Disaggregated and Integrated - Decision Making by EU Member States Public Administration on International Law

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Abstract:

The presented paper addresses the issue of the decision-making process in the framework of the public administration authorities and bodies in the European Union. Since this topic is one that can be analysed from various points of view, we find it an up-do-date and significant matter to be an object of the further discussion.

Keywords: decision-making, public administration, international law

Introduction

EU public administrations decision making relates to various issues and can be studied from many viewpoints. One particular area of interest, explored by this paper, is decision making on international law issues. This aspect is particular important as in the post-Lisbon treaty era, European Commission (EC) international law competence has significantly enhanced. The envisioned Brexit can also become an impeding international law issue for the EC and EU member states.

Debate begins by discussing theories about nation state public administration decision making processes, highlighting those relevant to international law. Subsequently, analysis turns to disaggregated state concepts, focusing on actors, other than the central administration, involved in international law decision making.

The paper's fourth section discusses relationships between this disaggregated process and integration dictated by the EU legal order, while the fifth addresses the relevancy of transparency, participation, access to information and privatization.

The final section contains a summary of the previous analysis and a forward looking discussion on a pathway to enhancing the quality of international law related decision making in EU domestic public administrations.

Today, international law significantly implicates daily life, rendering international law decision making by EU public administrations integral to the service provided to the public. This makes understanding the underlying processes and rationales an important matter. The paper hopefully presents a useful contribution to further such understanding.

International Law" Nation-State Public Administrations Decision Making – Theoretical Perspectives

Decision making by public administration is a vastly studied field, exploring the decision making process in the performance of administrations and the service they provide to the public(Carrington, 2002). Emphasis is usually given to how decisions on issues such as priority, staffing, budgeting, training, are made and what are the factors which are considered and by whom (Rubin, 2012). These types of studies are sometimes interview-based or empirical, with the aim of mapping overall trends and approaches (Peters, Pierre, 2012).

Studies of a different frame of mind examine the means and methodology public administrations employ in decision making facing particular issues or problems, like fighting crime, combating wide spread disease or facing environmental emergencies (Collins, Peerbolte, 2012). On a similar vein, studies of public administrations decision-making could also look explore the processes behind promoting a positive agenda, such as improving service to the public or modernization (Jarvis, 2016).

The analysis in this paper, starting with this first section, is more similar to the overall framework of these kinds of studies, although the issue at the focus of the analysis, i.e. international law, is not an issue with either negative or positive connotations. It rather presents a challenge any public administration must face in an increasingly globalized world (Vaduva, 2016). This interesting role played by public administrations in the framework of international law can also be studies empirically. However, in this paper, analysis focuses on the theoretical aspects which can provide a platform for a further empirical analysis to complement the findings or even contradict them.

Observing the issue from the international law perspective, much has been researched and studied about decision making on the international level (Ambrus, Arts, Hey, Raulus, 2014). Scholarship discussing this dimension of international law has been particularly bolstered by the emergence of the Global Administrative Law (GAL), receiving increased attention in the past decade (Caseesa, D'Alterio, 2016).

What is sometimes missing from the debate, in both the legal and political science perspective, is the general (rather than country specific) nation-state point of view in all matters concerning implementation of international law, including for decision-making. However, recently some

attempts have been made to understand how courts interpret international law (Aust, Nolte, 2016) and attitudes and approaches by governments to implementation of international law (Alter, 2014).

These scholarly attempts raise the question of what role public administrations play in decision-making on international law matters, and more importantly, how this role is performed in practice.

In this framework, setting up the taxonomy for our debate, analysis now returns to the opening paragraph of this section. The aim is to understand the underlying theories of decision-making processes by public administration and to see how these can relate to decision-making on international law related issues.

Before delving into the more substantive discussion, it is important to make clear, even as this early stage, that the aim of the analysis is not to provide one definite "normative" recipe for how public administrations should make decisions pertaining to international law but rather to provide a descriptive analysis of the internal process.

One definition of decision-making which has been provided by one commentator reads as follows: "Decision-making is usually defined as a process or sequence of activities involving states of problem recognition, search for information, and the selection of an actor of one from two or more alternatives consistent with the ranked preferences" (Political Sciences).

Public administration scholarship presents the basic decision-making models (Encyclopedia of Public Administration and Public Policy): rational actor (goals, alternatives, consequences, choices); organizational process (decision-making on the basis of input from different agencies); and the governmental process model (Encyclopedia of Public Administration and Public Policy) focused on complex negotiations, including political elements). Other versions of these models, adapted to more low-level decision-making, which seem more pertinent to the focus of the paper, include the administration and the incremental model.

The administration model views the decision-making process as one of less rigidity then the basic models. Accordingly, the decision-maker makes a decision by assessing the situation and collecting some relevant information, rather then collecting and comparing all possible information which can be impractical in real life public administration (Encyclopedia of Public Administration and Public Policy). The incremental model is different, describing the decision-making process as one which incorporates relatively few alternatives, as the decision-maker seeks to place a value on the different alternatives (Encyclopedia of Public Administration and Public Policy). According to this model, the tendency of the decision-maker would be to make similar decisions based on prior successes and failures (Encyclopedia of Public Administration and Public Policy).

Earlier Weberian concepts of public administrations viewed ideal decision making as a processe confined with predetermined sets of rules and procedures (Theodoulou, Roy, 2016).

Similarly, international law was also thought of as a straightforward system of legislative texts with relatively formal constraints and few decision-makers (Pauwely, Wessel, Wouters, 2012). Today, public administrations are viewed as a much more flexible systems including bodies entrusted with decision-making. This phenomenon has been termed as "multipolar administrative law", reflecting the increasing diversity in powers and influences of different public and private bodies (Cassese, Napolitano, Casini, 2014). Similarly, international law has also been transformed, and is today considered a living and "breathing" being (Franck, 2006), open to much interpretation and flexibility, including by nations states and corresponding public administrations.

The different models discussed provide a variety of lenses which can be utilized to view decision-making by public administrations on issues of international law.

Beginning the debate with the more general model, the rational actor model provides an optimal mechanism. According to this model, the public official faced with the need to make a decision on an international issue will go through four stages. For example, when faced with the question of how best to incorporate international law to the standards of operation of a public service, even if such incorporation is not mandated by international law (Blank, 2006). The official will set the goal of providing the service, seek out alternatives on means to implement the standard, and try and estimate the consequences of each choice. At the end of the process, the choice will be made on the basis of the findings.

In reality, this kind of decision-making on international law issues is very unlikely. Assuming that the public official understands the requirements of international law, it will be challenging to find alternatives and understand possible consequences. Unlike for domestic affairs, unless the public official has access to comparative experiences by public administrations from other states faced with similar issues, going through the alternatives and consequences stages can be fraught with difficulties.

The other two high level models are also somewhat ill equipped to capture the practicalities of international decision-making by public administration.

The organizational process foresees the decision as one based on input from different agencies. While seemingly such a process of inter-agency consultation is not farfetched when resolving matters pertaining to international law implementation, this might not be of that much help to the public official unless these agencies have expertise in the relevant field of international law (Mollers, 2016). Even if that is the case, it is also likely that the agencies involved will have their own interests in the resulting decision, in a way which might conflict with the international legal regime (Verdier, 2009).

The governmental process model is relevant to the international law decision making process, as decisions on international law by public officials can also be the result of complex negotiations between different state and non-state actors. In sensitive cases, where the

international regime conflicts with domestic political issues, politics can play a role, although this would not always lead to one overriding the other (Trachtman, 2010). That being said, for lower level decision-making, politics is usually not involved and the issues at stake do not justify a complex negotiation process.

Unlike the other models, the administration and incremental model seem to fit in better with public administration international law decision-making at the lower governmental levels. In many cases, the complexities of finding alternatives, especially for relatively innovative international law norms, necessitate a less than an optimal of collecting fewer sources of information. Acknowledging that the language abilities of public officials might also be limited, and that studies of international law are seemingly mostly done in few languages (mainly English or French), this can mean that only very limited resources are practically available for assessing alternatives.

The incremental model can also draw a more accurate picture. When there is little available information, the public official will probably find it easier to build upon prior experience in decision-making. Arguably, this might not be true in cases where the international norm in question is a new one, which the official, or the administration, have not faced before (i.e. a "fundamental decision") (McKinney, Howard, 1998). Nevertheless in such a case the official can still turn to prior experience with implementation of international law, and the tools utilized in past cases. Utilizing this model in order to understand the way public officials make international law related decision corresponds to the emerging practice in international law scholarship which views empirical and experimental approaches as vital to understand how international legal norms are implemented in practice. (Chilton, Tingley, 2013).

The Disaggregated State and International Law

In the past, it was assumed that when it comes to international law, at whatever level, only one or two state actors were involved in the decision-making process, reflecting what some describe as the "foreign office model". (Cavnar, 2016). Under this approach, even if the subject matter was under the responsibility of a different actor within the government, the organ primarily tasked with international relations would also be the only one providing guidance on international law related issues (Franck, 2005).

Today, it is increasingly understood that a much more variety of actors take part in decision making process within and outside government on various issues, including on matters pertaining to international law. This conceptual approach can be termed as "the disaggregated state" (Rao, 2011). While this term can mean different things, for the purposes of the analysis of this section it is used to describe actors outside the central administration which can be

involved (Curtin, Egeber, 2009). External categories of outside actors can be divided to two distinct main groups; actors which are part of the government apparatus and those outside it. The first category includes two main actors, courts and the legislature. Both play various functions in the public administration international law decision making process, in both direct and indirect capacities.

Courts can play an increasing direct role in creation of international norms as part of an emerging transnational legal order (Putnam, 2016). If in the past, courts solely played a responsive role, responding to international norms when such norms came before them, today some domestic courts might see themselves as part of an international judicial network, entrusted with a somewhat independent role in application of international norms (D'Aspermont, 2012). In turn, such norms can become binding for the domestic public administration, possibly transforming the way administrations operate (Rosenbloom, O'Leary, Chanin, 2010). This can also be somewhat relevant in the context of the European system, when courts choose to refer preliminary question on international law related issues to the EU courts (Kuijper,Wouters, Hoffmeister, Ramopoulos, Baere, 2013). Any decision in that regard can also change the way international law related decisions are made by public officials.

Courts also play a supervisory role exercising control and review of decisions by public officials (Künnecke, 2007). Such a supervisory role can be significant in cases when the administration makes an international law related determination. In this sense courts can limit themselves to domestic legal frameworks when interpreting international law (Aust, Nolte, 2016) but even this kind of domestically influenced adjudication can alter and rescind decisions made by public officials. Moreover, if constitutional courts, or courts of an equivalent status, are concerned, a decision by a court can dramatically change the way international law is perceived by the domestic public administration.

The second major actor in the government apparatus is the legislature. In common law jurisdictions the role of the legislature in international law decision making is relatively straightforward. In cases when treaties are concluded, with the possible exception of executive agreements, the legislature can play a role in the ratification of treaties, when sometimes, positive agreement of the legislature is required for the treaty to come into force (El-Haj, 2016). Allegedly, such high level decision-making should not have a direct impact on low level public administration decision making, as it relates to international obligations by the state. However, today, international law is becoming an integral component in the daily lives of almost every member of the public (Rossene, 2004), and in turn a mainstay for public administration, even in its lower echelons.

Like courts, legislators, as part of the multipolar administration, can also play a supervisory or corrective role for international law decision-making. The corrective role of legislators is relatively obvious in common law jurisdictions, as legislation can override both international

obligation and international law related decision making (Bueaulac, Currie, 2011). In discussing civil law jurisdiction, this approach is much less common but several international agreements, including those which the EU is party to, have already specifically recognized that law can overcome intentional obligations (the EU and Central America Association Agreement). This could be interpreted to mean that where decisions are made under the auspices of international agreements, these too can be limited by legislatures, even in countries which apply the monistic approach to international law, affording supremacy to international obligations over domestic law (Gaja,).

Actors outside the government apparatus can include three main groups; the public, trade associations and civil society.

The public itself is the most relevant actor. In the distant past, a member of the public would probably be unaware of anything which is even remotely linked to international law. Such lack of awareness was unsurprising as individual had relatively limited relevance as far as international law was concerned. (Parlett, 2011). Today, things are different, as individuals receive increased attention in international legal scholarship and international law making (Rozen,) Complementing this trend, increasing transparency in international law making and globalization make it much easier for individuals to be aware of international law developments and to utilize such awareness to influence or challenge decision-making by public officials on international law related matters (Peters, Bianchi, 2013). Acknowledging that there could be different levels of awareness of members of the public to various kinds of international law components (Biehler, 2008), the mere fact that such a possibility exists can change the course a public official takes in the decision-making process.

Trade associations, representing the interest of industry can also have an important role to play in the context of international law, including "capture" of international law making (Dunoff, 2007). Translated to the domestic level, such influence can even be a much less difficult task, as trade association and lobbying groups might have close ties to public officials (Bond, Smith, 2016). Bearing in mind that international law and international standardization can be highly technical, requiring specific expertise, the influence of such "professional" experts can be significant (Wouter, Werner, 2014). This kind of expertise can be relevant to high level policy making, but can also be meaningful for specific international law decision-making. Public administrators might happily "privatize" process to those who are much more familiar with it, even if the outcome would be likely subjective and not in the bests interest of the public (Peters, pierre, 2003).

Civil society organizations, representing the public, are increasingly involved in decision-making by public administrations (Demirkaya, 2016). The disaggregated state concept facilities this result as it allows more and more actors to enter to the decision-making realm (Friesen, 2012). While civil society can tend to focus on domestic issues (Tandon, Brown, 2015), their

international dimension is increasingly becoming prevalent. This outcome can be associated with the expanded exposure an access of civil society to international law, and with increasing networking between civil societies from different state and the exchange of experiences (Buckley, 2013). International civil society organizations are even, at times, constituted from domestic chapters (Transparency International, 2016), making the focus on international law related issues a high priority.

Past conventional wisdom was that civil society's traditional role is that of protest and promoting establishing alternative and opposing approaches to existing governance regimes (Lee, 2002). However, and most relevant to lower level decision-making by public administrations, civil society organizations can serve as advocates for individuals and groups in order to influence decision-making, for example in the field of human development or the environment (Yasuda, 2015). Consequently, if in the past decisions, in particular on international law related issues (at times complex by their very nature), went unchallenged because of lack of resources, today civil society can take up the cause of individuals before both courts and legislators, bringing the analysis to a full circle.

The discussion in this section of the paper demonstrated the potential involvement of actors in the disaggregated state in the public administration international law related decision-making process. Considering the lack of specificity of the decision-making models previously discussed, it can be argued that such models fail to comprehend the new realities of a globalized public administration when it comes to resolving international law related questions. The question is then how is this theoretical gap reflected in an integrated EU environment, to be discussed in the paper's next section.

EU Integration, the Disaggregated State and International Law Decision-Making

The advent of the European Union, encompassing an overgrowing number of public administrations in Europe, has transformed the operation of public administrations in the European administrative space (Sages, Overseem, 2015). In this context, one of the major changes occurred in the decision-making realm, where administrations, for the first time, allowed limitations imposed by a supranational body. Such limitations can be largely associated with the process of integration, a key component of the formation and function of the EU (Hofmann, Rowe, Turk, 2011).

Considering the different decision-making models discussed earlier, ramifications can be varied. One example is the limitation on the rage of options in decision-making, as the public official must comply with EU regulations and directives (Harlow, Rawlings, 2006). If pre-EU membership, the administrator could choose from different alternatives, even though in reality

these were relatively limited (as information is not always available and there are limited resources to collect it), post-membership poses strict legal limitations severely limiting decision-making flexibility.

Viewing the matter from a different perspective, the EU framework also brings with it structures and values which can be foreign to the domestic society (Steven, 2013). Concerning public administration these values can include transparency, both in the terms of openness and participation, reliability and predictability, efficiency and efficacy (Matei, 2004). Public administrations' non-compliance with these, and other, EU values can result in what can be termed as an "implementation deficit" (Louka, 2004). The EC's periodic reviews on the performance of member states' public administrations can also play a factor in enhancing the challenges faced by high and low level "domestic EU" decision-makers (European Commission, 2016).

EU integration values are also inherently linked to the disaggregated state concept, as various non-central government actors play a key role in realizing them (Rumford, 2002). In that sense, new EU member state are seemingly expected to facilitate such a role even if it does not correspond with domestic perceptions of the interrelationship between public administrations and external actors.

EU policy towards international law, and the commitments of the EU to international law, adds an additional layer of challenging complexity to decision-making. Such complexity is relevant to overall policy making, as it is constantly influenced by international obligations (Pollack, Wallace, Young, 2015) and to decision-making on international law related issues. While both of these dilemmas are of great interest, the focus of this section will be the latter, corresponding to the main focus of the paper.

Similar to other issues, the EU strives for an integrated policy on international issues. If in the past this was a mere declaratory goal, consisting mainly of declarations by EU officials (De Burca, 2001), this has very much changed in the post-Lisbon treaty era. Today, various international law issues have been brought under the EU competence umbrella, resulting in limitations on implementation of international obligations (Apter, 2014). Subsequently, decision-making by public officials on international law issues can now be influenced, at the very least on the policy level, by EU policy making bodies.

Lacking empirical data, it is difficult to assess how does Europeanization of domestic public administration impacts international law related decision-making by public officials (Vaduva, 2016). Nevertheless, what can be determined is that it makes decision-making on such issues a challenging task.

First and foremost, due to the high sensitivity of limiting the powers of states in the field of foreign policy (Kennedy, 2000), comprises reached on EU competence make it difficult to understand where domestic competence ends and EU competence begins. One example

relates to foreign direct investment, where even after improvements in the EU regulatory structure in the post-Lisbon Treaty era, the issues remains unclear and open to conflicting interpretation between the EC and the member states (Dimopoulos). In practice, the implementation of these treaties, or working with investors which are protected by them, is tasked with public administrators, which inherently need to balance between domestic laws, regulation and policies and EU policy which underlined the international negotiations.

Secondly, and increasingly, EU courts, which were in the past relatively reluctant to judicially create conflicts between EU law and international law, are leaning towards a Europeanized version of international law (Nollkamper, 2012). This approach is reflected in decisions invalidating automatic implementation of international law by EU institutions (Apter, 2014), and attempts to alter international obligations undertaken by the EU in the context of global trade (Apter, 2014). Set in the framework of the interrelationship between EU law and international law, also reflected in the drafting of EU international agreements (EU and Central America Association Agreement), such a power struggle is understandable, but it is still challenging for the domestic European public administrator faced with a need to decide how to contend with conflicts between EU law and international law.

The discussion of the courts brings us back to the disaggregated state concept, as courts are an important element in the equation. Court supported international law fragmentation in this framework, can potentially lead to fragmentation in public administration decision-making. This outcome poses an almost impossible task for the public officials seeking alternatives in the decision-making process, as whichever path chosen could lead to either criticism by the courts or conflict with international obligations.

Admittedly, for some public officials, direct conflict with courts or investments treaties is a relatively rare occurrence. What is much less rare is direct contact with the public, which increasingly necessitates the need for international law related decision-making due to the effects of globalization in an "internationalized public administration" (Holzer, Schwester, 2015).

In the disaggregated state, the public can be much more reactive to decisions made by public officials, using social media platforms for shaming purposes (Grandvoinnet, Aslam, Raha, 2015) or filing claims in foreign courts (Simon, 2016).

While this can be a phenomenon relevant to various types of decision-making, for international law related decisions it can be particularly prevalent in cases when decisions are made in order to implement international law or when decisions are made in conflict of international law. Those affected by the decisions can use international law and international forums with wide audiences utilizing information technology in order to note their dissatisfaction with the specific official and or policy.

EU domestic public administrations are likely to face such a challenge as they engage with international law related obligations to the EU on a daily basis. This is augmented by EU civil society platforms enabling individuals from member states to create what can be termed as "networks of protests" to act jointly against public administrations or for particular causes (Vujadinović, 2012).

Alongside these individual decision-making risks, the danger is also that an aggregate of decisions or policies might lead to wider mass protest. As international law is still considered to be a threat on sovereignty, when this is translated to issues which impact daily lives, the result can be mass protests leading up to demands for overall changes in policy. Such a process can lead up to occurrences like the decision by the UK to leave the EU). Brexit can be described as an outcry against a long list of decisions by the UK public administration inherent to the UK's obligations, under international law, to the EU and to other member states. It can also be perceived as a threat to concepts of "liberal 21st century international law" based on the principle of subjection to supranational values and ideals (Beach, 2015).

The discussion demonstrates that when public officials in EU domestic administrations are engaged in international law related decision-making, it is far from accurate to describe the process as corresponding to straightforward decision-making models, whether the government administration model or the incremental model (Beach, 2015).

Acknowledging that this is the state of affairs, it would be difficult to expect European public officials to go through all of the stages of the rational actor model, as resources are limited even in a modernized and advanced public administration (OECD, 2011). What is suggested instead is to view the process as reflecting enhanced versions of the government administration and incremental models. The practical outcome to thus theoretical change of perception could be, for example, educating public officials that when it comes to international law related decisions they should be aware of the potential risks and sensitivities.

While it is difficult to assume that officials will attempt to find all possible answers for international law related dilemmas, they could still strive to make a decision within the scope and spirit of the applicable international obligation, as long as it corresponds with domestic and EU law and policy. Such an approach is similar to the approach undertaken by some courts in interpreting constitutions (Aust, Nolte, 2016, Taldi, 2016) or when faced with the need to interpret international obligation (Nolte, 2016).

EU Administration International Law Decision-Making and Transparency, Participation, Access to Information and Privatization

Contemporary conceptions of decision-making by public administration point out various relatively new concepts, which can be considered as a hallmark of modernization processes.

Among these various possible components, this section explores four which can be especially relevant when it comes to internatioal law related decision-making by EU domestic public administrations.

The elements selected for focus include transparency, access to information, participation and privatization. As some of the derivatives of these elements have been explored earlier, the focus of the analysis here would be on the most salient expression of each not previously discussed.

Transparency is gaining increasing influence on decision-making by EU domestic public administrations (Treaty of the European Union reads). Alongside freedom of information and participation, the EU regime also consists of obligations to provide reasoning for decisions and provide visibility for decisions and regulations (as integral to the decision-making process and not only due to requests from the public) (Opdebeek, De Somer, 2016).

When it comes to international law, transparency, in the sense of visibility of documents is further enhanced. As part of a relatively recent practice, international treaties, some of which the EU is party to, require member states to act according to transparency principles (United Nations Convention against Corruption, 2016). Moreover, EU member states which are part of international treaties subject to peer and expert review processes, as most, if not all, EU member states must report on the means taken, including decision-making, to implement such treaties. In some cases, analysis of information reported is made public (United Nations Convention against Corruption, 2016), enhancing the visibility of international law decision making in ways at times more expansive than for domestic law type decision-making.

Publication of reasoning of international law related decisions can lead to global criticism or even punitive measures by the international community if it is identified that the steps taken were in violation of international legal obligations (Krieger, 2015). The disaggregated state is also relevant here, as it would typically be non-central administration actors, with sometimes diverging interests to those of the main public administration, who would utilize publication and disclosure of decisions to engage in global campaigns to transform domestic policy or decision making (Faulkner, 2007).

Access to Information – Many EU member states have freedom of information laws in place (EU Law and Freedom of Information, 2016). While its seems that the EU does not mandate member states to provide for access to information in their laws, states are obligated to not prevent the EC from allowing public access to information related to interactions with EC institutions (EU Law and Freedom of Information, 2016).

In practice, the freedom of information works better in some member states than in others (Media Pluralism Monitor, 2016). Despite these difficulties, which are more apparent in member states with prior tradition of strict confidentiality in public administrations, the basic contours exist. It seems likely that EU member states, particularly the newer members will

increasingly face the need to divulge information to the public, including matters related to the former communist regimes (Gervienė,). In this case, the disaggregated state can be defined as a change agent. Without the enhanced role of non-central administration actors, mainly the public and non-governmental association, freedom of information legal framework might have remained largely underutilized (Azfar, 2007).

The sensitivity of international law decision-making can lead to increased freedom of information (FOIA) requests. At the same time, FOIA regimes usually include exceptions to FOIA in the form of public security, military issues, international relations, and economic policies, which can all be closely linked to international law (European Commision, 2001). As a result, unlike for other types of decisions, it could be easier for public administrations, if they wish to do so, to refrain from disclosing information on international law related decisions. However, according to EU case law, which can serve as an inspiration to member states, such exceptions must be narrowly and strictly applied (European Commision, 2008).

Participation – transparency in decision-making is sometimes translated to the right of external actors to participate in the decision-making process by public administrations, an important hallmark of the disaggregated state (Coglianese, Kilmartin, Mendelson, 2009). The importance and relevancy of participation in high-level policy making seems to be self-evident. For low-level decision-making, which is what the discussion in this paper mostly focuses on, participation can mean affording the effected party with the procedural right to be heard before the administrative authority adjudicating the matter (Mandes, 2009).

This kind of individual participation can be associated with rules on natural justice, allowing relevant parties the right to present their position so that the relevant administrative body can make a fully informed decision (Hakwe, Parpworth, 1998). In specific cases, particularly when human rights are involved, international law, including the European Convention on Human Rights, can require pre-decision hearings (European Court of Human Rights Guide, 2016), although derogations from these obligations might be allowed (European Court of Human Rights Guide , 2016).

EU domestic public administrations can sometimes face conflicts between international obligations and the need to allow for individual participation in decision-making. In such instances, as for example in regards to EU mandated sanctions, case law seems to indicate that the right of hearing can override international law, as this right is considered fundamental (European Court of Human Rights Guide, 2016).

Privatization – integral to the modernization of public administrations and the aspiration to provide better services to the public, is the process of privatization of public administration or public services (Strategy of the Public Administration Reform in Montenegro, 2003). This process, which also characterizes some of the EU member state's public administrations, signifies an aspect of the disaggregated state not discussed so far; the replacement of public

services by private actors (Administration and the Civil Service in the EU 27 Member States, 2008). It is questionable whether such actors, even while preforming outsourced governmental functions, are subject to international law obligations (De Fyeter,2009). As the issue has yet to be fully developed in scholarship and practice suffice to say that such private provision of public services raises serious questions about the suitability of such organs to make international law related decisions.

Looking at the issue from a wholly different perspective, Privatization is not a foreign concept for international law, from both sides of the equation, impacting both international making and international law implementation.

From the viewpoint of the former, private experts can play a leading role in international law making (European Yearbook of International Economic Law, 2014). Like the impact of trade association previously discussed, "capture" can also be relevant in this case. This sort of outcome can be relevant in areas where international regulation requires a high degree of expertise which mostly exists in industry rather than in government (European Yearbook of International Economic Law, 2014). In turn, this private industry driven international regulation can predetermine decision making by public officials, going as far as de-facto revoking the sovereign will of states and that of the international community (Everson, 2014).

In this sense, as international obligations, especially those with a universal nature, are relevant in the EU context, this emerging type of international law can be of magnitude.

The latter private element of international law related decision-making is less obvious but can still be important. In the past couple of decades, attempts have been made to privatize foreign policy (Dickinson, 2005). This can be either done through courts attempting to force the state to take a particular position on a foreign policy issue(Stephen, 2004) or by "private" independent creation of international norms (Malaguti, Bossone , Cafaro, 2013). Arguably, such privatization efforts are more focused on general policy making, but this does not mean that it could not trickle down to lower level decision making. At the very least it could cause concern for public officials, when such privatization of foreign policy can pose obstacles to their decision-making powers, even if it is done solely on the EU level.

Summary and looking ahead – Initial Thoughts on how to Improve International Law Decision Making by EU Public Administrations

Improving the process of decision-making in public administration poses difficult challenges, requiring investment of significant resources with focus on organizational strategies and reforms (European Commision, 2016). The purposes of this final section is not to provide overall systematic solutions to EU public administration in this regard. Rather, the aim is to sum up the previous analysis and utilize it as a platform for focused ideas on how to enhance

EU domestic public administrations' international law decision making, recognizing the unique circumstances of such administrations and the distinct characteristics of international law related decisions.

The debate of the disaggregated state actors operating in conjecture with public administrations in an integrated European environment has shown that it is difficult to view EU international law decision making as fitting in with one of the models discussed at the outset. This conclusion led the discourse in the direction of enhanced models, which while might be better at capturing the true realities seem ill equipped to address the unique setting the relevant actors find themselves in. Such discrepancy with reality is not merely an academic conceptual problem but can also lead to gaps in addressing the quality of international law decision making.

Based on this framework, the paper proposes a more fitting way to look at the decision making process, suggesting to initiate a discussion on a distinct normative model for EU international law decision making for low-level public administration officials. The model can be provisionally termed as the Global Knowledgeable Incremental Model. As can be evident from its provisional title, this suggested lens adds the element of globalization and knowledge to the equation.

Ideally, the public administrator would be an expert on all things, including EU and international law, knowledgeable on the effects of Europeanization and globalization and keenly aware of the advent of the disaggregated state. In real life, this goal is not attainable so alternatives must be sought.

Alternatives to this perfect vision can be many and include example of overall reforms, including in recruitment of more educated and "global" public officials, enhanced training of officials (Jreisat, 2012) and increasing of benefits and pay (Mizrahi, Davis,). In a world with limited resources, which is the situation for many public administrations in EU member states, these kinds of directions also seem farfetched. What does seem viable is an approach which takes into account the limitation of both public administrators and public administrators, balancing this with the need to enhance and improve the international law decision-making process. The suggested approach includes three distinct pillars, which can serve as guidance for EU public administrations. Intentionally, as the aim not for a wholesale, one size fits all, solution, the proposal is of a general nature, leaving room for flexibility in adaptations for different public administration actors and different member states, and for future research and development.

Pillar one focuses on developing the concept of Europeanization and Internationalization in public administrators (Magone, 2004). For this purpose, training programs for administrators, today a feature of most public administrations, can include presentations on the importance of taking into account the principles of EU and international law in the decision-making process. While this will not entail substantive lessons on what is exactly EU and international law, mere

familiarity of these concepts and general ideas about the possibilities of conflict between the two, could go a long way to increase awareness by administrators to the issues which can come up in providing service to the EU public.

Pillar two is concerned with the policy making perspective. Recognizing the role of the actors in the disaggregated state, EU public administrations, on a domestic level, should consider developing coherent policies and guidance on interaction with such actors (the World Health Organization, 2013). Formation of such policy might be quite challenging and might even result in failure, but even thinking and considering the issue would lead to important insight. This kind of outcome can be further enhanced if the policy formation process would be inclusive, to include both low-level public administrators and the actors in the disaggregated state, as part of the ongoing public-government discourse, an important component of contemporary public administrations.

Pillar three utilizes a prominent feature of the interaction between global governance and the disaggregated state, manifested in the concept of networks. The idea of networks between public administrators is significantly enhanced in the EU context, as coordination and consultation meetings in Brussels create networks of public administrators (Peterson, Ottole, 2011), which have potential to become even more frequent and conducive than internal networks of domestic administrators. Bearing in mind the particular challenges set by international law decision-making, use of the EU networks to consult with public administrators from other member states can be a relatively easy tool. If used in an efficient and productive manner, for example by use of effective web-based platforms (House of Commons, 2008-2009) it could provide a useful platform for exchanging experiences and best practices.

Absent experimental or empirical studies it will be difficult to asses the utility and effectiveness of the proposed pillars. At the same time, it could be theorized that following the ideas proposed could support enhanced versions of the administration and incremental models. For the administration model, the pillars can enhance the process of seeking alternatives, even if only on the conceptual level, while for the incremental model the experiences of others (other EU administrators) can be treated as past experience to build upon. While these transformations will be far from prefect or ideal, the proposed pillars can serve as an important conduit to optimize EU integration in the disaggregated state era, at least as far as international law decision-making is concerned, and possibly for matters beyond it

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