidate, now Acceding, Countries, but they are relevant for all States Parties to the Statute, as well as for those States considering

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15 The 54 states that received these EU démarches varied by ICC status (23 non-signatories and 31 signatories including 16 states-party), region (30 Asia, 8 Africa, 8 Americas, and 8 Europe), and size (from China, India and Russia to Barbados, Cape Verde, and Qatar).
becoming Parties thereto, because they clearly indicate the limits to be respected - according to the EU - in evaluating the need for the bilateral non-surrender agreements (EU Presidency 2003).”

But did the EU’s endorsement and support of these guidelines have any effect? This section of the paper outlines six tests of EU effectiveness on the BNA issue, focusing on how non-EU states responded to the US government’s BNA campaign and whether their responses are consistent with the guidelines recommended by the EU. The first five tests examine the behaviour of all non-EU member states while the sixth test focuses on the behaviour of non-EU states in Europe.

A minimal definition of accordance with the EU guidelines would involve states-party and signatories of the Rome Statute refusing to sign a reciprocal BNA – that is, an agreement that would shield their own citizens (as well as those of the other party) from surrender to the ICC. A moderate definition would require that these states not sign any BNA that fails to comply formally with the full set of guidelines included in the Council Conclusions. A maximal definition would require that these states follow the interpretation of the Council Conclusions and Guiding Principles presented in the German Foreign Office’s October 2002 memorandum. Given the U.S. position on these issues, both the moderate and the maximal definitions would effectively preclude signing any BNAs with the United States.

Evidence of which states have signed which kinds of BNAs is available from a number of sources. The International Criminal Court’s website provides authoritative information on when all ICC states-party signed and ratified the Rome Statute, while the website of the non-governmental Coalition for the International Criminal Court also lists states that have signed but not ratified the Statute. The full text of all BNAs in force according to the U.S.
State Department is available from a dedicated website of Georgetown University’s Law Library. In addition, Human Rights Watch, the NGO Coalition for the International Criminal Court, and the American Non-Governmental Coalition for the International Criminal Court (all reputable human rights NGOs) have assembled comprehensive data on the dates, content and status of all reported signings of BNAs, including those that have not entered into force because a signatory government changed its position or a parliament refused to ratify the agreement in question. Finally, the EU Council’s 2003 annual report to the European Parliament reveals the list of states that received the EU’s November 2002 démarches (Council 2003b). Unless otherwise indicated, the following analysis relies on data assembled from these six sources. The term ‘ICC states’ refers to Rome Statute signatories and states-party, while ‘non-ICC states’ refers to states with no legal obligation to the Rome Statute.

Test 1: Of the 102 states that signed bilateral ICC non-surrender agreements with the United States between August 2002 and April 2007, 89 of these agreements were signed after the EU guidelines were adopted. Although we do not have direct evidence of how many states were contacted by the U.S. in its campaign, the figure of 102 BNAs represents a considerable portion of the 192 states that then belonged to the United Nations, especially if we consider that nearly 30 of the 192 also belonged to the EU or were candidates for membership during this period and were thus likely to follow the EU’s common policy. Although it is impossible to know for sure how many agreements would have been signed in

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18 Under public international law, states that sign a treaty are expected to act in a manner consistent with its provisions while ratification is pending. In these tests, Israel is treated as a non-ICC state because it (like the US) formally renounced its signature of the Rome Statute in the spring 2002.
the absence of a collective EU response to the U.S. campaign, this initial measure does not suggest that the EU’s efforts were very effective.

Test 2: The bottom line for EU effectiveness appears somewhat better if we focus on one of the most salient issues in the debate – the reciprocity of the BNAs. As shown in Table 1, the data on BNAs signed after the EU guidelines reveal that ICC states were far more likely than non-ICC states (27% vs. 7%) to insist that the agreements they signed be non-reciprocal. Given that the EU Guidelines stated clearly that the reciprocal BNAs proposed by the U.S. (i.e., agreements covering citizens and officials of both parties) would violate the legal obligations of any ICC state, this data appears to support the hypothesis that coherence facilitates efficacy in EU foreign policy. However, the same pattern could also be explained by the hypothesis that ICC states were intrinsically committed to protecting the Rome Statute, regardless of the EU’s position (Kelley 2007), which would weaken the claim of EU efficacy and the explanatory link to EU coherence.

-- Table 1 about here --

Test 3: The evidence of EU efficacy is somewhat stronger if we compare the reciprocity of BNAs signed by ICC states before and after the EU guidelines were adopted (see Table 2). Of the 69 BNAs signed by ICC states, the percentage that was reciprocal (and thus contrary to EU guidelines) dropped from 86% to 68% after the guidelines were adopted. This suggests that the EU’s effort to shape the global response to the U.S. campaign for BNAs had some impact, at least on one aspect of the issue. However, the small number (7) of BNAs signed by ICC states before the EU guidelines may not support such robust before-after comparisons.

-- Table 2 about here --
Test 4: The evidence of EU efficacy is actually quite weak if we examine the behaviour of the states that received EU démarches on the BNA issue in November 2002 (see Table 3). Of the 53 states that received EU démarches, 42% did not sign any BNA, 6% signed non-reciprocal BNAs, and 47% signed reciprocal BNAs. In contrast, of the 138 states that did not receive an EU démarche -- and thus might be expected to sign more BNAs and more reciprocal BNAs -- the data show that 49% did not sign any BNA, 12% signed non-reciprocal BNAs, and 38% signed reciprocal BNAs. If we focus on outcomes that are clearly inconsistent with the EU guidelines, we see that 47% of states that received an EU démarche went on to sign a reciprocal BNA, while only 38% of states that did not receive an EU démarche did so -- presumably the opposite of what the démarches were intended to accomplish.

-- Table 3 about here --

Test 5: The same pattern of EU inefficacy is found if we separate ICC states from non-ICC states before comparing the behaviour of those that received EU démarches to those that did not receive a démarche (see Table 4). For example, a stunning 47% of the ICC states that received démarches went on to sign reciprocal BNAs (which the EU guidelines clearly sought to prevent), while only 15% of the ICC states that did not receive démarches signed non-reciprocal BNAs. Similarly, 47% of non-states-party that received démarches refused to sign BNAs, while only 39% of ICC states that received démarches refused to sign BNAs. It is also interesting to note that if we focus on those who received a démarche, the same proportion (47%) of states with and without legal obligations to the Rome Statute went on to sign reciprocal BNAs, which suggests that the EU’s specific effort to frame the BNA issue in terms of legal obligations was as ineffective as its general effort to counter the U.S. campaign.

-- Table 4 about here --
But what about the EU’s effectiveness within its immediate neighbourhood – that is, among non-EU states in Europe? Given the extensive economic, cultural and political ties linking the EU to its neighbours, one might expect EU foreign policy to be more effective in its neighbourhood than elsewhere in the international system.

Test 6: Discounting those ten European states destined for EU membership in 2004, who were already committed by September 2002 to support all EU foreign policy positions, we consider the BNA behaviour of eighteen non-EU European states, including ten EU candidate, applicant and likely applicant states (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia, Turkey), four members of the European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland), and four other micro-states (Andorra, Monaco, the Holy See, San Marino). Of these, one (Romania) signed a reciprocal BNA before the EU policy was adopted, but Bucharest then declared that it would seek to amend the agreement to comply with the EU requirements. This amendment has not been agreed and the Romanian BNA is not listed in the State Department’s Treaties in Force. Four others signed BNAs after the EU guidelines were adopted. Albania’s BNA was criticized by Chris Patten, then the EU’s External Relations Commissioner, for non-compliance with EU guidelines on the scope of persons covered by such agreements. Several weeks later, when Bosnia-Herzegovina signed a BNA, Patten criticized the terms of its agreement as being only slightly better than Albania’s and (along with the EU presidency) sent a letter urging Sarajevo to respect the EU’s position on the ICC. Montenegro signed a BNA that is reportedly reciprocal and thus non-compliant with a critical aspect of the EU guidelines. Macedonia’s BNA is non-reciprocal, as recommended by

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19 The fact that the US signed BNAs with several Pacific micro-states indicates that it probably sought to sign BNAs with European micro-states as well.
the EU, but it is inconsistent with EU guidelines regarding non-impunity and the scope of persons.

Of the thirteen non-EU European states that have not signed BNAs, the behaviour of four cannot be attributed to EU influence. Norway and Switzerland announced their no-BNA position nearly six weeks before the EU agreed its common position. Croatia’s May 2003 declaration is generally attributed to the fact that the Croatian government was under strong international pressure to surrender suspects to the International Criminal Tribunal on the former Yugoslavia and thus politically unable to accept a U.S. request to be shielded from ICC jurisdiction, regardless of its preferences. One could assume that Serbia probably made the same calculation as Croatia.

In sum, of the eighteen non-EU European states studied here, four adopted BNA positions that are clearly non-compliant with EU guidelines, one signed but didn’t ratify a non-compliant BNA, and four others refused to sign a BNA for their own reasons. Only nine of the eighteen (Andorra, Bulgaria, Holy See, Iceland, Liechtenstein, Moldova, Monaco, San Marino, and Turkey) are fully compliant with EU preferences on BNAs and not clearly subject to other motives. Of the four non-EU European states that were seeking NATO membership and thus especially sensitive to US preferences, Bulgaria and Croatia refused to sign while Albania signed a BNA and Romania opted not to ratify its initial signature. This 50% success rate, and the fact that we only have firm evidence of one state (Romania) changing its BNA position in response to EU pressure, does not suggest a high degree of EU effectiveness within its immediate neighbourhood. The nine EU-compliant states may have adjusted their positions on BNAs to suit EU recommendations or they may have rejected the US campaign entirely for their own reasons.
Conclusions

As shown above, the definitions of EU coherence and effectiveness proposed in this paper facilitate transparent and systematic empirical analysis of the Union’s role in world affairs. The case study of the EU’s clash with the U.S. over bilateral ICC non-surrender agreements shows that the EU exhibited considerable political cohesion in support of a determinate common policy. Unfortunately for proponents of EU foreign policymaking, the evidence does not support the familiar expectation (hypothesis one) that EU coherence facilitates EU effectiveness. Despite the EU’s coherence on this issue, its collective effort to blunt the U.S. quest for BNAs had little observable positive effect. This finding indicates that achieving ‘actorness’ -- “the capacity to behave actively and deliberately in relation to other actors in the international system” (Sjöstedt’s 1977:16) -- is no guarantee that the EU will be able to ‘punch its weight politically.’

Although the outcomes evident in this case study appear most consistent with a negative relationship between EU coherence and effectiveness, the causal mechanisms discussed earlier for hypothesis two do not apply in this case. Instead, it seems likely that the EU’s general inefficacy on the BNA issue is actually due to the disproportionate pressure applied by the two sides: the EU relied principally on moral and legal arguments, backed by diplomatic démarches, to persuade third parties to act in a particular way, while the U.S. explicitly conditioned its considerable military and economic aid to those same governments on their compliance with its wishes. For example, after the U.S. cut military aid to six Caribbean states that refused to sign a BNA, the president of Guyana explained his decision
to sign: “The U.S. has made it clear that they will cut off the aid. I need the military co-
operation with the U.S. to continue. It is as clear as that. I can’t be more clear.”

The gap between the EU’s willingness to invest only soft power in this issue, as
opposed to the U.S.’s use of hard power, cannot be explained by the availability of
resources: the EU could have afforded make its own threats or simply to compensate
countries targeted by U.S. sanctions. Instead, it may be due to a reluctance to confront the
U.S. so directly at a time when transatlantic relations were already frayed by the Iraq
dispute. Or it could be due to the radically different stakes that the BNA issue had for the
U.S. and the EU: if the EU failed to shape outcomes to its liking, an international court to
which it was normatively committed would be weakened while US failure could expose its
citizens, soldiers, and even most senior politicians to the actions of a court whose
jurisdiction the U.S. government had never accepted.

In either case, the lesson is clear: coherence may have been necessary for the EU to
shape the outcome of the BNA issue, but it was not sufficient. Phrased more generally,
coherence may be necessary for the EU to exert its influence abroad, but it clearly is not
sufficient in a multi-centric world order where many others do not share the EU’s collective
policy preferences and are ready to deploy vast resources in pursuit of their goals. The
tendency of EU leaders to link the Union’s frequent lack of coherence to its frequent lack of
effectiveness on foreign and security policy is thus either misinformed or misleading, or
perhaps both.

The most reliable way to explore this issue further would be to modify hypothesis
one by elaborating the scope conditions that could intervene between coherence and
effectiveness and then to test these conjectures using large-N and/or controlled

contrast, there is no evidence that the EU tied its development aid or trade concessions to the BNA issue.
comparative methods. To maximize the generalizability of findings and account for the potential impact of intervening variables, the analysis should be designed to encompass multiple international relationships and issue-areas. To control for the potential impact of intervening variables, it could focus on multiple cases within a single relationship or issue-area. To increase our confidence that any co-variation between coherence and effectiveness represents a true causal relationship, large-N analyses should be paired with in-depth investigation of causal mechanisms or processes in a smaller number of cases. Doing so would enable to scholars to make an even stronger empirically informed contribution to public debate on the EU’s future role in world affairs.
Figure 1: Two Dimensions of EU Coherence

Policy Determinacy

Political Cohesion
Table 1: Reciprocity of BNAs signed after EU Guiding Principles

<table>
<thead>
<tr>
<th></th>
<th>Non-reciprocal</th>
<th>Reciprocal</th>
<th>Reciprocity unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ICC states</strong></td>
<td>27% (17)</td>
<td>68% (42)</td>
<td>5% (3)</td>
</tr>
<tr>
<td><strong>Non-ICC states</strong></td>
<td>7% (2)</td>
<td>89% (24)</td>
<td>4% (1)</td>
</tr>
</tbody>
</table>

*Note: This table only includes the 89 BNAs signed after 30 September 2002. All percentages have been rounded to the nearest whole number.*
Table 2: Reciprocity of BNAs signed by ICC states before and after EU Guiding Principles

<table>
<thead>
<tr>
<th></th>
<th>Non-reciprocal</th>
<th>Reciprocal</th>
<th>Reciprocity unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNAs signed before</td>
<td>14% (1)</td>
<td>86% (6)</td>
<td>0% (0)</td>
</tr>
<tr>
<td>BNAs signed after</td>
<td>27% (17)</td>
<td>68% (42)</td>
<td>5% (3)</td>
</tr>
</tbody>
</table>

*Note: This table only includes the 69 BNAs signed by ICC states. All percentages have been rounded to the nearest whole number.*
Table 3: Signature and reciprocity of BNAs signed by states that received and did not receive EU démarches

<table>
<thead>
<tr>
<th></th>
<th>Signed no BNA</th>
<th>Signed non-reciprocal BNA</th>
<th>Signed reciprocal BNA</th>
<th>Signed BNA of unknown reciprocity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received EU démarche</td>
<td>42% (22)</td>
<td>6% (3)</td>
<td>47% (25)</td>
<td>6% (3)</td>
</tr>
<tr>
<td>Did not receive EU démarche</td>
<td>49% (67)</td>
<td>12% (17)</td>
<td>38% (53)</td>
<td>1% (1)</td>
</tr>
</tbody>
</table>

Note: This table includes the 53 states that received an EU démarche and had diplomatic relations with the United States in November 2002. Iran received a démarche but had no diplomatic relations with the US and was thus not at risk of signing a BNA. All percentages have been rounded to the nearest whole number.
Table 4: Signature and reciprocity of BNAs signed by states that received and did not receive EU démarches, controlling for states’ obligations under the Rome Statute

<table>
<thead>
<tr>
<th>ICC states (n=135)</th>
<th>Signed no BNA</th>
<th>Signed non-reciprocal BNA</th>
<th>Signed reciprocal BNA</th>
<th>Signed BNA of unknown reciprocity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received EU démarche</td>
<td>39% (14)</td>
<td>8% (3)</td>
<td>47% (17)</td>
<td>6% (2)</td>
</tr>
<tr>
<td>Did not receive EU démarche</td>
<td>53% (52)</td>
<td>15% (15)</td>
<td>31% (31)</td>
<td>1% (1)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-ICC states (n=56)</th>
<th>Signed no BNA</th>
<th>Signed non-reciprocal BNA</th>
<th>Signed reciprocal BNA</th>
<th>Signed BNA of unknown reciprocity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received EU démarche</td>
<td>47% (8)</td>
<td>0% (0)</td>
<td>47% (8)</td>
<td>6% (1)</td>
</tr>
<tr>
<td>Did not receive EU démarche</td>
<td>38% (15)</td>
<td>5% (2)</td>
<td>56% (22)</td>
<td>0% (0)</td>
</tr>
</tbody>
</table>

Note: This table includes all 191 states with which the US had diplomatic relations in the period 2002-2007 (i.e., all but Cuba, Iran, North Korea, Somalia and Western Sahara) and which were thus at risk of signing a BNA. All percentages have been rounded to nearest whole number.
References


Council of the European Union (2003b). Annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP. Doc. 7038/03, Brussels, 7 April


