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# Reaching for a Calculator or a Mirror? Why the EU Joins International Human Rights Treaties

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## **EU Diplomacy Papers**

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## About the Author

Thomas Stiegler studied International Relations at the Dresden University of Technology (Germany) and International Politics during an exchange program at Instituto Tecnológico de Monterrey, Estado de Mexico (Mexico). In addition, he holds an MA in EU International Relations and Diplomacy Studies from the College of Europe in Bruges (Belgium), where he studied in 2011-2012 with a scholarship from the German Federal Ministry of Education and Research. He has previously worked as a trainee in the S&D Group at the European Parliament (2011), and interned at the German Embassy in Washington, D.C. (2010), as well as at the Friedrich Ebert Foundation in Mexico City (2010). He is currently based in Beijing on a sixteen-month post-graduate fellowship program of the German Academic Exchange Service for language and professional training. This paper is based on his Master's thesis submitted at the College of Europe (Marie Skłodowska-Curie Promotion).

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## **Abstract**

Why does the European Union (EU) join international human rights treaties? This paper develops motivational profiles pertaining either to a 'logic of appropriateness' or a 'logic of consequentialism' in order to answer this question. It compares the EU's motivations for its recent accession to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) with those dominating the EU's non-accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Based on this cross-case analysis, I argue that the EU's accession decisions are best viewed as cost-benefit calculations and explained by the strength of opposition and the desire to spread its norms. The EU is only marginally concerned with efforts to construct an 'appropriate role', although its accession considerations are positively influenced by (varying degrees) of an internalized commitment to human rights. The paper aims at deepening the understanding of the EU's motivations in the paradigmatic hard case of accession to international human rights treaties not least to evaluate the EU's 'exceptional nature', facilitate its predictability for stake-holders and contribute to political and ethical debates surrounding future rites of passage as a global actor.

## Introduction: Why join international human rights treaties?

In 2010 the European Union became the first international organization to ratify an international human rights treaty (IHRT), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), thus entering what has long been a states-only domain of international relations. The existing literature offers no consensus view on the motivations underlying EU actions in the field of International human rights: Evaluations of EU policies oscillate distinctly between characterizations as “window dressing”<sup>1</sup> and praising depictions as a “poster-child for global human rights progress”.<sup>2</sup>

If the EU had to write a letter of motivation for its future accessions to IHRTs, what reasons would it state? Would the EU make use of a ‘calculator’ of expected costs and benefits or rather a ‘mirror’ ascertaining its appropriate role? In assessing motivations, this paper seeks to understand and test the sincerity of the EU’s treaty commitments<sup>3</sup> to the promotion of democracy and human rights. Moreover, understanding which pressures ‘matter’ for its decision-making, will also enable empirically grounded political and ethical scrutiny to appraise the EU’s ‘exceptional’ nature as a foreign policy actor. Explaining accession to international human rights treaties constitutes a “paradigmatic hard case”<sup>4</sup> to research: In this international treaty, participants are neither rewarded with classical material (economic, security) benefits nor can participants be expected to reciprocate a third actor’s violation through retaliation against their own population.<sup>5</sup>

To answer the question why the EU joins international human rights treaties, this paper adopts the following research design: Drawing on the literature, a first section will derive variables pertaining to two contrasting hypotheses. These will then be tested in two case studies: the UNCRPD and the Istanbul Convention.<sup>6</sup> A third section

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<sup>1</sup> G. De Búrca, “The Road Not Taken: The EU as a Global Human Rights Actor”, *American Journal of International Law*, vol. 105, 2011, p. 47.

<sup>2</sup> *Ibid.*, p. 3.

<sup>3</sup> See for example: European Union, “Consolidated versions of the Treaty on European Union of 30 March 2010” [hereafter TEU], *Official Journal of the European Union*, C83/01, 2010, art. 3(1), 3(2), 3(5).

<sup>4</sup> O.A. Hathaway, “Why Do Countries Commit to Human Rights Treaties?”, *Journal of Conflict Resolution*, vol. 51, no. 4, 2007, p. 589.

<sup>5</sup> A. Geisinger, M. Stein & A. Michael, “Rational Choice, Reputation, and Human Rights Treaties”, *College of William & Mary Law School Paper*, no. 666, 2008, p. 1135.

<sup>6</sup> A similar research design was adopted by C. Dingding, “China’s Participation in the International Human Rights Regime: A State Identity Perspective”, *Chinese Journal of International Politics*, vol. 2, 2009, p. 400.

will answer the question based on an analysis of the motivational profile(s) that can best explain EU decisions across cases.

The first hypothesis explains behavioral choices through a rational-choice theory framework assuming that the EU acts as a “[r]ational, self-interested, utility maximizing” actor which is “not interested in other states’ welfare”.<sup>7</sup> As such, the EU accedes to IHRTs whenever perceived benefits outweigh costs.

*Hypothesis 1: The EU joins IHRTs because it takes an instrumental approach, conducts a cost-benefit analysis and accedes if pay-offs outweigh costs.*

By contrast, the second hypothesis focuses on choices made “without, or in spite of calculation of consequences and expected utility”.<sup>8</sup> It departs from the assumption that the EU’s perception of costs and benefits is not fixed but that both intrinsic normative beliefs of appropriate behavior and extrinsic social processes (social interactive construction of the appropriate) are superior variables.

*Hypothesis 2: The EU joins IHRTs because it views this step as appropriate. It forms this preference by consulting an intrinsic pre-existing commitment or by engaging in processes of social interaction in which it is persuaded or driven to emulate a reference group.*

Based on the case studies I will argue that the EU’s decisions are informed mostly by rational choice variables (strength of opposition and a desire to spread its norms), while its actions are to a weaker extent explained by efforts to construct an ‘appropriate role’. The selected case studies are the United Nations Convention on Rights of People with Disabilities, as the first and – so far – the only human rights treaty to which the EU has acceded, and the Council of Europe Convention on preventing and combating violence against women and domestic violence. This so-called Istanbul Convention is substantively comparable to the UNCRPD because it contains provisions constituting prominent norms of the EU’s external human rights campaign.<sup>9</sup> Nevertheless, the EU has not acceded to the Istanbul Convention.

I will infer results as follows: First, the influence of an individual variable is labeled *positive* if evidence and interpretations by interviewees conclude that they made an accession decision more likely. Conversely, it is labeled *negative* if the

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<sup>7</sup> A.T. Guzman, *How International Law Works: A Rational-choice Theory*, Oxford, Oxford University Press, 2007, p. 17.

<sup>8</sup> J.G. March & J.P. Olsen, “The logic of appropriateness”, in M. Moran, M. Rein & R.E. Goodin (eds.), *The Oxford Handbook of Public Policy*, Oxford, Oxford University Press, 2006, p. 690.

<sup>9</sup> See European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, *Human rights and democracy at the heart of the EU external action – towards a more effective approach*, COM(2011) 886 final, Brussels 12 December 2011, p. 8.

opposite is suggested. The qualification *marginal* is added to indicate a weaker strength of influence while *neutral* denotes little or no impact.

Second, after evaluating variables and motivational profiles for each individual accession decision, I will compare the direction of their influence across cases. Variables will be seen as *significant* for the accession decision, if they are able to explain the variation between the EU's accession (UNCRPD) and non-accession decision (Istanbul Convention). The explanatory value regarding this variation will be higher, the more a variable's exerted influence differs across cases, that is, shows a variation of influence.<sup>10</sup> The motivational profile containing the most confirmed influential variables will thus be seen as the most powerful answer to the question why the EU joins IHRTs. As a first step, I will equip my hypotheses with testable variables.

#### *Hypothesis 1: The EU as a rational-choice actor*

The first hypothesis assumes the EU is a rational actor driven exclusively by the following fixed benefits and costs: First, at the EU level,<sup>11</sup> *bureaucratic benefits* can be identified. Through the external tool of IHRT accession institutional actors can utilize their (supranational) mandate to occupy an internal legislative field, thereby expanding their tasks and influence.<sup>12</sup> An indicator of significance for this variable is an existing potential to expand tasks and flexibility on the substance of the agreement.

Second, *norm-shaping benefits* refer to an interest in the substantive norms of a treaty. Norms can be 'downloaded' to promote a pre-existing legislative agenda. Alternatively, by 'uploading' own human rights norms,<sup>13</sup> the EU can assert foreign policy influence (i.e. shape the global discourse on human rights<sup>14</sup>) or "creat[e] a level playing field internationally".<sup>15</sup> This variable is significant if the EU can influence IHRT norms and design through its participation in the treaty making process. For this,

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<sup>10</sup> For example, political opposition will only be qualified as a significant variable for the EU's general motivations, if its influence in the case of the Istanbul Convention differs from that of the case of the UNCRPD.

<sup>11</sup> My analysis focuses exclusively on the EU level leaving aside potential costs and benefits that may incur at subordinate levels (individual citizens or individual member states).

<sup>12</sup> V. Aggarwal & E.A. Fogarty, "Explaining Trends in EU Interregionalism", in V. Aggarwal & E.A. Fogarty (eds.), *European Union Trade Strategies: Between Globalism and Regionalism*, London, Palgrave, 2004, pp. 207-240.

<sup>13</sup> *Ibid.*

<sup>14</sup> For the case of China, see E. Wickeri, "China's Growing Prominence in the Multilateral Human Rights System", *HRIC Brief*, China Rights Forum, no. 1, 2007, p. 23.

<sup>15</sup> *Ibid.*, p. 613.

it should display active attempts to externally project<sup>16</sup> and internally promote the treaty's norms.

Third, *reputational benefits* could emanate from concerns over the EU's image. As various scholars postulate,<sup>17</sup> the EU could be motivated to join an IHRT seeking to enhance external visibility as a new actor and to showcase a consolidated reputation as a norm abider.<sup>18</sup> These benefits will be greater, when the EU seeks to promote its visibility during negotiations or views accession as beneficial for its reputation. Importantly, an improved image is seen as a means to the ends of future material benefits rather than as a benefit of social esteem in itself.

On the flip-side of the equation, accession may incur the following potential costs: First, *sovereignty costs* can be expected as accession to an IHRT transfers competences to an international body which can enforce and monitor human rights compliance. These costs are born by both the EU and its member states which are obliged to "take all appropriate measures to implement provisions of the mixed agreement that fall within the competence of the EU".<sup>19</sup> The sovereignty loss is seen as increasingly significant, the more IHRTs stipulate mechanisms for enforcement and monitoring.

Second, *legislative adaptation costs* denote costs incurred through internal implementation of treaty rules, including through legislative or institutional adaptations. If treaty norms reflect a pre-existing legislative state, these costs are low. They rise, however, as the EU undergoes a complex, resource-intensive, internal procedure to translate international obligations into community legislation.

Third, *opportunity costs* consider that a decision to accede may be commensurate with significant opportunity costs requiring commitment of financial resources, personnel, time, and expertise, which cannot be used elsewhere.<sup>20</sup> An indicator for

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<sup>16</sup> B. De Witte, "International Law as a Tool for the European Union", *European Constitutional Law Review*, vol. 265, 2009, p. 278.

<sup>17</sup> See F. Söderbaum, P. Stalgren & L. Van Langenhove, "The EU as a Global Actor and the Dynamics of Interregionalism: a Comparative Analysis", *Journal of European Integration*, vol. 27, no. 3, 2005, pp. 365-380; and Aggarwal & Fogarty, *op.cit.*

<sup>18</sup> O.A. Hathaway, "Between Power and Principle: An Integrated Theory of International Law", *University of Chicago Law Review*, vol. 71, 2005, p. 510.

<sup>19</sup> European Foundation Centre, "Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214", European Commission Employment, Social Affairs and Equal Opportunities DG Unit G3, Brussels, 2010, p. 34.

<sup>20</sup> Guzman, Andrew T., "Formation of Human Rights Treaties, A Response to Alex Geisinger", *Opinio Juris*, 11 February 2012.



the salience of this factor is the availability of another policy tool achieving the same substantive goals at lower costs. Opportunity costs are higher, the less costly an alternative path yielding similar results.

Fourth, the *strength of opposition* encapsulates the notion that “[w]here political pressure opposing treaty commitment exists, governments are less likely to join”.<sup>21</sup> Opposition to EU accession to an IHRT may originate from inside the EU (member states, institutional actors) or from ‘powerful’ domestic and transnational pressure groups. This factor is thus significant if there is evidence of a well-organized, powerful interest group or of important member states opposed to accession.<sup>22</sup>

Despite spanning a wide field of factors, rational choice theorists conclude that the *formation* of human rights treaties remains “especially difficult to explain”<sup>23</sup> without relaxing the rational choice core assumptions. The following section does so by operationalizing my second hypothesis, building a motivational profile consistent with a logic of appropriateness.<sup>24</sup>

#### *Hypothesis 2: The EU constructs its appropriate role*

The second hypothesis departs from the assumption that costs and benefits are not fixed but that internalized norms and social processes determine an accession decision. I will first examine whether the EU shows evidence of an ‘automatic accession reflex’ to IHRTs given an *internalized commitment* to the “the development of international law”<sup>25</sup> stipulated in its treaties. Indicative of an EU bias for accession is a pre-existing preference for an institution due to a shared history or towards a substantive treaty norm. Official justification of accession should resort to normative rather than material language while actors should view ‘independent external control’ of EU acts as appropriate.<sup>26</sup>

Second, *acculturation* denotes a potential influence of non-state actors (private interest groups, civil society) in decision-shaping by acting as a ‘reference group’ which the EU follows to confer legitimacy on its action. In case the EU seeks

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<sup>21</sup> Hathaway, “Between power and principle”, *op.cit.*, p. 103.

<sup>22</sup> Note that the flip side of this variable – positive support from sub-systemic actors – will be considered in the socialized areas of the second motivational profile (acculturation and persuasion).

<sup>23</sup> O.A. Hathaway, “The Cost of Commitment”, *John M. Olin Centre Working Papers*, no. 273, 2003, p. 4.

<sup>24</sup> For a conceptual clarification see March & Olsen, *op.cit.*

<sup>25</sup> Art. 3(5) TEU, 2<sup>nd</sup> para.

<sup>26</sup> In this logic independent external control is depicted not as a ‘monitoring cost’ but as a positive benefit of accession.

esteem as an end in itself (rather than as a means for future material benefits), an acculturation process can be attested if evidence reflects warnings of non-accession as hurtful for EU esteem and if a reference group is capable of changing EU behavior by virtue of allotting esteem or legitimacy.

Third, *persuasion* dynamics imply that the EU changes its preferences by becoming convinced that IHRT accession is in its interest. EU preference changes must thus be clearly attributable to its engagement in dialogue with effective international or domestic pressure groups (advocacy, epistemic) or negotiation partners.

### **A case of accession: UN Convention on the Rights of People with Disabilities**

Adopted in 2006 by the UN General Assembly as the first IHRT of this century, the UNCRPD is also the first of its kind dedicated to disability rights,<sup>27</sup> combining both the first and the second generation of human rights<sup>28</sup> through its objective to “promote, protect and ensure”<sup>29</sup> human rights for the 650 million disabled people in the world.<sup>30</sup>

The next section scrutinizes the EU’s deliberations to join this treaty by examining its motivations as a rational-choice.

#### ***The EU as a rational-choice actor***

This section assesses the first motivational profile entailing cost-benefit calculations for the EU in acceding to the treaty.

#### ***Bureaucratic benefits***

There is clear evidence that the European Commission garnered benefits from EU accession to the UNCRPD. Throughout negotiations, the Commission’s supreme interest in signing an international convention was evident in its intense efforts to push for the inclusion of a provision authorizing “international organizations to accede to

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<sup>27</sup> European Foundation Centre, *op.cit.*, p. 34.

<sup>28</sup> M. Schulze, *A Handbook on the Human Rights of Persons with Disabilities Understanding The UN Convention on the Rights of Persons with Disabilities*, New York, Handicap International, 2010, 3<sup>rd</sup> edn., p. 34.

<sup>29</sup> See UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution, adopted by the General Assembly, A/RES/61/106, 24 January 2007, art. 1.

<sup>30</sup> World Health Organisation, *World Report on Disability*, Geneva, World Health Organisation, 2011, p. 29.

the instrument".<sup>31</sup> The desire for legislative task expansion ('signing over substance') is epitomized in agreeing to a rights-based over anti-discrimination approach, as reported by a closely involved high-level EU official.<sup>32</sup> During negotiations, the Commission has been actively taking the lead as the main "position shaper" while no member state "spoke out against the Commission"<sup>33</sup> which represented the Union.

As a result of accession the Commission will be a "focal point for the implementation of the Convention",<sup>34</sup> while it shares competence for representation and coordination.<sup>35</sup> Hence, bureaucratic benefits exerted a *positive* influence on the EU's decision to accede.

### *Norm-shaping benefits*

In analyzing the negotiation stage, De Búrca concludes that the EU's "primary strategy"<sup>36</sup> consisted of promoting "the adoption of its own internal model of disability discrimination at the international level".<sup>37</sup> In addition, the EU's 'European Disability Strategy 2010-2020'<sup>38</sup> mentions the Convention ten times,<sup>39</sup> underlining its utility as an ex-post reference document to justify legislative action.

Despite not reaping all conceivable norm-uploading potentials (such as uploading the EU typical institutional design governing the features of the Convention<sup>40</sup>), the EU still saw both a foreign policy benefit in uploading and a legislative incentive in downloading provisions. This benefit thus played a *positive* role in the EU's accession considerations.

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<sup>31</sup> G. De Búrca, "The EU in the Negotiation of the UN Disability Convention", *European Law Review*, vol. 35, no. 2, 2010, p. 7.

<sup>32</sup> High-level EU official, Delegation of the European Union to the United Nations in Geneva, interview, Geneva, 1 May 2012.

<sup>33</sup> De Búrca, "EU Negotiation UNCRPD", *op.cit.*, p. 8.

<sup>34</sup> Council of the European Union, "Code of Conduct between the Council, the Member States and the Commission (2010/C 340/08) setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities", *Official Journal of the European Union*, C340/11, 15 December 2010, p. 11.

<sup>35</sup> *Ibid.*, pp.1-4.

<sup>36</sup> De Búrca, "EU Negotiation UNCRPD", *op.cit.*, p. 24.

<sup>37</sup> *Ibid.*, p. 1.

<sup>38</sup> European Commission, "European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe", COM (2010) 636 final, Brussels, 15 November 2010.

<sup>39</sup> See *ibid.*, pp. 3-4, 7, 9-10.

<sup>40</sup> *Ibid.*, pp. 16-21.

### Reputational benefits

The EU's image was able to benefit from a surge in visibility: Negotiation accounts suggest that the EU "put a great deal of energy into the promotion of its international identity".<sup>41</sup> Obtaining the label of being the 'historic first' international organization to become "a party to an international human rights treaty"<sup>42</sup> appeared to be worth investing diplomatic clout to placate concerns over an undue accrual of voting power<sup>43</sup> – and a benefit which at times even outweighed the "goal of designing the most effective instrument".<sup>44</sup> De Búrca ranks the political benefit of external visibility as second only to uploading its own disability norms.<sup>45</sup>

In sum, concerns to promote the EU's visibility *positively* affected the EU's accession decision.

To consider the flip-side of the EU's balance sheet, the following section examines the UNCRPD's costs.

### Sovereignty costs

As a consequence of ratification, the European Union itself now "falls under a legal duty" to observe disability standards.<sup>46</sup> In addition, the innovative monitoring system provides for "independent national monitoring and implementation"<sup>47</sup> which is secured through the appointment of a focal point that files progress reports and serves as a lobbying reference point for NGOs.<sup>48</sup> Yet rather than as 'costs', the Convention's legal requirements and external monitoring and control provisions were viewed as vital to the EU's foreign political interest in an "effective" convention.<sup>49</sup>

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<sup>41</sup> De Búrca, "EU negotiation UNRPD", *op.cit.*, p. 23.

<sup>42</sup> "EU ratifies UN Convention on disability rights", *EUROPA*, Press Room: Press Releases, 5 January 2011

<sup>43</sup> High-level EU Official, Geneva, *op.cit.*

<sup>44</sup> De Búrca, "EU negotiation UNRPD", *op.cit.*, p. 23.

<sup>45</sup> *Ibid.*, p. 24. According to a high level EU official, this *perceived* benefit contrasts with a likely marginal *de facto* impact of an accession on EU reputation (visibility and credibility) on the global stage, High Level EU Official, Geneva, *op.cit.*

<sup>46</sup> United Nations Human Rights, Office of the High Commissioner, "The European Union and International Human Rights Law", Brussels, United Nations Brussels, 2008, p. 49.

<sup>47</sup> De Búrca, "EU negotiation UNCRPD", *op.cit.*, p.12.

<sup>48</sup> See United Nations General Assembly, Convention on the Rights of Persons with Disabilities: resolution A/RES/61/106, New York, art. 33 and art. 35.

<sup>49</sup> European Union, "Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities- Position paper by the European Union", Position Paper for the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities (A/AC.265/WP.2), New York, United Nations Enable, 2002.

Sovereignty concerns initially voiced by some member states over an “interference with their domestic educational system” lost significance over the course of negotiations and failed to derail the EU’s eventual accession.<sup>50</sup> Nevertheless, sovereignty concerns are evident in that despite calls by the European Parliament and a proposal by the Commission,<sup>51</sup> the Council to date has not ratified the optional protocol of the UNCRPD which would oblige the Union to accept submission of private complaints to independent committees.<sup>52</sup>

Overall, as important sovereignty costs (such as independent monitoring and obligations under international law) were interpreted as benefits while others exerted some negative impact (such as private complaints and member state concerns over their national education competence), the overall influence of sovereignty costs on the EU’s accession deliberations can be assessed as *marginally negative*.

#### *Legislative adaptation costs*

The Commission reportedly pursued a deliberate strategy “to avoid the need for internal adaptation”,<sup>53</sup> thus preempting any “cost of adjusting to a new legal framework”.<sup>54</sup> As a result, the UNCRPD in large parts does not go beyond the level of provisions already existing at the national level.<sup>55</sup> Triggering specific efforts to their avoidance, potentially high legislative adaptation costs are interpreted as exerting a *negative* influence on the EU considerations.

#### *Opportunity costs*

Widely thought to be ‘expensive and bureaucratic’, the intricacies of the UN institutional apparatus did not significantly alter the EU’s willingness to continue negotiations nor did it prevent EU attempts for an arguably cost-intensive innovative monitoring system as the Commission pledged avoiding “undue administrative

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<sup>50</sup> De Búrca, “The EU in the Negotiation of the UN Disability Convention”, *op.cit.*, p. 9.

<sup>51</sup> European Parliament, Committee on Employment and Social Affairs, Rumiana Jeleva (rapporteur), *Report on the proposal for a Council decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with disabilities*, 2008/0171(NLE), Brussels, 3 April 2009, p. 7.

<sup>52</sup> “Disability Rights: EU and the Ratification of the UN Convention on the Rights of Persons with Disabilities”, *EUROPA*, Press Room: Press Releases, 18 May 2010.

<sup>53</sup> De Búrca, “The EU in the Negotiation of the UN Disability Convention”, *op.cit.*, p. 22.

<sup>54</sup> *Ibid.*, p. 9, no. 27.

<sup>55</sup> “Disability Rights: EU and the Ratification”, *op.cit.*

burden to facilitate [its] implementation".<sup>56</sup> Moreover, no other international or national instrument was available to justify an internal legislative initiative.

Correspondingly, the treaty's opportunity costs are interpreted as rather *neutral* for the EU's accession considerations.

### *Strength of political opposition*

Considering the treaty's ratification record, all 27 EU member states have signed the Convention of which to this date 20 have ratified it, 16 of which also acceded to the optional protocol (19 signed).<sup>57</sup> Reportedly, political disagreements in judging the necessity for or scope of a convention (Netherlands, Austria and Ireland vs. UK<sup>58</sup>) were primarily responsible for weakening the EU's influence, particularly the efforts to introduce innovative monitoring mechanisms.<sup>59</sup> However, the Commission and the Belgian Council Presidency devised instruments to rally member state support. They exerted political pressure by stating that swift conclusion by all member states "will send a strong signal" to the world.<sup>60</sup> Low levels of political opposition regarding the overall question of accession thus constituted a *neutral* factor in the EU's decision to accede.

For its decision to join the UNCPRD, an analysis of rational choice variables has thus found strong influence of legislative adaptation costs (negative) and bureaucratic and norm-shaping benefits (positive).

The next section will change the perspective from fixed costs and benefits to consider whether the EU's accession decision can better be understood as an effort to respond to intrinsic beliefs and social pressures to construct an appropriate role.

### ***The EU's construction of an appropriate role***

This section evaluates the second motivational profile for the EU to accede to the UNCPRD, the effort to construct an appropriate role.

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<sup>56</sup> European Commission, "European Disability Strategy 2010-2020", *op.cit.*, p.11.

<sup>57</sup> United Nations Enable, "Convention and Optional Protocol Signatures and Ratifications: Countries and Regional Integration Organizations", United Nations, New York, 2013.

<sup>58</sup> De Búrca, "EU negotiation UNCPRD", *op.cit.*, p. 9.

<sup>59</sup> *Ibid.*

<sup>60</sup> Human Rights Watch, "EU: Way Cleared to Join Human Rights Treaty", New York, 6 December 2010.

### Internalization

Contrary to an 'automatic accession reflex', the EU prioritized an "effective" treaty as a precondition for accession.<sup>61</sup> The importance of 'progress in substance' suggests a technical rationale trumping the effect of any pre-existing institutional commitment to the United Nations.

Nevertheless, the EU ideationally justified its stances as it believed its "model to be the best available".<sup>62</sup> Strong advocacy for independent monitoring evidently also subjects the Union itself to external control.<sup>63</sup> The EU displayed a degree of internalized commitment to the relevance and effectiveness of international law which it did not weigh against material costs but considered 'appropriate'. An 'other-regarding' interest<sup>64</sup> directed at the well-being of (disabled) citizens in other states also figures in EU rhetoric as then Commissioner for External Relations Ferrero-Waldner declared that EU accession reflected EU "efforts to protect and promote the rights of persons with disabilities worldwide".<sup>65</sup>

Hence, the professed internalization of the Convention norms by EU actors exerted a *positive* influence on the EU's decision to accede.

### Persuasion

Were persuasive dynamics inducing the EU to accede to the Convention? After "a decade of more general lobbying from interested groups and actors" Mexico rather than the EU was the main promoter of the UNCRPD.<sup>66</sup> The EU's initially reserved negotiation position transformed into support for accession "once it became clear that a consensus in favour of a binding international treaty was emerging".<sup>67</sup> Opportunistic calculations thus prevailed over outside pressure groups shaping the EU's position. Similarly, the EU was not persuaded that a development-

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<sup>61</sup> Council of the European Union, "Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, by the European Community", *Official Journal of the European Union*, 2010/48/EC, 29 August 2008, p. 23.

<sup>61</sup> European Foundation Centre, *op.cit.*, p. 34.

<sup>62</sup> De Búrca, "EU negotiation UNCRPD", *op.cit.*, p. 22.

<sup>63</sup> *Ibid.*, p. 17.

<sup>64</sup> S. Keukeleire, "Reconceptualizing (European) Foreign Policy: Structural Foreign Policy", Paper for the 1st Pan-European Conference on European Union Politics, Bordeaux, 26-28 September 2002, p. 8.

<sup>65</sup> European Commission, "Council decides on the European Community becoming a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD)", 30 November 2009.

<sup>66</sup> De Búrca, "The EU in the Negotiation of the UN Disability Convention", *op.cit.*, p. 1.

<sup>67</sup> *Ibid.*, pp. 6-7.

based approach was in fact superior to a rights-based approach. It accepted the majority view when it realised that its position for a discrimination-based instrument failed to win sufficient support.<sup>68</sup>

Due to a rather autonomous EU decision-making process during which interactions were confined to internal coordination between member states and the Commission, the effect of persuasive attempts by external actors on the EU accession deliberations is interpreted to be merely *marginally positive*.

### *Acculturation*

Rather than following a "script"<sup>69</sup> of appropriate behavior by states or NGOs, the evidence suggests that the EU's "win-set"<sup>70</sup> was rather unaffected by the legitimacy of other actors: Observers stated that the EU "found strong allies" in NGOs using their "expertise and experience" suggesting an instrumental use of NGOs rather than a substantive or ideational dependence.<sup>71</sup> While high-level post-negotiation meetings are to ensure compliance with the UNCRPD, they are framed as NGOs "being taken seriously",<sup>72</sup> suggesting an inverse legitimizing mechanism to the one underlying the acculturation factor.

Thus, despite significant presence and attested strength of potential advocacy and reference groups, the state- or civil society-driven process of acculturation can only be assigned a *neutral* influence on the EU's motivations for joining the UNCRPD.

The analysis of the second motivational profile thus suggests that to an important degree the EU's considerations were shaped by pre-existing preferences for the institutional structures and substantive provisions of the UNCRPD with social factors of persuasion and acculturation adding positive impulses only at the margins.

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<sup>68</sup> *Ibid.*

<sup>69</sup> For an explanation of the concept of a 'global script', see R. Goodman & D. Jinks, "Incomplete Internalization and Compliance with Human Rights Law", *The European Journal of International Law*, vol. 19, no. 4, 2008, p. 727, no. 55.

<sup>70</sup> R.D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games", *International Organization*, vol. 42, no. 3, 1988, pp. 435-441.

<sup>71</sup> De Búrca, "EU negotiation UNCRPD", *op.cit.*, p. 18.

<sup>72</sup> P. Ebels, "Europe's disabled people feel strengthened by meeting with EU presidents", *EU Observer*, 12 December 2011.



## **A case of non-accession: The Istanbul Convention**

The second case study sheds light on a treaty to which the EU has to date not acceded although legal hurdles have been cleared. The Istanbul Convention aims at “protecting the victims and persecute the perpetrators” of violence against women.<sup>73</sup> The treaty constitutes the most specific and comprehensive treaty worldwide designed to counteract gender-based violence through legally binding provisions. The analysis begins with rational-choice considerations of the EU’s accession considerations.

### ***The EU as a rational-choice actor***

This section assesses the first motivational profile regarding the cost-benefit calculations for the EU’s (non-)accession to the Istanbul Convention.

#### *Bureaucratic benefits*

As was the case for the UNCRPD, EU accession could enable the Commission to exercise its rights of ‘occupying’ the legislative field of domestic violence internally on the basis of international commitments. Unlike in the UNCRPD, however, the Commission has not actively pushed for an accession: Why then are these potential benefits not reaped? In its only (publicly) available statement, Commissioner Reding declares that “[a]n eventual accession to the Convention [...] by the EU *would require a careful analysis of all its implications*”.<sup>74</sup> Moreover, Commissioner Reding is quoted asserting that accession did not meet her resistance.<sup>75</sup> However, damping the optimism, a personal interview with a closely involved administrator suggests that fearing political resistance by member states to EU accession, a majority of Commissioners prefers not to pursue ‘occupying’ this field. This reluctance – viewed by some observers as evidence for a lack of “bureaucratic courage”<sup>76</sup> – stands in stark contrast to EEAS rhetoric which lists the “launch [of] a number of campaigns

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<sup>73</sup> “Parliamentarians committed to promoting the Istanbul Convention”, Interview with Mendes Bota, Parliamentary Assembly of the Council of Europe, Strasbourg, 26 January 2012.

<sup>74</sup> V. Reding, “Answer given by Mrs Reding on behalf of the Commission”, Parliamentary questions E-007063/2011, European Parliament, Strasbourg, 16 September 2011 [emphasis added].

<sup>75</sup> V. Linden Jonsten, Policy Advisor, Secretariat of the Progressive Alliance of Socialists and Democrats in the European Parliament Committee on Women’s Rights and Gender Equality, interview, Brussels, 25 April 2012.

<sup>76</sup> Oral account of interview with an expert on violence against women, Amnesty International, 13 April 2012.

associated with the Violence Against Women guidelines" among the EU's first human rights priorities.<sup>77</sup>

An opportunity to gain bureaucratic benefits thus exerts a *marginally positive* influence on EU actors' decision to join IHRTs.

#### *Reputational benefits*

Visibility gains of accession would tend to be weaker than in the case of the UNCRPD as accession would not be a "historically first" treaty for the EU to sign and the EU's audience would be less global in scope. However, a large potential benefit could lie in boosting EU credibility since accession and compliance would remedy an incoherence (noticed by observers<sup>78</sup> and diplomats<sup>79</sup>) between the EU criticizing third countries for their lack of "international commitments"<sup>80</sup> and its reluctance of entering into an available instrument itself. While professing to fix its record on "fighting [...] discrimination based on [...] gender"<sup>81</sup> the EU does not anticipate a heightened concern for reputational damage or benefits from accession to the Istanbul Convention.

Therefore, the impact of reputational benefits on the EU's accession considerations is only *marginally positive*.

#### *Norm-shaping benefits*

Having been formally excluded from the treaty-making process of the Istanbul Convention,<sup>82</sup> an accession would not enable the EU to upload its norms in pursuit of a foreign policy agenda. Rather accession would result in the inverse process of

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<sup>77</sup> European External Action Service, "Interview with Mrs Riina Kionka, Head of Division 'Human Rights Policy Guidelines and Multilateral Cooperation' of the European External Action Service on gender issues", Brussels, 12 January 2012.

<sup>78</sup> See, for example, Human Rights Watch, "European Union Country summary", 2012, pp. 3-4.

<sup>79</sup> Asked about the lack of ratification to the Istanbul Convention by a single EU member state, the Turkish ambassador described the EU's human rights policy as "inconsistent", S. Yener, Turkish ambassador to the EU, "A part of Europe or apart from Europe?", Speech at the College of Europe, Bruges, 16 April 2012.

<sup>80</sup> European Union, "Human Rights Guidelines – Violence against women and girls and combating all forms of discrimination against them", General Affairs Council of 8 December 2008, p. 1.

<sup>81</sup> "Human Rights", Delegation of the European Union to the Holy See, to the Order of Malta and to the United Nations Organisations in Rome.

<sup>82</sup> A possible future accession of the EU to the Council of Europe could increase the weight of this benefit allowing the EU to negotiate future Council of Europe Conventions. For a discussion of an accession possibility, see M. Emerson *et al.*, "Upgrading the EU's Role as Global Actor: Institutions, Law and the Restructuring of European Diplomacy", Brussels, Centre for European Policy Studies, 2011, p. 32.

'downloading' norms of a 'pre-cooked' convention text which may differ significantly from its own policy preferences. Moreover, in light of a lack of agreement on introducing legislation on violence against women internally, a potential to shape norms internationally is not viewed as a feasible benefit. The possibility of norm-shaping benefits is consequently exerting a *neutral* influence on the EU's accession considerations.

### *Sovereignty costs*

Besides the lack of an enforcement regime, the Istanbul Convention's independent monitoring and review procedures by an expert body are comparable to those of the UNCRPD.<sup>83</sup> They thus entail potential negative collateral consequences for EU sovereignty. Substantively, however, gender relations are perceived as a socially sensitive area in which states have traditionally objected interference by international commitments.<sup>84</sup> Moreover, within the "current climate", member states' concerns over sovereignty abdication are more pronounced.<sup>85</sup> The degree of delegation of competences and independent external control is not considerably higher compared to the UNCRPD.

However, due to member state sensitivity, political opposition exerts a *negative* influence on the EU decision.

### *Opportunity costs*

In terms of other available tools for the EU, evidence suggests indeed that the EU can achieve the goals of the Istanbul Convention through existing instruments posing lower costs than outright accession. By providing in its Council Roadmap that "the Union should especially take into account the standards set out in" the Istanbul Convention, the EU can claim to honor a political commitment to women's rights while avoiding the cost of full accession.<sup>86</sup> Despite this opportunity, the Commission does seem to view some distinguishing benefits in the Council of Europe Convention inducing it to consider accession.

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<sup>83</sup> "Monitoring", Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2012.

<sup>84</sup> This argument was emphasized by Linden Jonsten, *op.cit.*

<sup>85</sup> High-Level EU Official on Human Rights, Delegation of the European Union to the United Nations in Geneva, interview [phone], 24 April 2012, referring to the UK's re-assessment of EU accession to the European Convention on Human Rights (ECHR) due to sovereignty concerns.

<sup>86</sup> Romeva i Rueda, Raúl, "Question for written answer to the Council", European Parliament Rule 117, E-011463/2011, Brussels, 6 December 2011.

The availability of other instruments thus has *marginally negative* influence on the EU's considerations.

#### *Legislative adaptation costs*

The implementation of the Istanbul Convention would result in few new commitments for the European Union compared to what is already entailed in its internal DAPHNE program.<sup>87</sup> However, adaptations at the member state level would likely be considerable as many member states lack provisions on violence against women. Surveys conclude that “[t]he need for harmonized legal standards to ensure that victims benefit from the same level of protection everywhere in Europe was [...] apparent”.<sup>88</sup> While marginal at the EU level, recognizably significant national adaptation costs exert a *negative* influence on the overall EU decision to accede.

#### *Strength of political opposition*

Contrary to the UNCRC, the Istanbul Convention constitutes “a particularly divisive issue” for EU actors.<sup>89</sup> The lack of enthusiasm, particularly at the member state level, is exemplified by the fact that only one Council of Europe member state (Turkey) has ratified, and 17 EU member states have signed the Convention.<sup>90</sup> In addition, “[m]any states already made declarations stating that they would not use the Convention including Russia, Bulgaria and others”.<sup>91</sup> The overt and explicit rejection by these member states appears to be a matter of principle rather than political strategy.

Thus, a resistance at the member state level,<sup>92</sup> which was reinforced by a well-organized civil society campaign against making violence against women a more public issue,<sup>93</sup> showed its effect: The Commission has so far failed to seize

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<sup>87</sup> See European Parliament, Council of the European Union, “Decision (No. 779/2007 /EC) establishing for the period 2007-2013 a specific program to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III program) as part of the General Program Fundamental Rights and Justice of 20 June 2007, 03 July 2007, *Official Journal of the European Union*, L 173/19, pp. 19-26.

<sup>88</sup> Parliamentary Assembly of the Council of Europe, “Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)”, 2012.

<sup>89</sup> De Búrca, “EU negotiation UNCRC”, *op.cit.*, p. 22.

<sup>90</sup> Council of Europe Treaty Office, “Chart of signatures and ratifications”, Council of Europe, Strasbourg, 3 January 2013.

<sup>91</sup> “Council of Europe adopts Convention on violence against women”, European Public Health Alliance, 2 August 2011.

<sup>92</sup> High-Level EU Official on Human Rights, Delegation of the European Union to the United Nations in Geneva, interview [phone], 24 April 2012.

<sup>93</sup> Linden Jonsten, *op.cit.*

opportunities to exert political pressure to encourage accession – a remarkable contrast to its behavior during the negotiations of the UNCPRD. Posing significant costs for institutional actors, the influence of political opposition to the EU's accession to the Istanbul Convention is thus *negative*.

Overall, the EU's decisional equation for the Istanbul Convention looks markedly different from the UNCPRD: Besides opportunity costs, all other identified costs categories were confirmed as negative. Moreover, the EU's lack of involvement in the negotiations leading up to its formation neutralized bureaucratic and norm-shaping benefits.

To what extent is the EU's position informed by a desire to construct an appropriate role? The following section will examine the explanatory power of intrinsic and social considerations.

### ***The EU's construction of an appropriate role***

This section evaluates again the EU's second motivational profile, this time regarding the Istanbul Convention.

#### *Internalization*

While on paper combating violence against women is firmly anchored in Commission guidelines,<sup>94</sup> in the DAPHNE program<sup>95</sup> as well as in the external programs funded by the EIDHR,<sup>96</sup> heterogeneous degrees of internalization can be detected both at the EU and the member state level.<sup>97</sup> While the competent Commissioner appears to display a strong commitment, neither the College of Commissioners nor member states seem to share a sense of urgency for accession.<sup>98</sup> The member states' reluctance appears to be rooted in deeper-running cultural and religious views on the need for legal instruments to better protect women's rights.<sup>99</sup> By the same token, a shared founding history between the EU and the Council of

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<sup>94</sup> European Union, "Human Rights Guidelines – Violence against women and girls and combating all forms of discrimination against them", *op.cit.*

<sup>95</sup> See European Parliament, Council of the European Union, "Decision (No. 779/2007 /EC)", *op.cit.*

<sup>96</sup> European Union, *EU Annual Report on Human Rights and Democracy in the World 2010*, *op.cit.*, p. 37.

<sup>97</sup> Heterogeneous levels of internalization were confirmed by R. Youngs, Director General FRIDE, interview, Bruges, 26 April 2012.

<sup>98</sup> Linden Jonsten, *op.cit.*

<sup>99</sup> *Ibid.* It is suggested that a rights-based approach is strongly anchored in certain member states (e.g. Scandinavia) and missing in others (e.g. Balkan states).

Europe falls short of building a pre-existing EU bias for accession nor does it induce the EU to “exert friendly pressure” to promote Council of Europe IHRTs.<sup>100</sup>

Similarly to the UNCRPD, internalization is thus significantly embedded in the normative fabric and action of the EU’s supranational structures but due to its heterogeneous distribution among member states, it possesses merely *marginally positive* influence on accession considerations.

### *Acculturation*

Could the EU’s non-accession thus be viewed as the result of a missing reference group or of a lacking desire for social esteem? First, the Council of Europe as an institution could be seen as a reference group for the EU. While an EEAS official confirmed that there is general appreciation<sup>101</sup> and cross-fertilization with the Council of Europe at the parliamentary level,<sup>102</sup> the absence of an overall salience and visibility of the Convention weakens the Council of Europe’s capacity to act as a role model or reference group for the EU.<sup>103</sup> Nevertheless, the fact that IHRTs are cited in legislative acts and debated within the EU institutions provides evidence of the Council of Europe exerting a *marginal* “external source of pressure on the EU”.<sup>104</sup>

Second, on the side of civil society, the European Women’s lobby has advocated strongly for Council conclusions to devise an EU strategy to end violence against women but ranks EU accession to the Istanbul Convention only third on a list of priorities.<sup>105</sup> Unable to compensate for weak institutional support, this group is also suffering from a collective action problem being “loosely organized and poorly resourced”.<sup>106</sup>

Due to the absence of esteem-inducing external pressure on the EU, non-accession is not accompanied by social sanctions or the promise of palpable social

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<sup>100</sup> M. Bond, “The European Union and the Council of Europe: Difference, Duplication or Delegation?”, in D.J. Galbreath & C. Gebhard (eds.), *Cooperation or Conflict? Problematizing Organizational Overlap in Europe*, Surrey, Ashgate, 2010, p. 11.

<sup>101</sup> High Level EU Official on Human Rights, Delegation of the European Union to the United Nations in Geneva, interview [phone], 24 April 2012.

<sup>102</sup> Linden Jonsten, *op.cit.*

<sup>103</sup> Parliamentary Assembly of the Council of Europe, “Parliamentarians committed to promoting the Istanbul Convention”, *op.cit.*

<sup>104</sup> C.M. Montoya, “A New Era of Enforceable Rights? Recent EU Initiatives to Combat Violence Against Women”, APSA 2011 Annual Meeting Paper, 2011, p. 2.

<sup>105</sup> European Women’s Lobby, “European Women’s Lobby Priorities for the Cypriot Presidency of the European Union”, July-December 2012, Statement, 2012, p. 2.

<sup>106</sup> S. Mazey, “The European Union and women’s rights: from the Europeanization of national agendas to the nationalization of a European agenda?”, *Journal of European Public Policy*, vol. 5, no. 1, 1998, p. 143. This observation was confirmed by Linden Jonsten, *op.cit.*

esteem benefits. Hence, acculturation is again interpreted to exert a *neutral* influence vis-à-vis the EU's accession considerations.

### *Persuasion*

As EU representatives did not participate in the drafting and framing of the Istanbul Convention persuasion dynamics could not occur during negotiations. Given the lack of domestic pressure groups actively lobbying for EU accession, alternative modes of persuasion of EU actors remain ineffective for structural reasons.

First, persuasive pressures by political groups<sup>107</sup> and by the European Parliament<sup>108</sup> have not visibly resulted in more intense dialogues or negotiations for accession. The HR/VP's statement to be "very pleased to see that so many people mentioned the issues of women's rights"<sup>109</sup> suggests that her commitment to women's rights preceded and therefore did not require any persuasive engagement with the report.

Second, however, there are signs that a more pro-active Commission is reaching out to parliamentary interlocutors to help facilitate dialogue on accession, suggesting that processes of persuasion are indeed currently at work generating the "possibility"<sup>110</sup> of a change of heart on this issue. In the words of a high-level policy advisor: "The fight will likely continue."<sup>111</sup> Weak persuasion dynamics are thus observed to exert a *marginally positive* influence on EU deliberations.

A central factor for the construction of an appropriate role is the strong variation in the degree of internalization of the treaty's substantive norms. Taking a bird's eye perspective on this factor, one could derive evidence of a broader problem of the Convention being stripped off an essential requirement of effectiveness, namely a "high degree of consensus values among European societies"<sup>112</sup> in the substantive field of combating violence against women. Pressure

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<sup>107</sup> "The EU should sign the European Convention against gender violence, say leading Euro MPs", Group of the Progressive Alliance of Socialists & Democrats in the European Parliament, Brussels, 12 May 2011.

<sup>108</sup> European Parliament, Committee on Foreign Affairs, Richard Howitt (rapporteur), *Report on the Annual Report on Human Rights in the World and the European Union's Policy on the Matter, including Implications for the EU's Strategic Human Rights Policy*, 2011/2185(INI), Brussels, 30 March 2012, p. 26.

<sup>109</sup> C. Ashton, EU High Representative for the Common Foreign and Security Policy, speech, European Parliament, Strasbourg, 17 April 2012.

<sup>110</sup> Linden Jonsten, *op.cit.*

<sup>111</sup> *Ibid.*

<sup>112</sup> V. Rittberger, B. Zangl & A. Kruck, trans. A. Groom, "International Organization", Basingstoke, Palgrave Macmillan, 2012, 2<sup>nd</sup> edn., p. 266.

groups attempting to remedy this condition are weak as current persuasion efforts face an uphill battle.

### Mirror or calculator: what explains EU accession to IHRTs?

The results of the cross-case comparison are summed up in Table 1 which shows the direction of influence of the variables for both treaties. The last column highlights the potential of variables to explain why the EU acceded to the UNCRPD but did not accede to the Istanbul Convention: A variable's potential to explain this variation will be stronger, the more a variable's influence differs across the cases.<sup>113</sup> The explanatory strength of variables is classified as weak (a minus sign), moderate (one plus sign) or strong (two plus signs).

Table 1: Summary of results of cross-case analysis: direction of influence

Hypothesis	Variable	Accession to UNCRPD	Non-Accession to Istanbul Convention	Comparative explanatory power regarding variation
Logic of Consequentialism	<i>Sovereignty costs</i>	Marginally negative	Negative	+
	<i>Legislative adaptation costs</i>	Negative	Negative	-
	<i>Strength of political opposition</i>	Neutral	Negative	++
	<i>Opportunity costs</i>	Neutral	Marginally negative	+
	<i>Bureaucratic benefits</i>	Positive	Marginally positive	+
	<i>Reputational benefits</i>	Positive	Marginally positive	+
	<i>Norm-shaping benefits</i>	Positive	Neutral	++
Logic of Appropriateness	<i>Internalization</i>	Positive	Marginally positive	+
	<i>Acculturation</i>	Neutral	Neutral	-
	<i>Persuasion</i>	Marginally positive	Marginally positive	-

Within the rational-choice framework, all factors (except for legislative adaptation costs) showed a variation in the influence on the EU's decision across cases. Of these factors, however, the analysis found the strongest variation in the

<sup>113</sup> To illustrate, exerting *negative* influence in both cases, the existence of legislative adaptation costs cannot explain the different accession decisions. By contrast, a *neutral* political pressure allowed accession while strongly negative political pressure prompted non-accession. Therefore political opposition can explain why the EU joins International human rights treaties in more general terms.



*strength of political opposition* and *norm-shaping benefits*. In other words, one can plausibly infer that their variation correlates with the EU's behavior regarding both conventions.

Within the motivational profile based on the logic of appropriateness only varying degrees of *internalization* may explain the EU's non-accession, since acculturation and persuasion dynamics had a weak influence in both cases. The lack of cultural and political consensus within the EU regarding an urgency perceived for disability as opposed to women's rights is suggested to be a core element of explaining the variation in the EU's accession decisions. However, internalization at the EU level is not a sufficient condition for accession: An internalized norm of combating violence against women fails to induce EU institutional actors to ask its member states to ratify the Istanbul Convention. This evidence supports the conclusion that norm internalization must be evident at both the EU and the member state level to exert a strong influence in favor of accession.<sup>114</sup>

Why then does the EU join international human rights treaties? A rather nuanced picture emerges from the case studies, suggesting two conclusions: First, since the EU acceded when the (accumulated) positive influence of benefits outweighed the negative influence of costs and did not accede when this relation was reversed, hypothesis 1 can be confirmed. An overall glance at the influence of rational-choice variables suggests that the EU does indeed conduct a cost-benefit analysis when deciding whether to join an IHRT. Factors pertaining to the first motivational profile emerged as significant for the EU's accession considerations across both cases. Therefore, an overall interpretation of the results tentatively suggests that the EU's motivation for accession was rather instrumental-materialistic than intrinsic-socialized in nature. The very fact that the internalization of human rights norms varies across member states prevents the EU from acting consistently in an 'altruistic' cosmopolitan fashion. Even in the case of the UNCRPD, where internalized norms are visible, the EU does not display an automatic accession reflex.

Second, due to the importance of internalization as a necessary but not sufficient factor motivating EU action, hypothesis 2 can be partially confirmed. Even

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<sup>114</sup> Current developments suggest an evolving nature of this criterion: At the member state level, even the generically internalized norm of the need for an independent external control seems to be at risk as member states discuss a weakening of the ECHR's mandate. See "UK obstructing EU accession to human rights convention", *EU Observer*, 19 April 2012.

in the absence of significant persuasion or acculturation dynamics, it is difficult to derive from the findings that EU behavior is not *also* amenable to factors pertaining to the logic of appropriateness. The internalization of human rights norms is a basic prerequisite for the EU to even consider joining an IHRT. Reverting to the cardinal distinction between a “myopic [...] and farsighted self-interest”,<sup>115</sup> EU motivations can be qualified as trending towards the first in the Istanbul Convention and the second in the UNCRPD. While a methodologically constructed dichotomy of profiles is thus empirically dissolved into a synthesis, the result of this case study informs more general insights into EU motivations.

### **Conclusion: Cost-benefit calculations rather than appropriateness**

This paper examined why the European Union joins international human rights treaties. It has been argued that the EU’s accession decisions are based on cost-benefit calculations that can be explained by the strength of opposition and the desire to spread its norms rather than by efforts to construct an ‘appropriate role’.

Not unlike traditional actors in International Relations, both “calculated expected utility” as well as “internalized rules and principles”<sup>116</sup> shape the EU’s accession decisions. Yet the analysis revealed a partly exceptional nature of the EU’s motivations: In general, instrumental and rather self-interested calculations geared at its internal environment were at the heart of the EU’s considerations. A rather autonomous bureaucratic interest of its supranational institutional actors (especially the Commission) generates *sui generis* costs and benefits (e.g. uploading and downloading of norms) producing idiosyncratic rationales. Rather than an altruistic cosmopolitan actor who shows an automatic accession reflex, my analysis has portrayed EU action as acting strategically on the basis of at times ambiguous degrees of internalization. States and institutions can thus only partially view the EU as a ‘fellow peer’.

Furthermore, it can be observed that internal considerations (notably legislative adaptation and sovereignty costs) weigh slightly stronger on the EU’s decision than foreign policy considerations. The latter are confined to a ‘preference to be seen’ trumping a ‘preference for esteem’ logic. One could argue that as a

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<sup>115</sup> R.O. Keohane, *After Hegemony: Co-operation and Discord in the World Political Economy*, Princeton, Princeton University Press, 1984, pp. 120-125.

<sup>116</sup> March & Olsen, *op.cit.*, p. 701.

nascent external actor in the business of 'diplomatic branding', the EU is vulnerable to a trade-off between external visibility and principled negotiation accomplishments. Besides, heterogeneous levels of human rights internalization cause an internal lack of credibility which would require bureaucratic courage to confront.

In both cases, EU decision making appeared relatively unaffected by pressure from outside groups. However, the EU's high regard for norm-shaping benefits should command advocacy groups to push for formal inclusion of the EU in the treaty negotiation stage. Moreover, I find that accession to an IHRT can have the function of serving as a tool for the Commission to exert internal political pressure on member states to change preferences, promoting universal acceptance of human rights where they are not fully internalized.

Beyond the insights won from the case studies, the question of accession to IHRTs promises to remain alive: A high-level EU official mentioned possible EU efforts to accede to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and to the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) via a "political protocol" authorizing such a move.<sup>117</sup> These prospects suggest abandoning a legal filter to include those treaties whose formal hurdles for EU participation have not been cleared. An interview confirmed that external pressure<sup>118</sup> to accede to the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) show little sign of changing its internally motivated preference for non-accession.<sup>119</sup>

To fruitfully explore EU motivations regarding new treaties, it is recommended to develop the research design further: First, a review and refinement of variables could aim to address the difficulty of devising exact measurement or calculating more exact degrees of influence. Second, new case studies could test the validity and interplay of variables. They could also study dynamics between the member state and the EU level. As future world powers are held accountable for their treatment of international law and human rights,<sup>120</sup> devising "appropriate

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<sup>117</sup> High-level EU official, Geneva, *op.cit.* A logic of opportunity costs can be inferred behind this reasoning as UN treaties yield more (visibility) gains than regional treaties.

<sup>118</sup> High-level EU official, interview [phone], *op.cit.*

<sup>119</sup> "International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families United Nations", New York, United Nations Treaty Series, vol. 2220, p. 3, Doc. A/RES/45/158, New York, 1990 [entry into force on 1 July 2003].

<sup>120</sup> See A. Bradford & E.A. Posner, "Universal Exceptionalism in International Law", *Harvard International Law Journal*, vol. 52, no. 290, 2011, pp. 1-54.

comparators”<sup>121</sup> will allow comparing EU motivations with those of other global actors. This could set empirically grounded answers against short-circuited inferences from behavior. Third, while a legal line of research may fruitfully debate whether the EU accessions constitute “milestone(s) in the history of human rights”,<sup>122</sup> this paper sought to elucidate the question of EU motivations towards IHRTs. Further motivational inquiries could complement ethical and political debates over the quality of EU actions.

Finally, returning to the initial image of the EU as an applicant to (future) IHRTs, what have we learned about its fictional ‘letter of motivation’? The findings suggest that, as a sincere applicant, the EU cannot simply submit a photocopy of official commitments. Rather, aided by a calculator and occasional glances in the mirror, the EU’s letter may feature three subparagraphs which read in ascending order of dedicated space: ‘competences’, ‘convictions’ and ‘calculations’.

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<sup>121</sup> J.E. Wetzel (ed.), *The EU as a ‘Global Player’ in Human Rights?*, New York, Routledge, 2011, p. 45.

<sup>122</sup> “EU ratifies UN Convention on disability rights”, *op.cit.*; and S. Besson, “Human rights and democracy in a global context: decoupling and recoupling”, *Ethics & Global Politics*, vol. 4, no. 1, 2011, pp. 37-38.

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