



**Expert Consultation in the Framework
of the EU Strategic Review Process**

*The EU's Contribution to Common Global Rules:
Challenges in an Age of Power Shifts*

Summary of Findings

- Final version of 16 December 2015 -



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About The Hague Institute for Global Justice

The Hague Institute is an independent, nonpartisan organization established to conduct interdisciplinary policy-relevant research, develop practitioner tools, and convene experts, practitioners, and policymakers to facilitate knowledge sharing. Located in the city that has been a symbol of peace and justice for over a century, The Hague Institute is positioned uniquely to address issues at the intersection of peace, security and justice.

This Summary of Findings was prepared by:

Mr. Tom Buitelaar

Researcher, Global Governance Program, The Hague Institute for Global Justice

t.buitelaar@TheHagueInstitute.org

+31 (0) 70 - 30 28 195

Dr. Joris Larik

Senior Researcher, Global Governance Program, The Hague Institute for Global Justice

j.larik@TheHagueInstitute.org

+31 (0)70 - 30 28 194

Dr. Aaron Matta

Senior Researcher, Rule of Law Program, The Hague Institute for Global Justice

a.matta@TheHagueInstitute.org

+31 (0)70 - 30 28 168



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Introduction

On 8 and 9 December 2015, The Hague Institute for Global Justice, in collaboration with the Ministry of Foreign Affairs of the Netherlands, organized both a public high-level discussion and a closed expert consultation on the EU's forthcoming Global Strategy on Foreign and Security Policy. The events focused on how the Union and its Member States can promote a rules-based international system and effective multilateral institutions in a rapidly changing environment marked by numerous crises and challenges.

The high-level discussion on the morning of 8 December featured keynote addresses from the Minister of Foreign Affairs of the Netherlands, Bert Koenders, and the High Representative of the Union for Foreign Affairs and Security Policy, Federica Mogherini.¹

The high-level discussion also served as a prelude to the subsequent expert consultation, which was carried out according to the following methodology. The participants in the consultation were selected from among leading experts in EU foreign policy, global governance, European and international law, and multilateral diplomacy. Reflecting a diverse and representative set of stakeholders and professional perspectives, the experts came from think tanks, academia, international organizations, NGOs, and the private sector. Particular attention was paid to ensuring gender balance and including external perspectives from emerging powers and key partners of the EU, such as Brazil, Russia, India, China, and Nigeria. In the course of several breakout sessions and plenary discussions, the participants elaborated on the themes of: the EU's role in developing the international legal order, promoting effective multilateral institutions, and engaging non-state actors in tackling the most pressing global challenges (see [Annex I](#) for the program). The expert consultation, held under the Chatham House Rule, was preceded by an e-consultation, which ran from mid-November and included a wider circle of experienced international specialists, as well as younger, emerging experts and youth representatives from diverse disciplines and professions (see [Annex II](#) for the summary of the e-consultation).

The Ministry of Foreign Affairs of the Netherlands, working together with a number of like-minded Member States, such as Romania and Austria, can draw on the output of the high-level discussion and the expert consultation to contribute to the discussion on the new EU Global Strategy. A core component of this contribution, the following pages contain the consolidated summary of findings from the expert consultation.

Summary of Findings

The expert consultation focused on four main themes on different aspects of a rules-based international system, which were elaborated upon during the breakout sessions. Based on these discussions, general findings with regard to the new Global Strategy for Foreign and Security Policy were discussed in plenary sessions.

Breakout session themes and discussions

The expert consultation focused on four main themes, which were discussed in-depth during the breakout sessions, followed by the plenary in which reports of key findings and contentious issues were made. The four themes were:

¹ The keynotes and ensuing discussion can be viewed in their entirety on The Hague Institute website via: <http://www.thehagueinstituteforglobaljustice.org/events/high-level-discussion-on-the-eus-forthcoming-global-strategy-on-foreign-and-security-policy-common-rules-in-an-age-of-power-shifts/>



- Enhancing the EU's institutional framework, external representation and capacity to deliver on a rules-based approach to tackle global challenges
- The EU's engagement with other regional organizations, emerging powers, and non-western-led forms of governance (e.g., AU, ASEAN, ECOWAS, MERCOSUR, Eurasian Economic Union, OSCE, and AIIB)
- Reforming the architecture and functioning of the UN and Global rule of law and justice institutions (e.g., ICJ, ICC, but also WTO, IMF, WB)
- New partnerships with non-state actors: Addressing non-traditional challenges and tackling emerging threats

Enhancing the EU's institutional framework, external representation and capacity to deliver on a rules-based approach to tackle global challenges

Under this sub-theme, participants discussed specific measures that could enhance the EU's capacity to deliver on a rules-based approach both internally and externally. Discussions noted the importance of knowing for whom the new Strategy is being written and of making it as action-oriented as possible. In particular, participants noted the importance of focusing the European External Action Service (EEAS)'s work on where it could add value, instead of working as a '29th Ministry of Foreign Affairs'. Examples of where the EEAS could add value included the capacity to draw attention to particular issues areas, the implementation of existing strategies, and making European foreign policy more inclusive (both in the drafting process of the new Global Strategy as well as its future implementation). In addition, participants argued that the EU could, in particular, contribute to the development of rules for areas where these were either non-existent or underdeveloped (such as cyber, outer space, energy, etc.). Strong emphasis was given to the need for coherence in the Global Strategy, particularly with regard to the language of EU Treaties post-Lisbon, to ensure its credibility and EU Member States' compliance with it.

The EU's engagement with other regional organizations, emerging powers, and non-western-led forms of governance

Participants in this breakout session emphasized, firstly, that the Global Strategy should be a 'message', a narrative for European citizens, about what it means to be 'Europe' in times of difficult global crises, as well as to clearly state towards the rest of the world what the EU stands for. Secondly, the participants discussed where the European Union can engage in areas where regional structures are weak, for example in the Middle East. Participants recommended that, in these areas, the EU should adopt a certain measure of flexibility to determine who its key partners are and how to engage them. Thirdly, although the EU is still in a strong position to influence its partners, it cannot, nor should it, aim to affect global change alone. Instead, it should cooperate with other organizations, emerging powers and 'non-Western-led' forms of governance to defend, promote and develop further jointly owned norms and values.

Reforming the architecture and functioning of the UN and global rule of law and justice institutions

This breakout session focused on the question of where the EU could make a contribution to reforming the architecture and functioning of the global governance architecture, in particular with regard to the UN and global rule of law and justice institutions. Participants recommended that the EU should make clear its stake in a rules-based system, and be clear on the current threats and challenges and what can be done collectively to tackle them. It should further secure a clear sense from EU Member States on what they are willing to accept in terms of collective action to generate a stronger voice for the EU in international organizations. As to the reform of existing institutions, participants in this breakout



session noted that the Global Strategy should not attempt to specify which institutions it would reform and how, but rather adopt a set of general principles that could be applied to efforts to reform different institutions. Furthermore, participants discussed the merits of the EU as a connector and coordinator, and how it could use its soft power in a smart way to create a web of networks and actors, so as to improve the functioning of the global governance architecture. Throughout the session, participants noted that the EU should not only look at reforming the current architecture or devising new governance structures, but focus, in particular, on the implementation of existing international norms, agreements, frameworks, and strategies.

New partnerships with non-state actors: Addressing non-traditional challenges and tackling emerging threats

In this breakout session, the experts stressed that it is important to first specify that there are both cooperative and non-cooperative non-state actors, which require vastly different approaches on the part of the EU. Further, participants recommended that the EU map out in which areas of the world oppression of civil society is taking place and in which ways the EU can help to create and protect spaces for civil society actors to work effectively. In this regard, the EU could learn from the many positive examples of non-state actors changing the world for the better. These examples could serve as a laboratory for hybrid coalitions. Participants also noted that the Strategy should include the message that supporting cooperative non-state actors can not only support the EU's immediate interests, but is also very much in the EU's long-term interest.

General findings regarding the Global Strategy

Following the four thematically focused breakout sessions, the expert consultation developed a set of general points emphasizing the need for common global rules and effective global institutions in the EU's forthcoming Global Strategy. These represent, for the most part, a general consensus or majority view among the participants. Where contentious issues remain, these are also included in the summary. The main themes that emerged from the discussions are:

- Consistency
- Values, norms and interests
- Inclusive partnerships
- A forward-looking approach (*think globally, broker regionally, act locally*)

A consistent Strategy

In terms of maintaining consistency, experts participating in the consultation agreed that the new strategy should focus on:

- Using consistently the language introduced by the Lisbon Treaty by making a **clear link between the language of the Strategy and the relevant provisions of the EU Treaties**. This will not only support the coherence of the document itself and the EU's foreign policy as a whole but should also improve compliance.
- **Consistency between internal and external security and Union competences in the internal and external spheres**, in order to avoid a gap in credibility and expose the EU to the criticism of maintaining double standards.



- **Closing rather than widening the ‘expectations-capability/credibility gap’.** The strategy should be both ambitious but humble in this respect. It should not shy away from current challenges, while aligning expectations with actual capacities in EU foreign policy, including in the areas of delivery and follow-up.
- **The importance of follow-up, which is crucial especially in the post-Lisbon EU.** The Strategy should include a reference mentioning the institutions or agencies responsible for implementation.
- **Implementation of what the current international system is already generating,** particularly in areas **where implementation is lacking** (for instance the follow-up to UN Security Council Resolutions regarding the International Criminal Court (ICC), and **where functioning institutions are underused**, as is the case with the International Court of Justice.
- **Coherence between discourse and methodology in order to generate ownership,** including through the full involvement of the European Parliament (EP) and an acknowledgment of its enhanced foreign policy powers post-Lisbon. The Strategy should show confidence to reconnect with EU citizens. Regarding style and language **the document must be accessible so that it can resonate with the general public**, as well as maintain a coherent narrative.

Moreover, a majority of participants stressed the importance of the manner in which the Strategy will be finalized and argued in favor of **the Strategy being adopted by the European Council** (under Article 22 of the TEU) and not simply being presented by the High Representative, **in order to increase the document’s credibility and the level of Member State commitment and compliance.**

Contentious issues

- **Target audience:** There was no consensus among the participants about whether EU citizens should be the main target audience of the Strategy. This has been tried before, but very rarely do such initiatives reach European citizens directly. Therefore, a number of experts argued that the main target cannot be the general public, while noting that there is a role for the media to communicate key aspects of the Strategy to a wider audience. Rather, these experts argued that we should acknowledge that the main target should be European elites, Member State governments, and their external counterparts.

A Strategy that promotes and defends values, norms and interests

In terms of the relationship between values, norms and interests in EU foreign policy and how their promotion should be framed in the new Strategy, a common view emerged from the participants around the following points:

- A section on values, norms and interests should be the starting point of the Strategy. **The Strategy should make clear that the EU has a stake in the international rules-based system while acknowledging the ongoing power shifts.** The Strategy must not shy away from **identifying and addressing current common global threats and challenges** (‘burning issues’), as well as **making clear what goals and commitment the EU Member States are willing to take on collectively.** It should not only explicitly name the challenges ahead, but also provide tangible avenues to tackle them (addressing the questions of ‘what?’ and ‘how?’).
- **The set of goals should reflect current realities and challenges.** However, the strategy should not focus too much on **short-term challenges**, but also take into account **longer-term problems.**
- The Strategy should **strike a balance between the EU’s global leadership objectives and acknowledging its limitations.** The EU should aim at having a **leading role but not ‘riding alone’**, i.e., it should act together with others in **smart inclusive partnerships.** The Strategy



should also explicitly acknowledge that the EU (and *a fortiori* any of its Member States) cannot and should not bring about change in global governance norms and institutions *unilaterally*.

- **In terms of values, the Strategy must be ambitious but achievable, striking the right balance between objectives and resources.** The Lisbon Treaty already clearly states the values on which the EU is based and which guide its external relations. The new Strategy should reiterate these Treaty-based values and principles and reiterate the EU's commitment to them, but not necessarily rethink them.
- **Internally, the basic values that underpin this entire effort are ownership and solidarity of all EU Member States** (reference was made during the discussion in particular to Article 222 of the Treaty on the Functioning of the European Union). There should be more thinking on strategy in areas where commonality is lacking between Member States, and regarding the option for smaller coalitions of Member States to take the lead on issues with a common view, as long as this remains consistent with the EU Treaties.
- The language of the strategy should reaffirm the positive instead of focusing on the negative and emphasize **that the EU's actions are guided by internationally accepted laws, rules and norms** (as opposed to a proselytizing promotion of 'European/Western' values to the rest of the world). To this effect, the Strategy should **include references to the Sustainable Development Goals (Agenda 2030) and the role of the UN (including ECOSOC)** in implementing them over the next 15 years.
- The Strategy should show **leadership from the EU particularly on the issue of human rights protection and promotion**. International humanitarian law, international human rights law and international criminal law as well as support to international justice institutions should be explicitly mentioned in the Strategy. **Nothing in the Strategy should suggest that the EU is rolling back its commitment to international law and human rights at home or abroad.** In this context, many non-European participants stressed that the Strategy will be read and understood around the world as a 'message' from the EU with a clear signaling effect. Any language suggesting a decreased commitment to international law and human rights may hence set in motion a downward spiral.
- **There should be a reference to the EU as a security community**, and what its contribution to security can be both on a regional and on a global level through the Common Foreign and Security Policy/Common Security and Defense Policy (CFSP/CSDP).
- The Strategy should include a set of **general principles** underlying efforts for reforming and adapting global governance. These could include principles such as, *effectiveness, transparency, inclusiveness, flexibility, and accountability* (these 'principles' are more about the '*functioning of institutions*', and in this sense operationalize the underlying values of the EU and its foreign policy). They should be **tailored and applied on a case-by-case basis**, i.e., different approaches for different organizations, sensitive to the context, and taking into account the role of the EU and its Member States within these organizations.

Contentious issues:

- **Goals:** Participants remained divided over the question of whether the issue of representation in the UNSC should be raised in the Strategy.
- **Values:** There was no discernible consensus on how ambitious the Strategy should be in its language, i.e., how its wording can best avoid impressions of the EU being overly cautious or conservative. Some participants cautioned against overly ambitious rhetoric as being rather dangerous and expressed the need to avoid language that might be perceived as an imposition of the EU's values on others, or making adherence to them a precondition for engagement. A number of participants raised questions in this respect, such as whether this would mean that the EU is going to be more pragmatic or drop conditionality in its external relations. Others



also noted that flexibility and improved external representation often do not necessarily go together.

A Global Strategy of inclusive partnerships

An idea that permeated the discussion on the means through which the EU and its Member States can best promote a rules-based international system in an age of power shifts was that of ‘inclusive partnerships’. Participants largely agreed that such partnerships should be included in the Strategy in the following respects:

- The Strategy should **acknowledge the existence of a degree of normative pluralism**, including inside the EU, while recognizing that **this does not preclude collective action** (rather, this represents the basis for **iterative processes for norm diffusion and contestation**).
- With the Strategy the EU should **seek a central role in crafting and leveraging inclusive partnerships and coalitions tailored to 21st century challenges**. Cooperating in this manner and **employing transparent multi-stakeholder processes increases the legitimacy and credibility of the resulting norms and institutions**. Partnerships, for instance with emerging powers and other regional organizations, should be developed from joint normative bases, and **maintain joint ownership of common rules**.
- The Strategy should **promote and support regional organizations and forms of governance, including ‘non-Western-led’ ones** (see the discussion further below under ‘contentious issues’ regarding terminology), **as long as they respect core international norms (including human rights) and as long as they furnish contributions to global public goods**. These do not need to be exact replicas of the EU, but they should reflect the choices of the states and societies of the regions in question. These arrangements can serve as **multiplying and aggregating factors**, including through inter-regional cooperation, and thus, they can act as stepping-stones to an improved rules-based multilateral system.
- Furthermore, the Strategy should **acknowledge the diversity and power of non-state actors, including civil society and the private sector**, in contemporary global governance. These actors **can make significant contributions, but also serve as detractors, with regard to global public goods**. This distinction allows a determination as to whether or not they are to be regarded as legitimate and cooperative actors, regardless of their legal form or their degree of institutionalization. Whereas the support for certain civil society actors can also serve as a means for pursuing other EU interests, **strengthening civil society at large represents a strategic end in itself for the EU**.
- In that vein, the language of the Strategy should **avoid ‘patronizing’ ideas about civil society as a ‘tool for furthering EU’s interests’**. Rather, the EU should **ensure that there is space for them to operate independently, and it should vocally oppose policies in many countries that crack down on civil society**. The Strategy must make clear they are independent actors, not “taken in/absorbed” by the EU’s agenda.
- The Strategy must **harness the EU’s assets and experience in connecting, facilitating and coordinating in order to provide leadership and direction, without being controlling**.
- The Strategy should **aim at strengthening and increasing the EU’s engagement in existing international frameworks for including non-state actors**, such as the UN Global Compact. Moreover, the Strategy should stress the potential for **learning and applying lessons from successful hybrid (experimental) coalitions and networks, which embrace and engage non-state actors** (for instance, the Extractive Industries Transparency Initiative (EITI) and the Kimberley Process).



- The Strategy should place an emphasis on creating **tailor-made coalitions based on pragmatism to find the most effective way of tackling a specific problem.**

Contentious issues:

- **Patronizing terminology:** The term ‘*non-Western led*’ was criticized by some participants as old-fashioned and patronizing, as if the EU were in a ‘privileged’ position in which it can choose to allow non-Western led approaches to flourish. Accordingly, it was argued that this term should be avoided in the Strategy.
- **Patronizing assumptions:** Many, if not most, participants supported the idea that the Strategy should vocally oppose the crackdown on civil society actors in many countries around the world. It should furthermore foster inclusive multi-stakeholder partnerships, including non-traditional and/or under-organized civil society actors (such as marginalized groups). However, multiple participants acknowledged the obvious difficulties and pitfalls of this approach due to possible political consequences; hence, they emphasized that the EU could not succeed in this endeavor alone. At the same time, participants noted the importance of not assuming that the EU can ‘manage’ civil society or that the EU should instrumentalized civil society.
- **Giving up multilateralism sometimes to pursue bilateral or unilateral approaches:** A question that remained unresolved was whether in some situations the EU would be willing to explicitly give up multilateralism (and by which standards it should take such a decision).
- **Level of flexibility and inclusiveness:** Another question for which no overall answer was agreed upon was whether the EU should choose preferred ‘structural’ partners with whom to work or not (and whether compatibility of values should play a role in this). The issue of reviving the idea of ‘strategic partnerships’ was brought up by a number of participants, but did not find vocal support or rejection by the group as a whole.

A forward-looking Strategy in an age of power shifts – Think globally, broker regionally, act locally

The overall tenor of the discussion was that the new Strategy should be ‘forward-looking’ and operate at different levels of governance at the same time, as epitomized by the slogan ‘Think globally, broker regionally, act locally’. More precisely, this entails the following:

- The Strategy should **build on existing institutions and uphold existing global rules when they are being challenged.**
- The Strategy should reflect that **in emerging areas of global governance, rules and institutions still need to be developed or consolidated (such as in the areas of cyber, outer space, climate, and energy).** Here, there is the greatest potential for the EU to make a constructive contribution based on its experience and nature.
- **Using its soft power smartly, the EU should aspire to excel in the role of connector, coordinator, and facilitator at the center of a web of global and inter-regional networks and actors.** For instance, it should promote inter-institutional exchange and cooperation between different secretariats in different fora, institutions and partnerships. There is a **need to better highlight the unique place of the EU** – within today’s political reality and ‘crisis’ context – **as an ideal broker within the international system and multilateral frameworks** and to specify how the EU could bring to bear its resources for this purpose.
- Lastly, the Strategy should think ahead and suggest that **accommodating interests and normative standpoints through regional integration and other governance arrangements,** which operate as aggregators and multipliers, also allows for more creative ways of **updating the representation of emerging powers (and regions) in global institutions beyond a zero-sum game based on the status quo.**



Contentious issues:

- **Status quo:** Concerns were voiced by some participants regarding the issue of ‘building on existing institutions’ and ‘upholding existing global rules’ when they are being challenged, which seems to preclude more ‘reformist’ approaches. According to the latter, the use of a more positive language may be useful if the EU is to have a constructive role in changing and promoting them.

Additional issues and follow-up²

A number of additional issues were debated actively during the expert consultation. Even though they did not result in clear answers for the Global Strategy on the subjects of a rules-based international system and effective global institutions under the headings used above, they are nonetheless relevant and, hence, included here. One issue, in particular, received attention, i.e., **the relationship between the EU and its Member States:**

- A number of participants noted that the EU can have added value as an integrated but polyphonous actor acting in thematic areas and in providing comprehensive and coordinated responses with considerable resources to draw on. In this respect, some wondered whether the EU should sometimes step back when Member States are more capable and better positioned to act than the EEAS.
- When implementing the Strategy, some participants stressed that the Member States should also lead by example through adherence to the principles set out in the Strategy itself, both at home and abroad.
- The Strategy should emphasize, according to some participants, the added value and centrality of the EEAS in EU external relations and stress the necessity of providing it with the appropriate capabilities to fulfill its role. Others, however, wondered whether ‘centrality’ was the best way to describe the position of the EEAS. While the latter acknowledged that the EEAS is central in the sense of being the agency that provides coordination, they cautioned against the term given that it creates ambiguity. Others stressed that foreign policy is traditionally the prerogative of states, and that the EU should as such add value.
- Moreover, one participant presented the idea of appointing EU Special Representatives, as an instrument in exceptional circumstances, in areas where global rules are yet to be developed or consolidated. Some other participants questioned this idea’s usefulness and whether it would be preferable to use other mechanisms for particular challenges.
- The need for a stronger EU voice in international organizations was raised, particularly in promoting international justice institutions through all 28 of the EU’s Member States.
- A number of participants emphasized that the Member States and EU institutions need to cooperate in the spirit of loyalty and sincere cooperation, including in the area of CFSP, noting that they are already legally bound to do so by virtue of the EU Treaties.
- Some participants argued that the EU should learn from the recent COP 21 climate negotiations as a best practice of EU/Member State-coordinated and impact-oriented diplomacy, and seek to adapt this approach to other areas.
- Another participant noted, in terms of terminology, that the Strategy should not make a difference between the EU and its Member States because the EU comprises the Member States.

² Follow-up activities on these issues or on the main findings of the consultation described above could potentially take the form of future expert consultation meetings at The Hague Institute.



Further questions:

- A question posed during the plenary concerned the degree of attention to be given to the G20 in the EU's foreign policy. It was argued by some that the G20 cannot continue its perceived success in the management of the 2008 financial crisis. The only role one participant saw for it was to have the EU and the G20 exchange information on strategies, values and priorities. Moreover, the idea of a G20+ was proposed, which aims to connect the G20 with the other 173 UN member states, as well as regional organizations and non-state actors.
- It was further discussed whether mega-regional agreements such as the Transatlantic Trade and Investment Partnership (and its wider agenda for promoting norms and standards together globally) are helpful or detrimental to the EU's efforts for promoting jointly owned global norms. While some participants stressed that TTIP was a positive step and an asset for both the EU and the US, there was no consensus about the value of TTIP in the context of EU foreign policy and of global rules and institutions.
- Another question that was raised regarded how the EU could effectively implement best practices in its foreign policy by learning, for instance, from its more recent strategy, coordination and negotiations on climate change in preparation for and during COP 21 in Paris..
- Moreover, it remained unclear in which parts of the UN system the EU and its Member States should invest with a view to developing common rules for global challenges. Suggestions made by participants included the International Law Commission, institutions that are concerned with developing international law (including through case law), and the UN's Department of Political Affairs. The importance of looking at UN Security Council reform (especially with regard to restraining the use of the veto in the face of mass atrocities, based on a French-Mexican initiative) was also mentioned.
- Lastly, the issue was raised as to how the EU can organize itself better in existing international policy fora. As observed by one participant, once the EU and its Member States have coordinated internally and adopted a common position, there is little to no room left for negotiation with external partners, basically turning 'multilateralism into an afterthought'. To change this dynamic, it was noted that it may be helpful to equip EU negotiators with wider mandates. In this context, it was remarked, furthermore, that it is also important to connect the issue of mandates to issues of flexibility and issue linkage.



Annex I: Program of the expert consultation

Time	Session Details
<u>December 8, 2015</u>	
10:00-10:30 (lunchroom)	Arrival: Registration, coffee and tea
10:30-12:00 (MR1)	Public panel <ul style="list-style-type: none">• Opening remarks by Dr. Abi Williams, President of The Hague Institute for Global Justice• Keynote by Foreign Minister Bert Koenders• Keynote by High Representative Federica Mogherini• Q&A session with the audience, moderated by Dr. Abi Williams
12:00-13:30	Lunch for high-level guests and participants in the closed consultation
13:30-15:00 (MR1 and MR2)	Thematic session No. 1: <i>From stumbling blocks to stepping stones: (Inter-)Regional approaches to strengthen global governance and the rule of law</i> (two input statements, open discussion, summary by rapporteur) <ul style="list-style-type: none">• Breakout session 1A: <i>Enhancing the EU's institutional framework, external representation and capacity to deliver on a rules-based approach to tackle global challenges</i>• Breakout session 1B: <i>The EU's engagement with other regional organizations, emerging powers, and non-western-led forms of governance (e.g., AU, ASEAN, ECOWAS, MERCOSUR, Eurasian Economic Union, OSCE, and AIIB)</i>
15:00-15:30 (MR1)	Presentation of main findings by the rapporteur and discussion of Thematic session No. 1 in the plenary
15:30-16:00 (lunchroom)	Coffee and tea



Time	Session Details
16:00-17:30 (MR1 and MR2)	<p style="text-align: center;">Thematic session No. 2: <i>Common rules for global challenges</i></p> <p>(two input statements, open discussion, summary by rapporteur)</p> <ul style="list-style-type: none">• Breakout session 2A: <i>Reforming the architecture and functioning of the UN and Global rule of law and justice institutions (e.g., ICJ, ICC, but also WTO, IMF, WB)</i>• Breakout session 2B: <i>New partnerships with non-state actors: Addressing non-traditional challenges and tackling emerging threats</i>
17:30-18:00 (MR1)	Presentation of main findings by the rapporteur and discussion of Thematic session No. 2 in the plenary
18:00-19:00 (MR3)	“Scrum” meeting of rapporteurs and organizers only for drafting and refining summary/consensus statements of sessions 1 and 2; circulation among participants for additional feedback (digitally and print-outs at dinner)
19:00	Dinner for all participants of the closed consultation
<u>December 9, 2015</u>	
10:00-10:30 (lunchroom)	Coffee and tea
10:30-12:00 (MR1)	Presentation of summary statement and final round of input and feedback, occasion for the Member State and EU representatives to ask for clarifications and gauge “sentiment of the room”
12:00-12:15 (MR1)	Closing Remarks <ul style="list-style-type: none">• Dr. Abi Williams, President of The Hague Institute for Global Justice
12:15-13:45	Farewell lunch for participants



Annex II: Summary of the e-consultation preceding the expert consultation

This e-consultation was organized by The Hague Institute for Global Justice to seek input from a wider audience for the experts consultation co-organized with the Ministry of Foreign Affairs of The Netherlands in The Hague on 8-9 December 2015. The participants of the e-consultation – a diverse set of experts from around the world – were invited to share their ideas in two rounds, from 16-24 November and from 25 November-3 December. Each discussion round was prefaced by a discussion statement and three questions.

Round 1

Statement for Discussion: *In the current environment of multiple crises and pressures, rules-based approaches and multilateral institutions are under severe strain. The EU and its Member States need to accept this reality and adopt a more strategic and interest-based approach to common global rules and institutions.*

Q1. Do you agree? If so, what should the EU's focus and strategy be?

Most contributions stressed that the question employs a false dichotomy between ‘interest-based approaches’ and ‘rules-based approaches’. Many participants noted the **interaction between rules and interests**. In a nutshell: without rules, the EU cannot promote its interests; without interests, the EU cannot promote rules. Some also remarked that the EU should attempt to close the gap between rhetoric and available resources. If the EU wishes to maintain the relevance of multilateral cooperation and global institutions, it must adapt to changing circumstances.

Contributors exhibited a degree of consensus that the EU should further prioritize the multilateral fora through which it seeks to sustain a rules-based system globally. Further, it was suggested that **multilateralism is only one of the tools in the EU's foreign policy ‘toolbox.’** The EU should, therefore, specify when and where this tool is preferred over other options. From a legal standpoint, it was emphasized that multilateralism is “deeply engrained” in the Lisbon Treaty, making it an arguably indispensable tool by which the EU can pursue its interests.

Consensus also arose around the idea that the EU **cannot assume that the rules that guide its internal agenda are shared universally**. To face today's overwhelming challenges, pragmatic approaches are necessary. Contributors had different and sometimes competing views on what this implies. Some suggested that the promotion of interests should supersede the promotion of values. Others argued that the EU should reach out to new partners, focus on ‘achievable’ goals, and make a case for human rights and democracy that is not necessarily rooted in Western politics, in order to avoid the perception of the imposition of EU values and norms. Still others noted that the EU should not leave its values behind while engaging with other actors; it should instead attempt to revitalize its communication strategy and project a coherent, confident, and strong message about its values. One participant further argued that the EU's overly bureaucratic and legalistic structure engenders struggles in articulating and addressing the challenges facing the EU. Additionally, it was pointed out that the EU should also make more of an effort to listen to these other actors, so as to understand others' perceptions on the EU and how these actors interpret the EU's foreign policy.

To improve the **EU's capacity to deliver on its foreign policy objectives**, contributors noted the necessity of allocating sufficient resources, improved cooperation between the EU and other regional actors, and more effective EU decision-making machinery. Further, it was argued that the development of bilateral relations and mini-lateral fora could complement, and even reinforce, multilateralism. Moreover, it was suggested that the choice for the approach should depend on the



specific circumstances, and that an astute and realistic assessment to guide this choice would be critical.

Q2. Which concrete actions does the EU need to take to enhance its institutional framework, its external representation, and capacity to deliver on developing common rules to common global challenges?

A degree of consensus formed around the idea that the EU needs a **proactive multilateral agenda**, which expresses a vision for the future, imagines new modes of governance and attempts to overcome the perceived reactivity of EU foreign policy. While some argued that the EU's prioritization of efforts to reform and adjust institutional structures should depend on its interests, others argued that the EU should support any initiative which contributes to a more cooperative level of international relations. Other participants pointed to the need for the EU to strengthen its delegations, which are often best placed to cooperate with local stakeholders as well as to seek new hybrid modalities to engage with emerging partners.

An important deficiency in the EU's role as a global actor, as analyzed by the e-discussion contributors, is the plurality of actors and intricate division of competences between the EU and its Member States, as well as between the different EU institutions. **Better coordination between Member States and institutions** (for example "a pragmatic division of labor" between the European External Action Service and the Foreign Ministries of Member States) was noted as a crucial element for a strengthened foreign policy. To be a leader in effective multilateralism, this should include the coordination of Member States' actions in multilateral fora, where use could be made of more bilateral and interregional dialogues, in part, to be more responsive to third countries' concerns. Participants disagreed on whether new legally binding treaties would be necessary to implement the required changes.

Q3. On which global law and justice institutions should the EU concentrate its efforts for reform, and which are in your view the most pressing reforms to be adopted?

There was agreement among a number of contributors that the **EU should not play a leading role in attempts to reform global law and justice institutions**, both because the role the EU plays in these institutions is not always clear (for instance, as regards the involvement of the Member States and a formal EU presence in the United Nations). Some contributors suggested that the EU should **instead lead by example**. Nor was everyone convinced of the need to focus on global law and justice institutions. Rather, a number of commentators thought the EU should focus on making the existing political institutions more accountable and more "capable of producing decisions that are perceived as appropriate to turn our dangerous world into something more just, prosperous, and manageable." Moreover, it was observed that different institutions require different efforts and maintain different prospects as far as reform is concerned.

Round 2

Statement for Discussion: Rising powers and non-state actors are gaining in power and influence and demand a stronger voice and representation in both traditional global governance institutions (e.g., the UN and IMF), as well as new 'emergent' domains (e.g. in the area of cyber security and governance). Their views cannot be ignored and must be accommodated—including by the EU and its Member States—when developing common rules for addressing common global challenges.



Q1. Do you agree? If yes, what concessions do you think the EU and its Member States should make to reflect the shifting power structures and to make global governance more representative? If not, on which grounds can the EU justify its current position in global institutions and the continued legitimacy of global rules (as they currently stand)?

Responses on **the accommodation of rising powers** were mixed. One commentator posited that the influence of BRIC nations as rising powers is limited because they do not form a coherent bloc. While one respondent pointed out the limited political impact of **civil society organizations**, another respondent argued that **non-governmental experts and regulatory bodies** play an increasing role.

Other commentators expressed concerns about accommodating rising powers, positing that the interests of rising powers, such as BRIC nations can be at odds with the interests and values of the EU (i.e. in the fields of cyber and maritime governance). Yet other commentators remarked that such differences must be recognized in order to have any meaningful dialogue, and that the EU should play a constructive and proactive role in reforming institutions and grant emerging powers equal status in this regard, to prevent them from becoming rule-shapers or rule-breakers.

One respondent concluded that while addressing imbalances can increase acceptance and legitimacy of these institutions, accommodation must ultimately lead to more effective decision-making.

Q2. Which rising powers and non-state actors should the EU prioritize in seeking new partnerships and coalitions, and to which ends? Which forms should these partnerships take?

While it was acknowledged that EU cooperation with like-minded actors has been functioning well in the past and should be pursued further, with regard to new alliances, most contributions emphasized that the EU should adopt **selective engagement, strategic partnerships and multistakeholderism** in its external policies. Additionally, there was consensus over a need for the EU to focus on and **underscore areas of common interest** ('key pressure points') to foster strategic coalitions, especially in the light of rising powers with values other than those of the EU. The countries most frequently mentioned as potential priority partners for the EU were **Brazil and India, followed closely by China and Russia**. Some contributors additionally highlighted the need to partner with other actors, including **cities and intergovernmental organizations**.

Many contributions further noted the **tensions between Western/EU values** such as human rights and democracy **and the values of emerging powers**, including a strong emphasis on state sovereignty and non-intervention in state affairs. Moreover, the difficulty of reconciling policy agendas within such new partnerships was acknowledged, and it was accordingly suggested that the EU aligns coalitions along specific policy areas and targets, as well as in relation to the respective 'leverage' of potential partners on particular issues.

On the topic of **non-state actors**, contributors agreed that they should be included in EU partnerships. However, approaches differed with regards to which non-state actors should be included and to what extent. Some argued that the EU needs to focus on an **inclusion of civil society** and expand the latter to '**non-usual suspects**', i.e. groups outside the EU's progressive liberal agenda and established NGO channels. Others held that non-state actors are already playing a major role in global governance and international rule-making. It was asserted that the EU should therefore engage with international organizations within the 'global normative web' to discuss **checks and balances for non-state actors** involved in regulatory processes.

Q3. Which specific contributions can the EU realistically elicit from non-state actors to address non-traditional security challenges and to tackle emerging global threats (e.g. climate change and the threat of home-grown terrorist fighters)?



Some commentators highlighted **the innovative and effective approaches employed by some local community-level organizations and social enterprises** with regard to countering radicalization of disenfranchised young people. It was accordingly suggested that the EU should **seek to create and assist networks of such grassroots initiatives**, as well as avoid overly-formalized and bureaucratic processes to facilitate access by underprivileged organizations. One contribution also noted that **non-governmental experts** can be of particular value in providing technical expertise.