

Global Power Shift

Astrid Boening  
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Aukje van Loon *Editors*

# Global Power Europe - Vol. 2

Policies, Actions and Influence  
of the EU's External Relations

 Springer

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External Relations

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## Foreword: The EU is Not Over

*“Global Power Europe”* is an important contribution to one of most vital questions of our times: what will be the future of the international order? The answer will differ greatly depending on whether the EU will be able to contribute significantly to building an effective multilateral order. The answer is not and could not be clear-cut. The EU represents both enormous potential, based on its experience with building multilevel governance, and significant apprehension, due to the expectations gap that has grown along with it.

This volume, edited by Astrid B. Boening, Jan-Frederik Kremer and Aukje van Loon, shows the scope of the studies on the role of the EU as a global actor. It also shows the interest that scholars, on both sides of the Atlantic, maintain in the topic despite growing skepticism of the role of the EU on the international scene, of the future of the Euro zone and in some cases of the future of the EU itself. The volume also highlights the diversity of theories used to analyze the nature of the EU as a foreign policy actor. The authors cover many of the areas of international action of the EU, showing that it is too soon to rule out the emergence of the EU as a major global actor, but also underlining the tremendous challenges it faces in a changing international order.

Of the challenges identified in this volume, three are of especially critical importance to the future role of the EU as a global actor:

**The challenge of global power politics.** Of the major trends that are defining the future of the international order, increasing polycentrism will likely be one of the trends which the EU will find it difficult to cope. We are moving towards a post-Western world as power shifts to Asia, and no single actor will be in a hegemonic position. The era of US unipolarity is over, and no new bipolarity will replace it in the foreseeable future. In this context, the relative decline of the USA and the EU is inevitable. This means that the Western alliance is no longer a decisive force on the international scene, but that other actors need to be included to pursue an effective multilateral agenda. For the EU, this will come rather naturally, since the pursuit of effective multilateralism is central to EU foreign policy, with the EU integration process itself based on inclusiveness and cooperation. Yet, the effective adaptation to increasing polycentrism by the EU is not a foregone outcome for

three reasons: First, the EU has become used to strategic dependence of the USA. Second, the “power politics” conception of international relations that is pursued by a large number of new global players will limit international recognition of the EU as a strategic international actor. Third, and most troubling, is the fact that in a post-hegemonic world, middle powers are bound to play a major role. In this context, EU middle power states like Germany and France can be tempted to play a more autonomous international role, undermining the ability of the EU to define common policies. This is already the case with energy management issues and on security issues in general, as seen during the 2011 Libya crisis, when Germany assumed a position closer to that of the BRICS countries.

## **The Challenge of Coherence Involving EU Institutions and Member States**

The Lisbon Treaty did not solve the problems of unity and coherence in EU external action. By multiplying the number of European Union actors, the Treaty increased the need for more complex negotiations, not only between member states and EU institutions, but among the institutions themselves. The complexity of the Lisbon system makes the process of shaping external policy, weakening the coherence of external action by the Union more difficult. The coherence of EU foreign policy can't be merely the result of institutional cooperation, but needs to be enlarged to include the member states who will remain the most important actors in European foreign policy. With the Lisbon Treaty, the member states have gained greater power in the decision making process of the Union as highlighted by Selin Özoğuz-Bolgi in her chapter: “In the end, the retention of national sovereignty won over supra-nationality.”

This shift can be seen in the diminishing role of the EU Commission in external action in favor of the intergovernmental process. A good example can be found in the shaping of EU Mediterranean policy, where the transformation led to the weakening of the communitarian normative approach that over the years allowed the Commission, through the Barcelona Process, to support civil society initiatives in the fields of human rights and democracy. The difficulties of the EU to define a coherent policy to support the democratic transitions in the Arab world are a consequence of such state of affairs. The normative nature of EU external action means that acting with consistency regarding the values of the Union is a precondition for its credibility. However, the post-Western nature of the Arab revolutions makes the imposition of EU conditionality upon that region a weaker proposition. The integration of the southern Mediterranean in a common space of rules and norms is now more difficult and the most likely scenario is not that of EU “imperial” stretch but of the emerging of circles of autonomous regional cooperation in a democratic Arab world.

## **The Challenge of Adding Hard Power Capacities to Make the “Civilian” EU into a True Global Power**

This issue is not new. The launching of the European Security and Defence Policy (ESDP) in 1999 was a consequence of the lessons learned in Bosnia and Kosovo, and the conviction that without a military component the EU would not be able to play a relevant role in promoting effective multilateral action. In recent years, however, we have seen a weaker commitment to defense policy and a lack of ambition in this field. This, as several chapters in these two volumes address, is the result of several factors: The main reason would be the economic crises, and the fact that member states are substantially cutting defense expenditure. Eighteen European countries cut military spending by more than 10 % between 2008 and 2011, while the largest EU military powers, the UK, France and Germany, have made modest cuts of 0.6 %, 4 % and 1.6 % respectively. The UK plans to cut a further 7.5 % up to 2014/15 and Germany another 10 % to 2015.<sup>1</sup> The impact of the economic crises should hence not be underestimated. Economic constraints will imply a further deterioration of member state military capacities, military industries, investment in technological research and willingness to contribute to military operations.

Despite these limitations, the combined military capacities of the member states remain second only to those of the USA, though likely to be surpassed by China in the next decade. Thus if the member states pooled and shared their capacities, they would be able to maintain their global military standing for a decade, but this would require the definition of a common ambition for European defense and a clear understanding of common strategic goals. Increasing global interdependence is creating the conditions for effective cooperation among different actors.

Effective multilateral solutions can best be pursued using the UN framework as an indispensable source of legitimacy. The anti-piracy operations off the coast of Somalia are a good example of the importance of including China, India and other global powers in inclusive multilateral actions to global challenges. It has been argued that there is a need to revise the 2003 EU Security Strategy to take into consideration the shift toward a post-Western world. As Natividad Fernández Sola stresses, however, a new security strategy would not solve the current chaos by itself, “but would perhaps force member states to discuss at greater length the European shared security interests.” The conclusion could be, as in the 2008 revision of the security strategy debate that building a consensus of all twenty-seven member states will be very difficult. Yet even limited consensus achieved through open and vigorous debate can open the way to a more effective approach to the international action of the EU.

More critical than a discussion of the EU security strategy would be a discussion of the implications for the EU, internally and externally, of the ongoing transition to

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<sup>1</sup> See SIPRI—<http://www.sipri.org/research/armaments/milex/resultoutput/trends>



a polycentric and interconnected world.<sup>2</sup> This discussion would help Europeans understand the consequences of their relative international decline and to define policy that can help Europe avoid absolute decline. It could also spur Europeans to consider new possibilities in shaping their role as a global actor, without relying on unrealistic dreams of a European superpower. In the security field, the EU is likely to become a more regional actor than a global one. Due to the difficult nature of the security challenges in Eastern Europe, the Caucasus, and the Middle East, an EU which is able to play a major role in these areas would certainly contribute significantly to international peace. But for the EU to be influential, it needs to do more than enhance its hard power. The EU also needs to maintain its soft power. For that it must, first and foremost, remain a space of integration based on unity within diversity. As Cristina Pace stresses, “The European Charter of Fundamental Rights was therefore adopted into the framework of a specific strategy aimed at developing a European political identity through the recognition of a set of rights and common values.” In this perspective, the protection of human rights in EU member states is essential to promote the EU’s credibility and power on both a local and global scale. In contrast, the rise of populism and anti-immigration policies undermines the EU’s attractiveness, legitimacy and influence.

## Differentiated Integration

In conclusion, as many of the studies of this book show, there is a gap of expectations between what the EU is supposed to deliver and the present state of affairs of EU foreign and security policy. This gap needs to be overcome in order to allow the EU better to defend the interest of its citizens in a peaceful international order.

Three possible scenarios can be foreseen for the future of the EU: disintegration, the creation of a federal super state, or differentiated integration. Both the disintegration and federal super state scenarios are highly unlikely. The most likely scenario for the future of the EU, highlighted by the differing impacts of, and responses to, the present Euro crisis, seems to be that of differentiated integration. This would involve engaging in an internal reorganization of the EU to adapt to the renationalization of some policy areas by larger EU member states. This renationalisation limits the ability of the EU to develop common policies, so differentiation between EU states would deepen on the basis of varying levels of economic or military power.

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<sup>2</sup> See the ESPAS Report ‘Global Trends 2030—Citizens in an Interconnected and Polycentric World’, edited by Álvaro Vasconcelos. This Report assesses the long-term, international and domestic, political and economic environment facing the European Union over the next 20 years <http://www.espas.europa.eu/>

To preserve the European project, a Union shaped according to accommodation of diverse member state perspectives may be needed. This scenario may entail member states, or coalitions of them, driving EU foreign policy on selected priority issues, depending on respective national agendas. This approach could generate constructive cooperation between the EU and the national level in specific cases. The provisions of the Lisbon treaty that facilitate flexibility and enhanced cooperation can, as this book points out, accommodate this trend, but for a different Union than that of a single unique voice in international affairs.

Such a Union could still make a substantial contribution to a multilateral global order by working more closely with other global players, including states, international institutions and nongovernmental organizations.

The EU has an opportunity to lead in the creation of multilateral governance initiatives to address the major global challenges that citizens will be facing in the decades to come, such as climate change and human security. If the EU fails, no other international actor, including the USA, is likely to take on that important role, with worrisome consequences for the future of the world.

Paris, France

Alvaro de Vasconcelos



# Preface

Has the EU become a “Global Power,” or maybe even a “Super-Power”? questions like this have become more and more relevant for the study of international relations, especially in the context of expanded competencies for the EU in foreign policy in the light of the Lisbon Treaty. The EU is now an international legal personality and her authority in various fields of international politics has been legally assured. It is engaged in spheres like international trade and commercial policy, international climate governance, and international negotiations about ongoing international crises (North Korea, Iran, etc.) and has replaced, or at least supplemented, the member states as negotiating actors. There are countless journal articles, monographs, and papers that focus on explaining and examining the EU’s external activities: some of them focus in empirical studies on specific fields of engagement like commercial policy (p.e. and Nicolaidis 2005; Meunier 2006, 2007; Woolcock 2010), security policy (p.e. Charillon 2005; Gross 2009; Howorth 2007) or the EU’s actions in global climate governance (p.e. Oberthür and Roche Kelly 2008; Wurzel and Connelly 2011), while others focus on how to grasp the nature of the EU’s external actions in a theoretical way by testing and developing different approaches, models or theories suitable for understanding the EU’s international character *sui generis* (p.e. Vogler and Bretherton 2006). Further publications again try to answer the question, if there may be a form of exercised power unique to the EU like concepts of “market power,” “normative power,” “civilian power” or “integrative power” (p.e. Damro 2012; Duchêne 1972; Koops 2011; Manners 2006; Whitman 1998, 2011) and there are also some (edited) volumes on the market that give a more comprehensive overview about the foreign policy of the EU (p.e. Hill and Smith 2011; Bindi 2010). But these volumes either aim at giving a more general and well-written introduction to Europe’s standing in international relations (p.e. the magnificently edited volume by Hill and Smith 2011; Cameron 2012), focus—for various reasons—only on limited fields of engagement (geographically, politically etc.) of the EU’s foreign policy, or do not primarily try to answer the question of the EU’s global power (p.e. the volumes of Bindi 2010; Keukeleire and MacNaughtan 2008; Smith 2008). There is not a single volume available that tries to address the question “is the EU a Global Power” from an institutional, theoretical

and empirical angle in a comprehensive way. To fill this gap, the editors decided to bring a project on its way assorting contributions that deliver fresh and innovative theoretical approaches towards the EU's power, as well as chapters that deal with nearly every facet and aspect related to the EU's external engagement, ranging from A like the EU's relationship to ASEAN and the Arctic to Z like the "Zero Tolerance for Violence against Women Campaign." The editors and the publishing house noticed quickly that this Herculean task cannot be covered by just one volume and therefore decided to go for a two-volume project, in which each of the volumes stands on its own, but only both volumes together carry the whole picture of "Global Power Europe" from an institutional and theoretical perspective (Vol. I) and an empirical perspective (Vol. II). Hence, this two-volume project provides a multi-sectoral perspective on the EU's external projections from traditional as well as critical theoretical and institutional points of view (Vol. I), and is supported by numerous case studies covering the whole extent of the EU's external relations (Vol. II). The aim is to strive for a presentation of new approaches as well as detailed background studies in analyzing the EU as a global actor. The editors attempted to select authors as well as topics from a broad regional and intellectual "space." However, the opinions and thoughts presented are strictly those of the authors of the chapters alone, and do not represent an endorsement by the editors, or the editors' opinion.

Volume I (ISBN: 978-3-642-32411-6) "Global Power Europe—Theoretical and Institutional Approaches to the EU's External Relations" addresses the EU's overall external post-Lisbon Treaty presence, both globally as well as regionally (e.g. in its "neighborhood"), with a special emphasis on the EU's institutional framework (role of the Commission, European External Action Service etc.). It also offers fresh and innovative theoretical approaches to understanding the EU's international position and power.

Volume II (ISBN: 978-3-642-32415-4) "Global Power Europe—Policies, Actions and Influence of the EU's External Relations" on the other hand offers quantitative and qualitative contributions examining the EU's international efficacy from a political, economic and social perspective based on a plethora of its engagements. The volume delivers the most compressive assessment of altogether 19 empirical studies examining the whole branch of the EU's global activities, ranging from security policy (CSDP), ENP, climate governance, gender policy, commercial relations, trade policy, regional affairs (ASEAN, MERCOSUR, China etc.) and energy security to international crime to children's rights norms.

This Volume "Policies, Actions and Influence of the EU's External Relations" brings together contributions that are designed to highlight EU's external policies, actions and activities in regard to the exercise of power/influence on a global level in specific bilateral, regional and multilateral relations and institutions (p.e. ASEAN, MERCOSUR, NAFTA, FTAs, EPAs etc.), specific policies (environmental, trade, security, gender etc.), and by the use of specific means (military, economical, diplomatical etc.).

The chapter authored by **Salla Garsky** provides an overview of the EU's policy towards the International Criminal Court (ICC). Also, the EU's policy and support

towards the ICC will be compared and contrasted to that of the USA. Given that the Bush administration was severely against the ICC, the author argues that the EU has engaged in “normative binding” in its global campaign for the ratification of the Roman Statute. An international system based on restrictive norms is significant for the EU in order to be able to increase its power. Since it cannot compete with the US on military terms the ICC provides the EU with a framework to oppose unilateralist US policies. Involving the US into this ‘normative binding’ may increase the EU’s soft power and thus its promotion of international legal institutions has implications for the international system.

In his contribution **Raphael Bossong** emphasizes the external dimension of the EU’s fight against terrorism. Top priority of international security policy has been the continued activities of Al Qaeda and affiliated terrorist actors. The EU has attempted to develop an extensive counterterrorism policy since 9/11. The aim of this chapter is to provide a comprehensive overview of the EU’s external dimension and its changing global role. A brief historical overview of EU counterterrorism cooperation is followed by surveying three strands of the EU’s current counterterrorism policy. The impact on this policy from the Treaty of Lisbon is equally assessed current initiatives for reinforced security assistance to Sub-Saharan Africa is outlined. The author concludes that the EU has faced limitations in mobilizing available instruments and resources to combat terrorism beyond its borders.

The chapter by **Lisanne Groen, Arne Niemann and Sebastian Oberthür** assesses the EU’s role in international climate change policymaking. It does this by comparing the EU’s degree of goal attainment at two conferences of the United Nations Framework Convention on Climate Change (UNFCCC). These are the Conference of the Parties (COP) negotiations in Copenhagen in 2009 and Cancún in 2010. Comprised as building blocks, three explanatory factors, coherence, opportunity structure and politicization, are applied to enable the authors to examine whether the EU managed to attain its goals as well as the divergent outcomes for the EU of both negotiations. In the conclusion, the Durban negotiations of 2011 are briefly highlighted.

**Özgür Ünal Eris** assesses in his chapter contribution the European Neighbourhood Policy (ENP) of the EU. With aspirations to become a global power, the EU designed the ENP with the main objective to have an impact on neighboring countries’ democratization. This chapter investigates in detail the limitations and shortcomings of the ENP. It does so by applying a case study of the EU’s insufficient impact on democratization and stabilization in the Ukraine, a significant neighborhood partner of the EU. Equally, this contribution has the goal to reveal a contradiction between the EU’s normative vision and its security demands.

The EU in the wake of Palestine’s request of admission to membership in the United Nations (UN) is the central topic of **Valentina Morselli**’s chapter contribution. The Palestinian Authority’s application for full membership to the UN in September 2011 led to divergent contrasting and complementary reactions of both the EU and its member states. This chapter states the following hypothesis;

the highly contested nature of policies related to the Middle East Peace Process caused the inability to reach a common position among the 27 EU member states, thus letting states free of pursuing their own agenda. Independently of the actual policy proposed, a contrasting discursive trend, namely EU member states' praise and support for the EU's role in this issue, is an indication of the approach that member states pursue when it comes to the formulation of foreign policy. The European arena can thus be used as an enhancer of national policy but not necessarily as a constraint and might have a subsequent relevancy for the EU as a global power in the making.

**Luigi Carafa's** chapter analyses the development of energy cooperation in the neighbourhood between the mid-1990's and today. Firstly, regional energy cooperation under three different frameworks, the Energy Community, the neighbourhood policy, and the Union for the Mediterranean, is studied. Secondly, this chapter analyses bilateral energy cooperation with three key neighbours: Algeria, Egypt, and Morocco. These differ in terms of market size, their relative energy interdependence with the EU, and the availability of indigenous energy resources. Importantly, this country sample also captures the major geopolitical features of the EU's external energy relations in the neighbourhood very poignantly: Algeria and Egypt are the two most important energy producing countries involved in cooperation with the EU, while Morocco is a key energy transit country towards Europe.

Comparing engagement at the regional vs. the bilateral level, his chapter seeks to understand the nature of the commitments arising between the EU and its neighbours in the energy sector as well as the extent to which the EU is capable of building cooperation around its energy rules and policy-making institutions via functional cooperation.

The central argument of Luigi's chapter is that energy cooperation in the neighbourhood demonstrates the EU's ambition to project its internal sectoral activities also externally, but that the resulting power of the Union to engage its partners in functional cooperation is still limited in the energy sector: the sector-specific logic of external governance has an insufficient explanatory power in the case of energy cooperation. Especially at the bilateral level energy cooperation is strongly differentiated across countries—following macro-level rather than meso-level dynamics.

The contribution of **Julian Pänke** deals European integration and the Arab revolutions. As the Arab world currently faces a major transformation, the EU equally stands at a critical juncture being occupied with the financial crisis and the overall direction of its integration project. According to the author, the EU needs to embrace its imperial nature as history indicates the advantages of this in comparison to national "solutions". The common market, the Treaty of Maastricht and Eastern Enlargement all have created the union as an Empire. "Unifying the continent" was the imperial mission and the decisive steps towards an ever closer union were enhanced accordingly. This contribution finds that in order for the EU to become a global power, it needs to pick up the imperial thread again.

The EU's Central Asian Strategy is examined by **Ellen Pirro** in her contribution on the EU's external relations. EU interaction with Central Asia is characterized by

a long period of contact, notable donations of aid and economic development assistance. Fundamental to this relationship is the persistence of the EU in the face of strong competition from other actors, such as Russia, the USA and China. The EU is a major trading partner and comprises the largest donor nation for the five Central Asian republics. Essential to the EU but less welcomed by the Central Asian nations is implementation and cooperation in the areas of human rights and democratization. Although the EU faces significant limitation in its Central Asia policy, the prospect of energy resources, new markets, and the resolution of problems with neighbors increases the EU's persistence, and could lead to positive results in the future.

Diversifying EU energy sources and its subsequent potential influence in the South Caucasus is the central theme in the contribution of **Nelli Babayan**. When the EU was forced to search for other energy supply sources through the construction of the Southern Gas Corridor, Georgia, Armenia and Azerbaijan came under the EU's spotlight. The EU however has yet to secure these energy supplies. This lack of success has been directed at the ubiquitous inconsistency and incoherence of EU foreign policy, a lack of solidarity between member states and Russia. This chapter analyzes the drivers for and obstacles to the EU's energy diversification plans, arguing that solidarity principles are often overridden not only by rational interests of member states but also by external factors shaping those interests and affecting the EU's capacity to exercise influence for promoting its policies.

**Małgorzata Śmieszek** examines in her chapter the external action of the EU with regard to the High North. Climate change has been of increasing interest in the Arctic region and the recent developments and actions taken by the Arctic nations and other global players are of great significance. This chapter firstly explores the Arctic's present governance system and positions taken by major actors in the region. This is then followed by an analysis of the EU Arctic policy. This contribution will conclude with potential fields for development for the EU to overcome the external and internal constraints in its action towards High North in order to stay present in the changing environment of the world's politics and to secure its place among global powers.

The chapter contribution of **Roberto Domínguez** examines the impact of the EU on Latin American policies. According to the author, this has received less attention as most research has highlighted interregional relations or the relationship between the EU and individual Latin American countries. By examining the contributions and impact of the EU to the improvement of democracy in Latin America this chapter applies an analytical framework of norm-diffusion in Latin American countries. The settings for diffusion of norms, the strength of positive and negative conditionality and the conditions of the norm-takers to embrace the orientation of EU values play a significant role here. Depending on the sub-region or Latin American country, the norm-diffusion policies of the EU have a divergent impact. This will be illustrated in three contrasting cases of Mexico, Venezuela and Honduras.

**Carolyn M. Dudek** explores in her chapter the EU external policies with regard to EU-Mercosur relations. Due to deeply embedded norms of both liberalism and



protectionism and as a result of EU's promotion of both development and regional integration, EU policy towards Mercosur marks a stark contrast to the policy of the USA in this region. This contribution applies historical institutionalism in order to comprehend how liberal tenants of EU competition policy as well as the protectionism of the Common Agricultural Policy (CAP) have shaped the EU–Mercosur relationship. In particular, Spain's aspirations in promoting EU–Latin American relations and the contribution of the EU's competition policy with regard to the Southern Cone, will be examined.

The chapter by **Róża Smolińska** addresses the link between self-perception and external perception of the EU and their role in foreign policymaking. By mainly focusing on self-perception the EU views itself often as a model for regional integration, thereby differentiating itself from other international actors. Research on external perception is increasing which the author finds a significant element in the EU's identity-building process. The EU has been an interregional actor negotiating with ASEAN and ASEM for a long period. Switching negotiations from a regional to a bilateral level has revealed a certain weakness of the EU as a model for regional integration. This contribution highlights the EU's external perception utilizing surveys conducted among the Chinese and Indian elites and media in order to examine EU's regional integration and its external perception in Asia.

Drawing primarily from societal constructivist perspectives, **Salvador Santino F. Regilme Jr.** traces the contemporary interregional EU–East Asia relations. Regarding the themes of shared identity and interests prominent in constructivism, the author argues that fundamental problems in this EU relationship with East Asia must be urgently addressed. Although enduring economic and political EU engagement is present in this region, the external perception of the East Asian public of the EU is undervalued and misunderstood. The rise of China should lead to the EU to reconcile its policy inconsistencies juxtaposed with its self-perception as a “normative power”. Engagements with ASEAN could be considered by the EU to be promising for exporting its model of multilevel governance or to enhance its actorness and legitimacy. Identification of pursuing shared interests would reinvigorate interregional relations.

The chapter by **Vivien Exartier** analyzes the impact of France, Britain and Germany on EU sanction policy on China. It is argued by the author that Britain, France and Germany affect the EU sanction policy on China due to their historic and strategic ties to the PRC and their predominance in the armament industry. Three hypotheses are formulated involving these three EU member states with regard to affecting sanction policy in China; their influence can be negligible, they can be pacesetters in influencing or they are able to influence other EU member states. To test these hypotheses the case of the lift of the arms embargo is chosen and a three-step approach to Europeanization and domestic structural change is applied. The empirical findings reveal that European countries have not, either individually or collectively, developed a coherent China policy.

Center of attention in the chapter of **Christian Burkhardt** is EU trade. According to the author, this is arguably the EU's most highly centralized policy

domain. It is for this reason that EU trade represents a significant case study for characterizing the EU as a global actor. This chapter examines EU trade policy with regard to its objectives, instruments, style and decision-making procedures. A variety of examples, including the Economic Partnership Agreement (EPA) negotiations with developing countries, will be emphasized. The author comes to the conclusion that, concerning trade policy, the EU's actions bear more resemblance to a great power than a civilian or normative power.

Whether or not the EU can be considered a leading and distinctive gender actor is examined by **Petra Debusscher**. She critically examines gender mainstreaming in EU development aid by analyzing the budget, gendered language and frame of high level policy programming documents. An evaluation of whether a shift from a conservative Women in Development paradigm to a transformative Gender and Development paradigm will be presented. This is followed by an examination of whether the EU advocates a distinctive "Europeanness" in its gender policy towards developing countries. Both analyzes are undertaken by the author to determine if the EU lives up to both European and international commitments on gender equality and can be considered to be leading by example. The author's findings however come to the conclusion that the EU is not the innovative leading gender power it claims to be.

**Anna van der Vleuten** discusses in her chapter the EU which presents itself on the one hand, as a normative power and role model to other world regions, while on the other hand, it promotes norms such as gender equality in trade and aid policies. The author finds that the norm of gender equality collides with the neoliberal norms the EU incorporates in its trade regime. The contradictions and inconsistencies which result from this clash are prone to influence EU gender policies in region-to-region relations. By examining which consequences this has for the EU and the effectiveness of its policies, the author investigates the EU interregional relations with the Southern African Development Community (SADC).

**Ingu Iusmen** critically examines the EU's role as an international children's rights actor. The promotion of children's rights as enshrined in the UN Convention on the Rights of the Child (CRC) is a key objective of EU external policy. This contribution assesses the effectiveness of external action of the EU aimed at upholding children's rights. These rights have emerged as an entrenched EU accession condition and the EU has also attempted to address children's rights violation via the employment of thematic programs part of the EU development and democratization policies. Nevertheless, according to the author, EU policy on children's rights has faced various shortcomings that are further described in the chapter. Despite these drawbacks the EU has emerged as a compelling international children's rights actor.

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# Contents

<b>Strong, Independent, and Effective: The European Union’s Promotion of the International Criminal Court . . . . .</b>	<b>1</b>
Salla Garský	
<b>The Fight Against Terrorism: A Key Global Objective for the EU? . . . . .</b>	<b>19</b>
Raphael Bossong	
<b>The EU’s Role in International Climate Change Policy-Making: A Global Leader in Decline? . . . . .</b>	<b>37</b>
Lisanne Groen, Arne Niemann, and Sebastian Oberthür	
<b>European Neighbourhood Policy and The EU’s Role as a Normative Power: The Case of Ukraine . . . . .</b>	<b>55</b>
Özgür Ünal Eris	
<b>The European Union and the Question of Palestine’s Status in the United Nations . . . . .</b>	<b>73</b>
Valentina Morselli	
<b>EU Energy Cooperation in the Neighbourhood: Tailoring the Rules of the Game? . . . . .</b>	<b>93</b>
Luigi Carafa	
<b>The Empire Strikes Back: 1989, 2011 and Europe’s Neighbourhood Policy . . . . .</b>	<b>111</b>
Julian Pänke	
<b>The EU’s Central Asian Strategy in a Globalizing World . . . . .</b>	<b>131</b>
Ellen B. Pirro	
<b>The Geek, The Bully, and The Freaks: Diversifying EU Energy Sources Through and Exercising Influence in the South Caucasus . . . . .</b>	<b>147</b>
Nelli Babayan	

**The European Union in the Northern Latitudes . . . . .** 165  
Małgorzata Śmieszek

**The Limits and Contributions of the EU to Democracy  
in Latin America: The Cases of Mexico, Venezuela and Honduras . . . .** 181  
Roberto Domínguez

**Shaping EU-Mercosur Relations . . . . .** 199  
Carolyn Marie Dudek

**Discovering the Icebergs of EU Interregional Actorness in Asia:  
The EU “Unique” Regional Integration Model in the Eyes of China  
and India . . . . .** 219  
Róża Smolińska

**It Takes Two to Tango: A Constructivist Analysis of EU-ASEAN  
Interregional Relations . . . . .** 237  
Salvador Santino F. Regilme Jr.

**Was There any Coherent European China Policy in the Case of  
the EU Arms Embargo on China? . . . . .** 253  
Vivien Exartier

**The European Union as an Actor in International Trade Relations . . . . .** 271  
Christian Burckhardt

**Gender Equality in European Union Development Policy . . . . .** 291  
Petra Debusscher

**Gender Mainstreaming in EU—SADC Relations:  
The Capabilities-Expectations Gap . . . . .** 305  
Anna van der Vleuten

**The EU and the Global Promotion of Children’s Rights Norms . . . . .** 321  
Ingi Iusmen

**Index . . . . .** 337

# Abbreviations

AEPS	Arctic Environmental Protection Strategy
ASEAN	Association of Southeast Asian Nations
ASEM	Asia–Europe meeting
ASPA	American Service-Members’ Protection Act
BEAC	Barents Euro-Arctic Council
BIA	Bilateral immunity agreement
CEU	Council of the European Union
CFSP	Common Foreign Security Policy
CLCS	Commission on the Limits of the Continental Shelf
CoC	EU Code of Conduct
COREPER	Committee of Permanent Representatives
CSDP	Common Security and Defense Policy
DRC	Democratic Republic of Congo
EC	European Community
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFTA	European Free Trade Association
EP	European Parliament
ESDP	European Security Defense Policy
EU	European Union
EUMS	Member States of the European Union
G8	Group of eight (Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States of America)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
IMO	International Maritime Organization
LMS	Like-Minded States
NAM	Non-Aligned Movement



NATO	North Atlantic Treaty Organization
ND	Northern dimension
NGO	Non-Governmental Organization
OCT	Overseas country and territory
P-5	Permanent Members of the United Nations Security Council
PRC	People's Republic of China
PSE	<i>Parti Socialiste Européen</i> (European Socialist Party, Political Group at the European Parliament)
RELEX	External Relations Directorate General, European Commission
RS	Rome Statute of the International Criminal Court
SAARC	South Asian Association for Regional Cooperation
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNSC	United Nations Security Council
US	United States of America
USGS	United States Geological Survey

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# Strong, Independent, and Effective: The European Union's Promotion of the International Criminal Court

Salla Garský

## 1 Introduction

The decades-long aspiration to establish a permanent International Criminal Court (ICC) culminated in Rome on July 17, 1998. After 3 years of formal negotiations, 120 states adopted the Rome Statute (RS), creating the ICC. After receiving 60 ratification, the ICC became operational in July 2002. The ICC is an independent, international institution, and it is novel in the realm of international criminal law because it conclusively establishes the norms of international criminal law.

The ICC has jurisdiction over genocide, crimes against humanity, war crimes, and aggression committed after July 1, 2002. These crimes are of concern to the international community not only because of the scale of their horror, but also because they are usually perpetrated by governments, or with their complicity. The ICC can take over the prosecution of individual perpetrators, if the territorial state, in which the crime has occurred, or the home country of the perpetrator is State Party to the RS. In addition, the UN Security Council can refer cases in non-States Parties to the ICC's investigation (Rome Statute, Art. 11–15). The ICC's jurisdiction is limited by the principle of complementarity, meaning that the ICC takes over the prosecution of an individual only when the state of primary jurisdiction is unable or unwilling to do so. However, the ICC challenges the traditional understanding of state sovereignty, as it has supremacy over national jurisprudence under certain circumstances, and can exercise jurisdiction over the territory and citizens of a nation state (Rome Statute, Art. 11–17). Accordingly, one may expect that states, wanting to avoid the ICC's intervention, will work harder to prosecute and prevent the gravest human rights violations themselves (Mayerfeld 2003; Crawford 2003).<sup>1</sup>

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<sup>1</sup> For an excellent introduction to the ICC and the RS, see Schabas 2011.

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So far the literature on the ICC (Struett 2008; Ralph 2007, p. 98; Deitelhoff 2009), and the IR literature in general (Keck and Sikkink 1998), has focused on NGOs when speaking of ‘norm entrepreneurs’ (Finnemore and Sikkink 1998). However, the EU has also been closely involved with the establishment and promotion of the ICC, and its role in promoting the ICC ought to be emphasized more. As this chapter shows, the EU has played a central role in strengthening the ICC. EU member states (EUMSs) started to support the ICC in 1995, at the same time when the preparations of the Rome conference commenced. All EUMSs, except France and UK, were active in a coalition of like-minded states, which supported a strong, independent and effective ICC.<sup>2</sup> After the RS was adopted, the EU’s support for the ICC has intensified. In contrast to the EU’s promotion of the universality and integrity of the RS, the US vehemently opposed the ICC during the George W. Bush administration. I argue that the EU’s policy on the ICC was developed as a response to US disapproval, and that an evaluation of the EU’s policy formation would be incomplete without taking into account US actions against the ICC.

This chapter unfolds as follows. I first outline the theoretical framework, which aims to answer the question: Why does the EU promote the ICC? Then I present an overview over the emergence of the ICC, with a focus on the Rome Conference, establishing the ICC. Since foreign policy rarely develops in a vacuum, but is affected by its global context, the fourth section shows how the common European policy was formed as a response to US opposition to the ICC. The fifth section discusses the EU’s promotion of the ICC. The conclusion will answer the research question.

## 2 Why Support the ICC?

The standard answer of diplomats and civil servants to the question of why states join the ICC is that despite the costs of ratification, states support its norms, principles, and values, and join it because the probability of getting prosecuted is low. Clearly, it is hard to find state representatives, who would openly share the idea that genocidaires should go unpunished. Thinking in rational-choice terms, preventing violence and impunity can be understood as common preferences, while in terms of the logic of appropriateness of the constructivist theory they constitute socially constructed common rules (March and Olsen 1998).

According to constructivist theorists, such as Wendt, the commitment to the ICC would be driven by common identity. Cooperative behavior and identities supporting humanitarian values are produced and internalized through the interaction of actors (Wendt 1999).

The key characteristics of the current international system started to form after WWII, and they include institutions as well as norms, rules and values

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<sup>2</sup> Washburn 1999, p. 368; Kaul 1998a, b, p. 52; Scheffer 2012, pp. 18–9; A/AC.249/1998/DP.2; A/C.6/51/SR.29.



governing state behavior. When actors share common knowledge and a normative understanding of the principles and accepted behavior supporting the ICC, they tend to act according to the 'logic of appropriateness'. In such a situation it becomes hard to justify the non-ratification of the RS.<sup>3</sup> If the commitment to the ICC were based on common identities, then all established democracies should be ICC State Parties by now. But neither the US nor Israel, for instance, intend to ratify the RS and some states, like the Czech Republic, Chile and Japan have done so with delays. At the same time, countries with a developing or non-existing rule of law-tradition have decided to join the ICC. For these reasons, the ratification of the RS cannot be simply explained by the logic of appropriateness.

In contrast to constructivists, I argue that the RS as a negotiated multilateral treaty does not necessarily reflect common identities, but that it is a natural development of international law, and built on the regime of the United Nations (UN). Accordingly, most states' commitment to the ICC is based on rational calculations (Keohane 1984, pp. 78–9, 100ff). The commitment to the ICC, however, differs from traditional international cooperation in that states' participation to this institution does not aim to maximize concrete payoffs (Simmons and Danner 2010, p. 226; Kelley 2007, p. 576). Yet, on a global scale the benefits of the ICC are manifold. Unfortunately, Nazi war crimes marked more the starting point than the '*never again*' for large-scale human rights abuses. It is therefore financially and politically cheaper to have a permanent ICC, than to establish further *ad hoc* courts. The ICC also overcomes the problems of selectivity and retroactivity of *ad hoc* courts (such as the Nuremberg trials and the International Criminal Tribunal for Former Yugoslavia) and, through the specificity of the RS, the codification of international criminal law. Altogether, the absolute gain of the ICC is the formation of a permanent, legitimate institution to punish the masterminds behind grave human rights violations.

Consequently, the ICC performs as an international regime:

“[b]y using hard law to order their relations, international actors reduce transaction costs, strengthen the credibility of their commitments, expand their available political strategies, and resolve problems of incomplete contracting.” (Abbott and Snidal 2000, p. 422; see also Keohane 1984, p. 90).

Although joining the ICC has no direct consequences for most states, the ratification of the RS generates costs. First, the RS constitutes regulative norms, as it sets standards for state behavior in that grave human rights abuses must be punished (Wendt 1999, p. 165; Chayes and Chayes 1995, pp. 115–6). Second, the domestic implementation of the RS often requires time-consuming amendments of national laws, and third, the enforcement of the ICC's mission relies on the shoulders of the States' parties, as they are the main financiers of the court, and obligated to cooperate with the ICC (Kirsch 2008). Lastly, despite the costs, staying outside the ICC might turn out to be even more costly, as it may result in a negative reputation, as the ICC represents the values of the UN regime.

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<sup>3</sup> Wendt 1992, pp. 399, 417; see also March and Olsen 1998, pp. 951–2; Deitelhoff 2009, pp. 43–5, Kratochwil 1989.

I argue that for the EU, the commitment to, and the promotion of, the ICC is a rationally calculated decision and increases the EU's domestic and international legitimacy for the following reasons. First, the ICC corresponds with European identity and interests and is therefore worthwhile its support. The EU is founded on freedom, democracy, respect for human rights and the ideal of unity and it is consistent that its international agenda emphasizes international institutions and multilateralism. When it comes to the ICC, EUMSs do not have much to lose, but a lot to win with their support. The probability that the ICC would investigate any of the EUMSs is low and, hence, the gain of promoting the ICC is domestic and international reputation as a promoter and supporter of humanitarian values, such as international criminal law. Such a reputation may increase the EU's influence internationally.

Second, the ICC offers the EUMS an opportunity to strengthen the Common Foreign and Security Policy (CFSP). If the EU wants to portray itself as a global actor, it needs to act in unison and establish common preferences at times (Moravcsik 2010, p. 170). This has not always been uncomplicated (Grant 2009, p. 8ff). The fact that the coordinated EU policy on the ICC started at the time when the US unsigned the RS and initiated its campaign against the ICC implies that US policies served as a trigger to deepen the CFSP (Groenleer and Van Schaik 2007, p. 970).

Third, through its global campaign for the ICC, the EU can engage in what I call normative binding. The ICC is a successor of post-WWII institutions, which were established by the hegemonic power of the US (Ikenberry 2001). However, after the end of the Cold War, US policy was increasingly dismissive towards international institutions, contrary to most states continuing to support them. For this reason, one could assume that by showing their support for multilateralism through the ratification of the RS, the EUMSs wanted to outlaw unilateral politics of the US and mainstream the ICC. As a result, even those, who have not committed to the ICC, need to respect the rules and norms it sets. When the norms of the ICC are internalized, mutual agreement is not a necessary condition to constrain state behavior (Habermas 2000, p. 36). Accordingly, the more states join the ICC, the more generalized its norms become and the more difficult it becomes for reluctant states to ignore the institution. Hence, through normative binding, multilateralists can outlaw and bind the behavior of unilateralists. Simultaneously, an active supporter of multilateralism, in this case the EU, can enhance their legitimacy through the promotion of the common good. To summarize, in comparison to hard power, which is based on either military or economic capabilities, and is exercised through coercion or inducement, the promotion of binding norms and international institutions increases legitimacy, "an intrinsic aspect of power." (Ikenberry 2006, p. 235).<sup>4</sup>

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<sup>4</sup>This chapter does not engage in the debate on the nature of the EU's power. However, for the discussion on civilian and normative power Europe, see Duchêne 1973; Maull 1990; Manners 2002; Smith 2005; Diez and Manners 2007; Forsberg 2011.

### 3 The Dynamics of the Establishment of the International Criminal Court

As the preparations of the RS commenced in 1995, the EU voiced its support for the establishment of the ICC.<sup>5</sup> However, the EUMSs did not have a common position to the ICC prior to the Rome conference (EP, OJ C 320, 0194; EP OJ C 020, 0161). This was because the UK and in particular France did not support as wide a jurisdiction of the ICC as most other EUMSs did (A/AC.249/L.3). Despite the lack of a common European Policy on the ICC, the EUMSs did agree on the rough characteristics of the RS. They intended the ICC to be a permanent and independent institution, and emphasized the principle of complementarity, clear definitions of crimes, cooperation with the ICC, and the importance of the rights of the accused. Furthermore, the widest possible ratification of the RS was considered as central (A/C.6/50/SR.25; A/C.6/51/SR.26; A/C.6/52/SR.11).

From many perspectives, the establishment of the ICC was a highly complex diplomatic undertaking. The Rome conference was the largest UN codification conference ever held before, and the matter at hand, namely what would be the best way to prosecute individuals for grave human rights abuses, was not just politically challenging, but also a complicated legal matter (Lee 1999, p. 21). However, in terms of coalitions of states, the Rome conference was not characterized by a multitude of competing caucuses, which usually complicate UN-negotiations. In fact, only three groupings of states were identifiable: The biggest and most organized group of states was the coalition of Like-Minded States (LMS) of middle powers and developing countries, steered amongst others by Germany, Netherlands, Canada, Australia, Argentina, and South Africa. The LMS were committed to negotiate a strong and effective ICC, which jurisdiction would be independent of the UN Security Council (UNSC).

Germany, as one of the driving forces behind the LMS, was also the leader of the EU's agenda in Rome. The German agenda on the ICC was based on four 'building-blocks': namely universal jurisdiction, complementarity, an independent prosecutor, and a strict obligation to cooperate with the ICC. Germany was concerned about the reach of the ICC, and hoped it would become part of the UN for the sake of its universal support. Yet, during the negotiations it became obvious that a multilateral treaty without universal jurisdiction was a more realistic option.<sup>6</sup>

The Permanent members (P-5) of the UNSC (without UK and later also France) formed the heaviest counterweight for the LMS, as they wanted the UNSC to control the ICC's jurisdiction. If the LMS wanted to have a 'strong and independent' ICC, the goal of the American delegation was to negotiate a 'fair and efficient' court. The core policy of the US on the ICC jurisdiction was to gain control over it. And the UNSC, enabling the US to veto any referral to the ICC, should exercise

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<sup>5</sup> A/C.6/50/SR.25; A/C.6/51/SR.26; COM (95), 567; EP OJ C 126, 0015.

<sup>6</sup> Washburn 1999, p. 368; Kaul 1998b, p. 52; Scheffer 2012, pp. 18–9; Kaul 4.8.1997; A/AC.249/1998/DP.2; A/C.6/51/SR.29.

this control.<sup>7</sup> The third coalition of the conference was formed by most of the Non-Aligned Movement (NAM) states, which did not want the UNSC to exercise control over the ICC, and preferred a weak court.<sup>8</sup>

The dynamics of the Rome conference favored the EU. Most of the coordinators of the conference shared the vision of an independent ICC, to which the American agenda was an antipode. The American delegation had to build support for each of its positions in time-consuming bilateral negotiations, while most other states combined their powers in groups. In addition, due to the opposition of several domestic actors to the ICC, the US-proposals came often late to the negotiation table and failed to gain support or were displaced by more carefully drafted proposals, often supporting the agenda of the EUMSs (Scheffer 1999a, p. 15; Scharf 1999, p. 102).

The outcome of the Rome conference was based on a last-minute compromise on the ICC's jurisdiction, and neither the LMS nor the P-5 were able to impose all their proposals. A European proposal on automatic jurisdiction, although supported by 85 % of states, was 'negotiated away' at the last-minute, and replaced by a state consent- oriented approach of the P-5 (Kaul 1998b, pp. 371, 373). If the European delegates had the feeling that their proposal was negotiated away, the American delegation felt that the final version was 'mysteriously' prepared by a small group of LMSs behind closed doors (Scheffer 23.2.1999; Scheffer 1999, p. 20).

In the evening of July 17, the Chair of the Committee of the Whole proposed to adopt the RS without a vote. As the last attempt to hinder the adoption, the US called for a non-recorded voting, but the RS was adopted with 120 votes to 7, with 21 abstentions.<sup>9</sup> This was a "diplomatic defeat of epic proportions" (Brown 2000, p. 66) for the US, which joined China, Cuba, Iraq, Israel, Yemen, and Qatar in voting against the ICC. Indeed, the Americans had reasons to feel disappointed and overrun by EUMSs:

"the middle powers—and especially the middle powers in Europe—who controlled the ICC process were less concerned with punishing serious human rights abusers than they were with increasing their relative influence by inhibiting and controlling militarily powerful nations." (Goldsmith 2003, pp. 100–1; see also Lee 1999, p. 26; Arsanjani 1999, pp. 22–3).

It was not the goal of the EU to rule out the US, but the independence of the ICC was more important for the EUMSs than having the US onboard, especially because it was clear that the US would not ratify the RS anytime soon (Kaul 1998a, pp. 129–30).

At the Rome conference, the European agenda profited considerably from an active NGO lobby. The NGOs, financed by the EU, provided daily updates of the on-going negotiations. This was helpful for small delegations, which did not have enough delegates to participate in every working group. It is particularly interesting that the EUMSs, the EU, and Canada were the only contributors to a UN Trust

<sup>7</sup> Scheffer 13.11.1997; A/CN.4/458 and Add. 1–8, 85; A/CN.4/L.488. For the overall agenda of the US in the Rome conference, see: United States Delegation 26.3.1996; Scheffer 1999a, p. 19; United States Delegation 23.3.1998; A/C.6/50/SR.27; A/C.6/52/SR.13.

<sup>8</sup> Washburn 1999, 367; A/CONF.183/ 13 (Vol. II), 73; Kirsch and Holmes 1999, 4–5.

<sup>9</sup> A/CONF.183/C.1/SR.42; A/CONF.183/SR.9; Scheffer 2012, pp. 222–4.

Fund that allowed 52 developing states to send their delegations to Rome.<sup>10</sup> This shows that the EU had a great interest in bringing as many small countries as possible to the conference (Groenleer and Rijks 2009, p. 178; Struett 2008; Deitelhoff 2009). If the plan was to balance the sovereignty-oriented interests of the US with a coalition of small and middle powers, and push through a strong ICC, it was successful.

#### 4 The Struggle on the ICC: US v. EU

After the Rome conference, “The European Union was extremely satisfied with the outcome of the Conference.” (A/C.6/53/SR.9). The Clinton administration, in turn, announced that it was “not prepared to go forward with this treaty in its current form” (Scheffer 23.7.1998). Nevertheless, on the day the RS closed for signatures, President Clinton signed it, but he did not recommend the ratification to his successor (Murphy 2001, p. 399).

As George W. Bush was sworn into office a month later, it became clear that his administration would not support multilateralism and international institutions (Black and Borger 30.3.2001). Bush quickly rejected the Kyoto protocol and, perhaps as a reaction to this disappointment, the EU adopted a Common Position on the ICC on June 11, 2001—the same day Bush started his first official visit to Europe (CNN 11.6.2001). With the Common Position, EUMSs committed to the widest possible implementation and ratification of the RS, which would enable an early establishment of the ICC. They also acknowledged the ICC as an essential means to promote human rights and the principles of the UN. This was clearly not in line with the policy of the G.W. Bush government (CEU 2001/443/CFSP; A/C.6/56/SR.27).

When the RS received sixty ratifications, allowing the ICC to become operational in July 2002, the Bush administration was all but thrilled. The US government considered the ICC as an illegitimate, unaccountable, and unchecked power, open to political abuse: “The Europeans may be comfortable with such a system, but that is one reason why they are Europeans and we are not” (Bolton 1999). Hence, the US launched a ferocious campaign against the ICC, because it arguably undermined the role of the UNSC and threatened American sovereignty with its potential jurisdiction over Americans.<sup>11</sup>

As the first measure against the ICC, the Bush administration withdrew the US signature to the RS in May 2002, which is unconventional, but a legally admissible act. The EU quickly expressed its disappointment in the US action (CEU 8864/02). At the level of the UN, the US attacks against the ICC started in June, as the entry into force of the RS approached. At that time, the UNSC was about to renew

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<sup>10</sup> A/CONF.183/2; Lee 2002, 9; A/C.6/51/SR.27; A/AC.249/CRP.1/Rev.1; A/Res. 51/207; A/Res. 52/160.

<sup>11</sup> Grossman 6.5.2002; A/C.6/59/SR.27; Cummins and Stewart 2003, pp. 151–3.

the mandate of the UN peacekeeping mission in Bosnia and Herzegovina (UNMIBH). The US vetoed the extension of the UNMIBH mandate, because other UNSC members were not willing to adopt a resolution to guarantee immunity to all American peacekeepers (Murphy 2002, 727; S/PV.4568). In particular, the EU criticized the US attempt to secure immunity for its peacekeepers. As Commissioner Patten put it:

“Why should people make concessions to America if the United States is going to walk away in any case?” He continued with noting that the US “is happy enough to sit in judgment on others—indeed it is already doing so as part of the International Criminal Tribunal for the Former Yugoslavia—and it is ironic that it takes particularly tough positions in that context. But the United States now seems to be saying it must never itself be put in the dock.” (Patten 9.7.2002).

Eventually under strong pressure, the US agreed to settle with an immunity resolution that had to be renewed every year, and the UNSC extended the mandate of the UNMIBH.<sup>12</sup>

In August 2002, Bush signed the American Servicemembers’ Protection Act (ASPA), which prohibited cooperation with the ICC and restricted US participation to UN missions. The Europeans started to call the ASPA as The Hague invasion act, because it authorized the President to use all means necessary to release Americans held captive by the ICC.<sup>13</sup> When the ASPA was being prepared, the EU Council urged Bush to take into account its concerns about the legislation (CEU 9717/02), and revised the EU Common Position to the ICC. As a response to the US campaign, the EU’s revised common position to the ICC of 2002 paid more attention to the universal ratification of the RS than the first one, and outlined how EUMSs should provide political, technical, and financial support for the ICC. It did not mention the US opposition, but it noted: “States considering to ratify the Statute or to cooperate with the Court shall be encouraged to inform the Union of difficulties encountered on that path” (CEU 2002/474/CFSP).

The most invasive part of the US policy against the ICC was the drive for Bilateral Immunity Agreements (BIAs, aka Art. 98 Agreements), aimed to guarantee that no country would extradite American citizens to the ICC. An unparalleled, worldwide campaign was launched in the summer of 2002, as American diplomats started to approach their host governments with the quest to get them to sign a BIA. The ASPA prohibits US military assistance to ICC States Parties (except major military allies) unless they sign a BIA and, hence, the main inducement to obtain BIAs was money. In December 2004, President Bush signed the Nethercutt Amendment, prohibiting also development aid for countries not having signed a BIA. Accordingly, in the

<sup>12</sup> S/Res.1422; S/PV.4563; S/PV.4568; Draft Resolution S/2002/712; Cummins and Stewart 2003, p. 157; The UNSC renewed the Resolution 1422 12.6.2003 with S/RES/1487 (France, Germany, and Syria abstained), but in 2004, the US failed to gain support for a second renewal. See: Cunningham 22.6.2004; Department of State 23.6.2004.

<sup>13</sup> U.S. Congress H.R.4775; Scheffer 2001–2002, pp. 48–9; Franck and Yuhan 2003, p. 532.

following years, developing countries all over the world lost, or were threatened to lose, millions of dollars of military and development aid unless they would yield to US demands.<sup>14</sup>

The US campaign horrified many Europeans. Shortly after Romania had signed the first BIA on August 1, 2005, other EU-candidate countries, many of which also wished to become NATO-members, asked the Commission whether it could consider the BIAs being compatible with the RS. The Commission advised the EUMSs not to sign one. Of the EUMSs, Italy and the UK were willing to accommodate the US concerns, and were supported by Spain, Portugal, and Denmark. In contrast, Germany, backed by many other EUMSs, vigorously opposed the BIAs.<sup>15</sup> On September 30, the EU Council published guiding principles, stating:

“Entering into US agreements [...] would be inconsistent with ICC States Parties’ obligations [...] and may be inconsistent with other international agreements [...]”<sup>16</sup>

The message was considered as an important policy direction by many non-EUMSs, but the Americans were irritated by the EU’s policy: “From our perspective, the EU is imposing an unfair choice upon our friends and allies, particularly those countries seeking to join the EU.” (Bolton 3.11.2003). According to the US Department of State:

“suggesting that EU candidate countries hold off any decision until the EU makes some decision of their own [...] in our view, are inappropriate in seeking to direct candidate-country foreign-policy choices in advance of EU accession.” (Reeker 13.8.2002).

Already on August 16, 2002, US Secretary of State Powell had sent letters to European governments, urging them to sign a BIA (Becker 26.8.2002). To the dismay of the US, neither EUMSs nor EU candidate countries ratified a BIA (only Romania signed one). While the US used direct economic coercion, there is no evidence that the EU compensated financial losses for states willing to resist the pressure of the US, nor was the relationship between the EU and those, who signed the agreement, affected negatively (Kelley 2007, p. 575).

## 5 The EU’s Support for the ICC

### 5.1 *The Ratification Campaign*

Over time, the universality of the ICC has been of central importance for the EU (A/C.6/53/SR.9; A/C.6/54/SR.11; A/C.6/55/SR.9; A/C.6/56/SR.25). US opposition did not scare the Europeans, but rather opened a window of opportunity for the EU to profile itself in the international arena:

<sup>14</sup> H.R. 4818; CICC Quotes; CICC Summary; CICC, Countries Opposed; Ribando 2007, p. 5; Amupadhi 31.7.2003; Kristof 16.10.2005; HRW, 30.6.2003; Bolton 3.11.2003; Reeker 13.8.2002.

<sup>15</sup> For a thorough discussion on the common policy formation of the EU, see Thomas 2009 and Thomas 2012.

<sup>16</sup> CEU 12134/02; EP 25.9.2002; Thomas 2009; Amnesty International, 11.10.2002; EP P\_5TA (2002)0449.

“We disagreed with the United States over Kyoto, but we didn’t sit down and wait. We ratified and encouraged others to do so as well. The same thing has happened with the International Criminal Court” (Patten 3.7.2002).

Along these lines, the 2002 and 2003 common positions on the ICC state that the EU and the EUMS “shall contribute to the world-wide ratification and implementation of the Statute [. . .].” (CEU 2002/474/CFSP: CEU 10400/03). In order to do so, the EUMSs should raise the issue of ratification and implementation of the RS in negotiations and political dialogues with third states, groups of states, and regional organizations, and cooperate with other stakeholders. The EUMSs were also called to contribute technical and financial assistance for the ratification campaign, and to coordinate and develop their strategies and policies (CEU 2002/474/CFSP).

Hence, the ICC has become an important issue of EU foreign policy. The EUMSs channel their support for the ICC through the CFSP, while the Council and focal points in all EUMS coordinate the actions (CEU 5742/04; CEU 2001/443/CFSP). Consequently, ratification of the RS has been an important discussion point in all enlargement negotiations and accession phases (See e.g. CEU 10229/03; General Secretariat of the Council 2008). All EUMSs and candidate countries, except Turkey, are ICC-States Parties, and Europe is the best represented region in the ICC.<sup>17</sup> In its external relations, the EU brings up the ICC actively, including in negotiations with third countries such as Russia, China, and India. The Cotonou Agreement, a binding legal instrument, applying to nearly 80 ACP-countries, (European Commission Directorate-General 2006, p. 9), and many of the European Policy Action Plans and Cooperation Agreements, which set the agenda for EU cooperation with a particular country, include clauses for the ratification of the RS (see e.g. European Union, European Neighborhood Policy). Hence, while multi- and bilateral donors increasingly link their development aid to a good human rights account, the EU also encourages states to ratify the RS (Piron and O’Neil 2005). In addition to formal agreements, the EU regularly encourages non-ratifiers to join the ICC with diplomatic démarches (Portugal 2007; General Secretariat of the Council 2008, 10).

The role of pro-ICC NGOs has been central in the EU’s promotion of the RS. Between 2000 and 2008, the European Commission used €36 million to support the ICC and international criminal justice. Since 2003, it has been the main financial supporter of all major NGOs, working on the ratification of the RS.<sup>18</sup> In addition, NGOs receive significant financial support from EUMSs. Even though €36 million is a negligible fraction of the EU budget, it is wisely invested money, if the EU can use it to influence something that it would otherwise be unable to affect. That is to say that through the NGOs, the EU can access levels of third states’ political and social life, which it as a supranational organization cannot. In their diplomatic

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<sup>17</sup> 91 % of European countries have ratified the RS, while 80 % American, 63 % African, and only 33 % Asian and Oceania countries have joined the ICC. See United Nations Treaty Collection; United Nations Statistics Division.

<sup>18</sup> General Secretariat of the Council 2008, p. 16; European Commission 2008.



undertakings, neither the EU nor EUMS could possibly start to lobby domestic parties, policy-makers, or civil society of third countries. Thus, the funding for the NGOs can be assessed as a strategic move to advance the EU's interests in the case of the ICC.

The Japanese ratification of the RS is often mentioned as a success of the EU's ratification campaign. In cooperation with NGOs, the EU worked actively on the Japanese accession within the framework of 'EU-Japan ICC dialogue.' The dialogue included several conferences with legal experts from the EU and EUMSs, and as Japan's ratification depended on its financial contribution to the ICC, the EU

"played an important role [. . .] in finding agreement on the scale of assessments for Japan's contribution to the ICC's budget, which was influential on Japan's decision to ratify."  
(General Secretariat of the Council (2008); Wellenstein 1.12.2004).

## 5.2 *The EU and the ICC in the International Arena*

Instead of sympathizing with US concerns in the UN framework, the EU did quite the opposite by successfully promoting the adoption of a relationship-agreement between the UN and the ICC (A/C.6/58/SR.9; A/C.6/59/SR.6; A/59/PV.65). At the UN, the G.W. Bush administration did its best to sabotage ICC-related issues. It succeeded in securing that the UN would not pay for any expenses arising from the cooperation with the ICC, and in deleting all referrals to the ICC in UNSC resolutions for a long time. However, in the UN General Assembly the EU was able to isolate many US attempts.<sup>19</sup>

The EU also prepared an EU-ICC cooperation and assistance agreement, which was signed in April 2006. It is remarkable as the first legally binding agreement between the EU and another international institution, and as the first agreement between the ICC and a regional organization. According to the agreement, the EU offers gratis expertise and assistance of its personnel, and commits to provide facilities and services, as well as field level support for the ICC. The contract regulates only cooperation between the EU and ICC, and not between the ICC and EUMSs.<sup>20</sup>

When the UN started debating the Darfur crisis in 2005, the EU pleaded for a UNSC referral of the situation to the ICC (CEU 6072/05). For the US, however, the ICC was the last resort, and it offered to sponsor an ad hoc tribunal for the investigation and prosecution of the crimes committed in Darfur (Crook 2005; S/PV.5158). Other UNSC members and the EU opposed another hybrid court,

<sup>19</sup> A/RES/58/318; A/C.6/59/SR.6; A/C.6/59/SR.27; A/RES/58/79; A/C.6/58/SR.9; A/C.6/58/SR.10; A/C.6/58/SR.13.

<sup>20</sup> Art. 13 and 14, Agreement between the International Criminal Court and the European Union on cooperation and assistance.

and the UNSC referred the Darfur case to the ICC on March 31, 2005.<sup>21</sup> The resolution vastly strengthened the ICC as it rejected the creation of another hybrid tribunal, which would weaken the ICC's legitimacy. And even though the US would never join the ICC, from now on it was impossible to outlaw the ICC.<sup>22</sup>

Around the same time as the Darfur referral, the policy on the ICC was put in question in US domestic politics. As a result, series of waivers relinquished the ASPA-sanctions, and the BIA campaign ended on March 11, 2009 as the Nethercutt Amendment expired (Ribando 2007, p. 10; Gardner 2003, p. 3; Taft et al. 2009, pp. 13–14). When the UNSC referred the situation in Libya to the ICC in February 2011, the Obama administration voted for the adoption of the resolution (SC/10187/Rev.1; S/RES/1970). Although the Obama administration has revised the US policy on the ICC from clear cut opposition to friendly cooperation, the approximately 103 BIAs remain in force.<sup>23</sup>

The EU has repeatedly expressed its support for the ICC investigations in Darfur, and condemned those who do not cooperate with the ICC (European Union 22.7.2010; European Union 27.8.2010). It has also assisted ICC-investigations in Darfur and in the DRC by, for instance, facilitating local contacts and providing reports on requested locations (General Secretariat of the Council 2010, p. 22). After the European External Action Service (EEAS) was launched in December 2010, the Council replaced the 2003 common position by a decision on the ICC in March 2011. While the 2003 common position concentrated mostly on the ratification, the 2011 common position reflects the current situation of the ICC. Many countries, which have joined the ICC, have not implemented the RS, and cooperation with the ICC, in particular the implementation of arrest warrants, leaves room for hope. Hence the common position pays attention to state cooperation with the ICC, implementation of the RS, and the principle of complementarity.<sup>24</sup>

The 2011 Common Position was followed by a Revised Action Plan, which assigned the High Representative for Foreign Affairs and Security Policy to share the coordination on the ICC with the EU-Council. According to the Action Plan, the EEAS will mainstream the ICC across its departments, and the EU will provide political and diplomatic support to the ICC in the international arena. As a novelty, the effects of the ratification campaigns and state cooperation with the ICC should be monitored, and the EUMS should ensure that the media and public understand the institution and mission of the ICC (CEU 12080/11). Hence, the EU

“will continue to support the International Criminal Court both politically and diplomatically, as well as logistically and financially. In particular, the EU will keep on promoting the independence of the Court and helping to ensure its effective and efficient functioning.” (European Union, 14.12.2011).

<sup>21</sup> The US abstained in the voting. See A/Res/1593; SC/8351; Cryer 2006.

<sup>22</sup> HRW 8.2.2005; Kristof 2.2.2005; Ralph 2007, pp. 175, 176–8; Power 10.2.2005.

<sup>23</sup> Koh 2010. For countries that have signed a BIA with the US, see Georgetown Law Library, International Criminal Court—Article 98 Agreements Research Guide.

<sup>24</sup> CEU 2011/168/CFSP; see also CEU 5731/10, 24; CEU 17218/09; CEU 16841/09.

## 6 Conclusions

In the beginning of this chapter, I argued that the EU has supported the ICC as a counter-reaction to US policy. As the empirical parts of this chapter demonstrate, the EU's campaign for the ratification started at the same time when the US launched its anti-ICC campaign. Also, the open and frequent criticisms of the EU to the US policy support the argument. The UNSC referral of the Darfur-case to the ICC provides preliminary evidence that the EU and the EUMS have been successful in their campaign for the promotion of the ICC.

The ICC has helped to advance common European foreign policy making. It has offered a neat framework for the EU to expand its multilateral ideas outside its borders—who wants to say that punishing genocide is not moral? It has also opened a window of opportunity for the EU to take the lead in the international arena:

“The fact that the world's greatest military power is not with us is a blow—there is no denying this—but this is not the first time in recent history that Europe has taken the lead and set the international agenda. Many wrote off the Kyoto Protocol after the withdrawal of the United States, but the EU pressed on and ratified Kyoto, setting an example which was followed by the global community [. . .]. We intend to do the same to make the ICC a working institution for global justice.” (Byrne 3.7.2002).

Hence, the American failures in the field of international law may have enabled the EU to build an international coalition in favor of the ICC that is able to bind future unilateral undertakings of the US. One of the most impressive examples of this coalition's expansion can be found in Asia, where the US traditionally holds political influence, and the EU maintains only economic relations. The EU's successful campaign for Japan's ratification, but also the fact that all South American countries have ratified the RS, has introduced a common point of interest that offers a new basis for cooperation. It is remarkable that 121 states share a concept of the ICC that the US so immensely opposed. If these states identify the EU as the promoter of the ICC, it can increase the EU's international legitimacy.

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# The Fight Against Terrorism: A Key Global Objective for the EU?

Raphael Bossong

## 1 Introduction

The mobility of terrorists and multiple targeting opportunities require a coordinated international response. Over the last years, the risk of safe havens for international terrorists has been illustrated by the growth of Al Qaeda affiliated groups in Africa and parts of the Middle East (Bergen et al. 2011). For these reasons—but also in order to demonstrate political solidarity with the US—EU leaders committed to a comprehensive counter-terrorism policy in the aftermath of 9/11, which included efforts beyond the borders of Europe (Council 2001). Over the following years, this ambition was underlined in the European Security Strategy and the European Counter-terrorism Strategy (Council 2003a, 2005), which stress the global dimension and thematically interconnected fight against terrorism.

However, one could also criticize the EU's international counter-terrorism efforts. First, the EU runs the risk of replacing widely beneficial objectives, such as the promotion of international law and economic prosperity/free trade, with narrow security concerns, which may undermine its international standing as a 'normative power' (Manners 2006). In other words, security-related assistance may have pushed the EU's global role into a undesirable authoritarian direction (Youngs 2010)—or the EU may be unable to maintain the critical balance between solid support for the US and its desired mediating or brokering role in the Middle East or other parts of the world (Smith 2011, p. 610–612). Second, extending the reach of 'intra-European' security policies, such as on criminal justice cooperation, may allow security professionals to elude domestic political and legal accountability mechanisms (Wagner 2011, pp. 136–157).

In order to provide an adequate empirical foundation for this debate, this chapter surveys the external counter-terrorism policy of the EU. To date, the limited academic

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literature on this issue area remains divided into specific aspects, such as EU external missions (de Vries 2008), transatlantic relations (Salter 2010), financial assistance (Wennerholm et al. 2010) or relations with Northern Africa (Eder 2011). The chapter proceeds in three parts. A first brief part provides a historical introduction to the EU's international counter-terrorism efforts. The second main part surveys of three different strands of the EU's current external counter-terrorism policy: 1. engagement in external conflicts that are likely to fan international terrorist activity, 2. support for an global counter-terrorist regime, 3. creation of a regional protective regime against terrorism. The third part assesses the impact of the institutional changes of Lisbon on the EU's fragmented external counter-terrorism policy, and outlines current initiatives for reinforced security and development assistance programs in Sub-Saharan Africa that focus on 'Al Qaeda in the Islamic Maghreb'.

## 2 A Short History of the EU's Global Counter-Terrorism Policy

International terrorism is not a new issue for security cooperation both within and beyond the borders of Europe. The so-called *TREVI* group was founded in 1976 to respond to a wave of Palestinian terrorism that struck various European countries. *TREVI* also developed a network of extra-European partners, the so-called Friends of *TREVI*. While there is no publicly available evidence as to their work, it seems that the external partners included Morocco, the US and Canada (Bunyan 1993, p. 15). Moreover, *TREVI* was only one of several informal groups for international police, intelligence and counter-terrorism cooperation that sprang up since the 1970s (Le Jeune 1992, pp. 29–30). In the early 1980s member states of the European Communities established another forum for counter-terrorism coordination, the so-called Counter-terrorism Committee (COTER). This committee concerned itself with political response strategies to attacks and hostage crises and provided a link between the EU and various international conventions on terrorism.

In 1993 the Treaty of Maastricht transformed *TREVI* into the so-called Terrorism Working Group, which would operate under the Union's Third Pillar for Home and Justice Affairs. COTER would remain unchanged under the separate second pillar for EU Foreign and Security policy. This divide under two different pillars did not mean, however, that international counter-terrorism would be more neatly delimited. For instance, by the mid-1990s the Clinton Administration proposed the New Transatlantic Agenda (NTA) that had an important counter-terrorism component and included proposals for enhanced information exchanges, more stringent financial controls and cooperation in matters of non-proliferation.

These experiences and structures set a path of the EU's response to 9/11. Policy-makers committed to a 'comprehensive' response that should include both internal and external security measures (den Boer and Monar 2002, p. 26). Yet it soon emerged that cooperation in matters of Justice and Home Affairs would take the lead both inside and outside the Union's geographic borders (Bossong 2008, p. 37). This was fuelled by earlier ambitions for the creation of the so-called Area of

Freedom, Security and Justice within the EU as well as by US demands for increased security cooperation (Rees 2006) on issues such as border security, financial surveillance and asset freezes, and data exchange for criminal prosecutions.

The EU's focus on police instruments deepened in the aftermath of the attacks of Madrid and London in 2004 and 2005. Both attacks were carried out by long-term residents or EU nationals, which accentuated fears about ideological and violent 'radicalization' within European societies. Potential external drivers or justifications for the attacks, such as the Iraq war, were not discussed at the EU level (e.g. Council of the European Union 2004a). This is not to say that the wider international dimension of the fight against terrorism was completely neglected. After the London bombings in summer 2005, a new integrated EU counter-terrorism strategy stressed the need for further cross-cutting and cross-border efforts (Council 2005). However, the main thrust of the EU's counter-terrorism efforts remained centered on measures for police and justice cooperation.

Over the last 6 years one could detect a 'maturation' period, whereby the existing EU counter-terrorism agenda continued on an incremental path, aided by the occasional discovery of terrorist plots. For instance, the failed attempt to blow up several transatlantic flights in 2006 (The Guardian 2008) led to a reinforcement of existing EU aviation security rules, whereas the 2010 shooting of two US soldiers at Frankfurt airport by a lone radical (The Guardian 2010) underlined the need to work on internal radicalization processes and internet surveillance. Aside from such short-term policy-making dynamics, since 2010 one could identify new initiatives with regard to the international dimension of EU counter-terrorism policy (Council 2010a). This mainly concerned financial assistance to fragile states where 'affiliates' of Al Qaeda threaten to take hold, such as Pakistan, Yemen and states in the Sahel zone or the Horn of Africa. At the same time, the ratification of the EU Lisbon Treaty cleared the way for the creation of an integrated European External Action Service (EEAS) and reformed decision-making structures in justice and home affairs cooperation. The effects of these changes are discussed in the third part of chapter.

### **3 EU External Counter-Terrorism from a Cross-Cutting Perspective**

From an analytical perspective, one may divide the EU external counter-terrorism policy into the following areas of activity:

1. Engagement in conflicts that could contribute to international terrorist activity
2. Support for an global counter-terrorist regime
3. Construction of a regional protective regime against terrorism

### ***3.1 Engagement in External Conflicts That Could Contribute to International Terrorist Activity***

Analysts agree that the military missions under the Common Security and Foreign Policy (CSDP) have not been linked to the fight against international terrorism (Shepherd 2006; de Vries 2008). EU engagements in large ‘hot wars’, such as Afghanistan, Iraq or Libya, have been and remain inconceivable, as the EU lacks the required military capabilities and political will for such high risk interventions. The proliferation of EU military missions in the Balkans and different parts of Africa pursued much more limited objectives of stabilization or cease-fire monitoring. These missions were also driven by politically less contentious concerns than terrorism, such as support for the UN, or humanitarian or refugee crises. The current EU naval mission in the Red Sea does not run contrary this assessment. The mission predominantly revolves around limited economic objectives and the containment of piracy, whereas a direct engagement with the Al Shabab militia, which can be considered as an Al Qaeda affiliated terrorist organizations, has been avoided. At most, international naval operations off the coast of Somalia have the indirect effect of deterring pirates from forging closer links with Jihadi groups (Shortland and Vothknecht 2011). The absence of an outright EU ‘War on Terror’ can be explained by the long experience and preference of European governments with combating terrorism by non-military means (Rees und Aldrich 2005).

However, civilian EU missions also form part of the CSDP and could help to reduce international terrorism by promoting institutional reforms in authoritarian and fragile states. Over the 1990s, the conflicts in Bosnia attracted Mujahidin from Afghanistan (Mincheva und Gurr 2010). Weak justice institutions, easy availability of weapons and transnational organized crime networks added to the mix for a potential ‘safe haven’ for terrorists. This chapter cannot survey the achievements and limitation of the various EU police and rule of law missions that grew since 2003 in the Western Balkans. Suffice it to state here is that the fight against terrorism has not featured in the official mandates or publicly accessible mission documents. Right after 9/11 the US government forcefully argued that sanctuaries for Al Qaeda should be closed in the Western Balkans (Innes 2005, p. 228), i.e. before a more substantive EU presence could take hold. Since then, however, the principle of ‘local ownership’<sup>1</sup> and the contested limits of legitimate armed resistance, such as in Kosovo (Pokalova 2010, pp. 442–443), conflict with the need of intervening powers to address cases of political violence, crime or terrorism.

Other EU civilian missions that could be relevant for structural and institutional reforms with a link to counter-terrorism, such as the training missions in the Palestinian Authorities, Iraq and Afghanistan, have only achieved a symbolic

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<sup>1</sup> Local ownership designates the ideal that organisational reforms or newly created state institutions, which arise out of international state-building activities, should reflect the interests of the local population and quickly become independent of external support. For an extensive critical discussion, see Donais (2008).

presence. This is due to the protracted conflicts in the receiving countries, and a corresponding lack of political will to mobilize sufficient resources and to send larger numbers and more qualified civilian personnel (Korski and Gowan 2009, pp. 43–51). In short, both the civilian and military components of the CSDP remain a marginal to the EU's global counter-terrorism policy.

Instead, the EU could use its extensive international financial assistance to provide more positive incentives for global counter-terrorism cooperation or to tackle specific social and economic conditions that are likely to promote the occurrence of terrorism (Freytag et al. 2010, pp. 2–5). While the necessity to link development and security policies has been discussed since the 1990s, EU development aid policies have remained detached from the rapid rise of EU counter-terrorism cooperation after 9/11. For instance, the European consensus on development policy (European Union 2006) refers to the need for security for development, but does not explicitly mention terrorism. One could counter that the revised EU Cotonou agreement that regulates trade and development affairs with designated African and Caribbean partner countries introduced a clause on terrorism cooperation (Commission 2005: Art. 11a). Yet although the European Commission funneled more development funds to security-related projects and conflict prevention activities,<sup>2</sup> this specific counter-terrorism clause could not be linked to funding decisions.

In fact, during 2001–2006 the Commission could not draw on a budget line for counter-terrorism. As this period was governed by a long-term financial framework negotiated before 9/11, the Commission had to re-label existing projects for security sector reform to make a nominal contribution to UN resolutions on counter-terrorism assistance.<sup>3</sup> Only one new project that could be identified was a small pilot program of approximately 5m EUR for border security and financial supervision in the Philippines (Commission 2004)—and this project would quickly be terminated due to a legal challenge of the European Parliament that the European Commission unduly appropriated development funds (Barros 2012, pp. 10–13).

It took until 2007 and the creation of the so-called Instrument for Stability (IfS) before the Commission could effectively sponsor counter-terrorism projects beyond the EU's borders. Nonetheless, with a total of 2.1bn EUR over 6 years the IfS remains relatively small. This is accentuated by the fact that the IfS aims at a wide variety of crises and security issues. So far the IfS has been used twice for counter-terrorism projects, namely in Yemen and Pakistan. These countries are certainly crucial due to the rapid rise of extremist groups and the high international profile of Al Qaeda operatives in Yemen. With 14m EUR the Pakistani IfS project to improve criminal justice institutions is unlikely to make little difference to the countries enormous

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<sup>2</sup> Over the following years, EU strategy documents continued to make the point that development remained dependent on the provision of security, which was mostly defined as the absence of armed conflict and other threats than terrorism, such as drug trafficking and organised crime (EU doc 15097/07, 9565/10).

<sup>3</sup> As defined by the UN Security Council Resolution 1373. For the EU's official response that list ongoing assistance and reform programmes under the new counter-terrorism frame, see [http://www.eu-un.europa.eu/articles/en/article\\_1230\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_1230_en.htm)

social and political challenges, while other donors have spent far greater sums without decisive results (Ahmed and Farooq 2010, Islam 2011).<sup>4</sup> Figures about the IfS engagement in Yemen have not been published, but are likely to be even smaller. In light of the recent wave of unrest and growth of Al Qaeda affiliated groups in Yemen, such sums are clearly little more than a symbolic engagement.

In sum, the EU has not significantly reoriented its foreign and security policy and wider financial assistance programs in order to address conflicts or structural inequalities that could increase international terrorist activity (Wennerholm et al. 2010, pp. 10–22). This chimes with long-term trends in European development aid, which exhibits little coherent coordination and mixed response patterns to internal conflicts in recipient countries (Brück and Xu 2011). This could be seen as a positive finding, if one compares the limited EU engagement to the excessive ambitions of the global US War on Terror. But it may also be criticized that the EU has not used its international political and financial weight to address putative ‘root causes’ of transnational terrorism. This critique will be developed further in the third part of this chapter, which discusses the recent EU Sahel Strategy (European External Action Service 2011).

### 3.2 *EU Support for a Global Counter-Terrorist Regime*

The EU can be conceived of as a key actor in a wider global counter-terrorism regime. The Union has become particularly active in the area of financial sanctions and controls of suspicious transactions, which are also based on the UN system. In addition, it stepped up efforts to counter the proliferation of weapons of mass destruction. These three areas are briefly discussed in turn.

The UN Security Council Resolution 1373 from September 2001 provided the basis for a new global regime in the fight against terrorism (Romaniuk 2010, ch.3). As a result, the UN built up a new range of instruments around the *Counter-terrorism Task Force* and agreed on a comprehensive counter-terrorism strategy in 2006. EU support for these UN efforts continued established diplomatic practice since the 1970s.<sup>5</sup> Beyond numerous diplomatic declarations on the fight against international terrorism, the COTER Working Group developed an anti-terrorism clause that should commit third states to uphold all relevant UN conventions (Council 2004b). The clause has hesitantly been incorporated into EU partnership agreements and counts as ‘non-essential’—i.e. a violation cannot trigger a suspension of the partnership or sanctions. This contrasted with the original and more effective model for the anti-terrorism clause, namely the EU’s legal clauses on human rights in partnership agreements (Smis and Kingah 2008).

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<sup>4</sup> Yet one also needs to consider that much US aid to Pakistan has been focused on direct military assistance, which can lead to counterproductive results in the fight against terrorism (Bapat 2011).

<sup>5</sup> See Introduction.

The EU's track record appears more positive in more technical fields of the global counter-terrorism regime, namely counter-financing and non-proliferation. To take the latter first: After the dispute on the legitimacy of the 2003 invasion of Iraq, EU leaders agreed on a common security strategy (Council 2003a) and a strategy on non-proliferation of Weapons of Mass Destruction (WMD) (Council 2003b). The non-proliferation strategy, in particular, set out a multifaceted approach and moved beyond existing UN conventions (Alvarez-Verdug 2005, pp. 129–35). For instance, it promoted stricter control mechanisms for dual-use export goods in the EU, while EU partnership agreements with third countries increasingly included 'essential' clauses on non-proliferation. Official EU reports therefore paint an optimistic picture of wide-ranging EU non-proliferation activities (Council 2010b).

However, commercial interests and strategic allies of the EU, such as India, regularly conflict with the objective to strengthening the non-proliferation regime (Grip 2009, p. 19). Furthermore, critical political conflict, such as with Iran (and possibly Pakistan), are mainly dealt with by the 'Big Three' member states, i.e. Germany, France and Britain, and heavily depend on the political stance of the US. One should also note that the strategy remains legally non-binding and that the implementation and systemic impact of EU non-proliferation policies therefore remains low (van Ham 2011, pp. 5–9). Furthermore, the specter of WMD terrorism, which was widely debated among security policy-makers and analysts during the first years after 9/11, has proved largely illusory to this date (Mueller 2009, p. 235). In sum, EU non-proliferation policies have grown dynamically since 2003, but remain of questionable relevance to the global counter-terrorism regime.

On the international scene, the EU has been especially effective in the fight against the financing of terrorism (Vlcek 2006). Already in the late 1990s the EU enacted UN sanctions against the Taliban. After 9/11, the sanction regime went beyond traditional state actors and erased the distinctions between internal and external security. The UN passed a list of terrorist organizations and individuals whose assets should be frozen. The EU readily adopted and expanded this list, as various EU member states used the opportunity to add national terrorist groups to the sanction regime. At the same time, the European Commission linked the resurgent concern with terrorism financing with ongoing discussion about further EU policy instruments to combat money laundering, and eagerly supported the implementation process of the UN blacklist. Over the following years, EU officials held regular expert consultations with the US and other relevant partners, such as the Gulf Cooperation Council, to regulate international money transfers and to improve the effectiveness of counter-financing regulations (Council 2011a).

However, the speed and scope of EU efforts to contribute to the fight against the financing of terrorism generated multiple legal challenges. This contribution can only refer to the specialized literature that comments on the normative problems of linking international law and sanctions against individuals (Guild 2008) as well as on the multiple decisions by the European Court of Justice to revise the blacklisting process (Barros 2012, p. 13). In a nutshell, the EU had to cross out a few individuals

and organizations from sanctions list, and was mandated to provide more evidence and possible means to challenge the EU's decision. Yet the core legal regime for freezing assets and for monitoring financial transactions has remained in place.

It is extremely difficult to ascertain whether this regime is useful. Proponents argue that financial transactions have often helped to trace extended terrorist networks, while the operational room of maneuver of Al Qaeda has also decreased significantly as funds have dried up. Critics claim that ever more sophisticated surveillance and reporting mechanisms are too costly and cumbersome, while terrorist attacks can also be financed by small sums that cannot be effectively monitored (Brzoska 2011). The recent attacks in Norway that were organized by a single 'lone wolf' and financed by simple credit card fraud give credence to this reading. Suffice it to state here that the EU has played an ambivalent role in the creation and strengthening of a global regime for the fight against terrorism. Whereas general support for international conventions against terrorism has born little results, the EU can point to a substantive policy agenda in the fight against non-proliferation. However, the EU's role in counter-financing has been the most visible contribution to global counter-terrorism efforts, which has also been widely criticized on the grounds of legality and effectiveness.

### ***3.3 EU as a Regional Protective Regime Against Terrorism***

The third dimension of the EU's external counter-terrorism policy revolves around the regional rather than global protection against terrorism. This is based on the functionalist dynamic of policy externalization (Schmitter 1969). For example, a customs union is bound to develop an 'externalized' common trade policy to ensure its proper functioning. This argument can similarly be applied to EU cooperation in Justice and Home Affairs (Balzacq 2009). For instance, the abolition of internal border controls led to 'spill-over' dynamics that led to the creation of common standards for cross-border police cooperation or agreements with non-EU member states to readmit 'illegal' migrants.

After 9/11, the growth of security policies within the EU protect triggered further externalization dynamics (Kaunert 2010a, pp. 51–56) and intersected with US interests. In particular, new EU competences in the area of police and justice cooperation as well as transport security coincided with US demands for increased 'home-land security' (Rees 2006). As a result, the EU cooperates with the US on issues such as the transmission of air passenger name records (PNR), biometric security standards for travel documents, the control of ship containers, or the transmission of financial data on wire transfers. Even though the most recent versions of such EU-US agreements include stronger provisions on data protection that grew out of intense and prolonged negotiations (e.g. Council 2011b; Commission 2011), the EU—and its member states—shared critical security (and commercial) interests with the US to accept the high political and normative costs of these measures. President Obama



promoted further cooperation on more recent topics in counter-terrorism, such as the critical infrastructure protection, cyber-security and the fight against radicalization (Council 2011c). At the time of writing, many of these initiatives have yet to be implemented, but the trend clearly points towards an increasingly strong transatlantic homeland security regime that erases the boundaries between EU-internal and US security.

One could expect a similar, if weaker, cross-border police and security cooperation in the EU's neighborhood. Critical commentators have accused the EU of self-serving security cooperation with various authoritarian regimes in North Africa and the Near East (Joffe 2008). For instance, one can point to a growing number of consultations and declarations on counter-terrorism in the context of the European Neighborhood Policy (ENP) (e.g. Council 2010c). But it seems that other security concerns than terrorism stand in the forefront. Partnership agreements with Northern African states mostly focus on migration and refugee issues (Messari and van der Klaauw 2010) or energy security (Eder 2011). Correspondingly, security-related financial assistance under the European Neighborhood Instrument has remained oriented on police reform and border security, and is thus more likely to contribute to the fight against organized crime and human trafficking rather than terrorism in a narrow sense. The main explanation for these priorities can be found in the varying threat perception of terrorism in EU member states (Meyer 2009, p. 660), whereas organized crime and migration are more universally shared concerns.

This fits with the observation that operational counter-terrorism cooperation remains controlled by member states that tend to prefer bi-lateral arrangements (Coolsaet 2010, p. 864). At least until the upheavals of the 'Arab Spring', authoritarian regimes could profit from such fragmented security cooperation and avoid more concerted external pressures for reform. The EU's established cooperation programs via the ENP did not contain substantial reform programs for the security sector of these countries either. It remains to be seen whether the EU's democracy promotion programs can pick up speed under the changed circumstances (van Hüllen 2011). At the time of writing, the EU has been invited to lead institutional reform process, including in the justice and security sector, in Tunisia (Council 2011d) and has been discussing the prospects for a Rule of Law mission in Libya. The third part of this chapter discusses these developments in light of the post-Lisbon structures for EU foreign and security policy-making.

#### **4 Towards a More Coherent External EU Counter-Terrorism Policy?**

The Lisbon Treaty abolished unanimity requirements in nearly all areas of internal security cooperation and could be expected to set off a new dynamic of policy cooperation (de Zwaan 2012). For instance, the Lisbon Treaty established an integrated internal security committee, COSI, which put a new emphasis on

strategic planning across geographical and functional divisions. The Council also formalized a working group (JAI-EX) that coordinates international activities of EU member states in matters of police and justice cooperation (Council 2011e). Finally, EUROPOL has been transformed into an EU agency, which should further strengthen the EU's international profile in police cooperation. The resulting potential for more integrated internal and external security policies, which includes the fight against terrorism, has been underlined in a new EU internal security strategy (Council 2010d).

At the time of writing, however, these reforms had not made a decisive impact with regard to external counter-terrorism. First and foremost, the abolition of unanimous decision-making in internal security does not necessarily result in easier decision-making within the EU and more coherent international policies. The case of US access to wire transfer data (SWIFT), illustrated this dynamic (Ripoll Servent and MacKenzie 2011). Due to the change to majority voting, the European Parliament also became involved in the decision-making process on an appropriate legal framework for such data transfers. This resulted in a veto the first draft version of the US-EU agreement in order to extract stronger data protection rules. The fight against the financing of terrorism—which partly fell under EU community competences and qualified majority voting before the Treaty of Lisbon—already showed that increasing EU security competences led to political controversies and legal challenges before the European Court of Justice.

From a more operational perspective, the post-Lisbon internal security committee COSI aims to coordinate national police priorities. Yet the first iteration of its so-called 'policy cycle' to achieve this harmonization focused on organized crime rather than terrorism, while concrete results remain unclear (Council 2011f). This can be explained by the still highly diverse institutional structures of national security provision across EU member states, their divergent threat perceptions (Meyer 2009, p. 660) as well as the operational and cultural obstacle to implement new practices in the police (Lum 2009, p. 12).

Similarly, the transformation of EUROPOL into an independent agency should not be regarded as a breakthrough. The growing institutional and financial basis of EUROPOL supports its expanding portfolio of activities in the area of cybersecurity and monitoring of extremist websites (Council 2010e, p. 14). Yet this steady organizational development does not overcome the political questions whether it is acceptable to cooperate with third states that do not fully share EU conceptions of fundamental rights and data protection (Kaunert 2010b). Moreover, despite a growing routing of Europol with regard to analysis of terrorist threats—as is evidenced in its annual Terrorism Situation Report (e.g. EUROPOL 2009)—EU member states still cannot be expected to share the most sensitive information via this multi-lateral channel. This leads to a 'chicken-or-egg' dilemma whereby national police authorities continue to question the relevance of EUROPOL in the fight against terrorism, which is at least partly caused by their reluctance to trust Europol with more data in the first run (Bures 2011: ch.4). Therefore, EUROPOL remains a minor partner in global police cooperation against international terrorism.

For the same reason, the so-called JAI-EX committee that should coordinate national external police activities could be significant for the EU's global counter-terrorism profile. Given the traditional dominance of bi-lateral security relations in operational counter-terrorism, such coordination is urgently needed. However, the work of the JAI-EX committee seems to revolve around drug and human trafficking, which are regular topics for police cooperation, whereas international counter-terrorism is frequently handled by intelligence agencies that do not fall under the remit of JAI-EX. The links between JAI-EX to other parts of the EU's internal security machinery also remain underspecified (Council 2011g), so that the committee's activities may amount to little more than informing each other about national activities. Yet the most important barrier to an assessment of the activities of JAI-EX consists in the lack of public information.<sup>6</sup>

In any case, there are further indications of a relative continuity of the EU's external counter-terrorism policy after the Lisbon Treaty. Despite repeated calls to improve the institutional coherence of the EU's complex counter-terrorism policy—such as a by a possible merger of the EU's internal and external counter-terrorism group or a stronger profile for the EU Counter-terrorism Coordinator—path-dependency and bureaucratic interests continue to hamper coordination (Argomaniz 2011, ch.8). A wider policy framework for the coordination of internal and external security policies of the EU has equally stalled at the level of occasional meetings (Council 2011g). What seems to be required is a separate strengthening of the foreign policy components of the EU's counter-terrorism policy, rather than to stick to the elusive ideal of a fully integrated internal and external counter-terrorism strategy, which has hitherto been dominated by the transnational activities of police.

In the area of foreign policy, the Treaty of Lisbon could also be seen as a major turning point. Libya demonstrated that robust military interventions remain the domain of a few member states and NATO structures. The EU's CSDP will therefore remain detached from more aggressive or ambitious missions that could be conceived of as part of the fight against international terrorism. However, the creation of the EEAS, which includes Commission officials alongside national diplomats, should lead to a reform of development aid in order strengthen international security (Varrenti 2010).

The first related output of the EEAS has been the so-called Sahel strategy (European External Action Service 2011), which linked security concerns with development assistance and the promotion of good governance. While organized crime is also prominently mentioned, this mainly concerns terrorist activities by the so-called Al Qaeda in the Islamic Maghreb (AQIM). Over the last few years, this group has become a growing concern to terrorism analysts and EU policy-makers

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<sup>6</sup> At the occasion of a conference with policy-makers the author was briefly shown a classified meeting document that outlined discussions of the JAI-EX Committee with US representatives on the treatment of terrorist suspects. It was not clear, however, whether these consultations were of practical significance. This illustrates that further research and public information is needed to assess the importance of JAI-EX.

(EUROPOL 2009, pp. 21–22). The urgency of the Sahel strategy and activities to contain AQUIM were underlined by a new wave of kidnappings of EU citizens in the region, a growing number of attacks in Nigeria, as well as by the uprising in Libya, which could facilitate access to military weapons.

By the end of 2011 EU policy-makers therefore promised an additional 150mEUR for security assistance to Mali, Niger and Nigeria, financed from the European Development Fund. This represents the first time that ring-fenced development funds would be explicitly used for security and counter-terrorism purposes. In the future, the Sahel strategy should also link programs for economic development with the objective to combat radicalization. Taken together, this could be regarded as the way towards a more effective and integrated external counter-terrorism policy. The Sahel strategy already served as a precedent for a second strategy on the Horn of Africa that equally aims to pursue interlocking security and development objectives (Council 2011h: Annex).

Nevertheless, NGO representatives (APRODEV et al. 2011) were quick to point out that the Sahel strategy failed to provide a sufficient analysis of the complex regional situation and excessively focuses on AQIM and drug trafficking. The narrow scope of the strategy was underlined by the fact that assistance would be provided to three states only, namely Mauritania, Mali and Niger. These states are both characterized by undemocratic structures and by their dependency to external aid. This suggests that the EEAS may have picked a region where security cooperation is easy to define and where a lack of political weight of the partner countries allows the EU to showcase its relevance. In spring 2012, this problematic choice of cooperation partners came to a head as a military coup ousted the government of Mali, while nomadic rebels in the North allegedly struck an alliance with AQUIM and aimed to found an independent Islamic state. This chapter cannot provide a deeper analysis of the complex security and political dynamic in the Sahel zone. What can be asserted here is that the EU's intention to act as a stabilizing force and counterweight to terrorist-affiliated actors seems to have been a case of 'too little, too late'.

If one moves beyond extremely fragile regions in the Sahel, which may be beyond the effective reach of the EU—at least if one considers the potential will to intervene more forcefully—, further questions need to be asked about possible benefits of different kinds of external aid in the fight against terrorism. Research indicates that the effective delivery of aid in certain sectors, such as education, health and civil society, is more important than overall volume or 'robustness' (Young and Findley 2011). In words, the Sahel strategy may not become a model for the integrated external assistance and foreign policy of the European External Action Service as originally intended. Instead, long-standing debates about aid delivery and the prospects of external state-building activities are likely to persist, which translates into a continued low-profile of the EU's external counter-terrorism assistance.

## 5 Conclusions

The EU's external counter-terrorism policy presents a highly mixed picture. One can point to a dynamic increase in transatlantic homeland security cooperation with the US and a comparatively high level of EU support for global regimes that relate to the fight against terrorism, such as non-proliferation and counter-finance. However, one could not make out a coherent effort to mobilize all possible instruments of EU foreign policy to combat terrorism either at the global level or in the EU's neighborhood. While this chapter could only provide a broad empirical overview, these fragmented outcomes are a familiar feature of EU foreign and security policy and can be readily explained by institutional path-dependency, professional boundaries between different policy fields, and the persistent differences in threat perceptions and interests of both EU member states and third states. Despite the significant cooperation drive after 9/11, these structural cooperation barriers have largely remained in place. Therefore, recent institutional reforms and conceptual initiatives after the Treaty of Lisbon should not be overestimated either.

From a normative perspective, one needs to reflect on the internal differences and nuances of the EU's global or international counter-terrorism efforts. The growth of transatlantic security cooperation generated an extensive political and legal debate that underlined the erosion of data protection principles and the doubtful effectiveness or cost-benefit relation of various security measures. This critical line of analysis, which is most developed in the area of global counter-financing, needs to be extended to more recent topics of EU-US security consultations, such as radicalization or further infrastructure protection.

A particularly interesting picture emerges with regard to other forms of diplomatic activity and aid that may help address structural conditions or grievances, which may be related to the occurrence of international terrorism. One could not detect a significant reorientation of EU partnership agreements or redirection of financial assistance in relation to the fight against international terrorism. Compared to overall levels of EU assistance and general trade and association agreements, security assistance that has been explicitly tied to the objective of counter-terrorism (e.g. via the reporting under UNSCR 1373) remained limited. Security interests, such as the control of migration and the fight against organized crime, have arguably influenced EU diplomatic relations and assistance programs over decades. Yet 9/11 should not be interpreted as a critical watershed with regard to an illusionary ideal of EU civilian power.

Since 2010 growing concerns with 'branches' of Al Qaeda and the creation of the EEAS have triggered new efforts to develop a more effective international counter-terrorism policy. The EU Council furthermore attempted to strengthen the link between development spending and security projects with counterterrorism implications. However, the pioneering Sahel strategy continues to attract criticism and may have already been overtaken by developments in Mali. Moreover, the wave of upheavals in Northern Africa and parts of the Middle East demonstrated that choosing security over democratization can invite serious contradictions and

instability in the medium to long-term. In light of such dynamic or unpredictable developments the EU's external counter-terrorism policy needs to attract further research.

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# The EU's Role in International Climate Change Policy-Making: A Global Leader in Decline?

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## 1 Introduction

For over a decade the European Union (EU) has been characterised as a leader in international climate policy-making and negotiations (Zito 2005; Groenleer and Van Schaik 2007; Oberthür 2009). However, the outcomes of the 15th United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) in Copenhagen in December 2009 turned out rather disappointing for the EU. Contrary to EU objectives, the Copenhagen Accord did not gain the support of the entire COP to become legally binding and contained disappointingly few concrete or ambitious targets. More concrete decisions were taken at the COP16 meeting in Cancún 1 year later in order to mitigate climate change and adapt to it worldwide, such as the initiative to establish a facility for climate finance.<sup>1</sup> The EU seems to have played a more influential role at the Cancún negotiations than at Copenhagen, being more involved in the decision-making process and having a firmer hold on the outcomes. In this chapter we compare the degree to which the EU managed to attain its goals at both meetings, and seek to explain these diverging

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<sup>1</sup> UNFCCC Draft decision-/CP.16, Financial mechanism of the Convention: fourth review of the financial mechanism: [http://unfccc.int/files/meetings/cop\\_16/conference\\_documents/application/pdf/20101204\\_cop16\\_fm.pdf](http://unfccc.int/files/meetings/cop_16/conference_documents/application/pdf/20101204_cop16_fm.pdf), accessed on 5 March 2012.

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outcomes by drawing on three factors: coherence, the opportunity structure and politicisation.

We proceed as follows: in Sect. 2 we briefly specify our three explanatory factors. Section 3 analyses the COP15 negotiations leading to the Copenhagen Accord along these three factors. Section 4 examines the COP16 negotiations culminating in the Cancún Agreements. Finally, we present some conclusions from our findings, and briefly evaluate the Durban COP17 meeting.

## 2 Analytical Factors

The factors used here for analysing the COP negotiations are not meant to constitute a full-fledged framework. They rather comprise building blocks that may be used for more formal conceptualisation. The explanatory factors have been derived inductively from prior research (Groen and Niemann 2013, forthcoming), and have been found to be relevant in studies that focus explicitly on EU actorness and effectiveness (e.g. Jupille and Caporaso 1998; Bretherton and Vogler 2006). The subsequent analytical factors are somewhat intertwined and cannot always be neatly separated from each other.

### 2.1 Coherence

We distinguish between three dimensions of coherence, building on the concept of cohesion<sup>2</sup> from Jupille and Caporaso (1998). Our first dimension is preference coherence: to what extent do EU Member States (MS) share common basic preferences and goals for the COP meeting? Our second dimension is procedural-tactical coherence: i.e. the EU's ability to overcome diverging preferences and solve disagreements. This entails the existence of established procedures and instruments within the EU's negotiating infrastructure—or tactical instruments, such as issue linkage and side payments—for overcoming conflict or deadlocks. Our third dimension is output coherence: does the EU as a whole succeed in formulating common policies and positions, regardless of substantive and procedural agreement? And do the various EU actors comply with the policy that has been agreed upon? Thus, output coherence can largely be viewed as the result of preference coherence mitigated/balanced by procedural-tactical coherence.

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<sup>2</sup>We use the term “coherence” rather than ‘cohesion’ because it is more widely used in the literature and signifies basically the same phenomenon/concept (Niemann and Bretherton 2013, forthcoming).

## 2.2 *Opportunity Structure*

Whether the actions that the EU could agree on will translate into actual attainment of its goals depends to a large extent on the 'opportunity structure', the external context of events and ideas that enables or constrains EU action. It signifies the environment surrounding the EU in which action can take place (Bretherton and Vogler 2006, p. 24). Ideas and events within this environment can stimulate EU action, be conducive to EU actions, or hamper it to act. For example, we analyse whether the overall constellation of actors (and their objectives) at the negotiations strengthens or weakens the EU's pursuit of its goals. The position of the other major negotiating parties (based on their domestic preferences/constraints) is an important determinant for the final outcome of the international negotiations. Therefore, we also consider the question of whether the EU has devised a strategy that takes the external environment into account. The EU has to know what the other parties want from the negotiations to arrive at a substantial, albeit agreeable, outcome at the end of the negotiations.

## 2.3 *Politicisation*

The degree of politicisation of the negotiations can be described as the extent to which the negotiations are turned into a *political* debate. The extent to which discussions about the agenda items of the negotiations become political debates—at the national and international level, potentially involving a range of interest groups with different preferences concerning the outcome of the negotiations—influences the EU's ability to act at the negotiations. The degree of media and public attention is also considered in this respect, as well as the involvement of high-level political actors at the negotiations. All this may increase the political salience, and thus raise the pressure put on the negotiating parties and/or impede the scope for manoeuvre.

## 3 The Copenhagen COP15 Negotiations

The Copenhagen COP15 negotiations of December 2009 took place at three different levels: the negotiator level, the ministerial level and the final level of the heads of state and government. At the negotiator level the talks took place on two separate tracks: first, the Ad-Hoc Working Group on Long-term Cooperative Action under the Convention (AWG LCA) considers the future of the UNFCCC, aimed at the full and effective implementation of the Convention. The second negotiation track concerns the Ad-Hoc Working Group on further commitments for the Annex-I parties under the Kyoto Protocol (AWG KP). This Working Group

works on solutions for the period beyond 2012, when the first commitment period of the Kyoto Protocol will expire (UNFCCC 2012a; Van Schaik and Schunz 2012). Two EU negotiation teams, one on the AWG LCA and another on the AWG KP, participated at the negotiator level at Copenhagen.

The second stage of the Copenhagen negotiations was conducted at the ministerial level. Normally this is the final level of the COP meeting at which the Ministers take the decisions. However, because a global agreement should have been concluded at Copenhagen to replace the Kyoto Protocol after 2012 (involving many issue areas beyond the environment such as finance and development) heads of state and government were invited to take the decisions on this important matter. This was the third level of the negotiations. The heads of state and government were present during the last days of the negotiations.

At the first level of negotiations, the preparatory negotiator level, the EU still acted as an important negotiating party (Interview with UK Delegate by Telephone, May 2010). However, the negotiations did not deliver the much-wanted results, due to persisting differences between the EU, the United States (US), developing countries and the group of advanced developing countries, the 'BASIC' countries (Brazil, South Africa, India and China). When the negotiations progressed to the higher levels, the EU lost its grip on the negotiations. Its ambitious proposal of setting global greenhouse gas emission reduction targets in line with its own 20 % reduction goal (by 2020 from 1990 levels), even aiming at a 30 % reduction goal for all developed countries, and anchoring these in a universal, legally binding agreement was not followed by the other parties (Council 2009a, p. 5). The US and BASIC put together a final agreement, the Copenhagen Accord, without involving the EU in this process (Curtin 2010; Van Schaik and Schunz 2012). This agreement turned out to be quite disappointing when measured against the ambitious goals of the EU, for instance because there is no mention of any legally binding emission reductions (UNFCCC 2009).

The following factors, coherence, the opportunity structure and politicisation, will account for the outcome of the negotiations in terms of the EU's performance.

### **3.1 Coherence**

Overall coherence is viewed here as the result of 'preference coherence' mitigated by 'procedural-tactical coherence'. We argue that EU coherence was rather low due to meagre 'preference coherence' that could not adequately be balanced by only moderate 'procedural-tactical coherence'.

#### **3.1.1 Preference Coherence**

For an assessment of preference coherence we primarily analysed the extent to which the various EU actors shared similar goals with regard to the issues to be

negotiated at Copenhagen. Member governments managed to put on paper an EU negotiating position for the COP15 meeting negotiations in which the main goals of the EU for every issue of the negotiation agenda in Copenhagen were outlined (Council 2009a). The primary goal for the COP15 meeting on which all MS and the Commission agreed was that the EU had to take on a leadership role in Copenhagen and that an ambitious agreement had to be reached on how to proceed after 2012 when the first period of the Kyoto Protocol was to end (Council 2009b). However, on several important issues, two of which are further elaborated below, MS preferences remained rather diverse. Concerning these issues the text of the position was formulated in such a way that it masked differences of opinion, which meant that the document in essence contained no substantial EU position on these issues.

First, there was disagreement among MS on the question of whether and under which conditions the EU should commit itself to a CO<sub>2</sub>-emission reduction goal of 30 % compared to 1990 levels by 2020. The decision to set a conditional reduction goal of 30 % had already been taken in 2007 (Council 2007, p. 12), but this goal nevertheless remained controversial among the EU MS with Italy and Poland openly speaking out against it, and other Eastern European MS quietly supported their protest (New York Times, 6 December 2009; The Times, 17 October 2008). In the absence of prior agreement between the EU MS, agreement on the exact EU reduction goal had to be reached during the negotiations in Copenhagen.

Second, there was substantial disagreement among MS concerning the financial contribution for developing countries for adaptation and mitigation measures. Because of the financial crisis, many EU MS, most notably the Eastern European MS, were reluctant to donate (Guardian Unlimited, 11 December 2009). On the other hand, MS like the Netherlands, the UK, Germany, France, Denmark and Sweden were ready to put concrete amounts of money on the table (Interview with Dutch Delegate, The Hague, May 2010). The negotiating position thus merely stated that: “the EU is prepared to take on its fair share, in the framework of a global and comprehensive Copenhagen agreement which entails appropriate and adequate contributions by Parties” (Council 2009a, p. 19).

In sum, on a significant number of issues specified in the EU negotiating position no concrete agreement could be reached. Most MS appeared unwilling to sacrifice their own interests to agree on concrete and ambitious EU proposals for Copenhagen. Overall, the degree of preference coherence among the MS was rather low.

### 3.1.2 Procedural-Tactical Coherence

The relatively low degree of preference coherence could have potentially been compensated by procedural-tactical coherence, i.e. the EU's ability to overcome diverging preferences and solve disagreements. However, the Union's procedural-tactical coherence was significantly constricted by the unanimity rule. Unanimity often drove negotiators towards the lowest common denominator in the EU negotiating mandate, for example concerning commitments on CO<sub>2</sub> emission

reductions from forestry (Interview with UK Delegate by Telephone, 10 May 2010). For other issues on the agenda, such as climate finance and ‘hot air’, no concrete common EU position could be formulated at all because the MS were unable to reach sufficient agreement, despite a substantial number of meetings beforehand (Interview with Council Secretariat Representative, Brussels, May 2010).

The fact that EU negotiators were not permitted to deviate from the negotiation position before the MS had unanimously approved of change substantially constrained the EU’s ability to (inter)act at Copenhagen (Interview at the Council Secretariat, May 2010).

Just before the start of the COP15 negotiations it was clear for the negotiating parties and other insiders that the CO<sub>2</sub> emission reduction targets of the US and China were considerably less ambitious than those of the EU. The EU’s strategy for the negotiations was to convince the other major parties to adopt the ambitious goals of the Union. However, the sheer distance between the positions of the US and China and the EU’s position made this impossible (Der Spiegel online International 5 May 2010). The EU governments could have ensured that the EU preserved some influence during the negotiations by adapting the EU’s strategy. Yet, no unanimous agreement on adjusting the negotiating position could be reached.

Procedural-tactical coherence, however, worked to some extent in the form of package deals and issue linkage: on assigned amount units (AAUs),<sup>3</sup> Poland and other Central and Eastern European MS were prepared to give up their unused AAUs provided they got something in return. The deal was that they could spend the money of their unused AAUs on clean energy projects in their countries. Similarly, rather than definitively abandoning the conditional 30 % CO<sub>2</sub> reduction goal when some of the MS (mainly Italy and Poland) resisted, it seems that ways of “effort-sharing” among the EU MS were found in the Council of Ministers, which should be understood as internal mediation between differences of interest on sub-items, to keep up the 30 % conditional reduction goal as an overarching EU goal (Van Schaik and Schunz 2012). These findings indicate that a moderate degree of procedural-tactical coherence was achieved.

### 3.1.3 Output Coherence

Output coherence is the agreement among the involved parties on the output in terms of policies and their compliance therewith, regardless of the substantive and procedural agreement. The disagreement among the EU MS on a considerable number of goals included in the EU position at the start of the COP15 meeting

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<sup>3</sup> An assigned amount unit (AAU) represents an allowance to emit greenhouse gases comprising one metric ton of carbon dioxide equivalents. AAUs have been created for expressing the targets for reducing emissions under the Kyoto Protocol. The targets are expressed as levels of allowed emissions, which are divided into AAUs (UNFCCC 2012b).

had not disappeared by the time that the Copenhagen Accord was concluded. This can be seen perhaps most clearly by the differing satisfaction with the Copenhagen results among EU delegations. While France, the UK, the Swedish Presidency and the Commission were disappointed about the non-legally binding outcome, Italy and the Central and Eastern European MS indicated that they were quite happy with this less ambitious outcome (Barroso 2009; Interview with EP Delegate by Telephone, May 2010). In addition, substantial disagreements continued, for instance on the EU's CO<sub>2</sub> reduction target and climate finance.

There were also occasions during the actual negotiations in Copenhagen where the EU position was not fully respected by individual MS. For example, Sweden tried to alter the EU position on forestry during the negotiations to protect its own interests (Greenpeace 2009). In addition, when the negotiations shifted to the level of heads of state and government, even the daily coordination meetings between them did not allow to keep ranks closed. Moreover, at this final stage the heads of state/government of France, the UK and Germany took over the lead from the Swedish Council Presidency representative Prime Minister Reinfeldt and from Commission President Barroso in order to secure an ambitious outcome and left the less ambitious EU MS behind (Interview with Council Secretariat Representative, Brussels, May 2010; NRC *Handelsblad*, 11 December 2009).

Hence, overall it seems that the moderate procedural-tactical coherence could not overcome the insufficient degree of preference coherence, as a result of which the degree of output coherence was rather modest.

### 3.2 *Opportunity Structure*

The opportunity structure—i.e. the external context of events and ideas that enables or constrains EU action—entails the conduciveness of the overall constellation of actors and their goals (and also whether the EU has devised a strategy that takes the external environment into account). We argued that the opportunity structure at Copenhagen was unfavourable in terms of EU goal attainment.

First of all, the overall actor constellation was very unsuitable for the attainment of EU objectives. This can be ascertained by analysing the positions (and preferences) of the other key negotiating parties at Copenhagen: the US and BASIC. Unfortunately for the EU, the stances and objectives of the US and BASIC were considerably less ambitious than those of the EU. While the EU's unilateral CO<sub>2</sub> reduction target was to cut emissions with at least 20 % by 1990 levels in 2020, the US target was to cut emissions by 17 % by 2020 from 2005 levels and the Chinese target was to reduce the amount of carbon dioxide emitted per unit of economic output by 40–45 % by 2020 compared to 2005 levels, which would not even decrease the total amount of emissions in 2020 compared to 2005 (*New York Times*, 26 November 2009). Also detrimental in terms of the overall actor constellation, in late November, just before the start of the conference, BASIC decided to act jointly against the developed nations at the COP15 meeting (Dasgupta 2009). During a closed-door meeting in Beijing they



drafted an accord that became the basis for the final Copenhagen Accord. They also decided to jointly walk out of the meeting if the developed countries would try to move them to go beyond their limits (Schall-Emden 2009).

Under the Obama administration, the US was expected to pursue an ambitious stance at Copenhagen. However, on 15 November 2009, at the end of the Asia-Pacific Economic Cooperation (APEC) forum, the group of attending leaders, including both US President Obama and Chinese President Hu Jintao, decided to drop the target to halve greenhouse gas emissions by 2050, which they had outlined in an earlier draft. They also agreed to consider the Copenhagen negotiations as a “staging post” rather than as an end point in the search for a global climate deal (BBC News 2009).

The EU’s goals seem to have been too ambitious to be reconcilable with the interests of the US and BASIC. The latter could not be convinced by the normative arguments of the EU to shift their positions. The negotiating strategy adopted by the EU did not sufficiently take into account the fact that the US and BASIC had adopted rather conservative negotiating positions (Van Schaik and Schunz 2012). There was no plan B included in the EU negotiating strategy, which could have allowed the EU to react to the negotiating realities and stay closely involved in the process of arriving at some sort of compromise agreement. On top of that, as described above, the EU MS were unable to agree upon significant alterations of the EU negotiating mandate that could have enabled them to interact in a more flexible and tactical manner with the US and BASIC during the negotiations, in order to try to move them away from their conservative positions. Thus, it seems that because of its modest degree of actorness the EU was not optimally prepared to face the challenging external context at COP15 in order to arrive at an ambitious outcome.

As a result, the US and BASIC sidelined the EU during the negotiations at the final stage, among the heads of state and government. German Chancellor Merkel, French President Sarkozy and Spanish Prime Minister Zapatero had to wait until heads of state and government leaders Wen (China), Singh (India), Lula (Brazil) and Zuma (South Africa) had finished their conversation before being allowed to contribute at the final negotiations (NRC Handelsblad, 21 December 2009). The US and BASIC mainly concluded the Copenhagen Accord together on the final evening of the conference, without the EU (Van Schaik and Schunz 2012; Curtin 2010).

### ***3.3 Politicisation***

The divergence of preferences among the EU MS seems to have been “stimulated” (and aggravated) by the high degree of political salience of the COP15 negotiations, in comparison to earlier COP meetings. In Copenhagen, a new agreement to follow up the Kyoto Protocol had to be concluded. The summit marked the culmination of negotiations under the Bali Road Map and was attended by an unprecedented

number of media, non-governmental organisations and political leaders. Because final decisions about the agenda points of the Copenhagen negotiations, like climate finance and concrete CO<sub>2</sub> reduction goals, would have a big impact on the domestic situation in the EU MS, the COP15 negotiating agenda aroused a high degree of political debate inside many EU countries. As a result, EU MS were not willing to amend their national preferences on a large number of agenda points. Consequently, the EU's degree of coherence and thus its ability to act at Copenhagen diminished significantly.

According to a Commission delegate the political pressure put on the EU before and during the Copenhagen conference was very high. The EU stood fully in the spotlight of the public opinion, stronger than ever before at a COP meeting. The EU was challenged from various sides to adjust its position, both in more ambitious and in less ambitious directions. This can clearly be observed in the debate on the EU's CO<sub>2</sub> reduction goal, which resulted in a political chess game at the level of the heads of state and government and Finance Ministers (Interview with Commission Official, Brussels, April 2011). That political debate inside the EU MS effectively diminished the degree of EU coherence can be further substantiated. Already in 2008 important differences of opinion among EU Member State leaders concerning climate change ambitions came to the forefront, caused by the pressure exerted on many governments by domestic industrial lobby groups after the Commission proposed its ambitious energy and climate package. This seems to have been the case most prominently in Italy and Poland (two countries with still significant mining industries that also rely heavily on coal as an energy source), but also in other EU MS like Finland (a country with a large paper industry that wanted to be granted exceptions in terms of greenhouse gas emission reduction related to deforestation and forest degradation) and Germany (a country with a large manufacturing and industrial sector). This pressure was increased by the upcoming economic crisis (Parker and Karlsson 2010). Throughout 2009 the EU continued to struggle "internally over each nation's carbon quotas, assistance to developing countries and fidelity to the emissions reductions agreed to in 1997 under the Kyoto Protocol" (*New York Times*, 6 December 2009).

Obviously, the high degree of politicisation also affected third parties. The new US government, for example, seemed committed to an ambitious climate agreement (Council on Foreign Relations 2009). However, for such a step President Obama needed agreement by both chambers of Congress, which was particularly difficult with issues that are substantially politicised, as has been the case in the US. Moreover, the general US external policy stance is that the US will only take leadership and ratify international agreements "when domestic policy is settled on the issue in question" (Bang and Schreurs 2011, p. 247), which was not the case with the issues on the Copenhagen negotiating agenda. In June 2009, the House of Representatives passed a bill proposing a 17 % cut in greenhouse gas emissions from 2005 levels by 2020 (Bang and Schreurs 2011, p. 245). However, the effort stalled in the Senate. Oil, coal and manufacturing lobbies have been spending millions to frame the proposed bill as measures that will fuel unemployment and increase home heating bills (*Guardian Unlimited*, 17 November 2009).

Such domestic constraints on a considerably politicised issue prevented countries, such as the US, from moving away from (substantially) amending their positions at Copenhagen and really search for a compromise in the direction of the EU's ambitious stance. Overall, it can be assumed that the high stakes at play at the Copenhagen summit made it less feasible that the negotiations would result in a highly ambitious agreement as proposed by the EU.

## 4 The Cancún COP16 Negotiations

As a result of the COP15 negotiations a deep divide between developed and developing countries emerged, especially on the form a future agreement on climate change adaptation and mitigation should take. Developing countries did not want to bind themselves to any legal commitments concerning the second commitment period of the Kyoto Protocol and developed countries refused to do the same unless major developing countries would go along (Metz 2011, pp. 347–348).

The Cancún COP16 negotiations, held in December 2010, were able to take away a large part of the distrust between the two camps, and culminated in an agreement, which made formal many elements of the Copenhagen Accord by incorporating them in a UNFCCC decision (Metz 2011, pp. 347–348; Barroso 2010). Agreement was reached, among others, on administrative UNFCCC mechanisms on adaptation, technology transfer and the establishment of a Green Climate Fund (UNFCCC 2011).

The EU seems to have played a more influential role at the Cancún negotiations than at Copenhagen by using a more pragmatic approach, aiming at a concrete set of decisions implementing the Copenhagen Accord (e.g. Oberthür 2011, p. 10). In its Environment Council Conclusions the EU stated that it aimed for a balanced outcome across and within the two negotiating tracks, including all parties that would contribute to the establishment of a post-2012 regime including mitigation efforts and actions on the ground. To a large extent this goal was fulfilled, but shortcomings can be observed. As Oberthür (2011, p. 5) writes:

“By reaching an agreement with some substance at all, the Cancun conference held in Mexico from 29 November to 11 December 2010 succeeded in keeping the UN climate process alive and averting serious damage to multilateralism more broadly. While this is not a small achievement in itself, it should not lead us to disregard the shortcomings and limitations of the substance of the Cancun Agreements.”

When we take a closer look, the outcome of the Cancún negotiations was not as progressive as the EU had hoped for. On certain EU demands no agreement could be reached, such as the fact that little progress was made towards a global legally binding agreement to which all major greenhouse gas emitters are bound (Oberthür 2011: 11). The subsequent analysis accounts for the outcome of the Cancún summit, especially in terms of the EU's level of goal attainment by drawing on coherence, opportunity structure and politicisation.

## 4.1 Coherence

### 4.1.1 Preference Coherence

To what extent do the EU MS share common basic preferences and goals for the COP meeting? Like it did for the Copenhagen negotiations, the EU formulated a negotiating position for the Cancún negotiations, which found expression in the Environment Council Conclusions of 14 October 2010. These Conclusions state that:

“the work of both the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP) and the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) should enable COP 16/CMP 6 to *adopt a set of decisions, ensuring a balanced outcome across and within both negotiating tracks, [...] these decisions, including on adaptation, mitigation, technology, capacity-building, Reducing Emissions from Deforestation and Forest Degradation (REDD+), agriculture, Monitoring, Reporting and Verification (MRV), finance and market-based mechanisms*, should contribute to the establishment of a post-2012 regime based on coherent and stable rules that include Parties’ mitigation efforts, deliver actions on the ground (Council 2010, p. 3, [emphasis added]).”

It was not difficult for the Commission and the MS to agree on such a position: to support a balanced outcome in Cancún with progress on both the Long-term Cooperative Action (including all UNFCCC parties) and the Kyoto Protocol (including only the developed countries that are parties to the Kyoto Protocol) negotiation tracks, as all of them felt that the disappointing outcome of the Copenhagen negotiations should not be repeated.

However, not on all issues of the “Cancún package” the Commission and MS could easily agree. CO<sub>2</sub> emission reduction pledges (mitigation) was one of the contentious issues. At the Environment Council meeting in October the question of whether the EU’s CO<sub>2</sub> emission reduction target should be raised from 20 to 30 % below 1990 levels was discussed. There had not been consensus on this issue up to the date of the Council meeting. At the meeting itself no agreement on scaling up the target could be reached either (Euractiv 2010a). A deep divide between two blocks of MS, which was already present before the Copenhagen negotiations—and with very similar dividing lines as described for the COP15 above—seems to persist (Euractiv 2010a; Santarius et al. 2011, p. 9).

Concerning climate finance not all EU MS were on the same page either. It has been suggested that the EU would fall €200 million short of its 2010 yearly financial commitment and €357 million over the entire period 2010–2012 as some MS changed their mind about their pledges (Euractiv 2010b). According to an EU draft report four MS had not delivered their share for 2010 (Euractiv 2010b).

### 4.1.2 Procedural-Tactical Coherence

Procedural-tactical coherence refers to the EU’s ability to overcome diverging preferences and solve disagreements. On the contentious issues that have been

discussed in the section above on preference coherence, namely climate finance and mitigation pledges, the persistent division among EU MS could not be overcome. The use of procedures or tactics did not help to solve these issues, as the divide was rather deep (Interview with Commission Official, Brussels, April 2011). It has to be noted that the divide between the EU MS on the abovementioned issues did not hamper the EU from adopting a coherent negotiating stance on them, though, albeit a less ambitious one than the Commission and the more progressive MS would have liked, as will be further pointed out below.

### 4.1.3 Output Coherence

Because there was a firm consensus among the EU MS and the Commission on the line to take in Cancún, namely to aim at an agreement on a balanced set of decisions, of which the EU had been able to determine the content with quite some detail in its Council Conclusions, the EU was able to operate in a fairly coordinated way at the negotiations. The fact that some contentious issues between the MS remained did not hamper the EU from negotiating on these terrains in Cancún because it did not aim for a very far-reaching agreement this time (Interview with Commission Official, Brussels, April 2011). The EU could not take a highly ambitious position on these issues, but it could still make use of the basic level of EU agreement that had already been created before Cancún, which was still relatively ambitious compared to the stances of many other parties, namely, on mitigation, the EU agreement on having a 20 % reduction on greenhouse gas emissions from 1990 levels by 2020 and a 30 % reduction if other major parties would make similar efforts (Council 2007: 12). On finance the EU was able to agree to contribute with a considerable yearly amount of money to financing mitigation of and adaptation to climate change in developing countries (Euractiv 2010b). Overall, it seems that the level of coherence within the EU was sufficiently high to enable the EU to act in such a way that it could make considerable progress towards the goals that it had set in its Council Conclusions.

## 4.2 Opportunity Structure

Whether the EU can reach the goals that it has set for the negotiations depends to a large extent on the “opportunity structure”, the external context of events and ideas surrounding the negotiations that enables or constrains EU action. In the first place, many parties considered the Cancún negotiations as the make-or-break-moment for the international climate change negotiations, after the failure of Copenhagen. If the Cancún negotiations had not resulted in a balanced outcome, there would have been little chance that a meaningful global deal on climate action could ever be reached and the UNFCCC could have lost its value. Therefore, the majority of the UNFCCC

parties was eager to reach a substantial outcome in Cancún, involving all parties (Euractiv EUX TV 2010).

The EU profited from this atmosphere, which was conducive to its goals. Compared to the Copenhagen summit, the US and BASIC behaved in a more cooperative manner, which made it easier to arrive at a final package of agreements that satisfied all negotiating parties, including the EU. The US' goal was to ensure that the Copenhagen Accord would survive and be given a more definitive shape (Santarius et al. 2011, p. 12). This goal matched with the EU's goal for Cancún. The US was especially concerned about transparent climate action in China (measurable, reportable and verifiable). It urged China to proceed towards such action, which was also in the interest of the EU (Santarius et al. 2011, p. 12).

Brazil presented itself as a leader on climate policy. At home, it concluded the regulation of its National Climate Change Fund (Fundo Clima) in October 2010 and started actions to reduce deforestation, among others (Santarius et al. 2011, p. 13). Brazil also actively negotiated in favour of a second commitment period of the Kyoto Protocol at Cancún. It tried to convince Canada, Japan and Russia to change their mind on this issue and persuaded India and China to show more willingness to introduce binding mitigation actions (Santarius et al. 2011, p. 14).

South Africa wanted a positive outcome at Cancún, towards a legally binding global agreement, with which momentum could be built for the negotiations 1 year later in Durban. In Durban South Africa would hold the Presidency of the COP meeting. To achieve such a positive outcome, South Africa tried to form strategic alliances with the other BASIC countries, the African Group, the G77<sup>4</sup> and the EU. The South African delegation tried hard to resolve dilemmas, for example on whether to have a second commitment period for the Kyoto Protocol, and on whether to accept legally binding commitments, during the conference (Santarius et al. 2011, pp. 18–20).

China tried to play a more active and constructive role after Copenhagen. It showed its support for the multilateral process and pushed for a second commitment period of the Kyoto Protocol. This change of stance goes hand in hand with domestic changes. In its 12th Five Year Plan of 2010, more emphasis has been placed on low carbon development. China took a relatively flexible stance on climate finance to be paid by developed countries to the developing world for mitigation and adaptation measures, as it understands the financial difficulties that many developed countries are coping with due to the economic crisis (Santarius et al. 2011, pp. 15–16).

Finally, India also worked on climate change mitigation actions at home after Copenhagen. India wanted to be seen as a cooperative country at Cancún rather than as a “demandeur”. One of its aims was to break the deadlock between BASIC and

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<sup>4</sup>The G77 is one of the five regional groups within the UNFCCC, of which many developing countries are members. The group was founded in 1964 by 77 developing countries in the context of the United Nations Conference on Trade and Development (UNCTAD) and has more than 130 members (UNFCCC 2012c).

the US on transparency of mitigation actions. The Cancún Agreement includes two Indian proposals, one on a technology transfer mechanism and another on an International Consultation and Analysis mechanism, that helped to break this deadlock on the transparency of mitigation efforts. These Indian proposals were favourable to the EU, which also wanted the divisions on mitigation transparency to be overcome (Santarius et al. 2011, p. 17).

As a result of this stimulating opportunity structure the EU itself could take proactive steps at Cancún through which it made progress towards its goals. It tried to act as a bridge-builder by positioning itself between the major blocs: BASIC, the US, Japan, Canada, Australia, and the developing countries and tried to shift the balance as much as possible towards its own objectives. Sometimes it aligned with the developing countries and BASIC, in other cases it aligned with the US and other developed countries, depending on the issues under discussion (Oberthür 2011, p. 10).

The EU actively engaged in outreach activities with third countries by taking part in the “Cartagena Dialogue for Progressive Action”. This Dialogue is “an informal space open to countries working towards an ambitious, comprehensive and legally-binding regime under the UNFCCC (IISD 2010b).” 30 like-minded UNFCCC parties from the Alliance of Small Island States, Latin America, Europe, Oceania, South East Asia and Africa participate in the dialogue. Their goal is to explore areas of convergence and joint action. The EU engaged actively in these talks, arguing that existing mitigation pledges need to be strengthened and clarified and that more needs to be done on measurement, reporting and verification, and thereby made good progress in its coalition building exercise (Oberthür 2011, p. 10; IISD 2010b).

In addition, the fact that the EU clearly expressed in its Council Conclusions for Cancún that it would support a second commitment period under the Kyoto Protocol (as a result of the considerable degree of EU coherence on this issue), provided the basis for new coalition building with the developing countries, which had turned against the EU after the Copenhagen negotiations because they thought that the EU wanted to “throw away” the Kyoto Protocol. Overall, the EU adopted a more pragmatic “step-by-step” approach towards a concrete set of decisions that get action going on the ground, which suited the negotiating context at Cancún (Interview with Commission Official and Brussels, 14 April 2011).

### **4.3 Politicisation**

The Cancún negotiations were considerably less politicised than those at Copenhagen. After the failure at Copenhagen nobody expected a highly ambitious (legally binding) outcome anymore, neither insiders, nor outsiders. Much fewer heads of state and government attended the Cancún negotiations. Also, the COP16 meeting was much less discussed in the media and lobby groups were less active in the EU than they were before and during the Copenhagen summit (IISD 2010a). It remained rather silent around the Cancún COP meeting in comparison with the Copenhagen summit. Because of this context, much less was expected from the EU at Cancún.

This lower degree of political pressure meant that the EU could operate more freely. It was less pressured by certain interest groups to move to impossible highly ambitious negotiating stances, as practically nobody expected anything substantial to happen at Cancún after the failure of the Copenhagen summit. In addition, interest groups did not weaken the level of coherence among the MS either. In this less politicised context it was easier for the MS to agree on common pragmatic steps, based on a clear negotiating position backed by all, building coalitions, and thus reaching many of its goals at Cancún.

## 5 Conclusion

In the previous sections we assessed the degree to which the EU managed to attain its goals at the Copenhagen and Cancún negotiations and sought to explain these outcomes by using three factors: coherence, the opportunity structure and politicisation. In this final section we compare the outcomes of both negotiations and draw some conclusions and take a look at the Durban COP17 meeting.

When the negotiations progressed to the heads of state and government level at Copenhagen, the EU lost its grip on the negotiations. The US and BASIC put together a final agreement, the Copenhagen Accord, without involving the EU in this process (Curtin 2010; Van Schaik and Schunz 2012). This agreement turned out to be quite disappointing when measured against the ambitious goals of the EU. The moderate degree of procedural-tactical coherence could not overcome the insufficient degree of EU preference coherence, as a result of which the degree of output coherence was rather modest. The divergence of preferences among the EU MS seems to have been stimulated by the high degree of political salience of the negotiations. In addition, the overall actor constellation was very unsuitable for the attainment of the EU's objectives. The stances and objectives of the US and BASIC were considerably less ambitious than those of the EU.

The Cancún COP16 negotiations culminated into an agreement that made formal many elements of the Copenhagen Accord by incorporating them in a UNFCCC decision. With this outcome the EU achieved its goals to a large extent. The EU supported a balanced outcome in Cancún with progress being made on both the LCA (including all UNFCCC parties) and the KP (including only the developed countries that are parties to the Kyoto Protocol) negotiation tracks. It was not difficult for the Commission and the EU MS to agree on this position, as all of them felt that the disappointing outcome of the Copenhagen negotiations should not be repeated. Overall, the EU was able to operate in a fairly coordinated way at the negotiations. Very importantly, the opportunity structure was conducive to the EU's goals. The majority of the UNFCCC parties were eager to reach a substantial outcome in Cancún. Compared to the Copenhagen summit, the US and BASIC behaved in a more cooperative manner and made it easier to arrive at a final package of agreements that satisfied most of the negotiating parties, including the EU. Also, the Cancún negotiations were less politicised than the negotiations at Copenhagen, which meant that much less was expected from the EU, so it could take pro-active



steps at Cancún through which it made progress towards its goals. It tried to act as a bridge-builder by positioning itself between the major negotiating blocs.

All in all, based on this comparison of the Copenhagen and Cancún negotiations, it seems that the opportunity structure and the degree of politicisation are very important factors for determining the extent to which the EU can achieve its goals at the international climate change negotiations. The degree of EU coherence is also an important determining factor for goal achievement in the two cases, in which the EU takes a reformist stance. However, in the absence of a conducive external environment, even a highly coherent EU will have difficulties to steer the negotiations towards a final outcome that meets its goals.

The deal struck at the Durban COP17 meeting, the “Durban platform”, was regarded by many as a bigger success than the deal reached at Cancún. The EU was one of the leading actors at Durban. It managed to mobilise an alliance of progressive and ambitious states, which helped to achieve its goals, namely to agree on a timeline to achieve a legally binding agreement involving all parties, to be negotiated by 2015 and to be operational by 2020. At crucial high-level negotiations with a selective group of participants in the very last hours of the conference (International Institute for Strategic Studies 2011; Harvey and Vidal 2011) the EU managed to convince the main hold-outs, especially India, to agree with a roadmap towards an outcome with legal force by 2015 (Euractiv 2011).

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- Interview with UK Delegate by Telephone, 10 May 2010

# European Neighbourhood Policy and The EU's Role as a Normative Power: The Case of Ukraine

Özgür Ünal Eris

## 1 Introduction

### 1.1 *The EU as a Normative Power*

Duchene's (1973) mention of *civilian power Europe* was perhaps the first occasion when the special role of the then European Community in the world was sketched out. Duchene argued that Europe should be a force for the international diffusion of civilian and democratic standards, and should promote those values that belong to its inner characteristics, such as equality, justice and tolerance, and an interest for the poor abroad (Duchene 1973, p. 20). Almost 40 years after Duchene's original idea, this question is still discussed with an increasing relevance due to Europe's growing international aspirations (in trade, environmental and security matters) on the one hand, and the declining legitimacy of America's power, on the other. Ian Manners is one who has followed the normative dimension in Duchene's work. He pioneered the term 'normative power Europe' which strongly relates to the EU's presence, actorness and capability in world politics. The EU's this ability has not only ideological but also undeniably practical implications. That is, in the first instance, being normative means changing the norms, standards and prescriptions of world politics (Manners 2008, pp. 44–45).

For Manners, the concept of 'normative power Europe' was not meant to portray the EU and its international role as it is but as it *should* be. Manners' notion of normative power will be challenged in this chapter by arguing that his scheme is based on too passive an understanding of the EU as a norm entrepreneur in international relations. Instead of relying on passive diffusion alone, the EU is actually taking more active measures in promoting its norms and values. Moreover, whereas

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Manners was largely interested in how ‘normative power Europe’ affected the *wider global* normative space, this chapter adds a more regional focus by examining how the EU implements its normative power in Europe, and how that power is in fact uniquely circumscribed by that very same regional context.

Regarding the fact that the EU’s enlargement strategy was based on seeking to build trust through institutional engagement and capacity building, and by transmission of EU norms, such as democratic stability, liberalization and conflict resolution to the applicant countries, one can say that the successive waves of EU enlargement aimed to extend the EU’s post-1945 model of reconciliation to its neighbours. However, specifically after the enlargement waves in 2004 and 2007, the EU lost its enthusiasm and will to continue the enlargement process for several reasons. First, given that the recent two rounds of enlargement have already led to a debate on the EU’s absorption capacity, the future viability of the EU’s institutions and structures remains in question. Secondly, with each enlargement, the number of European non-member countries that qualify as potential member states decreases. The remaining potential candidates for membership have more difficulty meeting the conditions for accession than recently admitted countries, thus prolonging the whole enlargement process. Thirdly, EU member states are now busy dealing with their own problems rather than planning to support millions of potential new migrants from candidate countries or support structural adjustment funds to be spent outside the EU. As a result of these factors, any further potential enlargement creates a sense of tiredness and hassle in the minds of the publics of EU member states (Magen 2006, p. 421). Thus, faced with this inappropriate timing for further enlargements, but at the same time a lengthening queue of requests from governments in its neighbourhood, the EU has sought to buy time by developing a network of alternative agreements with these countries. This is the strategy known as the European Neighbourhood Policy (ENP) (Stefanova 2005, pp. 6–7).

Given this background, the main question to be answered in this chapter is whether the ENP is actually an effective instrument for creating change in the EU’s periphery through the extension of its norms in order to contribute to the EU’s aspirations to be a normative/global power, or whether it is actually no more than a superficial or rather uninfluential tool for extending the EU’s security community by preventing transnational security threats from spilling into the EU.

Tackling this research question first necessitates a thorough review of the main theories of European integration dealing with this issue, specifically those used to analyse international organisations: rationalist institutionalism and constructivism.

## 2 Theoretical Framework

The Europeanisation and enlargement literature include both rationalist and constructivist approaches. Schimmelfennig and Sedelmeier (2002) pioneered the use of constructivist theory to explain the EU’s *enlargement* process. They looked in detail at the extent of democratisation in the Central and Eastern European Countries

(CEECs) resulting from the enlargement process. Using the 'norm-based external incentives model,' they primarily analysed the impact of EU policies, rules and norms contained in EU treaties on the domestic structures, laws and behaviour of non-member countries (Schimmelfennig and Sedelmeier 2002, p. 521).

Concentrating on norms, this theory argues that states' behaviour is best understood as the product of social structures and interactions where ideas, norms, and identity are important. This interaction creates its main influence through the enlargement process, where the EU, 'as a normative power can project its norms and values in a way that is both efficient and legitimate.' This efficiency and legitimacy arise from the tool of 'conditionality' and the use of 'carrots and sticks' (Schimmelfennig and Sedelmeier 2002, p. 522).

In contrast to Schimmelfennig and Sedelmeier (2002) and Mattli and Plümpert (2002) offer a *rationalist* external incentives model to explain the extent of democratisation in the CEECs and the fact that member governments make cost-benefit calculations during the accession process. They argue that, for the candidate countries, such cost-benefit calculations are not related to the diffusion of norms as claimed by constructivists, but rather to redressing economic distortions and maximising aggregate domestic welfare. That is, a non-member state seeks to expand its institutional ties with the EU under conditions that provide it with positive benefits from enlargement, and that these benefits should exceed the benefits the state could secure from any alternative form of horizontal institutionalisation. On the other hand, member states favour the integration of an outsider state based on its geographical proximity and socio-economic structure (Mattli and Plümpert 2002, p. 568).

Although they differ in several of the concepts applied to analyse the tools that the EU uses to influence its neighbourhood, both theories give importance to the concept of security threats. This has been analysed by Ole Weaver (2000) in his approach to 'resecuritisation,' where he states that, '[t]hough as a mature security community the EU does not expect war, it cannot feel secure and continue to prosper if the rest of the continent is in a downward spiral towards increased insecurity and poverty' (Weaver 2000, p. 268). This is also reflected in the European Security Strategy published on 12 December 2003, which stated that 'in the post-Cold War era, the military threat gave way to diversified threats and a distinction between internal and external security concerns was more difficult to make' (European Security Strategy 2003, p. 2).<sup>1</sup> The European Security Strategy specifically points out that 'neighbours who are engaged in violent conflict, illegal trafficking of various kinds, terrorism, nuclear proliferation, environmental degradation, organised crime, or exploding population growth on its borders all pose problems for Europe.' Regarding solutions, the document suggests

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<sup>1</sup> Despite the fact that the European project was constructed without reference to hard security issues, the outbreak of war in the Balkans, 9/11, and the U.S. decision to wage an international war against terror, as well as American unilateralism, awakened the EU as a security actor. Thus, Javier Solana, the Secretary General of the Council of Ministers and the High Representative for the CFSP, was asked to prepare a paper on a common EU security strategy. The European Council then adopted the European Security Strategy in December 2003, which set out for the first time a vision for the EU's strategic policy by identifying common security threats (Aydın and Kaptanoğlu 2008, p. 65).

that ‘trade and development policies and assistance programmes can be powerful tools for promoting reform and contribute to better governance’ (European Security Strategy 2003, p. 8).

This section has briefly introduced two major theories that analyse institutions such as the EU, the significance of security in both theories, and the foundation of the ENP. The following section explores the concept of security in the ENP in more detail to identify which theory the policy is based on, and to answer the research question motivating this study: Is the ENP an effective instrument for influencing the political and economic development of EU partners through the extension of EU norms, thereby making the EU a potential *global power*, or is it rather a superficial *tool* for stabilising the EU’s periphery so that transnational security threats will not spill over into its own well-established security community?

### 3 Historical Background of the ENP

The 2004 enlargement changed the meaning of the EU’s near abroad. With the accession of ten new members, the Union started to share a land border with new Eastern neighbours so that on its new periphery it now faced a wide range of soft security challenges discussed already in the European Security Strategy. Realising that it was impossible to seal off instability behind ever tighter borders, the EU leaders had to make a choice: whether to export stability and security across its near borders or risk importing instability from them.

The solution to this conundrum came from the Commission in its Communication of March 11 2003, on *Wider Europe-Neighbourhood: a new framework for relations with our eastern and southern neighbours* (COM (2003) 11 March 2003), which proposed that the EU should aim for a close partnership with its neighbours; a kind of privileged relationship to include the furthest possible association below the threshold of membership (Aydın and Kaptanoğlu 2008, p. 66). Having the general aim of alleviating economic disparities, this partnership aims to progressively integrate the countries concerned into the EU’s internal market and its regulatory structures. The EU also offers its neighbours the possibility of participating in various EU programmes and several other incentives. Most importantly for our analysis, the partnership identifies several issues as ‘*threats to mutual security*’<sup>2</sup> and requests a joint response to these common challenges. As an outcome of this co-operation, the EU requests its neighbours’ commitment to certain ‘common values and interests,’ namely democracy, human rights, rule of law, market economy, sustainable development, stability, security and prosperity, as stated in the ENP documents (Commission of the European Communities 2003, 2005, 2006). Through the intensive co-operation

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<sup>2</sup> As such, the Commission detected the trans-border dimension of environmental and nuclear hazards, communicable diseases, illegal immigration, trafficking, organised crime, border management or terrorist networks (Commission 2003a, p. 6).

envisaged in different policy sectors, such as trade policy, political co-operation, social and cultural policy, there is an implicit understanding that economic and political development will bring prosperity and stability to the EU's neighbourhood.<sup>3</sup> The key political documents for achieving all these objectives of the ENP are called Action Plans (AP). All the individual APs were subsequently agreed and implemented between 2005 and 2007 except those for Algeria, Belarus, Libya and Syria.

At first glance, the ENP seems to be designed to strengthen the EU's normative power and extend EU norms and values into its neighbourhood; a strategy very similar to the EU's enlargement process. However, there are several problems regarding the ENP that prevent it from becoming an effective instrument to help the EU achieve its aim of norm promotion.

#### 4 Problems with the ENP

It has not taken a very long time for the countries of Eastern Europe to establish democratic consolidation, respect for human rights, minority protection, conflict resolution, and stability. The EU's political accession 'conditionality' has been the cornerstone of this success. By demanding the most rigorous criteria for membership, as compared to other organisations, and by making a highly attractive external incentive from the benefits coming with EU membership contingent on developing democracy, human rights and peaceful conflict management, the EU has induced would-be member states to conform to these political norms. On the other hand, this implies that the prospects for democracy promotion are gloomy in the context of the ENP, which only plans to offer strengthened co-operation in several issues, involvement in the EU's internal market, and various other programs, but does not include a commitment to offer partner states EU membership (Dannreuther 2004, pp. 209–10).

Schimmelfennig (2009) has tried to address this issue by analysing the elements in the ENP that have the potential to work as an alternative to political accession conditionality. He focused on the democratisation potential of *transgovernmental* functional co-operation in individual policy sectors, which is based on the EU's *acquis communautaire*. This governance perspective in fact shifts the focus from the ENP's macro policy to the level of sectoral meso-policies, and concentrates more on a sectoral co-operation structure rather than the traditional hierarchical Community method of integration. According to his arguments, as a consequence of exposure to the EU *acquis* and administrative policy-making in the EU and its member states, new structures of external governance emerge that establish stable horizontal ties between public administration in the EU and third countries,

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<sup>3</sup> Today the ENP consists of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, Palestinian Authority, Moldova, Ukraine, Belarus, Armenia, Azerbaijan and Georgia.



and introduce democratic principles into administrative rules and practices (Schimmelfennig 2009, p. 17).<sup>4</sup>

Schimmelfennig and his colleagues have applied the same method used with the CEECs during enlargement, the method of external governance, for analysing the impact of EU policies on actual democratic dynamics in third countries. When they looked at socialisation and democracy implementation through *network governance* (rather than hierarchical policy transfer as seen during enlargement), their results demonstrated that democracy promotion does actually take place (Schimmelfennig 2009, p. 21–23). This extension of network governance may in fact be more effective in technocratic and unpoliticised areas, but still the process-oriented, horizontal, voluntaristic and inclusionary attributes of network governance allow for the extension of norms and rules that goes along with participatory openness in decision-making processes and practices (Lavenex 2008, p. 939).<sup>5</sup>

However, studies of the ENP overwhelmingly show that there is a clear discrepancy between rule *adoption* and *application*. That is, although the EU has been fairly successful in inducing these countries to adopt legislation in line with democratic governance provisions, these provisions have generally not been implemented. There are three main problems within the ENP that may cause this lack of influence (Table 1).

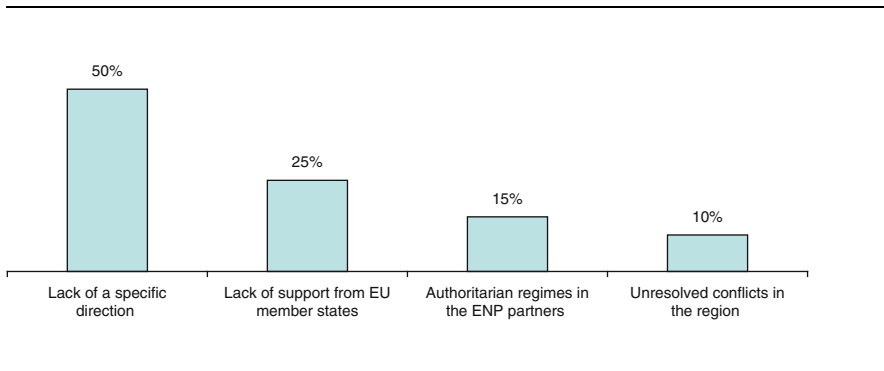
1. The main reason why the ENP is unable to promote democracy in partner countries is the lack of an EU membership incentive. The ENP has never matched the hopes and aspirations of countries like Ukraine, which hoped for stronger inclusion in the institutions of the West. The absence of the prospect of membership weakens the EU's legitimacy and ability to induce its neighbours to accept its norms and values.<sup>6</sup> It also weakens the power of politicians in neighbouring countries to make the necessary reforms.

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<sup>4</sup>In the ENP, co-operation in areas such as the environment, migration, transport or economic policies intensifies, and concrete support for this kind of democracy promotion can be seen in the involvement of ENP partners in democracy and governance *projects* funded by European aid (Schimmelfennig 2009, p. 17).

<sup>5</sup>One of the examples of successful sectoral co-operation between the EU and its ENP partners is the Mediterranean Sea Environment Strategy. Under this strategy, the EU provides financial assistance and supports specific environment projects in ENP countries bordering the Mediterranean. These projects mainly aim to de-pollute the region by 2020. In that sense, the EU also takes co-operation with civil societies in the neighbouring countries very seriously as well. This can also be seen in its approach towards the Arab Spring, which was further elaborated in a joint communication on 25 May 2012. This communication, which initiated the launch of a new response to a changing neighbourhood, stressed that there would be particular emphasis on the capacity of civil society to promote reform and increase public accountability in the ENP countries through the new Civil Society Facility. It would also consult civil society organisations more systematically in the preparation and monitoring of bilateral action plans and financial co-operation projects.

<sup>6</sup>Change does not only come from outside, because there are also some internal factors which may promote democracy. This happens mostly as a result of elections leading to the defeat of less democratic incumbents, or to popular unrest causing the downfall of the old regime.

**Table 1** Main problems with the EPI (N = 20)

2. Following from the previous problem, it becomes necessary for a partner country to ask whether it is worth paying the costs of aligning its legislation with the *acquis* when there is no chance of EU membership. In the ENP, it is ultimately unclear what the actual award is for enacting EU conditionality, namely merely the prospect of access to the EU's market at some future time and to some unspecified extent, which is overshadowed by growing anti-liberalism and neo-protectionism in the EU, as reflected by the French and Dutch rejections of the Constitutional Treaty in 2005, and the current financial crisis in the euro zone, which has led to new restrictions on liberalised access of goods and people into the EU (Stefanova 2005, p. 231).

In addition, the EU also lacks the will and capacity to commit and distribute massive financial resources to the neighbourhood, particularly considering again the financial burden of EU enlargement and current problems in the euro zone. Consequently, the ENP's economic provisions are not robust enough to act as a sufficient incentive for neighbours in the future (Haukkala 2009, p. 1613).<sup>7</sup>

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Externally, the EU is not the only actor which may cause democratic change in third countries. The United Nations also supports the liberal values that form the core elements of the EU. However, experience has shown that those international organisations that do not offer tangible or political incentives to the states of the region have not been effective in promoting democratic change against domestic obstacles.

<sup>7</sup>One other financial instrument committed to helping partner countries achieve sustainable economic development and social growth is the Facility for Euro-Mediterranean Investment and Partnership (FEMIP), the financial arm of the European Investment Bank in the Mediterranean region. According to the 2010 Annual Report of the FEMIP, through enhanced co-operation between the European Investment Bank, the European Commission, the Member States and their financing institutions, as well as the Mediterranean partners themselves, the FEMIP signed loans amounting to 2.6 billion euros to finance 18 projects: six in North African countries, nine in the East and three regional operations (queryFEMIP 2010 Annual Report, pp. 50–57).

3. The Action Plans of the ENP are also problematic. Asking partner countries to ‘approximate’ to the EU’s values and standards and enabling them to participate in the EU’s internal market is expected to help increase prosperity and security in the neighbourhood. However, ENP experts, such as Karen Smith (Smith 2005, p. 769) and Judy Blatt (Batt 2003, p. 5), have found that the actual performance of Actions Plans has been inadequate, as their research has shown that the *acquis communautaire* of the EU may not be an appropriate framework for countries struggling with basic economic reforms.

The three kinds of problem listed above suggest that the tools within the ENP may be inadequate if the task is to offer clear, strong, meaningful support for change. Schimmelfennig and Sedelmeier (2002, 2004) have contributed to this debate by arguing that the EU’s impact on democratisation in the partner countries has resulted primarily from the *external incentives of accession conditionality rather than social learning or lesson drawing*. Non-material incentives and mechanisms of social learning, such as imitation, persuasion, or social influence, have not generally overcome domestic resistance to the adoption of democratic and human rights norms. Even material incentives below the threshold of EU membership, such as financial aid or association agreements, have been too weak (Schimmelfennig and Sedelmeier 2004, pp. 670–71). After the severe difficulties they faced in the 1990s, the EU’s new eastern neighbours might prefer the clear institutional ties and mechanisms and financial support that full membership would provide them.

One particular example of the ENP’s lack of influence is Ukraine. The next section provides a detailed analysis of how the lack of membership prospects in the ENP may endanger the reform process within Ukraine.

## 5 The Case of Ukraine

The reason why this study has chosen Ukraine as a case is that its size, geopolitical standing and ambivalent external orientation make it an important example for evaluating the impact of EU initiatives in its immediate neighbourhood. Situated on the fault lines between two emerging geopolitical power blocs, and constantly torn between a European and an East Slavic choice, Ukraine constitutes a critical test case of the viability and success of the EU’s neighbourhood policy.

### 5.1 *Historical Background to the EU-Ukraine Relations*

The EU’s Partnership and Co-operation Agreement (PCA) with Ukraine was signed and ratified in 1998, and although financial assistance was provided for political and economic reform, the PCA did not envisage future EU membership. This process actually ran concurrently with the declaration by Ukraine of its intention to seek EU

membership. Specifically, the president at that time, Leonid Kuchma, proclaimed associate membership of the EU as the 'main foreign policy priority' of Ukraine in the medium-term perspective (Molchanov 2004, pp. 451–473). However, the Kuchma leadership experienced serious economic and political problems, and none of Ukraine's political parties managed, or even sought to put together a coherent policy programme on European integration, so no reforms were introduced for the implementation of the PCA (Protsyk 2003, p. 438).

The paradox of Ukraine's officially seeking EU membership while undermining its chances by its own domestic policies contributed to greater distancing between Ukraine and the EU. In contrast, Yushenko, the winner of the 2004 presidential elections adopted a pro-western strategy, and his victory created the possibility to transform Ukraine's European choice into real policy by internalising the 'common values' that the EU advocates so vigorously (Kuzio 2003, p. 21–22).

Accordingly, following Yushenko's victory, Ukraine placed EU membership firmly on its agenda and tabled a request for associate membership, intended to lead in time to full accession. There was real optimism from both sides that with Kuchma removed from power, democracy did have a chance in Ukraine and that Europe could and should offer it maximum encouragement. Therefore, immediately after the Orange Revolution that helped bring Yushenko to power,<sup>8</sup> the EU added ten points to its ENP AP, with the aim of strengthening and enriching the relationship and going substantially beyond what was originally on offer.

Though the Ukrainian AP does include more co-operation, and aims to bring Ukraine-EU relations to a higher level, one could suggest that it does not upgrade EU-Ukrainian relations to a new institutional level that would confirm Ukraine's place in Europe. On the other hand, for members of the Orange Movement, the possibility of EU membership in the longer run and associate membership in the medium term provided their motivation and, after 2004, represented the necessary anchor for Ukraine's new, fragile democracy. They believed that the EU simply could not decline Ukraine's membership aspirations after its demonstration of support for European values and democratic transition through the Orange Revolution. This initially led to the ENP having a positive effect in Ukraine. With the adoption of the EU-Ukraine AP listing the required reform measures, EU conditionality helped change the internal political structure by providing an external reference point for domestic actors to pursue domestic reforms. That is, it was *membership aspirations* rather than access to the market that gave the EU the power to motivate Ukraine. The first Orange government, which took key decisions resulting in the domestication of EU conditionality, saw Ukraine's participation in the ENP as a stepping-stone, rather than an alternative to enlargement.

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<sup>8</sup> The Orange Revolution was a series of protests and political events that took place in Ukraine, from late November 2004 to January 2005, in the immediate aftermath of the run-off vote of the 2004 Ukrainian presidential election, which was claimed to be marred by massive corruption, voter intimidation and direct electoral fraud. Kyiv, the Ukrainian capital, was the focal point of the movement, with thousands of protesters demonstrating daily.

However, though negotiations between the EU and Ukraine on an Agreement on Association started in 2007, it seemed to be only a strengthened list of co-operation possibilities between Ukraine and the EU, with potential EU membership nowhere mentioned. This attitude did not change in EU-Ukraine Summits either. For example, in the Summit of 22 November 2010, the EU ‘acknowledged Ukraine’s European aspirations and welcomed its European choice’; however, instead of mentioning the prospect of EU membership, it based future EU-Ukraine relations on the conclusion of the EU-Ukraine Association Agreement and Ukraine’s active engagement in the ENP and Eastern Partnership Initiative (Council of the European Union, 14th EU-Ukraine Summit Joint Press Statement, 22 November 2010).

Without any signal from Brussels of possible EU membership, Ukraine’s reform program was unable to overcome domestic political barriers, with state institutions remaining the tools of economic groups that hindered and obstructed any reforms that threatened their power and prosperity (Wolczuk 2008, p. 189–191). Economic growth stalled, corruption allegations led to the dismissal of several officials, and public confidence in the democratic processes markedly eroded. The irreconcilable differences between Yushchenko and his then Prime Minister Yulia Tymoshenko led to more instability. In the 2010 presidential elections, Yushenko was eliminated, leading to Yanukovich’s victory. With Yanukovich becoming President, some political scientists expected the country to fall more under the influence of Russia so that the era of the Orange Revolution, and the ‘westernisation and Europeanisation’ of the country would be over.<sup>9</sup>

Though some reforms were carried out during Yanukovich’s term, his term cannot be regarded as very successful in terms of making reforms. He reverted to the 1996 Constitution with numerous infractions, made changes to the electoral code which seemed designed to favour the ruling majority, and consolidated power in his hands. The imprisoning, in 2011, of Yulia Tymoshenko, former Interior Minister Yuri Lutsenko and former Environment Minister Heorhy Filipchuk for abuse of office was denounced by the EU as politically motivated. In economic terms, from 2010 to 2011, Ukraine dropped seven places in both the World Bank’s investment climate ranking and Forbes magazine’s conditions for business index, the number of small and medium enterprise (SMEs) decreased, and poverty levels rose by up to 13.8 %.

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<sup>9</sup>In the EU-Ukraine AP, which was endorsed by the EU-Ukraine Co-operation Council on 21 February 2005, the EU ‘acknowledges Ukraine’s European aspirations and welcomes Ukraine’s European choice. By sharing a border as direct neighbours, the EU and Ukraine are determined to enhance their relations and to promote security, stability and well-being. It will furthermore help to devise and implement policies and measures to promote economic growth and social cohesion, to raise living standards and to protect the environment, thereby contributing to the long-term objective of sustainable development’. Moreover, the part of the AP which covers co-operation on Freedom, Security and Justice has been revised by the EU, and sections on co-operation were strengthened (EU-Ukraine Action Plan and Revised EU-Ukraine Action Plan on Freedom, Security and Justice, 2005, 2010). For more details, see the report on Ukraine’s Relations with the EU, in the paper prepared within the framework of the project ‘Integration Perspectives and Synergic Effects of European Transformation in the Countries Targeted by EU Enlargement and Neighbourhood Policies’ (Centre for EU Enlargement Studies, Central Eastern University, Budapest, June 2008).

In political terms, according to the Economist Intelligence Unit Democracy Index, Ukraine fell from 67th in 2010 to 79th in 2011, dropping into the *partly free* category.

Further analysis on the inadequate impact of the ENP on the democratisation process of Ukraine follows below.

## 6 Analysis and Improvement?

The fact that the ENP was unable to function either to transform state structures and policies, prepare Ukraine to derive benefits from closer integration with the EU, or even help stabilise Ukrainian domestic politics proves the ENP's limited *transformative* effect in Ukraine.

For the supporters of Ukraine's EU membership, specifically the eight new Central European member states led by Poland, the prospect of EU membership for Ukraine is crucial for successful democratisation in the country. Yanukovych's return to power in the last presidential elections triggered criticism from the group that, by not giving Ukraine the prospect of membership, Europe has essentially 'ignored' the Orange Revolution and let the country fall back into the sphere of Russia.

However, other countries in the EU have important motives for not engaging with Ukraine. Specifically, the group of 'brakemen,' led by France, Belgium and Luxembourg, cite instability or protracted economic difficulties in Ukraine, and the fact that they will have to cover the costs of Ukraine's Europeanisation while benefiting comparatively little from the opening of new markets for trade and investment or from increased prosperity and stability. Beyond this, there is also a fear of entering 'the other part of Europe,' that is the Commonwealth of Independent States (CIS), and the consequences this step may have for EU-Russia relations because, for historical reasons, Ukraine has occupied a special place in Russia's foreign policy universe. Developments since the invasion of Iraq indicate that some leading EU member states are so eager to bring Russia onto their side that they may even be willing to sacrifice Ukraine to achieve this. This seems even more likely in the aftermath of recent energy disputes, the 2008 Russian-Georgian conflict, and the growing assertiveness of Russian foreign policy.

Internal EU *absorption capacity* has also been raised as a factor, considering the many internal changes the EU has gone through. Critics suggest that it is too soon to move on the question of Ukrainian membership, as the EU is still trying to adjust to the institutional, political and economic changes caused by the two previous enlargements. Moreover, the financial crisis that started in Greece and spread to other countries in the euro zone, such as Italy, Ireland and Portugal, has put the future of the EU in question, presenting serious challenges to future successes in stabilising an unstable neighbourhood. In addition, since that the EU is not a unitary actor in the sense that it has a clearly defined central authority for foreign and security policy making, policies tend to emerge in an ad hoc and uncoordinated manner.

This is not to say that the intense level of co-operation developed through the ENP with Ukraine has not made any impact. The Association Agreement was finalised, which establishes a comprehensive agenda for political association and economic integration, increased market access, approximation to the EU *acquis* and overall modernisation of Ukraine's institutions, as well as the creation of a Deep and Comprehensive Free Trade Area (DCFTA).

However, it would not be so wrong to conclude that in its relationship with Ukraine through the ENP, the EU has acted in accordance with rational institutionalism; calculating costs and benefits and interests of an intense relationship rather than social constructivism in the form of extending EU norms. As can be seen in Gawrich et al. (2010) analysis of the three main areas of intensive co-operation (economic co-operation, democracy promotion and internal security) between the EU and Ukraine, when you look at compliance with EU demands and the level of EU rewards as a result of meeting these demands, it can be said that the EU acts more in line with its own interests. This therefore fits more with a rational institutionalist approach. The reasons behind this conclusion are explained below.

Even though the level of economic co-operation between the EU and Ukraine is very high, Ukrainian expectations concerning EU rewards, such as an FTA and a stake in the single European market, are limited due to probable exclusion of Ukraine's major export items, such as heavy industrial and agricultural products, which belong to the EU's most protected 'sensitive' sectors.

Secondly, the area where the EU has made the most important impact on Ukraine is Justice and Home Affairs (JHA). The main areas of EU demands and co-operation in JHA concern migration and border policy, combating organised crime and drug trafficking, and judicial and police training and co-operation. Being issues which are primarily important for the EU's internal security interests (e.g. organised crime, illegal migration, the 'third country rule' in asylum policy, safeguarding the EU's Schengen regime) this further confirms the importance the EU attaches to security threats in line with its interests of avoiding the risk of negative spillover of neighbourhood unrest (Browning and Joenniemi 2008, p. 538).

On the other hand, when we evaluate Ukraine's compliance with EU using the recent progress report on Ukraine, we find that, specifically in the area of democracy and human rights, there has been further deterioration and that the democracy promotion goal was not successful; Ukraine still maintains only a very fragile and inadequate democracy. In other words, in line with social constructivism, the EU was not very successful in extension of its norms and main values.

ENP's channels and instruments of transnational exchange comprise economic exchanges such as trade and investment, personal interactions through various means of communication, tourism and academic exchanges, and cultural and informational influences via the media, churches and cultural performances. Some of the effects of these exchanges are direct and short term, some of them work indirectly and in the longer term. The intensification of trade, for instance, may make society more affluent and induce societal groups to demand civil liberties and political rights. It also brings people from established democracies in contact with people from non-democratic countries, thus facilitating the spread

of ideas and a change of attitudes. The same can be expected from non-economic interactions, such as cultural and academic exchanges increasing the level of education as a social requisite of democracy or constituting a channel for transmitting beliefs and desires that favour democratisation (Schimmelfennig and Scholtz 2008, p. 191). Thus, through several economic and political co-operation measures, the EU hoped to raise the partner states' populations' standard of living, create new power centres that would want to participate in political decision making, weaken the role of authoritarian leaders and enhance the transparency of the system. This reform process could not be done without the assistance of the political elites. However, as these the long-established political and family networks in economic and political life were not keen to loosen their grip on power, the EU seemed unable to successfully spread democracy to its neighbours at the government level. However, as the revolutions in North Africa in 2010 and 2011, often referred to as the 'Arab Spring,' show, in fact, strong co-operation attempts with partners have indeed had a democratising influence on the *societies* of these Arabic countries.

In the specific example of Ukraine, this effort was not enough. Because of the political struggles in Ukraine, the costs of the reforms to implement effective checks and balances are very high. Thus, without having any substantial incentive, the Ukrainian elites prefer to ignore or instrumentalise EU demands for democratisation. There is a lot of room for keeping up Ukraine's motivation for deeper integration such as widening linkages and improving direct financial support. Specifically, the most attractive rewards below membership may be seen in the DCFTA and in a free visa regime. However, as previously mentioned, especially for Ukraine, a substantial incentive needs to include the prospect of EU membership. Even the mere fact that Ukraine has made many compromises in JHA is because it positions itself as a 'would-be' EU accession candidate.<sup>10</sup> While it is true that the EU cannot enlarge forever, so that there has to be a limit to further integration, in case of Ukraine, the chance of attaining membership is the only reward that can attract both the elites and local mass support.<sup>11</sup>

Thus it can be said that the EU's experience so far shows that the only way it can legitimately project its normative power in Europe is by offering a full stake in European institutions and identity, which implies membership in the EU itself. If the EU does not want to extend accession conditionality to neighbours like Ukraine, and is thus failing to have a large impact on their internal reforms,

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<sup>10</sup> Ukraine granted visa-free travel rights to citizens of all EU member states in 2005 on a voluntary basis, awaiting EU concessions with respect to deeper economic integration and free visa regime. When this reciprocation did not materialize, starting in 2008, Ukrainian authorities started to diminish their support for co-operation with the EU in JHA, in terms of postponing visa-free access for Romanians and Bulgarians.

<sup>11</sup> According to the National Institute for Strategic Studies, domestic support for Ukraine's membership in the EU decreased from 55 % in 2001, to 47 % in 2005, and 43 % in 2008, mainly based on the lack of response from the EU in the immediate aftermath of the Orange Revolution.



then it is reasonable to conclude that the EU is failing to project its normative power through an effective ENP.

This is another way of saying that a rational institutionalist approach could be more suitable for analysing the ENP than a constructivist one. Although this does not mean that the EU is *not* seeking to extend its own particular model of liberal democracy to its neighbours, it does suggest that it is attempting to spread its values for reasons of *self-interest* rather than altruistically. In that sense the stalling, or even deterioration, in democratic standards not only contradicts the EU's goal of democracy promotion, but may also be an unintended consequence of prioritising stability.<sup>12</sup>

### ***6.1 The Eastern Partnership Initiative as a Way of Improvement?***

As shown by the most recent Communication of the European Commission, *A New Response to a Changing Neighbourhood*, published on 25 May 2011, the most important tools for improving the ENP and the partners' reform processes are seen to be *differentiation* and more *regional orientation*. This regional concentration and differentiation process had already taken shape when, in May 2008, Poland and Sweden proposed the establishment of an *Eastern Partnership Initiative (EPI)*. The main idea behind the EPI was to improve the ENP by promoting further integration with the Union's six immediate *eastern* neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The EPI was formally launched on 7 May 2009.

The EPI is an incentive designed to build on the strong parts of the ENP while attempting to make up for the issues that have drawn criticism from the EU's partners, mainly the fact that the ENP was not designed to deal effectively with the substantial geographical, historical, cultural, economic and political differences between the Southern and Eastern neighbours of the European Union, and that it was rather ambiguous regarding prospects of closer integration with the EU. The EPI has both bilateral and multilateral forms of co-operation. The bilateral track is built upon the already existing Partnership and Co-operation Agreements (PCAs) and the framework of the ENP, but it establishes a deeper and wider engagement than its predecessors. As part of its aim toward multilateral co-operation, the initiative seeks to develop strong co-operation among the six partner states, and with the EU, by addressing through *flagship initiatives* the common issues, interests and problems that affect all participants.

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<sup>12</sup>This preference can be seen in EU's co-ordinated response to the democratic changes in North Africa and the Middle East. While EU assistance mainly focused on deep democracy building, including electoral reform, support for civil society, construction of an independent judiciary and a free press and media, and the fight against corruption, the preparations for Tunisia seem to indicate that the EU is most likely to concentrate on *effective* rather than *democratic* governance, particularly in the area of economic development and border control (Börzel and van Hüllen 2011, p. 14–15).

Though it is a rather recent initiative, research conducted on the EPI so far shows that it suffers from the most important problem of the ENP: lack of membership prospects. This conclusion receives further support from empirical research conducted in Prague in September 2010, which involved in-depth-interviews, mainly carried out with representatives of the Czech Ministry of Foreign Affairs (MFA), the Foreign Affairs Committees in the Czech Republic Parliament and several non-governmental organisations (NGO)s. The reason why the Czech Republic was chosen as a case study to analyse the impact of the EPI is that the Czech Republic was behind the initial formulation of the initiative. Even during the preparations for the country's term as EU president, there was a consensus in the Czech government to put eastern policy among the top priorities in the area of external relations. The Czechs prepared consultations with their Visegrad partners, as well as with those other EU members that they considered like-minded, such as Germany, Sweden and the Baltic states, on the enhanced eastern dimension of the ENP through a paper circulated in 2007. These consultations later became some of the country's priorities during its presidency in 2009. Following this, many of the priorities the Czech Republic identified in the framework of its presidency were later included in the formal proposal for the EPI prepared by Poland and Sweden in the June 2008 European Council.

According to Pavel Bucek from the Department of Northern and Eastern Europe in the Czech MFA, the most important problem in the EPI is the lack of a specific political narrative about where it is heading; in other words lack of membership prospect. He explains the effect of this weakness:

“This attitude of the EU gave rise to a policy of evasion, where the key strategic issues were either not mentioned or formulated in a very complicated and vague manner. Apart from making EU policy incomprehensible by imposing extensive technical conditions that have little to do with promoting democracy without the membership prospect, this could also prove ineffective and counterproductive specifically in Ukraine and Moldova. Due to their proximity to the EU, these countries aspire to EU membership as well as visa liberalisation and the increase of available finances”.<sup>13</sup>

## 7 Conclusion

Against the background of the EU's changing geopolitical environment, the purpose of this chapter was to explore the motives behind the ENP. Was it a new initiative for the EU to assert its normative power in its new neighbourhood by assisting these countries to become more democratic, or was it just another way for the EU to further its own security interests, given the emergence of new security challenges that may lead to institutional restructuring of the EU? These challenges

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<sup>13</sup> This statement is taken from an interview held with Mr. Bucek on 21 September 2010 in Prague.

have led to the extension of new incentives and policies toward neighbouring non-member states, as the EU feels vulnerable to the threat of neighbourhood disorder spilling across its borders. It is in the EU's strongest self-interest, therefore, to invest in stability and co-operation around its borders. The challenge, however, has been to design a set of institutions and policies that the EU can reasonably present to other countries as a balanced and legitimate package.

This then is how the ENP came about, presented as a way to safeguard the EU's two main short- to medium-term foreign policy priorities in terms of its neighbourhood: how to avoid further enlargement, and how to manage its new external borders. This chapter argues that the EU's neighbourhood policies can be considered as a form of external governance that includes the (selective) extension of EU norms, rules and policies, i.e. its legal boundary, while *excluding* the opening of its institutional boundary, i.e. membership.

In this sense, two major theories of European integration, constructivism and rationalism, were used to analyse the EU's position regarding its neighbourhood. The constructivist approach defines the EU as a specific collective identity and a specific set of common values and norms. In this perspective, the relationship with the partners emphasizes the importance of their identification with the norms of the EU. Thus, whether a non-member state adopts EU rules depends on the degree to which it regards EU rules and its demands for rule adoption as appropriate in light of its own collective identity, values and norms. Given the problems with the EU's ENP policy discussed here, it can be said that the EU's approach towards its neighbourhood does not appear to be the result of a thorough evaluation of its previous policies. As the EU is trying to deal with its own financial problems, and member states are experiencing difficulties in reaching a common position regarding potential enlargement, it is not a very timely period for the EU to make the success of the ENP one of its main priorities. In that sense, while the ENP is *not* a strictly rationalist form of conditionality, it does incorporate the major elements seen in rationalist forms. The strong dynamics within the EU that have spurred the extension of parts of the EU's *acquis communautaire* into its immediate neighbourhood may be conceived of as a form of *external governance*. That is, it satisfies the EU's own functional needs conditioned by the resurgence of its fundamental identity as a *security community* with responsibility for providing security and welfare to its own citizens and the effective control of borders, instead of adopting the role of a normative power, as it did during the earlier eastern enlargement process.

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# The European Union and the Question of Palestine's Status in the United Nations

Valentina Morselli

The 66th and 67th session of the United Nations General Assembly (2011-2013) saw a quick evolution in the status of Palestine in the United Nations. After a failed application for full membership, Palestine's request for the upgrade to "non-member observer state" was accepted. In reaction to the events, the discourses of both the EU and EU's Member States coexisted in the international arena, presenting contrasting or complementary response proposals. Our hypothesis is that the highly contested nature of policies related to the Middle East Peace Process caused the inability to reach a common position among the 27 EU Member States, thus letting States free of pursuing their own agenda. A contrasting discursive trend, namely the Member States' praise and support for the European Union's role in the issue independently of the actual position proposed, is an indication of the approach that Member States pursue when it comes to the formulation of foreign policy, where the European arena is used as an enhancer of national policy but not necessarily as a constraint. How this is relevant for the "international actorness" of the European Union will be the object of our study.

## 1 Introduction

The Lisbon Treaty and the reinforced position of the European Union (EU) in the United Nations General Assembly are just a few elements that could enable the EU to assert a leading role in the international scene with regard to the Middle East Peace Process (MEPP).

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Yet, in the wake of the Palestinian Authority's (PA) application for full membership to the United Nations (UN) in September 2011 and 2012 request for the upgrade to "non-member observer state" in the UN, the European Union's discourse coexisted next to Member States': from the podium of the UN General Assembly (UN GA), States stuck to their own agenda while reasserting the need to speak with one European voice. Our analysis starts from the observation of the coexistence of these contrasting elements.

The highly contested nature of policies related to the Middle East Peace Process (MEPP) caused the inability to reach a common public discourse among the 27 EU Member States; a contrasting discursive trend, namely Member States' praise and support for the European Union's role in the issue independently of their actual position proposed, is therefore an indication of Member States' approach when it comes to the formulation of foreign policy, where the European arena is used as an enhancer of national policy but not necessarily as a constraint.

How this affected the EU performance as an international actor on the international scene on the occasion of Palestine's membership bid will be object of study. A single case study is by no mean exhaustive of the European foreign policy scenario, nor does it allow a definitive assessment of the European Union's international actorness. The reaction to Palestine's requests has to be replaced in the framework of the policies related to the MEPP and in the pattern of voting behavior of the EU Member States in the General Assembly, but it remains a relevant object of study: as the membership bid did not involve a vote in or of the European Union,—European Member States voted in the UNGA in their national capacity as members of the United Nations—Member States could choose between endorsing a unified European position or proposing an alternative one, having more freedom to defect, therefore making preferences' resilience more evident.

The research points to elements that might have influenced the lack of a unified EU position, coupled with a qualitative analysis of different sources: the EU and Member States' speeches in relation to the status of Palestine at the opening of the 66th and 67th General Assembly at the UN (September 2011 and September 2012), as well as the explanations of the vote in the UN GA in November 2012 concerning the resolution to upgrade the status of Palestine. Additionally, semi-structured interviews were conducted in Brussels<sup>1</sup> to further enhance the comprehension of the political dynamics at play.

This combined study should provide information on the impact of internal and external elements on the EU performance as an actor on the international scene.

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<sup>1</sup> Five interviews were conducted in Brussels, between April and June 2012, in the European institutions and at national permanent representations to the EU. Sources who asked to remain anonymous are identified as "EU diplomat", the label is thus not an indication of the place of employment of the source. Some interviews were conducted in languages other than English and are presented here in the author's translation.

## 1.1 *The Question of Palestine's Status at the UN*

On September 23rd, 2011, Mahmoud Abbas, President of the Palestinian National Authority formally submitted to UN Secretary General Ban Ki Moon an “Application of the State of Palestine for admission to membership in the United Nations” (A/66/371–S/2011/592). The request was referred by the Security Council to the Committee on the Admission of New Members, which concluded that it “was unable to make a unanimous recommendation to the Security Council” (S/2011/705 §21). A positive answer for full membership for Palestine was ruled out as the US stated it would use its veto power in the Security Council (TheGuardian.co.uk 2011a). Given the status of Palestine in the UN as an “observer” (A/RES/3237 (XXIX)<sup>2</sup>, Abbas decided to resort to his second best option: to demand the UN GA to upgrade Palestine’s status to that of “non-member observer State”<sup>3</sup>, granted with resolution A/RES/67/19 approved on November 29th, 2012 (A/RES/67/19).

## 2 **Theoretical Background of the Analysis: A Definition of “International Actorness”**

Sjøstedt elaborated the concept of “international actorness” in 1977 to explain the situation of the European Community in the international scene (Sjøstedt 1977). Several studies followed, trying to identify variables to define the international actorness.<sup>4</sup>

Brattberg and Rhinard make a brilliant synthesis, producing what they describe as a “framework for focusing on actorness per se, based on four operationalizable variables—“context, coherence, capability and consistency” (Brattberg and Rhinard 2012, p. 5). Context is defined as “favorable conditions for action”, in particular the actor’s place in the world, third countries’ perceptions as well as national and international legal provisions, recognition and authority; capability is related to the “availability of instruments” and the “capacity to utilize” them; coherence is defined in relation to “values, preferences, procedures and policies” and how these are “compatible and clear in an EU context”; consistency is related to the gap between the general agreed positions and actions (Brattberg and Rhinard 2012, pp. 6–11).

<sup>2</sup> “[...] the designation ‘Palestine’ should be used in place of the designation ‘Palestine Liberation Organization’ in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system [...]” (A/RES/43/177 §3).

<sup>3</sup> The wording of the resolution specifies that the status of non-member observer State is accorded to Palestine “without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people” (A/RES/67/19). The relevance lies in the use of the word “State”, although State recognition still remains a national prerogative, and in the possibility for Palestine to join UN agencies and other international bodies.

<sup>4</sup> For a complete review of the literature on the subject see Bécларd (forthcoming).



Although their framework is “fairly specific to international disaster response” (Brattberg and Rhinard 2012, p. 28), we esteem it to be relevant in our case. The combination of internal and external variables, with elements belonging to the actor and to the context it is forced to act in, is particularly appropriate: the Palestinian question is highly politicized and the EU and Member States’ positions result from a context where neither of them is the main deciding actor. Additionally, it allows taking into consideration the interplay between national and European level, inherent to the EU action.

Using Brattberg and Rhinard’s framework, we should be able to test the EU’s performance as an international actor in response to the question of the status of Palestine in the UN.

## ***2.1 Context and Capabilities***

Favorable conditions for acting and instruments’ availability are elements specific to the actor itself—new institutional arrangements—and to the international scene it is compelled to act in—its relations to other states or international organizations and the contingent historical context (Brattberg and Rhinard 2012 pp. 6–9). We will try to assess how those elements interacted in relation to EU’s reaction to Palestine’s requests.

### **2.1.1 Institutional Elements and EU Multilateralism**

Provisions of the Lisbon Treaty, entered into force on December 1st 2009, were partly conceived as a response to the internal debate concerning the role of the EU in the international scene. Relevant is the role of the High Representative of the Union for Foreign Affairs and Security Policy (HR), as well as new institutional arrangements concerning the President of the European Council.

The first, appointed by the European Council by a qualified majority “[. . .] with the agreement of the President of the Commission [. . .]” ([Consolidated Version of the Treaty on European Union](#) Art 18.1), is currently—fall 2012—held by Catherine Ashton, and coupled with the chairmanship of the Foreign Affairs Council (Art 18.3). The HR “shall conduct the Union’s common foreign and security policy [. . .] shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council [. . .]” (Art 18.2). Additionally, the HR “shall be one of the Vice-Presidents of the European Commission” and thus “shall ensure the consistency of the Union’s external action. [. . .]” (Art 18.4).<sup>5</sup>

The President of the European Council—currently Herman Van Rompuy—ensures “[. . .] the external representation of the Union on issues concerning its

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<sup>5</sup>The High Representative is assisted by the newly created European External Action Service (EEAS) (Art 27.3).

common foreign and security policy, without prejudice to the powers of the High Representative [...]” (Art.15.6). His role acquired further relevance following the EU's enhanced status in the UN GA. Since May 2011, resolution A/RES/65/276 allows “the EU representatives to present common positions of the Union to the Assembly [...]” (European Union, DEL NY 11-003EN).

Ashton and Van Rompuy's appointment raised doubts. Analysts concluded that Ashton's positions resulted from power struggle between the Council and the Commission (Kaczyński et al. 2010, p. 2) and that the posts were allocated as “essentially the product of a negotiation between the three main European capitals—Paris, London, and Berlin” (Chopin and Lefebvre 2010, p. 4). Interviews revealed that the HR enjoys a strong support of Member States in her mediation mandate in the Middle East area. Additionally, although the EU's role in the Quartet<sup>6</sup> is seen both as the result of a failed independent EU peace initiative (Musu 2011, p. 285) and as an “an acknowledgment of the growing political role of the EU in the MEPP and the legitimacy of the EU's” (House of Lords and European Union 2007, p. 32), the HR is seen by the interviewees as being able to “project leadership”, as for example reflected in the language of 11th of April Quartet Statement (see Quartet Statement 2012).

### 2.1.2 A Global Strategy for a European Foreign Policy

The Lisbon Treaty appears to be outlined to offer a more coherent approach to foreign policy making. Specific provisions concern Brussels' and capitals' actions outside the European boundaries: States are required to “[...] coordinate their actions in international organisations and conferences. They shall uphold the Union's positions in such forums. The High Representative [...] shall organize this coordination [...]” (Art. 34.1) and Member States which also sit on the UN Security Council are to concert with each other to defend Union interests (Art. 34.2).

Marc Otte,<sup>7</sup> former European Union Special Representative for the Middle East peace process, highlights the under-exploitation of Ashton's role as one of the Commission's Vice Presidents, as this would further enhance the ability to produce a coherent foreign policy and to move over inter-institutional disputes (interview). According to other interviewees, the lack of general strategy seems to be partially linked to structural changes introduced by the Lisbon Treaty. Some pointed to the fact that, if the permanent Presidency of the European Council has potential for developing a medium-to-long-term strategy, the rotating Presidency provided with

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<sup>6</sup>The Quartet, including the EU, the US, the UN and Russia, was established with the aim of securing “a two-state solution, with two democratic States, Israel and Palestine, living side by side in peace within secure and recognised borders” (Source: [www.quartetrep.org](http://www.quartetrep.org)).

<sup>7</sup>At the moment of the interview Marc Otte no longer Special Representative; he was Director Policy Planning, Federal Public Service, Foreign Affairs, Foreign Trade and Development Cooperation, Belgium. The interview was conducted in French; all citations are the translation of the author.

short time goals, coupled with strong commitment by the diplomats involved. Additionally, doubtful opinions highlight that “The Lisbon Treaty provisions [...] do not actually bring revolutionary changes since there is no single representation for the EU. [...] it is still far from clear how the powers of the High Representative, the European Council President and the President of the European Commission will be balanced” (Delcourt 2011, p. 40).

### 2.1.3 Transatlantic Relations

Analyzing European security in relation to the Middle East peace process, Musu identified two limits to EU’s effectiveness. The internal “inability of the Member States to go past the particularism of national interests and elaborate a coherent foreign policy” matched with the external limit “result[ing] of US interests in the region and its efforts to remain the main mediator [...]” (Musu 2011, p. 275).

We will go later into details on the first limit. As for transatlantic relations, the atmosphere changed during Obama’s term at the White House. Despite the brilliant beginning given the preeminence to the solution of the Arab-Israeli conflict in his foreign policy (Pogodda 2011, p. 44), the confidence in the effectiveness of Obama’s policy dropped.

The disputed position of the US in the Arab world might be a window of opportunity for strengthening the EU leverage as mediator in the MEPP. While the EU “is generally perceived as a secondary player, whose neutrality is often questioned” its “input [is] often considered by both parties to the conflict as a natural counterweight to American influence” (Schmid 2007, p. 91). Alternative opinions on the subject persist, as Natour—senior politician in the Palestine Liberation Organisation—explains: “Without an American decision the Europeans cannot do much [...]” (quoted in EUObserver.com 2012).

### 2.1.4 Political Uncertainty

A specific contextual element is the fact that neither the EU nor Member States were fully informed about the actual PA’s will as to what type of membership to request in September 2011. Ashton explained: “There is no resolution on the table yet, so there is no position” (European Union 2011 A 354/11), while Palestinian Minister for Foreign Affairs Malki defined Ashton’s efforts rather as an attempt to “persuade Abbas ‘to find a way to prevent confrontation at the UN’” (quoted in Haaretz.com 2011).

The interviews highlighted that, due to the unclear position of the PA, there were no formal negotiations in Brussels in 2011. Discussions were mostly related to possible scenarios—“if cases”, pointing to a general agreement on the idea that only negotiations among the parties will solve the problem and that, generally speaking, unilateral solutions might have negative consequences.

In September 2012 States tried and influence the exact formulation of the resolution. The UK for example asked for “assurances and amendments” such as the “commitment to return immediately to negotiations—without preconditions”, questions concerning Palestinian’s “membership of other specialized UN agencies and action in the International Criminal Court”, and a wording stating that the resolution would not be applied retrospectively (Hague 2012).

## 2.2 *Coherence and Consistency*

Given the context in which the international actor delineates its policy, the strength of its actions has to be defined in relation to values and preferences, and how these are translated in agreed positions and specific actions (Brattberg and Rhinard 2012 p. 5). The reactions to Palestine’s requests, as pinpointed in the next paragraphs, prove the difficulty in finding the balance between national, bilateral and multilateral policies, and the trouble of declining general principles in concrete actions.

### 2.2.1 **The EU and the Middle East Peace Process**

The efforts to build an effective EU foreign policy concerning the MEPP are not new. A particular highlight is the Venice Declaration of 1980 (European Council 1980) and more recently Catherine Ashton made the issue one of her foreign policy program’s key points (Ashton 2009).

Apart from the EU being a member of the Quartet, both the EU and Member States are active on the ground with a number of multilateral and bilateral instruments and initiatives.<sup>8</sup> In addition to permanent representations and delegations, the HR is supported by the EU Special Representative for the Middle East peace process. As a framework, “the EU has Partnership Agreements with all parties to the Arab-Israeli conflict” (Hollis 2010, p. 33) and, under the European Neighborhood Policy (ENP), Action Plans have been concluded with both the Palestinian Authority and Israel. Interestingly, the October 2012 negotiations on a new ENP Joint Action Plan included, as key priority objective, the commitment to “deepen bilateral relations in preparations for establishing a full-fledged Association Agreement between the EU and the future state of Palestine” (European Union A 465/12). Most assistance is channeled through the EU PEGASE mechanism (MEMO/12/341, p. 4); the EU is the “single largest donor” to the Palestinian Authority and both the EU and Member States are essential contributors to the

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<sup>8</sup>For the instruments and information presented in this and following paragraphs, see relevant pages on <http://eeas.europa.eu>

UN Relief and Works Agency (Hollis 2010, p. 32). Also, they are involved in several missions on the ground: the EU Police Mission for the Palestinian Territories (EUPOL COPPS), the monitoring mission at the Gaza-Egypt border crossing (EUBAM Rafah)<sup>9</sup> as well as some Member States participating in UN missions in the broader area.<sup>10</sup>

Results of the efforts depend on the political context but one could highlight a relative coherence in relation to the discourse concerning values and preferences.

The “Council conclusions on the Middle East Peace Process” of 2009 are recalled as the most relevant policy outline:

“[...] The European Union calls for the urgent resumption of negotiations that will lead, within an agreed time-frame, to a two-state solution with the State of Israel and an independent, democratic, contiguous and viable State of Palestine, living side by side in peace and security. A comprehensive peace [...] must be achieved on the basis of the relevant UN Security Council Resolutions, the Madrid principles including land for peace, the Roadmap, the agreements previously reached by the parties and the Arab Peace Initiative” (Council of the European Union 2009 17281/09 §1<sup>11</sup>; Musu 2007, p. 30; Schmid 2007, p. 90).

As for Palestinian statehood: “[...] the Council reiterates its readiness, when appropriate, to recognize a Palestinian state [...]” (Foreign Affairs Council 2010). It was hoped to achieve a two-state solution by September 2011 (EUUN11-068 EN).

It was hoped to achieve a two-state solution by September 2011 (EUUN11-068 EN). The end of the Israel-Palestinian conflict is in fact defined as a “fundamental interest” and a “strategic priority” of the European Union (Council of the European Union 2012 17438/12).

A recent analysis points out that the EU “[...] has yet to develop a coherent strategy to which all the Union’s institutions and Member States subscribe. It should link its efforts to drive greater coherence to broader attempts at identifying where its interests lie” (Hemra et al. 2011, p. 20). On the other hand, studies on the voting pattern of EU Member States in the UN GA show that votes in relation to the Israeli-Palestinian conflict normally “produce high levels of cohesion” (Birnberg 2009, p. 218). Our understanding is that the cohesion derives from the fact that, as highlighted in all the interviews in Brussels, opinions on specific stages for achieving a lasting peace and security for both the Palestinians and the Israeli might differ—as we will see in the following paragraph—but the Council conclusions and the underlying commitments towards democracy, peace and a two-state solutions are shared by Member States.

<sup>9</sup> The operation in Rafah has been suspended since 2007.

<sup>10</sup> For an overview see <http://www.un.org/en/peacekeeping/>

<sup>11</sup> See also Council of the European Union, 17738/10, Foreign Affairs Council of 13 December 2010; Council of the European Union, 15275/11, 10 October 2011; 13011/11, 18 July 2011; 5626/12, 23 January 2012; 9909/12, 14 May 2012. Additionally “EU positions on the Middle East peace process” [http://eeas.europa.eu/mepp/eu-positions/eu\\_positions\\_en.htm](http://eeas.europa.eu/mepp/eu-positions/eu_positions_en.htm)

### 2.2.2 EU, Member States and the Palestine's United Nations' Membership Requests

In September 2011, the level of confidence in a unified European position concerning Palestine's status in the UN dropped as the press started to uncover contrasts (TheNewYorkTimes.com 2011). The situation seemed far from improved 1 year later.

In the midst of hectic political times, the Quartet unveiled its proposal on September 23rd 2011: a short-time framework for negotiations, a preparatory meeting within a month, a commitment to reach an agreement no later than the end of 2012 including proposals on territory and security in the first 3 months of the framework, the organization of a Donors Conference (Statement of the Middle East Quartet 2011).

Neither in 2011 nor in 2012 did the EU or Member States express their favor for an immediate full UN membership for Palestine.<sup>12</sup> At the opening session of the 66th General Assembly of the UN, Van Rompuy as President of the European Council and EU Member States—with the exception of Lithuania (A/66/PV.16) and the Slovak Republic (A/66/PV.22)—referred in their speeches to the question of Palestine.

Among those supporting the Quartet's proposal, the EU: reiterating the institutional innovation brought by the Lisbon Treaty and the new position of the EU in the General Assembly—Van Rompuy<sup>13</sup> called for a “[...] resumption of direct talks between Israel and the Palestinian Authority [as] a “top priority”, adding that “[...] as a member of the Quartet we [Europe] are fully engaged in finding a solution in the Middle East Peace Process.” (A/66/PV.15).

Similar positions were presented by Latvia (A/66/PV.12), Austria (A/66/PV.23), the Netherlands (A/66/PV.26) and Germany, who in addition praised Ashton's efforts (A/66/PV.25). Italy committed to the relaunch of the peace process, “welcom[ing] the Quartet's new effort” and “Within the European Union, which

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<sup>12</sup> The study is based on a qualitative analysis of the wording of the speeches as delivered at the General Assembly 66th and 67th opening session, and following the vote for resolution 67/19. Although the content of the speeches is fairly different, the analysis focused mostly on three themes: reference to the situation of Palestine, or more specific reference to Palestine's status in the UN; reference to the role of the EU in relation to the question of Palestine; reference to the role of the Quartet and its proposal or to a general need for negotiations among the parties. The analysis does not take into consideration national positions expressed elsewhere or at different times. The reason for this limitation is the interest in the message as delivered to the public in the UNGA.

<sup>13</sup> Burke explains: “EU representatives have to identify when they are speaking on ‘behalf of the EU’ (implying that common institutions enjoy full competence over the matter), ‘on behalf of the EU and its member-states’ (in cases when common institutions share competence with national governments) or ‘on behalf of the member-states of the EU’ (when EU institutions have no competence and only act upon request of the member-states)” (Burke 2012). In the speeches of Luxemburg (A/66/PV.24), Denmark (A/66/PV.30) and Hungary (A/66/PV.20), Van Rompuy is referred to as “speaking on behalf of the European Union”. No explicit mention is made in Van Rompuy's speech.

has to speak with one voice [...]” (A/66/PV.24). While Sweden only pointed to the firm commitment of the European Union (A/66/PV.19), Hungary “fully aligns itself with the statement [...] by President Van Rompuy on behalf of the European Union” (A/66/PV.20). Denmark also aligns with Van Rompuy’s statement and calls for negotiation (A/66/PV.30), and so does Luxembourg, who also hopes that “[...] the aspiration of Palestine to have a seat in the Assembly [...]” will be heard and fully supports the proposal of the Quartet (A/66/PV.24).

Greece reminded that EU “[...] on its own account and within the Quartet, has a crucial role to play. Greece will continue to engage in dialogue with both sides and support Catherine Ashton and the European Union’s efforts within the Quartet and with the parties.” (A/66/PV.21). Belgium, hoping “that the steps proposed by the Quartet will be fully implemented”:

“[...] the Palestinian Authority has successfully progressed on the road to statehood, also thanks to the important and sustained contributions by the European Union and by Belgium, and [...] it has now reached a level of statehood that the world cannot ignore” (A/66/PV.24).

The UK presented a position similar to the Quartet’s, although with no clear reference to it: “Peace will only come when Palestinians and Israelis sit down and talk to each other [...]” (A/66/PV.15); similarly the Czech Republic (A/66/PV.19) and Romania (A/66/PV.29). Poland referred to mediation as “[...] an irreplaceable way to achieve lasting and just peace. [...] between Israel and its neighbours, especially with the Palestinian Authority” (A/66/PV.16). Finland (A/66/PV.11) and Cyprus (A/66/PV.15), also called for negotiations, while Estonia only refers to the need of a two-state solution (A/66/PV.11). None of these countries made a clear reference to EU’s role in the Palestinian issue. On the other hand Bulgaria, commending Ashton’s efforts and highlighting that it “recognized the Palestinian state in 1988”:

“Unilateral actions [...] cannot be a substitute for negotiations” and “[...] the United States, working in concert with the European Union, can facilitate this process, based on a vision outlined by President Obama” (A/66/PV.21).

Malta stated: “[...] from an institutional perspective, the [Palestinians’] preparations for statehood have been successfully completed.” It also “fully subscribes to the EU role in the peace process and negotiations particularly those of its High Representative for Foreign Affairs and Security Policy, to make this happen.”; the Maltese “government strongly believes that the elements set out in the conclusions adopted by the Foreign Affairs Council of the European Union in December 2009, December 2010 and May 2011 provide balanced parameters for the resumption of negotiations.” (A/66/PV.22).

Interestingly, there are a few European Member States who have more detailed positions than the official European one, but that presented them as part of a European effort for a solution to the peace process. Slovenia explained the role of mediator of the EU, “to which Slovenia belongs”, as having two aims:

“the revival of the peace process” and “[...] an immediate task relevant to the United Nations [, that] is to find an adequate status for Palestine within the ranks of our common, global Organization. Those two aims are genuinely linked, and the latter should be understood as supporting the former.” (A/66/PV.13).

Portugal “backed the concept that the European Union, through its High Representative, in the context of the Quartet and in coordination with other members of the European Union in the Security Council, has a constructive and decisive role to play”, adding “Europe can speak with one voice [...]”. Additionally Portugal supported “an enhanced status for Palestine in the United Nations”, justifying it as “an important step towards the creation of a new State [...]”, until Palestine’s admission to the UN as a State is possible (A/66/PV.22).

As for Spain:

“[...] the just, legitimate and longstanding aspiration of the Palestinians to live [...] in their own State [...] deserves a clear response from the international community [...] that can no longer be postponed. This new step could be conceived as a stage towards the legitimate objective of Palestine’s becoming a Member State of the United Nations with full rights [...]” (A/66/PV.24).

It was also added:

“Spain is coordinating its position with its European Union partners. I am grateful for the efforts of the High Representative, Catherine Ashton, to reactivate the negotiations, in a way acceptable to all European Union member States, and the declaration of the Quartet, which Spain assesses very positively.” (A/66/PV.24).

Ireland, reiterating the legitimacy of Abbas’s request, explains that

“[...] negotiations must resume as soon as possible. The statement issued last Friday by the Quartet provides a framework for precisely that.” (A/66/PV.25).

Looking to the future, the Irish position was clear:

“The day will come, not too far off, when the General Assembly will be asked to vote on a proposal to admit Palestine as a Member of the Organization, or perhaps, as an interim step towards the achievement of that goal, to accord Palestine non-member observer State status. Provided that the resolution is drafted in terms that are reasonable and balanced, I expect Ireland to give its full support [...]” (A/66/PV.25).

French President Sarkozy’s speech was probably the most debated. While saying that “no one can believe that the peace process can succeed without Europe without all the permanent members of the Security Council and without the Arab States that have already chosen peace [...]”, he presented a three-stages approach to negotiations (A/66/PV.11). Immediately the press synthesized similarities and differences in the French and Quartet’s proposals. Shahid –General Delegate of Palestine to the EU—declared: “it remains unclear which EU countries will support the resolution or whether French President Sarkozy’s new three-step peace plan is an EU position or a purely French idea” (quoted in EUobserver.com 2011).

At the opening ceremony of the 67th General Assembly, the question of Palestine retained less attention, with only 16 European Member States mentioning it, mostly referring to the Israeli-Palestinian conflict, while Ireland specifically mentioned the issue of the status of Palestine in the UN. (A/67/PV.16). Van Rompuy did not refer to Palestine’s status but only to a general “responsibility of each country to chart its own course and to do justice to the aspiration of its people.” committing the European Union to stay by their side, later also mentioning “[...] the urgent task of achieving peace in the Middle East [...]” (A/67/PV.9). Denmark (A/67/PV.21), and Luxemburg



(A/67/PV.9) referred to the role of the Quartet; so does Romania, which also mentions the role of the EU in “protracted conflicts” (A/67/PV.11) Germany, after recalling its position on the Israeli-Palestinian conflict, mentioned in the following paragraph that its “foreign policy is anchored in Europe [. . .]” (A/67/PV.15). Most interestingly, while several states mentioned the European Union—in relation for example to the wider Middle East area, the Syrian crisis or the Arab spring, only Malta made a clear reference to the EU in relation to the MEPP, committing to “[. . .] the efforts of the United Nations and the European Union, in particular towards the attainment of the goal of two viable States living side by side in harmony [. . .]” (A/67/PV.15).

The approval of the upgrade of Palestine in the UN to non-member observer State (A/RES/67/19) was passed with 138 yes—including Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Portugal, Spain and Sweden; 41 abstentions—including Bulgaria, Estonia, Germany, Hungary, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia and the United Kingdom; and 9 no—including the Czech Republic (A/67/PV.44).

Following the approval of the resolution, the Head of the Delegation of the European Union addressed the assembly on behalf of the European Union, based on the speech delivered by the HR before the vote at the UN (A/67/PV.45). It reiterates the need for a two-state solution, a “comprehensive negotiated peace”, and most importantly underlines that “The EU has repeatedly expressed its support and wish for Palestine to become a full member of the United Nations as part of a solution to the conflict [and] reiterates its readiness to recognize a Palestinian State when appropriate.” Additionally, the EU “[. . .] recalls its position on negotiations, including the conclusions of the Foreign Affairs Council in December 2009, in May 2012 as well as the statement delivered on behalf of the EU at the UN Security Council on 21 April 2011” (16079/2/12 REV 2).

As the result concerning the vote on the UN GA resolution 67/19 unveiled on November 29th, 2012, only some EU Member States used their right to explain their vote. What strikes as the most relevant element for our research is, just like in September 2011, the alignment of EU Member States with the EU’s statement, independently of their actual vote. Out of the 16 EU Member States that provided explanations, 9 openly stated their alignment with the EU’s declaration delivered on behalf of the EU, out of which five voted yes, and four abstained on November 29th (A/67/PV.44 and A/67/PV.45).<sup>14,15</sup>

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<sup>14</sup> Those states are Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Malta, Portugal, Romania, Spain, United Kingdom. The Czech Republic only mentions a general need for domestic politicians to be driving negotiations (A/67/PV.8).

<sup>15</sup> Belgium, Bulgaria, Italy, Hungary, Austria, the Netherlands, Spain, Romania, Portugal. Italy has been included as, although it does not directly mention the speech, it uses the wording “In accordance with the long-standing position of the European Union [. . .]” and “[. . .] strongly supports the European Union’s call [. . .]” Denmark only declared to share the commitment towards a two-state solution with the European Union. Germany referred to the role of the Quartet. France made a general call to Europeans; the UK, Greece, Czech Republic, and Finland did not mention the European Union (A/67/PV.44 and A/67/PV.45). It is relevant to remind at this stage that the European Union does not have voting rights in this type of matter at the General Assembly.

The analysis of the wording of the explanations comes to corroborate the findings of the analysis of 2011's speeches, as in both cases contrasting or complementary policies are presented in a wider inclusive European context.

An interesting comparison can be done with the vote concerning the Palestinian request for full membership in UNESCO—October 31st, 2011. Both in the UN GA and in UNESCO the sum of the EU Member States voices is smaller than the majority required to pass a resolution. As this could suggest that unity is not crucial, interviewees pointed out, discussing September 2011's situation, that “it does matter in the end”. In UNESCO, States tested their own policies before actually being called to vote at the UN; only eight EU Member States casted a different vote in UNESCO and in the UN General Assembly.<sup>16</sup> Some interviewees held the opinion that it remains a different case from a UN GA's vote, as in UNESCO the global interest prevailed over the national and the European. Members States' votes in UNESCO that was seemingly contradictory with their usual policy were explained in interviews as being influenced by uncertainty about consequences, or disagreements concerning the timing of Palestine's request.

In addition, it is relevant to note that the European Parliament called in 2011 Member States to express a united voice ([European Parliament 2011](#)). Similar wording in 2012, when the EU Parliament recalled its support to “Palestine's bid to become a UN non-member observer”, calling “on the EU Member States and the international community to find an agreement in this direction” and urging “the EU and the Member States again to play a more active political role [. . .]” ([European Parliament 2012](#)).

### 2.2.3 National Policy Versus European Policy

The behavior of Member States and European representatives concerning the PA's requests seems consistent with the idea that foreign policy is still the less “europeanisable” (Schmid 2007, p. 96) of the policies. This is because, especially in salient issues like the MEPP national contributions are rooted in specific national preferences, understood as “national diplomatic traditions and priorities” (Schmid 2007, p. 98).

Member States were under the obligation to reconcile national interests, the ties among Members States and to the EU institutions, and the ties in and out the UN. Dealing with Palestine's requests underlined the difficulty of reaching consensus when the issue at stake has historical roots and outcomes might spillover to bilateral and multilateral situations. Interviewees explained that Member States in 2011 took into consideration their bilateral relations with the parties to the conflict and other key players, the question of the jurisdiction of the International Criminal Court,<sup>17</sup> as well as the Palestinian membership to related UN-agencies and multilateral fora.

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<sup>16</sup> Denmark and Italy went from abstention to yes; Germany, Lithuania and the Netherlands from no to abstention; Slovenia from yes to abstention; Sweden from no to yes. Source: A/67/PV.44 and [TheGuardian.co.uk 2011b](#).

<sup>17</sup> See International Criminal Court, Update on Situation in Palestine, April 3 2012.

Otte specified that the strong opposition of Israel and the United States to the bid caused some Member States to be reluctant to take position together with the need to keep the Quartet united (interview). Internal politics was also at play. As an example, in November 2012 the Belgian press reported the shift in the national position concerning the vote on the upgrade of Palestine's status: an abstention was first announced—Foreign Minister Reynders declared his will “to find a position of consensus at the European level, which could have only been an abstention, given the dissensus in the EU”, but parties finally pushed for a shared—Belgian—position on a yes-vote (LeSoir.be et al. 2012).

In parallel, in the analyzed speeches of 2011, Member States underlined the role of both Ashton and Van Rompuy as well as the relevance of Europe for the solution of the MEPP, while in 2012 they mostly referred to an alignment on principles for negotiations and solutions to the conflict.

Interviews highlighted the awareness of Member States when it comes to the solution of the MEPP being a priority of the EU, the willingness to find a common European position and acknowledged that the strength as an individual Member State and the strength as a collective are very different. It was strongly underlined that Member States are less divided than what it might appear from outside and some indicated that important progress towards a common foreign policy has been made. As it was explained to the author, there is a large body of conclusions Member States agree on, which is the basis of policy formulation. The difficulty lies in doing the exercise “once again”, as differences persist on *how* to reach the objectives, “the methodology”. As a result, it was stressed that contrast arises when it comes to how to pursue negotiations, identifying what is helpful and what is not, and what can make a long term positive effect.

Interviewees pointed out that, in this kind of negotiations and despite efforts to find a common position, it is enough that one State “goes the national way” to generate a domino effect, where also other States return to their original position based on national interests. It seems that while waiting to reach a common European position, Member States resort to their own national positions. The conclusion reached by Schmid is therefore still relevant: the level of trust of the Member States towards EU policies, together with their capacity of using them as an instrument for their national priorities, is a good indicator of the plausible involvement of the States in negotiating consensus when it comes to MEPP-related issues (Schmid 2007, p. 101).

In an intergovernmentalist view of European politics, Hoffman relates the “European vs. national level” conflict to the features of the international system, in which States find themselves as individuals before being members of a regional complex. National politics are stemming from both “purely local and purely global” problems, rather than regional ones; the relations among the components of the regional system are “subordinated to their divergences about the outside world: ‘the regional subsystem’ becomes a stake in the rivalry of its members about the system as a whole” (Hoffman 1966, pp. 864–865).

An important caveat, as pointed out by Otte, is that one should not mistake division for the nature of European foreign policy, which has to be described as “common”:

there is a common position, but common actions only occur when common interests are considered as more relevant than individual interests (interview).

In this sense Lehne explains that European foreign policy is fundamentally different from highly integrated areas, such as trade or monetary policy: "In these areas competencies are transferred to Brussels or Frankfurt [...]. In foreign and security policy, common action at the EU level coexists with 27 national foreign policies, perceived by some member states to be indispensable elements of national sovereignty and identity" (Lehne 2011, p. 54).

Following this analysis, what makes the EU and Member States' reaction to the Palestinian requests interesting is that, precisely because it is an issue that is neither related to an internal vote nor to a vote of the EU as a legal entity in an international organization, the deterrence for defection is low, in opposition to what might be a stricter regulation for example in monetary or trade issues. Despite the absence of these formal elements, the Palestinian membership bid was highly debated by Member States in the public arena and the HR involvement testimonies of its relevance among foreign policy issues. Although not a major test for European foreign policy, the issue remains in our opinion relevant.

### 3 Conclusions

It seems that, since Schmid's analysis of 2007, where the EU is described as being in a "better position to influence the course of the [conflict's] events", yet "refrain [ing] from exerting full political responsibility even under improved conditions" (Schmid 2007, p. 93), not that much has changed.

When the interviews were conducted, in spring 2012, it was explained to the author that—speculating on an "if-case" scenario—a European common position concerning Palestine's status at the UN would probably turn out to be an abstention, allowing States not to take position in stark contrast to their own beliefs. Interestingly, it was stressed that "a lack of position is not a synonymous of a lack of a united position", adding that Ashton was criticized, but there should not be expectations on her having a political position leading to political chaos just for the sake of having a position.

Is the European Union doomed to fail in achieving coherence and effectiveness when it comes to foreign policy in general and the Middle East Peace Process in particular? Not necessarily.

Member States' reactions to the Palestinian Membership bid at the United Nations and the UNESCO vote, prove that there is still a long way to go to achieve "coherence" in foreign policy action. While EU Member States are reported to be voting "unanimously on nearly all (97%) resolutions put to the UN General Assembly" (Council of the European Union, CL12-117EN, 2012), in September 2012 it was not possible to achieve a common European position on the vote in the UN GA. Nevertheless, both EU Member States that abstained and that voted yes to

the resolution were able to openly endorse the EU statement of November 29th, so that even States who disagree among each other could at least agree on something.

The current situation presents nevertheless a positive “context” that could ease the path towards coherence. At the internal level, reforms introduced by the Lisbon Treaty are indications of the recognition of the need for unity among Member States. If matched with a political will, they could point to an improved “capability” of the EU as an international actor.

European Union’s external image and its “coherence” are related to the Union being a normative example, in addition to the fact that it is one of the main financial partners in the region. A definite description of the external EU image has to be complemented with the perception of the parties involved and other relevant actors in the international scene. Otte held for example the opinion that the external image of the EU was only slightly damaged in 2011 due to the hesitations in the issue, but no major opportunity was missed (interview) and other interviewees believe that September 2011 should not be considered “the thermometer” for the external action of the EU. The actual upgrade of Palestine having only just happened at the moment of writing, it is too early to assess consequences.

The coexistence in the public sphere of both the official European and Member States discourses—proposing alternative and complementary policy options towards the Palestinian Authority requests and praising the role of the EU and its institutions—suggests that the European stance can hardly be understood as the expression of a “consistent” interest, as the contradictions and differences among the States’ interests and policies are highlighted, to the detriment of the commonalities.

Differences between policy and tactics persist. Even in an agreed policy framework, such as the European position towards the Middle East Peace Process, when even one State refuses to adapt its tactics, the other Member States do get back to a position where the EU is seen as precious strength multiplier but national policy remains the best fall back option.

Differences in interests, combined with the relevance given in the speeches to the EU representatives, put our conclusions in line with other analysis on Europeans’ behavior in the UN, such as Delcourt’s: “it seems that the importance of ‘speaking with one voice’ and the mechanisms put it place in order to guarantee more unity have been detrimental to the EU’s overall level of influence. [...]” (Delcourt 2011, p. 37). These analyses thus make Hemra et al. recommendation relevant, underlining the necessity of “enhancing EU’s effectiveness as a negotiator by focusing less on speaking with one voice and more on delivering one message” (Hemra et al. 2011, p. 7).

To conclude, in our opinion, this does not mean that international actorness, consensus and coherence will never be achieved. Rather, it is still a matter of political will and not just of institutions building; the two elements coexist in “dialectic dynamic” (Marc Otte, interview). At present, the Member States’ approach towards the formulation of a common foreign policy is impeding the strengthening of the international actorness of the European Union; the situation might evolve, if Member States see a clear gain in negotiating a common position.

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## ***Interviews***

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# EU Energy Cooperation in the Neighbourhood: Tailoring the Rules of the Game?

Luigi Carafa

## 1 Introduction

Although the role of the European Union (EU) in the international system has attracted great academic attention in the last two decades, a tendency to implicitly or inadvertently project the unitary state actor model on to the EU external relations can be registered. Traditional approaches in the field of international relations, such as intergovernmentalism, intergovernmental institutionalism, and realist accounts more broadly, well capture the very essence of the EU as a non-single-voiced actor in world politics. By contrast, debates on Europeanization, external Europeanization, idea diffusion and normative power Europe have illuminated another facet of the EU external presence in the global political arena, i.e. the projection of internal rules, policies and activities beyond EU borders (Manners 2002; Diez 2005; Panebianco 2006; Schimmelfennig 2007; Börzel and Risse 2009; Whitman 2011; Carafa 2012). Among others, the EU external action has been defined as ‘regional normative hegemony’ and even ‘soft imperialism’—qualifying the EU in a unitary fashion that is valid across policy fields, countries or regions (Hettne and Söderbaum 2005; Haukkala 2008).

Recent studies have sought to redirect this tendency. Scholars of external governance have showed that the EU external action follows sectoral lines rather than overarching foreign policy schemes such as the European Neighbourhood Policy (Lavenex and Schimmelfennig 2009; Lavenex et al. 2009). This implies a consistent continuation of internal modes of sectoral governance beyond EU borders. Importantly, scholars remain divided between meso- and macro-level arguments. In this context, energy cooperation in the neighbourhood constitutes an ideal test-case for disentangling the real nature of the EU as a normative power. The more the EU developed its energy rules the more the Commission made use of them as templates

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for external energy action towards EU peripheries. Clearly, projecting internal governance beyond the territorial borders of the EU makes sense for policy-makers in Brussels. However, this strategy is challenging in the practice as the neighbours have dissimilar beliefs and interests in the energy dossier.

This chapter analyses the development of energy cooperation in the neighbourhood between the mid-1990s and today. On the one hand, it studies regional energy cooperation under three different frameworks: the Energy Community, the neighbourhood policy, and the Union for the Mediterranean. On the other hand, it analyses bilateral energy cooperation with three key neighbours: Algeria, Egypt, and Morocco. These differ as market size, energy interdependence with the EU and the availability of indigenous energy resources. Importantly, this country-sample also captures well the major geopolitical features of the EU external energy relations: in the neighbourhood, Algeria and Egypt are the two most important energy producer countries involved in cooperation with the EU; Morocco is a key energy transit country towards Europe. Comparing engagement at regional and bilateral level, this chapter seeks to understand the nature of the commitments arising between the EU and its neighbours in the energy sector as well as the extent to which the EU is capable of building cooperation around its energy rules and policy-making institutions via functional cooperation. For the sake of clarity, what this chapter does not intend to do is to study the impact of cooperation in terms of domestic rule adoption.

The central argument of this chapter is that energy cooperation in the neighbourhood demonstrates the EU ambition to project its internal sectoral activities externally, but that the resulting power of the Union to engage its partners in functional cooperation is still limited in the energy sector. As it will be shown, the sector-specific logic of external governance has an insufficient explanatory power in the case of energy cooperation. At bilateral level, especially, energy cooperation is strongly differentiated across countries—following macro-level rather than meso-level dynamics.

The enquiry proceeds in four steps: Sect. 2 sketches on the external dimension of EU energy policy; Sect. 3 sets the theoretical base for empirical research; Sect. 4 is devoted to the empirical analysis; and Sect. 5 summarizes the findings and conclusions. The empirical analysis is based on data from several sources, including official documents, technical reports, media articles, literature as well elite interviews<sup>1</sup> conducted between 2010 and 2012.

## 2 The External Dimension of EU Energy Policy

There is much at stake for the European Union as far as energy cooperation in the neighbourhood is concerned. EU energy demand increases every year along with import dependency on fossil fuels. In 2005, 76 % of the EU total primary energy

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<sup>1</sup> Interviewees were guaranteed full anonymity.

demand was covered by fossil fuels (Own calculations based on European Commission 2008b, p. 65). 68 % of these fossil fuels was imported from non-EU countries (Ibid.). In a baseline scenario for 2020, nearly 78 % of the EU total primary energy demand will be covered by fossil fuels, of which 84 % will be imported from non-EU countries (Ibid.). As a result of this, the EU is the second-largest consumer and the largest importer of energy in the world. With the exception of Norway, these imports mainly stem from sensitive areas: namely Russia and the Mediterranean region (with Algeria, Libya and Egypt topping the list).

But does the EU really matter in its external energy relations? Some of the major theoretical perspectives on international relations and EU integration studies can only partly answer this question. Intergovernmentalist approaches see EU institutions mostly as servants of member states governments (Moravcsik 1998). In this view, the EU as an international actor is largely downplayed. Liberal intergovernmentalists and even intergovernmental institutionalists, tend to reduce the importance of supranational institutions in the politico-security sphere (Keohane and Hoffmann 1993, p. 13). In a similar vein, from a realist perspective, the EU does (and can) not speak with one voice in its energy relations with producer and transit countries simply because the EU is not an actor *stricto sensu*. In other words, as far as energy is concerned, the picture that these theoretical perspectives suggest is one of ‘divided we stand’.

There is no doubt that the EU is not a single-voiced actor in the energy domain. Yet there is something that does not come into the picture offered by the above perspectives. The deepening integration in the field of energy has also rapidly developed an external dimension, which consists in the attempt to transfer EU-level energy policies to third countries. This means that the foundations of the EU external energy action can be found in its internal activities. In the late 1980s, energy resurfaced as a global challenge requiring supranational coordination, but the landscape was rather complex at that time: there was neither a legal basis for energy in the Treaties, nor a permissive consensus of the member states to boost integration in this field. In response to this, the Commission pursued a specific strategy to lock energy issues into overlapping policy areas falling under its legislative competence (McGowan 1996; Matlár 1997; Morata and Solorio 2012). This made the inclusion of the energy sector into the Single Market agenda a reality. Policy networks gradually developed starting from the mid-1990s. The European Commission made also use of more traditional community-method instruments to give a boost to sectoral integration: in particular the use of the right of legislative initiative and, in the case of deadlock, the threat of further legislation and of EU competition law (Eberlein 2008). This progressively led to the creation of an enduring EU body of energy legislation.

A key pillar of the nascent European energy policy was the legislation on the liberalisation of the gas and electricity markets, whose core principle is the so-called unbundling model adopted in June 2003. The European Commission defended that the key problem behind the establishment of a competitive internal energy market was the persistence of the old system of national champions in the member states. Unbundling the market (i.e. separating the transmission networks

from the production and supply activities) was seen as the policy solution to overcome this obstacle. A Commission enquiry, however, revealed serious shortcomings in the electricity and gas sectors and paved the way for corrective action starting from September 2007. In the new draft legislative package, the European Commission included an alternative softer unbundling option that would allow companies involved in production and supply activities to retain their network assets while giving up their management and commercial/investment decisions to an independent system operator. But France and Germany firmly opposed to this draft. The negotiations revolved mainly around commercial and investment issues. The final policy output resulted in the adoption of a downgraded unbundling system in March 2009.<sup>2</sup> A third additional option was set up, allowing old state monopolies to opt for keeping control over commercial and investment decisions related with their gas and electricity network assets - simply giving up management to an independent transmission operator and being subject to external supervision.

More recently, European energy policy shifted from a market- to a climate-centred paradigm. In response to increasing energy insecurity and climate change concerns, the 2006 Commission's Green Paper set out a strategy to build up a more consistent energy policy for Europe (European Commission 2006). Under the German EU Council Presidency (January–July 2007), the Union adopted an integrated energy and climate policy approach at the European Council in March 2007 with the aim of reaching three ambitious objectives: reducing greenhouse gas emissions by 20 % below 1990 levels, lessening energy consumption by 20 % through increased energy efficiency, and raising the share of renewable energy in the EU's energy mix to 20 % by 2020. In January 2008, the European Commission proposed binding legislation to implement this agenda. After only 11 months of negotiation, a compromise on the Climate Action and Renewable Energy legislative package (CARE) was reached. The package, which was formally adopted in April 2009, established new EU-level policies touching upon five main issues: (a) the reduction of the number of EU Emission Trading System (ETS) allowances available to businesses to 21 % below the 2005 level in 2020; (b) binding national targets in sectors not covered by the EU ETS (i.e. transport, housing, agriculture and waste); (c) binding national targets to achieve the overall objectives of a 20 % share of renewable energy by 2020; (d) the development of carbon capture and storage; and (e) binding standards for CO<sub>2</sub> emissions from new passenger cars.

While a *sui generis* energy policy was being created in the European Union, the Commission began to approach candidate and non-candidate countries in the Mediterranean region and Eastern surroundings (including Russia) in the mid-1990s in an attempt to project the EU energy *acquis* beyond EU borders. If one considers that only recently the Lisbon Treaty established the entry of energy among the shared competences between the Union and its Member States, it is clear that many were the constraints to develop an external energy action. The

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<sup>2</sup> For reviews, see also Euractiv (2009).

Commission's energy competences were very limited, and sectoral integration in the EU was progressing slowly (Zapater 2009). However, a body of EU energy legislation existed already by the late 1990s and provided the templates for the Commission's initiatives in the wider Europe. The key questions, here, are to what extent the EU succeed in engaging its neighbours in cooperation structures that follows EU energy rules and institutions of sectoral policy-making; and, under what conditions the neighbours do accept this sort of engagement. This chapter will contribute to shed light on these theoretical and empirical problems in the following sections.

### 3 Explaining the Set-Up of Energy Cooperation in the Neighbourhood

Recent debates on EU external relations have sought to explain how the EU expands its rules and organizational structures beyond EU borders (Lavenex and Schimmelfennig 2009). Scholars of external governance moved away from traditional foreign policy analysis by examining processes of norm diffusion and policy transfer to third countries and international organisations (ibid., p. 794). This strand of literature has its roots in governance debates within the fields of international relations and comparative politics. The concept of governance (as opposed to the notion of government) is used to depict the differential types of EU relations with third countries and international organizations. By so doing, external governance analysis has greatly contributed to a better understanding of EU external action by capturing the sectorally fragmented, differentiated, expanding scope of EU rules, policies and institutions to third countries.

The analytical starting point of external governance theory is that high interdependence between socio-political units generates demand for governance. Institutionalised cooperation is the channel through which socio-political units seek to coordinate this interdependence (Lavenex et al. 2009, p. 814). External governance moves on two tracks: the regulatory and organizational boundaries. The former dimension pertains to the extension of EU rules beyond EU borders. The latter dimension relates to the organisational settings that are linked to the bilateral/multilateral cooperation (Lavenex and Schimmelfennig 2009, p. 796). Shifts in any of these two dimensions lead to different forms of differentiated integration of individual third countries with the EU above or below the threshold of membership.

To capture the specific features of the external reach of EU rules, this study takes on three criteria developed in the literature as follows:

- The *scope of the EU acquis promoted*, which refers to the degree to which EU rules attain the conduct of third country actors. This varies from full EU acquis (e.g. enlargement), through partial EU acquis (e.g. ENP bilateral relations) or punctual EU acquis (e.g. information platforms), to no acquis promotion.

- The *legal quality of cooperation*, which refers to the degree to which cooperation parties are bound by a rule or a set of rules. This varies from harmonization, through approximation, to simple information or no precise commitment on the side of the EU and third countries.
- *Supervision*, which refers to the delegation of the authority to implement, interpret and apply rules to third countries (Lavenex et al. 2009, p. 815). This varies from judicial control, through political supervision, to good faith or no supervision at all (Lavenex 2011).

To capture the specific features of organisational boundary shifts, this study adopts the following three criteria:

- The *inclusion in EU structures*, which comprises the participation of third countries in the EU legislative arena, membership/observer status in committees and agencies, cooperation agreement with agencies. Clearly, there can be the case of no inclusion in EU structures.
- The *inclusion in parallel structures*, which comprises both EU-sponsored regional structures and independent regional and/or multilateral structures. In the case of enlargement, there are no parallel structures in place; or they lose centrality and significance over bilateral cooperation. At the weakest level of EU external relations, there can also be the case of no EU involvement in existing parallel structures.
- The *density of interactions*, which can vary from high, through medium, to low interactions between the cooperation parties. There can also be no institutionalised interaction foreseen (Lavenex et al. 2009; Lavenex 2011).

Cooperation between the EU and third countries may vary in these two dimensions. Table 1 summarises all the possible characteristics and combinations of regulatory and organizational dimension of bilateral/multilateral cooperation. The indicators, ranging from 1 to 4, allow to describe the concentric circles of EU external relations, varying from the strongest type of association (e.g. enlargement) with little room for “the ruled” to negotiate, through more horizontal process-oriented modes of cooperation (e.g. ENP-like cooperation), to informal cooperation with third countries in which systems of rules have a low centrality. Here, an important caveat is made. The four configurations of cooperation depicted in Table 1 are ideal types. This implies that, in the practice, cooperation can deviate from and overlap with any of the four circles.

The central research question, here, is on engagement. To what extent can the EU succeed in engaging its neighbours in cooperation structures that follows EU energy rules and institutions of sectoral policy-making? Under what circumstances do the neighbours accept this sort of engagement? Scholars of external governance have explained EU external relations as a conglomerate of sectoral regimes. Lavenex et al. (2009) have showed that modes of sectoral cooperation follow existing EU rules and institutions rather than overarching foreign policy schemes such as the European Neighbourhood Policy. However, the debate on this issue is very much opened. This chapter will put forward a systematic test of this inside–outside approach. From this perspective, existing EU energy legislation

**Table 1** Regulatory and organisational boundary shifts beyond EU borders (Lavenex 2011)

Dimensions	Criteria	Indicators
Regulatory boundary	Scope of EU acquis promoted	Full EU acquis (1)
		Partial EU acquis (2)
	Legal quality	Punctual EU acquis (3)
		Subject to negotiation (4)
		Harmonization (1)
		Approximation (2)
Supervision	Information (3)	
	No legally binding obligation (4)	
	Judicial control (1)	
	Political monitoring (2)	
Organisational boundary	Inclusion in EU structures	Good faith (3)
		No monitoring (4)
		Participation in EU legislative arena (1)
		Membership/observer status in committees and agencies (2)
	Inclusion in parallel structures	Cooperation agreement with agencies (3)
		No inclusion (4)
		No parallel structures (1)
		Inclusion in EU-sponsored regional structures (2)
	Density	Inclusion in independent regional and/or multilateral structures (3)
No EU involvement in parallel structures (4)		
High (1)		
Medium (2)		
		Low (3)
		No institutionalised interaction (4)

and institutions of energy policy-making provide a template for external action in complex policy contexts and appear as efficient solutions for specific energy sector problems (e.g. increasing energy insecurity and CO<sub>2</sub> emission levels). In other words, the external governance approach sees EU modes of energy governance as functionally superior. If this argument holds true, this study expects to find a consistent continuation of internal modes of energy governance in energy cooperation with the EU neighbours. If it does not hold true, this implies a significant variation of modes of energy cooperation in the neighbourhood.

## 4 Results and Discussion

To shape an external energy policy, the European Commission has resorted to a clear strategy: the Union does not speak with one voice, but does speak the same rules. Existing EU energy legislation and institutions for sectoral policy-making provide a template for external action. In the absence of a sound international actorness in its external energy relations, the projection of internal policies beyond the territorial borders of the EU makes theoretical sense especially for the European Commission. However, it is still unclear if such a strategy always materialises in the



practice. To what extent can the EU succeed in engaging its neighbours in cooperation structures that follows EU energy rules and institutions of sectoral policy-making? Do neighbours accept this sort of engagement?

To answer these empirical questions, the following sections explore both the regional and bilateral dimensions of energy cooperation in the neighbourhood. Following a *most-dissimilar-systems design*, I focus on energy cooperation under three different policy frameworks: the Energy Community, the neighbourhood policy, and the Union for the Mediterranean. Then, specific attention is devoted to the cases of Algeria, Egypt, and Morocco. They differ as regards sub-region, market size, and the availability of domestic energy resources. Importantly, this country-sample also captures a topical difference of geopolitical nature: within the European neighbourhood, Algeria and Egypt are the two most important energy producer countries involved in regional and bilateral relations with the EU; Morocco is a key energy transit country towards Europe.

#### ***4.1 Regional Cooperation: Boosting Learning Through the Back-Door of Energy Networks***

This section shows evidence of a continuation of internal modes of energy governance in regional energy cooperation, which is in line with the institutionalist argument developed in the literature. Until the late 1990s and early years of the new century, i.e. when EU energy rules were at best in a nascent phase, the European Commission did not go beyond mere attempts at exporting its energy principles to its partners in the Wider Europe, mainly through the Energy Charter Treaty.<sup>3</sup> In 1997, a Euro-Mediterranean Energy Partnership was created in the framework of the Barcelona Process. This was equipped with two main institutional structures: the Ministerial Conferences and the Energy Forum at the level of general directors. Cooperation was organised on the basis of three Action Plans (1998–2002; 2003–2007; 2008–2013). The resulting institutionalisation was low, with decentralised and ad hoc organisational structures. The character of cooperation was purely political and results were uneven.

But, the more the EU developed its energy rules the more the Commission made use of them as templates for external energy action towards EU peripheries (interview). With the advent of the enlargement rounds and the European Neighbourhood Policy (ENP) and particularly after the adoption of the second legislative package on the liberalisation of the gas and electricity markets in 2003, external energy cooperation upgraded substantially. The latter represents a typical case of top-down Europeanization by conditionality (Schimmelfennig and Sedelmeier 2004). Aware of the reasons for the success of the enlargement machinery, i.e. the *acquis communautaire* as a key instrument of external influence (Magen 2007), the European

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<sup>3</sup> Apart from Turkey, which is a full member, Morocco, Algeria, Tunisia, Egypt and the Palestinian National Authority are simply observers. For reviews, see Konoplyanik and Wälde (2006).

Commission used external relations policies to externalise energy rules as well as policy-making structures and consequently gained a role as an interlocutor with third countries and private companies which goes well beyond its formal institutional role in the energy field. A clear example of this approach was the establishment of the South-East Europe Energy Community Treaty in October 2005, which constitutes a hierarchical form of interaction based on treaty commitment to EU energy *acquis* and equipped with a set of organisational structures (Ministerial Council, Permanent High Level Group, Regulatory Board) as well as a Vienna-based Secretariat ensuring the day-to-day activities (Renner 2009).

By contrast, ENP-based multilateral energy cooperation takes the shape of information networks, i.e. networks that serve to exchange policy-relevant knowledge, best practices and ideas among the members (Lavenex 2008). In September 2006, the Euro-Mediterranean Energy Forum held in Brussels at the level of general directors re-launched the Energy Partnership. The Euro-Mediterranean Ministerial Conference of Limassol of December 2007 was indeed a turning point for energy cooperation at regional level. A set of regional and sub-regional EC programmes have been established or reinforced under the European Neighbourhood and Partnership Instrument (ENPI) since 2007: the Euro-Arab Mashreq Gas Market programme, Energy Efficiency in Construction, the Mediterranean Energy Market Integration programme, Mediterranean Regulators and the Electricity Market Integration programme. Given its position between the Mediterranean and the Caspian Sea, Turkey is also part of the Baku Initiative and Inogate sub-regional programmes. The overall amount allocated to the Mediterranean region in the period 2007–2010 was €342 million, of which about €33 million was earmarked only for energy information networks, thus representing about 10 % of the total (European Commission 2008a). Interestingly, transgovernmental forms of technical assistance that were initially devised to facilitate legislative approximation, regulatory convergence and institution-building in the accession countries, i.e. Twinning, Taiex (Technical Assistance and Information Exchanges) and Sigma (Support for Improvement in Governance and Management),<sup>4</sup> were extended to the eastern and southern neighbourhood with the advent of the ENP. However, specific activities in the energy sector still remain limited—accounting for 4 % of Taiex activities between 2006 and 2010, and 4.4 % of Twinning projects between 2004 and 2010 with an average of 1.5 projects per year—and were mostly directed to the eastern neighbourhood (particularly to Ukraine) (interview; European Commission 2009).

In this context, the EU launched the Mediterranean Solar Plan (MSP) as one of the priority projects of the Union for the Mediterranean (UfM) at the Paris Summit in July 2008. This project-oriented foreign policy initiative aims to promote energy efficiency policies and develop 20 gigawatts of installed renewable energy capacity in the Mediterranean region by 2020, along with the necessary electricity transmission capacity and cross-border interconnections. Importantly, however, the MSP constitutes a point of discontinuity with respect to above regional trend. The solar plan is a very loosely institutionalised form cooperation in which conflicts of

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<sup>4</sup> SIGMA is a joint initiative of the EU and the OECD, but principally financed by the EU.

interests are mainly solved at interstate level. So far, the German government has been the only clear European interlocutor with the neighbours and has mainly spoken in favour of the Desertec project. Algeria is a telling case in this respect. In June 2010, the newly-appointed Minister of Energy and Mines, Youcef Yousfi, declared that Algeria would potentially give up the European solar project evaluating the possibility of constructing a solar project on its own by collaborating with the Chinese clean energy industry (Solar Feeds 2010). But during a visit to Berlin by Algerian President Abdelaziz Bouteflika last December, Germany and Algeria expressed the political intention to cooperate more closely on fossil fuels and renewable energy (New Europe 2010).

Crucially, rule approximation has a low centrality in the solar plan. EU rules do not constitute the point of reference for cooperation, which is rather centred on accompanying the deployment of market-driven large-scale renewable energy projects in the region. To fill this gap, the European Commission launched the Paving the Way for the Mediterranean Solar Plan programme. Established in September 2010 with a €4.6 million budget, this programme aims to promote regulatory convergence and is implemented by a consortium of consulting and energy companies.<sup>5</sup> This consortium carried out activities of bench-marking of existing practice as well as drafting and discussion of roadmaps for regulatory convergence with the EU (ENPI 2010b). Although EU rules are promoted as a reference model, their use as a basis for cooperation as well as its adoption is not binding. Developments in individual countries are followed through technical (rather than an ENP-like political) monitoring (European Commission 2010), and interactions are loosely centralised. This programme may eventually serve as a platform for convergence on a crucial issue: that there is not yet a defined approach on how to bridge the costs of clean power vis-à-vis fossil fuel-generated power in order to assure the profitability of MSP investments over their lifetime. With the currently available technology, clean power generation is still more expensive than fossil fuel power generation. A potential solution to this problem is that the involved neighbours may potentially bridge these costs through the part of the revenues generated by the export of clean power from the deserts to Europe. Interestingly, the consortium has also studied the determination of cost sharing formulae (ibid.). Yet again, this programme emerges as a sort of information network.

#### ***4.2 Bilateral Cooperation: Country-Differentiation as a Non-option***

This section analyses engagement at bilateral level and illustrates that country-differentiation in energy cooperation has become a non-option for the EU. At bilateral level, Great importance is attached to keeping sectoral cooperation on an equal footing, at least in principle (interview). The EU has strived to engage its

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<sup>5</sup> MVV decon (Germany), ENEA (Italy), RTE-International (France), Sonelgaz (Algeria) and Terna (Italy).

neighbours in process-oriented forms of energy cooperation mainly based on soft-law ENP action plans under the European Commission's political monitoring (European Commission 2003). This effort has met with mixed results in the practice.

#### 4.2.1 Algeria

Algeria is somehow a unique case. It is the main gas producer and exporter in the Mediterranean region, and is the third key supplier for the EU after Russia and Norway (Eurostat 2011). When the Euro-Mediterranean Partnership was launched in 1995, Algeria was eager to cooperate with Europe as it had a strong need to come out of the international isolation of early-1990s (Darbouche 2010, p. 73). However, its involvement in cooperation structures has had ups and downs. Under the auspices of the EU, Algeria engaged in the project of Maghreb electricity market integration in late-2003. This remains so far the main EU-sponsored energy sector initiative to which Algeria is still participating—touching on regulatory cooperation based on the principles of the EU internal energy market as well as technical cooperation related the construction/reinforcement of the interconnections as well as synchronisation/stabilisation of the EU-Maghreb energy systems.<sup>6</sup>

With the advent of the ENP, Algiers adopted a more cautious posture—disregarding the network-based approach of the new policy. The Commission has been trying to use all its means in order to put bilateral energy cooperation under the framework of the ENP. However, Algeria has so far been reluctant to fully engage in such a scheme. More precisely, Algeria did not explicitly renounce to participate into the ENP. Rather, it communicated through changes in attitudes and diplomacy (interview). For instance, Algeria did not refuse to participate into the ENPI. According to the EU, Algeria is a participant to the ENP that has not yet agreed an Action Plan.<sup>7</sup> By doing so, the EU leaves an open door to Algiers if it ever wishes to re-think its posture.

Importantly, current bilateral energy relations are legally earmarked in the Euro-Mediterranean Association Agreement (EMAA) concluded with the European Commission in 2002 (EMAA 2002). The reference to energy cooperation is well defined in article 61. In particular, cooperation is aimed at:

- “Institutional, legislative and regulatory upgrading to ensure that activities are regulated and investment promoted;
- Technical and technological upgrading to prepare energy and mining companies for the requirements of the market economy and competition;

<sup>6</sup> See Declaration of intent between Algeria, Morocco, Tunisia and the European Commission on the Maghreb electricity market and its Integration into the European union internal Electricity market, 21 mai 2003, disponible en ligne à l'adresse suivante. Accessed September 25, 2012 from <http://www.mem-algeria.org/actu/comn/declaration-maghreb.pdf>

<sup>7</sup> Accessed Sept 25, 2012 from [http://eeas.europa.eu/algeria/index\\_en.htm](http://eeas.europa.eu/algeria/index_en.htm)

- The development of partnerships between European and Algerian companies in the activities of exploration, production, processing, distribution and services in the energy and mining sectors” (ibid., art. 61).

Although this bilateral agreement is a legally binding document, there is no formal commitment to adopt the EU energy *acquis*. On top of this, monitoring is of purely political nature (interview). The density of institutional interactions is very low, with the EU-Algeria Association Council meeting once per year on average.

Following to the rejection of the ENP by Russia, Algeria also decided to opt out and emulate the EU gas supplier number one. This resulted in a sort of ‘Russianisation’ of Algeria’s foreign energy policy, aiming at achieving a more beneficial treatment by the EU on energy (interview; Darbouche and Dennison 2011). Because of its leverage as the key North African gas exporter to Europe and its related high bargaining power vis-à-vis the Union, Algeria express the desire to pursue a pattern of interaction which is denominated as a strategic energy partnership. The latest National Indicative Programme, approved at the fifth Association Council in June 2010, states that “a draft memorandum of understanding on a strategic partnership in the energy sector was established in April 2006 and updated at the beginning of 2009. Algeria has confirmed its willingness to sign the memorandum, but the signature has not yet occurred” (ENPI 2010a, p. 4).

#### 4.2.2 Morocco

In 1996, EU-Morocco energy relations on energy issues were defined in the framework of the Euro-Mediterranean Association Agreement concluded with the European Commission. However, the reference to energy in this document was elusive. The official text of the agreement states that cooperation focuses on:

- Renewable energy;
- Promoting the saving of energy;
- Applied research relating to networks of databases linking the two Parties’ economic and social operators;
- Backing efforts to modernise and develop energy networks and the interconnection of such networks with Community networks” (EMAA 2000, art. 57).

Institutional density was extremely low, with meetings taking place on an ad hoc basis only at the highest political level (EU-Morocco Association Council) (interview). Under MEDA I and II, bilateral funding was awarded without any explicit link to the sectoral reform progress made by Morocco (ibid.). As a result of this, energy cooperation was very poor in this initial phase.

With the introduction of the ENP, EU-Morocco energy cooperation took the form of functional cooperation. Lacking the hydrocarbons reserves of its neighbours, Morocco currently imports 94.6 % of its energy (ibid.) Demand is expected to nearly quadruplicate by 2030 (ibid.). As a result, Morocco has an “urgent need” to develop energy cooperation with the EU and its neighbours—

Algeria included. An action plan was adopted in 2005. Institutional density has increased in terms of quality, and bilateral relations are now centred on functional cooperation and technical assistance (Action Plan 2005; Memorandum of Understanding 2008, pp. 2–4). A constant political monitoring is assured by the Commission—with a key role played also by the EU delegation in Morocco (interview). After signing a Memorandum of understanding (2008) with the Commission on the priorities for energy cooperation in July 2007, Morocco has been granted the advanced status in the framework of the ENP in October 2008. Rabat was even included in EU level energy structures such as Intelligent Energy Europe (Memorandum of Understanding 2007, p. 3) through which the Union seeks to promote institutional and regulatory change and pursues more horizontal, flexible and subtle forms of partial sectoral integration below the threshold of membership. In the last years, Morocco has attracted increasing funding for wind and solar energy projects from ENPI, international donors and development banks. A country with modest financial resources to cope with complex energy infrastructure projects, Morocco was able to meet the sufficient legislative and technical standards required at EU level to obtain significant financial support (interview). This raised the awareness of national elites and technocrats of the fact that the EU and development banks may fund projects and that private investors may redirect their capitals only if governments take action and demonstrate sufficient regulatory and technical capacity (*ibid.*). Nevertheless, EU incentives to cooperate in the energy field (e.g. in the forms of funds and EIB loans) are not yet made conditional to reform progress in Morocco. At least the linkage is not clear.

### 4.2.3 Egypt

EU-Egypt energy cooperation is somewhat mid-way between the case of Algeria and Morocco, focusing on deepening bilateral energy dialogue while being involved in more horizontal programmes and process-oriented modes of interaction with the EU. Initially, bilateral energy relations were legally based on the Euro-Mediterranean Association Agreement concluded between Cairo and the European Commission in 2001. However, the reference energy in this document was too vague. The agreement states that energy cooperation focuses on:

- “The promotion of renewable energies,
- The promotion of energy-saving and energy efficiency,
- Applied research into databank networks in the economic and social sectors, linking Community and Egyptian operators in particular,
- Support for the modernisation and development of energy networks and for their linking to European Community networks.” (EMAA 2001, art. 53)

Institutional density was extremely low, with the EU-Egypt Association Council meeting once per year on average. Community funding has been allocated with any clear link to the progress made by Egypt.

With the introduction of the ENP in 2003, Egypt has adopted a position that differs from those taken by the rest of the neighbouring countries on the energy field. On the one hand, the government wants to deepen the bilateral dialogue on the strategic energy partnership model. Indeed, Egypt is the second largest producer and exporter of natural gas in the Mediterranean region (after Algeria) and the eighth supplier of the European Union (Eurostat 2011). On the other hand, Egypt has become involved in programs and more horizontal modes of interaction with the EU. Bilateral/multilateral cooperation has become gradually centred on technical assistance, resulting in increased density of institutional interactions (Action Plan 2007). Importantly, the Egyptian interests in becoming a key gas provider through the Arab gas pipeline explain this mid-way solution. Egypt attracted the largest part of renewable energy investment within the Middle East and North Africa with \$490 million for a 200 MW wind project in the Gulf of El Zayt, jointly funded by the European Investment Bank and German Development Bank KfW (UNEP 2010, p. 51). Together with Ukraine, Egypt is by far the main beneficiary of the ENPI funding in the field of energy. Like in the pre-ENP phase, these funds have not been positively linked to the progress accomplished at sectoral level.

## 5 Conclusion

This chapter has investigated the nature development of energy cooperation in the neighbourhood between the mid-1990s and today. By doing so, it intended to contribute to the scholarship on external governance, which sees EU external relations as a conglomerate of sectoral regimes. From this perspective, the modes of sectoral cooperation follow existing EU rules and institutions rather than overarching foreign policy schemes such as the European Neighbourhood Policy. This chapter has sought to test and challenge the above argument.

The central empirical question of this study is to what extent the EU can succeed in engaging its neighbours in cooperation structures that follows EU energy rules and institutions. This chapter has explored both the regional and bilateral dimensions of energy cooperation in the neighbourhood. It has firstly analysed regional cooperation under the Energy Community, the neighbourhood policy, and the Union for the Mediterranean. It has then unveiled the nature of bilateral engagement between the EU and Algeria, Morocco and Egypt, respectively. Case selection responded to a most-dissimilar-systems design. Within the European neighbourhood, Algeria and Egypt are the two most important energy producer countries involved in regional and bilateral relations with the EU; and Morocco is a key energy transit country towards Europe.

This chapter has argued that energy cooperation in the neighbourhood demonstrates the EU ambition to project its internal activities beyond EU borders, but the resulting power of the Union to engage its partners in functional cooperation is still limited in the energy sector. Contrary to the conventional explanation in the external governance literature, this chapter has shown that the sector-specific logic

of external governance has an insufficient explanatory power in the case of energy cooperation in the neighbourhood. The empirical analysis has put in evidence the existence of a mismatch between regional and bilateral energy cooperation in the neighbourhood. At regional level, the EU succeeds quite well in engaging neighbours in regulatory cooperation based on the EU energy acquis. But the scope of cooperation is to boost learning processes rather than regulatory approximation. At bilateral level, the capacity of the EU to engage the neighbours in energy cooperation centred on EU rules is weak. The modes of energy cooperation do not purely reflect internal modes of energy governance. They rather follow the ENP approach based on tailor-made cooperation. However, power considerations take centre stage in particular with hydrocarbon-rich neighbour countries, revealing that country-specific differentiation has become a non-option.

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# The Empire Strikes Back: 1989, 2011 and Europe's Neighbourhood Policy

Julian Pänke

*The comparison between the Arab revolution, [...] and the Eastern Central European of 1989 is consistently employed, but remains without any political consequences. Although the experience of peaceful revolutions [...] and the success of the transformation of the 1990s [are] more than a proud heritage of Europe. Potentially they are an important instrument of European Neighbourhood Policy.*  
(Former Polish diplomat Janusz Reiter 2011)

*The EU's credibility as a global player will depend to a great extent on its capacity to act decisively in its neighbourhood.*  
(European Commission, Joint Communication. Delivering on a New Neighbourhood Policy, 2012)

## 1 Introduction

Empire! A powerful term bound to invite misunderstandings. Until recently the notion of empire was largely rejected by a majority of Western scholars, who considered a neutral, or even positive understanding, as discredited by the colonial history of the last 300 years. The term is politically charged. With the on-going debates surrounding a US unipolar international system, the concept returned with a vengeance, and a parallel historiography reached a more balanced evaluation

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of the Austrian-Hungarian, Russian and Ottoman empires.<sup>1</sup> Since the beginning of modernity and Edward Gibbon's formative *History of the Decline and Fall of the Roman Empire*, it was clearly the decay, rather than the achievements of empires, which inspired Western analysis. For many non-Western scholars, institutional stability provided by hegemonic regimes like the *Pax Romana* or *Pax Britannica*, outweighed their negative aspects (e.g. Liqun 2010, 23 f.). A few years ago historical examples of empires were analysed as an analogy to the European Union (Zielonka 2006; Posener 2007; Deak 2012), but because of the albeit reasonable hesitation to read the EU as an empire—with images of aggressive imperialism in our minds—and often an unbearable position that these analogies had with respect to civilisational superiority—it never gained prominence. Despite this understandable reluctance, applying the term empire to the EU has two advantages: in a simple and convincing fashion it characterizes the political reality of Europe's Neighbourhood Policy (ENP), and makes us aware of both the perception Europe's neighbours have, as well as Brussels' self-image.

## 2 Framing the European Empire

Since 2011, the Arab world faces major transformations. Several analysts have compared the Arab revolutions with the changes of 1989 in Eastern Europe. Even if the current financial crisis is absorbing much time and considerable resources of the EU, Brussels needs to understand the full potential of this second major transformation in its immediate neighbourhood for the sake of its own continuity, and to strengthen itself as a global actor. But so far “the main problem is the lack of an official discourse from Brussels and individual European governments about establishing the necessary new relationship with the Arab countries” (Aguirre 2012).

### 2.1 *The European Union as Global Actor?*

Given the established presence of the EU all across the globe, the union has to be considered a global *actor*. But does the union exercise the necessary influence required by a global *power*? Europe has one common market and military missions under the European flag. However, 11 member states still use their own currencies, all states hold most economic tools (e.g. taxes, employment), and a ‘European army’ is still missing, thus “the reluctance to join the words ‘Europe’ and ‘global power’

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<sup>1</sup> A recent search shows that Amazon has approximately 207,000 books with the word ‘empire’ in the title. See among others Michael W. Doyle, *Empires*, Ithaca (NY) 1986; Shmuel N. Eisenstadt, *The Political Systems of Empires*, Glencoe (IL) 1963; and Alexander J. Motyl, *Imperial Ends: The Decay, Collapse and Revival of Empires*, New York 2001 on the concept of empire.

together is only natural” (Renard 2009, p. 31).<sup>2</sup> To make things worse, “a continent that once stood for prosperity and generous social compacts now look[s] to be heading towards a decade of austerity—hardly appealing for emerging powers, whose rates of growth far surpass those of Europe” (Vaïsse and Kundnani 2012, p. 11), and which offer themselves as attractive partners for the Arab region (Ramadan 2012). According to a neo-realist reading, the EU, when competing with other powers, has to adopt a fundamentally new policy in the south. “Unconditional support for dictators [can] no longer be a viable or effective option, especially in the presence of emerging political and economic players such as China, India, Russia and South Africa. Reform [has] become imperative.” (Ramadan 2012, p. x).

## 2.2 *The Argument for a European Empire*

Between 1989 and 2004, Brussels was able to make much progress in transforming the EU into a global power by establishing, what I posit to refer to as ‘imperial Europe’. Its external activities in the eastern neighbourhood led to the development of the legal concepts, principles and rules that govern today’s Union. The dynamics of its eastern enlargement and the demands of the single market put multi-dimensional governance in place, creating a number of overlapping zones of various degrees of integration: The EU is not a monolithic bloc anymore.

By looking back at the EU’s policy record after 1989, the union might be able to avoid losing its influence in its neighbourhood in the future. Considering the idea of a new European empire implies first of all critically evaluating one’s self-perception, the perception of the neighbours and assessing their expectations, thus providing a unique chance to re-evaluate the relevance of EU values, and potentially establishing a narrative relevant to its southern neighbourhood: this would link the argument to constructivism. Secondly, Brussels should move forward with bold steps and offer real incentives to the southern Mediterranean (market access, free trade areas dropping non-tariff barriers, open visa regimes) and expand its imperial system of governance, as understood in terms of the importance of rules, as emphasized by the theory of institutionalism. If Brussels and the member states understand and embrace such an imperial nature of the EU’s, the Union could establish itself as a global power. By stressing neo-realist power considerations, institutional frameworks and a constructivist approach to ideas and narratives, the argument for an ‘imperial Europe’ adopts a multi-theory approach.

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<sup>2</sup> For a general overview on various perspectives of the EU as object in IR see Schumacher (2005) and Bretherton and Vogler (1999, p. 38). The authors locate the EU according to six criteria in global politics (1) shared set of norms and values; (2) capability to identify priorities and formulate coherent policies; (3) effective negotiating with international actors; (4) available political instruments and capacity to use them; (5) inner legitimacy of decision making processes and their priorities; (6) external perception and expectations of third.

In 2011 the leaders of the European Union clearly failed to reassure the rest of the world with respect to the sustainability of the integration project (Vaïsse and Kundnani 2012, p. 9). To overcome nationalist trends and to finally activate the potential inherent in every crisis, Brussels has to drop the old polarization that played the deepening of the union against a widening (Techau 2011). In an imperial-logic, both concepts mutually reinforce each other as decisive steps towards an ever closer union. They were enhanced (even enabled) by an imperial mission of ‘unifying the continent,’ which gave a significant sense of meaning and identity.

The “empire strikes back”, should be understood in three ways (a) as a demand for the union to re-launch a narrative-based and courageous, resource-backed real offer, as it did in Eastern Europe (1989–2004) to the MENA region now; (b) as reminiscent of European colonialism from the perspective of partners in the southern Mediterranean, which needs to be integrated into the new policies to be adopted; (c) as a promising analytical tool to understand the dynamics of the EU’s external relations in its neighbourhood. In the end, reformulating Alexander Wendt’s famous dictum,<sup>3</sup> “empire is what the union makes of it”.

### 3 Defining Empire

Freedom of religion, freedom of speech, freedom of travel, freedom of trade, right of establishment, equality of nations, races and religions, equality of citizens before the law—for all these features, the prototype is the Roman empire: the first melting pot to impose the motto: ‘unity in diversity’. As successor of the Holy Roman Empire of German Nations, with its patchwork of kingdoms and principalities, margraviates, free cities, and imperial abbeys, it presented another confusingly diverse example of practiced subsidiarity and shared sovereignties. The latter example inspired Jan Zielonka and Alan Posener to ascribe its features, i.e. as a neo-medieval model, to the EU (Zielonka 2006; Posener 2007, p. 111).

#### 3.1 *Multi-Dimensional Governance: Internal Component of Imperial Power*

Imperial power is characterized by vertical and horizontal multi-dimensional governance, leading to a ‘variable geometry’ of vertically arranged supranational, national, regional, and local authorities, enmeshed in horizontally overarching policy networks and resulting in constant “negotiations among nested governments at several territorial tiers” (Marks 1993, p. 392; Hooghe and Marks 2001). These flexible arrangements allow different grades of autonomy for the entities in question, as well as constantly negotiated relations between the imperial centre and the regions

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<sup>3</sup> Alexander Wendt, Anarchy is what States Make of it: The Social Construction of Power Politics, in: International Organization 46.2, Spring 1992, pp. 391–425.

within bi- and multilateral frameworks. Empires usually represent a reduction in integration from the centre to the periphery, corresponding to decreasing adherence to the common body of law and diminishing possibilities to take part in the decision making process of the centre (Münkler 2005, p. 17). The fuzzy logic of imperial politics has its merits particularly in ethnically, confessionally, and in other ways divided regions, prevalent in the European periphery (Balkans, Caucasus, MENA). Examples of historical empires, such as the Habsburg, Russian, or Ottoman empires, indicate the advantages (as focused on in this chapter) of empire in comparison to national tools of integration.

### ***3.2 Sense of Mission and Blurry Borders: External Component of Imperial Power***

Due to a lack of homogeneity in the interior, and the absence of a narrowly conceived national identity, an imperial identity seeks legitimacy by projecting some higher aim to the exterior. Ideologies and narratives might differ, e.g. supporting the spread of freedom and democracy, or the diffusion of socialism, but the imperial mission can be viewed to represent an instrument to be used against the eruption of chaos. Empires constantly confirm the perception of their own mission as defending order (Münkler 2005, pp. 8, 128). “Historic empires provided ideals. [...] [As] long as people believe in the principles, the system is likely to endure” (Deak 2012). In this imperial logic to maintain legitimacy among its members, empires tend to expand, utilizing the transforming powers of the periphery. Thus empires endow meaning by appeasing their peripheries. They invest a considerable share of their wealth into the development of peripheral regions. As a consequence, the peripheries were just as interested in the continuation of the empire as the centre (Münkler 2005, p. 9). Furthermore, imperial rule frazzles on the edges in not clearly demarked border territories or frontiers (Whittaker 2004, p. 3). This does not imply that borders are non-existent, rather, actors perceive their location and significance to be variable and somewhat open to manipulation (Barkey 2008, p. 21). As such, borders do not separate equal political entities, instead they represent grades of power and influence (Münkler 2005, p. 16).

### ***3.3 Historical Empires***

All three historical empires of the East displayed longevity, resilience, and flexibility as key features. Even though they never exercised complete monopoly of power in the territory under their control, their form of political organization proved widespread and durable (Barkey 2008, 13 f.; Kappeler 2001; Ley 2004; Etkind 2011). For the Ottoman Empire, Karen Barkey analysed the techniques by which the sultans and viziers maintained legitimacy, making a virtue out of diversity (Barkey 2008). Within the Ottoman imperial model the

“basic configuration of relationships between imperial authorities and peripheries [was] constructed piece meal in a different fashion for each periphery [. . .]. In that construction we see the architecture of empire emerge: a hub-and-spoke structure of state-periphery relations, where the direct and indirect vertical relations of imperial integration coexist with horizontal relations of segmentation.” (Barkey 2008, p. 1).

Istanbul remained more interested in preserving imperial flexibility and less committed to construct an encompassing collective or to make political reforms uniform (Barkey 2008, p. 12). Something similar can be said for the Russian and the Habsburg empires.<sup>4</sup>

The two main components of imperial politics are (1) multi-dimensional governance, embodied in flexible arrangements of different levels of integration and constantly negotiated relations between the imperial centre, the regions, and entities in multi- and especially bilateral frames; (2) a supranational ideology to substitute the absence of a narrow national identity concept. This legitimizing narrative is directed to the exterior and calls for continuous expansion, at least interaction with the periphery, which in turn gains substantial influence on the imperial core for the benefit of both.

These two components are prominently present in the European Union of today. The journalist Michael Ignatieff characterizes the US and European empires as “*empire lite*” compared to the empires in the past, which were “built on colonies, conquest and the white man’s burden”, stressing their “grace notes” of “free markets, human rights and democracy” (Ignatieff 2003). In their basic structures, the US and the EU remain empires, thus explaining their drive for dominance, which always needs to be observed critically. But their competitive advantage, when compared to nationalism, is giving up a binary logic: us or them, affiliation or alienation, suborder or oppression (Posener 2007, p. 117). Empires do not need all the potentially conflict causing elements of a nation: no need for a common history, neither one language or religion, nor shared customs and traditions.

## 4 Establishing the European Empire (1989–2004)

### 4.1 *Copenhagen: The External Stimulus of Eastern Enlargement*

The surprising collapse of the Soviet Union and the early transformations in the former communist states in Eastern Europe after 1989 caught the EU completely off guard. After a 3 year period of insecurity, Brussels decided to introduce the unparalleled external initiative of the Eastern Enlargement. In June 1993 the EU formulated

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<sup>4</sup> Moscow’s imperial agenda of the ‘Third Rome’ held together a complex system of dependent entities (ranging from the Siberian frontier, the Cossacks, the Caucasus to autonomous Poland) (e.g. Geoffrey Hosking, *Russia: People and Empire 1552–1917*, London 1997). Accordingly the Habsburg monarchy: Powers of the Emperor were only strengthened, if the competences did not collide with the princes’ privileges (Robert A. Kann, *Geschichte des Habsburger Reiches: 1526–1917*, Wien, Köln: 20).



the famous Copenhagen Criteria which defined the benchmarks for joining the Union. The common values were explained for the first time to the exterior. Through media coverage on enlargement they were communicated to the European public. They included democracy resting on the protection of minority rights, a free and social market economy and the adoption of the European Law corpus (*aquis communautaire*). Most importantly, they led to self-reflection in the interior.

The major instruments for eliciting compliance with imperial preferences were economic incentives. Some were offered as traditional trade-offs: foreign aid, market shares, and investment in exchange for cooperative behaviour. It should not be forgotten that in the capitals of Eastern Central Europe, this strategy conjured up memories of the Soviet Empire and their "calls for sacrifice, holding out future prospects" (Janos 2000, p. 365). This time prosperity meant a united Europe. At the summit of Essen in 1994, the EU decided on the elements and necessary steps for the pre-accession process. In doing so, Brussels established an external track of widening the sources of imperial appeasement and introduced various levels of integration borders between full and non-members became blurred, which is apparent in the different intermediate passages associate candidate, and candidate in negotiations for example.

#### ***4.2 Maastricht: The Internal Stimulus of the European Union***

The reality of these various zones of integration was extended on the domestic track as well, i.e. by abolishing border controls in the Schengen area 1996, and the establishment of the European Monetary Union (EMU) in 1999 with Denmark, and the UK opting-out. Along with the member states of the European Free Trade Area (EFTA), e.g. Norway or Switzerland, the EU now complemented its vertical dimension of multi-level governance with a horizontal dimension, in which actors not only cooperated on a subnational level (regions, municipalities) with each other to form territorially overarching policy networks (Marks 1993; Bache and Flinders 2004), but actors participate at various levels of integration, sometimes overlapping in certain policy fields. Whereas the vertical dimension addresses efficiency (subsidiarity), horizontal cooperation in a multitude of networks is typical for imperial entities and allows very flexible responses to specific regional needs in a very vast, multi-cultural geographical area.

In parallel to the response to the transformations in the eastern neighbourhood, the union witnessed a fundamental transition from an economic free market community to a value-based union. The Single European Act of 1986 envisaged a common market for 1993. Along with the 1989 initiative of the Delors Commission and German Chancellor Helmut Kohl, acting under the impact of the foreseeable reunification of Germany, the Euro was introduced as common European currency. The EC laid down the economic and domestic foundations of 'imperial Europe'. It was institutionalized in the Treaty of Maastricht in 1992 by complementing the economic *first pillar* of the European Communities with a Common Foreign and

Security Policy (CFSP) in the *second*, as well as in Justice and Home Affairs (JHA) as the *third pillar*. The idea of imperial fluidity was further strengthened by enhanced cooperation, which allowed a group of states to advance integration in any area within the EU without other members being involved. Revised since its introduction in the Treaty of Amsterdam 1997, it covers by now all policy fields and needs one third of the member states to be initiated. Since March 2011 this procedure was introduced for European divorce law<sup>5</sup> and patents.<sup>6</sup>

The two processes of widening and deepening worked in harmony. By the end of the decade and the introduction of the monetary union in 1999 in merely 11 of 15 member states the EU had received its imperial form of governance with its many exceptions for specific areas. The incentive—or at least the catalyst—for Europe’s transformation to an Empire originated not in its core countries, but at the periphery: in Eastern Europe (cf. Pond 1999, p. 7).

### 4.3 *European Neo-Imperialism?*

The Eastern Enlargement was anything but a smooth process, though. The majority of the Eastern and Central European states perceived the process as a transition from Soviet to European Empire. As in the case of Moscow after 1945, the more loosely coordinated European powers enforced a certain institutional framework in the territories adjacent to them. The European hegemon was animated by a concern about security. The security concerns were twofold: for one the more distant threat of a new Russian challenge to the continental balance of power, and more importantly the imminent fear of chaos and disorder in the immediate neighbourhood, “including visions of the looming peril of waves of impoverished refugees migrating westward” (Janos 2000, p. 363). The accession candidates themselves were very much aware of the imperial nature of EU policy, and “there was little doubt as to who called the shots, or in other words, who were the ‘missionaries’ wielding the ‘bible’” (Janos 2000, p. 366, citing Sajó 1997). This perception was constantly present, even though the Eastern European elites and large parts of society were willing to go through the painful transformations, which inevitably provoked severe political conflicts through re-distribution of national wealth, institutions and memory along their ‘path back to Europe’, whose repercussions are still easily observable in the politics of the new member states.

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<sup>5</sup> Fourteen states entered the proposed cooperation: Austria, Belgium, Bulgaria, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain.

<sup>6</sup> Towards the end of 2010 twelve states proposed to work around disagreements with Italy and Spain over what languages a common EU Patent would be translated into. The unitary patent would be examined and granted in one of the existing official languages of the European Patent Organization—English, French or German. 25 Member States, all except Italy and Spain, will join the proposal.

On their annual tours through Eastern Europe between 1997 and 2004 the representatives of the European Union appraised, through the use of 'safeguards', 'benchmarks', 'monitoring' and 'screening', the 'progress' of the accession candidates (Posener 2007, p. 94). Hegemonic agencies encouraged, praised and reprimanded their "pupils" by handing out rewards and punishments (Pänke 2010, p. 194). This "teacher" attitude became especially apparent when dealing with the political representation of the former regime elites, i.e. the post-communist parties. For example in 2002, the commissioner for enlargement, Günter Verheugen, in a harsh tone reminded the Slovak population, which parties they should vote for in order not to endanger their EU perspectives—in an open attempt to prevent another electoral victory of the post-communist Vladimír Mečiar (Pänke 2010, p. 113). Such telling examples for the biased approach of EU politicians towards unfavourable actors are manifold and shed an important light on the future nature of the ENP in the MENA region with respect to its unwanted Islamist actors. By the way, despite the numerous electoral successes of Mečiar, Slovakia turned out to be one of the most successful transitional countries.

The importance of enlargement within European foreign policy was widely recognized; Christoph Bertram, former director of the German think tank SWP, considered enlargement the most successful instrument of the EU's external relations (Bertram 2001). Along the way, the EU introduced a number of tools providing for flexible arrangements of integration (1) opt-out clauses (as e.g. for the UK in the Euro zone or Schengen area),<sup>7</sup> (2) enhanced cooperation, and (3) the transition periods within the accession treaties (e.g. for free movement of labour within the single market for the new member states by 2004). Would this "menu" transfer to the southern neighbourhood?

## 5 Europe Losing Its Neighbourhood (2004–2011)

In several respects 2004 marked a critical juncture in the development of European integration. Concerning the finality of the EU, some state representatives and scholars got carried away by the national dream of a federal Europe, manifested in the struggle to establish a European constitution between 2001 and 2004 (e.g. Pond 1999; Rifkin 2004; Leonard 2005). With the referendums in the Netherlands and France in 2005, the constitutional project failed. The subsequent period was characterized by enlargement fatigue and national quarrels about the breadth of the European defence policy and military capacities. The integration project itself lost its dynamism, reflected by the public becoming increasingly tired of the

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<sup>7</sup>The Schengen area comprises 26 members, of which three countries (Iceland, Norway, Switzerland) are non-members of the EU—the UK and Ireland opted-out. The Euro zone currently has 17 members with Denmark and the UK opting out and Montenegro and Kosovo as non-members using the Euro as national currency.

self-reflective debates. The Lisbon Treaty of 2007 did not succeed in clarifying the role of the EU's institutions, and even paradoxically strengthened intergovernmental mechanisms of the union in some respects.

## 5.1 *European Neighbourhood Policy*

Shortly before the Eastern Enlargement, Brussels initiated the European Neighbourhood Policy (ENP) as a 'spin-off'. Originally intended to intensify the close relations between the new eastern and southern periphery with the Union, involving a significant degree of economic integration and a deepening of political cooperation in an approach founded on partnership, joint ownership and differentiation, the ENP turned out to be a "mixture of jumble and loopholes" (Lippert 2008, p. 13). The ENP suffered from its imminent contradictions: south vs. east, accession vs. partnership, co-ownership vs. conditionality, worsened by a lack of real incentives, as well as prevalent conflicts of interest horizontally among EU member states, and vertically between EU institutions (cf. Lippert 2008; Fritz-Vannahme et al. 2008; Bendiek 2008). Two points of critique should be highlighted (1) *differentiation and multilateralization*: indecision concerning the "balance between the bilateral and multilateral dimensions, (. . .) whether on the thematic or regional levels" (Genshagen Report 2009, 5 f.); and (2) *asymmetry and ownership*: "The canon of principles governing the functioning of the Neighbourhood Policy is rounded off by the EU's much vaunted principle of 'ownership'. Yet 6 years after the introduction of the ENP the question of whether all partners participate sufficiently remains acute at all stages and all levels" (Genshagen Report 2009, 6 f.).

Nevertheless many analysts acknowledged that "the principles of the Neighbourhood Policy reveal a new dimension of how the EU considers itself and looks at the world" (Del Sarto and Schumacher 2005, p. 27). ENP's overall focus on bilateral agreements and its different degrees of integration "convey the image of an EU that will be 'fading out' towards its external borders" (Del Sarto and Schumacher 2005, p. 26)—an imperial centre-periphery approach.<sup>8</sup> So far Brussels lacks the courage to become aware of, or at least acknowledge, this imperial nature, even though it admits a more interest-driven approach, which would be consequently reflected in its foreign policy strategies: the foundation for an effective global actor. Furthermore, the Union lacks the will to invest significant resources in the ENP. The Polish scholar Katarzyna Pełczyńska-Nałęcz expects the continuation of a "dual strategy", leading to "a pretence in which both the EU and its [neighbours] will be merely imitating an integration" (Pełczyńska-Nałęcz 2011, p. 6). The crucial problem is that Brussels remains "unable to [. . .] determine clearly the goal which an integration not involving membership should seek." (Pełczyńska-Nałęcz 2011, p. 10).

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<sup>8</sup> For a more positive evaluation of the ENP see e.g. Del Sarto and Schumacher (2005); Cameron and Balfour (2006); and Böttger (2010).

## 5.2 *Southern Neighbourhood*

The record in the southern neighbourhood is even bleaker. Already in 1995, the Union had launched the Barcelona Process targeting the countries of the Middle East and North Africa, creating a second regional tier in the periphery. Its three baskets mirrored the Copenhagen Criteria without the membership perspective or clear strategy. Furthermore, authors like Francesco Cavatorta interpret the Euro-Med Partnership as “a reaction to the Algerian events of the late 1980s and early 1990s, when the opening up of the political system saw the emergence of an Islamist movement with foreign policy views aimed at challenging the international status quo” (Cavatorta 2011, p. 14). Thus an alliance with Arab dictators promised to be a bulwark against the rise of Islamism, and helped safeguard geopolitical and economic interests (Ramadan 2012, 9 f.). In a ruthless account Mariano Aguirre writes:

“Since the end of the colonial period, Europe has based its relationship with former colonies on obtaining cheap access to natural resources, selling weapons, and [...] profit[ing] from their cheap and tightly-controlled labor force. Politically, Europe’s aim was to preserve stability, to do business in the region and to secure Israel’s geopolitical position [...]. At the same time, Europe was the beneficiary of massive funds that repressive Arab elites transferred to banks, to investments (real estate), and to other operations that were not always clear and legal.” (Aguirre 2012)

The Troika of *security* against perceived threats of terrorism (read: Islamism), fear of uncontrolled *migration*, and the hope for guaranteed *energy* supplies ended up in unhealthy alliances with authoritarian regimes in the southern neighbourhood (Hanelt and Möller 2011, p. 3). This policy betrayed the common value system of the Union, and thus undermined any effort of establishing a resilient imperial agenda—and as a result convinced neither the Arab partners that the relations were based on mutual trust or giving up at least of parts of the notorious Western double standards applied in the region up to then (Burgat 2007, 3 f.) nor the European public to show a responsibility to act beyond rhetoric in the southern Mediterranean obviously it did not strengthen legitimacy of the ‘imperial Europe project’ in general.

The contradiction between bilateral arrangements, as foreseen in the ENP-framework, and the multilateral approach of the Union for the Mediterranean, Nicolas Sarkozy’s initiative of 2008, highlights this. “[It] is worth noting that the EU was resisting precisely those areas where a move towards the EU was seen as especially beneficial by most partner states (for example, the introduction of a visa-free regime, access to the agricultural market, etc.)” (Pełczyńska-Nałęcz 2011, p. 10). The European Neighbourhood Policy lacked the political will, consistency and especially the credibility, which it enjoyed in the re-unification process of Europe in the 1990s.

### 5.3 *Under Pressure: The Context of 2011*

The political context of 2011 became even more demanding for Brussels because of the ‘game’ the BRICS introduced (Renard 2009), with the natural resources and potential wealth of countries (which Parag Khanna labels “second world”) as the prize. The emerging powers are attempting to reshape the globe to suit their interests. “To a large extent, the future of the second world hinges on how it relates to the [...] superpowers,” Khanna writes, “and the future of the superpowers depends on how they manage the second world” (Khanna 2008: abstract). The “three flaws commonly associated with the West—European colonialism, American imperialism and their unconditional support for Israel—have never afflicted” the BRICS states; thus they do have a competitive advantage (Ramadan 2012, 60 f.), which leads the analyst Tariq Ramadan to recommend that the MENA region should reach out to the emergent countries, since they can “extricate Muslim-majority societies from the system imposed by the West, with its order, its debt and its crises.” (Ramadan 2012, p. 135).

Thus, in its own interest, Brussels “urgently needs to redefine its relationship with the Arab world, demonstrating a shift from favouring elites to supporting democratic political change, democratic actors and an economic and social justice agenda” (Aguirre 2012). If not, the EU might lose its neighbourhood after Brussels completely lost its courage in the east, where it had dropped the membership perspective for countries like Moldova or Ukraine, which had frequently expressed their wish to join the Union.

In the south, Brussels remained caught up in unproductive fixation on stability, betraying its own value system and nourishing the double standard perception. Being challenged by other actors in the region, the status quo is no option anymore and without in-depth reform, the tide is in fact turning against Europe. The EU should take the words of its former commissioner for enlargement Olli Rehn seriously, who said: “European *values* define European borders. Discussions *a priori* on geographic borders and the ‘absorption capacity’ are quite simply theological.” (Posener 2007, p. 11; citing Rehn).

## 6 The European Union and the Arab Revolutions in 2011

After the revolutions in Tunisia and Egypt, the EU responded immediately in March 2011 with the communication *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*, and in May 2011 with a re-evaluation of the ENP in *A New Response to a Changing Neighbourhood*. In the common strategy Brussels promises greater incentives in the three dimensions “money, markets and mobility”, introduces further bilateralisation within the “more for more” principle, and seeks closer engagement with civil society in order to build

“deep democracy”.<sup>9</sup> In May 2012 the Commissioner of Enlargement and the ENP, Štefan Füle, and High Representative Catherine Ashton presented the ENP-package *Delivering on a new European Neighbourhood Policy*, which unsurprisingly sketches out a bright picture of the new ENP. Among the projected successes, which the communication anticipates, are an “increase in the lending ceilings of EUR 1.15 billion to partner countries from the European Investment Bank, and an extension of the mandate of the European Bank for Reconstruction and Development”, the introduction of a “Civil Society Facility [...] with an initial budget of EUR 26 million for 2011, and similar amounts planned for 2012” within the “more for more in practice”, the doubling of financial assistance for Tunisia’s democratic transition from EUR 80 million in 2010 to EUR 160 million in 2011 (*money*), negotiation directives for deep and comprehensive free trade areas with Egypt, Jordan, Morocco and Tunisia (*markets*), and the plans “to conclude mobility partnerships with Morocco and Tunisia” (*mobility*) (Delivering on a new European Neighbourhood Policy 2012, 3 f.).

### ***6.1 Shortcomings and Differences in Comparison to the Eastern Enlargement***

While the preceding plan sounds good in theory, the ENP already did contain elements of differentiation and conditionality, the change anticipated is for Brussels to stick to its principles and promises, and position itself anew in the Arab region in general (Balfour 2012, p. 30). Still, the “new policy has enshrined greater flexibility and set out a framework for tailored responses, matching the specific requirements of the countries [...] and the nature of the partnership they seek with the EU” (Delivering on a new European Neighbourhood Policy 2012, p. 2). It has put Brussels on the right track.

However many analysts remain sceptical about the outcome. For example most of the money was transferred in the form of loans through the European Bank system rather than rapid budget relief, direct aid or debt cancellation (Khakee 2011, p. 3; Balfour 2012). “Mobility was reduced to visa facilitation for more students rather than a more broadly targeted opening of Europe’s borders to the south” (Vaisse and Kundnani 2012, p. 12; Hanelt and Dietl 2011; Khakee 2011, p. 4). “Although the EU began negotiating deep free trade areas with Egypt, Tunisia, Morocco and Jordan, the prospect of more open markets also remained distant as southern member states fearing competition continue to oppose liberalisation of

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<sup>9</sup>European Commission, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A new response to a changing Neighbourhood, COM(2011) 303, Brussels, May 25, 2011: “The elements that characterise a deep and sustainable democracy include: free and fair elections; freedom of association, expression and assembly and a free press and media; the rule of law administered by an independent judiciary and the right to a fair trial; fighting against corruption; security and law enforcement sector reform (including the police); and the establishment of democratic control over armed and security forces.”

the agricultural sector.” (Vaïsse and Kundnani 2012, p. 12; Hanelt and Dietl 2011). Beyond these issues, there is the disappointment growing out of the discrepancy between Arab expectations and European commitments. After a series of interviews in Tunisia, Anna Khakee states that support for the transformation should not focus primarily on assistance in building democratic institutions. “While expecting such assistance, many Tunisians fear that it may also amount to interference. Tunisian expectations are instead centered on the relationship between Europe and Tunisia as a whole.” (Khakee 2012, p. 2).

The many obstacles for a genuinely new approach towards the MENA region become clearer when comparing them to post-revolutionary Eastern Central Europe after 1989: first, the EU was the main economic and political power in the region; second, there was consensus among all relevant political actors (former opposition as well as post-communists) to join the EU, with all accepting its norms and institutions as an affirmation of their European identity; and third, “the EU’s promise of membership, when it was made, provided them an extra incentive to go through the painful process of transition” (Vaïsse and Kundnani 2012, p. 13).

The picture is different in the southern neighbourhood. Firstly, Brussels must compete with other players in the region, such as the USA, the emerging BRICS states, the Gulf states and Turkey. Most of these “players may not offer the funds the EU does, and may not care whether the North African states build their democracies or not, but that hardly matters” (Vaïsse and Kundnani 2012, p. 13). Secondly, some of the southern Mediterranean states are not willing to take over European standards ‘all the way’, but are rather protective of their independence, seeking emancipation from Western influence rather than sign up to European norms without the establishment of a real attractive alternative to full membership in the Union (Vaïsse and Kundnani 2012, p. 13). “Thirdly, and most importantly, against the background of the euro crisis, Europe does not believe it can afford the more generous approach it took in Central and Eastern Europe after 1989. The argument that engagement with North Africa will, in fact, also benefit Europe by giving the EU an economic edge [...] has fallen on deaf ears” (Vaïsse and Kundnani 2012, p. 13).

## ***6.2 Bold Initiative in Need: Expanding Multi-Dimensional Governance***

Thus within the various levels of integration and association, European leaders need to find answers to the difficult conceptual challenge of inventing a new long-term relationship with their southern neighbours. A bold initiative of the EU is needed: Conditionality could work if the EU were willing to offer big carrots linked to a new type of associational status, constituting by 2030 a vast Euro-Mediterranean Economic Area (EMEA) as Andre Sapir and Georg Zachmann are suggesting. Brussels could offer complete openness for goods, services and capital, with front-loaded concessions in the agricultural sector. With respect to labour mobility, the Union should organize a ‘Blue Card’ system for granting



temporary work permits to highly-skilled workers, “and more generally put in place mechanisms to favour circular migration, facilitating the upgrade of human capital.” (Sapir and Zachmann 2012, 6 f.). Furthermore the EU needs to re-evaluate its view on Islamist parties. Brussels lost credibility because of its undeniable “political blindness” (Burgat 2007, p. 15), by focusing on ideologically marginal actors, presumably secular and liberal, which had been—and still are—“close to the inner circles of autocratic rule” (Ramadan 2012, p. 94), preventing the EU “from having a clearer knowledge of what was occurring at the societal level” (Cavatorta 2011, p. 15). Here, experiences with post-communist parties in Eastern Europe can be helpful. Based on these ideas, the EU can turn the European Commission's concept of the “Three Cs for enlargement” into a new concept for the whole neighbourhood:

“(1) Conception: The EU should embrace its neighbors with a more daring approach of selective areas of functional and regional integration; (2) Communication: There is a lot of room for improvement in the EU's way of communicating with its neighbors; and (3) Cooperation: The EU must be selective with regard to partners, and it needs to develop a real spirit of partnership” (Möller 2011, p. 1)

### 6.3 *A New Imperial Narrative in Need: The Legacy of the ‘Euromediterraneum’*

Modelling new strategies towards the MENA region need to integrate the painful legacies of European imperialism still prevalent in the region, and distance itself clearly from European colonialism. Recent remarks of Marwan Bishara, senior political analyst of the Arab news network Al Jazeera, illustrate Arab perceptions. He recalls that the EU's embrace of Arab dictators reflected European expediency, neo-colonial tendencies, and complete ignorance of the Arab people (Bishara 2012). Nevertheless, I posit that a new ‘imperial Europe’—if it warrants a bold offer of integration embedded in clear strategies, dropping some of the Western double standards—might be more welcome in the MENA region than in many political circles of Europe itself. However, the new model has to be embedded in a larger narrative of actively supporting the southern neighbours in their transformation. Such a narrative should target the establishment of a shared space of peace, democracy and prosperity; resurrecting the historical unitary economic and administrative space of the Mediterranean past—the ‘Euromediterraneum’<sup>10</sup>;

<sup>10</sup> The ‘Euromediterraneum’ comprises the close economic, administrative, and as a consequence institutional links between all regions surrounding the Mediterranean in the Middle Ages as heritage of the Roman Empire. This period was characterized by interaction and mutual enrichment. In the last years it gained prominence in research; see e.g. Koder 2009 and the research network (Daniel König, Britta Müller-Schauenburg et al.) “trans-cultural interdependencies in the medieval Euromediterraneum (500–1500)” launched in March 2012 and funded by the German Research Foundation (DFG); preliminary link: [http://www.geschichte.uni-frankfurt.de/download\\_events/2012-03\\_transkulturelle\\_verflechtungen.html](http://www.geschichte.uni-frankfurt.de/download_events/2012-03_transkulturelle_verflechtungen.html) (11.07.2012).

in order to set free similar dynamics as Eastern Enlargement had done in the past. “A new imperial construct embracing all nations, religions and non-totalitarian ideologies might well be the only alternative to the revival of tribalism with all its tragic consequences” (Deak 2012).

Being aware that post-authoritarian spaces depend on external stabilization, to consolidate their new political systems, giving them time to develop durable institutions—this time can be granted by an imperial power (Münkler 2005, pp. 219, 247) like the EU. With the experience of its Eastern Enlargement, Brussels has a competitive advantage to emergent states, if Brussels carefully deals with its double standards and credibility (Balfour 2012, p. 32). Last but not least “Europeans must be prepared to accept, first, that Islamic parties can participate in, and even lead Arab coalitions, and second, that Arab democratic processes will take time and might adopt hybrid shapes that do not necessarily coincide with the liberal model.” (Aguirre 2012; cf. Ramadan 2012, 116 ff.).

## 7 Conclusion

The European Union under the impact of the Arab revolutions of 2011 has the chance to reconsider its Neighbourhood policy and reconcile with its imperial nature. The success of the Eastern European transformation rested primarily on the awareness of a common European project—the re-unification of the continent. Politics need emotional narratives to acquire legitimacy and encourage its citizens to join. Based on these preconditions, one can formulate a coherent strategic agenda. ‘Imperial Europe’ implies understanding its two essential components (1) an *imperial agenda*: Europe already has a common set of values, defined in the Treaties and deployed within various external missions, and highlighted in the Copenhagen Criteria of 1993. The agenda does not represent a formerly adopted ideology, but rather shared interests, enmeshed with historically linked traditions and memories, which have given rise to a common set of principles, which provide an underpinning for a legitimising sense of mission, capable of replacing ethno-cultural solidarities with loyalty to institutions and collective entitlements; (2) its *multi-dimensional governance*: Europe possesses a ‘variable geometry’, as it includes overlapping regions with different integration levels, which help to blur the boundaries in Europe and towards its neighbours: the Schengen area, the Euro zone, associate countries on the Balkans, candidate countries (e.g. Turkey), member states in various transition stages towards full access to the common market (e.g. Bulgaria, Romania), the EFTA etc.—these flexible arrangements of the Union’s imperial landscape can and should be expanded to the MENA region. Europe *à la carte* is a reality—the number of customers in the restaurant can be higher without endangering its nature as a European eatery.

By definition an empire needs to transform itself constantly, making it flexible by adapting to external challenges. The idea of federal Europe led to the failed constitution and the rather disappointing Treaty of Lisbon—within the next decades

Europe will not manifest itself as a federal state. Instead, Brussels needs to blur the borders in the Euro-Mediterranean space (Möller 2011, p. 10)—in combination with a convincing narrative of a shared space of peace, democracy and prosperity. The guiding principles and instruments (“money, markets, mobility”) are all there, the current underperformance of Brussels as global power is thus less a problem of capabilities than a matter of intentions.

“Of the three features that according to Hyde-Price mark a great power, i.e. the scale of its resources, ‘a sense of responsibility for milieu-shaping, system-management and providing collective goods’, and the willingness to act, it is the latter which is often missing in the EU” (Renard 2009, 32 f.; citing Hyde-Price 2007).

In an interesting analogy to today's state of the European Union, Herfried Münkler and Alan Posener observed that the Roman Empire did not suffer from an imperial overstretch, but rather—since the battle of Varus—from a lack of political will to imperial expansion, failing to offer the tribes behind the Northern frontiers privileged relations and incorporation into the empire (Münkler 2005, p. 247; Posener 2007, 25 f.).

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# The EU's Central Asian Strategy in a Globalizing World

Ellen B. Pirro

## 1 Introduction

The European Union's (EU) international aspirations have projected its efforts to every corner of the globe, even the most remote. The five former republics of the Soviet Union in Central Asia, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan and Kyrgyzstan (collectively "The Stans") certainly qualify as remote. These new nation-states are poised to make the transition to a globalized society with rapid development economically, socially and politically. The question is: how effective can the EU be in this swiftly evolving region in light of the stiff competition the EU faces there from Russia, China, the United States and Turkey as well as other countries and organizations—perhaps stronger so than in Africa or Asia. Each interested party, including both nations and organizations, offers different approaches to structure a relationship. To date, the Central Asian states have patterned their relationships with the international community based on their dependence on Russia. However, the EU offers these states a different relationship model than they have previously applied—one which may not only allow them to assert independence from Moscow, but would provide them with other significant benefits. The model is apparent in the numerous activities of the EU in Central Asia after statehood in 1990, and was defined in the EU's Regional Strategy Paper for

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Assistance to Central Asia 2007–2013.<sup>1</sup> This chapter examines that model, its applications to date, and its evolving nature in the face of Central Asian realities as well as world events.

## 2 The Developing Relationship Between the EU and the Central Asian States

For the EU, Central Asia seems at first an unlikely area of interest. It is remote and difficult to access. These are countries without major historical ties to Europe. Yet within the EU awareness of Central Asia is growing and a number of European nations and now the EU itself have begun to forge relationships there for several important reasons.

First, as the EU has enlarged (especially in 2004 and 2007), and with the proposed next wave of expansion, the EU neighborhood is potentially expanding closer to the boundaries of the Central Asian nations both geographically and economically—and includes zones of conflict in Afghanistan, Iraq and even Iran. Many of the basic problems of the EU's neighborhood, including drug and human trafficking and organized crime may have their origins in Central Asia, which is positioned midway between the Golden Triangle (of drug-producing Asian nations, including Afghanistan and Burma) and Europe. Second, there is the threat of a resurgent Russian regional foreign policy. The EU supports all of the former Soviet Republics in their efforts to loosen ties with Moscow and pursue a more democratic path. Europe views engagement and cooperative alliance as the best routes to stability in the region—and therefore security for the EU member states (MSs). The threats arise from a spillover of violence as well as a destabilization of the region, potentially negatively impacting the EU. Third, there is an ever-increasing demand for energy among EU MSs—and a supply diversification from Central Asia would help fill this void as well as lessen EU petroleum dependence on Russia.<sup>2</sup> Finally, in the EU's interest to expand market, Central Asia bears potential to develop into a lucrative area for European goods and services.

In turn, the Central Asian nations also recognize the possibilities inherent in the European model. In the EU's Regional Strategy Paper for Assistance to Central Asia 2007–2013,

“The leaders of each of the five Central Asian Countries have constantly reaffirmed their view that the EU constitutes a fundamental reference point in so far as it provides a model for democratic, political, and economic transition which they must aspire to follow.”<sup>3</sup>

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<sup>1</sup>European Council European Union and Central Asia: Strategy Initiative for Central Asia 2007–2013.

<sup>2</sup>Currently many of the EU MSs are mainly dependent on Russian sources of oil and natural gas.

<sup>3</sup>European Council European Union and Central Asia: Strategy Initiative for Central Asia 2007–2013, p. 12.

### 3 The EU Relationship Model

The EU developed expertise in establishing a model for its global regional relationships. This model differs significantly from those offered by Russia and China. Historically, the EU started with the predecessors of the Cotonou (2000) agreement, which defined the interactions between the EU and the former colonies of some member states, and has progressed to today's series of initiatives with a number of regions, including Africa and South America.<sup>4</sup> The model has been effective in other regions as well, and the EU is now seeking to apply it in Central Asia.

This model has two major components: it combines *bi-lateral* treaties between the EU and states in the area with *regional* arrangements. The bi-lateral treaties open the states to trade and financial interactions, while the regional pacts provide for EU aid in various forms. Political goals like democratization and human rights are intertwined with these two types of agreements. For the EU, central to the success of the model is an emphasis on a stream of interaction via visits, meetings, and conferences. These interpersonal associations focus on specific aspects of the agreed upon goals, which are often rather modest.

Among the major results of these arrangements—and key to the model—is the harmonization of the regional economies with EU standards to facilitate economic exchanges between them:

“The Partnership and Cooperation agreements that have been agreed with each of the region's five states are built around the same two major commitments, namely to align their respective legal frameworks with that of the EU, and to undertake regulatory convergence.”<sup>5</sup>

For example, in the transportation area, these states agree to EU weights, measurements and limits, linkages with existing EU routes, and EU safety measures. Such an agreement allows for easier trade relations between the region and the EU as well as facilitates aid from the EU to develop better transport.

It is noteworthy that all of these EU arrangements specify that the countries, which agree to these arrangements, do not have an EU membership goal. It is also significant that EU aid is conditional on EU (and UN) norms, which are often challenging for these nations to implement, such as progress towards democracy, anti-corruption measures, human rights, and environmental safeguards. Packaged together with significant amounts of aid, the EU has been able to achieve progress in these challenges for recalcitrant regimes.

Using this model, the EU has been forging an on-going relationship with the five states of Central Asia. The current initiative builds on bi-lateral treaties from the

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<sup>4</sup> European Union Commission Cotonou Agreement (2000) replaced a series of prior arrangements between the EU and former colonies mainly of Britain and France. Under Cotonou 78 countries qualify for economic benefits and foreign aid. The Agreement is scheduled to last for 20 years from 2000 to 2020. It was the prototype for subsequent agreements with the Mediterranean states and Latin America.

<sup>5</sup> European Union Central Asia Indicative Programme 2007–2010, p 3.



late 1990s and prior programs for small amounts of foreign aid, which started in 2002 under the program of assisting all the CIS nations.

#### **4 The Rise of Central Asia—and Its Implications to Growing International Interest**

The disintegration of the Soviet Union led to unexpected independent nationhood for Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Despite their rich and varied history, these five states were never independent nation-states, as we understand the term today, but republics created by, and developed within the Union of Soviet Socialist Republics. As their only experience with statehood and foreign relations was based on the USSR's notions of citizenship, norms of sovereignty and state/society, the authoritarian governments, civil difficulties and limited participation in the community of nations characterized their first decade of independence. However, with a weak Russia in those years, they were able to establish their independence, and begin to develop autonomous foreign relations. While much more could have been achieved in this respect, these states chose to remain relatively close to Russia.

Now in the second decade following independence the situation is shifting, and enabling these countries to assert themselves more internationally. Starting from the position of being considered too remote by other countries to justify any extensive engagement with them, the discovery of significant deposits of oil and natural gas, as well as other minerals have made the Stans more desirable to major powers. Most of the world's industrial powers in addition to Russia are calling on the Stans regularly now, and their second decade of political independence has been characterized by attempts of different powers to gain access both to their governments—and their wealth: Beyond the demand for resources, their proximity to various current theaters of military engagement also makes them strategically interesting.

However, in this second decade, Russia, is also seeking to reassert its dominance in these countries—as in all its former republics, which it refers to as its “Near Abroad.” The current Russian administration asserts that they are part of the Russian sphere of influence. As Russia represents a familiar model for Central Asia, they feel uncertain of how much influence they should ascribe to Russia.

Additional alternative models come from China and the United States beyond the EU's, which is the focus of this chapter. For example, China presents a model to structure interactions similar to the Russian version, but substituting China as the focus, as China is also seeking energy resources for its ever-expanding economy. To promote its cause, China created the Shanghai Cooperative Organization (SCO), which is being positioned as a counterweight to NATO in this area. China hopes that this organization will evolve as the gateway in placing Central Asia into their sphere of influence. For a number of years, the SCO has not yet fulfilled its objectives nor has it been very active. However, in 2012 China together with Russia sought to reinvigorate this organization with meetings and promises of interaction and aid.

While the Russian and Chinese models are similar, the United States presents a different model, focused somewhat less on energy, and more on security and the struggle against terrorism. Fearing a threat from the Iranian Islamic regime, the United States wishes to ring Iran with US allies and military options, including bases, as it also needs access to both Iraq and Afghanistan, and the conflicts it is involved in there. So, it has developed a new interest in the Central Asian nations. This has resulted in some small amounts of foreign aid, which has been mainly in the security area and in the establishment of military bases, notably the one at Manas in Kyrgyzstan.

Near-neighbor Turkey also has become an alternative to Russia in the Stans. Turkey is asserting increased regional strength as its economy thrives. It, too, is active in the Central Asian nations, seeking political influence based on ethnic ties and geographic proximity. One of the recurring challenges for the EU vis-à-vis Central Asia is the EU candidacy of Turkey—and the continuing delays towards its membership. At this stage, it appears that Turkey may drop its EU bid altogether, which would diminish the EU's reputation in Central Asia. As the EU also vies for consideration there, it appears to be the least likely partner, while the Stans are still mostly semi-authoritarian regimes.

The notable exception has been the successful “revolution” in Kyrgyzstan, which led to a (very fragile) parliamentary system, while Personalism and long duration characterize the leadership of the other Stans, with corruption rampant throughout the area. These are repeatedly cited for their lack of human rights—somewhat understandable due to their rough neighborhood, bordering Afghanistan, Pakistan and Iran. They have become notorious for drug trafficking into the lucrative markets of Europe, a trade the EU wants to bring under control. Yet all of these factors significantly challenge most countries seeking access and influence in Central Asia.

## 5 The EU Model in Action

Turning to the EU's evolving relationship with the Central Asian countries, the first impression compares to a spider's web—a dense network of relationship strands. Within this, the EU's Central Asian Strategy resembles many other EU programs, which are often complex and difficult to unravel. The EU's Central Asian Strategy starts with bi-lateral treaties, and proceeds with a continuous stream of visits, gatherings and conferences. There are a number of trade- and investment initiatives complementing various aid packages. To deliver in these many areas, the EU utilizes a number of programs already established, as well as special packages, dialogues, conferences and allocations specifically directed at Central Asia. A small example illustrates this point: A portion of the Europe aid funds is given to each of the five Stan countries for education. The EU then utilizes ERASMUS,<sup>6</sup> which is

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<sup>6</sup> ERASMUS, Erasmus Mundus Compendium (2007) European Union programme.

**Table 1** EU PCA treaties with Central Asia<sup>a</sup>

Kazakhstan	PCA in force July 1, 1999 Memo of Understanding on Energy, November 2006
Kyrgyz Republic	PCA in force July 1, 1999 Cooperation Council, July 22, 2008
Tajikistan	PCA in force January 1, 2010
Turkmenistan	PCA signed May 1998 Not ratified by European Parliament EU Parliament delays vote September 2011 Interim Trade Agreement November 1998
Uzbekistan	PCA signed April 1996 In force 1999 Partial suspension November 2005 Reviewed November 2007 Meetings resumed

<sup>a</sup>European Commission Central Asia Indicative Programme 2007–2013 (2007); European Commission External Relations (2008) Progress Report by the Council and the European Commission to the European Council on the Implementation of the EU Central Asia Strategy, 2008; European Council (2005) Development Cooperative Initiative 2005; European Council (2007) European Union and Central Asia: Strategy Initiative for Central Asia 2007–2013

already in place, to provide the scholarships for Central Asian students to pursue higher education in Europe. This following section provides a brief overview of the major threads in this relationship between the EU and the Central Asian nations, and how some of these programs have worked.

The first formal relationship established by the EU is a bi-lateral treaty known as the Partnership and Cooperation Agreement (PCA). The EU has negotiated such arrangements with each of the five Central Asian states. These agreements (which are similar for each of the Stans) are simple openings of trading relations, and permit EU aid and assistance. There is a basic human rights clause—often “de-emphasized” during actual activities (see Table 1 below).

As Table 1 indicates, even PCAs with the most basic establishment of trade relations between the two entities, have not always gone smoothly. Arrangements have only recently gone into effect between the EU and Tajikistan after a number of visits, discussions, and debates in the EU parliament—which was been reluctant to ratify the arrangement given Tajikistan’s deplorable human rights record and continuing political instability.

With Turkmenistan, the agreement was negotiated in 1998, but failed to be ratified by the EU Parliament. As recently as September 2011 its ratification was again delayed due to Turkmenistan’s failure to adhere to basic human rights as agreed upon in the document. In the meantime, the Interim Trade Agreement has been in effect, and the EU delivered under this agreement as if the full PCA were in force.

The PCA between the EU and Uzbekistan was partially suspended in 2005, when the political situation in Uzbekistan deteriorated and human rights violations increased. The agreement has been reinstated and regular meetings between Uzbek officials and the EU commission recommenced in 2007.

Despite the bumpy road for these agreements, the EU has proceeded with the other portions of the relationship as if the PCAs were fully in effect. In particular,

**Table 2** A partial list of conferences, meetings and contacts between EU officials and Central Asian Governments 2007–2008<sup>a</sup>

June 21–22, 2007	European Council adopted “EU Strategy for a New Partnership with Central Asia”
June 30, 2007	EU Troika and Central Asian Foreign Ministers Meeting in Berlin
October 8–10, 2007	Javier Solana visits Turkmenistan, The Kyrgyz Republic and Kazakhstan
December 2007	Assistance Coordination Meetings
March 10, 2008	Central Asian National Coordinators for Strategy Implementation Meeting with EU Commissioners and Coordinators, Brussels
March 2008	Assistance Coordination Meetings
April 9–10, 2008	Foreign Ministers of Central Asia and EU Commissioners Meeting in Ashkhabad
April 18, 2008	EU Commissioner Ferrero-Waldner visits Tajikistan
June 24, 2008	Progress Report by EU Council and Commission to European Council on Implementation of EU Central Asian Strategy
July 2008	Heads of Mission in Central Asia and the EU—Annual Meeting in Tashkent

<sup>a</sup>European Commission Central Asia Indicative Programme 2007–2013 (2007); European Commission External Relations (2008) Progress Report by the Council and the European Commission to the European Council on the Implementation of the EU Central Asia Strategy, 2008; European Council (2005) Development Cooperative Initiative 2005; European Council (2007) European Union and Central Asia: Strategy Initiative for Central Asia 2007–2013

the EU has pursued and multiplied contacts with Central Asia. The EU troika at the time, (the European Council Presidencies of Germany, Slovenia and Portugal) made deepening and widening the relationships with the Central Asian nations a priority beginning with the German presidency of 2007. It is noteworthy that the German presidency also called for increased action in the area of energy security, with Central Asia becoming part of that strategy. On June 21–22, 2007 the EU Council adopted “The EU Strategy for a New Partnership with Central Asia” which forms the basis for this ongoing relationship. As this arrangement expires in 2013, negotiations are already underway for the next stage. To solidify its approach and expand its efforts, in 2007 after the Strategy was enacted, the EU began a series of conferences; mutual visits by various leaders, and development of programs (See Table 2 below). In 2007–2008, there were more than a dozen interactions with the Central Asian nations.

In addition, the EU Troika of Council presidents visited each Central Asian capitol between Autumn 2007 and Spring 2008, and the EU has appointed a special envoy to Central Asia, who has paid regular visits to these nations as well: The honorable Pierre Morel was first appointed in 2005.<sup>7</sup> In 2007 this role was taken over by Philippe LeFort.<sup>8</sup> EU Commissioner Benita Ferrero-Waldner, Commissioner for External Affairs and European Neighbourhood Policy also visits each of

<sup>7</sup>European Council, Council Joint Action Appointing a Special Representative of the EU for Central Asia, 2005.

<sup>8</sup>European Council, Council Joint Action 2007 amending and Extending the Mandate of the European Union Special Representative for Central Asia, 2007.

**Table 3** EU-Central Asia—Calendar of key events - 2012<sup>a</sup>

February	
Trade Sub-Committee Uzbekistan, Tashkent	Feb 23
Cooperation Council Tajikistan, Brussels	Feb 27
March	
2nd Plenary—negotiations on new enhanced Agreement with Kazakhstan, Brussels	Mar 7–8
Fifth Regional Economic Cooperation Conference on Afghanistan (RECCCS) Conference, Dusanbe	Mar 26–27
Cooperation Council Kyrgyzstan, Brussels	Mar (tba)
April	
CABSI Ministerial Conference, Vienna	Apr 16–17
Annual EU—CA ministerial, Bishkek	Apr (tba)
3rd Plenary—negotiations on new enhanced Agreement with Kazakhstan	End Apr (tba)
Trade, Investment, Energy and Transport (TIET) subcommittee with Kazakhstan, Astana	End Apr (tba)
May	
Justice, Liberty and Security (JLS) Sub-committee and Human Rights Dialogue Uzbekistan, Brussels	May (tba)
June	
Cooperation Committee Uzbekistan, Tashkent	Jun (tba)
Cooperation Committee Turkmenistan, Brussels	Jun (tba)
4th Plenary—negotiations on new enhanced Agreement with Kazakhstan	Jun (tba)
Cooperation Committee Kyrgyzstan, Bishkek	Jun (tba)

<sup>a</sup>European Union External Action Services, EU-Central Asia Calendar of Key Events, March 2012

the five Central Asian Governments annually, with Andris Piebalgs, EU Commissioner for Energy, accompanying Ferrero-Waldner in 2008.

The result of these initial contacts was the EU's 2007 initiative, *The Central Asian Indicative Programme DCI*<sup>9</sup> (2007–2010). In pursuit of these programs, the EU stream of contacts has continued to the present and even increased in frequency (the calendar for the first half of 2012 contains multiple meetings, visits and conferences): No less than fourteen gatherings are scheduled for the first half of 2012 (See Table 3), with additional visits and exchanges among ranking officials not included in the table. Hence, the rich level of interaction and dialogue between the EU and the Stans is evident, and make the EU a constant presence in these five nations: No other nation, including the competing great powers, has as much contact with the governing bodies, leadership and the people of the Stans as the EU—a significant fact for the EU to achieve its objectives.

The model's component dealing with foreign aid is based on three general goals for EU assistance as described in the European council EU strategy initiative for central Asia 2007–2013.

<sup>9</sup> European Council Development Cooperative Initiative, 2005.

**Table 4** Budget of the Central Asian Indicative Programme 2007–2010<sup>a</sup> National Programmes

Kazakhstan	€44.0 million
Kyrgyzstan	€55.0 million
Tajikistan	€66.0 million
Turkmenistan	€22.0 million
Uzbekistan	€32.8 million
Budget for 2011–2013 <sup>b</sup> National Programmes	
Kazakhstan	€10.0 million per year
Kyrgyzstan	€17.0 million per year
Tajikistan	€20.7 million per year
Turkmenistan	€10.3 million per year
Uzbekistan	€14.0 million per year
Budget for 2011–2013 <sup>b</sup> Regional Programmes	
<i>Focal Section 1</i>	
Sustainable regional development	€50 million
Energy	€25 million
Environment	€20 million
Business cooperative networks	€5 million
<i>Focal Section 2</i>	
Education, science and people to people	€45 million
<i>Focus Section 3</i>	
Rule of law, border management	€10 million
Fighting organized crime	

<sup>a</sup>European Union Central Asia Indicative Programme 2007–2013, p. 9

<sup>b</sup>Central Asia DCI Indicative Programme 2011–2013

First there is the priority of establishing networks to deal with common problem areas especially the environment; education; and border management, which includes migration, crime and customs. Second, there is a general commitment to reduce poverty and raise living standards in the region. And finally there is the effort to promote “good governance” and economic reform throughout the region.<sup>10</sup> Each of these goals involves creation of specific programs through dialogue and communications between the EU, the nations, and stakeholders. The continuing meetings and other interactions between officials provide ongoing monitoring of the efficacy of the various programs, as well as planning for future extensions and new programs.

Table 4 presents the budgeted amounts for bi-lateral aid with each nation. First the funds are presented for the first portion of this assistance, under the Central Asia Indicative Programme of 2007–2010. In addition regional funds were given for other programs. This program was evaluated in the report of 2010,<sup>11</sup> and additional funding was made available for the second part of the program, 2011–2012. Overall, the EU plans to donate over a US\$1 billion over a 7-year period from 2007 through 2013.

<sup>10</sup> European Union Strategy Initiative for Central Asia 2007–2013.

<sup>11</sup> European Union, Progress Report on the Strategy Initiative for Central Asia, 2007–2013. Issued in 2010.

The second part of the program represents a 31 % increase in bilateral aid from the first 3 years of the program. In addition, regional aid was also increased by 4 %. There are a number of reasons for this increase, including such factors as identified development needs, success with initial projects, increases in trade, and proposed cooperative ventures with neighboring countries (Georgia, Azerbaijan, Armenia) on gas pipelines. It is noteworthy that although the EU has been undergoing great difficulties as a result of the financial crisis of 2008, as of this writing, all funding for Central Asia has remained intact, and indeed increased.

Much of the effort in the areas of business, finance and trade is not tied to specific programs, or is part of programs not entirely targeted to Central Asia. Thus, visiting delegations as a part of scheduled dialogues or conferences will often include business and finance participants from the EU private sector. The EU Investment Initiative includes Central Asia as a part of the world where it hopes to encourage private investment. There are three “Silk Road” initiatives, which trade on the name of the legendary pathway to Chinese riches, which traversed the Stans in Medieval times. There is the virtual “Silk Road” program, which seeks to extend and expand internet communications throughout Central Asia. There is the energy “Silk Road” of pipelines bringing natural gas from Turkmenistan and Kazakhstan to Europe. Additionally, there is the new proposed Silk Road linking Central Asia by roadway and rail with the EU, by traversing a winding pathway through the Caucasus Mountains. Cooperation with both Russia and Iran are central to progress in these transport projects.

Another specific program extended to Central Asia, the SME (Small and Medium sized Enterprises) Development program of the EU. This program identifies business intermediaries in both Central Asia and the EU and links them through networks to stimulate business growth, poverty reduction, and quality control. A specific example in Kazakhstan is a training program to develop export start up capacity for smaller enterprises, e.g. via the Trier Chamber of Skilled Crafts (Germany) partnership with the Kazakhstan Association of Independent Businessmen; or the Craft Industry Federation of Slovakia, conducting fairs in Slovakia and Luxembourg, which designed a stimulus program for Kazak exports, with the EU contributing 85 % of the associated costs. Another such initiative partnered a Dutch concern with Kazak farmers to begin an organic vegetable initiative for the export market.<sup>12</sup> In all, the first 3 years of the Strategic Initiative saw a dozen such projects designed to stimulate trade and investment in Central Asia.

## 6 The Operation of EU Policies in Central Asia

The time and space constraints of this chapter do not permit a full discussion of all the specific programs undertaken. But, to illustrate the benefits derived from this model, it is useful to examine a few key components in the areas of trade, governance and aid.

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<sup>12</sup> European Commission, *Europeaid, Facts and Figures*, 2011.

Key to the benefits of globalization in the economic sphere today is joining the World Trade Organization (WTO). So far, only Kyrgyzstan has become a member and so far this state is moving very slowly to enact the necessary implementing legislation. This means that most trade benefits are still to be realized. Kazakhstan is in the process of joining the WTO. But the other three Central Asian states lag further behind. The EU is meeting with these countries, advising them on the legal transformation, helping move Central Asia toward further trade integration and national congruence with the WTO. Similarly the EU is helping the Stan countries to better and expanded use of the EU preference system in trade. Aid from the EU targets growth of trade in the five Central Asian states. Aid programs focus on entrepreneurial growth, technical and vocational training, and harmonizing the standards and measurements to international levels.

This has had a measureable effect on trade growth between the EU and the five Central Asian states especially Kazakhstan. Today the EU has become the major trading partner of these five countries.

For Kazakhstan the EU has become a major energy partner for Europe, which gains oil and gas and the Kazakhs obtaining needed equipment and technical “know how” for growth in this industrial area. The Kazakh’s have proceeded despite their geo-political concerns about the EU and Turkey: Economic gain and development outweigh political concerns here. And the EU hopes that this implementation of the model will serve it well as it tries to develop relationships with the other Central Asian states.

In the case of the four other states discussed below, internal matters are preventing the EU from undertaking a more extensive application of the model. As can be seen in Table 5, there are still only small amounts of trade with the EU. In addition, and unfortunately, these other states are lagging behind in their efforts to move their internal situations closer to international economic and legal norms.

This is particularly tragic in the area of investment where implementing legislation, which would coordinate these nations with international banking standards, would result in significant movement of capital into vital investments, desperately needed for domestic development. Nevertheless, the EU continues to seek compliance with all of these agreements in its numerous meetings and conferences with Central Asian nations, additionally creating the Central Asian Investment Programme of November 2007, which includes major attempts to attract more investment into the area while continuing the pressures for needed reforms.

The EU is the largest single donor to Central Asia. Over the years since 1991 the EU donated €1.3 billion to the five Central Asian States. In the 3 year period announced in the initial Indicative Plan, the EU has allocated €314 million for Central Asian development. A couple of illustrations serve to demonstrate the nature of this assistance.

Education is one focus of EU’s assistance programs. The European Education Initiative for Central Asia was designed to channel this aid. Not only are there regular meetings at every level of educational development, but the EU has doubled the number of scholarships available to students from these nations. And prior to the publication of a pamphlet describing all such programs and fellowships designed to help Central Asia, the EU’s Commission’s Directorate-General for Education and



**Table 5** Trade between Central Asia and the EU—2011<sup>b</sup>

Millions/Euros	EU imports	EU exports	Trade balance
Kazakhstan	22,673	6,000	−16,673
Kyrgyzstan	53	409	355
Tajikistan	73	140	68
Turkmenistan	447	949	502
Uzbekistan <sup>a</sup>	1,321	356	−965

<sup>a</sup>The most recent trade figures for Uzbekistan are from 2010. In million €

<sup>b</sup>Eurostat (2012) Eu27 Trade since 1995

Culture visited all five nations in the Fall of 2007 and the Spring of 2008 to inform and promote the educational opportunities offered by the EU.

Attempts are now being made to set up the electronic highway, Virtual Silk (for distance learning, lifelong learning, and e-learning). While the technical elements are being put into place with regular meetings of the educational and research communities of the five countries and appropriate counterparts from the EU, the political will is not yet there to move ahead with this project and the countries are not willing to co-finance it.<sup>13</sup>

One of the most important areas for future economic growth and development is the area of transport. Efforts have begun to both harmonize the Central Asian systems with those of the EU and to extend the European system into Central Asia. If successful, this would provide the necessary economic linkages to tie Central Asia to the EU. Developments in this area began with the Baku conference in 2004 which created four on-going working groups. Interestingly, the EU and Russia are cooperating in the expansion and development of the Trans European network of transport (TEN-T) which will link Europe and Central Asia by rail and roadway. This has become particularly important for the EU to both connect its newest members to the rest of Europe and to facilitate the movement of energy resources from sources in and around the Black and Caspian seas to European markets.

One of the working groups focuses on investment in domestic infrastructure, which would become a link in the transnational system. EU donations are helping the Central Asian nations with their planning for domestic infrastructure and the EU has allocated some of the aid funds to help these nations begin integration of their transport systems with the wider unit. As the Indicative Programme says the goal of the EU is to:

“Provide regional level assistance for the progressive integration of Central Asian and ENPI Eastern countries’ transport markets, the gradual regional convergence of policies and approximation of EU norms and standards, and the effective implementation of international agreements in the transport sector, including on environment, transport security, environmental standards and the improvement of legal certainty and safety standards on the road, rail and maritime transport sectors. Improve interoperability in the rail sector.”<sup>14</sup>

<sup>13</sup> CAREN (Central Asia Research and Education Network) 2007.

<sup>14</sup> European Union Central Asia Indicative Programme 2007–2009 p 9.

Additional programs include the EU's aid to develop clean water supplies, environmental safeguards, and combat criminal activities especially those at the border. The UN estimates that about 19 % of Afghanistan's drug output transits these Central Asian nations en route to Europe.<sup>15</sup>

While fears exist about the rise of Islamic fundamentalism and the potential for terrorist activities, they have often been exaggerated. The Central Asian nations are officially Muslim, and since independence there has been a spate of mosque building. But years of Communist secularism have had an impact and the mosques remain largely empty. It seems that Central Asia is not an especially fertile ground to develop Islamic terrorist movements and recruit such membership, at this time. The sole exception is the fundamentalist movement, *Hizb ut-Tahrir* in Uzbekistan. Despite its attempts to grow throughout Central Asia it remains small and relatively inactive.

It is in the areas of human rights, democratization and good governance where the EU has had the hardest time having a positive impact. There are only a few programs in Central Asia, which allocates funds and oversees projects. The projects tend to be micro projects, working with existing groups or activities with the notion of building upon democratization. The problem is that the Central Asian nations are, and continue to be authoritarian, with the exception of the new parliamentary democracy in Kyrgyzstan. Criticism of these governments can have negative economic and security consequences, such as the ousting of the United States from Uzbekistan base for criticizing the government's handling of protests. So the EU treads carefully. Only slightly more than €2 million are allocated to these micro projects and only three countries participate, Kazakhstan, Kyrgyzstan and Tajikistan.<sup>16</sup> The EU has established an ongoing political "dialogue" with each of these nations. These meeting always include elements of democratization and human rights. The nations participate, with a lot of talk, but to date, little action has resulted.

## 7 Conclusions

The situation in Central Asia is at a turning point. The five states have become aware they do not have to follow the Russian model for their intergovernmental relations with the rest of the world. They have alternatives. Furthermore, they can probably play one or more of the "great powers" off against the others to gain advantages. The Russians, the EU, China, the United States and to some extent Turkey are all vying for Central Asia's oil, gas, and pipelines. And all are interested in curbing the rise of Islamic fundamentalism. However, to date, all of the

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<sup>15</sup> UN Office of Drugs and Crime, 2010, p. 44.

<sup>16</sup> European Commission EIDHR (2012) Annual Report on Human Rights and Democracy in the World Report July 2011.

cooperative, regionally based organizations have failed to make significant progress in structuring the international interactions of the Central Asian republics.

As it works currently in Central Asia, the EU's Central Asian Strategy has two major negative aspects to overcome. The first of these is the very small nature of the program. Granted that these are small nations, with sparse populations, still the total allocation of €1.3 billion of aid over a 5-year period is very small, even when compared with the other development programs of the EU. And, Kazakhstan accounts for 85 % of all aid and economic interaction. Each of the numerous aid programs is a mere drop in the bucket. Thus, the overall impact of EU aid is relatively small.

The second is the situation with Turkey. Turkey has long has significant interests in Central Asia. First of all it is proximate to these five new countries. Second, much of the population of the Central Asia countries speaks Turkic languages. Finally, they share religious beliefs and a history of Islamic culture. All of these are powerful reasons for Turkey to be a major player in the development of the Central Asian region. At the same time, Turkey looks to the West and to specifically to Europe. Turkey is currently a candidate for membership in the EU although there are human rights stumbling blocks along the pathway to full membership. Turkey is therefore a logical conduit for the EU model and ties with Europe linked to the CA states. It is not surprising then that the Central Asian states look on the relationship between the EU and Turkey as a forecast of their own possible future. Thus, one can suggest that as Turkish membership develops so too will Central Asian acceptance of the EU model. The EU's progress report for Turkish Membership released in 2004 states "Turkey could also help the EU to stabilize Central Asia." However, the current Erdogan government in Turkey has been backing off EU membership and while there has been no formal split, there is little progress in any direction. The world economic crisis has put the Turkish situation "on hold" because the EU has significant financial difficulties while the Turkish economy is growing rapidly.

While it is still too early in the process to determine the success of the EU's efforts in Central Asia, it is apparent that some progress is being made. The Central Asian nations welcome the aid and assistance given. While they are less enthusiastic about pressures in the areas of democratization and human rights, they are willing to talk in order to keep the aid flowing. On the EU side, patience and persistence are integral to the EU model and so far have kept the relationship going in the Central Asian nations. It remains for the future to see the fruits of the EU's model in Central Asian cooperation and prosperity.

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# The Geek, The Bully, and The Freaks: Diversifying EU Energy Sources Through and Exercising Influence in the South Caucasus

Nelli Babayan

## 1 Introduction

Even if the European Union (EU) has a full house of oil and gas suppliers, Russia's often political approach to energy issues, has given the latter an aura of an energy superpower that dominates Europe's energy supplies. Thus, while many have been occupied with Europe's dependence on Russian gas, few have attempted to stress that "overdependence on Russia is not a pressing issue for Europe as a whole" (Noël 2008: p. 2). Nevertheless, the greater dependence of Eastern EU members on Russian gas, the 2006 and 2009 disruptions of supply, and Russia's increasingly bullying politics have prompted the EU to enhance its energy security through diversification of its energy supplies. The 2011 disruptions in Libya's oil production due to political unrest and subsequent rise in petrol and diesel prices in the EU have further underlined the urgency of diversification plans. Thus, since "some major producers and consumers have been using energy as a political lever" and others "have not been playing by the same market rules" (European Commission 2006a: p. 1), the EU has embarked on an active search for new suppliers since 2006. However, within several years since the development of diversification plans and policies, the EU has encountered a number of obstacles that have hindered the success of its energy policy. The EU's approaches to the diversification of its energy sources are not only limited to its interactions with supplier and transit countries but also involve the interests of third-parties like Russia. Thus, observations on EU energy policy provide an opportunity to study the EU's capacity of exercising its influence in a multi-actor environment and more specifically explain the outcomes of its energy policy.<sup>1</sup>

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<sup>1</sup> Plans of diversifying energy sources and energy policy are used interchangeably in this chapter.

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Within the range of the obstacles for the EU's capacity to exercise influence and its diversification plans, the most mentioned one is the lack of solidarity between member states and the incoherence of the EU's policies (Noël 2008; Ericson 2009; Freifeld 2009; Umbach 2010) to some extent leading to lack of collective bargaining outcomes (Bozhilova and Hashimoto 2010). While not venturing to reveal all the factors affecting the EU's capacity to exercise influence on the case of its energy policy, through foreign policy analysis this chapter adopts an outward approach of looking at external factors rather than often cited internal incoherence of EU decision-making, divergent interests of non-solidary member states, and its political or economic leverages. Besides the policy-related initiatives of unbundling, the diversification of EU energy supplies has involved construction of new gas pipelines with the gas of new suppliers and the transit routes through new partner-countries. Being interested in the potential of the Caspian Basin for energy supply, the EU has focused its attention on the South Caucasus, where energy-rich Azerbaijan could be a new supplier and Armenia with Georgia new potential transit countries. However, the inclusion of the South Caucasus countries into the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP), along with the initiatives of Nabucco and White Stream pipelines have put the EU back into the murky zone of Russia's assumed influence. In addition to different levels of democracy and economic development, divergent relations with Russia, and divergent ambitions for EU integration, the South Caucasus countries host frozen conflicts, further complicating the EU's objectives.

By the analyses of developments within new agreements, commissioning of new pipeline projects, and competing Russian projects, this chapter shows the drivers for and obstacles to the EU's energy diversification plans, arguing that solidarity principles are often overridden not only by rational interests of member states but also by external factors shaping those interests and affecting the EU's capacity of exercising influence. This chapter juxtaposes the EU's and Russia's mechanisms of "striking deals" with their counterparts and latter's competing pipeline projects of the South Stream and the Nord Stream, which smash potential solidarity of EU member states. For additional factors that drive the progress or cause the stalemate of the EU's plans, this chapter looks at the political and economic features of the EU's potential suppliers and transit countries putting the EU's energy policy within the larger framework of its approach to the South Caucasus. The chapter argues that while the EU is plunged into the idea of diversification of energy sources resulting in a development of certain actions and policies, its geeky devotion omits the probability of Russia's bullying politics. Arguing that besides its own internal discrepancies, the EU has to handle also the geopolitical situation of its potential suppliers and transmitters, this chapter stresses the volatility of South Caucasus-based pipeline projects since the outstanding regional conflicts and the omnipresent Russian dominance may "freak out" the EU's plans.

## 2 European Solutions to Energy Problems and Russian Manoeuvres

The energy security of the EU is understood as functioning markets and diversification of supply sources. However, from the first glance the establishment of functioning markets is more time- and effort consuming, since they require “physical and legal infrastructure, as well as information and transparency, and the active participation of major players” (European Commission 2006a: p. 2). On the other hand, diversification entails different energy sources and transit routes, following “maintenance and upgrade of existing energy infrastructure in neighbouring countries of key importance to the EU” (European Commission 2006a: p. 2). Development of new major pipelines from the Caspian region and Central Asia is the most crucial aspect of the EU’s energy diversification plans. Thus the European Commission (2006b: p. 3) stressed the importance of having an EU external energy policy, placing it within its foreign policy objectives. However, since the objective of securing new energy sources through the Southern Gas Corridor has not yet been achieved, the EU’s decision-making or policy implementation are likely to be faulted. Applying foreign policy analysis, this article shows possible causes for the EU’s current failure and analyses its capacity to exercise influence depending not only upon its internal factors but also on the characteristics of its counterparts. The capacity to exercise influence is understood as the combination of internal and external factors characteristic to a certain policy and action-choices made by a policy promoting actor, which are likely to affect timely achievement of actor’s goals. Thus, the failure to achieve the goals within the set time limits would indicate reduced capacity to exercise influence. However, even in the case of unfavourable internal and external factors, the capacity to exercise influence may be increased by well-developed action-choices. This chapter analyses the external factors affecting the capacity to exercise influence viewing those within a larger framework of foreign policy decision-making.

In foreign policy decision-making, an actor identifies the decision problem or the goal, searches for alternatives, chooses an alternative (predicting the consequences of each alternative), evaluates each alternative in terms of the goals, and executes the alternative (Robinson and Snyder 1965). The “ideal type” (Mintz and DeRouen 2010: p. 7) of foreign policy decision making—rationality—assumes that actors are logical and, having perfect information about the consequences of a certain choice, maximise their benefits at the same time trying to minimise the costs. Rational choice received criticism from psychological approach (Tetlock and McGuire 1986), prospect theory (Quattrone and Tversky 1988; Levy 1992), social constructivism (Wendt 1999) and others. In addition, cognitive models of foreign policy decision making claim that rational model is often not realised in practice (Jervis 1976; Mintz and DeRouen 2010). Thus, mental shortcuts along with other

processes are indicative of an actor's "inability to carry out the complicated calculus of the rational model" (Mintz and DeRouen 2010: p. 8).

An attempt of rational decision-making may not result in desirable achievements due to a number of biases that decision-making actor is subject to. More than 15 biases including those of misperception, wishful thinking, relying on the past, and locking on one alternative (Mintz and DeRouen 2010), point to possible causes of choosing a specific action, thus affecting the capacity of exercising power. Nevertheless, they all separately account for different types of misinterpretations of the available information by a decision-making actor. In a multi-actor policy environment when success—i.e. timely achievement—of policy goals depends not only upon the decision-making actor, a multiplicity of biases may be applicable. Thus, for the reasons of parsimony, possible biases are grouped here into a planning fallacy,<sup>2</sup> which in the case of foreign policy analysis is understood as neglecting of internal or external dynamics of a multi-actor environment, and reducing the capacity to exercise influence. Thus, in a multi-actor environment, a decision-making actor promoting a specific policy needs to account not only for its own political and economic characteristics but also for possible actions of its "rivals" and internal dynamics of its counterparts (which would be external for a policy promoting actor).

The actors in such an environment (often of conflicting interests) can be categorised into three groups: *geeks*, *bullies*, and *freaks*. A geek is understood as an actor devoted to a particular policy objective and while endeavouring to account for details may commit planning fallacy, limiting its capacity to exercise influence. A bully is understood as an actor who may be negatively impacted by the geek's policy and due to its own interests uses its economic, political or any other type of leverage to undercut geek's plans. On the other hand, a freak is understood as the target of geek's policy, which is seemingly an unproblematic and supportive actor, who actually poses (often unintentionally) obstacles to geek's policy and the capacity to exercise influence due to its own internal dynamics. Depending on the analysed policy, the actors may change categories; however, in case the bully becomes the decision-making actor, its capacity of exercising influence is likely to be higher. In addition, should there be no bully-actor, the policy-implementing actor is likely to have higher capacity of exercising influence. Similarly, should the targets of a policy not turn out to be freaks but remain as expected, the capacity to exercise influence would further increase (Table 1). Should the possible policy rival not pose any obstacles to policy implementation or should the target of the policy correspond to its initial perception, they are classified as regular.

In the case of the EU's external energy policy, it is hypothesised that the EU would be a geek, Russia the bully, and the South Caucasus the freak. It is argued that the EU has failed to achieve its policy goals of energy supply diversification due to its negligence of such external factors as Russia's possible retaliation to

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<sup>2</sup> Planning fallacy term was first used by Kahneman and Tversky in 1975 and was defined as underestimation of a time necessary to complete a task.



**Table 1** Capacity to exercise influence in a multi-actor environment

Capacity to exercise influence	Actors		
	Policy promoting actor	Possible rival to the policy	Target of the policy
High	Geek	Regular	Regular
Medium	Geek	Regular	Freak
Low/medium	Geek	Bully	Regular
Low	Geek	Bully	Freak

*Source:* Author's own compilation

cutbacks in energy purchases and the internal political dynamics of the South Caucasus. It is argued that the capacity of the EU to exercise influence has been reduced by the dynamics of the multi-actor environment the EU acts within. It is subsequently argued that the EU has committed a planning fallacy by ignoring “bully” and “freaky” characteristics of its counterparts.

The endeavour to switch from Russian energy to alternative sources has been based on the “fear that Russia is too politically unstable to be a reliable partner” (Rutland 2008: p. 1), aggravated by the presence of high-rank politicians<sup>3</sup> within Gazprom's Board of Directors giving the Kremlin an opportunity to use energy as means of political leverage. Russia and its Gazprom basically annul EU efforts to bring coherence and solidarity to the practice of its energy policy. Since the Orange Revolution in Ukraine Russian power has started to be measured “in miles of pipeline constructed and barrels of oil per day exported” (Baran 2007: p. 131). Even if the potential of Russia to use energy as political leverage should not be exaggerated (Rutland 2008) and according to some “Russian energy diplomacy is demonstrably failing” (Monaghan 2007: p. 286), its influence to block alternative sources and routes should not be overlooked either, since Russia's “near abroad” policy may directly impact the EU's energy security.

In addition, while trying to become less dependent “on oil and gas imports from geopolitically uncertain regions” (Barroso 2007: p. 1), the EU has turned for new supplies and transit routes to another geopolitically uncertain region—the South Caucasus. Previously uninterested in the South Caucasus, the EU has increased its presence in the region by appointing a special representative and by including all three countries—Armenia, Azerbaijan, and Georgia—in the ENP and the EaP. Rightly considering democratization and economic development safer issues to promote within Russia's sphere of influence (Lussac 2010), through its policies the EU has officially focused on political development, regional cooperation, and free trade. Nevertheless, by including Azerbaijan and Georgia within its Southern Gas Corridor initiative and assigning Nabucco and White Stream pipeline projects a status of “strategic importance” (van Aartsen 2009: p. 7), the EU has elevated

<sup>3</sup> President Dmitry Medvedev served as the Chairman of Gazprom Board of Directors in 2000–2001 and 2002–2008, while the Viktor Zubkov has simultaneously served as first Deputy Prime Minister and Chairman of Gazprom Board of Directors.

the status of the South Caucasus and has triggered further competition with Russia. Russia-initiated competing pipeline-projects—Nord Stream and South Stream—have torn the solidarity of EU member states and have contributed to the stalemate of EU energy diversification plans. The following sections analyse the developments that have led to these outcomes by tracing the actions of the EU, Russia, and the South Caucasus countries.

### 3 New Pipelines and Russia's Smart Bullying Politics

While the EU has “four or five equal priorities” within its energy policy, its “political and legal support mechanisms are weak” (van Aartsen 2009: pp. 6, 5). Relying on gas from former Soviet republics, including from Azerbaijan's Shah Deniz Phase II, EU priority pipelines seem to compete not only with Russia's projects but also with each other. Russia has not openly opposed EU pipeline projects and the EU has stated that it is neither against nor for the South Stream project (Shishlo 2009), which has not been labelled as a rival to the Nabucco project only by the involved parties (BBC 2011b; EurActiv 2010a, 2011; Kanter 2011). Nevertheless, understanding that not all pipelines can receive gas from potential suppliers even if they are of strategic importance to the EU (European Parliament 2006), member states “promote each pipeline by undercutting the others” even if they “ought formally be acting together” (van Aartsen 2009: p. 7). In addition, even if some member states insist that pipelines are not competing but complementing each other (Bogdanovsky 2009), the progress of respective implementations and gas availability point to contrary conclusions. Russia in its turn applies what this chapter calls smart bullying politics. It instigates anti-solidarity actions of member states, in addition to promising “retaliatory measures” (RIA 2011c) to the EU's Third Energy Package, which contradicts Russia's own energy projects.

The EU has put its hopes on Azerbaijan's willingness to sell its gas to Europe and Georgia's EU aspirations to transit Azerbaijani gas. With an intention to bypass Russia and deliver Caspian gas to Europe, Nabucco has been deemed by the International Energy Agency as a more effective measure for ensuring Europe's energy security than the Russia-supported South Stream (RIA 2010c). However, despite a number of agreements, Azerbaijan has maintained a pragmatic position as President Aliyev mentioned that Azerbaijan's participation in Nabucco project was not final and would depend on the price offered by either the EU or Gazprom (Dadashev 2009) even if it had before agreed to provide gas for Nabucco. Azerbaijan's pragmatism and the EU's indecisiveness have created a fertile ground for Russia's further actions directed at undermining of Nabucco's feasibility.

Even though Nabucco project has been designed to bypass Russia, Prime Minister Putin said Russia would not hinder the implementation of Nabucco, given there were resources for it (RIA 2009b). However, according to Nabucco consultant Joschka Fischer, the South Stream project is not in the EU's political interests and Russia has been doing everything to hinder Nabucco's construction

(Flauger and Stratmann 2010). Apparently, without constructing direct obstacles to Nabucco's implementation, Russia has opted to leave Nabucco without gas and win over other European partners. However, it seems spillover revolutions in Northern Africa and the Middle East have added to Russia's luck (Grinkevich 2011), making the region even more uncertain than it had been deemed before.

The South Stream pipeline—a joint venture of Italian ENI and Gazprom established in 2008—plans on transporting Russian gas to Bulgaria, Greece, Italy with the initial endpoint in Austria.<sup>4</sup> The 3,700 km pipeline bypasses the traditional transit country Ukraine and instead of diversifying the energy supply of the EU, diversifies the export routes of Russia. From its initiation the South Stream project had been perceived as Nabucco's rival (MacDonald 2008), and Gazprom's unexpected offer to buy Azerbaijani gas for its new project left no doubts about the upcoming competition (Velizade 2008). Putin's remark that Nabucco partners should simply "take a calculator and work out what is more profitable" (RIA 2008) have persuaded Hungary, which receives 70 % of its gas consumption from Russia, to join in shortly after the establishment of the South Stream project (Shchedrov 2008). Similar intergovernmental agreements were signed with EU members Bulgaria, Greece, which considers the South Stream an energy priority (RIA 2011b), and Slovenia, which aimed to diversify its sources by exclusion of Ukraine (Shiryaevskaya and Bierman 2009). Turkey's long-awaited agreement to allow part of the pipeline pass through its territorial waters (Gazprom 2011) have put the South Stream closer to its implementation, as it has not encountered either gas shortage or lack of intergovernmental agreements and has implemented its actions according to the initial timetable (Nikolskyi 2012).

Arguing that both Nabucco and South Stream will guarantee the energy security of Europe, Russia's representative in the EU Chizhov stressed that Russia is not against Nabucco, especially since the main difference between the South Stream and Nabucco is that the South Stream had gas and Nabucco did not (RIA 2009b). The 2009 agreement on exporting Azerbaijani gas to Russia was not conceived as a danger to Nabucco, given it would not be prolonged beyond its expiration date of 2014 (Socor 2009). However, in 2010 Gazprom signed a new agreement with Azerbaijan on purchasing 1 bcm gas per year—twice more than previously—doubling the purchase starting from 2011 (RIA 2010b), thus buying the gas supposed to flow through Nabucco (Zaynalov 2009). The agreement was later confirmed and updated with a commitment to buy more than 2 bcm of Azerbaijani gas from 2012 with no further ceiling on the volume of purchase (Regnum 2010). Committing to purchase the entire export volume of Azerbaijani gas even if having sufficient gas reserves of its own, Russia subsequently resells it for a lower price to Poland and Ukraine (Krechtnikov 2010), thus stressing

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<sup>4</sup> Since the EU has blocked the sales of 50 % share of the Central European Gas Hub controlled by the Austrian OMV, in December 2011 Gazprom announced that the South Stream may terminate in Northern Italy, with only a spur running to Austria (RIA 2011a; Reuters 2011a).

the claim that its gas policy in the South Caucasus has been directed at voiding Nabucco from supplies.

The pipeline competition between the EU and Russia has also been shrewdly used by some member states, while under considerable pressure from Russia. While showing rhetorical commitment and demanding the EU to exhortate the construction of Nabucco (Bogdanovsky 2009), Bulgaria also signed an agreement with Russia for the construction of the South Stream (Babich 2009; RIA 2009a). Less than a year later Bulgaria modified its position, stating that Nabucco was more important than the South Stream (Bogdanovsky 2010), consequently managing to negotiate a lower price for Russian gas and yet again modifying its stance in favour of the South Stream (RIA 2010a). In 2006 Romania's president Basescu called Gazprom "the biggest threat to the region [Europe] since the Soviet army", advocating for energy independence from Russia. Nevertheless, in 2010 after being "under strong pressure from Gazprom to join the pipeline project" (EurActiv 2010b), Romania confirmed its interest in participating in the South Stream pipeline construction (Gazprom 2010).

New pipeline initiatives supported by Russia have also antagonized member states not included in a project. The Nord Stream AG established by Gazprom and German E.ON in 2005 directly connects Russia with Germany through a pipeline passing under the Baltic Sea with a capacity to pump 55 bcn of gas per year. Even though North European gas pipeline linking Russia and Germany through the Baltic Sea had been recognised as a project of "common interest" for the EU (European Commission 2006a: pp. 15, 22), the bypassed Poland called it an equivalent of the Molotov-Ribbentrop pact (Chumakova 2006) and "a waste of money" (EurActiv 2010c). Similarly bypassed Lithuania would have been happy if the Nord Stream would have been "off the table" (EurActiv 2009), while Czech prime minister expressed his disappointment with Germany's active involvement with the project (Fedyashin 2009). Nevertheless, the Nord Stream pipeline, dubbed by Chancellor Merkel "the milestone of a reliable relationship" between Europe and Russia (BBC 2011b) started pumping gas in November 2011, pushing the plans of diversifying Europe's energy sources further away.

The commencement of Nabucco's construction has been delayed to 2013 with subsequent 2-year postponement of the first gas flow to 2017 "as a direct result of the changes in the timing for gas supplies in the Caspian and Middle East regions, as announced by potential suppliers" (EUbusiness 2011)<sup>5</sup>. Nabucco's future became even more uncertain after the 2011 EU sanctions and earlier decision to halt the construction of a pipeline through Iran (RIA 2010f), which had previously pledged its readiness to provide gas for Nabucco (Kommersant 2008). Russia's agreements of 2008 with Bulgaria and Serbia were dubbed as "the death of Nabucco" by Russian Duma Deputy Speaker since "there will be no gas left for another pipeline" (Nicola 2008). Such grave predictions for Nabucco's fate were labelled as "far from the truth", calling the South Stream "a rhetorical pipeline

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<sup>5</sup> At the time of writing this chapter in early 2012.

designed to frustrate Southern Corridor gas” (Ramsay 2009). However, the last nail in Nabucco’s coffin might have been struck when its major partner Austrian OMV signed a cooperation agreement on South Stream with Gazprom, further strengthened by an intergovernmental agreement between Austria and Russia in April 2010 (RIA 2010d, e). Assuring that Europe will have a secure gas flow for the next 100 years, Russia rendered Nabucco as a competition but no match for its South Stream (RIA 2010f). While Nabucco’s construction has been delayed, Russia-supported South Stream’s construction has been brought forward from 2013 to the late 2012 with first gas to be pumped in 2015 (BBC 2011a).

The advancement of the South Stream project and the delay of Nabucco with its shortage of suppliers seem to have prompted the EU to revive its plans on building a submarine Trans-Caspian gas pipeline. A similar initiative was previously effectively put under doubt by the 2007 agreement between Russia, Kazakhstan and Turkmenistan to build a pipeline along the coast of the Caspian (Konyrova 2007) and by earlier voiced environmental concerns (RIA 2007). Speaking on the possibility of the Trans-Caspian pipeline, which would connect Turkmenistan with Azerbaijan, the Energy Commissioner Oettinger mentioned that “Europe is now speaking with one voice” and intended to diversify its resources as soon as possible (European Commission 2011). The revival of the pipeline project bypassing Russia has been met with fury by Russian authorities, which oppose the project on the grounds of environmental concerns, warning to veto the project from the standpoint of a Caspian basin littoral state (Reuters 2011b). While Russia voices its concern on preservation of environmental integrity of the Caspian Sea, it seems to have no objections to its own pipelines to be built beneath the Baltic and Black Seas. Azerbaijan and Turkmenistan, nevertheless, agreed to the project, with Turkmenistan, interestingly, planning to buy equipment for building its part of the pipeline from Russia (RIA 2011d). However, it has to be seen whether the claims of US officials that “nothing will obstruct the construction of the Trans-Caspian pipeline” (Nurmuradov 2011) or Russia will manage to impede another European gas project, with Duma vice-speaker threatening Turkmenistan with a “Libyan scenario” if it continues “flirting with the EU and the USA” (Yazev 2011). The developments have indicated the EU’s continuing commitment to its pipeline projects. However, the developments have also shown that the EU often cannot control the actions of its members and how it has failed to contain Russia’s bullying actions.

#### **4 The South Caucasus: Generating Energy or Problems?**

Though to varying degrees all South Caucasus countries have shown open support to the EU’s policies in the region and along with their EU-ambitions announced their, at least rhetorical, adherence to the promoted European values. However, apart from Russia’s own energy policy, which methodically upsets the EU’s energy diversification plans in its objective of importing Caspian gas, the EU faces the long-standing lack of regional cooperation in the South Caucasus.

Regional cooperation in the South Caucasus is an important factor for the EU's energy policy since a cooperative framework needs to be established between supply and transit countries. However, there has been no trilateral cooperation in the region since Armenia has been under economic embargo from Azerbaijan, and maintained economic cooperation only with Georgia. The unresolved dispute between Armenia and Azerbaijan over the Nagorno Karabakh region has been the main cause behind the lack of regional cooperation in the region and one of security concerns in the European neighbourhood. Despite the involvement of international actors in the mediation of conflict resolution, the Nagorno Karabakh issue has not resulted in any tangible progress. Demonstrating strong rhetorical commitment to the resolution of the Nagorno Karabakh conflict by including it within individual ENP Action Plans, the EU, nevertheless, has provided only a loose framework of cooperation, often relying on the actions of other less influential organisations (Babayan 2012). The 2011 review of the ENP carried out jointly by the European Commission and High Representative has not introduced any novelty in the EU's engagement in conflict resolution.

The importance of the South Caucasus for EU plans on energy supply diversification is highlighted by its geographic position, which would allow the EU to gain access to Caspian gas bypassing Russia and excluding Iran. In this case the importance of regional cooperation comes into play, since Azerbaijan would need to transport its gas either through Armenia or Georgia. However, given the closed borders of Armenia with Azerbaijan and Turkey, its leverage within regional energy structure is limited and it is not included in the Southern energy corridor. In addition, the EU insists on the closure of the Metsamor nuclear power plant, without offering Armenia alternative sources of energy diversification. On the other hand, closed borders with its neighbours stem from the protracted Nagorno-Karabakh conflict, which in its turn makes Armenia turn to Russia both for security and its energy supplies, thus sustaining the latter's influence on the region. The ongoing Nagorno Karabakh conflict influenced the construction of the Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline, which instead of directly crossing Armenia to enter Turkey, routes through Georgia, having made its construction both more time-consuming and more expensive. Bypassed by the BTC, Russia insisted that the pipeline was a politically rather than economically motivated initiative (RIA 2005). It retaliated by raising gas prices for the South Caucasus and allegedly deliberately fired 50 missiles on the pipeline during the 2008 conflict with Georgia (McElroy 2008; Morningstar 2008). If not for security and stability of the region, the EU has to involve more actively in conflict resolution for feasibility and security of its own planned pipelines in the case of conflict escalation.

The Nagorno Karabakh conflict also contributes to Russia's presence in the region's security matters since it maintains a large military base in Armenia on the grounds of the latter's security. Due to the unresolved conflict, the presence of Russian military is considered desirable by the Armenian authorities and meddling into region's internal affairs by the Azerbaijani authorities (Smbatian 2010). Russia not only simply moved its troops to Armenia after withdrawal from Georgia in

2005, but also prolonged the agreement on stationing of its troops in Armenia for additional 25 years until 2044. The 2008 Russia-Georgia conflict “generated new sources of instability for the entire post-Soviet space, not only because it highlighted a new form of Russian revisionism but also because it brought to the fore the limits of Western policies in what Kremlin views as its sphere of influence” (Mikhelidze 2009: p. 3). In addition, Azerbaijan chose to subdue its support to Georgia and adopt a soft approach in its bilateral relations with Russia (Valiyev 2009) to avoid open confrontation with Russia and agreed to new increased sales of its gas to Gazprom.

The internal dynamics of South Caucasus politics has shown to be more problematic than initially anticipated by the EU. However, instead of addressing one of the core problems of the South Caucasus—conflicts—the EU has opted for democratization activities in its efforts to pull the region away from Russia. The EaP, which seemed to be a timely initiative due to the conflict between Georgia and Russia (Shapovalova 2009), offers political association and economic integration through association agreements (AA), deep and comprehensive free trade areas and visa liberalisation. Nevertheless, the attractive terms of free trade and visa liberalization have lacked substance (Boonstra and Shapovalova 2010) and specific terms and conditions that provide an effective framework for implementation. Even if the inclusion in the EaP had been initially conditioned by progress in democracy, in order to have access to Azerbaijani gas and possibly give more “European” feeling to Armenia and Georgia, they were included in the policy, despite their poor democratic performance. Some local observers have noted that the EaP will have a positive effect “on democratic changes in Armenia only in one case: if the European structures put forward very serious demands before our authorities” (Danielyan 2010). Despite poor democratic record, especially in Azerbaijan, the EU has never initiated sanctions against the South Caucasus countries and strongly relied on intergovernmental cooperation and assistance programmes, using political dialogue mostly as a policy dialogue on energy or trade (Börzel et al. 2009). Thus, the added value of the EU’s approach to the South Caucasus that can address the needs of partner countries and assist the EU in exercising its influence is ambiguous.

## 5 Conclusion

Even if EU member states may be “condemned to be divided” (Carta and Braghiroli 2011: p. 281), especially concerning Russia, the 2006 gas crisis caused concerns among all EU members prompting the emerged initiative to decrease Europe’s dependence on Russian gas. Through the development of an analytical framework applicable to multi-actor policy actions, this chapter has shown that the opposite has happened. While the EU has so far failed to diversify its energy sources through the Southern Gas corridor, Russia has managed to strengthen its position of the EU’s main energy source by diversifying its own export routes. This chapter has argued that the EU is a geek actor, which commits a planning fallacy in its policy by neglecting the dynamics of the multi-actor environment its policy is placed within,

thus failing to fully use its capacity to exercise influence. As suggested before, the EU's capacity to exercise influence for achieving the goals of its energy policy within the South Caucasus is low, since besides unfavourable internal factors, there is a number of unfavourable external factors.

The neglecting of the possibility of retaliation by bullying Russia and the inadequate assessment of the internal dynamics of the freaky South Caucasus have lowered the capacity of the EU to exercise influence and subsequently diversify its energy resources through the Southern Gas corridor. The results of this analysis, however, do not suggest that if a policy is to be implemented in a multi-actor environment with hostile or unexpectedly behaving counterparts, it should not be taken further. This analysis suggests, that in any multi-actor environment, a policy promoter should take into account the external dynamics of its policy implementation. This claim is especially applicable to the EU, which is already burdened by often anti-solidary and contradictory actions of its member states. More specifically, for the EU to succeed in its energy diversification initiatives, it needs to pay closer attention to the internal political and security dynamics of the South Caucasus, since the latter, even if unwittingly, currently fosters Russia's bullying politics.

The internal dynamics of EU politics is only half of the problem when analysing its energy diversification plans, especially in such volatile regions as the South Caucasus. Thus, this chapter argues that the implementation of the EU's energy policy has to address a complex interaction of often interconnected obstacles ranging from its own internal political dynamics to local realities of energy suppliers. At a different level, the lack of solidarity among EU members fuels Russia's competitive pipeline projects and the success of its bullying politics. It damages the EU's plans within its neighbourhood, making its other related policies ineffective and inefficient. An assertive and proactive approach may not be the EU's conventional strategy, however, to achieve its objectives it has to match the strategy of its counterparts. Russia's influence in the South Caucasus feeds on regional conflicts and its dominance will wane only if the conflicts are resolved and trilateral regional cooperation is possible. Thus, if the EU wants to transfer its energy diversification plans from theory into practice and increase its capacity to exercise influence, it needs to address the issue of protracted conflicts in the South Caucasus and stabilise the region by more active involvement in domestic issues.

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# The European Union in the Northern Latitudes

Małgorzata Śmieszek

## 1 Introduction

One of the consequences of climate change has been growing interest in the Arctic region. Whilst during the Cold War the region was an operating arena for naval forces, intelligence collection and a potential theatre for nuclear confrontation between the United States and the Soviet Union, after its conclusion it was to turn into a 'frozen desert' and a remote periphery of international relations. However, the processes of climate change and global warming and their implications for the High North have brought the region once again to the attention of scholars, academics and politicians. With temperature rises more than twice the global average and the unprecedented rate of melting of the Arctic ice coverage, the region is attracting at present significant political and economic interest as new opportunities for the exploitation of Arctic energy and natural resources and new maritime trade routes arise.

In light of these developments the present chapter aims to explore the possibilities and challenges ahead for the European Union within the complex setting of a new Arctic governance framework. For the purpose of this contribution the Arctic region is understood as an area stretching above the Arctic Circle located 66° 33' north latitude.<sup>1</sup> It covers territories belonging to eight circumpolar states—members of the

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<sup>1</sup> As Richard C. Powell points out “[w]hether the signifier ‘the Arctic’ is taken to be the Arctic Circle, the Arctic Ocean, delineations based on temperature or tree-line isographs, or the total geographical area north of 66°N, depends as much on political as geophysical factors [...] allow[ing] for many narratives to be constructed about the northern latitudes” (Powell 2011, p. 105). As will be discussed further, these narratives also find their expression in debates concerning the Arctic governance framework, where attempts have been made to override the Arctic Council and marginalize it by a closer cooperation amongst the five Arctic Ocean littoral states (Canada, Denmark, Norway, the Russian Federation and the United States).

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Arctic Council, namely: Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States.<sup>2</sup> As this chapter will argue, turning the Arctic from a third-tier issue to a focal point of global activity and economic interests calls for firm and comprehensive action from the EU, which should exert in the region an influence corresponding to its economic and political potential.

The chapter is structured into three main parts. The first outlines briefly the Arctic's potential for the expansion of human activities, its present governance system and the legal regulations applicable to the region. The second provides an overview of the positions of major Arctic players as presented in their national strategies and through their actions. It includes also a brief comment on the non-Arctic states which are beginning to express more actively their interest in the region. Then the third part outlines the previous and current positions of the European Union towards the Arctic as expressed in its official documents. Finally, the chapter concludes with potential fields for development in order to overcome the EU's external and internal constraints in its action towards the High North.

## 2 High Stakes in the Arctic

Climate change has been the single most important driver behind the emergence of the Arctic in the arena of world geopolitics. Due to the special vulnerability of the region and the Arctic's distinct feedback mechanisms that accelerate the melting of the ice caps, the minimum sea ice extent recorded in September 2011 was the second lowest in the history of satellite records, just behind the decade 2002–2011 where nine of the ten lowest minima were experienced (Perovich et al. 2011, p. 36). Such massive declines in sea ice open up the Arctic Ocean and seas of the High North to oil and gas exploration, increased maritime transport and fisheries, thus raising the interest of transnational corporations and states in the exploitation of Arctic natural resources and its economic potential. Firstly, the Arctic's importance is growing as an energy province able to meet the demand for hydrocarbons in a world still thirsting for fossil fuels. According to the U.S. Geological Survey published in June 2008 High North resources account for about 22 % of the undiscovered, technically recoverable resources in the world, including 13 % of the untapped oil and 30 % of the untapped natural gas reserves, most of them located offshore (U.S. Geological Survey 2008). Even though these estimates still

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<sup>2</sup>The Arctic Council is a high level intergovernmental forum providing a mechanism to address the common concerns and challenges faced by Arctic people and governments. It is comprised of the eight above mentioned Arctic nations, indigenous organizations and permanent observers, among them Permanent Observer States (France, Germany, the Netherlands, Poland, Spain and the United Kingdom).

have to be confirmed and extraction and communications technologies have to be developed to overcome the physical challenges of activities above the Arctic Circle, the sheer potential size of the Arctic resources attracts investors to the region.

Secondly, the shrinking of the sea ice opens up northern sea lanes for maritime transport offering it savings of up to 40 % in distance between Northeast Asia, Northern Europe and further to the north-west coast of North America (International Northern Sea Route Programme 1999), “potentially linking three of the world’s most vibrant economic zones (China-Korea-Japan, the European Union and the eastern United States)” (Järvenpää and Ries 2011, p. 131). So far the Northern Passages, the Northern Sea Route along the Russian coastline and the Northwest Passage running amid the islands of the Canadian archipelago have been used only for local and regional transport without serious commercial implications. However, already in September 2009 massive decreases in sea ice allowed for the safe cruising of two German vessels along the Russian coast.<sup>3</sup> This was followed in the summer of 2011 by the voyage of the first supertanker of the Suezmax class and a Japanese-owned bulk carrier (Emmerson and Lahn 2012, p. 29) when both Northern Passages were free from ice for a second consecutive year (Perovich et al. 2011, p. 36). The waters in the Arctic will be opening up as well for fishing trawlers since the fishing industry is also expected to engage in activities in the High North, particularly as certain fish stocks may be moving northwards due to temperature rises and changes in their migratory patterns.

Nevertheless, as Olav Stokke remarks, “the relationship between these environmental changes and the commercial viability of Arctic economic activities is not straightforward” (Stokke 2011, p. 838). Even though the shrinking of ice caps opens ways for exploitation of the Arctic natural resources and shipping, it also brings new challenges for these industrial activities: floes, drifting icebergs and greater waves endangering shipping and offshore operations, with coastal erosion and thawing permafrost undermining the existing onshore infrastructure.

All the above mentioned changes and potential developments are expected to have profound implications for the Arctic governance framework and serious socio-economic, ecological and geopolitical consequences. They may bring new threats to the region such as piracy, illegal immigrants, terrorism and incidents at sea, with oil spills particularly dangerous to the extremely vulnerable Arctic ecosystem. They also raise the question of ownership and delimitation of significant parts of the Arctic Ocean and its seabed among Arctic coastal states, which have so far all declared their willingness to settle their contentious issues in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). The Convention that entered into force in 1994 provides a governance regime for the exploitation and usage of the world’s seas and oceans. In accordance with the UNCLOS provisions, littoral states can establish their territorial seas extending up to 12 nautical miles from the baseline

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<sup>3</sup> Two vessels, the *Beluga Fraternity* and the *Beluga Foresight*, successfully transited the Northern Sea Route along the Russian northern coast, giving the company savings of up to \$300,000 per ship due to the reduced time and fuel costs of the journey (Smith 2009).



where they exert full sovereignty rights, except for the right of innocent passage that they cannot deny. Moreover, coastal states are entitled to establish their exclusive economic zones (EEZ) within a reach of 200 nautical miles from the baseline wherein they possess sovereign rights in exploration, exploitation, conservation and management of the natural resources coming both from the sea and its underlying seabed and subsoil. Finally, states can also submit claims to the Commission on the Limits of the Continental Shelf (CLCS) which can decide for the extension of the country's EEZ in cases where the continental shelf forms a natural prolongation of the land territory that has to be confirmed by high standard scientific proof (United Nations 1982). In these situations rights enjoyed by a state with respect to the exploration of natural resources shall apply also to the extended area, a matter highly relevant concerning the Arctic region where most of the energy and mineral resources are expected to be found in the continental shelf.

Even though not all Arctic nations are UNCLOS signatories, they all agree with its provisions and declare their will to settle disputes in a peaceful and cooperative manner. However, there are also certain differences in their approach towards the exploitation and governance framework of the Arctic as will be seen in the next part where an outline of the major players' positions is presented.

### **3 Arctic Players**

#### ***3.1 The Arctic Coastal States***

When in August 2007 a Russian expedition planted the country's flag on the seabed below the North Pole many commentators proclaimed it the beginning of the race for the Arctic and its vast natural resources. Since then, whilst tensions have calmed down, the Arctic coastal states: Canada, Denmark, Norway, Russia and the United States have repeatedly expressed their interest in the High North and confirmed it with their respective national strategies on the development of the region, published since 2008. Whereas all countries emphasize the need to preserve the Arctic as a zone of both bilateral and multilateral cooperation, their interests in the region differ to a certain extent, depending, inter alia, on the significance of the Arctic within each country's domestic and foreign policy discourse. Here to the fore come Russia, Canada and Norway, which find their northern regions central to their future economic development and are determined to prove it by political, economic, and military means (Zysk 2010, p. 103). Russia has the longest coastline of the five Arctic littoral states and is expected to gain most profits from the exploration of its oil and gas onshore and offshore deposits. Since now about one-fifth of Russian GDP is produced in the area and as Russia's economic profile and political power greatly depend on the revenues and leverage coming from oil and gas exports, it is not surprising that the Arctic is seen as vital for future Russian development and its competitiveness on global markets. In a new Arctic strategy since of September

2008 the Russian government proclaimed, as a major economic policy goal, to transform the Arctic into Russia's strategic natural resources base by 2020. However, to achieve this objective Russia needs additional technical know-how and technologies allowing for deep-sea drilling, capabilities that only a few global energy companies have at hand. Therefore the government has dropped its former reluctance towards foreign investment in crucial Russian sectors and in the spring of 2012 state-owned Rosneft signed cooperation agreements with American and Italian energy corporations on a joint exploration and development of oil and gas reserves both on the Russian continental shelf and in other offshore areas. To turn the Arctic into the country's resource base Russia is cooperating as well with Norway, which in turn has been very active in building up knowledge and expertise on Arctic technologies and the exploration of oil and gas in its offshore areas given that energy resources are the country's main source of revenues and its largest export industry. To further facilitate their economic collaboration, Russia and Norway signed also in September 2010 an agreement on maritime delimitation in the Barents Sea, thus ending a 40-year dispute over the contested territories in the region.

Whereas for Russia the Arctic has enormous economic value, for Canada its North constitutes a fundamental part of Canadian identity and is a highly emotional experience with great symbolic value. In political terms though the Arctic is for Canada first and foremost a matter of sovereignty and exercising Canadian sovereignty rights in the region where the general concern is about "the precise limits of Canadian territory and the possibility that international law might limit Canada's rights within parts of [its] [...] territory" (Byers 2010, pp. 5, 6). There are several boundary disagreements that Canada has with other Arctic players. It does not agree on the boundary line in the Beaufort Sea with the US, argues with Denmark over the possession of the tiny Hans Island and issues contradictory claims with Russia and Denmark to the Lomonosov and Mendeleev Ridges. Similarly to Russia, Canada has allocated significant resources to modernize its navy and coast guard (Conley et al. 2012, pp. 19, 20).<sup>4</sup>

In addition, Canada and Russia both claim their respective Northern passages, the Northwest one and the Northern Sea Route, to be their internal waters, a stance strongly opposed, among others, by the United States and the European Union, which consider them as international straits under the provisions of the UNCLOS. Seeing the growing importance of maritime transport in the Arctic and the increasing value of these transport channels, their legal status might become a contentious issue in the future (Zysk 2010, p. 107). In that respect, even though the United States, in their Arctic strategy from January 2009, list as a top national priority freedom of the seas and preservation of the global mobility of US military and

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<sup>4</sup> Whereas the Russian Northern Fleet possesses the largest number of icebreakers and conventional and nuclear capabilities in the region, Norway has the most modern naval fleet with Arctic operational potential and a coast guard trained in effective protection operations in the northern waters (Järvenpää and Ries 2011, p. 136).

civilian vessels and aircraft throughout the Arctic region (White House 2009), the U.S field of manoeuvre is at this moment rather limited since the U.S is the only one among Arctic nations which is not a signatory to the UNCLOS. Therefore, and also with regard to exploration of national resources, both the Bush and the Obama administrations have supported accession to the UN Convention on the Law of the Sea as the most effective means of protection of national interests in the High North (Lundestad 2009, p. 16). By contrast, Norway has already taken full advantage of the UNCLOS provisions and was the first among all the Arctic nations to successfully claim and clarify the outer limits of its continental shelf with the UN Commission on the Limits of the Continental Shelf (CLCS). By the decision taken in April 2011 Norwegian maritime territories are presently seven times larger than the country's total land area (Norwegian Ministry of Foreign Affairs 2011, p. 13), not surprisingly the High North has been put at the top of the Norwegian foreign policy agenda as its most strategic priority area (Heininen 2012, pp. 35, 41).

Growing attention to the Arctic region has also been paid by Denmark which by virtue of Greenland possesses one of the vastest territories within the Arctic Circle. However, the relationship between Denmark and Greenland has been specific particular due to the broad autonomy that Greenland has enjoyed since the 1979 'Home Rule', which was extended further by the Self-Government Act of 2009. In accordance with its provisions, Greenland is in charge of, among other competencies, its judicial matters, environmental and climate policy and management of its natural resources.<sup>5</sup> Moreover, in their execution Greenland is not constrained by EU legal provisions and regulations since it managed formally to leave the European Community in 1984 obtaining instead the status of an overseas country and territory (OCT). Denmark retained control over the defence matters and foreign affairs of the island and pays to Greenland an annual grant that will be gradually decreased once Greenland starts receiving revenues from the extraction of its natural resources (Emmerson 2011, p. 293, fn. 4). The Self-Government Act foresees as well possible future independence for Greenland, but rather as the potential outcome of a mutually agreed constitutional process than a decision taken by Greenlanders unilaterally (Emmerson 2011, p. 292). Nevertheless, the present active Danish Arctic policy has been to some extent influenced by this perspective which would break the Danish Crown's link with the High North. In July 2009 the Danish Parliament decided to set up an Arctic military command and task force by 2014 (Jakobson 2010, p. 7, fn. 26), in addition to already operating the small Danish Sirius Patrol, which patrols Greenland's eastern coast with dogsleds in "a political and legal exercise to demonstrate sovereignty" (Järvenpää and Ries 2011, p. 136).

Furthermore, with regard to the governance framework of the Arctic region, Denmark played a significant role in the organization of a meeting of the Arctic five littoral states that took place in Ilulissat in Greenland in May 2008 with exclusion of the other Arctic Council members, i.e. Iceland, Finland and Sweden. The "Arctic 5"

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<sup>5</sup> "It is estimated that 31 billion barrels of oil and gas in areas west of Greenland and east of Canada could be discovered" (Ministry of Foreign Affairs of Denmark 2011, p. 24).

signed there the Ilulissat Declaration, where the coastal states declared themselves to be by virtue of their sovereignty in a unique position to address the possibilities and challenges of the Arctic. Not only has the document reflected a departure from a more inclusive and open forum of cooperation like the Arctic Council, but it has also raised a question about which platform of international cooperation would be more suitable for future management of the Arctic. Both Canada and Russia highlighted the importance of closer cooperation between the littoral states, similarly to Denmark, which in this setting could play a much more visible role and therefore finds the “Arctic 5” the right “forum for issues primarily relevant for the five coastal states, currently the continental shelf issue” (Ministry of Foreign Affairs of Denmark 2011, p. 52). The United States, however, after its initial support for the Ilulissat initiative, in the aftermath of a second meeting of the Arctic five in Canada in March 2010 publicly affirmed its commitment to the Arctic Council as a preferred forum for discussion instead of an exclusive table for only five players. Also Norway, a signatory to the Ilulissat Declaration due to its insistence on the UNCLOS legal framework, finds the Arctic Council to be “the only circumpolar body and the leading political body for Arctic issues” (Norwegian Ministry of Foreign Affairs 2011, p. 10). With the ongoing discussions on the further evolution of the Arctic Council, whether it should be turned from a decision-shaping to a decision-making forum, a certain milestone was achieved in May 2011 with the signing of the agreement on cooperation in search and rescue missions in the Arctic, the first legally binding agreement established under the auspices of the Arctic Council (Conley et al. 2012, p. 14).

In general, all Arctic coastal states have an interest and recognize the necessity of maintaining the Arctic as a zone of peace and cooperation. In that respect they engage into numerous bilateral relations and multilateral forms of cooperation, first of all with their partners in the Arctic Council: Iceland, Finland and Sweden.

### **3.2 *Non-Coastal Arctic States***

The three Scandinavian countries: Iceland, Finland, Sweden expressed a deep concern about their marginalization in the governance framework that arose with the Ilulissat Declaration. Since they all pay great attention to the developments in the region, the Arctic in their view “should not be limited to a narrow geographical definition but rather be viewed as an extensive area when it comes to ecological, economic, political and security matters” (Heininen 2012, p. 34; citing Althingi 2011, p. 1).

Iceland owes its geographical link to the Arctic region and a seat at the Arctic Council to the small island of Grimsey off its northern coast, which partially lies above the Arctic Circle. More important, however, has been the country’s membership of NATO and the role played by Iceland in Cold War times when an American radar and airbase were located in Keflavik, making Iceland a strategic location between the two superpowers. The unexpected withdrawal of the U.S. military forces in 2006 and the complete collapse of the Icelandic financial system in late

2008 as a result of the financial crisis, faced Iceland with a new geopolitical reality and enforced the reorientation of its policy objectives leading to an application for membership of the European Union in July 2009. Regardless of the result of accession negotiations, Iceland's economy remains closely linked to the EU as most of its economic and commercial relations and interests with the EU are covered by the European Economic Area Agreement (EEA) in force since 1994. In addition, ongoing climate change and potential developments in the energy and shipping sectors could bring back some of the country's former relevance due to energy transports from Russia and Norway to global markets and the potential exploitation of Iceland's natural resources (Ingimundarson 2008, p. 87).

Two Scandinavian countries that joined the EU in 1995, Sweden and Finland, have taken so far rather different approaches towards the Arctic. Whereas Finland has taken a proactive stance in the region since the very beginning, Sweden's attachment to northern matters has not been so clearly defined. It was only recently in May 2011 that Sweden issued its first comprehensive Arctic policy paper under growing international and domestic pressure to do so. In many aspects the Swedish strategy is in line with other similar documents, however, it is worth stressing the accent on a strong climate change policy which Sweden sees as one of the core Arctic domains and where it intends to focus on substantial reductions in emissions of greenhouse gases and short-lived climate forcers, backed also by actions on strengthening the long-term adaptation capacities of the Arctic communities and environment (Government Offices of Sweden 2012).

On the contrary, Finland, formerly constrained in its northern policy by the presence of its powerful neighbor, after the collapse of the Soviet Union took a chance to reinforce its stand in the region and become an important actor on the Arctic arena. It stood behind the launching of the Arctic Environmental Protection Strategy (AEPS) in January 1989, which then developed into broader cooperation on research and protection of the Arctic environment. Moreover, the accession of Finland and Sweden to the European Union in 1995 brought northern matters to the EU where "it was decided that a northern dimension could form an important contribution by Finland to EU geopolitics" (Powell 2011, p. 108). In consequence, the Northern Dimension Initiative was launched in 1997 and thought of as a partnership between the EU, Iceland, Norway and Russia.<sup>6</sup> However, it took more than 10 years for Finland to adopt its own Arctic strategy in June 2010, though it was the first among non-coastal states to prepare such a document. In its strategy, Finland prioritizes economic developments in the region, especially in the shipping sector where extensive Finnish experience of winter shipping and in Arctic shipbuilding could be used. With regard to the governance framework of the High North, Finland clearly stresses the central role of the Arctic Council instead of more exclusive forms of cooperation and proposes a broadening of the Council's mandate together with admitting new observers, including the European Union. The Finnish strategy speaks explicitly of

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<sup>6</sup> More on the Northern Dimension in Sect. "The Arctic in EU Official Documents".

the EU as an Arctic player and aims at further development of the EU's Arctic policy in its own right with the Northern Dimension becoming a central tool for the EU in terms of external relations (Finland 2010, p. 44).

Both Sweden and Finland welcomed the Communication of the European Commission<sup>7</sup> as the first step towards creation of a comprehensive and coherent EU Arctic policy. Both countries speak also in favor of strengthening the EU vis-à-vis other Arctic actors and raising its visibility in the region's governance. "The question is, however, if there is enough political will among the eight Arctic states to do that [broaden the mandate of the Arctic Council], and further, whether they are ready to engage with relevant non-state northern actors as well as non-Arctic states" (Heininen 2010).

### **3.3 *Non-Arctic Actors***

Accelerating climate change and other developments in the Arctic have raised significant attention not only amongst the Arctic states, but also from other global players like China, Japan, India and South Korea. Among them China and South Korea have already applied for the status of 'permanent observer to the Arctic Council,' but like the application of the European Union the decision on this status has been postponed for a later date. Chinese researchers remain very active in the research field of climate change and environmental studies and China has recently signed several cooperation agreements with Iceland, with this latter's future role as a potential major hub in the transportation lane running from Asia via the Northeast Passage to the Northern Atlantic in mind. Moreover, even though China accepts the UN Convention on the Law of the Sea as a basis for the regulation of disputes over sea resources, it is still of the opinion that the Arctic legal framework "need[s] to be refined [...] to ensure a balance of coastal countries' interests and the common interests of the international community" (Jakobson 2010, p. 10; citing Hu Zhengyue 2009) to reflect better the new conditions resulting from climate change, ice melting and the Arctic's particular features. To this end, in view of Linda Jakobson, China will continue "to persistently, yet quietly and unobtrusively, push for the Arctic in spirit being accessible to all" (Jakobson 2010, p. 13).

## **4 The European Union in the Northern Latitudes**

### **4.1 *The Arctic in EU Official Documents***

Development of the Northern Dimension (ND) was the first activity taken by the EU with regard to its northern regions. Launched in 1999 during the Finnish Presidency it

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<sup>7</sup> More in Sect. "The Arctic in EU Official Documents".

was envisaged as a cooperation platform between the EU, Russia, Norway and Iceland and firstly focused mostly on dialogue with Russia and securing energy supplies, followed by issues of environmental management and the dangers of pollution (Powell 2011, p. 108; citing the European Commission). In the second phase the ND broadened its scope to include matters of economic integration and sustainable development within the region to “help ensure that no dividing lines are established in the North of Europe” (European Commission 2007, p. 6). In practice, the initiative aimed at “the European Arctic and Sub-Arctic areas to the southern shores of the Baltic Sea, including the countries in its vicinity and from North-West Russia in the east to Iceland and Greenland in the west” (European Commission 2007, p. 6) still focused more on relations with Russia, especially its northwest part and in closer vicinity to the EU borders.

The formation of the EU initial position on Arctic matters came mostly from growing concern over climate change and its implications for European security which received a lot of media attention as a result of the already mentioned planting of the Russian flag on the North Pole seabed in August 2007. Following these events, the High Representative and the European Commission published in March 2008 a document entitled “Climate Change and International Security” where they recognized the changing:

“geostrategic dynamics of the [Arctic] region with potential consequences for international stability and European security interests [...] [and] an increasing need to address the growing debate over territorial claims [...] which challenge Europe’s ability to effectively secure its trade and resource interests in the region and may put pressure on its relations with key partners” (High Representative and the European Commission 2008, p. 12).

Furthermore, the paper suggested focusing more on the security risks related to climate change in multilateral arenas such as the UN Security Council, G8 and UN specialized bodies, and referred to a possible need for a strengthening of the existing legal frameworks, including the Convention on the Law of the Sea and proposed to develop the EU Arctic policy based on the evolving geo-strategy of the region (High Representative and the European Commission 2008, pp. 10, 11). In the view of Richard C. Powell, the Ilulissat ministerial meeting that took place following an invitation by the Danish Minister of Foreign Affairs and the Premier of Greenland was a response to this document and a reaction to the perceived interference of non-Arctic states into particular matters relevant to the Arctic states (Powell 2011, p. 112).

Similar in tone to the document of the High Representative and the European Commission was a resolution adopted by the European Parliament in October 2008 where the Parliament argued in a bold manner that as three of the EU’s Member States (Denmark, Finland and Sweden) and a further two of its closely-related members of the EEA Agreement (Iceland and Norway) are Arctic nations, it means that the EU and its associated states comprise more than half the numeric membership of the Arctic Council (European Parliament 2008; Powell 2011, p. 114). The EP called then for “delivering a standalone EU Arctic policy” (European Parliament 2008, p. 5) in face of “the ongoing race for natural resources in the Arctic which may lead to security threats for the EU and overall international stability”

(European Parliament 2008, p. 13). The parliamentarians gave the opinion that as a first step the European Commission should gain permanent observer status to the Arctic Council. Moreover, as, in their view, the UNCLOS convention was not formulated to address specific issues of climate change and its consequences for the seas of the Arctic Ocean, they suggested that the Commission should act for an opening of international negotiations leading to a treaty for the protection of the Arctic (European Parliament 2008, p. 15), clearly in contradiction to the stand of the five Arctic coastal states as expressed in the Ilulissat document.

Interestingly, the communication from the Commission that was released only 1 month after the Parliament's resolution does not even mention the Arctic treaty. In the document that so far<sup>8</sup> represents the most comprehensive stand of the EU with respect to the Arctic region, the Commission firmly confirms its support of the UNCLOS legal framework and defends the principle of freedom of navigation and the right of innocent passage in the newly opened routes. It sets the policy objectives to protect and preserve the Arctic in unison with its indigenous population, promote the sustainable use of natural resources and to contribute to enhanced governance in the Arctic multilateral governance (European Commission 2008, pp. 3, 8, 9). Furthermore, in the view of the European Commission:

“[t]he main problems relating to Arctic governance include fragmentation of the legal framework, the lack of effective instruments, the absence of an overall policy-setting process and gaps in participation, implementation and geographic scope” (European Commission 2008, p. 10).

To address these issues the Commission recommended that the EU should work on the full implementation of the existing legal instruments, the development of new frameworks when needed due to Arctic specificities, and integration of the Arctic component into wider EU policies and negotiations. Last, but not least, the Commission referred to the Ilulissat Declaration by stating that the EU shall not support any arrangements excluding any of the Arctic EU Member States or Arctic EEA EFTA countries (European Commission 2008, p. 10), expressing thus its support for objections raised by Finland, Iceland and Sweden towards meetings of the 'Arctic five'.

In principle, the European Commission took a moderate stand towards the Arctic partners and with regard to the region's future management. It stepped away from security concerns and controversial elements prioritizing instead environmental protection and sustainable development of the Arctic, in which also European industries could take part and gain profit from. Its stand was further supported with the conclusions of the foreign affairs council meeting of the Council of the European Union in December 2009 which encouraged the EU Member States to contribute to systemic research on the Arctic environment and biodiversity, to strengthen protection of the vulnerable Arctic ecosystem, and to work closely with the other Arctic states to provide assistance in search and rescue purposes and other needs in the region (Council of the European Union 2009, pp. 3–5). The

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<sup>8</sup> As of May, 2012.



new communication from the Commission on Arctic matters to be released in 2012 is expected to stay more or less in line with the former statements.

Summing up, “[s]ince 2007 EU Arctic policy has developed from addressing the security implications of climate change, to focusing on how the EU could gain legitimacy and influence by being a responsible actor, to a more recent approach of highlighting EU rights as well as responsibilities in the region. It has become a major goal to be accepted as a legitimate and natural partner in Arctic affairs” (Offerdal 2011, p. 862).

## 4.2 *Development of EU Arctic Policy*

As “[t]he outside is not a good place to be” (Offerdal 2011, p. 876) the EU has to overcome its internal and external constraints to take its place in the Arctic governance framework. Firstly, the particular character of the EU policymaking, with its constantly growing number of issues and actors involved, makes it often difficult to agree on an agenda and find a common position of the member states and the institutions. Secondly, even though the European Parliament tried to present it differently, in strict legal terms the EU is an outside actor towards the majority of Arctic states. Moreover, none of its member states shares the Arctic coastline, which further decreases EU’s influence on Arctic states’ decisions and discussions undertaken among the “Arctic 5”. Last, but not least, even though certain countries support the EU’s engagement in Arctic affairs, others like Canada or Russia remain reluctant in this respect.

To overcome the above mentioned limitations the EU should play a more active role in the multilateral arenas where Arctic matters are debated and at the same time develop bilateral partnerships and agreements with key countries within the region. It should enhance its efforts to obtain the status of permanent observer to the Arctic Council to further support Sweden and Finland in their attempts to broaden the scope and mandate of the institution which could become the Arctic governance framework able to deal with the challenges arising from changes in the region. Whether it will happen, remains yet to be seen. As Timo Koivurova points out:

“[t]he Arctic wide intergovernmental cooperation, even though changed from the AEPS to the Arctic Council [. . .], has been very much the same kind of inter-governmental forum from 1991 onwards to the present day” (Koivurova 2009, p. 152).

It is not allowed to discuss any security-related issues but provides instead valuable scientific assessments and policy guidelines. However, the already mentioned first legally binding agreement on search and rescue purposes signed under the auspices of the Arctic Council could present a new opening in the formation of a future governance framework for the region. In that respect the EU should also support Denmark, which, even though it occasionally runs its Arctic policy in contradiction to the EU objectives, speaks for the reinforcement of the Arctic Council and turning it “from a ‘decision-shaping’ to a ‘decision-making’ organization” (Ministry of Foreign Affairs

of Denmark 2011, p. 52). Denmark supports as well the EU's application for observer status to the Arctic Council and promotes good relations between the EU and Greenland to enhance the participation of the latter in the relevant EU programmes (Ministry of Foreign Affairs of Denmark 2011, p. 52).

On its internal side, the EU should ensure firstly, more coordination between its institutions when speaking on Arctic matters since sending mixed signals to external partners, as has happened with the European Parliament and the Commission documents on the Arctic, undermines the image of the EU as that of an actor with a clearly defined and comprehensive policy in the region. Moreover, it permits actors like Russia to deal with the EU Member States rather on a bilateral basis instead of facing the coordinated approach of the European Union as could be expressed by, for instance, the European Commission.

Secondly, the Arctic component should be included into EU fields of actions and policies such as climate change, environment, maritime policy and fisheries, energy, transport and research, as these domains in particular have "a significant impact on the socio-economic and environmental aspects of the Arctic region" (Cavalieri et al. 2010: ES-1). Through inclusion of the Arctic impact assessment into its respective internal policies, the EU could strengthen their external dimension thus legitimizing its own presence on the Arctic arena and raising its own profile in the Arctic decision-making circles. For example, with regard to the energy field, the European Union should work on a strengthening of its Northern Dimension policy to support best practices and sustainable energy development in the Arctic and collaborate with Russia on reducing the environmental footprint of hydrocarbon extraction (Cavalieri et al. 2010: ES-3). Concerning fisheries, the EU market-based incentives could be enhanced to promote sustainable patterns of fisheries, whereas in the shipping sector the EU should support works on the International Maritime Organization (IMO) Polar Code and development of the Arctic shipping infrastructure (Cavalieri et al. 2010: ES-4). Finally, as in the Arctic securing balance between the interests of industry and environmental protection is a key priority, the EU, with its experience of the fight against climate change, could significantly contribute to mitigation and adaptation efforts aimed at the region, for instance, through support for reducing emissions from international shipping under the IMO auspices, dedication of more extensive funds for adaptation of the Arctic communities to the effects of climate change (Cavalieri et al. 2010: ES-2) and inclusion of Arctic matters into the agenda of post-Kyoto negotiations on a new global climate change regime. Such internalization of the Arctic component into EU internal policies would allow as well for the development of more comprehensive and mutually supportive EU instruments.

Last, but not least, the EU could strengthen its standing in the Arctic region through its economic potential and leverage, inter alia, in the shipping sector where on the EU side almost 90 % of its external freight trade is seaborne (European Commission 2011) and European companies own up to 41 % of the world's total fleet measured in dead weight tonnage (European Commission 2009, p. 2) and in the energy segment where the EU is expected to be among the main importers of the hydrocarbons extracted in the Arctic.

## 5 Conclusions

The unprecedented rate of climate change in the Arctic has resulted in the region's geopolitical and strategic importance growing steadily in the last decade. Not only Arctic states, but also other global players such as China, India, Japan and South Korea have recognized the consequences of Arctic developments for security, maritime transport and the energy sector. The changing profile of the region has called for an identification of states' interests and objectives towards the High North which "corresponds [also] to a general objective of European governments to set up a more ambitious union foreign policy and to enhance its effectiveness" (Weber and Romanyshyn 2011, p. 850) on a global arena. In its institutions' consecutive documents the European Union has presented drafts of the EU Arctic policy, which still need further development and political will for their implementation and the accomplishment of the proclaimed objectives.

As the Arctic ecosystem is one of the most vulnerable on the planet and the processes ongoing in the region have a reach beyond its borders, the EU is entitled to take a role in Arctic management and in future sustainable development of the High North. Yet, "[t]he significance of the Arctic is, first of all, its role in great-power strategies" (Powell 2011, p. 106; citing Möttölä 1998). To find its place in the changing geopolitical setting of the Arctic the EU should keep it in mind and develop a comprehensive EU Arctic policy to protect and promote its own values and interests in the region. To achieve this goal the European Union ought to overcome both the internal and external constraints of its foreign and Arctic policy, among others, by ensuring increased coordination between its institutions when speaking on Arctic matters and including the Arctic component into EU fields of actions such as climate change, energy, maritime policy and transport and research. Such internalization would allow for the development of more comprehensive and mutually supportive EU instruments. Moreover, through the external dimension of these policies the EU could legitimize its own presence in the Arctic institutional setting. Finally, the EU could strengthen its voice in the Arctic governance framework also through its economic leverage, in particular in the energy and shipping sectors, to take a position corresponding to its economic and political potential among the other global powers in the High North.

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# The Limits and Contributions of the EU to Democracy in Latin America: The Cases of Mexico, Venezuela and Honduras

Roberto Domínguez

## 1 Introduction

The external relations of the European Union (EU) to Latin America has been studied from different angles (Grabendorff and Seidelmann 2005; Domínguez and Roy 2007). While most of the publications have focused on the interregional relations or on the relationship between the EU and individual Latin American countries, the impact of the EU on Latin American policies has received lesser attention. The study of the diffusion of EU values around the world, including Latin America (Domínguez 2011), has been encouraged by the research project *The Transformative Power of Europe* (Börzel 2010). In this regard, this chapter investigates the contributions and impact of the EU to the improvement of democracy in Latin America. Theoretically, the paper discusses three stages for the study of EU norm-diffusion in Latin American countries. The first is the setting for diffusion of norms, the second is the strength of positive and negative conditionality, and the third is the conditions of the norm-takers to embrace the orientation of EU values, to develop a sense of ownership and to enhance the dialogue with the EU. Unlike the Central and Eastern European countries where the prospects of membership constituted powerful incentives for internalizing EU norms (Schimmelfennig and Sedelmeier 2005), the transformative power of the EU in Latin America and Asia is more limited than in the immediate neighborhood. Nonetheless, depending on the sub-region or the country in Latin America, EU norm-diffusion policies have a diverse impact on the internalization of democratic values, practices of rule of law and human rights. The chapter is divided into three sections. After reviewing the analytical framework of diffusion of norms, the paper provides an overview of the EU-Latin American relationship; the third section

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presents the empirical analysis of three contrasting cases: The first reveals a successful case of cooperation whereby the EU was able to engage in the democratization process in Mexico; the second case illustrates an opposite case in which Venezuela chose to question free market policies and to concentrate power in the executive branch of government, leading to confrontations with the EU, and hence affecting the EU leverage to stimulate democracy in the Andean nation; Honduras is the third case and shows how a derailing event of the Honduran democracy produced negative incentives from the international community and the EU as well, resulting in a domestic negotiation to restore stability in the Central American country. In this regard, the rationale of selecting these three cases is based on the different outcomes which EU policies produced as a source of norm diffusion.

## 2 Analytical Framework: The EU as a Source of Diffusion of Norms

The academic debates on democracy promotion have been heavily influenced by the leading role of the United States and the EU since the early 1990s. However, both actors have displayed different instruments and showed dissimilar readiness to promote values. On one hand, the United States has been a pivotal actor in democratization processes worldwide, because it has been ready to deploy an arsenal of incentives, including military aid, since the fall of the Berlin Wall. On the other, the EU has also promoted Western values by developing institutions and policies substantiated by the logic of the civilian power (Börzel and Risse 2007, p. 28)—but offering unappealing incentives to countries beyond cases of EU membership perspective.

The role of the EU as a source of diffusion of norms, particularly in the cases of the EU enlargements, has stimulated a scholarly debate centered on the EU motivations and on the effects on the norm-recipient countries. Tafel (2008) groups three main trends in the literature focusing on the EU motivations: ideational-constructivist, material-instrumental, and constitutional. The first strand emphasizes the EU's normative impulse in its cultural and social environment as a community of democratic states, in which the union conceives its identity as an international actor (Manners 2002). The second approach locates the EU's drive in the promotion of norms as a function of self-interest calculations based on perceived cost and benefits of political actions (Hyde-Price 2006). The third deliberates the inter-institutional bases of the EU policy-making process, which explains the rationale of the EU as an external actor in the area of democratic governance and protection of human rights (Smith 2003).

With regard to the effects on recipient countries, the analysis of the external relevance of the EU has continued to flourish by focusing on the policies and the resources created to benefit Central and Eastern Europe, the immediate neighborhood and the ACP countries, as well as more recently, on the impact on Asia and Latin America. The power projection of EU norms indicates a formula: as geographical distance increases and the incentives fade, the influence of the EU decreases.

From the perspective of the diffusion of norms, the analysis of EU democracy promotion policies in Latin America remains understudied. The EU role as a civilian power is not only limited due to geopolitical distance and limited economic influence, but also by the presence of the United States, and domestic transformations within the Latin American countries. In order to evaluate EU instruments to promote democracy in Latin America, and based on the extensive literature on norm-diffusion (Berry and Berry 2007; Risse-Kapen et al. 1999; Glatz 2007; Kelley 2004), this chapter evaluates three elements of the EU policies towards Latin America: (a) the setting for norm-diffusion (linkages and diffusers coordination), (b) the strength of conditionality (negative and positive), and (c) the mechanisms of appropriateness (orientation, ownership and dialogue).

## ***2.1 Settings for Norm Diffusion***

Two elements as the pillars elucidate the setting for the diffusion of norms. The first component is the linkage between the norm-maker and the norm-taker. The concept of linkage, defined as “the density of ties to the European Union, the United States, and Western-dominated multilateral institutions” (Levitsky and Way 2005a, p. 520), has added a new variable to the analysis of diffusion of norms. The assumption is that deep linkages with the EU will eventually contribute to shape the preferences of external actors and will reinforce the role of the EU as soft power. Levitsky and Way (2005b) have identified five dimensions of linkages: (a) economic ties, (b) geopolitical ties, (c) social linkage, (d) communication linkage and (e) transnational civil society ties. While scholars have worked with these dimensions, there has been an emphasis on trade and on the assumption that the intensity of linkages increases with geographical proximity (Schimmelfennig and Scholtz 2007a, p. 17).

The second component is the leverage that is “defined as governments’ vulnerability to external democratizing pressure” (Levitsky and Way 2005a, p. 520). This leverage is affected by at least three factors. The first is states’ raw size as well as their military and economic strength. In the case of Latin America, the vulnerability of Panama or Haiti contrast with the military strength and size of Brazil or Venezuela. The second factor is the competing—or complementary—agendas of Western powers to Latin America. The United States and the European Union have developed two different approaches towards the diffusion of norms, which eventually clash with, and/or erode the effective promotion of norms. Cuba epitomizes the competing views between the long-standing embargo-strategy of the United States, and the cautious engagement of the European Union. In other case studies, both agendas may not necessarily coincide, but they can complement each other to achieve better results, such as aid policies towards Haiti or Colombia. Finally, the third element is exemplified when governments have access to political, economic, or military support from an alternative regional power. There is a recent trend of growing influence of China’s investment in



Latin America as an alternative to European or US leverage; in the case of Venezuela, the military ties with Russia have rapidly grown in the past decade.

## 2.2 *Conditionality*

The transformational power of the EU in Central and Eastern Europe was based on the clout of conditionality. Material benefits for the norm-takers in the form of assistance and institutional inclusion alter the potential of the EU's ability to be an effective norm-maker (Björkdahl 2005). The literature on norm diffusion indicates that without the incentive of potential membership, the EU's influence over other countries' domestic political developments is likely to be minimal (Tafel 2008, pp. 2–4). Thus, the promise of rewards and the leverage to obtain democratic outcomes declines with non-candidate countries. For those countries in the European neighborhood policy, the impact of EU democracy promotion has been severely weakened. Thus, “the highest size of incentives lies in the promise of membership, and decreases in the associations and partnership agreements” (Schimmelfennig and Scholtz 2007b, p. 15).

The lack of prospects of membership does not equate with the assumption that conditionality does not exist in the relation of the EU with Latin America. While positive incentives offered by the EU to a state in process of democratization can include institutional membership, association status, trade benefits, technical assistance, and other types of aid, negatives incentives may also be an effective instrument to exert leverage (McDonagh 2008, p. 144). For instance, the EU used negative incentives comprised of economic sanctions when President Manuel Zelaya was ousted in July 2009 by suspending all aid programs to Honduras. In the case of Latin America, the incentive of membership is not on the table of negotiation as a positive incentive. However, the negotiation and conclusion of association agreements with Mexico and Chile have constituted positive incentives to reinforce the democratic practices in both countries.

## 2.3 *Appropriateness*

The setting for diffusion of norms and conditionality are not enough to explain the effectiveness of EU democracy and human rights promotion policies. The recipient country or norm-taker is not a passive actor. Indeed, the norm-taker country is often the ultimate actor that determines whether or not to adopt or intensify Western-style standards of democracy and human rights. Jonasson (2009) argues that democracy promotion should be country sensitive, inclusive, and cooperative between the donor and the recipient state, following the logic of appropriateness proposed by Kelley (2009). In light of this reasoning, Jonasson asserts that in order to develop policies with effective and lasting result, policies

should encourage (a) the positive orientation of the norm taker, (b) the active participation of beneficiaries through domestic ownership of projects, and (c) the development of a close dialogue between donors and recipients (Jonasson 2009).

The first element is *orientation*, which is the prospect of successful democracy promotion, if the recipient partners are oriented towards democracy promotion policies. The external normative influence can be “met with the adoption of the new norms, localization of the new norms to the local pre-existing context, resistance and also rejection” (Björkdahl 2005, p. 274). For example, Cuba embraces an orientation of democracy and norms that contradicts the policies of the EU. Similarly, in the past decade Venezuela has revisited the fundamentals of democracy, and implemented policies that produced acrimony in its relations with Western countries. On the other hand, Mexico and Chile were able to negotiate association agreements once they had moved forward in the process of democratization.

The second element of the analysis is *domestic ownership of the process*, which means the involvement of different type of recipients (NGO's, local government, state) in the “development of the democracy promotion policies and their implementation” (Jonasson 2009, p. 10). The assumption is that the greater the role of recipient actors in the process, the greater the sense of ownership, and the greater the prospects of the long-lasting effect of democratic practices. Consequently, the EU has gradually offered grants through different programs to NGOs and local governments to promote human rights and democracy in Latin America. The third and final is *dialogue*. This is essential to grease the engine of diffusion of values. The argument here is that the needs and priorities of norm takers evolve over time, and it is only through dialogue that the policies can be revisited (Jonasson 2005, p. 10). In the relationship between the EU and Latin America, the dialogues at the regional level have been in place for more than a decade, while at the country and civil society level it is more developed with Mexico, Chile and Brazil in comparison to say, Cuba, Venezuela or Honduras.

### **3 Overview of the EU External Relations Towards Latin America**

In order to explain the contributions of the EU to democracy and stability in Latin America, it is pertinent to present an overview of the EU relationship towards Latin America, which operates at three different levels. The first is the *region-to-region level* of interaction, which bi-annually summons more than 60 heads of state and government of both regions since 1999. The second level of the *relationship is between the EU and sub-regions* in Latin America. Here both parties are able to narrow down their interests and reach relevant mechanism of cooperation such as association agreements. The third level, *between the EU and individual countries*, has proved to be quite dynamic with the conclusion and implementation of tangible benefits, such as the association agreements with Mexico and Chile, or the strategic

**Table 1** EU's main trade partners in Latin American partners (2010)

Imports from		Exports to		Major trade partners	
Country	100 %	Country	100 %	Country	100 %
1. China	18.9 %	1. United States	18.0 %	1. United States	14.5 %
2. United States	11.4 %	2. China	8.4 %	2. China	13.9 %
3. Russia	10.4 %	3. Switzerland	7.8 %	3. Russia	8.5 %
10. Brazil	2.2 %	9. Brazil	2.3 %	10. Brazil	2.2 %
24. Mexico	0.9 %	18. Mexico	1.6 %	19. Mexico	1.2 %
32. Chile	0.6 %	32. Argentina	0.5 %	33. Argentina	0.6 %
33. Argentina	0.6 %	35. Andean Comm.	1.5 %	34. Chile	0.5 %
40. Costa Rica	0.4 %	36. Chile	0.3 %	43. Colombia	0.3 %
42. Peru	0.3 %	43. Venezuela	0.7 %	46. Venezuela	0.3 %
44. Colombia	0.3 %	45. Colombia	0.3 %	49. Peru	0.3 %
48. Venezuela	0.3 %	Latin America	6.4 %	Latin America	6.3 %
Latin America	6.1 %				

*Source:* Own Elaboration based upon EUROSTAT, DG Trade/Statistics, March 18, 2011

partnerships with Brazil and Mexico. Table 1 shows the most relevant Latin American trade partners of the EU.

The region-to-region dialogue between the European Union and Latin America was institutionalized in 1999, when the first bi-regional summit took place in Rio de Janeiro (Domínguez and Roy 2005). Since then, six bi-regional meetings have been held, and all the meetings have emphasized the bilateral agenda. The second summit, held in Madrid in 2002, set the main areas of cooperation in the bilateral agenda, and the third, held in Guadalajara in 2004, brought about a sense of confidence in light of the recognition of social cohesion as the top priority in the summit agenda. Unfortunately, the prospects of social cohesion as the driving force of the bilateral relationship vanished in the fourth meeting in Vienna in 2006 due to EU enlargement fatigue, difficulties to ratify the Constitutional Treaty, and rising skepticism of the free market by several left leaning incoming governments in Latin America.

The context of the 2008 Summit in Lima was not conducive to reaching any better results than the 2006 Vienna Summit. The international economy was affected by the international economic crisis. While Europe was still focusing on the institutional reform of the Lisbon Treaty, the energy crisis and the reconfiguration of the Balkans, the Andean area faced two crises: first, the diplomatic and border dispute between Colombia and Ecuador-Venezuela, and secondly the lack of consensus on a common position of the Andean Community of Nations in the negotiations of an association agreement with the EU. The Madrid Summit in May 2010 offered an important stimulus for the bi-regional relationship: the “Mechanism of Investment of Latin America and EU-Latin America Foundation” were created, while the negotiations of the association agreement with Central America were close to be finalized (European Commission 2010).

The relationship with Latin American sub-regions has been one of the preferred strategies of the European Union. For decades, the EU found in sub-regional processes of integration the replication of its own model. Over time, however, exporting the EU model produced limited results due to the obstacles the members

of the Andean Community or the Central American process faced in pooling sovereignty in community or supranational institutions. Thus, the balance in the case of the EU-sub-regions relationship is mixed, while negotiations with MERCOSUR have been stalled several years, and the Andean Community (AC) remains divided, Central America is the exception as a result of the conclusion of an Association Agreement with the EU.

As a region, MERCOSUR ranks 8th among the EU's trading partners, accounting for 2.7 % of total trade in 2009. Negotiations for an inter-regional agreement between both parties were launched in 1999, but were suspended in October 2004. While both parties decided to resume negotiations in May 2010, the progress remains limited (European Commission 2011). Negotiations between the AC and the EU have been quite unusual because what started as a region-to-region association agreement turned out into a region-to-country free trade agreement. The EU-ACN negotiations were launched in June 2007, and four rounds took place (European Commission 2008). In 2008 Bolivia distanced itself from other ACN members in four sensitive issues, namely services, investment, intellectual property and public procurement. Ecuador, later supported by Bolivia, opposed the proposal of an ACN position on the chapter on trade and sustainable development. Such internal disagreement within the ACN led negotiators to water down the association agreement, and instead suggest a free trade agreement with Colombia and Peru. Unlike MERCOSUR and the AC, Central America and the EU started negotiations in 2007. While both parties made some progress in seven rounds of negotiation, they decided to postpone the eighth round due to the political instability in Honduras in 2009. Fortunately, EU and Central American negotiations resumed, and concluded with an Association Agreement in May 2010 during the EU-LAC Madrid Summit (with the text initiated in Brussels in March 2011).

Brazil, Mexico and Chile are the main three partners of the EU in Latin America. While Brazil has been negotiating as a MERCOSUR member with the EU for an association agreement for more than a decade, Mexico was the first Latin American country to reach an association agreement, followed by Chile. Why were Mexico and Chile the first countries to sign these agreements? On a number of criteria ranging from the size of their economies to the nature of their political evolution, there are outstanding differences between Mexico and Chile. Nonetheless, both countries have undergone a simultaneous and gradual process of (a) erosion of political authoritarianism, (b) implementation of free market policies since the mid-1980s and (c) conclusion of free trade agreements with the United States.

#### **4 Case Studies: Mexico, Venezuela and Honduras**

The previous sections have argued that whereas the region-to-region dialogue serves as a background of the EU-Latin American relationship, the substantial policy interaction between both parties takes place in the EU-individual countries relationship. This section compares how the EU contributes to strengthening democracy in three countries based upon the premises of setting for diffusion of

norms, conditionality, and appropriateness, as explained in the analytical framework of this chapter. The main assumption is that the etiology of democratization in Latin America is the result of domestic processes; nonetheless, external actors may either contribute to, or delay the democratization processes. Before proceeding to the analysis of the three cases, the table below presents the evolution of five indicators inherent to the concept of full-fledged democracy: rule of law, control of corruption, government effectiveness, political rights and civil liberties.

## **4.1 Mexico**

Despite Mexico not being considered an electoral democracy until 2000 by Freedom House, the electoral system had undergone several reforms, and the authoritarian rule had gradually ceded power to a more organized opposition. In 2008, freedom scores considered Mexico as a “Free State,” while the global governance scores of the World Bank indicate that in the area of rule of law and corruption Mexico had slightly decreased its rank, while it increased or maintained stability in the areas of government effectiveness between 1996 and 2008 (Kaufmann et al. 2009) (see Tables 2, 3, 4, 5, and 6).

Since 2000, several reforms were implemented under the Fox administration, notably among them the Law on the Reform of the Civil Service, and the Law on Transparency. Likewise, the Fox Administration pursued a more active policy towards better protection of human rights, with the Senate adding 26 supplementary legal instruments, the creation of the Special Prosecutor’s Office for Crimes of the Past, and the Inter-Secretarial Commission on Government Policies in the area of Human Rights. Nonetheless, the illiberal features of the Mexican democracy have survived the political change, and enormous challenges need to be overcome. Mexico currently faces skyrocketing numbers of violence associated with drug-trafficking organizations, resulting in the deaths of at least 50,000 people under the administration of President Felipe Calderon (2006–2012). Thus, Presidential authority over the armed forces is extensive. Although the military has historically operated beyond public scrutiny, human rights advocates, including the National Human Rights Commission warned that its strengthened counternarcotics role has not been accompanied by increased clarity regarding limitations on its conduct.

The Mexican transition has been explained as having been greatly motivated by domestic variables. Similar to other Latin American countries, there was a rejection of foreign intervention in domestic affairs. Nonetheless, during the 1990s Mexico experienced dramatic changes in the acceptance of external influences in the democratization process. First, the electoral process made the country more politically plural in terms of political parties sharing the legislative and the governorships. Second, the economic opening of Mexico crystallized in the North American Free Trade Agreement (NAFTA). Both events increased the pressure for political opening.

**Table 2** Governance scores: rule of law (−2.5 to +2.5)

Country	1996	1998	2000	2002	2004	2006	2008	2010
Honduras	−0.71	−0.84	−0.91	−0.83	−0.73	−0.90	−0.89	−0.87
Mexico	−0.47	−0.51	−0.36	−0.33	−0.37	−0.51	−0.64	−0.56
Venezuela	−0.64	−0.71	−0.80	−1.12	−1.21	−1.38	−1.59	−1.64

Source: Kaufmann D., A. Kraay and M. Mastruzzi: *Governance Matter VIII Governance Indicators for 1996–2010*

**Table 3** Governance scores: control of corruption (−2.5 to +2.5)

Country	1996	1998	2000	2002	2004	2006	2008	2010
Honduras	−1.01	−0.63	−0.72	−0.81	−0.70	−0.76	−0.82	−0.85
Mexico	−0.33	−0.51	−0.32	−0.23	−0.33	−0.32	−0.26	−0.37
Venezuela	−0.80	−0.87	−0.67	−1.11	−1.02	−1.01	−1.13	−1.24

Source: Kaufmann D., A. Kraay and M. Mastruzzi: *Governance Matter VIII Governance Indicators for 1996–2010*

**Table 4** Governance scores: government effectiveness (−2.5 to + 2.5)

Country	1996	1998	2000	2002	2004	2006	2008	2010
Honduras	−0.72	−0.65	−0.48	−0.58	−0.54	−0.55	−0.57	−0.66
Mexico	−0.03	+0.34	+0.29	+0.26	+0.10	+0.10	+0.18	+0.16
Venezuela	−0.76	−0.46	−0.67	−0.93	−0.90	−0.79	−0.85	−1.01

Source: Kaufmann D., A. Kraay and M. Mastruzzi: *Governance Matter VIII Governance Indicators for 1996–2010*

**Table 5** Governance scores: political rights 2002–2010

Country	2002	2003	2004	2005	2006	2007	2008	2009	2010
Honduras	3	3	3	3	3	3	3	3	4
Mexico	2	2	2	2	2	2	2	2	2
Venezuela	3	3	3	3	4	4	4	4	5

Source: Freedom House

Each rating of 1–7, with 1 representing the highest and 7 the lowest level of freedom, corresponds to a range of total scores

**Table 6** Governance scores: civil liberties 2002–2010

Country	2002	2003	2004	2005	2006	2007	2008	2009	2010
Honduras	3	3	3	3	3	3	3	3	4
Mexico	3	2	2	2	2	3	3	3	3
Venezuela	5	4	4	4	4	4	4	4	4

Source: Freedom House

Each rating of 1–7, with 1 representing the highest and 7 the lowest level of freedom, corresponds to a range of total scores

Against this background, a significant incentive for the incipient Mexican democratization was the negotiation of the *Agreement on Economic Partnership, Political Coordination and Cooperation*, which came into force in 2000 and was the first agreement of this type between the EU and a Latin American country.

There was certainly an economic driving force in the association agreement, but it was limited because the external trade of Mexico has been dominated by relations with the United States, and the EU represented only from 6.5 % in 1999 of the Mexican exports. Hence, in addition to the mutual economic interests, the negotiation was protracted initially due to Mexico's reluctance to include the democracy clause. Eventually the Mexican government quickly realized, however, that it had no alternative choices but to accept the democracy clause, which in turn concluded the negotiation process, and the agreement came into force in 2000 (Domínguez 2008, pp. 170–175). Another EU action to promote transparency and democracy in Mexico was by providing European funding for NGOs to monitor elections. In the context of the negotiation of the association agreement, Mexico was initially reluctant to allow such funding to NGOs, but finally ceded to EU pressure, and over time the monitoring of electoral processes and funding to NGOs has become a routine political practice. After a period of competing views about the ways to enhance democracy, Mexico's goals developed to coincide with the European values and eased the way for the association agreement.

As for concrete areas of cooperation, the EU earmarked €55 million for Mexico for the period 2007–2013, focusing on three sectors: (a) Social cohesion and support to related policy dialogues; (b) Sustainable Economy, and (c) Competitiveness. In each one of these areas, regular policy dialogues were envisaged as innovative instruments that allow bilateral assessment and reprioritization of significant programs (European Commission 2007a, pp. 1–3). Cooperation in the human rights sector has substantially increased since the European Initiative for Democracy and Human Rights (EIDHR), and included Mexico as one of three priority countries in Latin America in 2002. With the active participation of the Mexican government, in the framework of the EIDHR, the EC Delegation has been responsible for 19 projects in Mexico for a total of approximately €3.2 million. The Commission has also negotiated two targeted projects with the UN Office of the High Commissioner for Human Rights (OHCHR) with a total EU contribution of €1.4 million.

The association agreement has also developed mechanisms of dialogue to include NGOs and civil society, igniting a sense of ownership of the EU projects in Mexico. In the case of civil society, a bi-annual meeting of Mexican and European civil society organizations was established. While civil society organizations are not endowed with any decision making power in the context of the bilateral relationship, they have contributed to raise the awareness on the efficient use of European cooperation resources to promote democracy and human rights. Nonetheless, NGOs have co-financed projects in Mexico for €4.5 million in seven projects related to the social, cultural and economic situation of the country.

## 4.2 *Venezuela*

The deteriorating quality of democracy has been a trend in Venezuela since the late 1990s. Freedom House has ranked Venezuela as an electoral democracy. Nonetheless, due to politically motivated disqualification of opposition candidates

and the abuse of state resources by incumbent politicians during state and local elections in 2008, Freedom House downgraded it to a non-electoral democracy (Freedom House 2009). Likewise, Venezuela's status on freedom was Free until 1999, which has been since changed to "Partially Free." The World Bank indicates that in the area of rule of law, corruption and government effectiveness, Venezuela's rank has been steadily dropping (Kaufmann et al. 2009) (see Tables 2, 3, 4, 5, and 6).

When President Hugo Chávez was elected in 1999, the expectations of change were high, and to some extent he has addressed them by pursuing policies aimed at ameliorating poverty and social exclusion, particularly through programs known as *Missions*. The main problem associated with the consolidation of democracy in Venezuela has been the polarization stimulated by the government and the erosion of the pillars of the democratic structures, such as division of power, accountability and freedom of expression, *interalia*. The use of laws to undermine the opposition has been a common strategy of the two consecutive Chavez administrations since 1999. In March 2005, for instance, the amendments to the Criminal Code came into force extending the scope of Venezuela's disrespect of laws, which criminalizes expressions deemed to insult public officials or state institutions, and increase penalties for criminal defamation and libel. Likewise, the 2004 Law on Social Responsibility of Radio and Television gives the government the authority to control the content of radio and television programs, and limit the use of airwaves by opposition stations by revoking their licenses.

President Chávez has pressed ahead with further centralization and attacks on the opposition. In the increasing milieu of polarization, in February 2009, President Chavez won a referendum on changing the constitution to remove the cap on the number of terms that an elected official may serve. Following the amendment of the decentralization law, and the commandeering of ports and airports, controlled by local authorities, by the central government, the National Assembly passed a law establishing a "head of government" for the capital district of Caracas in April 2009, which undermines the role of the popular opposition leader and mayor of the city. Thus, most of the budget, authority and assets accessible to the opposition mayor, Antonio Ledesma, are now redirected to the city's unelected head, a post selected by Mr. Chavez.

In light of the deterioration of democracy in Venezuela, the role of the European Union has been quite limited. The United States is the main trade partner of Venezuela (35 %), followed by the European Union, which represents only 8.9 % of Venezuela's total trade. From nationalizations to diplomatic incidents, the United States has been unable to produce any change in the government or deter the weakening of democratic structures in Venezuela. Actually, the United States has been accused of indirectly sponsoring the failed coup d'état in 2002. The leverage of the United States and the European Union is also undermined by the alternative alliances Venezuela has been forging with Iran, China, and Russia—and the abundant oil resources available to Venezuela currently. For instance, Venezuela and Cuba have reportedly offered Russia the use of air bases, which would allow Russia to step up operations of its bombers around US airspace (Economist Intelligence Unit 2009). With regard to the oil sector, it represents about 30 % of its GDP and 80 % of



exports—making the Venezuelan economy vulnerable to oil price fluctuations. In the absence of any association agreement with the EU, the incentives the EU can put forth for negotiations with Venezuela are limited.

The course of the reforms in Venezuela is to some extent opposed to the type of policies the United States and the European Union embrace. Venezuela opposed the Free Trade Area of the Americas, and together with Cuba, has proposed the Bolivarian Alternative for Latin America and the Caribbean. As a testimony to the opposing views of the EU and Venezuela, the President of the European Commission, José Manuel Barroso, warned that European businesses have found some obstacles in Latin America: lack of predictability of the economic setting, market access difficulties (trade and on-trade barriers), political instability, excessive red tape, customs problems, insufficient regional infrastructures, corruption and so forth. He added:

On top of these obstacles, there is a worrisome new one: the tendency to understand European investment under a negative light . . . . Make no mistake, whether this political attitude prospers, European businesses will not be harmed as a consequence because there are abundant investment opportunities in other regions, and the victims will be poor people in Latin America (Barroso 2006).

Despite the limited leverage of the EU, the Union has reacted on several occasions to the deterioration of democracy in Venezuela. The use of EU declarations to condemn or support significant events in Venezuelan politics has been used often. For instance, the EU issued declarations conveying its concern in the case of the non-renewal of the broadcasting license of Radio Caracas in May 2007, or supporting the December 2007 referendum by asserting that the voting did not take place in a transparent manner. Nonetheless, in the case of monitoring elections, there have been disagreements. In 2004, for instance, the rules set up by the government-friendly National Electoral Council (CNE) collided with the Code of Conduct of the International Institute for Democratic and Electoral Assistance; in reaction to this, the European Union refrained from sending a mission stating that “it has not been possible to secure with the Venezuelan electoral authority the conditions to carry out observation in line with the Union’s standard methodology” (Brehuer 2007, p. 560).

Concerning EU assistance to Venezuela, the 2001–2006 Country Strategy Paper mentioned human rights and democracy promotion, but two main partnership areas were targeted: first, prevention and reconstruction (due to the floods in 1999), and second, trade diversification (fisheries) with a provision of €38.5 million. On the other hand, in the 2007–2013 Country Strategy Paper, the EU has identified two specific sectors for cooperation: (a) support to the modernization and decentralization of the Venezuelan state and (b) assistance aimed at diversifying the country’s economy. The amount allocated for this period was €40 million. With regard to the areas of human rights and democracy, some new programs have been gradually developed to include more NGOs and local governments (European Commission 2007b, pp. 1–4). In 2005, the European Instrument for Democracy and Human Rights (EIDHR) included Venezuela in the list of focus countries, eligible therefore

for the implementation not only of regional projects, but also national ones. Under this instrument, Venezuelan civil society has been able to receive support in two specific areas, namely, campaigns to foster a culture of human rights and efforts to advance equality, tolerance and peace. Thus, the EU has sponsored seven projects with local NGOs in Venezuela related to human rights and democracy promotion. On the other hand, with the aim of promoting democracy, in 2002 the EU Commission approved a project to assist the OAS in its efforts to implement the agreement reached between the OAS, the Venezuelan government and the opposition after social unrest early that year.

### 4.3 *Honduras*

Since democratic life was restored in 1980, Honduras has undergone a gradual institutional transition, moving from an authoritarian military regime to a pluralistic democracy. Ever since then, consecutive electoral contests have been held regularly, with power alternating peacefully between the two main traditional parties. Honduras has signed and ratified almost all international and inter-American conventions on human rights, although their actual implementation remains uneven. Freedom House has evaluated Honduras as electoral democracy for more than two decades, and in the freedom scores Honduras' status was classified as "Partially Free" in 2008 (Freedom House 2009). This positive trend matches World Bank governance scores, where, while in the area of rule of law the score has slightly decreased, in the sectors of government effectiveness and control of corruption it has improved in the period 1996–2008 (Kaufmann et al. 2009) (see Tables 2, 3, 4, 5, and 6).

While elections are marred by sporadic violence and vote-counting problems, they are considered free and fair by international observers. The main problem lies in the lack of implementation of laws and the discretionary use of power. Official corruption continues to cast a shadow over the political scene, and progress such as the 2006 passage of a transparency law, are mired by flaws in the legal design. Thus, while authorities generally respect the constitution's press freedom guarantees, lack of access to public officials and information is a significant obstacle for reporters. Constitutional guarantees on the freedoms of assembly and association are generally observed. The 2006 Citizen Participation Law protects the role of civil society groups and individuals in the democratic process. The judicial system is weak and inefficient, and accused of high levels of politicization. About 79 % of inmates are awaiting trial, and the prison system is notoriously overcrowded. While the murder rate dropped from 154 per 100,000 inhabitants in 1999 to 49.9 per 100,000 in 2007, it is still among the highest in the region. The UN Office on Drugs and Crime estimates that there are 36,000 gang members in Honduras (Freedom House 2011).

After the United States and Central American countries, the EU is Honduras' third largest trade partner, while Honduran trade is minor for the EU beyond a few sensitive products (e.g. bananas). In recent times, particularly during the tenure of deposed president Manuel Zelaya, Venezuela increased its influence over

Honduran domestic politics, lessening the leverage of the United States, with whom Honduras has a free trade agreement. Against this background, following the orders of the Supreme Court and the Honduran Parliament, the military deposed President Zelaya in July 2009. While the international community reacted unanimously for reinstating President Zelaya, the EU was one of the first political entities, even before the United States, to use negative conditionality against the *de facto* government. The European Union suspended financial aid to Honduras worth €65.5 million after the failure of talks aimed at reinstating Manuel Zelaya as president in late July 2009 (Vogel 2009). A byproduct of the events in Honduras resulted in the temporary postponement of the negotiations for an EU-Central America Association Agreement, which was already in the 8th round of negotiations. After holding elections in 2010, the EU normalized relations with Honduras.

The EU's strategy towards Honduras has underscored the relative stability of this Central American country as a "window of opportunity," whereby the "leverage offered by EU cooperation should support this new development momentum, in order to make it more conducive to actually reducing poverty" (European Commission 2007c, p. 4). Consequently, the European Commission provided funds for three specific areas between 2002 and 2006: (a) sustainable management of natural resources (45 %), (b) local development and decentralization (26 %), and (c) education (21 %). For the period 2007–2013, the Country Strategy Paper for 2007–2013 emphasized the urgent need to improve justice, and public security and law enforcement (human rights), and allocated €223 million in funding for: (a) social cohesion (50 %), (b) management of forestry resources (30 %), and (c) improving the legal system and public safety (20 %) (European Commission 2007c, pp. 2–4).

Despite the recent setbacks in Honduran democracy, the positive trend of democratization has been conducive to orient Honduras in the same direction of European values and cooperation. At the same time, the EU has reiterated the need to work in coordination with other donors, providing gradual empowerment to national authorities dealing with cooperation, and transferring responsibilities from the European Commission in Brussels to the EC regional Delegation in Nicaragua (which covers Honduras) with a view to bring the level of operational decision-making closer to the actual needs and beneficiaries.

## 5 Final Considerations

The solid and enduring democratization processes around the world are rooted in domestic transformations. The pressure—or lack of interest—of external powers may catalyze or delay the pace of democratization. While the EU was a decisive factor in the democratization of the central and eastern candidate members in the past two decades, the power of the EU as influential power wanes where the promise of membership is not an option, and conditionality as a foreign policy

instrument do not exist. This chapter has explored three groups of variables to explain the scope of EU's norm diffusion in Latin America.

The first is the setting for norm diffusion. In regions such as Latin America, where the main problem is improving the quality of democracy, the diffusion of norms is constrained due to the limited EU linkages with the region in comparison to other dominant countries in the region. Nonetheless, the EU's diffusion of norms can exponentially grow if there is coordination of policies with dominant regional actors such as the United States or the Organization of American States. Likewise, the EU's policies can be affected if other regional or extra-regional actors display policies that entail a different perspective of values such as the case of Venezuela in Honduras or Russia and Iran in Venezuela.

The second element of the analysis is positive and negative conditionality. While its transformational effect is not as powerful as the incentive of membership, in the case of Mexico, the prospects of reaching an association agreement with the EU was an incentive for the Mexican government to accept the democracy clause, EU funding to NGOs to monitor elections, and more recently, EU monitoring missions themselves. In the case of Honduras, where the extreme event of ousting a President occurred, the use of negative conditionality by suspending EU aid to that country contributed to bring the parties in conflict to the bargaining table.

The third crucial element is the appropriateness of the norm-takers of Western values. The initial domestic agreement in Latin American countries to adopt policies to improve the quality of democracy and the respect of human rights is pivotal for the success of EU's policies. Mexico reoriented its approach with regard to the transparency of external monitoring on elections, while Venezuela has actually revisited its concept of democracy, and enacted policies that clash in some areas with EU values and principles. The appropriateness can be also enhanced in those cases where the EU promotes the participation of local groups in the implementation of projects and maintains a permanent dialogue with the recipients of aid in order to adapt it to the priority needs in the field. In this regard, the analysis of the EU strategies in the three countries reflects the fact that priorities and strategies differ from case to case, depending on the specific needs of the country.

Unlike the Central and Eastern European countries, where the prospects of membership were strong for internalizing EU norms, the transformative power of the EU is limited in Latin America. Nonetheless, this does not preclude the EU to act in order to help improving the quality of democracy in the area by offering settings and resources conducive to the internalization of democratic values and practices of rule of law and human rights.

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# Shaping EU-Mercosur Relations

Carolyn Marie Dudek

## 1 Introduction

The 1823 Monroe Doctrine, warning Europe to stay out of Latin American affairs, set the stage for the US to play a dominant role in the region. In the last two decades, however, we have seen an increase in Europe's influence in Latin America, especially in the Southern Cone. The European Union (EU) since the late 1990s outspends the US in foreign aid to the region, European foreign direct investment (FDI) has surpassed the US, and Europe has also become an important trading partner (see Appendix) (EUBusiness 2009; USAID 1999–2008; Nunnenkamp 2002, pp. 227–244). The EU's approach toward the Southern Cone and more specifically, Mercosur, is quite distinct from the US. The US has focused on a growth-oriented strategy under the policy ideals of the Washington Consensus and has sought free trade agreements. On the other hand, the EU has not only sought free trade, but also political dialogue, cooperation and development as well as the encouragement of regional integration. Since the regime transitions from authoritarianism to democracy in Mercosur countries the EU has made a concerted effort to fund programs to promote the protection of human rights to deal with the aftermath of the 'Dirty War' in countries like Argentina. The EU has also put issues of a "green economy, climate change, biodiversity conservation and sustainable energy"<sup>1</sup> as important issues in EU-Latin America Summits. The association agreement being negotiated between the EU and Mercosur is not simply about free trade, but includes the promotion of socio-political ties (Grugel 2004, pp. 603–626; Hussain 2012).

In the 1990s there emerged a wave of 'new regionalism', exemplified with the Maastricht Treaty, deepening European integration, and the Treaty of Asuncion

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<sup>1</sup> European Union External Action Service (2011–2013, p. 10).

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creating Mercosur (Santander 2005, pp. 285–306). ‘New regionalism’s’ region-to-region negotiations shaped global governance as well as promoted economic liberalization (Santander 2005, pp. 285–306; Robles 2008, pp. 181–197). Liberalism, in large part, shaped the EU’s strategy and promotion of a trade agreement with Mercosur, and inspired EU competition policy, which forced the breaking up of European monopolies, which had an unintended result promoting significant European FDI overseas.<sup>2</sup> Simultaneously, Mercosur members adopted liberalization, which meant privatization and investment opportunities for foreign companies (Izquierdo Zamarriego, interviewed by author, 2008; Pulido, interviewed by author, 2006). Although liberalism shaped most EU policies, illiberal policies of protectionist agricultural policy have thus far prevented the completion of an association agreement. Some scholars argue that an EU-Mercosur agreement has failed due to the institutional weakness of Mercosur (Stuhldreher 2011, pp. 69–76). However, as EU practitioners point out, continued negotiations with Mercosur has helped strengthen Mercosur’s institutions and the EU has at times negotiated with the individual members of Mercosur in order to forge a bi-regional agreement (Mally, interviewed by author, 2006; Pulido, interviewed by author, 2006; Blasseti et al. 2003, pp. 77–111). If the EU can finalize an association agreement with Central America, an institutionally weak regional block, it seems that negotiating with Mercosur is not so different.

To understand better the contradiction within EU policy supporting liberal and protectionist policies simultaneously we shall examine the main issues shaping EU-Mercosur relations (1) Spanish membership to the European Community; (2) the emphasis of liberalism as an economic model on both sides of the Atlantic; and (3) EU Common Agricultural Policy (CAP) and the tension between protecting European farmers and allaying the discontent of farmers in Mercosur.

A useful theoretical perspective to understand the shaping of EU-Mercosur relations is historical-institutionalism. Institutions in this context refer to both formal and informal (Aspinwall and Schneider 2000, p. 3 and 39; March and Olsen 1989; Peters 2005). Scharpf (1988), one of the first EU scholars to utilize an institutionalist approach, called into question traditional approaches coming out of international relations theory, such as intergovernmentalism (Aspinwall and Schneider 2000, p. 2).

The intergovernmentalist perspective asserts that member states are the main actors in the EU and negotiations of member states create EU policy (Moravcsik 1993; Garrett 1992). On the other hand, institutionalists characterize the European Community as “a single polity” than merely a group of independent states vying for influence within the Community.<sup>3</sup> Examining EU-Mercosur relations and specifically the issues shaping association agreement negotiations, it would be over simplistic to state that Spain in its negotiations with EU members is the only determining factor

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<sup>2</sup> Pulido (interviewed by author, 2006); Gennaro (interviewed by author, 2006); Molano (interviewed by author, 2008); Aspinwall and Schneider (2000, pp. 1–36); Hamner (2002, pp. 385–387); Izquierdo Zamarriego (interviewed by author, 2008).

<sup>3</sup> Pierson (1996, p. 126); Dehousse (1994, pp. 103–125); Majone (1992, pp. 299–316).



shaping EU-Mercosur relations. One has to take into account the norms shaping various policy sectors within the EU as well as the action of member states, whose actions are constrained by norms and formal institutional structures of the EU.

Historical institutionalism is a useful lens as Pierson (1996) explains, “prior decisions form a basis upon which new decisions are made” (p. 133). Liberalism inspired competition policy, and protection of agriculture may have started as the outcome of intergovernmental bargains, but they have evolved to shape EU formal and informal institutions. Political development, norms, formal and informal institutions, and policy structures are formed over time and become embedded within institutions (Pierson 1996, p. 128). For instance, liberalism emerged within the EU as a driving ideological perspective that permeated several policy areas. Liberalism profoundly influenced the treaties and over time has become embedded in many, but not all policy areas. For instance, liberalism inspired competition policy and has become a supranational policy that the Commission has taken the lead in shaping and it has become a “flagship for the EU” (Cini and McGowan 2009, p. 1).

Although intergovernmentalists may argue that Spain’s assertiveness forging EU relations with Mercosur demonstrates the central role of member states and interstate bargaining, liberalism and protectionist agricultural policies the EU advocates has constrained and shaped Spain’s actions within the EU toward Latin America. For instance, Spain has supported an association agreement between Mercosur and the EU; however, the Commission, a supranational institution, is the negotiating body. Moreover, liberalism and cooperation and development programs, which were previously instituted as central to EU-ACP relations, are being applied to Mercosur (Hussain 2012). Historical institutionalism can provide a useful lens to examine the impact of the EU’s institutional structure and norms shaping the rational pragmatism of Spain’s influence on developing EU-Mercosur relations as well as how liberalism and protection of EU agriculture has shaped the EU’s policies toward Latin America.

As liberalism informed EU competition policy and shaped the institutional structure and constraints on member state policies, corporations had to adapt and sought market opportunities outside of Europe.<sup>4</sup> Thus, many European firms invested in Latin America, which was selling off formally nationalized industries. Spanish companies achieved significant investment in Latin America and thus Spain pushed for stronger EU-Mercosur relations.

Yet, protectionism, which was the basis of CAP, had been institutionalized within the EU and strong agricultural countries, like France, continued to protect their agricultural sector from external competition and have sought to block an association agreement. The dynamics of the EU’s norms and institutions created a framework which shaped the actions of EU members and the EU, specifically the Commission’s actions, in their negotiations for an association agreement with Mercosur.

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<sup>4</sup> Aspinwall and Schneider (2000, p. 16); Molano (interviewed by author, 2008); Hamner (2002, pp. 385–387).

## 2 Historical Background: The 1990s and Spain's EU Membership

Spanish membership to the European Community pushed Latin America as a new priority for common foreign policy as well as a new location for European investment and trade into the 1990s (Crawley 2000). Simultaneously, the 1990s were a period for the adoption of neo-liberal policies both in Europe and Latin America. As Europe deepened its integration, Latin America was coming off of a wave of democratization and saw Spain as an exemplar of democratization and the EU as a model of regional integration (Palacio 2011, pp. 210–279). Thus, Latin America tried to emulate that seemingly positive move toward both democratization and integration with the creation of regional blocks such as Mercosur (Palacio 2011; Fawcett and Hurrell 1995).

These significant changes within the EU and Latin America also began to shape the relationship between these two regions. Similar to the EU's much older relationship with ACP countries, the EU focused on cooperation and development with Latin America, as well as an emphasis on constructing bi-regional relations in order to promote regional integration in Latin America (Grugel 2004, pp. 603–626; Bulmer-Thomas 2000; Hussain 2012). The EU viewed regional integration as a way to promote development and secure democratization within Latin America.<sup>5</sup>

Europe's attitude toward Latin America is based on the premise that instability has emerged in the region due to the inability or unwillingness of governments to respond to demands for reform (Crawley 2000, pp. 9–34). Thus, the EU has sought to address the root causes of the problem and created initiatives allocating funds specifically toward building civil society, supporting non-governmental organizations (NGOs) and grass roots programs (Grugel 2000, pp. 87–107). As the EU constructed a foreign policy based on development, cooperation and regional integration in Latin America, it also engaged in increased economic activity between the two regions. Thus, an association agreement was sought to not only promote trade, but also promote political dialogue and cooperation (Hussain 2012).

Conditions in the 1990s in Europe and Latin America promoted greater European investment in Latin America. EU competition regulations, based on neo-liberalism, caused European corporations to break apart their monopolies. As a result, many European companies looked elsewhere to maintain or improve their profit margin.<sup>6</sup> Increasing European investment in Latin America also laid part of the groundwork for a new and greater European presence in Latin America, which impacted the US's previously more dominant role in the region. Although relations in Latin America are not a zero-sum game; a greater European presence does not exclude a strong US presence, nonetheless, increased European investment has prompted stronger

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<sup>5</sup> Dickson (2009, pp. 42–59); Lister (1997); Grugel (2004, pp. 603–626); European Commission (2002).

<sup>6</sup> Pulido (interviewed by author, 2006); Hamner (2002, pp. 385–387); Molano (interviewed by author, 2008); Gennaro (interviewed by author, 2006).

European activity in the Western hemisphere. Underlying the EU's new role in Latin America, and particularly its increased investment in larger Mercosur countries, were neo-liberal policies adopted by both sides of the Atlantic. Competition and deregulation policies have become significant competencies of the EU and neo-liberalism has inspired such policy initiatives both in Europe and abroad. Likewise, the IMF and World Bank also utilized neo-liberal inspired ideals of the Washington Consensus and influenced economic policy adoption in Latin America (Stiglitz 2002).

Considering the massive European investment<sup>7</sup> in Mercosur throughout the 1990s it seems that EU policies were not simply to promote development in the region for developments' sake, but also to protect European interests. Much of European investment that now exists in Mercosur countries were an outgrowth of the adoption of neo-liberal policies on both sides of the Atlantic as well as pressure from international organizations. The backdrop of the 1990s fashioned a stronger relationship between the EU and Latin America, and Spanish membership to the EU initiated and further shaped EU policy toward Latin America.

The strong link between Europe and Latin America was re-forged following Spanish and Portuguese membership to the European Community in 1986. As Vicente Palacio (2011) points out, Spain "invented Latin America as a political and economic regional partner," and took the lead to forge a bi-regional approach (p. 279). Moreover, Spain was in a unique position since it had gone through a regime transition in the late 1970s and Latin American countries were likewise experiencing democratic regime transition or consolidation during the 1990s. The obvious historical, cultural and language ties made building political, economic and social linkages between Spain and Latin America a natural fit (Molano, interviewed by author, 2008; Izquierdo Zamarriego, interviewed by author, 2008).

Spanish involvement in Latin America came with increasing Spanish investment; thus, Spain took the lead in forging relations between the EU and Latin America. Large-scale Spanish corporations in telecommunications, utilities, energy, and banking, to name a few, began significant investment in Latin America and particularly in the Southern Cone. The Table 1 puts the focus of Spanish FDI in Latin America into perspective.

These FDI figures demonstrate that Spain had a very important vested interest in Latin America. Neo-liberal pressures from abroad, such as the WTO, and within the EU created challenges and opportunities for Spanish investment in Latin America and stimulated Spain's desire to forge closer EU relations with the region.

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<sup>7</sup> Following the 2001 economic crisis in Argentina much foreign capital fled the country, but a significant amount of European capital remained. As a precautionary measure to avoid capital flight, the administration under Nestor Kirchner enacted regulations that require foreign firms to remain in Argentina for at least 1 full year.

**Table 1** Spanish FDI to Europe and Latin America (1986–1996)

	% of FDI to EU	% of FDI to Latin America
1986–1990	50	10
1991–1993	60	12
1994–1996	33	40

Source: Arahuetes, Alfredo. "Spain." In *FDI in Latin America: Perspectives of the Major Investors*. Madrid: Inter-American Development Bank and IRELA, 1998: 105–128

### 3 Liberalism and Regional Integration

The EU has sought economic liberal goals such as opening trade and creating a fair competitive environment within Europe. As a result, competition policy and particularly the breaking apart of monopolies in the 1990s had a profound impact on several industries throughout Europe.

In its foreign relations, the EU has made a conscious effort to promote liberalism within underdeveloped world regions initially with ACP counties and later in Latin America and in particular to promote regional integration (Lister 1997; Grugel 2004, pp. 603–626; Arts and Dickson 2009). EU policy toward Latin America has focused on development and cooperation maintaining bi-regional relations rather than bi-lateral ones (Lister 1997; Grugel 2004; European Commission 2002). Bi-regional relations refer to the EU acting as a block negotiating with other regional blocks rather than negotiating with individual countries. The US has chosen a very different strategy negotiating with individual countries.

Association agreement negotiations between the EU and Mercosur began in 1999, but have still not been finalized. In October 2004 the negotiations were suspended, but hope for concluding an agreement re-emerged in 2006, with the failure of the WTO Doha Round. The EU Delegation had high expectations that EU-Mercosur negotiations would be concluded as an alternative to a WTO agreement (Martín 2006). EU officials believe that negotiations with Mercosur simultaneously are a way to help build the institutional structure and deepen integration of Mercosur (Pulido, interviewed by author, 2006; Mally, interviewed by author, 2006). From 2004 until 2010 negotiations remained at a standstill and the EU's policy of bi-regional negotiations seemed to be failing (Ruano 2010, pp. 161–167; Palacio 2011, p. 269). Up until more recently, the EU seemed to be moving away from the bi-regional strategy as the EU was only able to conclude agreements with Mexico and Chile and still could not conclude an agreement with the Andean Community or Mercosur. The EU signed a free trade agreement with Mexico and an association agreement with Chile that were put into force in 2000 and 2003 respectively. The EU also moved to create a trade agreement with the Andean Community, but when the negotiations fell apart, the EU concluded multiparty trade agreements with Peru and Colombia in 2010.

These bi-lateral agreements seemed to occur in the face of the EU's attempt to encourage regional integration in Latin America and to promote bi-regional negotiations. The EU's inability to finalize an agreement with Mercosur or the Andean Community suggested that the EU had given up on the policy and had taken an approach to try to get whatever trade agreements it could even if they were not

bi-regional. In particular, the EU especially sought agreements with countries that had signed free trade agreements with the US, such as Mexico and Chile.

The EU-Latin American Caribbean Summit (EU-LAC) in May 2010, during Spain's EU presidency, signaled a re-birth of EU bi-regional relations. The EU-LAC summit finalized negotiations for an Association Agreement between the EU and six Central American countries and also reinvigorated the dialogue to conclude an agreement with Mercosur. Interestingly enough at the time of writing this article the US has still not ratified proposed free trade agreements with Colombia or Panama, whereas, the EU has. As the EU Trade Commission memo states, "The Agreement (with Central America) is also meant to reinforce regional economic integration in Central America and the EU hopes for it to have a positive spillover effect on the overall political integration process and contribute to the stability of the region" (EU Trade Commission 2011). The May 2010 Summit suggested that the EU had renewed its desire to promote regional integration in Latin America and finalize an agreement with Mercosur.

Why did it take till 2010 to renew discussion on an EU-Mercosur trade agreement? One argument is that by 2010 Europe had become engulfed in its own economic debt crisis and found that European FDI in Mercosur made up for economic losses in Europe (Inter-American Developmental Bank 2011, p. 128). Even with resistance from ten EU member states spearheaded by France to block resuming negotiations due to their agricultural interests, negotiations were re-opened with Spain holding the EU presidency, and have been moving forward, but are still not completed as of the writing of this article (Inter-American Developmental Bank 2011, p. 128).

The goal of the EU is to promote trade between the EU and Latin America and it seems that when bi-regional negotiations are not possible, the EU will work to finalize a trade agreement with individual countries. It seems that in the case of Mercosur there is a concerted effort on the part of the EU to continue to promote the integration of Mercosur and to finalize an agreement between the EU and Mercosur, rather than negotiate with individual countries.

## 4 The Knock-On Effect of EU Competition Policy

Economic liberalism not only impacts regional integration but also EU competition policy, which led to "deregulation and liberalization of domestic markets and privatization of national monopolies" (Goetz and Hix 2001, p. 4). Europeanization literature suggests that EU policies can impact national policymaking and domestic structures creating pressures for national adaptation.<sup>8</sup> However, Europeanization literature examines how the EU has affected regional and national governments

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<sup>8</sup> Goetz and Hix (2001); Harmsen and Wilson (2000, pp. 13–26); Green Cowles et. al. (2001, pp. 1–20); Featherstone and Radaelli (2003).

as well as citizens and organizations, within member states, and their interactions with the EU, but does not address how the EU has impacted private organizations and specifically corporations and their behavior outside of Europe. From a theoretical perspective, Europeanization literature does not help us to understand the empirical reality that EU competition policies' effect broke apart state monopolies and created an environment whereby many of these companies sought new market opportunities overseas.<sup>9</sup>

Historical institutionalism, however, helps to understand why corporations acted as they did. In particular, national governments adapted their policies due to policy pressures that built up over time from the EU. Businesses that were once state monopolies had to adapt to their new environment. Competition policy in the EU in the 1990s began to put pressure on large corporations in public utilities, telecommunications and energy to break apart monopolies.<sup>10</sup> As a result, many corporations began to look overseas to accommodate the change in their structure and market size (Pulido, interviewed by author, 2006; Molano, interviewed by author, 2008). Spain, the largest private European investor in Latin America, had a unique situation as an autarkic economic system under Francisco Franco's dictatorship transformed to an open economy with European membership (Salmon 2002). As Spanish markets began to liberalize in the 1990s there was both increased direct investment flowing into Spain as well as Spanish companies traveling outward and especially into Latin America, which was also implementing privatization programs (Salmon 2001). Latin America was a natural destination for Spanish companies to invest due to the lack of language and cultural barriers.

Between 1996 and 2002 EU privatization was completed and some of the most notable companies related to our discussion were Repsol, and Telefonica. As these firms began to liberalize they also sought places outside of Spain to expand their markets and Latin America was a natural place for Spanish investment not to mention Latin America's movement toward privatization.<sup>11</sup>

Repsol is an example of Spanish corporate diversification and investment overseas. Argentina was of particular interest to Repsol as a way to augment their upstream<sup>12</sup> production, which previously was very limited. The corporation was mostly focused on downstream processes, but with the acquisition of oil rights in Argentina, Repsol became not only the largest oil and gas company in Spain, but also in Argentina. In 1999 Repsol merged with Argentina's Yacimientos Petroliferos

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<sup>9</sup> Molano (interviewed by author, 2008); Pulido (interviewed by author, 2006); Hamner (2002, pp. 385–387); Izquierdo Zamarriego (interviewed by author, 2008); Gennaro (interviewed by author, 2006); Aspinwall and Schneider (2000, p. 21).

<sup>10</sup> Competition policy, however, does not explain the massive FDI of Spain's banking sector in Latin America, which happened simply because of growing opportunities in the region.

<sup>11</sup> The impact of privatization in Latin America also depended on how it was actually carried out. In the case of Argentina, state run monopolies were simply traded for private monopolies coming from foreign countries such as Repsol and Telefonica. On the other hand, Chile which was much more successful economically, liberalized the economy but instituted structures to protect Chile.

<sup>12</sup> Upstream refers to crude oil retrieval, whereas downstream refers to the refining process.

Fiscales (YPF), a formerly Argentine state owned oil company. As a result, Repsol-YPF became one of the ten largest private oil companies in the world, the largest corporation in Argentina, and the largest private energy company in Latin America in terms of assets (Repsol 2012). Regarding natural gas, in 1989 Argentina began deregulating the industry as part of the privatization of YPF; and as a result, Repsol-YPF, owns a dominant portion of the market in both natural gas and crude oil. Thus, Repsol-YPF became Spain's largest firm in terms of revenue and 40 % of Repsol's profits come from Argentina (Martín and Toral 2005).

Recently, under the President of Argentina, Cristina Fernandez's administration, there have been attempts for Argentina to buy shares of Repsol-YPF in order for Argentina to gain a majority of shares in the company. This attempt has infuriated Spain and the EU is backing Spain in the dispute, which could be a new hurdle to completing an EU-Mercosur association agreement.

Another example of significant European investment in Latin America due to liberalization of European markets is Telefonica, the largest telecommunications company in Spain. The European Commission and the World Trade Organization pushed for greater liberalization in the telecommunications sector and Telefonica had to follow suit. As a result, Telefonica became a much more assertive private telecoms corporation and began to expand into Latin America. The EU sought to de-regulate the telecommunications sector in order to: "defend the competitive position of the European telecommunications industry; the co-ordination/harmonization of services and products across member-state telecommunications systems and the liberalization of market access and market functions" (Héritier 1999, p. 38). The EU's adoption of telecommunication liberalization policies created a coercive force that caused telecommunications companies throughout Europe to adjust in similar ways, including investing overseas. Telefonica today operates in fifteen Latin American countries and is one of the largest fixed and mobile line providers in Latin America.

Increased European investment in Latin America and specifically Spain has opened up markets for both sides of the Atlantic and has moved Europe into a much more important position in the Western hemisphere. As a result of greater European investment we have also witnessed a greater role for the EU in Latin America. In the past, the United States maintained a very strong presence in Latin America. With greater globalization, including the forging of regional trading blocks, Europe has found itself in an interesting new global position. Since the Monroe Doctrine the US has played a prominent role shaping Latin American internal politics and earned the reputation as a "big brother" to the region for better and worse. However, more recently US foreign policy emphasis has shifted to the Middle East and Latin America has become less of a foreign relations priority (Birns and Ciriaco 2011). Both changes in US and EU foreign policies have created new opportunities for Europe in Latin America. Political, economic and social liberalization and globalization have affected how various regions of the world operate with one another.

Peter Katzenstein's (2005) focuses on the unipolar nature of world politics and the significant and central position the United States now plays. His basic argument

is that the US has formed an imperium by creating porous regions that allow for the US to penetrate globally constructing its imperium. However, examining changes in Latin America it seems that since the US has not focused equally across its “imperium” it has presented porousness or opportunities for other foreign entities like European countries and the EU. Commercial, economic or political interests in a region are not necessarily a zero sum game. For instance both Chile and Mexico have free trade agreements with the US and with the EU.

Neo-liberalism informed both US and EU policies toward Latin America, but shaped the structure of the actual policies in very different ways. The US Washington Consensus promoted economic growth and liberalization of markets; whereas, the EU has sought to promote liberalism in the form of liberalization of markets with regional integration combined with promotion of democracy, human rights and social development (Grugel 2004). Moreover, the unintended knock-on effect of EU competition policy promoting investment in Latin America created an environment to further promote EU-Mercosur relations and protect European investments.

The promotion of political, social and economic development in the region has been central to EU policy toward Mercosur. Although support for development goals may seem altruistic, EU policy also demonstrates pragmatism to create stability to protect European investments, focusing on what the EU sees as the root of instability in the region. As much as economic liberalism on both sides of the Atlantic promoted trade and European FDI in Latin America, liberal policies have not been adopted in all economic sectors. Agriculture still remains one of the sectors in both the US and EU that follows illiberal policies and has seriously impeded the creation of an EU-Mercosur free trade agreement.

## 5 Agricultural Policy: The Juggernaut

Agriculture stands out as one of the major policy conflicts between the EU and Mercosur. Some call it the ‘agricultural knot’ and the main stumbling block to finalize an agreement. As demonstrated in the tables below, the EU imports a significant proportion of Mercosur agricultural goods, but the EU exports little agriculture to Mercosur countries (Tables 2 and 3).

Since EU agricultural exports to Mercosur are limited, market access from the perspective of Europe it was not a major issue (Valladão and Page 2003). The significant amount of Mercosur agricultural goods, along with different approaches to agricultural policy on both sides of the Atlantic, help to explain why agriculture remains a sticking point. Agricultural sector negotiations are complex and central to concluding an association agreement. It is impossible within the context of this discussion to cover the breadth and depth of the disagreement regarding agricultural trade, however, we shall highlight some



**Table 2** EU agricultural imports from Mercosur as a percentage of total Mercosur exports

Year	Percentage
2006	50.1
2008	52.4
2010	51.3

*Source:* European Commission, DG Trade, “Mercosur EU Bilateral Trade and Trade with the World,” June 8, 2011

**Table 3** EU agricultural exports to Mercosur as a percentage of total EU exports

Year	Percentage
2006	3.7
2008	3.6
2010	4.0

*Source:* European Commission, DG Trade, “Mercosur EU Bilateral Trade and Trade with the World,” June 8, 2011

important aspects of the ‘agricultural knot’ to elucidate how agriculture has shaped and even halted negotiations.

The agriculture and agribusiness ‘knot’ can be divided into three areas: market access, sanitary and phytosanitary measures, and multifunctionality/non-trade concerns (Valladão and Page 2003, pp. 15–30). Regarding market access, Mercosur countries desire greater access to larger markets for their agricultural goods in wealthier regions such as Europe. However, the EU has structured their agricultural policy in a very protectionist way. Imports are restricted and high tariffs are placed on agricultural goods to ensure that European goods are better priced in European markets. Moreover, the EU subsidizes European agricultural products on the international market to push European goods’ prices below market value, thus making them very competitive on international markets. Although the EU has done some reform of their Common Agricultural Policy (CAP), it has not been far reaching enough to assuage discontent among agricultural exporters of Mercosur countries.

Both the WTO and OECD have regarded EU agricultural policies as protectionist (Valladão and Page 2003, pp. 15–30; WTO 2001). The Doha round of the WTO and its failure to come to an acceptable conclusion was due to the EU and US protectionist agricultural practices and their unwillingness to yield to pressures from lesser-developed countries, which are more dependent on agriculture. The main point of contention the EU and US have with Mercosur, is that they have maintained high tariffs on manufactured goods, whereas Mercosur argues that they maintain those tariffs just as the EU and US continue to maintain high tariffs and subsidies on agricultural products. As a result of the inability to reach a mutually acceptable solution the Doha Round of discussions broke down. EU officials saw the collapse of the Doha Round as an opportunity to reignite and conclude an EU-Mercosur agreement (Martín 2006; Pulido, interviewed by author, 2006; Mally, interviewed by author, 2006). Yet, agriculture still remains one of the central stumbling blocks to conclude an agreement.

CAP was one of the original common policies of the EU and was seen as a way to ensure food security and sustainability, and has remained a fundamental basis of European integration (Valladão and Page. 2003, pp. 15–30). The three main principles that guided CAP were market unity, Community preference and financial solidarity (Fouilleux 2010, pp. 340–357). These three principles have driven CAP and created a protectionist policy that does not promote liberal global agricultural trade. France, as the largest agricultural producer in Europe, has been a strong opponent against reforming CAP. Although France was unable to stave off the CAP 2003 ‘Mid-term Review’ which introduced significant reforms de-coupling support from production, France has been successful at its staunch opposition to the liberalization of CAP in relation to EU-Mercosur negotiations (Konold 2010). As Dieter Konold (2010, pp. 321–323) points out, France maintained its strong stance on protection of agriculture due to their budgetary interests and skeptical political culture towards liberalism. The institutional norm of agricultural protection was set even prior to the formation of the European Community and has continued to the present with France leading the charge. With such pressures within the EU to maintain protectionist policies regarding agriculture, it is not surprising that market access of Mercosur agricultural goods has been difficult to negotiate.

Sanitary and phytosanitary issues have also impacted market access. Both regions have extensive sanitary and phytosanitary regulations found in multilateral agreements, in particular the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade served as a regulatory framework for both regions (Blasseti et al. 2003, p. 78). However, EU standards are higher than these international standards (Blasseti et al. 2003, p. 79). Since Mercosur does not have a singular regulatory framework regarding sanitary and phytosanitary regulations, the EU has had to negotiate with each Mercosur member state.

There have been several sanitary issues such as a pestilence among pigs for pork production, apples and pears, and too many antibiotics in honey, just to name a few, that have caused the EU to stop importation of certain Mercosur products (Simiele, interviewed by author, 2006; Iturriza, interviewed by author, 2006). Many of these issues have now been resolved, however, Latin American officials argue that these were merely excuses to not import competitive products (Simiele, interviewed by author, 2006; Iturriza, interviewed by author, 2006). Negotiating sanitary and phytosanitary concerns is quite complex since the EU has higher standards and will need to negotiate individually with each Mercosur country. Moreover, mistrust still exists among Mercosur countries, which perceive the EU as using sanitary issues as an excuse to block imports (Simiele, interviewed by author, 2006; Iturriza, interviewed by author, 2006).

Related to sanitary issues are also concerns about animal welfare and traceability. Animal welfare deals with “agricultural exploitation, transportation and slaughter” (Blasseti et al. 2003, p. 93). Traceability refers to the “identity, history and source of a product” (Blasseti et al. 2003, p. 94). The necessity of traceability is to ensure certain standards and to be able to trace a product to its origins should there be a problem. Both animal welfare and traceability pose problems in negotiations.

Although Mercosur countries do not practice intensive and confined animal production, Mercosur countries reject the inclusion of animal welfare in the negotiations, but the EU has been insistent and there are some aspects to animal welfare where there are disagreements that will have to be resolved (Blassetti et al. 2003, pp. 95–96). Regarding traceability, Mercosur does not have a common regulation for it. There are variations across Mercosur members regarding traceability standards and creating identification and databases to fulfill traceability regulations could be quite expensive. Traceability was left out of the EU-Chilean association agreement, but Chile is not a large agricultural producer, whereas Mercosur countries are. Thus, the disparity in sanitary regulations and related regulations of animal welfare and traceability will be very difficult to remedy and will remain a difficult area to negotiate.

Another contentious area is multifunctionality, introduced as a new concept at the 1992 Rio Earth Summit. Multifunctionality refers to issues such as food security, socio-economic concerns of rural communities, food quality and safety and the environment (Hermelin and Tavernier 2003, p. 179; Brad DeVries 2000). The basic idea behind multifunctionalism is that agriculture is not just about food, “but also sustaining rural landscapes, protecting biodiversity, generating employment, and contributing to the viability of rural areas” (Potter and Burney 2002, p. 35). The EU has played an important role developing multifunctionality as well as remaining one of its most active proponents (DeVries 2000). The EU formalized multifunctionality in Agenda 2000, with emphasis on agro-environmental concerns and the inexorable link between agriculture and rural development (Hermelin and Tavernier 2003, pp. 180–181; Givord 2000–2001).

Although multifunctionality is proposed as a “Green Box” support, or one that does not impact trade or constitute price supports, many countries of the Cairns Group, of which all Mercosur countries are members, have looked at multifunctionality with great suspicion.<sup>13</sup> In particular, the Cairns Group asserts that although multifunctionality is considered a non-trade concern, in practice it does impact trade. EU subsidies on exports and the past practice of production supports leading to overproduction in agriculture and environmental degradation as a result of CAP, has lessened the credibility of the EU’s claims to support multifunctionality. If the EU desires the preservation of rural communities and small farmers, then the negative impact EU supports for exports seems to run counter to EU beliefs as these supports severely impact the well-being of rural agricultural communities in non-European countries. As Potter and Burney (2002) point out, multifunctionality regarding environmental issues is not trade distorting in and of itself, however, the design of the policy for subsidies can have trade distorting effects.

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<sup>13</sup> Hermelin and Tavernier (2003, pp. 180–181); DeVries (2000); Potter and Burney (2002, pp. 35–37).

One of the very controversial issues related to multifunctionality is the export of genetically modified organisms (GMOs) to the EU. From an EU perspective GMOs fit under multifunctionality since within Europe there are certain health and environmental concerns related to their cultivation and consumption. The EU has taken a much more precautionary approach to regulating GMOs and as a result a 12 year de facto moratorium on the cultivation and importation of GMOs had been put into effect until 2010 (Patterson and Josling 2002). In response to the EU's ban on GMOs, Argentina and the US brought a case before the WTO. In 2006 the WTO ruled that the EU's moratorium on GMOs was illegal. GMOs remained a multifunctionality stumbling block in the earlier negotiations for an agreement between the EU and Mercosur. It seems, however, that the WTO's 2006 ruling as well as some current changes to EU regulatory policy of GMOs has alleviated this agreement barrier. However, Mercosur countries as members of the Cairns Group still perceive the EU's allegiance to multifunctionality regarding agriculture as simply a ruse to continue to introduce illiberal policies under the guise of what the EU claims as a non-trade concern.

Intrinsically linked to negotiating a compromise on agriculture is also contention over European industrial exports. There has been some discussion regarding a change in EU agricultural policies in return for a change in Mercosur's high tariffs on manufactured products. The Doha Round and an association between the EU and Mercosur are still on hold due to the reluctance of the EU to drop subsidies to European farmers and tariffs on imported products, and for Mercosur countries to decrease tariffs on manufactured goods.

## 6 Conclusion

The inability to conclude a free trade agreement begs two questions: Why do the EU and Mercosur even want an agreement and what are the barriers to achieving an agreement? An historical institutionalist perspective helps us to better analyze and answer both of these questions. Liberalism has inspired the EU and Mercosur along with all member states' policies. Of course, the degree of the application of liberal policies varies from country to country and between the two regional blocks. Over time, however, as historical institutionalism purports, liberalism has shaped the formal and informal institutions of the regional blocks, which sets parameters within which state and non-state actors can operate.

In the context of the EU, competition policy became an integral supranational policy, which constrained monopolies in Europe. In response to this institutional reality that was shaped since the founding of the Community promoting liberalism, by the 1990s many monopolies and state run industries were privatized and forced to decrease their market share. As a consequence to the change in the 'rules of the game,' companies had to adjust and seek new markets. As the EU and US adopted greater liberalism and with pressures from the World Bank, IMF and WTO, likewise other parts of the globe, such as Latin America, adopted similar neo-liberal strategies.

Thus, as European companies were looking for new markets, market opportunities emerged in Latin America with the region's similar adoption of privatization.

Historical institutionalism does take into account the role of actors and in the case of the EU, the role of member states and their desire to act in their own best interest (Pierson 1996, p. 128). Member state actions, however, are shaped and constrained by EU formal and informal institutions that have been constructed over time. Spain has played a central role shaping EU-Mercosur relations, particularly due to their historic links to the region, but also because of their significant investment in the region.

As European investment in Latin America, and particularly Mercosur countries increased, so too did EU interest in forging closer relations with Mercosur; as well as promoting goals such as development, cooperation and regional integration in Latin America for the betterment of the region, but one could also argue that pragmatism to protect European investment in the region also underlies the EU's policy. The norms underpinning the EU's policy toward Mercosur were very similar to those that inspired EU-ACP relations also grounded in development, cooperation and the promotion of regional integration. For instance, the EU has provided programs to promote human rights, develop civil society, facilitate technological exchanges as well as promote environmental goals in Mercosur countries.

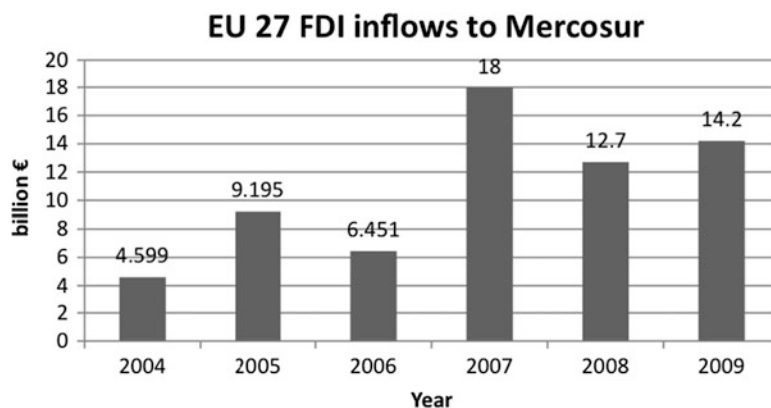
Liberalism, however, does not inform EU agricultural policy. CAP was based upon protectionist ideals and from the EU's perspective agriculture is not just about food production, but it also includes multifunctionality and safety concerns. As a result, the norms and ideals that have shaped CAP have also shaped the EU's position regarding agricultural trade with Mercosur. Mercosur exports to Europe are predominantly in the agricultural sector and the EU's illiberal practices have created the agricultural-knot, which has been a major stumbling block to finalizing negotiations.

During the 1990s and beyond it is clear that the EU, its member states and private industries have taken a greater interest in Latin America, historically the hegemony of the United States. As the US has focused on other world regions and is seen as an imperial power, many Latin American countries are looking to Europe as a new more benevolent large investor in the region. In particular, the EU's sizable developmental aid and focus on human rights and democratization along with economic development has provided the "porousness" of regions that Katzenstein (2005) asserts the US has done. However, as the EU becomes a more important player in Latin America it will also have to watch what impact their policies may have for these countries and the goals that the EU has set forth to promote regionalism in Latin America and ultimately the successful negotiation of an association agreement between the two regional blocks.

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## Appendix

**Graph 1: EU FDI in Mercosur**



Sources: European Commission, DG Trade, *EU Bilateral Trade and Trade with the World*, January 18, 2011

Eurostat, European Commission, *European Union foreign direct investment yearbook 2008: Data 2001–2006*, 2008

### ***Mercosur's Trade with Main Partners (2010)***

Mercosur major import partners

Rank	Partner	Mio euro	%
1	EU 27	41,471.6	20.0
2	USA	30,910.4	14.9
3	China	28,895.7	13.9

Mercosur's major export partners

Rank	Partner	Mio euro	%
1	EU27	43,044.5	20.6
2	China	29,017.7	13.9
3	USA	17,697.0	8.5

Source: European Commission, DG Trade, "Mercosur EU Bilateral Trade and Trade with the World," June 8, 2011

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# Discovering the Icebergs of EU Interregional Actorness in Asia: The EU “Unique” Regional Integration Model in the Eyes of China and India

Róża Smolińska

*As the Union develops as a strategic player, [...] it must start listening to what the world thinks about it*  
(Lynch 2005, p. 11)

## 1 Introduction

One cannot deny a significant spread of regionalism and regional integration processes in recent years all over the world. This global tendency can be traced back at least to some extent to the example of the European Union (EU), and has been described as “primordial” (Smith 2003b, p. 103; Joffé 2001, p. xiv; Zhu 2007b, p. 79; Jain 2007, p. 117). It is not only a result of a passive EU serving as an example for others, but it is also an outcome of its support to such regional developments in other parts of the world since the 1960s, but more directly observable since the 1990s. The importance of the regionalism principle for the EU’s foreign policy and external relations was acknowledged by referring to it, in fact, as one of the foundations of EU external policies, and studies of the EU’s interregionalism become part of the assessment of the EU’s role as a global actor (Söderbaum and Van Langenhove 2005, pp. 250–251).

As will be presented here, the EU perceives its regional integration model as one of its distinguishing features that, among others, illustrates the EU’s “distinctive” nature as an international actor. EU External Affairs Commissioner Chris Patten expressed this during his 2001 visit to India by stating that “sharing our experience

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This contribution is based on research within a postgraduate program at the College of Europe in EU International Relations and Diplomacy Studies, conducted simultaneously at the United Nations University and the Institute on Comparative Regional Integration Studies. On the same basis a shorter paper under the same title was presented at the First Euroacademia Global Conference “Europe Inside-Out: Europe and Europeaness Exposed to Plural Observers” in Vienna, Austria on 22–24 September 2011.

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of regional integration is therefore perhaps one of the most important international contributions that Europe can make” (Wiessala 2002, p. 25).

Such EU self-perception is even more visible when the EU makes a reference to the Asian region that was somehow “rediscovered” by the EU in the years following the publication of the Asia Strategy in 1994 (Farrell 2009, p. 1173). The European Commission’s indication of an enlarged Europe becoming “more than ever a reference model” for Asia has been easily interpreted in the context of the EU’s claim for a right to “export” its model of regional integration (Petchsiri 2007, p. 49; Jain 2007, p. 126). This EU “self-documentation” was recognized as indicating “the ways in which, at a declaratory level at least, the EU hopes to change and shape its Asian partners”, along the line of “an unconscious [...] assumption that all the Asian countries are gradually becoming ‘more like Europe’ or ‘more Western’” (Anderson 2007, pp. 87–88; Subhan 1996, p. 1).

The EU self-perception as a model of regional integration is broadly recognized when referring to it as a “successful example”, “reference point”, “the best model” or simply to its “attractiveness” (Joffé 2001, p. xiv; Wang 2007, p. 93; Zhu 2007a, pp. 145–147). Asia acknowledges this importance to the EU’s regional integration as well by seeing it as “a leader by example” (Chaban et al. 2006, p. 261). Asian leaders view European regionalism as a potential instrument to undertake some sort of economic integration in Asia, but also seek to find the strengths, as well as the weaknesses, of regional integration.

One may predict some Asian receptiveness to the EU’s regional integration model. Yet, these “expressions of interest” are simultaneously accompanied by noticeable level of precaution. Approaching the EU’s regional integration model through comparable models is especially visible with respect to the Association of Southeast Asian Nations (ASEAN) as a good illustration of Asian vigilance toward the EU’s model of regional integration, because it has always restrained from copying the EU model (Petchsiri 2007, p. 50).

Faced with such an ambiguous welcome between a mixture of openness and hesitancy towards it, the EU has recently experienced several failures in its inter-regional (region-to-region) relations with Asia, such as the EU’s switch to bilateral negotiations following unsuccessful region-to-region negotiations to establish the Free Trade Agreement with ASEAN (Camroux 2010, pp. 68–69), the rejection of the EU in its attempt to join the members of the East Asia Summit (Parello-Plesner 2010; Islam 2010), or the observable fatigue within the Asia–Europe Meeting (ASEM) (Bello 2010, p. 64). The current study attempts to understand these difficulties by the EU in becoming an interregional partner to Asia, while at the same time positioning itself as a global power.

The cases of both China and India present examples of the rise of power which “often affects the state of the balance of powers in the region and in the whole world, which in turn inevitably influences behaviours and calculations of other powers,” such as the EU’s global power in the making (Tsuruoka 2008b, p. 5). Both are prominent actors in their respective regions and therefore, represent key interlocutors for the EU (Fioramonti and Poletti 2008, p. 168). In addition, when taking into account the different role that the European regional integration process

plays in diverse Asian regions (Bello 2010, p. 64), the EU cannot consider its role in Asia without considering both of these countries. Furthermore, both were referred to in the *European Security Strategy* as the EU's counterparts in "strategic partnerships" (European Council 2003, p. 14).

### ***1.1 The EU's Model Fits All?***

"Europe does not exist without non-Europe. Europe can only be realized in the mirror of Others" (Chaban et al. 2007, p. 25; citing Stråth 2002).

The way in which the role of this mirror appears in relations between Asia and Europe has been called by some scholars as "iceberg-issues of intercontinental cooperation," as they reflect unspoken rules of an interregional dialogue that is largely about perceptions, images, views and stereotypes and "which are never at the surface of EU-Asia policies, but [. . .] which can lead to serious collisions of policies, values and assumptions if they are, willfully or unintentionally, neglected" (Anderson and Wiessala 2007, p. 15).

While realizing that in an interdependent and globalized world the achievements of the EU's policies may be facilitated or constrained by other international players, it becomes clear that external perceptions matter and need to be seriously taken into consideration (Lucarelli and Fioramonti 2010, pp. 1–2; Tsuruoka 2008b, p. 8), i.e. because their examination becomes a crucial factor in determining the EU's chance for efficient implementation of its policies. They may carry the weight of an "early warning system" for the EU, which is of particular significance for an actor still establishing itself in the international arena (Lucarelli and Fioramonti 2010, p. 2). Perceptions may also be used to recognize potential opportunities for the effective international appearance of the EU.

From this perspective, the present surveys reveal, however, that the EU is not seen by others overall as a "different" or "unique" international actor (Fioramonti and Lucarelli 2010, p. 222). One of the few exceptions to this external image of the EU, contrary to the EU's self-perception, is the European integration experience, i.e. the EU as a model of regional integration (Lucarelli 2007b, p. 269).

The current analysis is framed by the question to what extent EU interregional actorness in Asia is determined, specifically here by the perceptions of China and India. The answer is relevant for the potential opportunity for EU action in Asia in terms of regional integration. As the EU's integration model has been associated with the EU's 'distinctive' character, and has been highly appreciated around the world, including in Asia, the model constitutes a solid basis for the EU to build upon its interregional actorness in Asia. If properly identified and well exploited, it will turn out to be a profitable, as opposed to a lost opportunity. As such, the study of perceptions, could create an opportunity for the EU to improve the conduct of its foreign policy and to efficiently build its actorness, not only interregionally, but longterm, also globally, rather than "constituting the icebergs' risk" if left unaddressed.

## 2 The EU: A “Different” Global Actor?

From its very beginning, the EU itself was not associated with the concept of a state. Instead, it was classified within a broader concept as an actor. This notion is usually used in relation to a process-oriented approach of actorness, defined as an interplay between three main elements: “*opportunity*, which denotes the external context; *presence*, which captures the ability of the EU, by virtue of its existence, to exert influence beyond its borders; and *capability*, which signifies the ability to exploit opportunity and capitalize on presence” (Bretherton and Vogler 2006, p. 2, emphasis added). The question of actorness is particularly relevant when taking into account the EU’s ambition to become a “power” on the international scene (Toje 2008, p. 203). In the context of the following analysis, this theoretical approach constitutes a framework which encompasses both active and passive aspects, i.e. what the EU *is* (presence), as well as what the EU *does* (actorness).

### 2.1 A “Unique” Actor?

During the debate about the EU’s actorness, many researches focused on the single question as to what kind of “political animal” is the EU (Söderbaum and Van Langenhove 2005, p. 250). While diverging in numerous aspects, researchers nonetheless agree in emphasizing those features of the EU that differentiate it from other actors (Bretherton and Vogler 2006, p. 44; Carta 2010, p. 207). They claim that “the special nature of the EU itself” makes the EU eligible to be classified as a “distinctive” world power (Smith 2003a, p. 199; Smith 2003b, pp. 103–113; Fioramonti and Lucarelli 2008, p. 193). This so called “distinctiveness thesis” is based on the claim that the EU is a “new form of global player”, profoundly different (read “better”) from “traditional powers”, due to its self-declared goals (Lucarelli and Fioramonti 2010, p. 3).

Being “different” was not only mentioned in the literature, but has also been stated by the EU itself. EU official documents generally describe the EU as “a global player with global responsibility, but also with the will to play a stabilizing role worldwide and to point the way ahead for many countries and peoples” (Lucarelli and Fioramonti 2010, p. 3). This “ethics of responsibility” (Lucarelli 2007b, p. 252) may be found in many of the EU’s documents and speeches, to mention just a few examples. The *European Security Strategy* refers to taking “greater responsibility” in the world, while the *Laeken Declaration* identifies to the EU’s readiness to “shoulder its responsibilities in the governance of globalization” (European Council 2001, 2003).

The EU’s unique behaviour at the international level is explained by the fact that it is differently constituted. Consequently, at one point or another, all debates concerning the kind of power which the EU is, mention the EU’s self-perception as “a legitimate model to be followed” (Lucarelli and Fioramonti 2010, p. 5).

Recent research test whether the EU is in fact a different (meaning “better”) international actor (Chaban et al. 2006, p. 246). As an example of the main focus of such tests on the inconsistencies and inefficiencies of EU actions, it is sufficient to mention Christopher Hill’s concept of the “expectations–capability gap” (Hill 1993, pp. 305–328). Nonetheless, the usefulness of such studies is undermined by the absence of one important element: The EU can define itself as any kind of power it wishes to, but its impact depends on the extent to which this view of power is actually shared by other international actors. This gap in EU research (Lucarelli and Fioramonti 2010, p. 3; Lucarelli 2007a, pp. 26–27), even though progressively filled in recent years,<sup>1</sup> is astonishing when compared to the amount of research that is conducted on the external image of the USA (Tsuruoka 2008b, p. 1). This also underlines the no less surprising fact that the Others’ perception of the EU is “a rather new topic of research for academics, as well as political analysts and journalists, despite the fact that external perceptions and images are *crucial factors* in foreign policy [emphasis added]” (Fioramonti and Lucarelli 2010, p. 218).

## 2.2 *Why the Perceptions?*

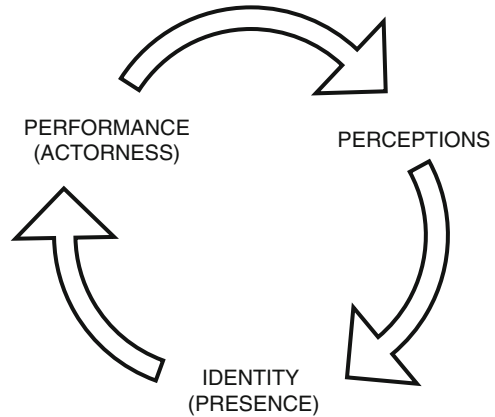
Research in the field of perceptions is significant based on three main arguments. First, perceptions are a source of knowledge about the EU foreign policy, and as such, they constitute “important indicators of how well intentions have been translated into observable actions” (Rhodes 1998, p. 6). Second, perceptions help to shape EU identity and roles because “EU foreign policy, while being to a large extent driven by internal ideas and processes [. . .], is also partly shaped in response to others’ expectations and reactions” (Chaban et al. 2006, pp. 247–248; Holland et al. 2007, p. 28). Additionally, “political identity [. . .] is also subject to reinterpretation once the external images that are acknowledged by domestic constituencies diverge dramatically from those of relevant Others” (Lucarelli 2007a, p. 27). Third, perceptions influence the impact of EU foreign policy performance while helping to “evaluate the ‘reach’ of EU influence” (Elgström 2006, p. 12).

The consequences of not affording importance to perceptions have been identified as well. The fact that the “EU behaves ‘as if’ the external image of the EU was not too dissimilar from the EU’s self-representation [. . .] might lead to dangerous cognitive dissonances that inevitably have a negative effect on the EU’s external relations and its actual impact” (Lucarelli 2007a, p. 27). Moreover, this situation “can be seriously detrimental to the EU as [it] can weaken its political and economic leverage and in turn, it might even exert a negative impact on its legitimacy at home” (Fioramonti and Lucarelli 2010, p. 223). The opposite attitude

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<sup>1</sup> Recent publications in the Journal of Common Market Studies, the European Journal of International Relations or GARNET Research Project “The External Image of the European Union” directed by Sonia Lucarelli.

**Fig. 1** Perceptions-identity-actorness



of working on positive external views may result in an interesting ‘spill-back effect’ of strengthening internally European identity.

Following the logic of the above argumentation one can draw a figure that demonstrates how these three main elements of perceptions, identity and performance are linked together (Fig. 1).

The EU’s capacity to display its positive international role, broadly recognized and appreciated by other actors, also has further significance in that it can create favourable conditions for the development of increased international legitimization for the European project (Chaban et al. 2006, p. 262).

It has been noticed that while the Lisbon Treaty has already made clear the objectives and principles of EU foreign policy and external action, now is the appropriate moment for the EU to surpass its self-reflective stage and start listening to its partners (Schulz 2010, p. 4). In relation to the EU’s regionalism principle one may paraphrase Michito Tsuruoka in stating that:

“if there are only an insufficient number of major actors in the [...] region] who regard the EU to be worth counting as an important partner, its capability and the willingness to do something in the [...] region] will not be fully utilized [...] and] [n]o matter how hard the EU struggles to establish itself as an [...] interregional] actor, the result inevitably also depends on whether the third countries regard the EU as such” (Tsuruoka 2008a, p. 112).

### 3 The EU’s Regional Integration in the Dragon’s Eyes

“[T]he European integration process is irreversible and the EU will play an increasingly important role in both regional and international affairs.”(*China’s EU Policy Paper* 2003)

The Chinese acknowledged that the EU is similar to China as being a power trying to “find its place” at the international scene (Geeraerts 2007, p. 19). In its quest to become the global player, it “perceives the European example as a source of *inspiration* [emphasis added] for enhanced regional economic integration on Asia” and recognizes that “despite the great uncertainty, which continues to characterize

the process of European political integration, European economic integration is now irreversible” (Lisbonne-de Vergeron 2007, p. xvi, 8).

In general, “for many, the story of old European enemies coming together still inspires” (Islam 2005, p. 59). This also seems to be the case for China. Most often, a parallel is made to China’s relations with Japan (Lisbonne-de Vergeron 2007, p. 35). However, it is also frequently denied that China and Japan will become the “France and Germany of Asia” in the foreseeable future, even if there is agreement that analyzing the French-German path may prove to be a useful starting tool in forging a common regional integration plan (Jora 2007, pp. 75–76).

### 3.1 *The Perceptions of Chinese Elites*<sup>2</sup>

Chinese elites, when asked about spontaneous images of the EU, as one of three most often given answers cited the EU as an ongoing regional integration (Holland and Chaban 2010, pp. 12–13). Although the economic aspect of the EU is recognized as overtaking other dimensions, they also mention such EU attributes as the enlargement process, the Euro and the development of the European Defense and Security Policy (Bingran and Shuangquan 2007, pp. 59–60; Holland 2007, p. 243; Peruzzi et al. 2007, p. 15). Nevertheless, a positive evaluation of the EU as an integration project equals the positive evaluation of the EU as an economic actor (Peruzzi et al. 2007, p. 13). The only difference between the two is that the economic aspect scores 23 % of negative opinion, whereas the EU’s integration project was not viewed as negatively.

The EU is also perceived positively as a “model for integrative efforts in other areas of the world” (Peruzzi et al. 2007, p. 16). Without referring to any specific regions, former Chinese Ambassador to Germany, Mei Zhaorong underlined:

“the path taken and experience gained by EU to date have great significance of reference for different regions in the world to realize coexistence and prosperity by conducting regional cooperation” (Mei 2004, p. 5).

Additionally, 66 % of students, commonly considered as the future Chinese elites, perceived European integration as the EU’s advantage in international affairs, believing that the integration process increases its power (Liquan 2008, pp. 160–162).

Interestingly, other elites also referred to the *EU*, such as:

- Civil elites mentioned the EU as a “strong regional power”;
- Media elites regarded the EU as a “good model for the world”, as well as a “new model for other countries”; they also recognized the possibility of risk of the EU’s expansion;

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<sup>2</sup> Here and after, a meaning of “elites” following Lucarelli (2007a, p. 33): “Political elites are significant players who give rise to global events and constitute an important factor in shaping the overall image of the EU around the world. This survey [. . . is] examining the main documents issued by political parties and governments in a sample of countries [. . .] with the aim of providing an indicative outline of how the EU is perceived by political elites in those countries.”



- Political elites did not explicitly refer to the EU's regional integration, the only implicit reference concerned the very general and imprecise category of "integrity";
- Only business elites explicitly mentioned the EU as a "good model for Asia" (Bingran, and Shuangquan 2007, pp. 64–65).

The same survey asked about the impact of *ASEM* as an instrument facilitating Europe-Asia interregional interaction:

- Business elites stated that *ASEM* is "an example of cooperation between two great regional powers which would ultimately serve to balance the United States' superpower status";
- Political elites viewed *ASEM* as "a good platform for mutual communication between two regions";
- Civil society elites referred to *ASEM* as "a positive event which provides a platform for mutual communication between the regions so as to remove misunderstanding and to enhance interaction" (Bingran, and Shuangquan 2007, p. 62).

All of them used such key words as platform or communication, but only business elites recognized *ASEM*'s importance in a broader international context.

Particularly riveting is the repeated reference to the EU as a regional integration model in relation to China's aspirations in Asia, pointing to the fact that the EU's achievements are perceived by Chinese strategists as a "significant *potential source of inspiration* [emphasis added] for regional cooperation" (Lisbonne-de Vergeron 2007, p. 12).

Financial elites emphasized the Euro as "probably the EU's greatest institutional success" and "most important component of Europe's external power" (Lisbonne-de Vergeron 2007, p. 8). The possibility of creating an Asian currency unit was mentioned, which is even referred to as an "Asian version of Euro", highlighting that it should build "on the EU experience which would lead eventually to a monetary union 'in East Asia and perhaps more widely'" (Lisbonne-de Vergeron 2007, p. 11).

The EU as "a *potential source of inspiration* and experience [emphasis added]" is also referred to in broader aspects of its integration, i.e. "European ideas of seeking a balance between economic efficiency and social equity, but also between the needs of the economy and society and the environment" (Lisbonne-de Vergeron 2007, p. 17). The elites underlined the similarity of China's potential role in the regional Asian integration, as compared with the role that is played by the EU in the West:

"Asian regional trade is increasingly important and 'China will become the core driver of Eastern prosperity', just as Europe 'could perhaps become the core driver of Western prosperity' [...] 'the logic of these developments must be [...] the emergence of some equivalent development in Asia to the economic integration that the EU has engendered in Europe'" (Lisbonne-de Vergeron 2007, pp. 10–11).

This indication of the EU's regional integration model while referring to China's role in Asia constitutes not only a characteristic of the Chinese elites' perceptions, but also of other surveyed groups.

### 3.2 *Perceptions of Chinese Media*

The EU-related topics are rather modestly covered in Asian media (Holland 2007, p. 236). However, when compared with other Asian countries, China represents an exception having the highest coverage in television media (Bingran, and Shuangquan 2007, pp. 45–46; Holland 2007, pp. 230–236). The coverage of Europe’s “integration and expansion” in Chinese media is seen as relatively extensive in recent years, as the amount of EU-related items constitutes about 10 % of total international coverage (Xiaoping 2007, pp. 106–107, 116).

The EU is viewed in China mainly as an international actor, given that 84 % of media reports concerning the EU are externally focused, and the statistics again place China at the head of all Asian countries surveyed (Holland 2007, pp. 231–232). The same very high score concerns both press and television, with a coverage rate of 83 % and 90 %, respectively (Bingran, and Shuangquan 2007, p. 49). Nonetheless, the EU is presented as an external actor engaged elsewhere in the world, in Iran and the Middle East, and “not necessarily locally relevant [. . .] in the region” (Bingran, and Shuangquan 2007, pp. 45–46; Holland 2007, pp. 232–236).

As an example, following the EU’s 2004 enlargement, a Guandong provincial television station broadcasted a report within its *The Chinese Talk* program, entitled “Europe’s integration and Europe’s expansion” (Xiaoping 2007, p. 105). Although the title, particularly its second part, may induce a feeling of uneasiness, the main goal of the program was to discuss the European experience and its implications for Asia. A scholar from the Beijing National School of Administration intervened, saying that: “[i]t is an irreversible tendency that regional integration will expand into globalization. [. . .] Europe is in the vanguard globally and offers good lessons for Asia” (Xiaoping 2007, p. 105). The program was summarized:

“[t]he coverage reported that some Chinese scholars thought the European Union had so far made a good showing in terms of regional integration and, in doing so, has provided a model for other regions, especially Asia” (Xiaoping 2007, p. 105, 108).

Even if taking into account that such programs do not appear daily in Chinese media, it should be acknowledged that the mere fact of issuing such coverage reveals a certain degree of relevance of this topic for the Chinese media.

As an affirmation to this point, Li Xiaoping cited the opinion of a Chinese citizen, who was randomly questioned about the EU by a journalist in November 2005:

“the success story of the European Union can offer us lessons in at least one respect: it’s that whilst it emphasizes integration and conformity it also pays due attention to protecting cultural diversities amongst its member countries” (Xiaoping 2007, p. 112).

Here, yet again, the previously mentioned perception of the EU integration in individual terms (us meaning China) as opposed to regional ones (in relevance to Asia) is manifested. The same finding can be retrieved from a study of major journals consulted by Chinese leaders, as “the study of the EU’s development may offer a valuable experience for the Chinese in search of an optimal way for China’s development” (Men 2006, p. 789).

The EU's mainly economic image "is now balanced by recognition of an active political international role, even when that role is with a third country elsewhere" (Holland 2007, p. 236). At the same time, Chinese media affords growing attention to the EU. The only concern might be that not enough attention is given by media to the regional usefulness of the EU model for the whole of Asia.

The Chinese perception of the EU's regional integration might be characterized by two main features. On the one hand, similarities are emphasized: "[t]he western culture took its root in Europe, whereas China is a main representative of the oriental civilization" (Zhe 2010), "the EU is regarded as more prepared [than USA] to treat China as an equal" (Clegg 2009, p. 132) and "Europe is the only civilization China recognizes as comparable to its own" (Lisbonne-de Vergeron 2007, p. 48). All of them summarize a declared proximity between China and the EU, also expressed in the results of the surveys discussed above.

On the other hand, the wording used to describe the EU's model should also not be undermined. Often utilized words, such as potential or inspiration, should cause the EU's reflection about the way in which it presents its model to China. As expressed by means of perceptions, the China's expectations of inspiration should be appropriately recognized and adequately taken into consideration by the EU. As the Chinese Ambassador to the EU, Song Zhe, expressed it:

"[t]he respect called for here is not a simple gesture, but sincere willingness to put ourselves into the others' position to fully understand their history, reality and development choice" (Zhe 2010).

#### 4 The EU's Regional Integration in India's Eyes

An explicit link between the EU integration and Asia is difficult to find in India's perceptions because "the EU has very limited leverage in the region" (Jain 2005, p. 64). A key to understanding this is in realizing India's attitude towards Asian region as a whole. India does not expect any "greater cohesion in Southeast Asia" but it would "prefer to see an *Asiasphere*, in which the East regains its historic significance in the world" (Lisbonne-de Vergeron 2006, pp. 15–17). It also recognizes that Southeast Asia may become an important "trade bridge" with China (Lisbonne-de Vergeron 2006, p. 25).

The Asian region was of growing importance to India already preceding the EU (Lisbonne-de Vergeron 2006, p. 14; Wagner 2008, p. 97). There is a feeling on the part of India that Europeans do not satisfactorily understand how thoroughly India has been getting involved in the region (Jain 2008, p. 23). India's focus of perceiving the EU mainly in the global, as opposed to the regional context, is the main difficulty of studying the perceptions of the EU's model of regional integration. However, "[s]ome of the mechanisms Europeans have used to create their internal economic area and shape the relationship between political and economic government are relevant to *us* [emphasis added]" and the Euro is perceived as a "constructive and impressive achievement" (Lisbonne-de Vergeron 2006,

p. xii, 29). Additionally, “[t]here is much that India can learn from European experiences in regional *economic* integration [emphasis added]” (Jain 2005, p. 64).

Nevertheless, these images are opposed by other viewpoints: “[t]he EU, however, does constitute a ‘*low-key role* model of regional trade integration’ for India [emphasis added]” (Lisbonne-de Vergeron 2006, p. 28). Even if the relevance of the EU’s regional integration model was acknowledged, it was viewed in terms of its relevance to India, and not in the context of the Asian region as a whole.

Interestingly, “the story of old European enemies coming together” (Islam 2005, p. 59) still inspires India as well, especially in relation to the dispute with Pakistan over Kashmir, or tensions over the Tamils in Sri Lanka. Significantly, it is not only a hypothetical possibility to follow the example of the EU, as India’s use of increased economic interaction has already helped to improve its relations with Pakistan (Wagner 2008, p. 98).

#### 4.1 *Perceptions of Indian Elites*

Indian business elites perceive the EU not as an entity, but as a “conglomerate of states,” which results in very low attention being afforded to the EU as a whole (Jain 2005, p. 64). However,

“some of the mechanisms that the EU has adopted to create and sustain its common market and unite the political and economic sides of the integration process are quite relevant for Indian business elites” (Fioramonti 2007a, p. 356).

Once again, no regional dimension can be observed among Indian business elites. A similar focus was observed among Indian civil society elites: “the EU is perceived as a valuable partner in the Indian quest for regional hegemony [. . .] because of strong historical ties [. . .] and common values” (Fioramonti and Poletti 2008, p. 175). The low level of attention paid to the EU by Indian elites may be explained by their perceptions being influenced by Anglo-Saxon media (Jain and Pandey 2010, p. 207; Jain 2005, p. 64; Jain 2008, p. 21). This historical component is of essential importance for the way in which India constructs its image of the EU as the Anglo-Saxon way of reporting about the EU is seen as implying a “more nuanced understanding of [. . .] European integration” (Jain 2005, p. 64).

More optimistic insight into political elite perceptions provided that “many leading figures have expressed *sympathy* [emphasis added] towards the project of greater European unity and the prospect of Europe as a whole becoming a positive factor in global affairs” (Lisbonne-de Vergeron 2006, p. 5). Regarding perceptions of political elites on the EU’s international cooperation dimension, the results obtained were ambiguous: the EU is “still at an experimental level,” or is not able to exert its power beyond its own borders (Jain and Pandey 2010, p. 204).

More insight into Indian elites’ perceptions of the EU was provided by spontaneous images of the EU. The responses included the Euro, “the brotherhood and unity that emerged after the Second World War,” and of the “EU being a unique

experiment” (Jain and Pandey 2010, p. 207). One can assume that awareness of EU regional integration project exists among Indian elites, albeit without strong basis.

A relevant survey was conducted soon after the 2009 ASEM Summit (Jain and Pandey 2010, p. 206). Nearly two thirds of political, business, media and civil society elites admitted their ignorance of the ASEM process and estimated it as a “low-key affair”. Only few perceived it as a positive process seeking an opportunity to draw Asia and Europe together and permitting India to get involved within this Asian frame “with and within Europe”. Civil society representative commented that ASEM still had a long way to go, before it would reach a level of other regional organizations, such as ASEAN. It was expressed that ASEM did not appear as an effective tool because it did not provide solutions to any “longstanding problem”, but without any precision about the kind of problems expected to be addressed. ASEM was also characterized as a “diplomatic side-show with no real content” and in need of more visibility in order to provide the average Indian citizen with the opportunity to understand the relevance of the EU for India, as well as for Asia. Finally, it was felt that ASEM needs more time to “prove its utility”.

If taking into consideration that ASEM constitutes one of very few interregional frameworks, then such findings might be interpreted as an expression of ignorance or lack of Indian interest in interregional cooperation. However, another factor should also be taken into account. India expressed a willingness to join ASEM in 1996, but due to Chinese resistance it joined only in 2007 (Wagner 2008, p.97). In 2009 India was not yet fully socialized into the process, which disabled its completely effective participation compared to other members. In this respect, the situation has a chance to improve with time, as India gains more experience in taking an advantage of the ASEM process.

## 4.2 *Perceptions of Indian Media*

The expressions describing the coverage of the EU in Indian media include: “not particularly interested”, “rarely mentioned”, “marginally covered” or “clearly under-reported” (Fioramonti 2007a, p. 353; Fioramonti 2007b, p. 7, 17; Fioramonti and Poletti 2008, p. 175; Jain and Pandey 2010, p. 207). The EU is explained by “newsworthiness and marketability” playing a decisive role when choosing the subjects to be covered, and by the lack of a conscious attempt to cover EU news *per se* (Jain and Pandey 2010, p. 203). Moreover, almost 24 % of news about the EU had no attributed source of information and, as Reuters is a major newswire, the image of the EU was presented “through the British lens” (Jain and Pandey 2010, pp. 197–198).

The survey conducted after the 2009 ASEM Summit revealed a lack of news concerning this event in the studied print media (Jain and Pandey 2010, p. 195). Other surveys reported in single articles on the EU supporting regional integration within

the South Asian Association for Regional Cooperation (SAARC) (Fioramonti 2007a, pp. 359–361; Fioramonti 2007b, p. 18).

Nonetheless, the EU's activities in diplomacy and human rights in the region were evaluated positively by the media (Fioramonti 2007a, p. 360). Among others, the EU was praised for criticizing the human rights record of Pakistan and Myanmar, supporting democratization in Nepal, contribution to humanitarian aid, as well as its diplomatic engagement in Iran and North Korea as particularly distinguishing the EU from the USA. Obviously, these examples do not present the EU's regional integration model, though they all indicate an Indian appreciation of the EU's involvement in the region, even if the EU is not yet perceived by Indian media as a relevant interregional partner.

Two main features of Indian perception of the EU should be highlighted. First, one can hardly find explicit reference to the EU regional integration model. If finally found, it is, similarly to the case of China, most often indicated in individual terms, as a model for its own rising power, rather than as an interregional partner and regional integration model for Asia.

Second, "wording" matters also in this case. The use of notions such as inspiration, support or economic proves the vigilance of the Indian approach illustrating the well-held Indian belief that "[t]he EU model cannot be transplanted, but it can *perhaps* [emphasis added] be adapted to South Asia" (Jain 2005, p. 64). A possible explanation was suggested by one of the interviewees:

"Europe's incapacity to be enthusiastic about its own dreams prevents it from reaching out and inspiring the world" (Lisbonne-de Vergeron 2006, p. 41).

## 5 Conclusions

Asia's and Europe's divergent approaches towards the EU's regional integration model contribute to the EU's lackluster performance as an interregional actor in Asia. The EU's understanding of itself as a model to be followed (Lucarelli and Fioramonti 2010, p. 5; Petchsiri 2007, p. 49; Jain 2007, p. 126) does not correspond to the perceptions of relevant Others, in this case China and India referring to the EU with terms such as "support" or "source of inspiration". This nuanced wording observed in all studied surveys, leads to the conclusion that the EU cannot set itself as an example to be followed or replicated by others. Instead, the EU should not only be open to, but also more powerfully encourage its partners to pursue their own path toward regional integration by learning from European experiences and adapting them to the reality of their own region.

It has been proven that both China and India follow the global pattern of acknowledging that the EU's regional integration experience is an element of EU distinctiveness as an international actor, even if the EU itself is not in general terms perceived as a "different" or "unique" actor. Both recognize this model and

its possible usefulness as a source of inspiration. As such, it represents a solid basis on which the EU can build its interregional actorness in Asia.

Beyond this, both India and China are more willing to consider the EU model as an inspiration in individual terms, meaning for their own development, and not so much in the context of the Asia region as a whole. The tendencies of both countries to consider the EU model in terms of its power and its potential implications for their own rising power, rather than in terms as an interregional partner and regional integration model for Asia, were unveiled as a hidden part of the icebergs of EU-Asia relations.

The EU's possible success in overcoming Chinese and Indian reluctance in taking on significant regional action depends among others on the EU's ability to listen to what they think about its model. This is important in order to recognize the opportunity of effective influence that is based on an identified willingness to learn from the EU and to determine what it is that China and India, as representatives of Asia, actually expect from the EU. This must be understood as the opportunity to learn from the EU regional integration experience and the ability to adapt to their own regional context. If the EU succeeds in taking into consideration such relevant perceptions, it can serve to update its own identity and build a stronger international presence. Subsequently, by avoiding collisions with such icebergs, it will foster an improvement in the conduct of EU foreign policy and international performance, and contribute to the construction of its actorness.

To ensure that perceptions constitute a practical tool for foreign policy-making, there is a need for conducting more detailed surveys to yield analyses in greater depth. Additionally, studies focused on the external perceptions of the EU offer a variety of opportunities for further research in other regions. Such a development of research prospects is promising not only in terms of possibilities for comparison between different regions, but also in the context of a more complex evaluation of the EU's global role.

Finally, the study of perceptions involves closer interactions between the parties involved in its conduct. Such intensified contacts, which are aimed at the mutual understanding, and not changing according to one's own principles, present an exceptional opportunity for learning from Others. This does not offer an advantage only in qualitative terms, as well explained by George Bernard Shaw: "[i]f you have an apple and I have an apple and we exchange these apples, then you and I will still have one apple. But if you have an idea and I have an idea and we exchange these ideas, then each of us will have two ideas" (thinkexist.com). It also offers a chance to sustain, and perhaps even to create an essential aspect for further future human development diversity.

"We must know each other to improve each other. [. . .] Our goal is not, and must not be, that of eliminating the differences [. . .]. Our aim cannot be that of increasingly becoming alike, in a world made every day duller and duller by uniformity. The human adventure has more probabilities of perpetuating itself when its roots are deeply and firmly set in variety. [. . .] In this respect the expansion of contacts between Europe and Asia may lead to a better mutual understanding" (Wiessala 2002, p. xv; citing Agnelli 1996).

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# It Takes Two to Tango: A Constructivist Analysis of EU-ASEAN Interregional Relations

Salvador Santino F. Regilme Jr.

## 1 Introduction

The ongoing European sovereign debt crisis has posed enormous anxiety over the future of a regional common currency, and more importantly that of the fate of European integration. Needless to say, the impending failure or success of the European Union (EU) to effectively address the crisis will also be reflective of the prospects of regional integration as a governing principle and mechanism of interstate relations. Meanwhile, the recent emergence of China as the world's second largest economy and the resulting dramatic political optimism that it will become the next superpower (Castro 2009; Grinter 2006; Regilme 2010; Swaine 2011) have also stimulated much public interest on the strategic importance of the Asia-Pacific as a world-region.

Indeed, amidst mainstream discourse in global politics that emphasise the purported shift of the balance of power from the Atlantic to the Pacific, there is a dearth of scholarly interest and public discussion over the critical relevance of interregional relations between Europe and East Asia. On the one side of the Atlantic is where the world's most successful experiment of regional integration is located as it is in the case of the European Union—characterised as a 'supranational polity pursuing a project of post-national democracy.' (Fabbrini 2005). Replication of the EU project appears to be elusive in Pacific East Asia despite the Association of South East Asian

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Nations' (ASEAN) reputation as the 'world's most successful third-world regional institution' (Jones 2008), thereby making full-blown regional unity as 'decades away.' ("East Asia Summit: Regional Unity Decades Away," 2010).

Notwithstanding the notable contrast in perception between ASEAN and the EU model of supranationalism, there appears a wealth of learning and experience on regional integration and cooperation in which Southeast Asian states may cull profound lessons from the EU. The examination of this possible juncture of learning may indeed be gleaned from the interregional cooperation between these two critically relevant regions in international relations. More importantly, such an investigation ultimately requires a theoretically informed, yet empirically grounded analysis of the current interregional dynamics between East Asia and Europe.

## 2 What Is with 'Social Constructivism' in EU-ASEAN Relations?

Scholarly inquiries into the interregional relationship between Europe and Asia merit not only haphazard, more materialist analyses. Instead, it necessitates the deployment of theoretical and analytical lenses that would unlock both the ideational and materialist interregional complexities. In this regard, a reconsideration of constructivism as a theoretical-analytical tool may appropriately present and analyse these complexities. Prior to engaging with the analysis of this interregional relationship, this work first provides a brief overview and justification of the usage of constructivism to set the analytical contours for the subsequent sections of this research.

By historicising on the "great debates" in International Relations (IR) theory, it is clear that the end of the Cold War provoked a fierce, double-edged IR debate, particularly between so-called rationalists and constructivists, *vis-à-vis* critical theorists and constructivists (Katzenstein 1998; Reus-Smit 2004). On both streams of the debate, it has been remarked, since the last ten years, that the framing of the discussion was that these "isms" focused on actual international relations ontology rather than contrasting epistemological approaches to the field. In view of the continued popularisation of the constructivist approach as a valuable analytical tool in examining problems in international politics, it is indeed insightful to deploy some of the methodological strengths of this approach in scrutinising the newly emerging research area of EU-ASEAN/East Asian<sup>1</sup> interregionalism.

Constructivism is typified by its resolute accentuation on the relevance of 'normative as well as material structures, on the role of identity in shaping political action and on the mutually constitutive relationship between agents and structures.'

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<sup>1</sup>"Asia", in this case, broadly refers to ASEAN members as well as the Northeast Asian states (Japan, South Korea and China), and when the term "East Asia" is used, it includes both the ASEAN member states as well as the Northeast Asian states.

(Reus-Smit 2004, p. 188) Hence, the social identity of global political actors is not solely determined by materialist considerations; an argument strongly advanced by neo-realists who also emphasise that state survival is contingent on the maximisation of military power.

In contrast, while constructivists recognise the centrality of materialism in international relations, they suppose that ‘material resources only acquire meaning for human action through the structure of shared knowledge in which they are embedded.’ (Wendt 1995, p. 73). Thus, within the constructivist paradigm, both ideational and normative structures—including institutionalised norms and ideas—shape global political actors’ interests and consequently their identities. Moreover, critically evaluating the neo-realist fixation on material-based structures, constructivists also emphasise the significance of the order of ‘shared ideas, beliefs and values’ that have structural characteristics and that may have a formidable influence on ‘social and political action.’ (Reus-Smit 1999, pp. 188–191).

Additionally, constructivism also explores questions of identity and interests where, by understanding how ideational structures are indeed essential, one may discover that the actors’ formation of identity actually has direct ramifications on shaping interests, and in turn, actions (Checkel 1998). Hence, normative and ideational structures are deemed to shape actors’ identities and interests through three modes of action: *imagination*, *communication* and *constraints* (Reus-Smit 2004, pp. 198–199). Through *imagination* actors recognise a gamut of necessities and possibilities through which they can act upon, based on the ideational structures, and with both practical and moral considerations. Also, via *communication*, these structures may influence actors’ actions through, perhaps, the invocation of norms of legitimate conduct. Finally, constraints—when influence falls short of its intentions—may be instructive in the performative actions of political actors.

Over the past two decades constructivism has clearly gained ground in rectifying the centrality of ‘methodological individualism and materialism’ that had previously dominated much of IR scholarship (Checkel 1998, pp. 324–348). Since this work aims to thoroughly examine EU-ASEAN interregionalism through the deployment of IR theory, it is essential to note that both constructivism and attempts at contextualising interregionalisms are by-products of the international conditions produced in the post-Cold War era. In terms of the growing use of constructivism, a variety of scholarly research, particularly conducted on European issues has been undertaken based on this paradigm. For instance, the roles of ideas and beliefs in EU integration processes (Risse-Kappen 1996); post-Cold War “security constructions” in Europe (by examining how weak states are “empowered” without undermining sovereignty) (Flynn and Farrell 1999); Iceland’s relationship to the EU (Misik 2008); the role of “subsidiary” as a norm in the competence regime of the EU (van Keersbergen and Verbeek 2007); are among the research priorities of the modern wave of constructivism. Notably, most of these constructivist analyses are intra-European, or at least introspective. Similarly, as EU interregionalism is also relatively new, it may indeed be illuminating to use the constructivist method as an analytical tool that can give light to interregionalism as a foreign policy instrument of the EU—a topic of study that situates the EU as an active actor beyond its frontiers.

### 3 The Genesis of Euro-Asian Relations

*Identity* and *interests*—both of which are core concepts of constructivism—are embedded in *history*, examining first the historical genesis of the two regions' relations to each other is the first critical step in this analysis. Beyond the long colonial histories experienced by several parts of East Asia (especially in south east Asia), the relationship between the European Community (EC) and the ASEAN is considered to be a model of group-to-group interregionalism (Lukas 1998; Haenggi 2000; Mols 1990). In this case, interregionalism refers to the 'interaction of one region with another' and is often portrayed as a 'double regional project' responding to the need to pool an ever-greater percentage of resources in recognition of other interregional or the global dynamics (Gilson 2005). Although Gilson's notion of the importation of regional structures to other regions (EU to East Asia) is usually not (explicitly) intended (Gilson 2005), these two regions' relations focused on information exchanges and collaboration in specific policy areas; often trade and investment as well as taking into account the EU's emphasis on the promotion of normative values such as human rights and democracy (Haenggi 2000). Indeed according to the European Economic and Trade Office the official policy of the Union is 'to expand and deepen relations with other countries and regions' and to conduct regional dialogue that covers 'investment, economic cooperation, finance, energy, science and technology and environmental protection, as well as political matters such as the global war on terror, international crime and drug trafficking, and human rights.' (European Economic and Trade Office 2007)

Taking to account that the task of capturing EU-Asian relations as monolithically simple is absurd (Patten 2002), the European Commission divides its relations with Asia into South Asia, Northeast Asia, Southeast Asia, Central Asia, Australasia and several bilateral (EU-to-state, or state-to-state) relationships. With this in mind, this work is geographically limited to the south eastern and the north eastern regions to better explore a certain brand of EU-Asian relations. By considering the concrete cases of EU-ASEAN Dialogue and the more inclusive Asia-Europe Meeting (ASEM), the EU apparently singles out East Asia (both Southeast and Northeast Asia). Based on the European Commission's Regional Programming for Asia Strategy Document for 2007–2013 (EU 2007), the priority for strategic cooperation between the EU and Asia is foundationally based on support for regional integration initiatives primarily facilitated by the ASEAN and the ASEM member countries. Moreover, the Singapore-based Asia-Europe Foundation (ASEF), which is a pivotal organisation supported by the EU and ASEAN, organises most of its cultural, intellectual and political exchanges involving East Asian and EU member countries.

Historicising on the origins of ASEM, the European Commission (July 1994) published a policy document entitled: 'Towards a New Strategy for Asia,' emphasising the urgency of modernising the EU's relationship to East Asia, which has recently gained political, economic and cultural significance ("About Asia-Europe Meeting," 2010). In November 1994, Singapore and France proposed that an EU-Asia summit meeting be held, in which the agenda of reviving a new

partnership strategy between the two regions would be discussed. Consequently, the first ASEM Summit was held in Bangkok, Thailand in March 1996, marking the inauguration of the ASEM Summit.

Since ASEM is more representative of the main political actors in East Asia, it is worthwhile to characterise the main features of such collaborative instrument between these two regions (“About Asia-Europe Meeting,” 2010). Firstly, since it is considered informal, ASEM is an open forum for policy-makers and state officials to deliberate on any number of political, economic and social issues of common interest and to complement efforts conducted bilaterally or multilaterally. Secondly, multi-dimensionality refers to the intentionality of the ASEM to comprise the full spectrum of relations and to dedicate political, economic and cultural dimensions of equal importance. Thirdly, espousing the virtues of equal partnership, ASEM discards an “aid-based” relationship and claims to embrace on ‘mutual respect and mutual benefit.’ Fourthly, ASEM is a forum designated for heads of states and governments in order to strengthen exchanges between polities in all sectors of the two regions.

Notwithstanding the lack of a systematic social science research on the various benefits that can be directly attributed to ASEM’s activities, it does function as a high-level management mechanism for some of the most important economies and aims to balance geostrategic interests in a volatile and rapidly changing region (Gilson 2005, pp. 307–326). Also, for the EU ASEM operates as a venue to promote democratic values and the espousal of human rights among states whose record has yet to satisfy EU’s expectations. Meanwhile, from the East Asian perspective, ASEM functions as a first-hand examination forum of the practices of regional integration and helps build a framework in which East Asia can present itself as a regionally coherent political and economic body. This is perhaps best seen in the discursive rhetoric and power of highly publicised ASEM activities in the global media—presenting an image of mutually reinforcing regional organisations (ASEAN and EU) and asserting their institutional existence and legitimacy on the international political level.

Indeed, ASEM may be broadly contextualised within a ‘global tri-polar context,’ in which the dramatic shift from geopolitics to geo-economics, and from communist-capitalist bipolarity to inter-capitalist tri-polarity is visible (Dent 2004, pp. 214–215). On the level of economic cooperation, according to the ASEAN (2010), the aggregate value of ASEAN trade with the EU has grown from \$186.7 billion (USD, 2007) to \$202.5 billion (USD, 2008). This is a remarkable 8 % growth over the span of a single calendar year, while EU flows of foreign direct investment (FDI) also grew from \$10.6 billion (USD, 2006) to \$12.4 billion (USD, 2008) marking a 15 % increase. Notably, ASEAN statistics shows that the EU-25 (excluding Bulgarian and Romania) stood as the second largest export market for ASEAN countries in 2008, trailing behind only ASEAN countries themselves, and ahead of Japan, the US and China (ASEAN 2009b). While this may be accurate the data reveals that the EU-25 is significantly behind China and Japan in exporting its products to ASEAN countries.

Reflective of the historic transformation of the post-Cold War international political economy, triadic economic dominance remains extreme in which

85–95 % of international production, trade, finance, foreign investment and new technological development is accounted for the aggregate value of economies of the EU, East Asia and North America (Dent 2004). Examining more recent EU and East Asian interactions particularly last May 2009, top-level cabinet or ministerial heads attended the 17th ASEAN-EU Ministerial Meeting in Phnom Penh, Cambodia and strongly agreed, in principle, that it is critical for the EU and the ASEAN to deepen cooperation in addressing the global economic and financial crisis as well as food and energy security (BBC 2010). Two significant documents were produced as a result of the Phnom Penh meeting: the ‘Joint Co-Chairmen’s Statement’ and the ‘Draft Phnom Penh Agenda for the Implementation of the ASEAN-EU Plan of Action (2009–2010).’ The latter document is notable as it covers collaborative areas of action in economic, socio-cultural activities as well as political and security. This specific mode of engagement at the ministerial level transcends economics and also covered post-9/11 security issues such as terrorism, disarmament, and the non-proliferation of weapons of mass destruction and even human and drug trafficking (“ASEAN, EU minister urge closer cooperation to tackle economic crisis,” 2010). ASEAN—and its related modes of action including the Ministerial Meetings—offers an insightful and classic case of interregionalism where it tenders new ways of managing changes that cover both the political and economic agenda and may have spill-over effects on intra-regional cooperation development (Gilson 2005).

It is also essential to underscore that the EU is considerably more progressive than the US in its recognition of ASEAN’s Treaty of Amity and Cooperation (TAC). TAC was originally signed in 1976 by ASEAN’s founding members, and not only determines ASEAN’s organisational rules and modes of conduct, but also explicitly notes key principles that have intensified political confidence among member countries which was crucial for regional peace and stability (Manyin 2004). As one of the more quintessential documents of ASEAN, the TAC articulates collectively held principles of peaceful coexistence and active cooperation among South-east Asian states (ASEAN 2005.). As a means of fostering its institutional legitimacy ASEAN welcomes political support from other non-ASEAN states and regional partners by formally acceding to the TAC. Unlike the US that has only recently proclaimed its intention to accede to the TAC (2009) reflective of a key change in US diplomacy (Manyin 2004), the EU had already formalised its intention to accede to the TAC. In May 2009, the EU signed two key documents: ‘ASEAN Declaration of Consent to the Accession to TAC,’ and the ‘Declaration on Accession to the TAC’, both of which enable the EU to accede to TAC represent significant steps to intensify engagement with ASEAN (Xinhua News Agency 2009). The eventual, formal accession of the EU to the TAC regime will represent the most symbolically important political action of the EU in exhibiting its long-term interest to engage with ASEAN as one of the developing world’s most advanced regional organisations. At the symbolic-discursive level, the EU’s accession to the TAC will strongly enhance its formal recognition of ASEAN as a regional institutional actor that has a share in global governance in much the same way that the EU has assumed a similar international role.



## 4 Identity and Interests of the EU in East Asia

Despite the economic successes and political dialogue between the EU and ASEAN, a tremendous amount of work remains to be done on redefining the EU's relationship to East Asia<sup>2</sup> since the states and diverse publics of ASEAN member countries tend to hold negative and problematic perceptions of the EU. The only credible and empirically based research on EU perceptions in the Australasian region based on an EU-funded research project at the University of Canterbury in New Zealand highlights that the ASEAN states do not feel vindicated in understanding and/or challenging problematic images of the EU (Chaban and Holland 2005). Such research—conducted through the Centre for Research in Europe—presents a transnational comparative analysis employing tripartite use of methods (public perception surveys, media coverage and elite surveys) which includes the Australasian countries (New Zealand and Australia), Asian countries (both North-east and Southeast) and Pacific countries (Chaban and Holland 2008). The research time-frame spanned 2002–2008, and concluded that the EU is largely seen as “European actor, acting somewhere-out-there-in-the-world” (Middle East Africa, former Soviet republics), which indicates that the EU is regarded as a distant political actor, irrelevant for the domestic Asia-Pacific political and economic discourses.

Additionally, the EU is also negatively perceived in Asian countries vis-à-vis its treatment of its Muslim minority populations and Asian migrants in Europe—two issues which were generally considered as symptomatic of Euro-centrism. Among Australasian and Northeast Asian countries, the EU's self-perceived ‘normative power’ is seen as very remote, unknown, and marginal in terms of external perceptions (Manners 2002). Surprisingly, the EU's international campaign against poverty and its human rights promotion is only minimally acknowledged, while the notion that the EU is an environmental, developmental, and human rights leader was diagnosed as inefficiently communicated (Chaban and Holland 2005).

The economic relationship was cast in a more positive light with the EU being generally viewed as a ‘ubiquitous economic giant,’ and thus being seen as an important global economic counter-balance to the US (Chaban and Holland 2008). Irrespective of such perceptions, there is an urgent need for the EU to develop a more strategic and effective public diplomacy approach in the Asia-Pacific region (Chaban 2006).

Notably, the above-mentioned empirical findings referred only to aggregate results. In the particular case of Southeast Asian countries, research findings were telling. For instance, while the EU is Indonesia's second largest export partner, the former seems to be extremely under-appreciated, given that only 8.9 % of the total number of respondents listed the EU as among Indonesia's most important international partners (Holland 2009). Such irrelevance of the EU is also reflected in the

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<sup>2</sup>For further reading on the global political-economic dimensions of financial and economic regionalism see the work of Grimes (2009) and a critical review of such work by Regilme (2012).

case of Singapore where, in a student survey involving respondents from Singapore's three main universities, the EU received 'middle to low assessment' in its importance for the country (Turner 2009). Accordingly, it has been opined that there is no immediate correlation on this assessment level of the EU as measured against variables such as sex, nationality, number of years of study, subject of study or frequency of accessing the local media for international news as key determinants for such perceptions (Turner 2009). Considering these unfavourable views of the EU it has been suggested that

If the European Union is serious about taking a greater role in the world affairs it will require a public diplomacy capability to match. . . . For the Union to prosper it must project a positive image of itself to opinion formers and to the 'man in the street' both within and beyond its borders (Twigg 2005, pp. VI-VII).

Unfortunately, the EU as seen by the "others," in this case by East Asians, is an under-appreciated, under-valued and misunderstood global actor. This dominant narrative reveals how distant the EU is from East Asian affairs, and whose image is tarnished by perceived controversial policies on migration, Islam, and Euro-centrism. Despite the EU's self-perception as a "civilian" or "normative" power, dedicated to "civilising" international relations as a function of a broader transformation of international society (Duchene 1972; Hill 1990; Manners 2002), the EU is left unrecognised in East Asia in the former's work on normative issues of global governance such as: poverty reduction, human rights promotion and environmental sustainability. Comparatively, there seems to be a noticeable mismatch between the "other's" perceptions and the self-perception of the EU. This identity conundrum has been re-echoed by the EU itself through Margot Wallstroem, Vice President of the European Commission for Institutional Relations and Communication Strategy. She confessed that

The real problem in Europe is that there is no agreement or understanding about what Europe is for and where it is going. We need a new consensus, a "common narrative." A shared perception of the new, modern story of what Europe is about (Wallstroem 2009).

On the question of which interests link East Asia to the EU, economic interests appear clearly predominant. This is important since historically the EU (and EC, 1950s) was established with strong economic interests in mind while the creation of the ASEAN (1967) was created in response to the geo-politics of the Cold War. Since then, the EU has evolved into a more complex political entity and the political discourses within the EU have been characterised not only by economic interests such as trade and investment but also other normative political values that it must consistently uphold (Wiessala 2006). The evolution of the EU as an institutional actor with more complex interests and competencies was made possible after the enactment of the 1987 Single European Act and the 1993 Treaty of European Union. From a broader perspective, the end of the Cold War paved the way for a more dynamic global political economy such that a tri-polar world has emerged

with the materialisation of a triadic economic dominance of East Asia,<sup>3</sup> North America and the EU (Dent 2004; Katzenstein 2000).

Against the backdrop of the tri-polar global political economy, ASEM was created in 1996 amidst a myriad of divergent interests. The EU, known in East Asia as an economic giant, must still capitalise on its ‘social and political capital’ and reinvest in a more strengthened trade and investment relationship with East Asian actors. As the aforementioned figures suggest, the EU has experienced a dramatic increase in trade transactions with ASEAN, which should be fully maintained. Also, in spite of the figures that speak of a sustained and strengthened bi-regional trade relationship between EU and East Asia, the EU must ensure that this trade relationship is also felt in local communities in East Asia as publics in the region are still fixated on the US as an economic player.

Similarly, on the economic front, it is critical for the EU to realise that it has much to gain as it attempts to strengthen its political capital in East Asia. The continued rise of China (Economy 2005; Jacques 2009)—due to its sustained economic growth—has provided the country enhanced bargaining power in the realm of regional and global governance. Thus, it has been opined that it is only the core countries of the EU (and not the EU itself) that have the capacity to bargain with and against China which consequently results in disappointing outcomes (Fox and Godement 2009). For instance, the UK lobbied for the opening of Euro markets for Chinese goods, yet the Chinese financial services sector has remained severely restricted as this is also similar with France and Germany whose national commercial diplomatic powers have proven to be inauspiciously inadequate such that a growing trade deficit with China continues to be the trend. Such a prognosis of the absence of a coherent EU collective action towards China may also be reflected in its economic interactions with ASEAN and the Northeast Asian economic giants whose economies are still largely tied to the US (Dent 2001).

Additionally, apart from economic interests, the self-perception of the EU as a “normative power” is another considerable starting point by which the EU can reinforce its relationship to East Asia. Confronting the diversity of actors in the ASEAN and North East Asia, the EU is generally composed of high-income countries while some ASEAN members are economically lethargic and unable to revive or construct their own versions of the region’s so-called “economic miracle.” The EU has much to gain if it were to invest development aid in the relatively weak economic actors among ASEAN members not only as a reinforcement of the EU’s

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<sup>3</sup> The economic strength of East Asia can be gleaned from the East Asian miracle story as well as the economic boom that first started by Japan. For further literature review on East Asian “economic miracle” story, see: Meredith Woo-Cummings. *The Developmental State*. (Cornell, NY: Cornell University Press, 1999) 346 pages; Chalmers Johnson. *MITI and the Japanese Miracle*. (Stanford, California: Stanford University Press, 1982), 412 pages; Charles Polidano. “Don’t Discard State Autonomy: Revisiting the East Asian Experience of Development”, in *Political Studies Review* 49:3 (2001): 513–527; Mark Thompson, “Late industrialisers, Late democratizers: developmental states in the Asia-Pacific”, in *Third World Quarterly*. (1996), 17(4): 625–647.

self-perception as a “normative power,” but also as a means of boosting its regional image. Strengthened trade relations and a more strategic development aid approach could present promising economic opportunities for EU firms as well as chances for the EU to gain regional and international political capital.

Nonetheless, the EU appears to have an unclear, incoherent and inconsistent human rights policy towards ASEAN-related issues including the on-going political crisis in Burma and illiberal policing practices of post-9/11 governments in Thailand, the Philippines, Indonesia, and Malaysia (Alcaraz 2003; John 2009; McCoy 2009; Regilme 2011; Sidel 2007). Demonstrating such policy inconsistency, the EU was apparently praised for its attempt to extend asset freezes and travel bans to members of the Burmese judiciary after the latter convicted Aung San Suu Kyi (Mydans 2009). Despite such freezes and bans, and the considerable development aid given by the EU to key countries in ASEAN, it is argued that the EU’s promotion of human rights and democracy through development cooperation is ‘high on rhetoric but low on achievement.’ (Crawford 2002).

There has also been an apparent failure of the EU regarding human rights promotion in East Asia as seen through the EU’s Common Foreign and Security Policy in Asia vis-à-vis the case studies of Burma, China and Indonesia (Wiessala 2006, pp. 55–94). A key reason behind the EU’s inability to use its relationship to ASEAN/ASEM as a means for pushing the human rights agenda in Burma and even China is due to the disparity in “normative values” between these two institutions as the apparently dominant policy paradigm in ASEAN maintains that the internal affairs of its members are not within the rightful control of any other supranational body due to sovereignty issues.

Interestingly, it was noted that the marked differential gap in terms of the institutional character between the EU and ASEAN renders human rights diplomacy of the EU largely ineffective: the EU is more value-driven as noted by its self-perception as a “normative power,” while ASEAN continues to embrace the more orthodox principle of non-intervention as human rights promotion is considered a national issue. Exhibitive of the uniqueness of the East Asian case, it was noted that the region still remains to be at the end of the race as opposed to Latin America and the South Mediterranean with respect to having finalised third-generation agreements pertaining to human rights and democracy-related clauses with the EU (Reiterer 2006).

The EU is unable to overcome this apparent mismatch of institutional values with ASEAN and is thus unable to flex its muscles as a “normative power.” Indeed, the EU continues to be so deeply mired in its internal politics that in May 2009, during the last ASEM Ministerial Meeting in Hanoi, representatives of the foreign ministries of Germany, Britain, Italy and Spain were entirely absent and two-thirds of the other EU members only sent junior officials (“It’s Time Europe paid serious attention to ASEM,” 2009). This was seen as a humiliation for ASEM, and the EU may have lost substantial political capital to China, Japan and South Korea since they, together with the ten members of ASEAN, actively participated in the Meeting.

Amidst of the rise of China as an economic and political power and the emerging discourse on the eventual materialisation of an “Asian Century,” (Mahbubani 2008) the EU’s continued self-assessment as a “normative power” in international politics

remains to be seen in East Asia, especially as the EU disregards symbolic, but important and highly publicised diplomatic events such as ASEM.

Notwithstanding the marked difference of the institutional-historical ontogenesis between the EU and ASEAN, a promising point of collaboration between the two could be the idea of ‘cross-institutional fertilization.’ (Reiterer 2006, pp. 223–243). One avenue the EU could take to overcome the “*mismatch-of-values problem*” with the ASEAN is to eventually export the EU model of integration with regional cohesion and the further institutionalisation among the many aims advanced. When ASEAN’s Charter (December 2008) was ratified, eventually allowing for additional members and establishing a mechanism to facilitate inter-governmental organisations’ diplomatic representation to the bloc, the EU has been able to take the opportunity and formalise their collaboration in terms of furthering the institutional development of ASEAN. Indeed, in February 2010, the EU appointed a new Ambassador to ASEAN, Norbert Baas, who pledged to work on the ‘institutional and capacity building assistance’ of ASEAN by the EU based on the Nuremberg Declaration that espoused the EU-ASEAN Enhanced Partnership (“Stronger EU-Asean relations seen,” 2010).

Concretely, the ASEAN-EC Project on Regional Integration Support (APRIS), an initiative worth around €4.5 million, is a framework programme meant to assist ASEAN members for the goal of regional integration (ASEAN 2009a, b). It endeavours to learn from the experience of the EC/EU in fostering regional economic integration, to further improve ASEAN mechanisms and communications schemes and to support capacity-building programmes for the ASEAN Secretariat as well as the members including financial support for a business plan on the establishment of an ASEAN-EC Management Centre in Darussalam, Brunei (ASEAN 2009a, b).

## 5 Concluding Remarks on Constructivism and EU-East Asian Relations

Constructivism in international relations may be characterised as being primarily concerned with the *social and historical contingency* in global politics. Consequently, it considers the dynamic link between *ideas* and *material factors* as derivatives of how agents fundamentally conceive their material reality. Moreover, on the classic agent-structure problem (Hay and Wincott 1998; Mahoney and Snyder 1999; Ritzer and Goodman 2000), constructivism is fundamentally interested in how structures impact agency and how agents try to influence structures. Empirically, the emergence of EU-East Asian relations through its formalisation in ASEM commenced due to efforts by individual agents such as France and Singapore that first took care of the proposal of the Summit. Inevitably, such agent-initiated proposals in the mid-1990s occurred within the atmosphere of sustained and heightened institutionalisation of the EU as well as increasing

economic and political confidence in East Asia amidst the rapid economic growth spearheaded by the so-called East Asian tigers.

On the part of the EU as a political actor, it is argued that it has two primary motivations. First, in the context of the Schengen Pact and the efforts towards the signing of the Treaty of Amsterdam, France and other concerned actors within the EU may have perceived the reinforced momentum of how the EU united as a single institutional entity and, consequently, felt the need to resuscitate its external relationship based on how the EU sought to legitimise itself by directly interacting with another recognised regional body such as ASEAN. Secondly, echoing a 'realist constructivist' (Barkin 2003) tone, the evolving normative structure of global politics was gearing towards the formation of regional groupings and the EU's incentive to the materialisation of ASEM was not only to legitimise itself but was also tied up within a string of EU interests in the markets of the ASEAN and Northeast Asian countries. Such discursive analysis on interests is historically grounded as some EU powers had centuries-old colonial interests in some territories of what is now called Southeast Asia.

Considerably, the normative structure of global politics allows indirect influence on trade and markets and, even in some cases, internal politics in light of power accumulation. As may be gleaned with the case of the US, one may examine the attempt of the EU to recreate its post-colonial relationship with ASEAN not only through "messianic rhetoric" (in reference to "normative power" identity vis-à-vis human rights and development problems in East Asia) but also the classic case of how the EU interacts with other regional bodies with the former's interests as its priority. This analysis has been articulated through referring to the failure of the EU-Mercosur Free-Trade Area (FTA) negotiations (Robles 2008a, b).<sup>4</sup> The failure may be attributed to the lack of a "consensual basis" for negotiations as there was disparity between the EU's rhetoric and the actual reality of negotiations; a critical lesson that must be learned in the case of the ASEAN-EU interregional diplomacy. Notably, it was claimed that the EU will take into account differences of development within ASEAN but, as in the case of Mercosur, the EU dismissed all requests for "special and differentiated treatment." Moreover, it has been conceded that the

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<sup>4</sup> Alfredo Robles (2008a) contends that the failure of EU-ASEAN Free Trade Agreement can be gleaned from the breakdown of EU's negotiations with Mercosur wherein "special differentiated treatment" (SDT) was not applied for low-income Mercosur countries. It must be noted, as Robles asserts, that ASEAN's low-income countries may be the only one who can expect for such "SDT". Nonetheless, even the high- and middle-income ASEAN countries may still face a very arduous task competing with key EU economic players. In addition, in Robles (2008b), it was contended that there is a misguided perception on how the fast-paced process of EU and ASEAN towards FTA negotiations was considered a success. Accordingly, the EU was compelled to agree to take the ASEAN negotiation format that implied the inclusion of Myanmar, amidst the reinstatement of EU sanctions against Myanmar. This clearly shows another policy inconsistency of the EU in its relations with East Asia. Refer to: Alfredo Robles, "The EU and the ASEAN: Learning from the Failed EU-Mercosur FTA Negotiations," *ASEAN Economic Bulletin* 25 (3) (2008a):334–344; Alfredo Robles, "An EU-ASEAN FTA: The EU's Failures as an International Actor," *European Affairs Review* 13: (2008b): 541–560.

birth of ASEM was an outcome of Europe's rediscovery of Asia when the latter experienced record-breaking economic growth levels presenting new opportunities for cooperation in the early 1990s (Gaens 2008).

It is still worthwhile to underscore the logic of how the normative structure in which the EU responds to is not only composed of how the EU can promote *normative values* but also how such actions can be quintessentially embedded within a cob-web of *power interests* and great-power considerations of the Union.

In this essay, I employed the constructivist approach on the interregional dynamics and complexities of East Asia-EU relations in reference to the politics of identity and interests that consequently dictate the modes of action in examining renewed relations between the EU and East Asia. The analysis commenced by explaining what the general principles of constructivism are as well as historicising the genesis of EU-East Asia relations.

Theoretically, I explained that the EU suffers an *image crisis* in East Asia despite the intense engagement of the Union in terms of trade and economic transactions. Also, despite the self-gratifying self-perception of the EU as a normative power, East Asia remains a region where that power has yet to be fully visible as diagnosed by Chaban and Holland (2008), Crawford (2002), and Wiessala (2006), who highlighted the failures of the EU's foreign policy actions and agenda in East Asia.

Historically, a sense of caution must persist among EU decision-makers. Notwithstanding that the EU's recent rediscovery of East Asia is largely founded on economic interests and its quest to sustainably legitimise itself as an institutional entity (Dent 2001), the EU must fundamentally rethink its recognition of a "social reality" that engaging with East Asia is beyond purely economic interests and its mere recognition of its identity as a kind of political messiah which will bring salvation to areas of the world where human rights and democratic norms are nothing but chimerical goals that have yet to materialise.

Given the changing regional dynamics in Asia, the EU must realistically assess that it suffers from an acute problem of projecting its identity in East Asia and therefore needs to reassert an identity that matches the Union's self-perception, prudently re-discover its mutual interests with ASEAN and North East Asia, and determinedly bridge the gap of the EU's normative power rhetoric and consistent norms-based engagement with Asia. Considering the rise of China as a global power and the apparent prevalence in popular media discourse of an emerging "Asian Century," the interregional relations between the EU and East Asia will be one of the primary battlegrounds for determining the relevance of the Union in international politics over the years to come. Should the EU fail to rectify the current, disappointing failures between its *self-perceived identity* as a normative power and its *actual practices* in East Asia, *the EU's normative power will remain an elusive chimera.*

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# Was There any Coherent European China Policy in the Case of the EU Arms Embargo on China?

Vivien Exartier

## 1 Introduction

The People's Republic of China always had a choice of dealing either with Europe as an 'abstract amalgam' of industrialized West European nation states, or with the European Community/European Union as the "concrete yet fuzzy, and yet at times frustrating, technical framework of Europe" (Möller 2002, p. 11). At first sight, due to its own political tradition of developing close *relationships* before developing *partnerships*, China felt closer to individual European countries. China however quickly grasped the importance of the European Community as an economic powerhouse, and sometimes tried to play the former against the latter. It was a logical reaction, since the EC was mostly dealing with trade issues at the time it started a relationship with China. Politically then, the point of reference for China was individual states, especially Britain, France and Germany, who had all established relations with China prior to the EC.

The EC only started its transformation into a political union (European Union) in 1992 with the Maastricht Treaty by developing a stronger identity as a foreign policy actor. The Union is far from being completed, especially when it comes to common foreign policy, such as where domestic interests might conflict with EU interests. Today, from an EU perspective, the relationship with China is flourishing. Economically, EU-China trade in goods has increased more than 40-fold since 1978, amounting to about €174 billion in 2004 (EU Commission 2004). European Commission President Barroso recently stated that the EU was at a dynamic moment in its relationship with China, and that further developing its relationship would be one of the Union's top foreign policy objectives (European Commission 2004).

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In strategic domains, multiple agreements have been signed, and levels of cooperation have certainly been expanding. The EU has been supporting China's integration into global institutions in order to increase its stake in making them work more effectively. When it comes to the role of China on security issues however, member states diverge, and have not seen any urgent need to develop collective strategic thinking related to China (Sipri 2005). They have conflicting opinions about whether to tie deeper political cooperation with progress on human rights. Ultimately, countries tend to compete against each other to be Beijing's best political friend and trading partner, thus undermining the EU China-policy. France and the United Kingdom for instance, as co-members of the United Nations Security Council always took a more cooperative stance compared to Northern European Member States, who tended to have a less conciliatory attitude because of China's human rights record (Sipri 2005). Political ties and commercial interests justified then the 2003–2005 Franco-German crusade for a lift of the arms embargo.

The interactions between member states and the EU, and the impact of the EU on domestic actors and structures (McGowan 2005, p. 996), called 'Europeanization,' applies perfectly to the EU's China policy-making. Some scholars argue today that individual European countries have been losing influence in favor of the EU as a whole in terms of China policy-making (Wong 2005). There have been more top-down influences, from Brussels to Member States, than bottom-up influences coming from Member States to Brussels, with member states' foreign policy vis-à-vis China and EU policies converging.

This study analyzes the impact of France, Britain and Germany on the EU's sanction policy on China, and in particular the case of the handling of the lift of the arms embargo, imposed in the wake of the Tiananmen Square Massacre in 1989. "Sanctions are an instrument of a diplomatic or economic nature, that seek to bring about a change in activities or policies such, as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles" (European Commission 2008). Arms embargoes, however, differ from traditional EU sanctions because their implementation ultimately depends on the good will of individual member states while dealing with the embargoed country. The case illustrates how the EU was unable to formulate a common and coherent position in its China policy, and suggests that Britain, France and Germany affect the EU sanction policy towards China, based on their historic and strategic ties to the PRC.

Comparing a set of policies between the EU and its main member states with regard to China is a somewhat difficult exercise for methodological, historical, and functional reasons. First of all, the field of comparative security study is fairly recent, and there are constant evolutions of the definition of security and foreign policy. Second, from a functional perspective, the three states belong to the EU, and we compare the policies of an organization they belong to with their individual policies, might go beyond the policies of the EU. Finally, historical relations with China started at different moments. The formal relationship between the EU/EC and China began in 1975 while the three states recognized the PRC much earlier (with Britain being the first European power to recognize the People's Republic of

China in 1950 and France the first to exchange ambassadors with the PRC in 1964, followed by Germany's recognition in 1971). Based on their historical relationship with China, the three countries have been developing their own perception and vision of China's role in world security. Britain, France and Germany are the most influential member states when it comes to defense issues, because they have the largest defense resources (army, manpower and budget). In particular, the three Member States' leadership contributed to define the status of partnership of China with the EU.

Finally, most EU member states, including the Big Three, have an overlapping membership with NATO, another major security provider for Europe. NATO obligations bring up the importance of another actor outside the European Union regarding European security matters: the United States. The United States, as the only superpower, always seemed a proponent of a more autonomous European Union, provided it did not conflict with US interests. The Big Three's perception of the role of China in the world might conflict with such interests. . .(Table 1).

## 2 Methodology

The study combines a questionnaire addressed to defense and foreign affairs officials from the three member states and EU institutions, press articles, interviews and speeches from the 2003–2005 period, the application of Börzel's theory (Börzel 2002), who recognizes three kinds of reactions from the member states to Europeanization: *pace-setting* (pushing policies at the EU level), *foot-dragging* (blocking or delaying policies), and *fence-sitting* (neither blocking or delaying, but building tactical coalitions with pace-setters and foot-draggers), as well as research about EU "*laws adaptation misfits*" (Cowles et al. 2001; Falkner et al. 2005) to understand the member states responses to Europeanization.

The questionnaire was divided into four parts: general questions about the embargo, institutional questions about the role of the EU institutions, the role of EU member states in the debate, the influence of the Big Three, the impact of bilateral relations, and finally the perception of the place of China in the international security sphere. More specifically, the target respondent populations were the following:

- France, Germany, Britain officials/advisors responsible for foreign and defense policy for the 2003–2005 period (or afterwards if they had some perspective about the events), including: Premier Blair's government, the Chirac Presidency, Chancellor Schröder's and Merkel's administrations.
- France, Germany, Britain members of Parliament, sitting on Foreign Affairs, Defense and European Affairs Committees.
- European Commission officials (Directorate General Relex)
- European Council Officials (including CFSP)

**Table 1** The timeline of the EU arms embargo on China

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June 6, 1989:	The European Council imposed a series of punitive measures on China for its violent repression of the Tiananmen democracy movement.
May 25, 1998:	Member States adopted the Code of Conduct on Arms Exports, outlining principles and guidelines based on eight criteria for future exports of military equipment.
December 2003:	In visit to China, Chancellor Gerhard Schröder told Premier Wen Jianbao that “the time had come” to lift the embargo.
December 12, 2003:	The European Council instructed its foreign ministers (General Affairs Council), under the initiative of French President Chirac to ‘re-examine the question of the embargo on the sale of arms to China’.
December 18, 2003:	The European Parliament rejected the lift by a landslide vote (373 in favor, 32 against) due to continuing violations of human rights.
January 26, 2004:	EU foreign ministers failed to reach an agreement after discussing the issue. They asked two working groups, the Committee of Permanent Representatives (COREPER) and the Political and Security Committee, to examine the matter further.
January 27, 2004:	French President Chirac, at a joint conference with visiting Chinese President Hu Jintao, publicly called for lifting of the arms embargo on China.
April 26, 2004:	The European Council discussed the embargo and called for further discussion.
October 11, 2004:	The European Council of Foreign Affairs Ministers reviewed the state of discussions on the embargo. It also took a series of decisions on the EU-China Dialogue on Human Rights.
December 8, 2004:	The EU confirmed its intention to ‘continue to work towards lifting the embargo’.
March 14, 2005	The PRC People’s Congress adopts the Taiwan Anti-Secession Law, which inflicted a severe blow to the arms-embargo lift initiative.
March 14–19, 2005:	A European Union team visits Washington to explain the proposal to lift its Tiananmen Square arms embargo on China, but without convincing their US counterparts.
April 14, 2005:	The European Parliament approved a resolution that called on the European Council not to lift the arms embargo on China.
July 1, 2005:	The UK takes over the EU presidency and place not put the embargo issue on the agenda.
November 2005:	German Chancellor Elect Merkel opposes the lift.

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- COREPER and Permanent Representations Officials (the members of the representations constituting COREPER)
- Members of the European Parliament sitting on Foreign Affairs and Defense Committees (Table 2).

To understand the responses to Europeanization, we need to determine the suitability of fit between the EU and the Member States with China. The degree of ‘fit’ constitutes what has been identified as ‘adaptation pressures’ (Cowles et al. 2001, p. 7), in other words whether there was adaptation or convergence, whether the French, the German or the British would adopt the EU policy on China easily or not. When adaptation pressures are high, European institutions challenge the identity, the constructive principles, core structures and practices of national institutions. And when member states create those pressures on European institutions (to lift the embargo for example), the identity, principles, core structures and practices of EU institutions are challenged (defense of human rights in the European Parliament for instance).

**Table 2** Positive respondents from the Three Member States and the EU

Case	Number of respondents (interview or correspondence)
France	7
Britain	7
Germany	13
EU	16

In cases of high adaptation pressures, the presence or absence of mediating factors determines the degree to which domestic change adjusts to top-down Europeanization, or EU change adjusting to bottom-up Europeanization. I used five mediating factors (including three from the Cowles et al. model) to predict whether the ban would take place:

1. The presence of veto points prevents structural adaptation. The more power is spread across the political system, and the more actors have a voice in political decision making, the more difficult it is to create the 'winning coalition' necessary to introduce institutional changes in response to Europeanization pressures (Cowles et al. 2001, p. 9). In our case, German and Britain coalition governments might have more difficulties to comply with an EU policy versus a one-party government. Public opinion might be another veto point preventing an EU law to change.
2. A country's organizational and policy-making cultures also affect whether domestic actors can use adaptation pressures from Europeanization to trigger structural change (Cowles et al. 2001, p. 10). A culture based on consensus for example would overcome veto points. A Head of State keen on expanding the relationship with China, or who has been influential in EU-China relations (case of French President Chirac), will have a significant impact on the EU China policy. The leaders of the Big Three all belong to that category.
3. The Human Rights issue is another defining issue in the relationship with the EU and the Member States. Some Member States try to depoliticize human rights and dissociate progress in that area with trade. The German and the French leadership appear to belong to that category. However, for some countries, traditionally the Northern European Member States or for some institutions, such as the European Parliament, human rights ought to be considered as the primary policy under consideration when establishing a relationship.
4. The trade issue could be considered as the 'rival' issue of human rights in terms of importance in the EU-China and the three big States-China relationships. Trade has been the original field of action for Member States and the European Union, and a boon for their economies. Trade between the two amounted to some €210 billion in 2005, with European exports to China valued at €52 billion, and imports from China at €158 billion (Griffin and Pantucci 2007, p. 163).
5. The empowerment of external actors: Cowles et al. argue that Europeanization leads to a redistribution of power among a range of actors outside the policy-making process (Cowles et al. 2001, p. 11). In our case, the United States has

been a determining influence in the debate, and so has China. The United States carefully watched the debate of the lift from its beginnings, and heavily lobbied Member States against it.

Using this mixed model allows to explain the response of the Member States to the Europeanization of China policy based on the mediating factors and attitudes which enabled or disabled policy change.

### 3 Findings

France, Germany and Britain significantly affected the EU's China sanction policy. The issue of the arms embargo has not been resolved, but the three members have been key players in putting and keeping the arms embargo on the top of the agenda one way or another. France and Germany did upload their preferences, and influenced other member States to follow their policy choices. Britain was also influential in the debate, but more as swing state: originally in favor, but ended up switching positions. The findings also showed that domestic factors (opposition parties, media, and public opinion), and external factors (importance of the transatlantic relationship, influence of the US in Asia, and China's attitude towards Taiwan) had a key impact on the outcome of the initiative, and empowered the will of the Big Member States.

The underlying premise of the debate on whether to lift the arms ban on China was strategic, relating more to the implications for regional and in particular cross-Strait security and stability. The US for instance worried as far as China's intentions and capabilities to make use of prospective arms imports following a lift. However, such concerns were likely to be mitigated as continued and targeted US pressure, compliance with the 1995 Wassenaar Arrangement and the EU Code of Conduct (EU Council 1998), and supplier states' own judgments in deciding the types of armament and defense technologies for transfers would prevent sales of direct lethal military significance. China's own capabilities to absorb imported equipment and technologies and integrate them into its own existing order of battle would also suggest that the transformation will take years, if not decades, to materialize (Saalman and Yuan 2004).

#### *3.1 The Case of the Embargo: An Aberrant or Normal Issue for EU Foreign Policy?*

The debate over a common approach towards the rise of China has become one of the most controversial and contested issues across the Atlantic and within Europe itself (Sandschneider 2008, p. 24). The lift of the arms embargo was at its core. One may wonder why the issue would provoke so much passion and intrigue, since the embargo was based on a political Declaration on China (EU Council 1989) made by



the European Council, and was never legally binding. The episode occurred before the creation of the European Union and before its Common Foreign and Security Policy (CFSP), which would later establish policies on legal instruments giving expression to CFSP decisions, including embargoes. The arms ban on China then was an 'empty shell,' and there was never a decision to revise its form (Jessen interview 2008). All other sanction measures that pre-dated the creation of new EU legal instruments have either been discontinued, or have been renewed and given a different legal form (Jessen interview 2008).

The arms embargo on China is unique in this regard. Since it was a political decision, it never fell into the Commission sanctions portfolio. The European Council was the one deciding to review it, not the Commission, which traditionally oversaw the application of sanctions by working with the Council (Jessen interview 2008). In its essence, the China sanction policy could only be affected by member states themselves. From this it can be argued that from a legal perspective there is not one arms embargo against China but a series of member state embargoes established under country laws and regulations (Sipri 2005). It ultimately comes down to the fact that once again the member states have the last word when it comes to foreign policy. The Europeanization of foreign policy regarding China remains more bottom-up and horizontal than top-down. France and Germany, and at some point the UK, based on their close ties with the PRC and their commercial and strategic interests in the region, pushed for the lift, by setting the agenda and influencing other member states. The issue was, moreover, symbolic and major European countries wanted to send a signal to Beijing to return to normalcy by lifting the ban. The lift of the embargo fitted a bigger EU plan vis-à-vis China. The EU wanted to be China's main partner and supply this huge market with commercial goods and participate in infrastructure projects, such as high-speed trains, civil engineering projects, and the construction of nuclear power plants (Kogan 2005, p. 9).

### ***3.2 Comparison of the Influence and Responses of the Big Three and Their Impact of Bilateral Relations***

Throughout history, while the EU-PRC relationship was evolving, the Big Three uploaded their individual national policy preferences in the promotion of their own relationship with China: a trade relationship for Germany, a political one for France, and the issue of Hong-Kong for the United Kingdom, no matter what was happening at the EU level (Crossick et al. 2005, p. 36). Although the UK became a foot-dragger on the issue of the embargo by not putting the issue on the agenda of its EU presidency in the second half of September 2005, the UK still used the Presidency-platform to hold bilateral meetings between British and Chinese ministry delegations. . .

In the questionnaire it was asked whether bilateral relations helped or harmed in developing a coherent EU China policy. It was established that big Member States

pursued their own interests rather than EU interests. The UK made the choice to abandon ship in order not to upset the US and lose them as a partner in its defense sector. Did France and Germany pursue the greater good congruent with the EU's? Their vision of a multipolar world fits the aspirations of the EU to become a stronger political player. There was no misfit between the German and French policies on one hand and the proposed EU policy on the other. The French and the Germans had a heavily regulated weapons sales export system, and a removal of the lift coincided with French, German and EU interests. Both countries qualified as pace-setters in their readiness for the policy—but above all in setting the agenda, formulating the policy and convincing other member states. The greater good was to improve the China-EU relationship, which fit the vision of a multipolar world. The short-term interest for France, Germany and their followers (Italy and Spain were big proponents) was to increase their market share in China (Giannella interview 2008). Since there was no true single common foreign policy, it was easier for member states to upload their national interests through the EU, as Britain did with Zimbabwe (Williams 2002), or in the case of Chad and France (Quille interview 2007). The British position was very fluid and did impact the outcome by maintaining the status quo, and favoring the transatlantic bond over a rising China and a coherent EU policy. Britain, as a big power, had the capacity to tip the scale through very discreet and limited lobbying.

Germany, France and the UK undoubtedly played an important role in agenda setting, policy formulation, and exchange of ideas with member states (Boden interview 2007). The three Member States were key players in the debate and exerted a strong influence, but other countries such as Italy were part of that group as well. Its Prime Minister, Silvio Berlusconi, spoke against the embargo on several occasions (Giannella interview 2008). The influence of the Big Three was naturally very visible at the European Council level, since the EU sanction policy towards China was essentially intergovernmental: (Latella 2007). As suggested earlier, the arms embargo did not qualify as a sanction per se, since it was a declaration—a loophole which needed to be addressed by an updated sanction policy vis-à-vis China (Quille interview 2007).

Based on the fact that the decision emanated from the Council and was not legally binding, there was some resentment even within European institutions about repealing the embargo. The European Commission originally seemed divided over the review decision. It appeared that EU Commission President Prodi was more in favor of lifting the embargo than the Commissioner for External Relations, Chris Patten. Following the EU-China summit in October 2003, President Prodi declared that the Chinese request for removing the embargo had a great chance of success, and when the decision about the review of the embargo was taken in December 2003, Prodi officially supported the measure (Kreutz 2004, p. 50). During the early months of 2004, Commissioner Patten and the External Relations office got on board, and concluded that the Code of Conduct might be a better method of restricting arms sales to China (Mure 2004).

The European Parliament (EP) was much more vehement on its opposition. In that case, there was a mismatch between France and Germany. The only

democratically elected body never supported the decision to lift the embargo, and passed several resolutions stating its opposition. The EP's stance reflected frustration with domestic opposition parties and with public opinion, since it always had a strong human rights culture (Brie interview 2007). The members of the European Parliament had an issue with the fact that the Code of Conduct was not legally binding, and therefore did not really make countries comply with human rights obligations (Latella interview 2007).

### ***3.3 Response to the Embargo by Other Member States***

Some member states were uncertain as to how to react when the issue was brought up by France and Germany, and were certainly not keen on lifting the ban (Jessen interview 2008). The Netherlands, Finland, Belgium, Portugal and Sweden voiced concerns over lifting the embargo without simultaneously pushing for significant improvements in China's human rights. Despite these concerns, the Netherlands and Denmark demonstrated a willingness to agree to lift the weapons embargo, if this represented the will of the majority. The opposition parties and public opinion in Northern European countries were strongly opposed to the lift, but could accept it as long as significant human rights improvements were noticeable. In January 2004, Dutch Prime Minister Balkenende, as the acting EU President during the Netherlands's 6-month EU presidency, stated that it would be detrimental for 'political and diplomatic relations for the Netherlands' upcoming presidency if they were the only country in favor of maintaining the embargo' (Kreutz 2004, p. 53). The consensus was to upgrade the Common Position and beef up the Code of Conduct (Quille interview 2007).

When the US started expressing their opposition to the measure, some member states did start revising their position. The United Kingdom was the first to do so, based on its special relationship with the United States. The new member states, also loyal to the United States and grateful to have joined NATO, would follow (Quille interview 2007). The creation of the strategic dialogue on Asia between the United States and the EU did not soften the US stance.

### ***3.4 The Place of China in the World and the Aspirations of the EU as a Global Actor***

The last question in the interview was about the possible increasing role of China in the international security sphere. Annalisa Giannella, special envoy from the European Council, on a lobbying 'campaign' trip in the United States observed that the embargo was an issue of adequacy in terms of the relationship with the PRC (Giannella interview Giannella 2008). The European Union wanted to develop a

true partnership, and scrapping the restriction would symbolize the increasingly positive tone of EU-China relations, and the role of China in the world. The rapid growth of Sino-European trade coincided with the development of the European political union and of a common European political identity. The draft European Security Strategy Paper stated that “a stronger Europe with a common strategic vision is also a Europe capable of consolidating relationships with the other great partners” like China, as “a pillar of the organization of the new world” (European Council 2003). Europe was trying to raise its profile in the region and saw Beijing as an essential counterweight to US dominance in world affairs (Bork 2004).

The EU-China relationship was also simplified by the fact that China was neither a military threat nor geographically adjacent to Europe (Griffin and Pantucci 2007, p. 163). From the Chinese point of view, European diplomacy was not confrontational on human rights and respected national sovereignty. Thus, the security concerns that dominated China’s relations with Washington did not hinder China’s dealings with Europe (Griffin and Pantucci 2007, p. 163). David Shambaugh goes further by identifying the Sino-European relationship as an emerging “axis” in international relations based on three pillars: engaging China through multilateral institutions that enhance its participation in international affairs; intensifying bilateral Sino-European ties; and improving China’s “domestic capacity” to govern (Shambaugh 2004). Both the EU and China aspire to play a greater role in international affairs, and both promote a multipolar world, each representing one pole.

The debate about the lift coincided with the ‘upgrade’ in EU-China relations to a strategic partnership (European Commission 2003). The concept implied a smooth relationship and cooperation in an increasing number of domains, including strategic ones (Giannella interview 2008). Over time, and especially since 1995, both the EU and China agreed that their relation had not only expanded but also deepened. The EU Council’s secretary-general/high representative Javier Solana added that, as partners, the EU and China had “significant global strengths, capabilities and responsibilities” (European Council 2003). To Solana, China was rapidly emerging as a world leader and positive actor on the global stage (Van Kemenade 2006, p. 10).

The strategic partnership entailed that global solutions could not be found without China. The PRC should play a more important role in international security. China was a global player, member of the UN Security Council and there have been convergences on non proliferation of weapons of mass destruction as well as on Darfur, Burma or North Korea (Latella Interview 2007). The EU believed that by treating China as a respected interlocutor, it could encourage Beijing to act as a partner on issues of global governance. The Chinese, though, saw the embargo as discrimination, and it seemed difficult to expect leadership from China with an EU embargo. The EU also expected Beijing to ratify the International Covenant on Civil and Political Rights, one of the main United Nations human rights treaties, in the near future (Mure et al. 2005). China could not be treated as a pariah states such as Burma, Sudan and Zimbabwe, the only other countries subject to EU arms embargoes. The EU leadership admitted there had not been enough progress on human rights,

but they maintained that China today was a more liberal country than it was in 1989 (Peel 2005).

In the words of EU External Relations Commissioner Benita Ferrero-Waldner (Crossick et al. 2005, p. 32):

“Both the EU and China have changed beyond recognition in 30 years and so has our relationship. Our existing trade and economic cooperation agreement simply does not live up to the dynamism of today’s partnership. It’s time to reflect the vibrancy of our relations with an ambitious new agreement that will help us move to a fully-fledged strategic partnership.”

It was agreed that the meaning of “strategic” would have to go beyond the traditional definition and encompass a comprehensive partnership, including economic and trade relations, civil society exchanges and political relations.

However, despite the fact that the term “strategic partnership” was not defined by the European Union, few have questioned the decision to include China as a strategic partner. The EU’s objective was to help China to be a peaceful, stable democratic (although not necessarily in the full Western sense), internationally responsible country, internally consensus seeking, and externally multilateral, sharing broadly similar values and goals. The intensification of bilateral ties between the EU and China—as well as between China and individual member states—did not mean either the weakening of EU-US relations, or the guarantee that both wanted to establish a multipolar world (Crossick et al. 2005).

### ***3.5 Applicability of Adaptation Theories on Foreign Policy***

The innovative methodology applies theories of adaptation to Europeanization used for community method policies (formerly Pillar 1), where member states comply with foreign policy, and where member states are the ultimate decision-makers. Drawing from Börzel (2002), Falkner et al. (2005), and Cowles et al. theories (2001), the study intended to see how the three member states would respond to EU rule. Applying the Börzel-model to a foreign policy issue was easily transposable, as the case of Britain shows. Britain was first a fence-sitter, “watching” France and Germany take the lead on the issue, wondering if it would correspond to its interests, before it decided to jump on the bandwagon. Then, based on the strong reaction from the United States, Britain became a foot-dragger and ended up tanking the initiative by convincing other member states in the spring 2005 that the timing was not right, and by not putting the issue on the agenda of its EU presidency in the second half of 2005. France and Germany were pace-setters from the beginning to the end, and even after 2005, French diplomacy would still bring up the issue while traveling to the region. Börzel’s classification could apply to other foreign policy cases and translates how member states might change their opinion as it evolves.

The Cowles et al. and Falkner et al. theories were more difficult to transpose to foreign policy, since foreign policy does not only follow one type of Europeanization but several. Models were adjusted to the needs of the study. Mismatch or misfit

meant that there was either disagreement between a member state and the EU, or lack of readiness to pursue a certain option. “Match” or “fit” meant that there was agreement between the member state policy and the EU proposed policy and readiness (export control regime) to adapt to the new policy. The mediating factors were adjusted to predict and explain the responses of the member states to a Europeanization of an EU-China policy. Their models were complementary to the questionnaire: the importance of external actors for instance was not mentioned in the questionnaire but was brought up during interviews and turned out to be an important mediating factor. The model was also a noteworthy tool to test the hypothesis of the influence on the ultimate impact of external factors.

As for future applications in foreign policy, with a reinforced High Representative we may see more top-down Europeanization of foreign policy and a stronger grip from Brussels. Reinforced European foreign policy institutions will certainly require adjustments in national political and administrative structures. In addition, this ‘national adaptation’ might well be supplemented by a process of ‘identity reconstruction’. The presence of an EU Foreign Affairs minister is likely to increase expectations of a common EU policy, thus constraining national policy choices and further enhancing the ‘coordination reflex’ among capitals. This will matter since the coordination process will henceforth be led by genuine European actors rather than member state Council presidencies (Jonas 2008, p. 31). Then adaptation models such as Falkner et al.’s or Cowles et al.’s should be easier to transpose as well. . . Let us now review three mediating factors that struck out and were decisive in making the issue fail.

### ***3.6 The Empowerment of External Actors***

#### **3.6.1 The Impact of the United States**

The involvement of the US was decisive in sabotaging the initiative of the lift. The pro-active stance of the US, we might even call the US an ‘external’ foot-dragger, confirmed the hypothesis that any policy initiative changing the EU sanction policy on China needs to be approved by the US, whether the lobbying for the proposal was successful or not. The US animosity was probably underestimated by the Europeans, and not necessarily understandable, given the US record regarding weapon sales to China. Indeed, the US previously sold both dual use technologies and arms to China (Giannella interview 2008).

The frenzy about a potential conflict in the Taiwan Strait puzzled the Europeans. The PRC would not engage Taiwan in a war while the island was one of the largest foreign investors in the Chinese economy. The issue seemed more a turf brawl where the US might feel threatened by the emerging Sino-European Axis and by the economic and geopolitical rise of China, which might threaten the ability of the US

to act as a unique balancing power in the region, and marginalizing its regional influence (Wolfe 2004, p. 2).

Although the arms embargo issue introduced yet another serious dispute into US-European relations, it led to the creation of dialogue between the US and Europe to coordinate their policies in Asia, and have a strategic discussion about how Chinese development can contribute to international security (Griffin and Pantucci 2007, p. 167). The EU was the initiator of those forums with a view to avoid further misunderstandings about policies. These dialogues were conducted by the so-called troika, consisting of the senior official in charge of East Asia at the foreign ministry of the incumbent presidency, together with the ones of the previous and the next presidency. Their interlocutor on the US side was the assistant-secretary of state for Asia-Pacific Affairs, Chris Hill. Main themes on the agenda were global issues such as the Middle East, Iran, North Korea, terrorism etc., where the US and the EU have common concerns. The focus was no longer on the lifting of the arms embargo: the proposal had been removed from the EU agenda due to a lack of consensus within the Union (Van Kemenade 2006, p. 10).

### 3.6.2 Taiwan

The EU's official policy with regard to Taiwan was consistent with the Chinese government's "one-China" principle. On Taiwan, there was no mismatch between France, Germany, Britain, and the EU: they all recognized the government of the People's Republic of China to be the sole legal government of China, and did not establish diplomatic relations with the island. On the other hand, as the EU's third largest trading partner in Asia, Taiwan is an important economic partner; therefore, its interests cannot be completely ignored. The EU's main objective in managing these relationships has been to try and balance economic relations with Taiwan while maintaining good political relations with Beijing. For the most part, the EU has employed a cautious approach towards Taiwan that has caused little friction, but has not been completely without controversy. Following passage by the Chinese government of an anti-secession law directed at Taiwan, the EU Commission voiced its concern over an explicit reference in it as to the use of "non-peaceful means" to resolve the issue, and warned against unilateral action. The Commission stressed that "any arrangement between Beijing and Taipei could only be achieved on a mutually acceptable basis, with reference also to the wishes of the Taiwanese population" (Glen and Murgo 2007, p. 37, the citing the Commission of the European Communities 2005). The EU, however, did not associate the anti-Seccession Law issue with the lift of the arms embargo—unlike the United States. Given the poor record on human rights, the timing of the Chinese was disastrous, and showed that the Chinese authorities did not make any connections between the two: as expected, the Taiwan issue remained more important to the US than to EU-China relations. Secondly, it is worth noticing that the EU and Member States did not seem too alarmed by these regional security considerations in Asia, when they thought of their relations with China, which might have explained the neutral

reaction at the announcement (Balme and Bridges 2008, p. 137). This attitude differed with the US', which was involved in the region.

### ***3.7 A Main Veto Point: The Weight of Domestic Opposition***

Domestic opposition was the other main veto point in several countries. Although there was a consensus among member states' governments to review and possibly remove the embargo, most of the domestic political oppositions were against the process regardless of political affiliation. Regarding the Big Three, the level of opposition was the most vociferous in Germany, followed by the UK, and somehow under control in France, since there was not so much of a public debate. Even though this opened up a chance for debate on EU foreign policy, this divide between those in power (on the "inside") and those in opposition (on the "outside") created a strange political landscape and reinforced the idea of 'democratic deficit' where national voters and citizens had no control whatsoever about the decisions made in Brussels. This criticism was not necessarily fair since most of those decisions were actually taken by Member States themselves and specifically by their executive branches. The European Parliament, as the only democratically elected European body opposed the lift, but could not affect the final outcome, since it only had a consultative role in foreign policy. In a sense, the consequence of insider-outsider politics is that the EU *acquired* a foreign policy, but not a *debate* on foreign politics (Kreutz 2004, p. 55).

### ***3.8 The Thorny Issue of Human Rights***

The status of human rights was a scale-tipping issue that prevented the repeal of the embargo. To the proponents of the lift, the ban did not directly result in human rights improvements, and the EU even officially ceased to link political and human rights dialogues to possible sanctions on trade or security issues (Balme and Bridges 2008, p. 137). Furthermore, the PRC made some progress on this issue, such as a permanent dialogue with the EU since 1995, participation in some conventions and other benchmarks.

For the opponents, however, the record was just not enough, and they were expecting some strong signals, such as the release of political prisoners from the Tiananmen events, which never materialized (Giannella interview 2008). Concerns about religious freedom, cultural rights, and what has been called "ethnic dilution" in Tibet also fueled the rhetoric of the anti-camp rhetoric. The EU regularly raised the issue of Tibet in its bilateral dialogues with China, and had asked for a Chinese ratification of the International Covenant on Civil and Political Rights (ICCPR), which would be viewed as an important benchmark of progress in the EU-China



dialogue. However, despite years of pressure on this issue, the Chinese government never ratified the covenant (Balme and Bridges 2008, p. 139).

## 4 Conclusion and Agenda for Future Research

The debate surrounding the arms embargo on China highlighted some important problems regarding the development of EU foreign policy. It also revealed some indication of the potential the EU carries as a political actor. The EU seemed to struggle to find a right balance between its economic and security interests in its China policy, and to define its own identity, often overshadowed by the Big Three. The Big Three significantly Europeanized the EU-China policy through uploading their preferences. At the same time it appears that European countries have not, either individually or collectively, developed a coherent China policy. Thinking about China has been driven by political and commercial considerations, rather than an evaluation of the security environment in East Asia and China's place within it (Sipri 2005, p. 20).

The member states of the EU must also recognize the critical importance of speaking with one voice pertaining to China. By acting together, they can play a vital role in bringing progress to China and other developing nations. The Union's soft-power "toolbox" (trade, finance, technical assistance, etc.) should be used to demonstrate the importance of regional cooperation to Beijing, and the fact that a strategic partnership with the EU should be a clear "win-win" for both sides (Crossick et al. 2005, p. 37).

Furthermore, the European Security Strategy states that strategic concerns and human rights are important objectives for EU foreign and security policy (European Council 2003). There is, however, no indication as to which of these two is considered more important. The EU as a political entity should be able to bring some leadership on conflicting issues characterizing foreign policy, without waiting for indications coming from Member States. Continuing to link the lifting of the arms ban to progress in China's human rights improvement for instance, will be increasingly difficult to sustain, and indeed may become an irritation to the relationship as the EU begins to implement its comprehensive strategic partnership with China. The 2008 Lisbon Treaty institutional reforms in foreign policy should indicate how human rights, trade and strategic interests will affect one another.

Finally, it would be interesting to look at other regions to see whether the EU sided with human rights or trade, or whether the EU chose a pioneering road. In the case of EU leadership in sanctions, it could be interesting to compare our case to others and assess the status of member states' sanctions legislation, investigations and prosecution of alleged non-compliance and enforcement.

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# The European Union as an Actor in International Trade Relations

Christian Burckhardt

## 1 Introduction

Article 3(e) of the Treaty on European Union (EU) indicates that the two main objectives of the Common Commercial Policy are “free and fair”. On an abstract level, it is conceivable that the trade policy of an actor is both free and fair at the same time, although it is unlikely in the case of the EU, one of the most powerful economic actors on the planet. The official discourse of the Commission puts a strong emphasis on “fair”. The Directorate-General (DG) Trade regards as its main mission “to ensure prosperity, solidarity and security around the globe” (European Commission 2010a). In a similar vein, the Laeken Declaration of the European Council stated that the EU is “a power seeking to set globalisation within a moral framework; in other words, to anchor it in solidarity and sustainable development” (European Council 2001, p. 2).<sup>1</sup>

This chapter argues that the EU’s rhetoric serves as a “normative dressing” over an essentially realist agenda (Smith 2006, p. 530). The realist hypothesis, inspired by Schweller and Gilpin, predicts a strong attachment to commercial and geopolitical goals, a strategic selection of trading partners, and a disregard for normative concerns and societal groups (Schweller 1999; Gilpin and Gilpin 2002; Antkiewicz 2009, p. 229). In short, the complete opposite of what is often called in the literature “civilian” (Duchêne 1973) or “normative” power Europe (Manners 2002). After further detailing the EU’s objectives, the chapter proceeds to analyse the Union’s

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<sup>1</sup> Nearly a decade later, the Commission reaffirms this point at the WTO: “against the background of our substantial role in the global trading system, the basic objective of our trade policy has always been to support sustainable development at home and abroad. . .” (WTO 2009a, p. 6).

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instruments, style and decision-making procedures in the area of international trade, with a particular emphasis on the Economic Partnership Agreement (EPA) negotiations with developing countries.

## 2 Objectives: Market Access, and Competition with the US

The Union is motivated by structural power concerns, particularly since 2004 when José Barroso became the President of the Commission (Aggarwal and Fogarty 2004, p. 228). The Union's key interest is its relative economic position vis-à-vis the US, and to a lesser degree the emerging economies, especially China (European Commission 2010c, p. 11). South African and Brazilian diplomats confirmed that they regard the EU as an actor pursuing its narrow economic interests rather than as an actor oriented towards the promotion of human or social rights in its trade relations (Garibay 2009, pp. 775, 778). Trade policy, in short, is “an essential element of a European policy of competitiveness” (Council of the European Union 2006, p. 2). In practice, this means that the EU focuses on trade liberalisation, reciprocity and—in the words of Trade Commissioner Peter Mandelson—“hard-nosed” market access policies (European Commission 2007, p. 3; European Commission 2006, p. 3; Meunier 2005, p. 917). Already from the mid-1990s onwards, the EU was more interested in proactively opening foreign markets for European firms, rather than in defending the EU's single market and its Common Agricultural Policy (DEFRA and HM Treasury 2005; Keukeleire and MacNaughtan 2008, p. 202). In comparison with its international competitors, the EU traditionally favoured ‘deeper’ trade integration, including the so-called ‘Singapore issues’—investment, competition, transparency in public procurement and trade facilitation.

A dedicated market access unit was created within DG Trade, which administers a large database listing foreign barriers by sector, country and type of measure. In addition, the Commission has set up market access teams in thirty-nine third countries monitoring the implementation of free trade agreements (European Commission 2010c, p. 12). The strategy is to identify foreign barriers to EU imports in a comprehensive manner, prioritise them, and push foreign governments to eliminate them (Shaffer 2006, p. 838; Bretherton and Vogler 2006, p. 231).

Competition between EU and United States' (US) firms for third market access represents an important driver of trade policy (Sbragia 2010, p. 369). As Table 1 illustrates, the majority of EU trade initiatives have been launched to neutralise trade diversion after similar US actions, with several Latin American countries as a prime example (Woolcock 2007, p. 3).<sup>2</sup> Aggarwal rightly argues that the “only way to demonstrate that structural power concerns are not relevant would be if the US pursued regimes, and the EU failed to respond” (Aggarwal and Fogarty 2004,

<sup>2</sup> A Commission official admits that the Free Trade Agreement (FTA) negotiations with several Latin American countries were launched on the basis of “the perceived diplomatic need to develop the overall EU relationship with Latin America” (Baldwin 2006, p. 938).

**Table 1** Status and year of trade agreements with selected countries/regions

Country/Region	US	EU
Asia-Pacific	Asia-Pacific Economic Cooperation (APEC) founded 1989	Asia-Europe Meeting (ASEM) founded 1996
Canada	Entered into force 1994	Negotiations launched 2009
Central America	Approved 2005	Launched in 2007
Colombia	Signed 2006	Negotiations started 2009
Mexico	Entered into force 1994	Entered into force 2000
Latin America	Free Trade Area of the Americas Negotiations launched 1994	EU-Mercosur Association Agreement. Negotiations launched 2000
Peru	Signed 2006	Negotiations started 2009
Republic of Korea	Signed June 2007	Launched May 2007
Singapore	Entered into force in 2004	First negotiation round took place in 2010

Source: (Office of the US Trade Representative, 2010; European Commission 2010a, b, c)

p. 228). This has not happened. In fact, as we will see below, since 2006 the EU is on the offensive.

Some observers consider multilateralism, at least until the departure of Pascal Lamy as Trade Commissioner in 2004, as an objective of EU trade policy (Defraigne 2002; Van Den Hoven 2006, pp. 186–187). Lamy’s mantra was “managed globalisation”, privileging normative foreign policy objectives at the multilateral level over economic objectives at the bilateral and the regional level (Sbragia 2010, p. 370; Meunier 2007, p. 906). After the creation of the World Trade Organisation (WTO) in 1995, the Organisation had called repeatedly for an end to bilateral free trade agreements, as they “further complicate the multilateral trade regime” (WTO 2007, p. xii).

The EU indeed stopped pursuing new free trade agreements in 1997. Nevertheless, Lamy’s rhetoric and the EU’s FTA moratorium could not hide the fact that for the EU, the WTO remained a means to an end, not an end in itself. A Commission Communication reaffirming market access as a ‘prime objective’ of EU trade policy was published in 1996, just 1 year before the moratorium on new free trade agreements came into effect (European Commission 1996, p. 19). In any case, the moratorium only concerned new FTAs. The EU continued to negotiate ongoing FTAs with Mexico, South Africa and Chile in the period 1997–2002. As long as an EU-US duopoly dominated the WTO, reinforcing the existing balance of power, legally binding rules were considered the most efficient way to open foreign markets to European producers (Young 2006, p. 194; Meunier 2005, p. 914; Wilkinson 2004, p. 144). Once the 2003 WTO Ministerial Meeting in Cancun collapsed due to differences on agriculture between the EU-US duopoly and the G20 group of emerging and developing economies, the Union announced only 2 months later the end of its FTA moratorium (European Commission 2003, p. 16). It simply would try to achieve bilaterally what it had failed to achieve multilaterally (Woolcock 2007, p. 8). In addition, the importance of ‘managed globalisation’ was

most likely overrated. In fact, as one DG Trade official admits, in all likelihood it was only Lamy and his close aides who were guided by the doctrine (Meunier 2007, p. 910).

The argument that the EU prioritises interests over values in its trade policy needs to be qualified in three ways. First, geographic proximity, eligibility for EU membership, and level of development of the negotiation partner matter, of course. Commercial motivations are expected to be strongest—*ceteris paribus*—when dealing with industrialised economies not in the EU's immediate neighbourhood,<sup>3</sup> and weakest when dealing with developing economies close to Europe, such as the Mediterranean countries (Woolcock 2007, p. 2). Second, the distinction between values and interests in areas such as environmental protection, social rights and health and safety standards is nearly impossible. It could be argued that the Union's attempts to export strict environmental regulations are simply a way of protecting Europe's heavily regulated corporations from foreign competition, for instance. Third, the EU's position on a number of limited trade issues, such as the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement in the Doha Round, might indeed have been influenced by normative considerations (Adrian Van Den Hoven 2006, p. 191). Nevertheless, on most issues, a distinction between values and interests is possible, and the Union opts for the latter in the vast majority of cases—with the vast majority of counterparts.

### 3 Instruments: Market Size, Variety of Trade Agreements, and *Fonctionnaires*<sup>4</sup>

The combination of market power, the ability to forum-shift, a wide selection of differentiated trade agreements together with vast material and informational resources make the EU a 'formidable trade power' (Meunier and Nicolaidis 2005, p. 247).

#### 3.1 *Market Size*

Size matters in the world economy: the bigger the market, the greater the potential economic power (Hirschman 1980). The EU's most powerful external policy instrument is therefore undoubtedly the Single European Market (SEM). It featured a combined population of over 500 million inhabitants, and a nominal GDP of over sixteen billion US dollars in 2010, representing 20 % of global GDP in terms of purchasing power parity (PPP) (World Bank 2011). Throughout the first decade of

<sup>3</sup> The arduous FTA negotiations with South Korea provide a recent example.

<sup>4</sup> In international trade parlance, *fonctionnaires* is a French equivalent widely used for civil servants.

the new millennium, the Union remained the world's leading merchandise trader; the world's leading trader in services<sup>5</sup>; the world's largest energy importer; and finally the world's largest provider and recipient of foreign direct investment<sup>6</sup> (WTO 2009a, pp. 12–13). The sheer size of the ESM attracts third parties for its limitless economic opportunities and forces them into submission for fear of being excluded (Meunier and Nicolaidis 2005, p. 248). The Commission itself acknowledged that the ESM provides it with “significant leverage” in trade negotiations (European Commission 2010b, p. 23).

### 3.2 *Variety of Trade Agreements*

Another distinct advantage of the EU is the plethora of different trade agreements at its disposal at the unilateral, bilateral, plurilateral and multilateral level (Hix 2005, p. 385).

At the unilateral level, two initiatives stand out. Since 1971, the EU has participated in the General System of Preferences (GSP), a scheme initiated by the United Nations Conference on Trade and Development (UNCTAD), granting developing countries preferential tariff treatment for particular products under a permanent waiver to the most-favoured nation (MFN) clause stipulated under WTO rules (European Commission 2011c).<sup>7</sup> Empirical evidences suggest that the current share of preferential trade under GSP schemes is around 3 % of global trade (Bora et al. 2002). In 2001, the EU went one step further, and granted duty- and quota-free access to all exports (except arms and munitions) to all Least Developed Countries (LDC) as defined by the United Nations. The Everything But Arms (EBA) Regulation is unique to the EU, and often presented as proof of the Union's value-driven trade policy. However, Yu characterised it as a “cheap window dressing plan”, because it excluded the key crops of bananas (until 2006), rice and sugar (both until 2009) (Page and Hewitt 2002; Yu and Jensen 2005).

Table 2 shows the variety of different EU trade agreements at the bilateral level. The content of the agreements inevitably varies depending on the partner and the year they were concluded, the more recent agreements often cover a broader range of sectors—such as services, investment and public procurement—and contain provisions on political, social and cultural cooperation.<sup>8</sup> The EU calls the more

<sup>5</sup> In 2006, the EU accounted for 27.3 % of global services exports and 24.0 % of imports (WTO 2009b, p. 11).

<sup>6</sup> In 2006, the EU accounted for 40.7 % of global inward FDI stock and 51.5 % of global outward stock. (WTO 2009b, p. 12)

<sup>7</sup> Other countries granting GSP preferences are Australia, Belarus, Canada, Japan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the United States of America (UNCTAD 2012).

<sup>8</sup> In international trade parlance, these agreements are also called ‘second-, third- or fourth generation’ agreements. Agreements focusing primarily on tariff elimination are called ‘first generation’ agreements.



**Table 2** Types of EU free trade agreements

Nature of agreement	Partners
Association Agreement	Chile
Comprehensive Economic and Trade Agreement	Canada*
Cooperation Agreement	Argentine, Bangladesh, Brazil, Paraguay, Uruguay
Deep and Comprehensive Free Trade Areas	Armenia, Egypt*, Georgia, Jordan*, Morocco*, Tunisia, Ukraine*
Economic Partnership Agreement	West Africa, Central Africa, Eastern and Southern Africa, Eastern African Community, South African Development Community, Caribbean*, Pacific*
Economic Partnership, Political Coordination and Cooperation Agreement	Mexico
Energy Community Treaty	Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and the United Nations Interim Administration Mission in Kosovo
Europe Agreements	Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia
European Economic Area	Norway, Lichtenstein, Iceland
Euro-Mediterranean Association Agreement	Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority
Free Trade Agreement	India*, Singapore*, South Korea, Switzerland
Inter-Regional Cooperation Agreement	Andean Community*, Mercosur*, Central American Customs Union*, Gulf Cooperation Council*, Association of Southeast Asian Nations*
Partnership Agreement	African, Caribbean and Pacific Group (ACP)
Partnership and Cooperation Agreement	Armenia, Azerbaijan, Georgia, Iraq*, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, Uzbekistan, Tajikistan
Stabilisation and Association Agreement	Accession candidate countries (Croatia, Albania, Montenegro)
Trade, Development and Cooperation Agreement	South Africa
Trade and Economic Cooperation Agreement	China*

Sources: (European Commission 2011a). Agreements with asterisk under negotiation as of June 2012; all other agreements listed have been concluded.

comprehensive agreements usually ‘Association Agreements’, while agreements focusing exclusively on tariff elimination are entitled ‘Cooperation Agreements’ or FTAs. Agreements with developing countries are often called ‘Partnership Agreements’.<sup>9</sup> Some agreements are unique to the EU because of its nature as a

<sup>9</sup>This is merely a general characterisation, which does not claim to apply to all of the EU’s trade agreements.

supranational regional organisation, such as Stabilisation and Association Agreements for the accession candidate countries and the inter-regional agreements with other regional organisations. Nevertheless, even excluding these two particular types of trade agreements, the Union still maintains more formal trade relations with third parties than any other entity in the world.<sup>10</sup> The EU has concluded or is negotiating preferential trade agreements with sixteen of its twenty main trading partners in goods, for instance (European Commission 2011b, p. 22).<sup>11</sup>

The EU is also a signatory of the two plurilateral treaties under the aegis of the WTO, the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement (Woolcock 2010, p. 383).<sup>12</sup> Again, this is a sign of the breadth of the Union's trade relations as only thirty and forty-one WTO members respectively are covered by these agreements (WTO 2011).

At the multilateral level, the EU has been a "key player" in the negotiation and establishment of the WTO and the Doha Development Agenda (DDA) (Hix and Hoyland 2011, p. 308). The Union remains heavily engaged in all aspects of the WTO's operations. As one of the four WTO members with the largest share of world trade, the EU's trade policy is subject to review every 2 years under the Trade Policy Review Mechanism (TPRM); other members are reviewed only every 4–6 years.<sup>13</sup> Recent TPRMs have concluded that in comparison with its main competitors, the EU has a relatively benign trade policy stance concerning tariff rates, MFN duty free imports, and General Agreement on Trade in Services (GATS) service sectors with commitments (Evenett 2007, p. 68). Nevertheless, while only 8 % of the EU's tariffs are internationally classified as tariff peaks, those peaks are concentrated in sectors of key export interest to developing countries. Textiles and agriculture in particular are industries, which are labour-intensive, employ millions of people in developing countries, and account for a substantial proportion of their exports (WTO 2009a, p. 19). The EU's applied MFN tariff on agricultural goods averages around 18 %, on footwear 17 %, but only 4 % on industrial products (WTO 2009a, p. 34). This contrasts starkly with the EU's strong rhetorical commitment to 'fair and free trade'. Thus, developing and emerging economies such as Chile rightly criticise the EU for "not preaching by example" (WTO 2009a, p. 29).

Furthermore, the EU is playing a very active role in the WTO's Dispute Settlement Mechanism (DSM), second only to the US (O'Shaughnessy 2006, pp. 186–188). The

<sup>10</sup> As a comparison, the US had 11 FTAs in force with 17 countries as of November 2011 (International Trade Administration 2012).

<sup>11</sup> The remaining four trading partners are the US, China, Russia, Japan and Australia.

<sup>12</sup> A plurilateral treaty is a treaty between a limited number of states with a particular interest in the subject of the treaty (Aust 2000, p. 112). The main difference between a plurilateral and other multilateral treaties, according to article 20(2) of the Vienna Convention on the Law of Treaties, is that under a plurilateral treaty a reservation requires acceptance by all the parties.

<sup>13</sup> The TRPM mandates that the four member states with the largest shares of world trade (the EU, the United States, Japan and China) be reviewed every 2 years, the next 16 be reviewed every 4 years, and others be reviewed every 6 years (WTO 2012c).

Commission boasted that it has “continuously been more on the offensive than the defensive” (European Commission 2004, p. 10). In fact, the EU has brought more cases against the Americans than vice versa (McCormick 2007, p. 97).

Since 1995, the EC has been a complainant in 85 cases, a respondent in 70 cases, and a third party in 113 disputes.<sup>14</sup> For comparison, the figures for the US are 98, 113 and 93 respectively (WTO 2012b). A third of the EU’s complaints have been directed against emerging and developing countries (WTO 2012b).<sup>15</sup> The Union has generally been a successful litigant, winning thirteen, and losing only four completed cases in the period 1999–2004. Vigorous in seeking to enforce the rulings it has won, the EU has sought, threatened or imposed sanctions on multiple occasions (Young 2006, p. 195).

The fact that so few middle- and low-income WTO members have succeeded in holding the EU to account through the DSM, while the EU has made such active use of the WTO’s legal framework to pursue its interests, puts the Commission’s leading role in establishing the DSM in a different light (O’Shaughnessy 2006, p. 189). The EU justified its strong support for a codified set of rules with the argument that all WTO members should have an equal say in settling trade-related disputes (European Commission 2010c). Nevertheless, Busch and Reinhardt demonstrated that the DSM is more effective for developed than for developing countries. In identical circumstances, India has a 41 % chance of getting an average defendant to concede, Australia, on the other hand, 73 % (Busch and Reinhardt 2003, p. 734). The lack of transparency in procedures, the dominance of powerful states, the relative deficiencies in legal expertise of the developing countries, the lack of domestic legislative input, and the absence of civil society contributions all turned the DSM into an opaque intergovernmental process, largely determined by power politics (Lee 2004, pp. 121–122).<sup>16</sup>

Serious tensions remain between the EU’s frequent participation in the DSM, and its frequent use of essentially unilateral trade defence instruments (DTI) (Smith 2006, p. 531): anti-dumping and anti-subsidy measures, safeguards, and the Trade Barrier Regulation (TBR) (Stevenson 2005). Anti-dumping, by far the most important DTI used by the EU, is the imposition of import tariffs and minimum price levels, if exporters sell at discriminatory prices that are likely to harm European producers (Woolcock 2010, p. 394). The Union initiated 428 anti-dumping procedures from January 1995 until June 2011; only India (647) and the US (452) initiated more (WTO 2012a). Safeguard measures allow WTO members to restrict temporarily the imports of a product to protect a specific domestic industry from a surge in imports (Hix and Hoyland 2011, p. 307). Modelled on US Section 301, the

<sup>14</sup> In the period 1995–2004, the EU was defendant in 15 % and plaintiff in 17 % of all disputes (McCormick 2007, p. 97).

<sup>15</sup> 35 out of 85 cases were brought forward against China, Mexico, Indonesia, Brazil, Argentina, India, Chile, Pakistan and the Philippines.

<sup>16</sup> In principle, developing countries are free to withdraw from the WTO, but the loss of MFN rights constitutes a strong deterrent (Brown and Stern 2005, p. 1)

EU TBR is a mechanism which allows industries and enterprises to bring complaints to the European Commission when foreign trade measures prevent their access to third-country markets (Crowell and Moring 2005). In contrast to other TDI, the TBR is not confined to the EU's domestic market, but attempts to force third-countries to change their national policies to improve market access opportunities for EU exporters. Woolcock thus characterised it as an "instrument of aggressive unilateralism" (Woolcock 2000, p. 392).

### 3.3 *Fonctionnaires*

Finally, the Union possesses human resources specialised in external trade questions, the 660 *fonctionnaires* of the DG Trade in Brussels, and the trade experts *sur le terrain* in the EU Delegations (European Commission 2008).<sup>17</sup> In Switzerland alone, the EU employs 23 staff in the Delegation to the UN (European Commission 2012c), 18 staff in the Delegation to the WTO (European Commission 2012b), and eight staff in the Delegation to Switzerland (European Commission 2012a). In comparison, 28 WTO members have no Permanent Delegations in Geneva at all (Blackhurst 1998, p. 36), and only 34 WTO members have Permanent Delegations to the WTO (Mission of Switzerland to the UN in Geneva 2011). At the WTO Ministerial Meeting in Cancun in 2003, the delegations of the US and the EU comprised more than 800 officials each; the Central African Republic, on the other hand, was able to send only three diplomats to Mexico (Wilkinson 2004, p. 128). The Union's superior human resources are crucial, as trade questions require a great number of highly specialised economists and lawyers, The WTO in Geneva conducts around ten meetings a day, for instance (Shaffer 2005, p. 134).

## 4 Style: Sanctions, Threats, and Demands

The Union's trade policy style and the manner it employs all of the instruments at its disposal resembles that of a great power: not built around persuasion, but rather around threats, sanctions and demands (Kerremans and Orbie 2009, p. 629). The EU offers incentives and punishments through trade to encourage its targets to comply, and deploys its structural power to demand concessions from those who wish to gain access to its market (Smith 2006, p. 532). As Galtung already remarked in 1973, bilateral or regional agreements between a customs union of highly developed European states and various individual or regional groupings are bound to confer a great deal of structural power to the centre in relation to the periphery (Galtung 1973). Third countries are often economically dependent on aid

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<sup>17</sup> The number cited is for 2011 and includes all function groups.

and trade flows from Europe: *demandeurs* with no credible outside options (Meunier 2005, p. 168). This manifests itself in the inclusion of provisions in FTAs that would not be acceptable among countries more balanced in power (Brown and Stern 2010b, p. 34). A favourite strategy is ‘forum-shifting’: constantly searching for the best “venue” to dominate a divided set of supplicants and trade partners, subject to the EU’s pyramid of privilege (Aggarwal and Fogarty 2004, p. 227). The Commission plays countries against each other through engaging in simultaneous multilateral, regional and bilateral negotiations, thereby threatening to deny benefits to some countries that it offers to others (Gruber 2000). Another strategy is simple blackmailing: FTAs between the EU and developing countries provide potential retaliation measures should the target country refuse to cooperate with the Union (Lee 2009, p. 202). The EU requested a waiver for its Cotonou trade agreement with the ACP group of countries at the WTO Doha Meeting in November 2001, for instance. Latin America countries, joined by the Philippines and Thailand, suspected that the EU’s insistence to deal with the waiver in Doha was merely intended as a sweetener to secure ACP agreement for the launch of the new trade round (Wilkinson 2004, p. 123).

#### 4.1 *Economic Partnership Agreements*

The best current example of the Commission’s “vigilant defence of European interests” (European Commission 2010c, p. 4) are the Economic Partnership Agreements (EPAs) with developing countries. While too early to evaluate their economic effects, the style of negotiation is critical for the fairness of the outcome (Brown and Stern 2010a, p. 3).

In the 1990s, the unilateral preferential access which the EU granted to 79 former colonies, known as the African, Caribbean and Pacific (ACP) countries, came under increasing attack for violating WTO rules by discriminating against other developing countries. As a result, the EC has been negotiating EPAs with the ACP countries since September 2002.<sup>18</sup> The negotiations aimed to replace the unilateral preferences granted under the Cotonou Agreement by bilateral preferences granted under EPAs. The European Commission praised EPAs as “poverty reduction mechanisms” (European Commission 2010a, b, c), which would “ensure a transparent. . . framework for trade and investment and stimulate regional integration as well as domestic adjustment and development processes” (WTO 2009a, p. 8). The EU’s stated commitment to these developing countries appeared convincing, considering that the 79 ACP states accounted for only 3 % of EU exports and 4 % of EU imports (Woolcock 2007, p. 3). Nevertheless, in 2012—ten years after the commencement of the

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<sup>18</sup> The ACP group consists of 48 sub-Saharan African states, 16 states in the Caribbean, and 15 states in the Pacific. Cuba has not signed the Cotonou Agreement, and does not participate in the EPA process.

negotiations—only 15 countries had signed a full EPA, 23 had signed an ‘interim’ EPA focusing exclusively on goods, and 40 countries had initialled no EPA at all.

This overwhelming rejection was due to the Commission’s unilateral and aggressive approach during the negotiation process. Following practice established since the First Lomé Convention in 1975, the ACP group wanted one binding agreement that would inform all EPA agreements. More than 24 areas of common concern, including objectives and principles of EPAs, were identified by the ACP Secretariat (Lee 2009a, b, p. 93). The EU, however, decided no longer to negotiate with the ACP countries as a group, but to divide them into six negotiation regions: West Africa, Central Africa, Eastern and Southern Africa, the Southern African Development Community, the Caribbean, and the Pacific. Aggarwal and Fogarty’s analysis of the EU’s interregional trade ties revealed that the Union preferred interregional deals, because it was better placed to define relevant elements of the regime (Aggarwal and Fogarty 2004, p. 227). This ‘divide and rule’ negotiating ploy created six smaller counterparts, which were internally incohesive as most EPAs contained both LDCs and non-LDCs (Orbie 2008, p. 46).<sup>19</sup> In addition, the new regional groupings were inconsistent with, and thus undermined, existing African economic and political blocs (Ochieng and Sharman 2004, p. 3). LDCs were left with the difficult decision whether to join more developed countries in regional EPAs or hang on to the privileged non-reciprocal access granted under the EBA initiative (O’Shaughnessy 2006, p. 194). Most LDCs were forced to make such data-intensive cost-benefit analyses under intense time constraints without trade sustainability impact assessments (SIA). The few SIAs, which were completed in time, did not have a substantial impact upon the actual conduct of the negotiations (Raza 2007, p. 80).

Furthermore, the Commission broadened the scope of the EPAs to include a wide array of trade issues going beyond WTO requirements.<sup>20</sup> The insistence on the inclusion of services, intellectual property rights, and the ‘Singapore issues’, all of which would almost exclusively benefit European companies, underlined the EU’s objective to increase its foreign investments in these regions, rather than to contribute to equitable and sustainable development (Dür and Bievre 2007, pp. 89–90). Cariforum, the only region which concluded a full EPA, committed itself to open nearly 90 % of its goods and services sectors, for instance (Mohammed 2009, p. 160). Other regions only accepted ‘interim EPAs’, mostly confined to trade in goods, which was sufficient to ensure WTO compatibility.

However, even the ‘interim EPAs’ with their eventual elimination of tariffs on at least 80 % of trade might impose high-adjustment costs and loss of government revenues on developing countries. Joseph Stiglitz remarked that “EPAs do not give

<sup>19</sup> The East African group included the LDCs Uganda and Tanzania, and non-LDC Kenya, for instance.

<sup>20</sup> These issues include sanitary and phyto-sanitary measures, intellectual property rights, public procurement, competition policy, investment, trade and environment, trade and labour standards, consumer policy regulation and consumer health protection, standardization and certification, and food security (WTO 2009b, p. 28).

sufficient opportunities for businesses in LDCs to develop to levels where they can compete favourably with their counterparts in the EU...” (Ghana News Agency 2008).<sup>21</sup>

Despite the uncertainty about the EPA’s economic impact, the Commission has applied constant pressure on ACP countries to ratify them. Several ‘interim EPAs’ were signed only because the Union was threatening to apply punitive tariffs on non-signatories’ exports into the EU. The ACP Council of Ministers “urged the European Commission to . . . desist from exerting pressure at the highest political level. . .” (ACP Council of Ministers 2006), and called for ‘interim EPAs’ to be re-negotiated (ACP Council of Ministers 2007).

## 5 Decision-Making

In the field of trade, the Union’s institutional framework performs similar to a traditional state (Young 2006, p. 203). Power is centralised within the DG Trade, which has successfully captured external trade policy (Bilal 1998). The vast volume of the literature confirms the relative independence of the Commission in trade negotiations, either from a principal-agent perspective, or by means of two/three-level game models. The principal-agent perspectives talk about “agency slack”, and the Commission’s “agenda-setting power” (Meunier 2007, p. 908), as well as multi-level approaches situate the negotiator’s autonomy within the EU’s win-set (Van den Hoven 2007).

### 5.1 Free Trade Agreements

Nevertheless, trade policy remains a case of ‘iterated delegation’, meaning that each specific trade negotiation requires a different mandate. This reinforces the Council’s possibilities to discipline the Commission if it acted too autonomously during previous acts of delegation (Kerremans 2004, p. 370). Thus, the Commission draws on the position of member states, the views of business and civil society, and reports from national parliaments to produce a draft mandate for the initiation of international trade negotiations (Woolcock 2010, p. 387). The ‘article 207 (formerly 133) Committee’, composed of senior trade experts from the member states representations in Brussels, amends the proposal, and sends it to the ‘General Affairs and External Relations’ (GAERC) Council of Ministers which adopts it—usually without discussion—by Qualified Majority Voting. The GAERC is attended by foreign ministers - trade ministers rarely meet formally to decide on trade policy questions (Baldwin 2006, p. 929). Another aspect reinforcing the ‘de-politicised nature’ of trade policy is that

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<sup>21</sup> Admittedly, Stiglitz also stated that EPAs were not as bad as comparable US agreements.

the European Parliament has no formal say in the elaboration of the mandate, even after the adoption of the Lisbon Treaty.<sup>22</sup> The Parliament's International Trade Committee (INTA) is consulted, holds hearings and issues reports (Hix 2005, p. 382).

During the negotiations, the Commission assumes the representation of the parties, closely followed by the 207 Committee, which can intervene at any time. National diplomats are present in the formal negotiations, but the Commission is the only member of the EU delegation to speak. In informal sessions between chief negotiators, only a few Commission officials are present, and they do not always report all of the details back to the member states (Meunier 2005, p. 38). DG Trade as the lead Directorate has to consult other DGs before proposing a particular line of action. National parliaments approve the results of the negotiations, which finally are ratified by the Council by qualified majority.

Since the entry into force of the Lisbon Treaty, the decision-making process became more centralised: National parliaments no longer play a role, while the consent of the European Parliament is required before ratification (Dimopoulos 2010, p. 168). Agreements of mixed Community and Member State competence in the areas of services, trade-related intellectual property rights, and foreign direct investment were discontinued<sup>23</sup>, all trade issues have become EU competence (Woolcock 2009, p. 7).

The decision-making process for anti-dumping measures, the Union's most frequently employed TDI, is even more centralised. Young therefore argues that the EU's institutionalised framework for trade disputes equals "a traditional state" (Young 2006, p. 203).

## 5.2 *Influence of the Council*

Despite the 207 Committee's central role in the decision-making process, its influence is often overestimated. Committee members meet once a week; they form an 'epistemic community'. Their deliberations are not published; decisions are taken by consensus (Hayes-Renshaw and Wallace 1996, p. 88). The Committee regards itself more as a policy collaborator than as a supervising body (Johnson 1998, p. 37).

Furthermore, DG Trade has inherent advantages in terms of expertise and information as the sole negotiator on behalf of the EU for several decades. The argument advanced previously concerning the Commission's human resources does not only apply externally, but also internally: no member state can match DG Trade's institutional capacity and detailed knowledge of trade topics (Woolcock 2009, p. 4). The Commission may confront Council members with a *fait accompli* and present a take-it-or-leave-it deal, for example (Larsen 2006, p. 17).

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<sup>22</sup> Compare art. 218(2) TFEU

<sup>23</sup> See art. 218(6) TFEU.



### 5.3 *Influence of Industry and Civil Society*

Industry and civil society have an even lesser impact on EU trade policy. In the wake of the failed Multilateral Agreement on Investment (MAI), the Commission itself has established the Civil Society Dialogue (CSD). However, several participants in the dialogue indicated their disappointment with this process, as the European Commission officials speaking in the meetings do not deviate from their official position.<sup>24</sup> The CSD meetings therefore seem to provide mostly an opportunity for networking and representation, without a discernible impact on policy (Hocking 2004). Meunier rightly argues that civil society involvement may be as seen as mere “window dressing” under such circumstances (Meunier 2003, p. 83). In addition, the limited human resources of industry associations pose an obstacle to an effective contribution to policy-making. Eurocommerce, an association of European commerce representing 13 % of the EU’s gross domestic product (GDP), has one international trade adviser (Gerlach 2006, p. 179).

The real conflicts take place *within* the Commission during the inter-service consultations, between DG Trade, the European External Action Service (EEAS), DG Development and Cooperation – EuropeAid, DG Environment and DG Agriculture (Orbie 2008, p. 48). An official described the relationship between DG Trade and other DGs in terms of “permanent friction” (Bretherton and Vogler 2006, p. 67). DG Agriculture is much more cautious about liberalizing trade in agricultural products, for instance (Woolcock 2010, p. 388).

## 6 Conclusions

This chapter analysed the EU as an actor in international trade relations with regards to its objectives, instruments, style and decision-making process. It argued that the Union’s trade policy is not at the service of development, as the Commission claims (WTO 2009a, p. 8), but rather that “the EU’s mercantilist interests have taken precedence. . .” (ACP Council of Ministers 2007). In the area of trade, the EU resembles more a ‘great power’ than a civilian power, with a wide range of instruments, which it employs coercively, following a centralised decision-making process. During the EPA negotiations, the EU has continuously demonstrated its great power orientation over a span of 10 years. As no major economic interests were at stake, one possible explanation might be that DG Trade simply ‘cannot do development’, regardless of its negotiation counterpart. DG Trade’s ‘great power reflex’ might be closely connected to its central role in the EU’s decision-making process.

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<sup>24</sup> Surveys demonstrated that the CSD is regarded as more useful by the private sector than by civil society organisations (Dür and Bievre 2007, p. 88).

More generally, the findings of this chapter could provide an indication of how a more powerful and centralised “political Union”, which some politicians and commentators have recently called for, would act on the international stage (Schäuble 2012).

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# Gender Equality in European Union Development Policy

Petra Debusscher

The Lisbon Treaty considers “equality between women and men” among the EU’s core values and objectives, and since 1996, the EU has committed to integrate gender considerations into all aspects of its operations and policies. In its policy documents and public statements the European Commission frequently stresses that gender equality is a goal in its own right that has been a part of the European project of integration since its beginning (McCrae 2010). Given the rich history and growing importance of gender equality in all kinds of policy domains it is not surprising observers have stated that the EU stands out in its support for gender equality among international organisations (Debusscher and True 2009). The Union (Commission and member states) is also the world’s largest development aid donor, collectively disbursing 55 % of official development assistance globally. In several high level policy documents the EU has stressed it “has been increasingly active in promoting gender equality in its external action” as gender equality is one of the five essential principles of development cooperation and a goal in its own right (European Commission 2010, p. 3). But to what extent has the EU actually used its development aid to advance gender equality goals? Has the EU promoted gender equality in its development policies in a transformative way as put forward by international and European standards? Or has the approach towards gender equality in its foreign aid remained rather ‘mainstream’? This chapter critically examines gender mainstreaming in European Union development aid to assess whether or not the EU can be considered a leading and distinctive gender actor, using a budget, language and frame analyses of policy programming documents. Unlike Moser and Moser (2005), I do not review the progress of gender mainstreaming in implementation in general. I limit myself to an assessment of the planning process. After an introduction on gender equality in EU development policies I delve into the analysis of budget, language and frame.

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## 1 Gender Equality in EU Development Policy

Early efforts to integrate gender equality in EU development policy took place in the context of the United Nations (UN) Decade for Women 1975–1985 and the Third World Conference on Women in Nairobi in 1985. Following these events the European Commission (EC) established its ‘Women in Development’ (WID) policy, including its first WID desks, communiqués and references to women in the Third and Fourth Lomé conventions (1984 and 1989) (Petó and Manners 2006). This WID perspective addressed the exclusion of women from the development process by creating specific projects for women. The WID paradigm was increasingly criticised as a conservative ‘add women and stir’ approach by feminist scholars, who pointed out that its narrow focus on women was ineffective as it ignored the underlying societal problems, namely unequal gender relations (Moser 1993; Subrahmanian 2007). Following the 1995 United Nations (UN) Beijing Conference, the international community replaced the WID paradigm by a GAD paradigm and embraced the strategy of gender mainstreaming as “the fundamental GAD buzzword” (Subrahmanian 2007, p. 112). GAD was considered innovative; it focuses on gender without dislodging women as the central subject, as it recognises that improving women’s status requires analysis of the *relations* between women and men. Gender mainstreaming would widen the scope from add-on, small-scale projects for women, to the integration of a gender equality perspective into all policies (Johnsson-Latham 2010). It stressed “the shared responsibility of women and men in removing imbalances in society” (Council of Europe 1998, p. 18). The participation and commitment of men was thus fundamental to changing the position of women. As the ultimate aim of gender mainstreaming is to change discriminatory gender norms, structures and practices in society, it is regarded as a transformative approach.

Since 1995 the EU has adopted a range of high-level policy documents<sup>1</sup> confirming that gender is a cross-cutting issue that has to be mainstreamed in all areas of development and into all programs and projects at regional and country level. In a ground-breaking resolution of late 1995 the EU Council of Ministers first declared the integration of a gender perspective in development co-operation as a

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<sup>1</sup> Including the 1995 Council of Ministers Resolution on Integrating Gender Issues in Development Cooperation; the 1998 Council of Ministers Regulation on Integrating Gender Issues in Development Cooperation; the 2000 European Commission Communication on the European Community’s Development Policy; the 2001 European Commission Communication on the Programme of Action for the Mainstreaming European Parliament of Gender Equality in Community Development Cooperation; the 2004 European Parliament and Council Regulation on Promoting Gender Equality in Development Cooperation; the 2006 Joint Statement by the Council and the representatives of the governments of the Member States meeting within the Council, the and the Commission on EU Development Policy: ‘The European Consensus’; the 2007 European Commission Communication on Gender Equality and Women Empowerment in Development Cooperation and the 2010 European Commission Staff Working Document ‘EU Plan of Action on Gender Equality and Women’s Empowerment in Development 2010–2015’.



crucial principle underpinning the development policy of the Community and the Member States (European Council 1995). This was followed by a string of high-level policy documents on integrating gender equality in development, including a 1998 ‘Regulation on Integrating Gender Issues in Development Co-operation’ (European Council 1998). In 2001 the Commission published its ‘Programme of Action for the Mainstreaming of Gender Equality in Community Development Cooperation’ which stipulates a twin-track strategy to achieve gender equality. Such twin-track strategy implies that “the EC is committed to including gender equality goals in the mainstream of EC development co-operation policies, programmes and projects” (gender mainstreaming), while “concrete actions targeting women (specific actions)” reinforce these processes (European Commission 2001, pp. 8–13). More recently, the EU has adopted high-level policy documents which update the earlier arrangements and reconfirm the twin-track strategy towards gender equality (European Parliament and Council 2004; European Commission 2007a, 2010).

## 2 Analysing Gender Mainstreaming in EU Development Aid

Guided by these significant political commitments to gender equality, the external services of the European Commission have institutionalized gender equality methodologies and principles across their policy and operational work. In what follows I delve into the analysis of gender mainstreaming in European Union development aid to assess using a budget, gender language and frame analyses. The budget, gender language and frame analysis will be used to evaluate if a shift has been made from a conservative Women in Development paradigm to a transformative Gender and Development paradigm to determine if the EU lives up to innovative international and European commitments on gender equality and is leading by example. The frame analysis will help to determine if the EU advocates a distinctive “Europeanness” in its gender policy towards developing countries (Debusscher 2011). Taken together, the two questions enable me to conclude whether or not the EU can be considered a leading and distinctive gender actor.

### 2.1 Dataset

I analysed 98 Country Strategy Papers (CSPs) and National Indicative Programmes (NIPs) from 2002 to 2013 including countries from Asia, Africa, Latin America and the European Neighbourhood on their inclusion of gender equality. CSPs and NIPs are bilateral agreements between the EC and the government of the partner country and are the main instruments for programming EC development aid. Given their importance in planning and implementing EC aid, CSPs and NIPs are regarded as the main building blocks to effectively gender mainstream policies

in development practice. A CSP contains a country analysis sketching the situation of a country, the national strategy, an overview of previous co-operation and a response strategy establishing the development priorities to tackle the problems described in the country analysis. The NIP makes the priorities from the CSP's response strategy operational by outlining the concrete development programmes in the chosen focal and non-focal sectors and adds timetables, budgets and measurement indicators.

## **2.2 Budget**

As GAD and gender mainstreaming imply the integration of a gender equality perspective into all policies, obviously, the budget should systematically address gender equality to make the commitment credible (Beetham 2010; Elson and Sharp 2010). A scoring system was developed to estimate the percentage of the development budget that is gender mainstreamed. The scores range from 'not mentioned at all' (no gender mainstreaming), to 'a one-sentence reference to gender equality' (sector will perhaps be gender-mainstreamed), to 'two to three concrete references to gender equality in the objectives or expected results' (sector is likely to be gender mainstreamed), to 'four or more concrete references to gender equality in the objectives or expected results' (very likely to be gender mainstreamed) and last to 'gender is integrated in one or more performance indicators' (fully gender mainstreamed). Since every NIP has a set of performance indicators linked to the sector's goals by which to monitor and evaluate the success of the development programme, it is reasonable to say that the inclusion of so-called 'gender indicators' corresponds to having the development objectives linked to gender equality in practice. For example, an NIP with the focal sector 'Justice' and the objective to reform the justice system could have 'perception of the credibility of the judicial system' as one of its indicators. If this indicator is disaggregated by gender or if it contains a specific indicator linked to gender (for example, 'number of gender-based violence cases resolved'), it corresponds to having the development objectives linked to gender equality in practice. These so-called 'gender indicators' can be either indicators broken down by sex (for example school enrolment rate for girls and for boys) or specific indicators measuring improved gender equality (for example a decrease in gender-based violence). Since gender indicators constitute a critical link between policy aspirations and policy practice (Walby 2005; Beetham 2010), I regard the use of such indicators as the most definite sign available in the programming phase of being fully gender mainstreamed in the GAD philosophy.

### **2.2.1 What Percentage of the EC Development Budget Is Gender Mainstreamed?**

The sum of the reviewed NIP budget was 14,245.51 million euro for the programming period 2002–2013. As seen in Table 1, up to 49.81 % of this budget was not gender mainstreamed at all. Gender was not mentioned once in the objectives

**Table 1** gender inclusiveness of EC development aid (in million € and % of the total budget)

Focal and non-focal sectors in NIPs	2002–2013	
<b>Not gender mainstreamed</b>	€ 7,096.37	49.81 %
<b>Perhaps gender mainstreamed</b>	€ 1,606.20	11.28 %
<b>Likely to be gender mainstreamed</b>	€ 1,565.21	10.99 %
<b>Very likely to be gender mainstreamed</b>	€ 495.54	3.48 %
<b>Fully gender mainstreamed with indicators</b>	€ 3,482.19	24.44 %
<b>Total budget</b>	€ 14,245.51	100 %

or expected results of the budgetary sectors, so it is plausible that this share of the budget was not gender mainstreamed in practice.

Approximately 11 % of the budget includes gender as a one-sentence phrase without further specification. This indicates probably only a cosmetic upgrading. For example, an NIP that mentions that ‘gender is a crosscutting issue that will be mainstreamed’, without further specification on what this entails. There is a possibility that this part of the budget was gender mainstreamed in the implementation phase, but I suppose this is highly unlikely. It is more plausible that the inclusion of a gender phrase is only make-up to fulfil the EC programming standards formally.

Looking at the budgetary categories with up to three references (likely to be gender mainstreamed) or with four or more references in the objectives or expected results (very likely to be gender mainstreamed) are respectively 10.99 % and 3.48 %. For these two categories, it is reasonable to say that it is (very) likely they will be gender mainstreamed in practice, although gender was not included explicitly in the measurement indicators. Approximately one quarter of the budget is fully gender mainstreamed using gender indicators. As gender is not included into large part of EC development aid from 2002 to 2013 (not gender mainstreamed + standard reference: 61 %), I conclude from the budget analysis that add-on WID policies have not yet made place for an integral gender mainstreaming approach where the budget systematically reflects gender equality objectives.

### 2.3 Gendered Language

A word count gives an indication of the extent to which the discourse has changed from a focus on women to a focus on gender relations. When a GAD approach is in place, there should be an equal share of references to women and to men. An imbalance would indicate that implicitly one sex is taken as the norm, whereas the other sex is constituted as a problem. I have counted references that relate exclusively to women (including ‘women’, ‘woman’, ‘girl’, ‘mother’ and ‘female’), exclusively to men (including ‘men’, ‘man’, ‘boy’, ‘father’ and ‘male’) and references that relate to both sexes equally (including ‘gender’ and ‘sex’). A word count is of course only a first step. Next, I will examine what specific roles are attributed to both men and women, and to what extent gender stereotypes are challenged or reproduced.

**Table 2** Number of references to women/men/gender

CSPs and NIPs	Number of references	Percentage
<b>References to women</b>	2639	55.64 %
<b>References to men</b>	610	12.86 %
<b>References to gender/sex</b>	1494	31.50 %

### 2.3.1 Is the Language Gender Mainstreamed?

As seen in Table 2, language analysis of 98 CSPs and NIPs from 2002 to 2013 shows that there is an overrepresentation of references that relate exclusively to women (55.64 %) compared to references that relate exclusively to men (12.86 %). From this evidence I conclude that the formal language used in the CSPs and NIPs is more the typical Women In Development language than a genuine Gender and Development language that involves both women and men equally in the analysis and solutions for gender equality. The language used in the CSPs and NIPs is thus not genuinely mainstreamed. Although the EC labels its approach as gender mainstreaming, the language analysis reveals that the EC's perspective on gender inequality shows features of the conservative WID paradigm as gender still mainly equals women.

When examining the content of these references it became clear that it is mainly exclusively women who are mentioned when analysing problems concerning gender inequalities. Women are linked to problems with gender inequality while men rarely appear in the country analysis and are almost never explicitly problematized.<sup>2</sup> The 610 times men are mentioned, this is mostly in a general phrase referring to “equality between men and women”, or in quantitative terms (for example percentage of boys/girls enrolled). What is more, women are not only seen as the main problem holders in the gender (in)equality question, they are also made solely responsible for the solution as men almost never appear as a target group to promote gender equality in society.<sup>3</sup> It is clear that—looking at the gendered framing of solutions for gender equality—the EC's perspective resembles the WID paradigm. One of the core features of GAD and the gender mainstreaming strategy, which is “the shared responsibility of women and men in removing imbalances in society” (Council of Europe 1998, p. 18), is completely missing in the CSPs and NIPs. Neglecting the role of men in solving the gender inequality puzzle is harmful for results. To create a gender equal society men need to be brought on board and higher financial and intellectual investments need to be made to change discriminatory gender norms.

<sup>2</sup> With the exception of the issue of domestic or gender-based violence, where men are sometimes problematized, when they are conceptualized as perpetrators (but never as possible victims). Most CSPs however, leave men out of the picture when talking about domestic and gender-based violence and talk about the issue as a women as problem only.

<sup>3</sup> With the single exception of the Indian NIP, that proposes to increase efforts for a greater responsibility and participation of men in reproductive health, not a single other NIP mentions men explicitly as target group in the gender-inequality question.

It is also remarkable that references to the gendered distribution of unpaid care work—housework and care of persons that occurs in homes and communities on an unpaid basis—are scarce in the diagnoses and absent in the prognoses. In the country analysis, only five CSPs out of 98 mention women’s double burden or household tasks (first generation CSP Peru, Gambia and Tanzania and second generation CSP Botswana and Sierra Leone), although it is widely recognised that “unpaid care work is a major contributing factor to gender inequality and women’s poverty” (Budlender 2004, p. v; 2008; Razavi 2007; Gammage 2010). This neglect is problematic for several reasons. While the silence on this topic implicitly legitimises the unequal division of care work between men and women, it also implies that such work is valueless and ignores its connection to economic growth and development in general (Budlender 2004; 2008; Razavi 2007). Furthermore, leaving women’s disproportionately large share in non-market care work out of the analysis has implications for the quality of the overall gender analysis. This is because the gender bias in unpaid care work creates a gendered “time and income poverty” (Gammage 2010) that has a direct impact on several of the issues that are put forward in the CSPs and NIPs, such as women’s access to (full-time) education and jobs or their vulnerability to gender-based violence. The invisibility of these links in the analysed documents results in a biased analysis.

Furthermore, I found that several CSPs refer to women as a vulnerable group or even as “the most vulnerable segment. . . of the population” (European Commission 2007b, p. 29). Women are also often lumped together with other groups that are deemed vulnerable such as children, elderly, orphans, and “the disabled” (European Commission 2007c, p. 5). In several CSPs and NIPs, women are conceptualized as passive victims of poverty, sex traffickers, violence, or tradition. This conceptualization of women as the vulnerable victim is stereotyping and leans close to Chandra Mohanty’s (1991) highly criticized objectification or victimization of “Third World women.” This means that women as a category of analysis are defined in terms of their object or victim status, or in the way they are affected by, or not affected by, certain systems or institutions (Mohanty 1991).

## 2.4 *Frame*

Policy documents typically contain a diagnosis (what is the problem) and a prognosis (solution/s) of the issue at stake, including ideas on the causes of the problem, “the ends that can be reached through the use of certain means, and on the desirability of certain outcomes” (Verloo 2005, p. 22). In this section I examine which gender issues are identified as problems and solutions in the CSPs and NIPs.

### 2.4.1 **How Is Gender Equality Framed?**

In-depth analysis of the EU programming documents reveals that gender inequality in the CSP’s country diagnoses is mainly put forward as a problem of maternal

mortality (48 out of 98 CSPs), access to education (41) and income disparity and poverty (36). Violence against women (32), unemployment and access to jobs (29) and the lack of access to decision-making (24) are also important. The main solutions put forward in the NIPs to tackle gender inequalities are focussed on education (30 NIPs), employment (24 NIPs) and reducing maternal mortality (13 NIPs). Outlining the main problems and solutions reveals two important frames, a poverty reduction frame and a labor market or economic growth frame. The analysis of the main solutions shows that two out of three of the dominant solutions, are located within the UN Millennium Development Goals (MDGs), namely Goal two to achieve universal primary education, Goal three to promote gender equality and empower women (with the concrete target to eliminate gender disparities in all levels of education by 2015) and Goal five to improve maternal health (with the targets to reduce maternal mortality and achieve universal access to reproductive health). Although “the more optimistic readings of the MGDs” have stressed their contribution “to ‘en-gendering’ the global development agenda” (Chant 2007, p. 10), feminists around the world have criticised the MDGs for their narrow scope and minimal poverty agenda (Chant 2010; Subrahmanian 2007; Mukhopadhyay 2007). In their view, the MDGs ignore systemic political and power issues concerning gender inequality and do not use a human rights framework, which depicts “people as ‘rights holders’ who can mobilise to demand the realisation of their rights” rather than as passive recipients of policies (Barton 2005, p. 29). Furthermore, the emphasis is on girls’ rather than women’s voices and rights and “far-reaching but controversial areas” such as land rights, male violence and sexual and reproductive rights are ignored (Johnsson-Latham 2010, p. 44). Feminists “struggling against the vice of neoliberal theory and policy” even view the MDGs as “a significant step, but in the wrong direction” (Saith 2006, p. 1174). Also gender equality in employment is often framed as a solution to eradicate poverty. Like for example in the Ethiopian CSP were it is stated that “women’s contribution to household income and production is crucial for fighting poverty.” (European Commission 2002a, p. 11) In this poverty-frame the integration of gender equality in employment is also located within the MDGs, namely Goal one to eradicate extreme poverty. In this case, gender equality is used instrumentally to reach the goal of poverty eradication and not as an aim in itself (Debusscher and Van der Vleuten 2012). Such instrumentalist policies serve to maintain traditional gender roles rather than to dismantle gender inequalities (Molyneux 2006; Roy 2010). Moser and Moser aptly summarise the debate on the pros and cons of instrumentalism. It can be defended for pragmatic reasons because “in the ‘real’ world of politics, compromises and strategic alliances are parts of reality”, but it “risks depoliticizing the transformative nature of the feminist agenda” and thus strips gender mainstreaming of its transformative potential (Moser and Moser 2005, pp. 14–15).

In an equal amount of cases employment and education as main solution for gender equality are framed instrumentally to achieve economic goals. This was mostly the case in the Southern European Neighbourhood countries and in some Latin American countries (Debusscher 2012a, b). Women must be educated and

integrated in employment to “contribute to growth,” “build a knowledge society,” (European Commission 2007c, pp. 20–21), bring “industrial modernisation” (European Commission 2002b, p. 27), or “ensure a technologically skilled and adaptable workforce” (European Commission 2007d, p. 24). In several policy documents education is framed as a tool for development and a preparation for the labor market. In general, education is not framed as a basic human right, neither is it framed as a tool to bring gender equality into the intimate sphere. For example, in the Ecuadorian NIP the main objective of the budgetary sector on education is “to train a competitive labor force directed at the country’s productive needs and with a foothold in the market” (European Commission 2007e, p. 34). The aid program also explicitly stresses the importance of participation of girls and young women in technical and vocational education. The goal of gender equality is strategically brought into the education sector and it is framed economically. Gender equality however is not a goal in itself. Other gender policies could be seen as supporting this dominant economic frame. For example reproductive health allows women to control their fertility and be more active on the labor market. Sometimes also less evident policy areas are framed economically, as for example in the Colombian CSP where violence against women is a situation that “entails high economic costs for the country” (European Commission 2007f, p. 12). This economic emphasis is convergent with the early WID tradition, where “the underlying rationale . . . was that women are an untapped resource who can provide an economic contribution to development.” (Moser 1993, p. 2). Also it is convergent with the manner in which gender equality is typically framed by the World Bank. As put forward by several authors the World Bank’s traditional justification for gender mainstreaming its lending programmes, sector projects and policy formulation is “the synergy between reducing gender disparities and achieving greater economic growth.” (Schech and Vas Dev 2007, p. 16) Since 2006 the World Bank explicitly considers gender as “smart economics” raising productivity, growth, and improving other development outcomes such as poverty reduction (World Bank 2006, 2012). Nevertheless the World Bank’s gender equality and growth frame has received many criticism of scholars in the fields of gender studies and development, as policies creating economic growth on the macro level may still turn out to have negative consequences for women’s health and well-being, destroy human capacities or reduce people’s access to goods and services (Elson and Cagatay 2000; Schech and Vas Dev 2007). Furthermore its policies have been criticised for being conservative as they do little improve the position of women and change discriminatory gender roles (Brym et al. 2005).

### 3 Conclusions

This article has examined gender mainstreaming in the programming of EU development cooperation for the period 2002–2013 using a budget, language and frame analysis, in order to evaluate whether or not the EU can be considered a leading and

distinctive gender actor. To answer this question I combine two sub questions. First I evaluate whether a shift has been made from a conservative Women in Development paradigm to a transformative Gender and Development paradigm to determine if the EU lives up to European and international commitments on gender equality and can be considered to be leading by example. Second I examine whether the EU advocates a distinctive ‘Europeanness’ in its gender policy towards developing countries. The analysis of budget, language and frame shows that the shift from a conservative WID to a transformative GAD paradigm has barely been made in practice. Over 60 % of the budget from 2002 to 2013 does not include gender issues and only one quarter of the development budget from 2002 to 2013 was fully gender mainstreamed using gender indicators. Furthermore, when the policies talk about gender, they mainly refer to women. Conceptions of masculinity and femininity, as well as the gendered division of care work are not questioned in policy texts. On the one hand, women tend to be victimized and are referred to as ‘vulnerable.’ Men, on the other hand, are barely mentioned. In general, men are the silent norm that women have to catch up with as problem holders. This conception of women as sole problem and solution holders in the gender inequality puzzle fits the conservative WID paradigm, and is contradictory to a genuine GAD paradigm where men and women share responsibility in removing imbalances in society. The applied approach is also limited to the extent that apart from the ‘usual suspects’ (health, education and work) gender issues have been included in few new domains (e.g. transport). Such approach clearly does not fit a gender mainstreaming strategy which includes a gender equality perspective into all policies. Furthermore, the approach remains predominately instrumentalist as gender issues are framed within the dominant development policy paradigms and as they are ‘sold’ as a way of more effectively achieving other policy goals such as economic growth or poverty reduction. The frame analysis thus shows that rather than a distinctive ‘Europeanness’ in its gender policy towards developing countries, the EU’s policy has few innovative elements. The two major gender frames that are used in the EU’s programming documents—a poverty frame and an economic growth frame—correspond to the frames that are used in the UN’s MDGs and the World Bank’s gender policies. It seems that rather than an innovative and distinctive gender actor, the EU’s gender equality approach in its development policy can be called a patchwork of approaches borrowed from the UN and the World Bank. This may not be surprising. Although the EU has always been involved with developing countries, its main mandate concerns economic integration on the European continent, whereas development occupies a central place in the mandates of international organizations such as the World Bank or the UN (Orbie et al. 2012). What is often stressed in the literature to explain why the EU “is usually a taker of policy from other sources rather than an institution that sets the international agenda on contemporary problems in development”, are the bureaucratic procedures, the limited analytical capacity and competences of the EU in development aid policies (OECD-DAC 2002, p. 60). This means that the EU simply lacks the staff, expertise and knowledge to develop new and innovative ideas in development policy (Santiso 2003), in contrast to the “intellectual monopoly” of the World Bank



(Baroncelli 2011, p. 646) or the UN. This chapter shows that these general conclusions on EU development policy are also valid for the EU's gender equality policies. In conclusion, the EU fails to live up to European and international commitments on gender equality and cannot be considered to be leading by example. Also, as the EU's gender frames are derived from other international institutions, the EU is not the distinctive and innovative gender power it claims to be.

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# Gender Mainstreaming in EU—SADC Relations: The Capabilities-Expectations Gap

Anna van der Vleuten

## 1 The EU as a Normative Power: The Carrot and the Sermon

The EU is often depicted as a civilian or normative power (Manners 2002) and there is an extensive body of literature on the concept of Normative Power Europe (for an overview, see Orbie 2008). Summarizing the debate, one could argue that the label has at least three dimensions. It refers to, first, the asymmetry between the economic and the military capacities of the EU; second, to the way in which the EU exercises power, and third, to the expectations raised by the EU as regards its role in the world. These dimensions are linked, because as long as the EU lacks the means to act as a unified military actor, it will focus on non-military instruments in its external policies and prefer the carrot and the sermon to the stick. We find the sermons in the aim of the EU to diffuse its norms and values. The EU imposes its ‘model’ (regional integration, a single market, a liberal democracy) on candidate countries which have to absorb all Community legislation and adhere to the ‘finalités politiques’ (political cooperation) in order to qualify as member state. Towards other, weaker regions of world, the EU uses its influence to promote norms in the field of economic policies (trade liberalization, market access) and politics (regional integration, good governance, democracy) as a way to strengthen its position at the global level. The carrot becomes evident when we realize that the EU is the largest donor organization of development aid in the world and it gives aid under conditions which reflect its norms, such as commitment to regional integration, good governance, sustainable development and human rights, including women’s rights.

In fact, the EU behaves as a normative power only to the extent that it does not use military means to defend its interests. After all, the EU is not only a normative power with the implicit positive connotation attached to the ‘no coercion but

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support' style, but it is also an economic power which looks for safeguarding its position in the global arena. It is the biggest trading bloc in the world, and it relentlessly aims to strengthen this position and defend its rules and regulations in agriculture, manufacturing and services. In the interregional arena the exercise of these two roles, the normative and the economic one, results in contradictions and inconsistencies which might undermine its credibility as a 'force for good' as well as the effectiveness of its policies.

The promotion of gender mainstreaming belongs to the norms which constitute the normative face of the EU. As regards the promotion of this norm, the EU has several types of carrots and sermons at its disposal. It can use conditionality in the negotiations of preferential trade agreements and it can apply gender mainstreaming to development aid. Our research question is, how the inconsistencies which are inherent in the double role of the EU manifest themselves in EU policies concerning gender in its relations with other regional organizations and to what extent they affect the credibility and effectiveness of the EU's external actions. We will focus on the relations between the EU and the Southern African Development Community (SADC), one of the regional organizations with which the EU entertains extensive relations. Given the long-standing history between the two regions, this seems to be a good case to explore the workings of normative power.

## 2 EU-SADC Relations, Norms and Identities

Relations between EU and SADC are characterized by a strong asymmetry in economic power, illustrated most clearly by the fact that EU aggregated gross domestic product (GDP) totals some 48 times SADC aggregated GDP (WTO 2010). SADC is a small player in the global arena. It accounts for less than 1 % of world trade. The EU is the world's largest trading bloc, the world's largest donor in Africa and the most important economic and trade partner of SADC (EU website). In an asymmetric relationship of this kind, the stronger organization will tend to play a hegemonic role as paymaster (donor) vis-à-vis the other, weaker organization, in order to secure access to markets and mineral resources and extend its influence. It will also behave as a 'teacher', imposing its norms. We will investigate to what extent the EU acts as teacher vis-à-vis SADC, and whether it is successful in this role.

Yet, the relations between regional organizations such as EU and SADC not only depend on the distribution of capabilities, but also on ideational factors. Arguably, regional organizations differ from other international organizations as regards their geographical scope and their identity. First, they typically consist of states belonging to a region, a certain geographical area. Although regional borders are not given and natural but constructed and geopolitical, and therefore it is not self-evident how to delimit a region, this criterion sets regional organizations apart from international organizations with a potentially global membership such as the UN and the WTO. The Treaty on European Union states that 'Any *European State* ... may apply to

become member of the Union’ (italics added; Article 49 TEU). One of SADC main objectives is to ‘enhance the standard and quality of life of the people of *Southern Africa*’ (italics added; SADC Treaty Article 5). Even if no consensus exists as to Europe’s and Southern African borders, every candidate country has to be able to refer in a credible way to this notion in order to be eligible for membership.

Second, regional organizations usually refer to a common identity, based on the shared history of this geographical entity, some combination of cultural, economic, linguistic, or political ties (Van der Vleuten and Ribeiro Hoffmann 2007). The regional identity defines the in-group and out-group respectively. This ideational factor is assumed to influence interaction processes between regional organizations. Regional organizations will behave differently depending on their affinity with each other. The match or mismatch of their identities will promote or hamper the development of shared ideas and norms. We expect regional organizations to socialize with a ‘familiar Other’. Socialization implies that norms, promoted by the stronger regional organization, are accepted as legitimate and will be reproduced in institutional arrangements and policies by the weaker organization. We expect regional organizations to resist to be socialized by an ‘alien Other’. Resistance means that the diffusion of norms is unsuccessful and that the norms promoted by the stronger regional organization are considered illegitimate.

SADC has a regional identity that is rooted in the Liberation struggles against colonialism and apartheid. In 1979, the black-ruled Frontline States created the Southern African Development Coordination Conference (SADCC) to reduce their dependence on white-ruled South Africa by forging closer ties among themselves. They opted for collective self-reliance and tried to avoid trade and market integration (Bauer and Taylor 2005). In 1992, SADCC was renamed and reorganized as SADC and became oriented towards market liberalization and structural adjustment. It welcomed South Africa as a member state in 1994.<sup>1</sup> The shared experiences of colonialism and the long struggles for independence have created a strong sense of unity and solidarity. As former Tanzanian President Benjamin Mkapa put it:

SADC is rooted in struggle; from which we have much to learn. ...the first lesson is unity. Without unity the armed struggle would have buckled in the face of the superior weaponry of our erstwhile enemies. And today, as we wage the struggle to carve for ourselves a place at the table of a global economy, we must remain united. There is no alternative to unity (Mkapa 2002).

The identity of the EU is rooted in the experience of two World Wars and the strong desire, by integrating the heavy industries of France and Germany, to avoid a third one. Market integration and neoliberal ideas dominate all EU policymaking, not only as ends in themselves but also as a means of preserving peace by promoting prosperity (Van der Vleuten 2007). Since the ending of the division of

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<sup>1</sup>SADC has 15 member states: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar (suspended in 2009), Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

Europe in 1989, a democratic identity has been added to this neoliberal identity, as testified by the insertion in the Maastricht Treaty (1992) of a recital proclaiming ‘its attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law’ and by the criteria for membership. The EU also positions itself as the ‘natural supporter of regional integration among developing countries, and that its goals in doing so are political rather than economic’ (Robles 2008): the EU casts itself in the role of the ‘benevolent teacher’. As regards the African continent, former EU Commissioner Louis Michel acknowledged ‘a particular responsibility’ based on ‘our common history, interlocking cultures and shared values’ (European Commission 2006).

This view, however, is not shared by Southern Africans. The anti-colonialism of the SADC distances it from its former colonizers: the Netherlands, the United Kingdom, France, Portugal and Belgium. Also, until the 1980s the European Community supported the South African apartheid regime.<sup>2</sup> Clearly Southern Africa perceives EU as the ‘alien Other’. In spite of SADC interest in access to the EU market and EU aid, SADC does not behave as an obedient ‘pupil’. In 2004, the President of Tanzania acting as President of SADC warned that

‘We are tired of being lectured on democracy by the very countries which under colonialism either directly denied us the rights of free citizens, or were indifferent to our suffering and yearning to break free and be democratic (...) We know our democratic aspirations better than anyone else’ (Madakufamba 2004).

Political elites, trade unions and non-governmental organizations in South Africa accuse the EU of hypocrisy and double standards (Olivier and Fioramonti 2010). During the negotiations on the European Partnership Agreements (EPAs), the EU complained that SADC was unresponsive and non-committal (Robles 2008, p. 191), while some in SADC defined the EPAs as a ploy to re-colonize Africa (Olivier and Fioramonti 2010). SADC seems to resist being treated by the EU as a pupil more than we would expect if we focus on their relative power alone. This means that the exercise of normative power by the EU might be hampered in two respects; by its own inconsistencies and by the uneasy fit of its identity with SADC identity. To what extent do we see these effects in EU promotion of gender equality in its relations with SADC?

### 3 Normative Power Europe and the Promotion of Gender Equality

As regards the EU gender regime, it is common to distinguish between hard and soft law (Kantola 2010). EU hard law consists of treaty articles, directives and rulings of the European Court of Justice, that are binding on member states. Legal instruments

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<sup>2</sup> See Klotz (1995) for an extensive account of the reluctance of Western European governments to impose sanctions against white minority government in South Africa.

promoting gender equality constitute an important part of the so-called *acquis*, the whole body of legislation and Court rulings of the EU. This importance does not reflect a pervasive intrinsic concern with women's rights on the part of the EU member states and institutions, but the fact that changes in gender relations always entail economic consequences which in a common market cannot be neglected. As the Court of Justice argued in its *Defrenne II* ruling, EU gender equality policies always were supposed to have a double aim, to ensure equitable competition and to realize social progress (Case 43/75, *ECR* 1976). The first aim was crucial for the effective functioning of the EU as a common market; the second aim was important for the legitimacy of its market-oriented policies (Van der Vleuten 2007). Unsurprisingly, legal instruments have remained restricted mainly to employment-related rights such as equal pay, equal access to the labour market, parental leave and social security. Only with the official commitment to gender mainstreaming in the Amsterdam Treaty in 1997, the domain of gender equality policies was broadened to potentially include all EU policy fields. After all, gender mainstreaming requires the integration of gender equality into all policies (Kantola 2010). Still, the scope for the elaboration of binding regulation addressing specific concerns has remained limited to labour market issues. The most problematic case in this respect is probably gender based violence. The EU has no mandate to issue binding rules on the elimination of gender based violence. It has to fall back on soft law instruments.

In addition to hard law, the EU gender regime is shaped by soft law, which is a container concept for policy instruments that rely on the power of persuasion and the purse, such as financial support for projects, rankings, recommendations, action programmes, benchmarks and targets as exemplified by the Open Method of Coordination.<sup>3</sup> The merits and pitfalls of soft law have been extensively discussed elsewhere.<sup>4</sup> These instruments have not only been used in labour market policies, but also in domains where the EU has no treaty base for hard law, such as the fight against gender based violence. In 1986, the European Parliament issued a report and adopted a non-binding resolution on Violence against Women, but the Commission could not undertake action as there was no treaty base. In 1997, the European Parliament and the Council of Ministers approved the Commission proposal for the Daphne project (now in its third generation), which provides program funding for hundreds of non-governmental organizations dealing with violence against women and children (Montoya 2009). A Campaign for Zero Tolerance for Violence against Women was launched by the European Parliament and the Commission in 1998. Apart from calling upon the member states to combat all forms of violence against women at the closing of the campaign in May 2000, no effective pressure for policy reform was or could be exercised by the EU on its member states (Montoya 2009).

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<sup>3</sup> The Open Method of Coordination is based on new public management instruments such as ranking and benchmarking.

<sup>4</sup> On the limits and possibilities of gender equality legislation, see Hoskyns (1996), Van der Vleuten (2007). On gender mainstreaming, see Stratigaki (2005), Lombardo and Meier (2007). On new strategies (benchmarking, ranking), see Van der Vleuten and Verloo (2012).



In sum, if the EU in its relations with SADC wants to promote gender equality, it has different instruments at its disposal (Novitz 2008). First, the EU can act as a role model and support EU-style regional integration including norms on equal pay and equal opportunities and soft law instruments. Second, in its trade and aid policies, the EU can apply conditionality, requiring the compliance with gender equality norms in exchange for market access or development aid. Third, the EU should apply gender mainstreaming to its trade and aid policies, in the sense that intended and unintended consequences for gender relations are assessed and addressed. The norm of trade liberalization, for instance, may have different consequences for working women than for working men in Southern Africa due to their differing positions in the labour market. Policies can support the empowerment of women or undermine their access to resources. In the next sections, we will have a closer look at EU policies towards SADC.

### ***3.1 The EU as a Teacher and Role Model***

Institutionalized relations between the EU and the SADC go back to the ‘Berlin Initiative’ in 1994, celebrating the accession of post-Apartheid South Africa to SADC. A political dialogue was launched with the objective to develop cooperation in several fields, including regional integration. However, against the background of irritations and disagreement concerning the regime by Robert Mugabe in Zimbabwe, the political dialogue suffered from lack of focus and few initiatives took place in the area of regional integration (Brocza and Brocza 2012). Of more importance is the multiannual Regional Strategy Paper/Regional Indicative Program (RSP/RIP) which is negotiated by the European Commission and representatives of SADC member states. The RIP for 2008–2013 foresees in total €116 million to alleviate poverty. Eighty percent of the budget is earmarked for ‘supporting the acceleration of economic growth and development in the SADC region through deeper levels of regional economic integration and political cooperation’ (European Commission 2008a, p. 4). The RSP offers a telling example of the way in which the EU positions itself as a role model and teacher for SADC. It argues that:

‘The key advantage of the European Commission relative to other international cooperating partners in supporting the process of regional economic integration lies in the EU’s importance as the region’s major trading partner and its own experience of economic integration’ (European Commission 2008a, p. 38).

It exports its model as regional organization, investing considerable financial resources in institutional capacity building and development of the SADC Secretariat and SADC governance structures (European Commission 2008a: Annex 18). Regional integration is considered the ‘key instrument for the integration of the ACP countries in the world economy’ (European Commission 2008a, p. 1). Fredrik

Söderbaum offers a very critical assessment of this policy, arguing that EU promotion of regional integration is more about assuring market access for its domestic producers than about exporting norms. He even calls it ‘soft imperialism’, because the EU imposes its model from a position of dominance (Söderbaum 2004). Also, in spite of its commitment in the RSP/RIP, the EU even has undermined regional integration in Southern Africa by concluding a preferential bilateral trade agreement with the major economy of the region, South Africa, and by establishing different relations with different groups of countries, thereby making harmonization of intra-Africa trade policies more difficult (Sicurelli 2010).

To what extent is gender mainstreaming part of the promotion of EU-type regional integration? In the RSP/RIP, trade and regional integration are the so-called focal issues, whereas gender belongs to the non-focal issues which receive a mere 5 % of the budget (European Commission 2008a). The importance of gender is recognized in the stocktaking analysis, where it is argued that ‘major challenges remain on issues related to women’s economic empowerment, women’s participation in decision-making, women’s human and legal rights and the monitoring of progress in policies to reduce gender inequalities’ (European Commission 2008a, p. 3). The need to pursue gender equality is directly linked to the goal of poverty eradication; it is stated that ‘Without gender equality, SADC poverty strategies will not succeed in improving the lives of women, men, boys and girls’ (European Commission 2008a, p. 10). Unfortunately, this insight does not translate into the mainstreaming of the Focal Area Regional Integration, which is limited to a classic treatment of economic integration. We found only an ad hoc mention that the ‘mainstreaming of gender and HIV issues could also form part of the capacity building programme’ (European Commission 2008a, p. 41). In spite of the gender awareness shown in the discussion of poverty reduction, gender equality is clearly subordinated to regional economic integration. This is striking, as a Commission policy document on external relations depicts the EU as teacher and role model linking precisely economic objectives and gender:

‘One of the major assets the EU has available to promote Gender Equality in its external relations is the experience of best practices from inside the Union. Gender Equality is recognised by the EU as a fundamental human right and as a necessary condition for the achievement of the EU objectives of growth, full employment and social cohesion. (...) A genuine European approach should be built based on this longstanding experience (...)’ (European Commission 2007, p. 5).

As we have argued, in certain domains such as gender-based violence, the ‘best practices’ are limited to projects without including legal instruments. For those reasons the value of gender equality promotion by the EU is limited with regard to all issues which are outside the labour market in a strict sense. Furthermore, the ad hoc and limited attention to gender and the absence of gender mainstreaming in its regional strategy document undermine the credibility of the EU as teacher of gender equality. In the next section we look more specifically into EU trade and aid policies directed at SADC.

### 3.2 *EU Gender Mainstreaming of Trade with SADC*

Regarding trade agreements with third parties, the EU has exclusive competences, which means that the Commission negotiates these agreements on behalf of the member states. Trade agreements with SADC have been in a process of renegotiation for some years now. Since 1975, Southern African countries were covered by the Lomé Convention of the EU (then European Economic Community) with the ACP-countries (the former European colonies in Africa, the Caribbean and the Pacific). These agreements offered non-reciprocal duty-free access to the European market for most ACP exports, until the Cotonou Agreement was signed in 2000. The Cotonou Agreement requires the elimination of non-reciprocal preferences in order to obtain conformity with WTO rules. As a result, new preferential market access commitments are negotiated in the context of so-called economic partnership agreements (EPAs) between the EU and the different regional groupings of ACP countries. The SADC is one of the regional groupings in Africa.

In trade agreements sometimes conditionality is applied (Novitz 2008). Does the EU-SADC EPA include specific conditions concerning gender? As the EPAs involving SADC countries are still under negotiation [August 2012], there is no consolidated text yet. An interim EPA was signed by the EU and Botswana, Lesotho, Mozambique and Swaziland in 2009. However, in 2010 these countries as well as Namibia proposed ‘to focus on reaching an “inclusive” and comprehensive agreement with the whole SADC EPA Group’ instead of provisionally implementing the interim EPA (European Commission 2012, p. 2). Negotiations continue. In the chapter on trade of the interim agreement there is no mention of gender objectives (European Commission 2008b). Another interim EPA was signed with the Eastern SADC member states Madagascar, Mauritius and Zimbabwe in 2009. It is entering the implementation phase in 2012. Again, there is no mention of gender equality among the general objectives in the trade chapter or among the specific measures (Council 2009). From this follows that EU trade policies do not pursue gender equality as a norm on equal terms with market liberalization, and that its trade policy has not been gender mainstreamed. To what extent is market liberalization expected to have gendered effects?

The volumes of trade are extremely asymmetrical between the EU and SADC, as the EU is the most important destination market for all SADC exports, except for South Africa, while SADC share in total EU trade is extremely small. Given these trade patterns, Keck and Piermartini (2008) expect significant effects on SADC countries of liberalization between the EU and the SADC. On the export side, they predict positive welfare effects<sup>5</sup> for SADC countries in sectors where EU imposed very high tariffs, especially on food products and animal agriculture, whereas export losses are expected in light manufacturing, textiles and clothing (Keck and Piermartini 2008). On the import side, Keck and Piermartini (2008) believe that preferential access of the EU to the SADC market may have negative welfare

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<sup>5</sup> Welfare impacts are measured in terms of change in income.

effects for SADC countries which are large importers in a given sector or which have strong trade links with third countries, for instance in eastern Africa. The most exported goods are fuels and minerals, crops and light manufacturing; the most imported goods are light and heavy manufacturing, services and food products. It is expected that agriculture will expand at the expense of manufacturing in most SADC countries.

The specific consequences of these changes for gender relations are not easy to predict due to a scarcity of data and to differences between and within the countries involved. In SADC, women are particularly involved in agriculture, the food-processing industry and the production of leather and non-metallic products. It will be difficult for food producers in the region to compete with cheap EU products (Kiraty and Roy 2010), although Keck and Piermartini (2008) expect a reallocation of resources towards the production of processed food.

A key characteristic of the position of women in economic activities in SADC is their involvement in the informal economy, including informal cross/border trade (Kiratu and Roy 2010). Around 70 % of the informal traders in the region are women. As a result, agreements concerning formal trade will not strongly affect women's trade activities. However, such agreements risk to make it more difficult to legalize their activities, because to be eligible for duty-free entry, certificates of origin need to be furnished which informal traders are unable to obtain (Kiratu and Roy 2010). Ulmer argues that the emphasis on integration in the world market in the Cotonou Agreement is likely to have a negative effect on women's position and income, as they have less access to resources enabling them to take advantage of the new opportunities and compete with foreign goods and services (Ulmer 2004). She found for Zimbabwe that women predominately work on the less fertile and smallest pieces of land and access only 23.3 per cent of available credit to purchase seeds and fertilisers (Ulmer 2004, p. 55). Generally spoken, policies aimed at trade liberalization without accompanying capability building measures have been detrimental to women's position and have exacerbated gender inequalities (Trui 2009; Kiratu and Roy 2010). As a result, the gender blindness of the interim-EPAs constitute a missed opportunity for the EU to show its commitment to gender mainstreaming.

### ***3.3 EU Gender Mainstreaming of Aid for SADC***

In the domain of development aid, the EU does not have exclusive competences. Its activities complement member states' policies. The EU considers gender equality to be 'an issue that cuts across all aspects of development planning and implementation' and requires a 'twin track approach of women's empowerment and mainstreaming of gender equality' in development policies (European Commission 2008c). This approach should be realized by taking into account, already during the planning stage, the effects of policies on the respective situations of women and

men and to propose specific measures to support the empowerment of women. The main responsibility lies with the Southern African governments, but the Commission plays a monitoring role in assuring that gender equality issues are included in the national priorities of ACP countries and in the Country Strategy Papers, which are developed within the framework of the afore-mentioned Regional Strategy Papers.

A survey done by Aprovech in 2002 of the Country Strategy Papers of ACP countries, including all SADC countries, revealed that the concept of gender and mainstreaming of gender equality was not found in the CSPs in vital sectors such as food security and rural development (Sohet and Ulmer 2002, p. 9). Petra Debusscher has undertaken an analysis of the most recent round of Country Strategy Papers. She found that gender mainstreaming is applied in a selective and superficial manner. On the one hand, gender issues are increasingly mentioned in all chapters of the CSPs. Additionally, references to gender are found in almost all parts of the budget for EU aid. However, references remain predominately to women, instead of including men in the problem definition. This implies that men are the silent norm women have to catch up with (Debusscher 2011).

Both the interim-EPA with the Southern African countries and the interim-EPA with the Eastern African countries also contain provisions for development cooperation. One of the measures for poverty alleviation refers to gender equality:

‘Encouraging participation of marginal groups in the fishing industry, for example, through the promotion of gender equality in fisheries by developing the capacity of women engaged in fisheries, as well as other disadvantaged groups’ (European Commission 2008b, p. 30; Council 2009, p. 50).

Also, gender mainstreaming is mentioned in the interim-EPA with Southern African countries as one of the areas to be addressed by cooperation on development issues, but without further clarification or elaboration (European Commission 2008b: Article 38). The Development Matrix in the Appendix to the agreement mentions under agriculture ‘(iii) . . . gender mainstreaming in access to production factors’ (European Commission 2008b, p. 60), and includes a section entitled ‘Gender Promotion of female entrepreneurship through targeted interventions’ where activities could be: (1) Support Programmes that help women improve access to all resources, in particular those for trade and development; (2) Promote female entrepreneurship to facilitate participation in regional and global markets’ (European Commission 2008b, p. 58). In the interim agreement with the four Eastern African countries, in the chapter on economic and development cooperation, ‘gender mainstreaming’ is one of ten ‘areas’ to be addressed, again without further elaboration and without being connected to other areas (Council 2009, p. 56).

We conclude that in its aid policies, the EU does pay attention to gender issues. However, it is included in an ad hoc and piecemeal fashion, which contradicts the whole idea of gender mainstreaming. To what extent is this approach to gender mainstreaming reflected in SADC policies? Does it socialize with the EU or does it chart its own course?

## 4 SADC and the Promotion of Gender Equality

The ‘rebirth’ of SADC in 1992 coincided with the preparations for the UN Fourth World Conference on Women in Beijing in 1995. Southern African women NGOs and women from gender units in the national governments set up a regional task force to represent the demands of the region in Beijing. The SADC Secretariat developed a work programme which stipulated how gender issues could be incorporated in regional policies. This SADC Gender Programme was approved by the Council of Ministers in February 1997. Subsequently, in September 1997, the SADC Summit signed the Gender and Development Declaration to endorse the Council decision on the gender programme. The declaration was a brief, non-binding document. The member states agreed to a 30 % target of women in political and decision making structures by 2005, to promote women’s full access to and control over productive resources, to reform all discriminatory aspects in laws, constitutions and practices, and take measures against violence against women (SADC 1997). As opposed to gender equality in the EU, which is mainly economically framed, from the start, gender equality was recognized by SADC as a fundamental human right; SADC member states should ensure the ‘eradication of all gender inequalities in the region’ and protect and promote the human rights of women and children, including sexual and reproductive rights (SADC 1997). One year later, an Addendum was attached to the Declaration in which measures were proposed to tackle the problem of violence against women.

The main general document presenting SADC aims and objectives is the 2003 Regional Indicative Strategic Development Plan (RISDP) (SADC 2003). Concerning women’s rights, the RISDP calls upon the member states to integrate a gender perspective into all national policies, programs, and activities (gender mainstreaming), and to adopt specific measures to address the constraints faced by women (affirmative action). Gender equality is predominately presented as instrumental to achieving economic development and poverty eradication. The RISDP itself applies gender mainstreaming systematically, as gender issues pop up in all policy areas, including mining, energy, agricultural research, forestry, fisheries and wildlife, and water management, to name but a few. Almost all binding protocols which elaborate the RISDP contain references to women and gender. As regards the chapter on trade policies, the RISDP explicitly links the policy aim of creating a common market to the challenge of developing policies that target ‘vulnerable groups such as . . . women to ensure that they take advantage of the policies’ (SADC 2003, p. 25).

In 2005, 10 years after Beijing, the 30 % women target from the Gender Declaration was to be achieved. Upon insistence by women’s groups, an audit was conducted on the provisions for gender equality in key regional and international instruments<sup>6</sup> and the extent to which they had been implemented by SADC

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<sup>6</sup>The Beijing Declaration and Platform for Action, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Union Protocol (Maputo Protocol) and the UN Millennium Development Goals.

countries. The audit reported mixed results as regards implementation of the commitments contained in the documents (SARPN 2005). The report was critical about the fact that poverty and HIV/AIDS hit women and especially young women very hard, without adequate policies addressing their over-representation among vulnerable groups. As the gap between policies and implementation seemed to widen, the SADC Gender Unit recommended that the Heads of State adopt a binding Protocol.

In August 2008, the SADC Protocol on Gender and Development was adopted by the member states. It came into force in October 2011, after ratification by two thirds of SADC member states. The aim of the Protocol is to enhance all existing non-binding commitments and create a strong legal framework for gender equality with clear targets and indicators to enhance accountability and monitoring mechanisms specific to the SADC region: 'States are not only expected to commit themselves to making far-reaching changes, but they are to achieve them within the time frame provided' (Munalula 2011, p. 190). It also draws on good practice in the region, such as the requirement to follow the example set by two countries which have included gender equality in the national constitution. Article 17 deals with trade policies, and contains the commitment to

adopt policies and enact laws which ensure equal access, benefit and opportunities for women and men in trade and entrepreneurship, taking into account the contribution of women in the formal and informal sectors (SADC 2008, Article 17.1).

States also shall review all trade policies to make them gender responsive, by 2015. The link between gender equality and poverty eradication is addressed in Article 18, which states that 'States Parties shall, by 2015, review all policies and laws that determine access to, control of, and benefit from, productive resources by women' such as water, land and capital; and in Article 19 which addresses discrimination in wage employment (SADC 2008).

As a result, SADC policies in the fields of poverty eradication and trade may be considered gender mainstreamed. Even though economic development and poverty eradication are considered SADC overarching priorities (matched in importance only by the political objective of peace and stability), the scope of SADC commitment to gender equality is much larger than economic concerns. This is well illustrated by the issue of gender-based violence. As opposed to the EU, SADC has included the fight against gender-based violence in binding policy instruments. The Gender Protocol contains a specific chapter on gender-based violence with a 'holistic approach', including the tackling of practices which legitimize and exacerbate the persistence and tolerance of gender, a series of legal measures, training of police and other services, mechanisms to help perpetrators of gender-based violence, and a clear target: to reduce 'current levels of gender based violence by half in 2015' (SADC 2008: Articles 20–25).

To what extent have SADC policies promoting gender equality and gender mainstreaming been developed as a response to EU trade and aid policies? This question will be addressed in the last section.

## 5 The Credibility of Normative Power Europe as Teacher of Gender Equality

The EU has strong political and economic ties with SADC. It has the capabilities to influence its policies and institutions through trade, development aid and its role model function supporting regional integration. The SADC Secretariat, including the Gender Unit, is heavily reliant on European funding; if it were to be withdrawn, the Secretariat would probably have to close down as SADC would be unable to pay its staff's wages (Saurombe 2009). As the EU cherishes its image as normative power, enabling it to strengthen its position in the global arena, we would expect it to promote gender mainstreaming in a consistent way: the EU as the teacher, investing its economic power to promote its norms. This could be achieved by making access to its market dependent on compliance with gender equality norms and by gender mainstreaming its regional integration and development aid policies. However, in spite of the power asymmetry between the EU and SADC, in the first section we formulated the expectation that a successful process of socialization would be hampered by the clashing identities of the two regional organizations. We expected SADC to resent being told what is right and defend its own norms and identity. We also wondered whether the EU would be able to conciliate its economic interests with its normative role.

In our analysis, we have found that regional integration in Southern Africa has gone hand in hand with consistent attention to gender equality in economic and non-economic issues. From its very beginnings in the 1990s, SADC has developed and institutionalized gender equality policies at the regional level. At first sight, one might credit EU with a successful process of norm diffusion. However, gender mainstreaming in Southern Africa cannot be considered the result of EU policies. There are many references in SADC documents on gender based violence to the AU and the UN, but none to the EU. EU support for regional integration does not include a systematic gender dimension. In spite of its rhetoric, EU trade policies towards Southern Africa (two interim EPAs) do not reveal a strong concern for the intended or unintended consequences of trade liberalization for women. As a result, the interim EPAs are more gender-blind than SADC trade policies. EU development aid shows similar inconsistencies and weaknesses, as it addresses gender issues in a piecemeal fashion only. From the beginning EU gender equality policies have suffered from the limitations of the EU as a common market where women were only relevant as workers and gender issues were only taken into account in the economic part of the public domain. SADC, however, has from the beginning approved declarations with a wider scope, based on a 'holistic' approach and international conventions in the field. Domestic violence, for instance, is considered part and parcel of regional policymaking while the EU has not been able to deal with this issue as it falls out of the scope of the treaties.

Based on these arguments, the development of national and regional gender equality policies and institutions in SADC seems less the outcome of EU normative agency, but the result of double pressure on governments 'from below', by



Southern African women's organizations and women in the governments, and 'from above', by the UN World Conference on Women and transnational women's organizations. However, we would argue that it is not in the first place the differing identities, but rather the limitations, inconsistencies and unintended consequences of EU policies which explain why SADC seems to follow its own way more than we would expect given the unequal power distribution between the EU and SADC.

Christopher Hill introduced two decades ago the concept of the capabilities-expectations gap concerning EU's external role, which suffered from the absence of a common foreign and defence policy to balance its economic power and still was expected by others to play a more prominent role in order to balance US dominance (Hill 1993). The present paper has revealed another capabilities-expectations gap, one between rhetoric and reality. We would expect Normative Power EU with a view to its own ambitions and objectives, including gender mainstreaming of all policies, to use its capabilities to promote gender equality employing carrots and sermons. However, EU behaviour clearly falls short of the expectations raised and damages its credibility as normative power. High expectations are fostered by women's organizations, politicians, and officials of the European Commission, but also by the political elites and non-governmental organizations in Southern Africa. EU capabilities are limited because of its own institutional constraints (no treaty base) and its contradictory aims (market access, neo-liberalism and deregulation versus empowerment of women and poverty eradication). As a result, its sermons lack credibility, whereas it will need big carrots to obtain compliance with its objectives.

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# The EU and the Global Promotion of Children's Rights Norms

Ingi Iusmen

*The UN Convention of the Rights of the Child and its two Optional Protocols form the core of the EU's external action on the rights of the child. We will continue to translate our commitments into concrete actions. . . We will continue to systematically bring up children's rights issues with our partner countries and within the United Nations, to seek to respond to children's rights and needs in our development cooperation and to cooperate with civil society*  
(Baroness Catherine Ashton 2010)

## 1 Introduction<sup>1</sup>

The European Union's (EU) commitment to human rights is embedded constitutionally and institutionally in the European project, while the promotion of human rights abroad is fundamental to the 'normative-power' international image that the EU seeks to promote (Manners 2002; Sjursen 2006). Since the late 1990s, the EU has sought to extend its embrace of human rights norms to children and young

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<sup>1</sup> The findings of this chapter draw on documentary analysis, several rounds of qualitative interviews (carried out between 2010 and 2011) with Commission officials, Member State representatives and children's rights NGOs as part of the Commission funded-project 'The Evaluation of the Impact of the EU Instruments Affecting Children's Rights with a View to Assessing the Level of Protection and Promotion of Children's Rights in the EU' (2010–2011) and the ESRC postdoctoral grant PTA-026-27-2846 'The EU Human Rights Regime: Policy Feedback and Children's Rights' (2011–2012). All interviews were conducted anonymously and interviewees, with some exceptions, approved to be cited anonymously and are not, therefore, named.

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people, inside and outside the European Union. By employing the UN Convention on the Rights of the Child (CRC) as the key source of inspiration for its children's rights measures, the EU has developed and shaped a role as an international children's rights actor committed to promoting children's rights norms in third countries. Therefore, in taking up the issue of children's rights, the EU is joining a range of international organisations, including the United Nations (UN) and the International Labour Organisation (ILO), as well as international children's rights organisations, such as Save the Children or Oxfam, engaged in advancing children's rights norms based on the CRC principles.

But how successfully has the EU advanced children's rights norms via its external policy? This chapter critically examines the effectiveness of the EU as a global children's rights actor by assessing how the EU developed and promoted children's rights measures in EU external policy. It is argued that, on balance, despite some key shortcomings, the EU has succeeded in developing an EU children's rights role on the international arena, while some of its policies radically changed the plight of children on the ground.

This chapter is organised as follows: The first section explores the emergence of an EU children's rights policy as part of the EU's endeavour to promote human rights to third countries. The promotion of children's rights measures and policies is scrutinised in relation to three policy sectors: EU enlargement (section two), development and democratisation (section three). The last section assesses the key achievements and underlying shortcomings of the EU's role as a children's rights organisation – and hence its role as a global power in civic human rights promotion.

## 2 From Human Rights to Children's Rights

The CRC (1989) is a complex and highly technical convention, covering children's right to participation, voice, associate, as well as freedom of thought and expression. Children are represented in the CRC as independent rights-holders, and their freedom and well-being as *legal entitlements*, which constitute the responsibility of states, rather than parents, care givers or charitable bodies. Therefore, the CRC is regarded as the 'touchstone for children's rights throughout the world' (Fortin 2009, p. 49), by providing a paradigm shift in thinking about children as *subjects* of rights. By arguing that the enjoyment of a wide set of human rights is an entitlement that all children possess, the CRC also suggests that State parties to the Convention have an obligation to reform the structures and policies that prevent many children from exercising those rights. Nonetheless, the CRC is part of the family of UN human rights treaties that take shape at the interface between international and domestic politics.

It is generally agreed that regional organisations can play an important role in the successful promotion of human rights, even if they are not themselves signatories of human rights conventions. Regional organisations, such as the EU, can influence state behaviour via technical advice, naming and shaming, norm diffusion, persuasion, agenda-setting and by setting an example. They may also sometimes be able to

exercise influence through trade or aid policies (Powell and Perez 2011). Regional organisations can also act as entry points for advocacy organisations that are pushing for greater compliance with international human and children's rights (Tarrow 2001; Grugel 2005). However, given the commitment of regional organisations to promoting human rights norms and the CRC's role as the main yardstick for children's rights, it was deemed that the EU's embrace of CRC principles would face challenges similar to those faced by the State parties (Ruxton 2005). For instance, it is not clear how states are supposed to undertake and finance the necessary reforms implementing the CRC provisions or whether some issue-areas should take precedence over others. By embracing the promotion of children's rights in its relations with third countries therefore, the EU has undertaken a truly significant task.

The EU's embrace of children's rights norms and principles is part of the EU's broader commitment to promote human rights, norms and values. Indeed, there is a voluminous literature that explores in detail how the EU has tried to promote human rights in enlargement negotiations (Schimmelfennig and Sedelmeier 2005; Grabbe 2003, 2006), or via the human rights clause included in the external agreements concluded with third countries (Bartels 2005). The European Commission in particular has played an important role in upholding human rights externally, both in relation to third countries and in EU candidate states via human rights conditionality (Miller 2004; Sedelmeier 2006). A further concern has been raised regarding how far regional organisations can successfully address 'structural human rights abuses' (Pogge 2003, p. 549), or life-limiting, humiliating and exploitative social conditions, extreme poverty, marginalisation, and social exclusion and discrimination, which require root-and-branch changes at the domestic level. Rights violations of this sort are rooted in the uneven distribution of social, economic, political and cultural power, or what Farmer (2003, p. 7) calls 'pathologies of power'. They reflect the operation of established social hierarchies, political institutions and dominant values, which expose some groups systematically to harm in ways that become 'normalised' and embedded.

By endorsing the promotion of children's rights as an objective of EU external policy, the EU faces further challenges regarding the framing dynamics underpinning the translation of children's human rights into concrete policy measures. Generally, discussions of children's rights are often framed in terms of balancing—protecting children, but also supporting parents and care givers, advancing children's rights to autonomy, with their right to protection and so on (Melton 2008, p. 903). For instance, the promotion and protection of children's rights has to provide a balanced approach between two opposing framings of children's rights: children's dependency on adults in order to exercise his/her rights, hence 'children's needs-based rights', and children's 'dignity rights' (or capacity-based rights), which acknowledge that children are individual persons with the same claims to dignity as autonomous adults (Woodhouse 2000, p. 4).

While the rights-based approach focuses on children as dignity-endowed humans, the needs-based approach emphasises children's inherent vulnerability, and hence their need for protection. Therefore, rights-based framings use participatory and empowering approaches and start by identifying violations of human rights, rather

than focusing on human needs. Children's 'needs-based' approach would include rights to nurture, education, food, medical care, shelter, and other positive goods without which children cannot grow into autonomous adults.

The notion of children's 'dignity rights', or a 'rights-based' approach, acts as a necessary complement to the notion of 'needs-based rights,' because it acknowledges that children are individual persons with the same claims to dignity as autonomous adults. In making children's rights operational, the law must reflect the child's dependency, but also his/her emerging capacity for participation and, ultimately, control (autonomy).

Therefore, at the heart of the protection of children's rights lies the tension between two distinctive visions of childhood: the dependency approach (or 'needs-based'), which highlights the child's helplessness (and hence their need for protection), and the empowerment approach (or 'rights-based'), which stresses the child's emerging capacities for autonomy. The CRC includes rights focusing on children, both according to a dependency approach and an empowerment approach; i.e. recognition of children's essential dependency and their capacity for autonomy. In short, the EU's commitment to advance children's rights in line with the CRC principles had to pay heed to the underlying complexity and contrasting framings describing children's rights.

The EU first revealed its interest in children's rights in the early 1990s in connection with the EU Eastern enlargement (especially pertaining to Romania), and shortly afterwards with regard to development policy. The 2000 EU Charter of Fundamental Rights specifically mentioned children's rights to protection and participation,<sup>2</sup> while the Commission's 'strategic objectives' for 2005–2009 included the protection of the rights of children as 'a particular priority,' and promised that 'the Union [would] act as a beacon to the rest of the world' in respect to children's rights' (European Commission 2005, p. 3). In 2006 the Commission issued its first coherent statement of intent with regard to future action by adopting the Communication *Towards an EU Strategy on the Rights of the Child*. The Communication attempted to bring together all European Commission policies affecting children into an integrated, rights-based framework (European Commission 2006a, p. 2). As the first Commission plan for children's rights, the Communication represents a watershed document. It commits the Commission to mainstreaming and 'child-proofing' its own procedures and policies, and promises evaluation of all future Commission policies in relation to children. With respect to non-EU countries, the EU set out in detail its

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<sup>2</sup> Article 24 of the EU Charter of Fundamental Rights reads:

'Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests' (Charter of Fundamental Rights of the EU 2000, p. 13).

external policies in the Communication *A Special Place for Children* (2008). This called for children's rights to be taken into consideration across EU trade negotiations, development, cooperation and humanitarian aid policies and political dialogues (European Commission 2008a, b). Strategies to combat child labour, trafficking and to promote education, health and basic services were also promised. The situation of children in armed conflict and crisis was addressed in more detail in the *EU Guidelines on Children and Armed Conflict* (2003, updated in 2008) which drew particular attention to the rights of separated and unaccompanied children and child soldiers and the importance of maintaining education services for children, even in times of emergency and crisis (European Commission 2008b). In brief, the emergence of an EU children's rights agenda applicable in EU external policy dimension drew on the EU's broader commitment to promote human rights norms to third countries.

### 3 Children's Rights and Enlargement Policy

The EU has transformed the children's rights provision of Central and Eastern European countries (CEECs) via the application of its accession conditionality as part of the Eastern enlargement process. The Copenhagen accession criteria, whereby the applicant country has to have 'achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (European Council 1993, p. 2) was employed by the Commission to forge changes in the CEECs' child protection provision.

2004 saw the accession of ten new Member States: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. EU membership was then extended to Bulgaria and Romania in 2007. These enlargements are unprecedented in terms of the number of countries involved, and the sheer length and complexity of the accession negotiations. Indeed, in the late 1990s the Commission played a leading role in encouraging change, and in funding reform across the childcare sector particularly in those CEECs that had a high number of children in institutional care, such as Bulgaria and Romania (European Commission 2006b, p. 13). It was particularly the child protection in Romania that became a high-profile accession condition during the Eastern enlargement process due to the situation of children in orphanages, which grabbed the attention of both the international media and EU institutions.

All former communist countries had child protection systems that violated children's rights from legal, social, economic and political perspectives. The Progress Reports relating to Romania and Bulgaria in particular made extensive reference to children's rights, emphasising the need to reduce the number of children in residential care, implement measures to combat child trafficking and street begging, and to promote the social inclusion of Roma children. However, it was the child protection in Romania that became a highly politicised accession condition (from 1998 to 2007) due to the international media coverage of institutionalised children and the issue of



international adoptions. Indeed, the Romanian children's case stands out from the Eastern enlargement process due to the extensive and unprecedented level of EU intervention in the children's rights provision of a prospective EU Member State (Iusmen 2012). Thus, the situation in Romania required the EU's employment of international instruments, such as the CRC, along with EU financial assistance in order to assist the Romanian government with the reform of the child protection system. Moreover, the Commission's lack of internal mandate in, and *acquis* on this area, meant that even at the Commission-level there was little agreement on whether the CRC provisions could be used as guiding principles to transform the children's rights provision in Romania.<sup>3</sup>

The Romanian case provided the EU with the unique opportunity to develop and apply a model of child protection reform which was based on CRC principles. Indeed, the template of child protection reform was later employed in relation to the new candidate countries that experienced similar problems to those faced by Romania. For instance, the overhaul of the child protection in Romania involved the closure of large old-style institutions and the creation of alternative care services (European Commission 2000, p. 19), such as family-type modules, day care centres, maternal centres, recuperation centres or foster care networks. The Romanian case is salient here due to the moratorium on international adoptions imposed by the EU in 2001 as a 'mechanism to end practices that were incompatible with Romania's international obligations under the CRC, and which risked opening opportunities for trafficking in children and other forms of abuse' (European Commission 2002, p. 24). This was the first time that the EU had taken an official stance on the practice of international adoption, an area where the EU had no expertise, or experience of involvement. In spite of the high pressure exerted on the EU by the pro-adoption lobby, requesting that Romania lift the ban on ICA, the Commission's official position on this issue was clear: the EU was not against international adoption as such, but against the corruption and bad practices in child protection (Post 2007, p. 108).

The EU's intervention in the Romanian children's case stands out regarding the breadth and depth of the changes sought by the EU in this policy sector. A new legislation explicitly based on the CRC principles was deemed a fundamental change requested by the EU in order to provide children in the former communist states with the same level of rights protection as that enjoyed by children in Western Europe. For instance, at the Commission's request Romania adopted legislation primarily reflecting the CRC principles and the practices of the EU Member States (European Commission 2004, p. 28). The new Romanian legislation on children's rights and child adoption was highly innovative, and it established a legal system of protection that had at its heart the 'best interests of the child' (Article 3 CRC), while its implementation was supported by a new institutional framework addressing children's rights as a standalone policy area. According to European experts on children's rights law, the new legislation is 'an example of a legislation pushing

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<sup>3</sup> Author's interview with Commission official in at DG Enlargement, Brussels, May 2010.

very far the application of the CRC and it contains a number of provisions by which the other Member States of the EU could be inspired'.<sup>4</sup> Romania, therefore, provides a noteworthy illustration of the extent and depth of EU intervention in the children's rights provision of candidate countries.

During the accession negotiations with Romania and Bulgaria, the Commission developed a particular interest in Roma children (European Commission 2006b) and a concern with the rights of Roma children still predominates its children's rights policies (European Commission 2010a). Similarly, insisting on pro-rights legal reform—inspired by CRC principles—remains part of the current accession negotiations, for example in relation to Croatia, Turkey and the (Former Yugoslav Republic of) Macedonia. Children's rights are addressed now both as part of the political criteria and the *acquis communautaire* section in the Progress Reports monitoring the current candidate countries. In the current Progress Reports, Chap. 23 on *Judiciary and Fundamental Rights* scrutinises some human rights areas, including children's rights, which are also still examined in the political section of the Progress Reports. The monitoring of children's rights within the *acquis*-context involves two aspects.

First, the Commission has greater leverage to put pressure on current candidate states because the Commission can issue benchmarks for opening and closing chapters, which is an important instrument for the Commission. Second, the evaluation of progress is more straightforward, and has become more institutionalised and structured. Furthermore, the employment of benchmarks in relation to children's rights and the inclusion of this human rights area in the *acquis*-section (as part of Chap. 23) amount to the formalisation and further enhancement of the Commission's role regarding the promotion of the rights of the child in the EU's external dimension. According to the Commission's *Enlargement Strategy and Main Challenges 2010–2011*, children's rights are now monitored in all current and potential candidate states as part of the political and *acquis*-criteria (European Commission 2010a). Various aspects related to child protection and children's rights are scrutinised and assessed in these countries, for instance children's access to education is monitored in Turkey, while the implementation of measures regarding the protection of children is scrutinised by the Commission in Croatia to name just a few.

In brief, the protection of children's rights constitutes now a *sine qua non* accession condition in the current enlargement process. All CEECs have enacted children's rights measures across all child-related areas in the form of binding legislation, soft law and policy initiatives. In short, due to accession negotiations with the CEECs, the protection of children's rights has become a formal and entrenched EU accession condition, while the reform of the child protection sector in countries such as Romania is employed as a template in relation to the current candidate countries.

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<sup>4</sup> Author's interview with an international child rights expert Commission official at DG Enlargement, Brussels, May 2010.

## 4 Children's Rights in Development and Democratisation Policies

The promotion of children's rights in EU external relations was pursued as part of two main external policy objectives: democratisation and human rights, on the one hand, and development policy on the other. The main political institutions in charge of EU external policy—the Council and the Commission—have all produced a considerable number of policy documents on children's rights in EU external action, both general ones and theme-specific ones. These documents provide insights into the way in which children's rights in EU external action are approached (Council of the European Union 2003, 2007; European Commission 2006a, 2008a). The Council set out its approach to children's rights outside the EU in the *EU Guidelines for the Promotion and Protection of the Rights of the Child* (2007) and, in so far as children's rights in zones of conflict are concerned, *EU Guidelines on Children and Armed Conflict* (2003, 2008). The aim of the Council was to mainstream children's rights throughout its external policies in general, namely development and cooperation, trade, human rights policy generally, humanitarian aid and the Common Foreign and Security Policy. The *EU Guidelines* (2007) promised high priority for children's rights 'via all available tools' at the disposal of the Commission (Council of the European Union 2007, p. 3). The *EU Guidelines on Children and Armed Conflict* aim to influence third countries and non-state actors to implement international and regional human rights and humanitarian law standards, and to take effective measures to prevent the violation of children's rights on the ground (Council of the European Union 2003, p. 2). To this end, both the *EU Guidelines for the Promotion and Protection of the Rights of the Child* and the *EU Guidelines on Children and Armed Conflict* focused on regular monitoring, reporting and assessments as the basis for identification of situations in which EU action is required. The key tools to achieve these objectives in relation to third countries were actions such as political dialogue, multilateral cooperation, crisis management operations and training.

At the Commission level, the *EU Guidelines for the Promotion and Protection of the Rights of the Child* and the *EU Guidelines on Children and Armed Conflict* are implemented within the context of multilateral cooperation by the use of the EU external tools, such as EC programmes and the relevant financial tools. The Guidelines specifically mention that the Commission should consider the link between relief, rehabilitation and development in the EU's external aid policy; and children's rights should be pursued both as part of the Development Cooperation Instrument (DCI) framework, or as part of the broader human rights policy. Indeed, in EU external policy, children's rights have been addressed as part of development cooperation policy, and the broader human rights and democratisation policies.

EU external policies are underpinned by a commitment of long-standing towards factoring children into development policy, where rights-based approaches caught on early, and date from the early 2000s. The 'target' countries for EU children's rights policies are now in practice located mainly in the developing world. It is here,

in the view of the Commission, where rights violations are most dramatic and where, moreover, the Commission has some aid-based leverage to try and effect change. A fifth of the world's children, almost all of whom are in the developing world, have left education by early adolescence (UNICEF 2011, p. 2). An estimated 170 million children are malnourished and 20 million children are displaced due to armed conflicts or human rights violations (European Commission 2006b, p. 3). It is not surprising, then, that externally, Commission policy is shaped by the view that the rights issues facing children outside Europe are vaster and more dramatic in scale. This idea sits alongside an assumption that a combination of leadership, normative persuasion, combined with the authority that comes with a budget of more than €16.9 billion in development assistance, could achieve some degree of change.

The Commission Communication *A Special Place for Children in EU External Action* (2008a) purported to establish a framework for a comprehensive EU-approach to children's rights in third countries by developing a long-term action plan on children in EU external policy. The 2008 Communication embraces a 'holistic and universally applicable view of children's rights', and intends to 'be part of broader development/poverty reduction strategies' (European Commission 2008a, p. 7). Although the promotion of an integrated approach to children's rights was the Commission's original aim, the policy was eventually confined to a narrow focus, namely employing development strategies involving complementarity between policy tools and financial instruments. Children's rights are addressed in four ways in development cooperation: first, via bilateral programmes, second, via thematic programmes, third, via cross-cutting issues and fourth, via mainstreaming children's rights in all projects and programmes within the development framework (Vandenhoele 2011, p. 478). The European Union's development cooperation policy targets broadly the reduction of poverty, as well as sustainable economic and social development.<sup>5</sup> Thematic programmes complement the geographical programmes or geographical instruments, and they are supposed to achieve the general objectives of the relevant EU external policy, in this case development cooperation.

Since 2006, children's rights have been addressed particularly in two ways in development policy: via targeted actions as part of thematic and geographic programmes and through trying to mainstream children's rights in development and country-based projects and programmes. As a DCI thematic programme, *Investing in People* (iP), addresses children and youth within the development policy framework, covering a wide range of issues that contribute to achieving the Millennium Development Goals (MDGs). *Investing in People* covers four general areas: good health for all, education, knowledge and skills, gender equality, and other aspects of human and social development, which includes children and youth. The iP in particular has been employed to address a series of issues related to children in third countries, including global monitoring and policy advocacy for child protection, and the rights of children,

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<sup>5</sup> Regulation (EC) No 1905/2006: Establishing a Financing instrument for Development Cooperation.

strengthening of participation by children, the promotion of policies to support the employment and decent work for young people, and programmes to keep and retain children in education. It has a specific budget line for children of €90 million for 2007–2013, with projects for children also drawing from the IiP education budget (€80 million) and communicable diseases (€50.6 million). IiP is supported by geographical instruments, such as the European Development Fund (for the African, Caribbean and Pacific countries), the Development Co-Operation Instrument (in Latin America, Asia and South Africa), and the European Neighbourhood & Partnership Instrument (in the neighbouring regions).

Children's rights are also covered in the *European Instrument for Democracy and Human Rights* (EIDHR), the main self-standing financing instrument for the promotion of democracy and human rights worldwide. While the IiP addresses social and economic issues, that affect children, including labour, education and health, the EIDHR focuses on political and civil rights, including those of children. Another key difference concerns the approach to children's rights while IiP programme has a 'needs-based' approach to children, the EIDHR employs a 'rights-based' approach to children. Children's 'needs-based rights' reflect children's essential dependency at birth, but also leave room to honour their inherent capacity for growth to maturity. Both thematic programmes have run their own calls for proposals focusing on children associated with armed conflict. Commission officials deem that the difference between the two approaches amounts to the distinction between a social angle (Investing in People), and a human rights angle (EIDHR) in addressing children's issues. The EIDHR has funded projects aimed at strengthening the role of civil society in promoting human rights, and at addressing the rights of severely deprived and marginalised children, including child soldiers, as well as projects that aim to support the implementation of CRC principles. Nevertheless, EIDHR's own budget (€6.8 million) is actually quite a small part of the human rights and democracy budget. Priority attention has been given to support children affected by armed conflict (European Commission 2008a), with specific budgets for these children under both the IiP and EIDHR.

The Commission has also started working with other organisations, including UNICEF and ILO. This has led to some interesting developments, including the work on the design and application of a toolkit to address children's rights in European development cooperation and external relations. The EU/UNICEF toolkit on children's rights is intended to be employed in development cooperation and government programming by providing policy recommendations to facilitate better incorporation of children's rights into both the content and process of developing Poverty Reduction Strategies (PRS) and National Development Strategies (NDS). All in all, the EU has explored new avenues in promoting children's rights via its development policy, and broader human rights and democracy initiatives in relation to third countries.

## 5 Achievements and Challenges

### 5.1 Achievements

The EU took a bold decision in the late 1990s: to address the violation of children's rights in third countries, and hence promote the compliance with CRC principles. The EU's role as a children's rights actor is further challenging, given that State parties to CRC, inside and outside the EU, have not, on the whole, complied with their obligation to deliver to the best of their capacities (Kilkelly 2005). Whatever the balance sheet in the relatively short time frame since the early 2000s, it should nevertheless be recognised that the EU is trying to play a part in engineering an important shift towards taking children's rights seriously in EU external relations. There are a number of achievements, including the discursive inclusion of children's rights within EU policy documents, meaning that children are no longer quite so invisible in the policy process as in the past. Indeed, children's rights are now expressly addressed as part of EU external policy sectors, particularly in enlargement policy. The EU has promoted children's rights measures by drawing on the CRC principles, and therefore children's rights have become an entrenched area of the EU's role as a 'normative power'. By employing a wide array of tools, such as financial tools, programming along with accession conditionality, the EU has succeeded in addressing a wide range of children's rights matters in non-EU countries, despite lacking a legal mandate in children's rights in relation to the Member States. There is also the beginning of systematic policy coordination at the Commission-level, and the establishment of a relationship with civil society stakeholders. But, equally, there is no doubt that outcomes are less than what the EU had promised to deliver.

### 5.2 Challenges

It is widely contended that the EU advances a certain conception of childhood via its external policies: primarily a 'needs-based' approach, rather than a 'rights-based approach' is promoted towards non-EU countries. For instance, the 2008 Communication *A Special Place for Children in EU External Action* omitted any reference to 'rights' in most of the text of the Communication. Along the same lines, the key focus in the measures and projects funded under DCI is on the needs of children facing hardships in developing countries. This needs-based approach to children entails the depiction of 'children as passive victims who are psychologically scarred and vulnerable' (Hinton 2008, p. 288).

On the other hand, there are those who support the claim that children are autonomous individuals and 'fully-fledged beneficiaries of human rights' (Cantwell 1992, p. 27). The shift from 'rights' to 'needs' is justified on the basis 'that satisfying children's and adolescents' basic needs is essential for the realisation

of their rights' (European Commission 2008a, p. 6). The focus on children's needs rather than their rights is also salient in the four main priority areas requiring action at the global level, all of which focus on protection: child labour, child trafficking, violence against children including sexual violence, and children affected by armed conflicts (European Commission 2008a, p. 2). In the same vein, the Council has emphasised the particular vulnerability of children (Council of the European Union 2008, p. 5).

With respect to the image of the child, and the view of children's rights that is being developed and promoted by EU institutions externally, a picture of vulnerability and victimisation emerged: children are regarded as vulnerable, as victims of exploitation, who need to be helped (European Commission 2010b, pp. 14–15). Therefore, there is hardly any recognition of the agency and dignity-based rights of children. This results in a distorted view of children as only a vulnerable category, that is in need of protection. The emphasis on needs and protection in external action is perhaps not surprising, given that it reflects the standard approach taken towards children's rights in EU internal action also (Stalford and Drywood 2009, p. 171).

The mainstreaming of children's rights across development and external policy has also been difficult. Mainstreaming children's rights into EU policies sits at the heart of what the EU intends to achieve in relation to children's rights. Mainstreaming has emerged as one of the key ways states try to tackle multi-dimensional issues—gender, poverty, social exclusion etc. To make a real difference for to children's situation on the ground, mainstreaming should ideally take place at the local level and within the Commission. At the same time, effective mainstreaming requires considerable intra-institutional coordination, resources (Stalford and Drywood 2009, pp. 165–166), alongside effective leadership, to be able to successfully adapt and translate abstract ideas about children's rights into policy. One of the reasons for ineffective mainstreaming is that the Commission lacks sufficient in-depth knowledge about children's rights issues, and needs to work with wider civil society groups, not just in terms of policy delivery but, more fundamentally, with regard to design and prioritisation than is currently the case. At the same time, as we know from past experiences with gender mainstreaming, the challenges are enormous. As with gender issues, mainstreaming children's rights in development successfully is hampered by the fact that the policy sectors involved are very diverse—from poverty and social inclusion to armed conflict, democracy-building and rural development and local partners are not always cooperative. Then there is the issue of resources. The Commission has been criticised for not spending enough on prioritisation, capacity building, learning and human resources in Brussels: one children's rights stakeholder contended that 'there is no children's rights staff - children's rights is a fraction in somebody's job. On paper things look good, but in practice there is a need for human resources inside the Commission'.<sup>6</sup> Across Commission services, it is still the case that the number of experienced staff with expertise on children's rights is still small. Given the technical complexity of

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<sup>6</sup> Author's interview with UNICEF, Brussels. July 2011.

translating abstract children's rights principles into effective policy measures, EU institutions need to engage more effectively with children's rights organisations and stakeholders that possess the necessary know-how regarding children's rights issues.

Evaluating the success of the EU as a children's rights actor is further complicated by the difficulty in determining what protecting children's rights means in the real world. In particular, there is a dilemma as to how far rights-based programmes can address or ameliorate the structural issues that cause the most serious rights violations in the first place. One way this issue unfolds inside the Commission is in tensions between development programmes on the one hand, and on the other, in trade policy which indirectly permits—or fails to monitor and act on—the systematic abuse of children and young people in industries and production chains outside Europe. A commitment to ending child labour in hazardous industries for example, mainstreamed and monitored in trade policy, would almost certainly be more effective in advancing children's wellbeing in the developing world than the current series of discrete small scale development programmes and activities since, as they currently stand, region-to-region and country trade agreements do not address child labour.

Equally, children's welfare, including their access to education, health and family rights in the developing world would be better protected by a Commission commitment to include decent wages for adults in trade negotiations, than by focusing on policies that target only children. This would of course demand a concerted approach that would take development policy outside the narrow remit of DG Development and into the Commission more broadly and would, for that very reason, be very difficult to achieve. Another problem is that, whilst financial assistance is being provided, the success of the policies is difficult to ascertain since appropriate monitoring mechanisms are not always in place (European Commission 2008b, p. 9). The Commission's own monitoring system is project-based, and provides some (generally positive) feedback in relation to individual projects, but very little in terms of broader impact. Stakeholders have argued that the lack of a macro-level impact assessment is one of the key gaps in children's rights policies, since it makes it difficult to learn lessons and improve programmes for the future.

## 6 Conclusion

Since the late 1990s the EU has boldly endorsed the promotion of children's rights norms and measures as an integral part of its external policy. The EU's promotion of children's rights measures has emerged as part of the EU's broader commitment to human rights norms in EU external policy dimension. The development and promotion of children's rights measures entailed enormous institutional and logistical efforts on the part of the EU, given that children's rights is not a policy sector usually associated with what the EU traditionally stood for, i.e. economic integration. The development of a wide range of right-based measures regarding children meant that Commission officials modified their institution's role in the EU (Hooghe 2012, p. 87)



as strongly committed to upholding children's rights principles. The Council, and particularly the Commission, have developed children's rights policy measures and instruments—based on the CRC principles—which were aimed at addressing the violation of children's rights as part of EU enlargement policy, development policy and in the democratisation sector. Given the leverage of EU accession conditionality, the EU has scored significant successes in overhauling the child protection provision of the Eastern candidates, as Romania's case clearly demonstrates. At the same time, thematic programmes, such as IiP and EIDHR, have targeted children's rights matters from within their broader policy objectives. Therefore, there are important achievements that describe the EU's emergent role as a global children's rights actor.

However, despite these successes, the children's rights policies promoted by the EU face significant shortcomings, such as the focus on a 'needs-based approach', challenges underpinning mainstreaming processes, and the lack of the necessary children's rights expertise at the EU-level. There are few, if any, examples of successful delivery of a holistic agenda of children's rights by regional organisations or, indeed, by State parties, partly because of the structural nature of many children's rights issues. The EU, therefore, embraced an enormously difficult task in trying to turn an abstract commitment to a rights-based policy agenda into concrete policy initiatives that would change the situation on the ground. The obstacles faced by the EU in advancing children's rights externally point to the broader challenges that regional organisations, such as the EU, need to address when advancing rights-based measures in third countries. The availability of necessary expertise and effective tools, institutional capacity to deliver, cooperative relations with stakeholders, along with the political will to take bold action, are some of the vital factors that need addressing before the regional organisations can perform more effectively in the provision of children's rights norms at the global level.

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# Index

## A

*Acquis communautaire*, 100, 327  
Actorness, 38, 44, 55, 219–232  
Administrative coordination, 61  
African, Caribbean and Pacific (ACP) countries, 10, 182, 202, 280–282, 310, 312, 314  
Agenda 2000, 211  
Air passenger name record (PNR), 26  
Al Qaeda, 19–24, 26, 29, 31  
Amsterdam Treaty, 309  
Andean Community (AC), 186, 187, 204, 276  
Anti-dumping, 278, 283  
Appropriateness of norm-takers, 195  
Arab-Israeli conflict, 78, 79  
Arab Peace Initiative, 84  
Arab Spring, 27, 60, 67, 83  
Arctic Council, 165, 166, 170–177  
Arctic Environmental Protection Strategy (AEPS), 172, 176  
Arctic governance framework, 165, 167  
Arctic region, 165, 170, 171, 174, 175, 177  
ASEM. *See* Asia-Europe Meeting (ASEM)  
Asia, 13, 131, 132, 173, 182, 219–232, 237, 238, 240, 249, 258, 265, 293, 344  
Asia-Europe Foundation (ASEF), 240  
Asia-Europe Meeting (ASEM), 220, 226, 230, 240–242, 245–249, 273  
Asia-Pacific Economic Cooperation (APEC) forum, 44, 273  
Assigned amount units (AAUs), 42  
Association agreement (AA), 31, 62, 64, 66, 157, 184–187, 190, 192, 194, 195, 199–202, 204, 205, 207, 208, 211, 213, 273, 276

Association of South East Asian Nations (ASEAN)  
ASEAN-EC Management Centre in Darussalam, Brunei, 247  
ASEAN-EC Project on Regional Integration Support (APRIS), 247  
ASEAN+3 framework, 247  
Draft Phnom Phen Agenda for Implementation of the ASEAN-EU Plan of Action (2009–2010), 242  
Treaty of Amity and Cooperation (TAC), 242  
Asuncion Treaty, 199  
Authority, 59, 65, 74, 75, 79, 81 82, 88, 188, 191, 192, 276, 329

## B

Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline, 156  
Barcelona Process, 100, 121  
Black and Caspian seas, 142  
BRICS, 122, 124

## C

Cabinets, 242  
Cancún agreement, 38, 50  
Capability-expectation gap, 223  
Cartagena Dialogue for Progressive Action, 50  
Central and Eastern European Countries (CEEC), 56–57, 60, 325, 327  
Central Asia, 131–144, 149  
Central Asian Indicative Programme DCI 2007–2010, 138, 139  
Charter of Fundamental Rights of the European Union, 324

- Children's rights, 321–334
- China, 6, 10, 40, 42, 44, 49, 113, 131, 134, 143, 167, 173, 178, 183, 186, 191, 214, 219–232, 237, 238, 241, 245, 246, 249, 253–267, 272, 276–278
- Civilian missions, 22
- Civil Society Dialogue (CSD), 284
- Climate policy, 37, 49, 96, 170
- Coherence
  - institutional, 82, 82, 85
  - output coherence, 42–43, 48
  - preference coherence, 40–41, 43, 47, 48
  - procedural-tactical coherence, 40–43, 47–48
- Commissioners groups, 137
- Commission on the Limits of the Continental Shelf (CLCS), 168, 170
- Common Commercial Policy, 271
- Common Foreign and Security Policy (CFSP), 4, 7, 8, 10, 12, 57, 76, 77, 118, 255, 259, 328
- Common Foreign Security Policy (CFSP)
  - action plan, 4
  - common policy, 4
  - common position, 4
- Common identity, 2, 307
- Common policy framework, 9
- Common Security and Defense Policy (CSDP), 22, 23, 29
- Comprehensive and coherent approach, 173
- Conditionality, 57, 59, 61–63, 67, 70, 100, 120, 123, 124, 183, 184, 188, 194, 195, 306, 310, 312, 323, 325, 331, 334
- Consistency, 76, 79–87, 121
- Constitutive norms, 238
- Constructivism, 56, 66, 70, 113, 149, 238–240, 247–249
- Coordination, 12, 20, 24, 29, 43, 82, 95, 177, 178, 183, 189, 194, 195, 207, 264, 276, 309, 331, 332
  - instruments, 309
- Copenhagen Criteria, 117, 121, 126
- COP 16 in Cancún, 37, 38, 46–51
- COP 15 in Copenhagen, 39–47
- COP 17 in Durban, 38, 51, 52
- Cotonou Agreement, 10, 23, 133, 280, 312, 313
- Counter-terrorism Committee (COTER), 20, 24
- Counter-terrorism cooperation, 20, 23, 27
- Counter-terrorism policy, 19–21, 23, 26–32
- Counter-terrorism task force, 24
- Country Strategy Paper (CSP), 192, 194, 293, 294, 296–299, 314
- Country Strategy Plans, 293
- Crisis management, 328
- CSP. *See* Country Strategy Paper (CSP)
- Currency geopolitics, 241
- D**
- Daphne Project, 309
- Decentralization, 191, 194
- Deep and Comprehensive Free Trade Area (DCFTA), 66, 67, 157, 276
- Democracy promotion policies, 60, 185
- Development aid, 8–10, 23, 24, 29, 245, 246, 291, 293–300, 305, 306, 310, 313, 317
  - donor, 291
- Development Cooperation Instrument (DCI), 137, 139, 328–331
- Diplomacy, 103, 151, 219, 231, 242–244, 246, 248, 262, 263
- Directorates-general (DGs), 283, 284
- Dispute Settlement Mechanism (DSM), 277, 278
- Distinctiveness thesis, 222
- Domestic empowerment, 313
- E**
- East Asia Summit, 220, 238
- Eastern enlargement, 70, 113, 116–118, 120, 123–124, 126, 324–326
- Eastern Partnership Initiative (EPI), 61, 64, 68–69, 148
- Economic external relations, 223
- Economic Partnership Agreements (EPA), 189, 272, 276, 280–282, 284, 312, 314
- EFTA countries, 175
- Emissions trading system (ETS), 96
- Empire, 111–127
- Energy
  - demand, 94, 95
  - independence, 154
  - security, 27, 137, 147, 149, 151, 152, 242
  - sources, 45, 147–158
- ENI, 153
- Enlargement strategy, 56, 327
- Environmental Council, 46, 47
- E.ON, 154
- ERASMUS, 135
- Ethical identity, 222
- EUBAM Rafah, 80
- EU-China Summit 2005, 257
- EU-LAC Association Agreement 2010, 187, 205

- EU-Latin American Caribbean Summit (EU-LAC) 2010, 205
- EU-Mexican Agreement on Economic Partnership, Political Coordination and Cooperation, 189
- EUPOL COPPS, 80
- Euro
  - structural limitations, 22, 24
- Eurocentric perspective, 243
- Euro-centrism, 243
- Euro-Mediterranean Economic Area (EMEA), 124
- Europeaid funds, 135
- European Army, 112
- European Constitutional Law, 193
- European Convention on Human Rights, 24, 193
- European counter-terrorism strategy, 19, 21, 24
- European Court of Justice (ECJ), 25, 28, 308
- European Debt Crisis, 237
- European Defense Agency (EDA), 119
- European Eastern Partnership (EaP), 148, 151, 157
- European Economic Area Agreement (EEA), 172, 174, 175, 276
- European Exchange Rate Mechanism (ERM), 133
- European External Action Service (EEAS), 12, 21, 29–31, 80, 284
- European Foreign Direct Investment (FDI), 199, 200, 203–206, 208, 241, 275
- European foreign policy, 13, 77–78, 86, 119, 264
- European Free Trade Association (EFTA), 117, 126, 175
- European Initiative for Democracy and Human Rights (EIDHR), 190, 192, 330, 334
- European Instrument of Democracy and Human Rights (2005), 143, 330
- Europeanization, 93, 100, 205, 206, 254–259, 263, 264
- European Monetary Union (EMU), 117
- European Neighborhood Policy (ENP)
  - action plans, 62, 79, 103, 156
  - framework, 121, 156
  - principles
    - differentiation, 68, 107, 120, 123
    - joint ownership, 120
    - mutual accountability, 58
    - positive conditionality, 63, 106, 120
    - shared values and common principles, 308
  - review documents, 58, 59, 104
  - strategy paper, 56, 58, 59, 77–78, 122
- European partnership agreements (EPA), 24, 25, 31, 83, 272, 280–282, 284, 308, 312, 314
- European Rapid Reaction Force, 23
- European Security Strategy (2003), 57, 222
- European Union
  - accession conditions, 325, 327
  - Central Asian Investment Programme, 141
  - Central Asian Strategy, 131–144
  - Charter of Fundamental Rights, 324
  - commissioner for enlargement and ENP, 119, 122
  - common agricultural policy (CAP), 200, 209, 272
    - community preference, 210
    - financial solidarity, 210
    - market unity, 210
  - common foreign and security policy (CFSP), 76, 118, 328
  - Council of the European Union, 80, 82, 87, 175, 272, 328, 332
  - Court of Justice of the EU, 25, 28, 308, 309
  - development policy, 23, 291–301, 324, 328–330, 333, 334
    - European Instrument for Democracy and Human Rights (EIDHR), 143
    - Investing in People (IiP), 329, 330
  - energy diversification plans, 148, 149, 152, 155, 158
  - energy policy, 94–97, 99, 104, 147–152, 155, 157
  - enlargement policy, 325, 331, 334
  - Environmental Policy, xxvi
  - EU gender regime, 308, 309
    - hard law, 308, 309
    - soft law, 309, 310, 327
  - European Council, 57, 69, 76–77, 79, 96, 136, 137, 221, 222, 255, 256, 259–262, 271, 293, 325
  - European neighborhood policy (ENP), 10, 184
  - European Policy Action Plan, 10
    - cooperation agreement, 10, 98, 99, 133, 136, 154, 169, 173, 263, 276
    - pioneering policy, 31, 267
  - foreign affairs council, 80, 82, 84, 175
  - foreign policy, 10, 31, 77–79, 131, 219, 223, 224, 258–259, 266, 267
  - global power, 220
  - guidelines for promotion and protection of the rights of the child 2007, 328

- European Union (*cont.*)
- guidelines on children and armed conflict, 325, 328
  - high representative of the union for foreign affairs and security policy, 88, 89
  - human rights policy, 246, 328
  - institutional framework, 113, 118, 282, 326
  - investment initiative, 135
  - justice and home affairs, 20, 21, 26, 66
  - legal personality, xi
  - non-proliferation policy, 25
  - PEGASE mechanism, 79
  - president of the European Council, 76, 81
  - Principle of Conferral, 5, 12
  - Regional Strategy Paper for Assistance to Central Asia 2007–2013, 132
  - rotating Council Presidency, 77
  - small and medium enterprises development programme (SME), 64, 140
  - Special Representative for the Middle East Peace Process, 77
  - stabilization policy, 126
  - Treaty of the European Union (TEU), 307
  - treaty of the functioning of the EU (TFEU), 283
  - vice president of the European Commission, 76, 77
  - Women in Development (WID) policy, 292
- EUROPOL, 28, 30
- Euroscepticism, 186
- Eurozone, 61, 65, 119, 126
- EU Sahel strategy, 24, 29–31
- Everything But Arms (EBA), 275, 281
- Exclusive economic zones (EEZ), 168
- External environment, 39, 43
- Externalization, 26
- F**
- Federalism, 77, 119, 126
- Finalités politique, 305
- Foreign affairs council, 80, 82, 84, 175
- Foreign policy decision-making, 149
- Free trade agreement (FTA), 66, 187, 188, 194, 204, 205, 208, 212, 220, 248, 272–274, 276, 282–283
- Fundamental Rights Agency (FRA), 327
- G**
- G20, 273
- Gazprom, 151–154, 157
- Gender
- equality, 291–301, 308–318, 329
  - mainstreaming, 291–300, 305–318, 332
  - policy, 293, 300
- Gender and development (GAD) paradigm, 292, 300
- General System of Preferences (GSP), 275
- Genetically modified organisms (GMOs), 212
- Georgia, 59, 68, 139, 148, 151, 152, 156, 157, 276
- Global actor, 112–113, 120, 219, 222–224, 244, 261–263
- Global authority, 75
- Global climate governance, xi
- Global climate power, 177
- Global counter-terrorism regime, 25
- Global Financial Crisis 2008, 139, 172
- Global governance, 188, 200, 242, 245, 262
- Global Issues Unit, 265
- Global order, xxvi
- Global tripolar context, 241
- Greenhouse gas emissions (GHG), 40, 44, 45
- Gulf Central Bank (GCB), 106
- Gulf Cooperation Council (GCC), 25, 276
- H**
- Hard law, 3, 308, 309
- Historical institutionalism, 200, 201, 206, 212, 213
- Honest broker, 19
- Human resources, 279, 283, 284, 332
- Human rights
- treaties, 262, 322
  - violations, 1, 3, 136, 329
- I**
- Ideational footprint, 239
- Ideational structure
- core norms, 182, 239, 307
  - passive leverage, 55
  - soft power, 182, 306
  - unilateral emulation, 57
- Identity
- model, 249
- Ilulissat Declaration, 171, 175
- Imperial Europe, 113, 117, 121, 125, 126
- Imperial politics

multidimensional governance, 116  
   supranational ideology, 116  
 India, 10, 25, 40, 44, 49, 52, 113, 173, 178,  
   229–232, 276, 278  
 Institutional framework, 113, 118, 282, 326  
 Institutional structure  
 Instrument for Stability (IfS), 23, 24  
 Interdepartmental meetings, 12  
 Intergovernmental conferences, 166, 176  
 Inter-governmentalism, 93, 200  
 Interim Trade Agreement (ITA), 136  
 Inter-institutional disputes, 77  
 Internal security committee (COSI), 27, 28  
 International actorness  
   capability, 75–79  
   coherence, 79–87  
   consistency, 79–87  
   context, 76–79  
 International climate negotiations, 37, 48, 52  
 International Criminal Court (ICC)  
   ad hoc tribunals, 11  
   complementarity, 1, 5, 12  
   genocide, 1, 13  
   international criminal law, 3, 4  
   jurisdiction, 1, 5–7  
   ratification, 2–5, 7–13  
   Rome conference, 2, 5–7  
   Rome Statute, 1  
   States Parties, 8–10  
 International Energy Agency (IEA), 152  
 International Labour Organization (ILO),  
   322, 330  
 International Maritime Organization (IMO), 177  
 International Monetary Fund (IMF),  
   203, 212  
 International organizations  
   multilateralism, 4, 7  
   regimes, 112  
   unilateralism, 57  
 International Relations Theory, 238, 239  
 Interregionalism, 219, 238–240, 242  
 Interservice groups, 284  
 Islamic fundamentalism, 142, 143  
 Islamism, 121  
 Iterated delegation, 282

**J**

Jai-EX committee, 29  
 Japan, 3, 11, 13, 49, 50, 167, 173, 178, 225,  
   238, 241, 245, 246, 275, 277

**K**

Kyoto Protocol 1997, 45

**L**

Latin American countries, 181, 183, 188, 195,  
   203, 207, 213, 272, 298  
 Leadership  
   structural, 77, 257  
 Legitimacy, 4, 12, 13, 25, 55, 57, 60, 77, 83,  
   113, 115, 121, 126, 176, 223, 241,  
   242, 309  
   cognitive, 223  
   moral, 13  
     exchange, 241  
     influence, 4, 57, 60, 115, 223  
 Liberalism, 61, 200–205, 208, 210, 212,  
   213, 318  
 Libya crisis, vi  
 Lisbon treaty, 21, 27, 29, 73, 76–78, 81, 96,  
   120, 186, 224, 267, 283, 291  
 Logic of action  
 Logic of appropriateness, 3  
 Lomé Convention of the EU with  
   ACP-countries, 312

**M**

Maastricht Treaty, 199, 253, 308  
 Madrid principles, 80  
 Managed globalisation, 273  
 Market access, 66, 113, 192, 207–210,  
   272–274, 279, 305, 310, 311, 318  
 Membership  
   conditionality, 59, 61–63, 67, 70, 120, 124,  
     184, 194, 195, 306, 325  
   perspective, 121, 133, 182  
 MENA region, 114, 119, 124–126  
 MEPP. *See* Middle East Peace  
   Process (MEPP)  
 Mercosur, 187, 199–215, 248, 273, 276  
 Middle East Peace Process (MEPP), 73, 74,  
   77–81, 83, 85–87  
 Military missions, 22, 112  
 Minorities, 325  
 Monroe Doctrine (1823), 199  
 Multifunctionality, 209, 211–213  
 Multilateralism, 4, 7, 46, 76–77, 273

**N**

Nabucco pipeline, 159  
 Nagorno Karabakh conflict, 156  
 National Development Strategies (NDS), 330  
 National elites, 105  
 National Indicative Programmes (NIP),  
   293–299  
 NATO. *See* North Atlantic Treaty  
   Organization (NATO)  
 ND. *See* Northern Dimension (ND)



- New Transatlantic Agenda (NTA), 20
- NGOs. *See* Non-governmental organizations (NGOs)
- NIP. *See* National Indicative Programmes (NIP)
- Non-Aligned Movement (NAM), 6
- Non-governmental organizations (NGOs), 2, 6, 10, 11, 185, 190, 192, 193, 195, 202, 308, 309, 315, 318, 321
- Non-proliferation regime, 25
- Nord Stream AG, 154
- Normative Power Europe (NPE), 4, 55, 56, 93, 271, 305, 308–311, 317–318
- Norms
  - normative binding, 4
  - norm diffusion, 97, 181–184, 195, 317, 322
  - norm entrepreneur, 2, 55
  - regulative norms, 3
  - rules, 2, 70
- North American Free Trade Organization (NAFTA), 188
- North Atlantic Treaty Organization (NATO), 9, 29, 134, 171, 255, 261
- Northern Dimension (ND), 172–174
- Northern Passages, 167, 169
- Northern Sea Route, 167, 169
- NPE. *See* Normative Power Europe (NPE)
- Nuremberg Declaration “Stronger EU-ASEAN relations seen” (2010), 247
- O**
- OAS. *See* Organization of American States (OAS)
- OECD, 101, 209, 300
- Opportunity structure, 38–40, 43–44, 46, 48–52
- Orange Revolution in Ukraine, 151
- Organization of American States (OAS), 193, 195
- Oxfam, 322
- P**
- Palestinian National Authority (PNA), 100
- Particularism of national interests, 78
- Partnership and Cooperation Agreement (PCA), 62, 63, 68, 133, 136, 276
- PCA. *See* Partnership and Cooperation Agreement (PCA)
- Perceptions, 28, 31, 75, 125, 221, 228–232, 243, 244, 273–226
  - self-perception, 220–222, 244–246, 249
- Performance model, 231
- Permissive consensus, 95
- Plurilateral treaties, 277
- Police and justice cooperation, 21, 26, 28
- Politicisation, 38–40, 44–46, 50–52
- Poverty Reduction Strategies (PRS), 329, 330
- Power
  - asymmetry, 317
  - civilian, 31, 55, 182, 284
  - great, 127, 138, 143, 249, 279, 284
  - hard, 4
  - hegemonic, 4
  - legitimacy, 4
  - middle, 5–7
  - military, 13, 239
  - normative, 4, 55–71, 93, 237, 244–246, 248, 249, 271, 305–306, 308–314, 317–318, 321, 331
  - soft power, 267
- Primary law of the European Union, 1
- Programme of Action for the Mainstreaming of Gender Equality in Community Development Cooperation, 292
- Public opinion attitudes, 258
- Q**
- Quartet on the Middle East, 77
- R**
- Regional integration
  - economic, 224, 229, 310, 311
  - model, 219, 232
- Region-to-region dialogue, 186, 187
- Regulation on Integrating Gender Issues in Development Co-operation, 292, 293
- Repsol, 206, 207
- Resecuritisation, 57
- Roadmap, 44, 52, 80, 102
- Role model, 229, 310–311
- Russia-Georgia conflict 2008, 156
- S**
- SAARC. *See* South Asian Association for Regional Cooperation (SAARC)
- Sanctioning/enforcement mechanisms for non-compliance, 267
- Save the Children, 322
- SCO. *See* Shanghai Cooperative Organization (SCO)
- Security community, 56–58, 70
- Self-marginalization

- SEM. *See* Single European Market (SEM)
- Shadow institutions, 193
- Shanghai Cooperative Organization (SCO), 134
- Silk Road program, 140
- Singapore issues, 272, 281
- Single European Act, 117, 244
- Single European Market (SEM), 66, 274
- Societal lesson-drawing, 62
- Soft imperialism, 93, 311
- South America, 133
- South Asian Association for Regional Cooperation (SAARC), 231
- South Caucasus, 147–158
- Southern African Development Community (SADC)
- Gender and Development Declaration, 315
  - Gender Programme, 315
  - Protocol to Accelerate Gender Equality in SADC, 315
  - Regional Indicative Strategic Development Plan 2003 (RISDP), 315
  - Southern African Gender Protocol Alliance, 316
- Southern African Development Coordination Conference (SADCC), 307, 312–314, 316
- Southern Gas Corridor Initiative, 157
- South Stream Project, 152, 153, 155
- Sovereignty, 1, 7, 86, 168, 170, 171, 187, 239, 246, 262
- Strategic interest maximization, 267
- Strategic planning and programming, 28
- Structural power, 272, 279
- SWIFT, 28
- Syria crisis, 83
- T**
- Tariffs, 209, 212, 275–278, 281, 282, 312
- Telefonica, 206, 207
- Terrorism Working Group, 20
- Third generation rights, 246
- Third World Conference on Women 1985 in Nairobi, 292
- Top-down, 100, 257, 259, 264
- Trade
- agreements, 136, 187, 188, 194, 199, 200, 204, 205, 208, 212, 220, 248, 272–280, 282–283, 306, 312, 333
  - Barrier Regulation (TBR), 278, 279
  - policy, 26, 59, 271–275, 277, 279, 282, 284, 312, 333
- Transatlantic relationship, 258
- Trans European Network of Transport (TEN-T), 142
- Transformative Gender and Development paradigm, 293, 300
- Transnational social learning
- TREVI group, 20
- Turkey's EU candidacy, 135
- U**
- Ukraine, 55–75
- Unilateral trade defence instruments, 278
- United Nations
- Committee on the Admission of New Members, 75
  - Convention on the Law of the Sea (UNCLOS), 167, 170, 173, 174
  - Convention on the Rights of the Child (CRC), 322
  - Decade for Women 1975–1985, 292
  - enhanced observer status, 77, 82
  - Fourth World Conference on Women 1995 in Beijing, 315
  - General Assembly, 11, 85, 87
  - Millennium Development Goals (MDG), 298, 315
  - Mission in Bosnia and Herzegovina, 8
  - Observer status, 75
  - P-5, 5
  - Relief and Works Agency, 80
  - Secretary General, 75
  - Security Council, 1, 5, 23, 24, 81, 84, 174, 254, 262
  - UNESCO, 84, 85, 87
  - UNFCCC Conference of the Parties (COP) in Copenhagen, 37
  - UNICEF, 329, 330, 332
- United States of America
- Arctic strategy 2009, 169
  - ASPAs, 8, 12
  - Bush, George W., 7, 8, 11
  - Clinton, Bill, 7
  - Department of State, 9
  - exceptionalism, 232
  - Obama, Barack, 12, 26, 44, 45, 78, 82, 170
  - Romney, Mitt, 13
  - secretary of state, 9, 265
- Unity in diversity, 114

**V**

Venice declaration (1980), 79

**W**

War on Terror, 22, 24, 240

Washington consensus, 199, 208

Whitestream pipeline, 148, 151

World Bank, 64, 188, 191, 193, 203, 212, 274,  
299, 300

World Trade Organization (WTO)

Agreement on Technical Barriers to  
Trade, 210

Agreement on the Application of Sanitary  
and Phytosanitary Measures, 210

Doha round, 209

**Z**

Zero-sum, 202

Zero Tolerance for Violence against Women  
Campaign, 309