

Linkage of the Common Commercial Policy to the General Objectives for the Union's External Action

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Introduction: European External Relations in a Globalized World

In 2005, the conference on the EU's external economic policy according to the Treaty establishing a Constitution for Europe (TCE) dealt with the objectives of the Common Commercial Policy (CCP) and of the external action of the EU.¹ With the ratification of the Treaty of Lisbon, it is time to analyse the CCP in the context of the general principles and objectives, which are applicable to the EU's external action within the TEU and the TFEU.

Starting point for this analysis is the "Laeken Declaration on the Future of the European Union" of the European Council meeting in Laeken on 14 and 15 December 2001. Besides setting the course for the substance of the TCE, the declaration contains remarkable conclusions about "Europe's new role in a globalised world".² Under the impression

¹ Vedder, Ziele der Gemeinsamen Handelspolitik und Ziele des auswärtigen Handelns, in: Herrmann/Krenzler/Strein (eds.), *Die Außenwirtschaftspolitik der Europäischen Union nach dem Verfassungsvertrag*, 2006, p. 43 et seq.

² Presidency Conclusions of the European Council Meeting in Laeken on 14 and 15 December 2001, Annex I, Bulletin EU 12-2001, under point I.27: "Beyond its borders, in turn, the European Union is confronted with a fast-changing, globalised world. Following the fall of the Berlin Wall, it looked briefly as though we would for a long while be living in a stable world order, free from conflict, founded upon human rights. Just a few years later, however, there is no such certainty. The eleventh of September has brought a rude awakening. The opposing forces have not gone away: religious fanaticism, ethnic nationalism, racism and terrorism are on the increase, and regional conflicts, poverty and underdevelopment still provide a constant seedbed for them.

What is Europe's role in this changed world? Does Europe not, now that is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the

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of September 11, new threats for peace and security were identified: religious fanaticism, ethnic nationalism, racism and terrorism, regional conflicts, poverty and under-development. Within a “fast-changing, globalised world”, Europe has “a leading role to play in a new world order”. In this regard, the Union wants “to play a stabilising role worldwide” and be an example for other countries and people.

The Laeken Declaration emphasises that the EU’s intent is “to shoulder its responsibilities in the governance of globalisation” as a power, which fights against “all violence, [. . .] terror and [. . .] fanaticism, but which also does not turn a blind eye to the world’s heartrending injustices”. Europe seeks to change world affairs in a way that does not only favour the rich, but also the poorest countries on earth. Europe strives to be a power “seeking to set globalisation within a moral framework”. This ambitious commitment is directly linked with Art. III-292 TCE and, after the failure of the TCE, with the relevant provisions within the TEU and TFEU.

One of the most essential developments of the TCE and the Lisbon Treaty in comparison to the EU and EC Treaty (as amended by the Treaty of Nice) is the concentration of the EU’s external competences within a policy of its own. These competences were beforehand—during the existence of the EC—gradually developed and scattered all over the Treaties. Whereas in the TCE the external action of the Union was addressed in a sole section, the rules concerning the foreign relations were yet again divided between the TEU and TFEU, but connected through the principles and objectives for the whole of the EU’s external action as mentioned in Art. 21 TEU. Thus, the entire external action of the EU must be guided by the ambitions as expressed in the Laeken Declaration.

The Arrangement of the External Policy Objectives of the Union

The general external policy principles and objectives—complying with the mandate of the Laeken Declaration—first found entrance in Art. III-292 and Art. III-293 TCE which comprised the general values and objectives of the Union as enshrined in Art. I-2 and I-3 TCE. The specific commercial policy objectives were to be found in Art. III-314 TCE.

Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others’ languages, cultures and traditions. The European Union’s one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.

Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world’s heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development”.

Under the Treaty of Lisbon, the general objectives of the Union's external action as first phrased in Art. III-293 TCE, are identically restated in Art. 21 TEU. The new Art. 21 TEU only provides for the changed terminology from the TCE to the Lisbon Treaty—"High Representative" instead of "Minister for Foreign Affairs", "Treaties" instead of "Constitution"—and adapts to the legislative procedure and systematic structure of the legal acts provided by the TEU and TFEU. The same applies to Art. 22 TEU in comparison to Art. III-293 TCE and to the specific commercial policy objectives in Art. 206 TFEU compared to Art. III-315 TCE. The EU's objectives to be followed in its external action as mentioned in Art. 21 TEU accord literally with Art. 2 TEU and Art. I-2 TCE. Even though the objectives of the EU as mentioned in Art. 3 TEU do generally accord with Art. I-3 TCE, they were extended by two points. Especially the introduction of "the protection of [the EU's] citizens", according to Art. 3 para. 5 TEU, is of relevance here. Thus, the relevant provisions concerning the objectives of the CCP and the general external action of the EU are—except the usual terminological and structural changes—identical with the ones of the TCE.³

CCP Objectives, Art. 206 TFEU

According to the since 1958 unchanged Art. 206 TFEU, the EU commits itself to contribute "to the harmonious development of world trade, the progressive abolition of restrictions on international trade, [. . .] and the lowering of customs and other barriers". With the Lisbon Treaty "the progressive abolition of restrictions [. . .] on foreign direct investment" was added. Art. 206 TFEU was drafted in 1958 with the intention of the former EEC to prevent fears of protectionist and foreclosure effects that were affiliated with the creation of the customs union.

The development of world trade and the abolishment of trade barriers were the essential objectives of the GATT. Moreover, the EEC was no party to the GATT

³ Therefore, one can refer to the commentaries on the TCE: Hummer, Art. III-292, Art. III-293, Art. III-314 TCE, in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Heintschel von Heinegg, Art. I-2, Art. I-3 TCE, in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Calliess, Art. I-2 TCE, in: Calliess/Ruffert (eds.), *Verfassung der Europäischen Union*, 2006; and Ruffert, Art. I-3 TCE, in: Calliess/Ruffert (eds.), *Verfassung der Europäischen Union*, 2006; with regard to TEU/TFEU, see: Hummer, Art. 21, Art. 22 TEU, in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012; Heintschel von Heinegg, Art. 2, Art. 3 TEU, in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012; Callies, Art. 2, Art. 3 TEU, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011; Cremer, Art. 21, Art. 22 TEU, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011; Hahn, Art. 206 TFEU, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011; Schwarze, Art. 2 TEU, in: Schwarze (ed.), *EU-Kommentar*, 3rd ed. 2012; Becker, Art. 3 TEU, in: Schwarze (ed.), *EU-Kommentar*, 3rd ed. 2012; Terhechte, Art. 21, Art. 22 TEU, in: Schwarze (ed.), *EU-Kommentar*, 3rd ed. 2012; Osteneck, Art. 206 TFEU, in: Schwarze (ed.), *EU-Kommentar*, 3rd ed. 2012; Pechstein, Art. 3 TEU, in: Streinz (ed.) *EUV/AEUV. Kommentar*, 2nd ed. 2012; Regelsberger/Kugelmann, Art. 21 TEU, in: Streinz (ed.) *EUV/AEUV. Kommentar*, 2nd ed. 2012; Nettesheim/Duvigneau, Art. 206 TFEU, in: Streinz (ed.) *EUV/AEUV. Kommentar*, 2nd ed. 2012.

and thus not formally bound by its obligations.⁴ The objectives mentioned in Art. 206 TFEU re-appear as substantial elements of the CCP in Art. 207 para. 1 sentence 1 TFEU. This specific commercial policy-related objective is inherent in any WTO abiding commercial policy. Since the EU is a member of the WTO, the provision confirms the EU's obligations arising out of its WTO membership and has no independent meaning beyond that aim. However, Art. 206 TFEU can—as a standard of control—affect the validity of secondary commercial policy acts. This is in particular the case in situations in which the ECJ finds that it is not in a position to revise an EU secondary act on the basis of WTO law.⁵

General Objectives for the EU's External Action, Art. 21 TEU

New⁶ and far beyond the trade related objectives is the alignment of the CCP with the objectives governing the EU's external action in general. In an excessive regulatory technique, Art. 21 para. 3 subpara. 1 alternative 1 TEU and the general reference in Art. 205 TFEU as well as the specific—but actually redundant and therefore purely demonstrative—reference in Art. 207 para. 1 sentence 2 TFEU make the general principles and objectives of the EU's external action provided for in Art. 21 para. 1 and 2 TEU mandatory also in the field of the CCP. Art. 21 para. 1 TEU incorporates the values of the Union in Art. 2 TEU and Art. 3 para. 1 and para. 5 TEU establish objectives for the EU also for its external action.

Art. 21 para. 3 subpara. 1 TEU extends the scope of application of the objectives laid down in Art. 21 para. 1 and para. 2 TEU to both Title V TEU, i.e. the CFSP and CSDP that are dealt with in Art. 23 et seqq. TEU, and Art. 206 to Art. 222 TFEU which collect the external competences as formerly contained in the first pillar of the EU. Since the external action of the EU is—differently from what the TCE foresaw—not dealt with in a single section but split up in the TEU and TFEU, it was deemed necessary to once again explicitly refer to the principles and objectives contained in Art. 21 TEU in Art. 205 TFEU for the EU's external policy action contained in the TFEU. Similarly, Art. 207 para. 1 sentence 2 TFEU incorporates the general external policy objectives in stating that “[t]he common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action”.

⁴ The conclusion that the EEC is a de facto member of the GATT was only reached later on by the ECJ, Joined Cases 21-24/72, *International Fruit Company*, [1972] ECR, 1219.

⁵ For this established case law, see e.g. ECJ, Case C-280/93, *Germany v. Council*, [1994] ECR I, 4973, para. 109 et seqq.; ECJ, Case C-149/96, *Portugal v. Council*, [1999] ECR I, 8395, para. 41 et seqq.

⁶ Herrmann, Die gemeinsame Handelspolitik der Europäischen Union im Lissabon Urteil, in: Hatje/Terhechte (eds.), *Grundgesetz und europäische Integration. Die Europäische Union nach dem Lissabon-Urteil des Bundesverfassungsgerichts*, EuR-Beiheft (2010) 1, p. 193 (206): “fundamentally new legal basis”.

The EU's Internal Policies in the Service of the External Action

Art. 21 para. 3 TEU does not only oblige the Union to apply the external action principles and objectives to its particular external competences, but extends their scope, in its second alternative of subpara. 1 also to “the external aspects of its other policies”, i.e. the internal policy areas of the EU.

Consistency of the EU's External Policy and Its External and Internal Policies

A coherent pattern of the new Union law is its strong linkage between the policy areas conferred to the EU among one another. This does specifically apply for the external action. Next to Art. 7 TFEU, which, as before, affects the consistency among the EU's internal policies, Art. 21 para. 3 subpara. 2 TFEU demands both, horizontal consistency between the various areas of the EU's external action and vertical consistency between the external and internal policy areas. Consistency is to be safeguarded by Council and Commission assisted by the High Representative,⁷ according to Art. 21 para. 3 subpara. 2 TEU. Thereby, not only the “external aspects” of the internal policies but the whole range of the EU's internal policies will come under the influence of the Union's external action objective.

Preclusion of Competence Extension

Art. 3 para. 6 TEU and Art. 207 para. 6 TFEU exclude that the principles and objectives set forth for the external action will lead to an extension of the EU's competences and affect the principle of conferral. This self-evident principle can be traced back to the Laeken Declaration and will affect the realization of the EU's external action objective.⁸

The General External and the Intrinsic CCP Objectives Governing the CCP

The objectives mandatory for the CCP arise out of three sources, one intrinsic and two exogenous:

- the specific commercial policy objectives, mentioned in Art. 206 TFEU;
- the general objectives for the EU's external action are laid down in Art. 21 para. 2 TEU;

⁷ See below “Conflict of Objectives, Politicization of the CCP”.

⁸ See below “Mandatory Orientation Towards the General Objectives for the Union's External Action”.

- furthermore, according to Art. 21 para. 1 TEU, the Union shall be guided within its action on the international scene “by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world”.

Hereby, the Union externalizes its internal constitutional values. These are enumerated in Art. 21 para. 1 TEU. Simultaneously, Art. 21 para. 1 TEU does implicitly also refer to Art. 2 TEU, which does formulate the basic values of the EU in general. The “principles” mentioned in Art. 21 para. 1 TEU do not only include the “values” on which “the Union is founded”, but also the Union’s objectives as enumerated in Art. 3 TEU. Art. 3 para. 5 TEU, which is not mentioned in Art. 21 TEU, names the principles and objectives “the Union shall uphold and promote [. . .] [i]n its relations with the wider world”. Art. 3 para. 1 TEU names, as a general objective of the Union, the promotion of “peace” and the promotion of “its values and the well-being of its peoples”.

The provisions just mentioned phrase the relevant values, principles and objectives for the Union’s external action in overlapping and non-identical wording. This might give reason to controversial judicial and political arguments in detail. Yet, looking at the full set of the objectives, one can identify 14 objectives which must be adhered to in the conduct of the CCP. Moreover, the cross sectoral obligations of Art. 8 to 13 TFEU must be respected.⁹

The Commercial Policy Objectives, Art. 206 TFEU

The specific commercial policy objectives mentioned in Art. 206 TFEU, apply since 1958 unmodified. The only exception is the newly added obligation for “the progressive abolition of restrictions [. . .] on foreign direct investment”. These objectives aim for the development and liberalization of world trade. This obligation has been intrinsic to the CCP from the beginning. Today, its major function is to shape the EU’s commercial policy in accordance with WTO law.¹⁰

The General External Action Objectives Governing the CCP, Art. 207 para. 1 sentence 2 TFEU

The general objectives governing the EU’s external action, refer, on the one hand, naturally to the security of the Union and, on the other hand—in conformity with the Leaken Declaration—altruistically to international security, global concerns such as protection of the environment and economic development, and the respect for political values. The latter are the fundamental rights of the western hemisphere historically cumbersomely achieved in Europe. The pursuance of these altruistic objectives is, in a globalized world with various threats, also always self-serving for the security of the Union and its citizens.

⁹ Streinz/Ohler/Herrmann, *Der Vertrag von Lissabon zur Reform der EU*, 3rd ed. 2010, p. 133.

¹⁰ See above “CCP Objectives, Art. 206 TFEU”.

The various principles and objectives for the external action of the Union cannot be analysed in detail.¹¹ Their impact can yet be conceived without a detailed analysis. Not only the antagonism between economic interest and advocacy for human rights illustrates that the EU's external action principles and objectives can come into conflict with each other.¹²

Integration of All Countries into the World Economy, Art. 21 para. 2 lit. e TEU

Through Art. 21 para. 2 lit. e TEU the Union is obliged to “encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade”. With the restriction of trade barriers, the obligation comes close to the specific commercial policy objective of Art. 206 TFEU, which similarly aims at the elimination of trade restrictions. However, this general objective extends *ratione personae* yet far beyond the scope of WTO membership and includes all countries within its scope. With regard to content, Art. 21 para. 2 lit. e TEU is broader in substance than Art. 206 TFEU because “integration [...] into the world economy” does not only embrace the elimination of trade barriers, but in particular also includes the strengthening of the economic and trading power of countries and is thus interrelated with the overall economic development.

Free and Fair Trade, Art. 3 para. 5 TEU

According to Art. 3 para. 5 sentence 2 TEU, the EU is obliged “to contribute to [...] free and fair trade”. The objective of free trade flows exemplarily out of the EU's WTO membership and is in regard of its substance identical to the WTO obligation. However, “fair trade” is yet independent of the Union's WTO obligations¹³ and includes the realization of adequate prices for producers and the adherence of social and labour standards.

¹¹ Not even the commentaries contain such a detailed analysis: Hummer, Art. III-292 TCE, in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Geiger, Art. 21 TEU, Art. 2 TEU and Art. 3 TEU, in: Geiger/Khan/Kotzur, *EUV/AEUV, Kommentar*, 5th ed. 2010; Bitterlich, Art. 2 TEU, Art. 3 TEU and Art. 21 TEU, in: Lenz/Borchardt (eds.), *EU-Verträge. Kommentar nach dem Vertrag von Lissabon*, 5th ed. 2010; in most detail Kaufmann-Bühler, Art. 21 TEU, para. 8 et seqq., in: Grabitz/Hilf/Nettesheim (eds.), *Das Recht der Europäischen Union*, 46th suppl. 2011; Regelsberger/Kugelmann, Art. 21 TEU, in: Streinz (ed.) *EUV/AEUV. Kommentar*, 2nd ed. 2012; Terhechte, Art. 21, Art. 22 TEU, in: Schwarze (ed.), *EU-Kommentar*, 3rd ed. 2012; Hummer, Art. 21 TEU, in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012; Cremer, Art. 21 TEU, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011.

¹² See below “Conflict of Objectives, Politicization of the CCP”.

¹³ The term “fair trade” can be interpreted to solely include WTO-conform trade; however, the term is used in a broader understanding, see Dimopoulos, *The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy*, EFAR 15 (2010) 2, p. 153 (163 et seqq.): “equitable trade”.

Safeguard Security, Independence and Integrity, Fundamental Values and Interests of the Union, the Well-Being of Its Peoples and the Protection of Its Citizens, Art. 3 para. 1, Art. 3 para. 5 sentence 1, Art. 21 para. 2 lit. a TEU

Essential for any foreign policy is the safeguard of the security and the interests of the actor. This natural and self-involved objective of the EU's external action policy is thus not only mentioned in the catalogue of objectives of Art. 21 para. 2 TEU at a first place, but also in Art. 3 TFEU, which does restate the objectives of the EU in general, and which, at the forefront, in its paras. 1 and 2 phrases this objective before the other external action objectives.

Art. 3 para. 1 TEU obliges the Union "to promote [...] its values and the well-being of its peoples". According to Art. 3 para. 5 TEU, the EU "shall uphold and promote its values and interests and contribute to the protection of its citizens". Art. 21 para. 2 lit. a TEU obliges the Union to "safeguard its values, fundamental interests, security, independence and integrity". The security of the Union is according to Art. 24 para. 1 TEU, the primary function of the CFSP and—in the view of a Common European Defence Policy yet to be developed—also of the CSDP and may lead at last resort in case of an armed aggression against the territory of a member state to the obligation for aid and assistance as enshrined in Art. 42 para. 7 TEU.¹⁴ The security of the Union and its citizens against terrorist attacks, which is and will very be often embraced in international terrorist activities outside the territory of the Union, is secured through the solidarity clause of Art. 222 TFEU which includes an obligation to assist as set forth in Art. 222 para. 2 TFEU.¹⁵

Democracy, Rule of Law, Human Rights and Human Dignity, Art. 2, Art. 3 para. 5, Art. 21 para. 1, Art. 21 para. 2 lit. b TEU

The Union has committed itself to the core values of democracy, the rule of law and human rights through Art. 2 internally, and, as the fundamental principle for its external action, through Art. 3 para. 1, Art. 3 para. 5 sentence 1 and Art. 21 para. 1 TEU. Democracy, the rule of law and fundamental or rather human rights are provided in Art. 21 para. 1 TEU as principles and in Art. 21 para. 2 lit. b TEU as objectives of the Unions external action, while Art. 3 para. 5 sentence 2 TEU only mentions human rights within the enumeration of the external action principles. The latter mentions in particular "the rights of the child". The respect for human dignity is particularly stressed in Art. 21 para. 1 and Art. 2 TEU. The protection of minorities which belongs to the internal principles of the Union, is, however, neither particularly mentioned in Art. 3 para. 5 TEU nor in Art. 21 para. 1 TEU. The international protection of

¹⁴ For the CFSP and CSDP, see Vedder, Möglichkeiten und Grenzen effektiven Krisenmanagements durch die EU – Der rechtliche Rahmen, in: Isak (ed.), *Krise, Kompetenz, Kooperation. Beiträge zum 9. Österreichischen Europarechtstag 2009*, 2010, p. 15 et seqq.

¹⁵ Vedder, Art. I-43 TCE, para. 3, 5 and Art. III-329 TCE, para. 2, in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Vedder, Art. 222 TFEU, para. 1, 3, 5, in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012.

minorities is however included through the general objective to respect international law. It is remarkable that within the broad field of human rights, the sole mentioning of the rights of the child highlights *in concreto* a single individual aspect of this field.¹⁶

Ensuring the values of the Union—as well as its interests—is, according to Art. 42 para. 5 TEU, also a task of the CSDP. The development of democracy, the rule of law and human rights was in Art. 177 para. 2 EC Treaty (as amended by the Treaty of Nice) an explicit objective of the development policy. Today, Art. 208 para. 1 TEU still embraces this development assistance policy objective through reference to the general principles and objectives of the Union’s external action.

Freedom and Equality, Solidarity and Mutual Respect Among Peoples, Art. 2, Art. 3 para. 5, Art. 21 para. 1 TEU

Freedom and equality belong to the fundamental values of the Union as enshrined in Art. 2 TEU, of which, however, solely the “principle of equality” is repeated in Art. 21 para. 1 TEU. The fundamental value “freedom”, which is mentioned in Art. 2 TEU independently of human rights as a value of a state and social order, is embraced in the principles of democracy, rule of law and human rights even without explicit mentioning. The “mutual respect among peoples” as mentioned in Art. 3 para. 5 TEU, is not explicitly repeated in Art. 21 TEU, but is included through the respect for international law. It is difficult to construe the meaning of the term solidarity which was introduced into the primary law of the Union through the TCE and today through Art. 3 para. 5 and Art. 21 para. 1 TEU.¹⁷ While the term solidarity in Art. 2 sentence 2 TEU is meant as a social value engraved in the communities of the Member States of the Union—and the term solidarity is used with different meanings and context within various parts of the TEU and TFEU—solidarity in the meaning of Art. 3 para. 5 and Art. 21 para. 1 TEU should, within its context, be interpreted as solidarity in relation to third—non-member—states.

Respect for and Strengthening of International Law and, in Particular, the Principles of the UN Charter, Art. 3 para. 5, Art. 21 para. 1, Art. 21 para. 2 lit. b TEU

Within Art. 3 para. 5 TEU the Union commits itself “to contribute to [...] the strict observance and the development of international law, including respect for the principles of the United Nations Charter”. The “respect for the principles of the United Nations Charter and international law” is invoked in Art. 21 para. 1 TEU as a relevant principle for the development of the Union, without mentioning this function

¹⁶ Convention on the Rights of the Child of 20 November 1989 (entered into force 2 September 1990), 1577 U.N.T.S. 3; see in that regard Schorlemer/Schulte-Herbrügge (eds.), *1989–2009. 20 Jahre UN-Kinderrechtskonvention*, 2010.

¹⁷ See Vedder, Art. I-43 TCE, para. 1 f., in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Vedder, Art. 222 TFEU, para. 1 f., in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012.

in Art. 2 or 3 TEU. Moreover, Art. 21 para. 2 lit. b TEU expresses the development and strengthening of “the principles of international law” as an external action objective.

The respect for international law, and in particular, the UN Charter is expressed as a fundamental principle for the Union, for the first time in 1997 in the fifth accession requirement established by the Luxembourg European Council.¹⁸ Thus the Union commits itself to conduct its international relations in accordance with international law and according to Article 21 para. 2 lit. b TEU, the Union is obligated to advocate the observance of international law worldwide. The Union, as an international organisation, commits itself to the observance of the rules of international law, especially the rules of customary international law, while treaties which are concluded by the Union are binding according to Article 216 para. 2 TFEU.

Peace-Keeping, Conflict Prevention and International Security, Article 3 para. 1, Art. 3 para. 5, Article 21 para. 2 lit. c TEU

According to Article 3 para. 1. TEU, the preservation and promotion of peace is an essential objective of the Union, which is extended in Article 21 para. 2 lit. c TEU to conflict prevention and the strengthening of international security. Contributing to “peace-keeping, conflict prevention and strengthening international security” in accordance with the UN Charter is an explicit objective of the CSDP. In order to achieve this objective, the Union may conduct missions according to Article 42 para. 1 TEU.¹⁹ Besides the defence of the Union itself, which is of minor relevance in present world affairs, the operational capacity of the Union for peace-keeping and conflict prevention internationally is a main task of the CSDP as part of the CFSP.²⁰

That this aim may only be pursued under the observance of international law and according to Article 21 para. 2 lit. c TEU, especially “in accordance with the purposes and principles of the United Nations Charter” can be already concluded from the commitment for the observance of international law. However, this article specifically refers to the rules of the UN Charter which establish the system of collective security, in particular the rules of Chapter VII of the UN Charter and moreover other important principles, such as the obligation for the peaceful settlement of disputes in Art. 33 UN

¹⁸ Conclusions of the Presidency of 12./13.12.1997, Bull. EU 12/1997 p. 9: “The members of the conference must share a common commitment to peace, security and good neighbourliness, respect for other countries’ sovereignty, the principles upon which the European Union is founded, the integrity and inviolability of external borders and the principles of international law and a commitment to the settlement of territorial disputes by peaceful means, in particular through the jurisdiction of the International Court of Justice in The Hague”.

¹⁹ See Vedder, *Möglichkeiten und Grenzen effektiven Krisenmanagements durch die EU – Der rechtliche Rahmen*, in: Isak (ed.), *Krise, Kompetenz, Kooperation. Beiträge zum 9. Österreichischen Europarechtstag 2009*, 2010, p. 18, 25 et seq.

²⁰ See Vedder, *Möglichkeiten und Grenzen effektiven Krisenmanagements durch die EU – Der rechtliche Rahmen*, in: Isak (ed.), *Krise, Kompetenz, Kooperation. Beiträge zum 9. Österreichischen Europarechtstag 2009*, 2010, p. 17 et seq.

Charter. The reference to the Helsinki Final Act and the Charter of Paris²¹ in Article 21 para. 2 lit. c EUV refers specifically to security in Europe under the aegis of the OSCE, whereas the UN Charter is applicable to peace-keeping on the global plane.

Sustainable Development, Article 3 para. 5, Article 21 para. 2 lit. d TEU

The commitment to “sustainable development of the Earth” as stipulated by Art. 3 para. 5 TEU is substantiated by Art. 21 para. 2 lit. d TEU to “the sustainable economic, social and environmental development of developing countries”. It is remarkable that the term sustainable development aims not only at the economy but also at the society and the environment. The primary objective is, according to Art. 3 para. 5 and Art. 21 para. 2 lit. b TEU, the eradication of poverty. This essential objective is reiterated by Art. 208 para. 1 subpara. 2 TFEU as a special objective of the development cooperation.

Preservation and Improvement of the Quality of the Environment, Sustainable Management of Natural Resources, Art. 21 para. 2 lit. f TEU

Art. 21 para. 2 lit. f TEU obliges the Union “to preserve and improve the quality of the environment”, without embedding this objective in the external policy objectives of Art. 3 para. 5 TEU. However, Art. 21 para. 2 lit. f TEU aims at the development “of international measures” for the protection of the environment, whereas Art. 191 TFEU makes the objectives of “preserving, protecting and improving the quality of the environment” the subject of the internal and external environmental policy of the Union itself. A crucial aspect of the global environmental policy is “the sustainable management of natural resources”, to which the Union committed itself by virtue of Art. 21 para. 2 lit. f TEU “in order to ensure sustainable development”, thus establishing a connection to development cooperation. The “rational utilization of natural resources” is an objective of the environmental policy of the Union according to Art. 191 para. 1 TFEU.

Combating Climate Change, Article 191 para. 1 TFEU

The objective of “combating climate change” internationally is addressed neither in Art. 21 TEU nor included in Art. 2 and 3 TEU. The objective was introduced by Art. 191 para. 1, fourth indent TFEU, which according to Art. 174 para. 1 EC Treaty (as amended by the Treaty of Nice) generally aimed at the international management of regional and global environmental problems. Thereby the Union responded to the G-8 Summit in Heiligendamm in summer 2007. As late as during the course of the deliberations on the Lisbon Treaty, combating climate change was

²¹ Final Act of the Conference on Security and Cooperation in Europe of 1.8.1975 and Charter of Paris of 27.5.1997, in: Fastenrath (ed.), *KSZE/OSZE: Dokumente der Konferenz über Sicherheit und Zusammenarbeit in Europa*, 26th suppl. 2010, documents A.1 and A.2.

put on the international agenda.²² This very essential external policy objective was inserted in the provisions on the environmental policy, because one did not want to re-open deliberations about the central provision of Art. 21 TEU at that stage.

Security of Energy Supply, Art. 194 para. 1 TFEU

Likewise, the “security of energy supply” was not included in the catalogue of Art. 21 TEU, but can be found in the newly introduced environmental policy provision of Art. 194 para. 1 lit. b TFEU. This objective has, in view of the global allocation of energy sources, implicitly also an external aspect. The energy supply of the Union from external sources is of special importance for the CCP, since fossil fuels and electric energy constitute goods in the meaning of the CCP.²³ The importance of the security of energy supply for the Union has led to the fact that the Union is a party to the Energy Charter.²⁴

Aid in Case of Natural or Man-Made Disasters, Humanitarian Aid, Art. 21 para. 2 lit. g TEU, Art. 214 TFEU

As part of the principle of solidarity²⁵ as mentioned in Art. 21 para. 1 TFEU, the Union obliges itself in Art. 21 para. 2 lit. g TEU to “assist populations, countries and regions” in case of “natural or man-made disasters”. The solidarity clause of Art. 222 TFEU as the last provision of the TFEU dealing with the Union’s external action is yet not only applicable in cases of reciprocal aid between the Member States, but also covers terrorist threats and attacks.²⁶

This general objective is implemented—not solely and exclusively—by Art. 214 TFEU, which invests the Union with a legal basis for its humanitarian aid action.²⁷ Accordingly, the Union provides “ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters [...]”.

²² Conclusions of the Presidency of 21./22.6.2007, Article I.27 and attachment 2 Article A.4; Summit Declaration “Growth and responsibility in the world economy” of 7.6.2007, p. 18 et seqq., available at: http://www.g-8.de/Content/EN/Artikel/_g8-summit/anlagen/2007-06-07-gipfeldokument-wirtschaft-eng.templateId=raw.property=publicationFile.pdf/2007-06-07-gipfeldokument-wirtschaft-eng.pdf.

²³ Vedder/Lorenzmeier, Art. 133 EC-Treaty, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008, para. 304 et seqq.

²⁴ Energy Charter Treaty of 17 December 1994, [1998] OJ L 69/1; on that account see also Bamberger/Wälde, *The Energy Charter Treaty*, in: Roggenkamp/Redgwell/Rønne/del Guayo (eds.), *Energy Law in Europe*, 2nd ed. 2007, p. 145 (145 et seqq.).

²⁵ See above “Freedom and Equality, Solidarity and Mutual Respect Among Peoples, Art. 2, Art. 3 para. 5, Art. 21 para. 1 TEU”.

²⁶ Khan, Art. 222 TFEU, para. 3, in: Geiger/Khan/Kotzur, *EUV/AEUV, Kommentar*, 5th ed. 2010; Vedder, Art. I-43 TCE, para. 2, 5, in: Vedder/Heintschel von Heinegg (eds.), *Europäischer Verfassungsvertrag. Handkommentar*, 2007; Vedder, Art. 222 TFEU, para. 2, 5, in: Vedder/Heintschel von Heinegg (eds.), *Europäisches Unionsrecht. Handkommentar*, 2012.

²⁷ Kotzur, Art. 214 AEUV, para. 1 et seqq., in: Geiger/Khan/Kotzur, *EUV/AEUV, Kommentar*, 5th ed. 2010; Ollmann, Art. 214 TFEU, para. 1 et seqq., in: Lenz/Borchardt (eds.), *EU-Verträge. Kommentar nach dem Vertrag von Lissabon*, 5th ed. 2010.

Global Governance, Multilateralism, Art. 21 para. 2 lit. h TEU

According to Art. 21 para. 2 lit. h TEU, the Union commits itself to “promote an international system based on stronger multilateral cooperation and good global governance”. This is the most ambitious of the objectives. “Good global governance” does, in particular, cover the fight against corruption, organized crime and the maintenance or establishment of working state structures to prevent the emergence of failed states.

Beyond that, the terminology of “good global governance” implies that the states of the world are led by democratic legitimized governments which are responsible²⁸ towards its peoples and which exhibit a free democratic order, based on human rights. In that regard, “good global governance” includes the export of the Union’s own fundamental values, such as democracy, rule of law and human rights, as mentioned in Art. 21 para. 1 and Art. 21 para. 2 lit. b TEU.

Within this last and most fundamental objective, the Union also commits to multilateralism as an instrument of international relations. The strive for the objectives of Art. 21 TEU within the international cooperation is mentioned on several instances within the Treaties²⁹ and is expressed for the overarching CFSP in Art. 32, 34 and 35 TEU.

The CCP in the Service of the External Action of the Union

With its CCP, the EC, now EU, has pursued other than commercial policy objectives as well. This is in particular true for the trade agreements the EU has concluded with third states. Similarly, this is increasingly the case of autonomous legislation implementing the CCP. Since the 1960s, “development through trade” was generally an accepted strategy of the EU’s development cooperation policy.

The Dispute About Finality

With its Natural Rubber Agreement opinion of 1979³⁰ and the cases *Tariff Preferences* of 1987,³¹ *Werner and Leifer* of 1995,³² as well as *Dorsch Consult* of 1998³³ and finally

²⁸ “responsible governance” is claimed in many international treaties concluded by the EG and in many political documents of the organs of the EU, see below “Commercial Policy Agreements”.

²⁹ e.g. Art. 21 para. 2 lit. f TEU, Art. 191 para. 1 bullet point 4 TFEU, Art. 32, 34, 35 TEU.

³⁰ ECJ, Opinion 1/78, *International Agreement on Natural Rubber*, [1979] ECR 2871.

³¹ ECJ, Case 45/86, *Tariff Preferences*, [1987] ECR 1493.

³² ECJ, Case C-70/94, *Werner*, [1995] ECR I, 3189, para. 10 et seq. ECJ, Case C-83/94, *Leifer*, [1995] ECR I, 3231, para. 9.

³³ ECJ, Case T-184/95, *Dorsch Consult*, [1998] ECR II, 667.

Bosphorus of 1996,³⁴ the ECJ clarified that the EU, through commercial policy instruments—in that case international agreements but also secondary legislative acts—also and even exclusively can pursue policy objectives other than solely commercial ones, i.e. development assistance, environmental policy,³⁵ and security policy³⁶ objectives.

Thus, the ECJ cleared the way to put the CCP instruments in the service of non-CCP objectives. Yet, under the new legal situation after the Lisbon Treaty, the question arises, whether the Union *must* put the CCP in the service of other, non-CCP objectives.³⁷

Commercial Policy Agreements

Pure trade agreements according to Art. 207 TFEU are scarce and very often relate to specific products of specific countries and can hardly be associated with any further objectives. Horizontal trade agreements, i.e. agreements which cover all goods, with third states or a group of states, became, so far as they are of preferential nature, as a general rule, part of—with regard to their substance—further-reaching agreements, which are concluded as association agreements according to Art. 217 TFEU. Horizontal non-preferential trade provisions can normally be found in cooperation agreements, which are not only based on the EU's CCP competences but also on additional competences, since they cover further subjects.³⁸ Even though such agreements are no pure trade agreements in the meaning of Art. 207 TFEU, they exhibit in their core, a CCP provision.

The analysis of treaty practice shows that the CCP is not anymore an end in itself, but is rather used for further reaching purposes. The free trade agreement between the Union and South Korea which was signed on 6 October 2010³⁹ and, thus, based on Art. 207 TFEU and other articles, is nevertheless a trade agreement that has been negotiated according to the previous legal situation. However, it is a model of a new generation of trade agreements in the pursuit of the “new commercial policy”

³⁴ ECJ, Case C-84/95, *Bosphorus*, [1996] ECR I, 3953.

³⁵ ECJ, Opinion 2/00, *Cartagena Protocol*, [2001] ECR I, 9713, para. 23, in particular the assertion of the commission, para. 35, shows that commercial policy can be open for environmental aims.

³⁶ Prior to the creation of a special legal basis for trade embargos by the Maastricht Treaty in the form of Art. 228a TEEC, now Art. 215 TFEU, trade embargos were – and basically still are today – trade policy instruments, quantitative restrictions to imports and exports at level zero, Vedder/Lorenzmeier, Art. 133 EC-Treaty, para. 88 et seqq., in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

³⁷ For the implementation of this commitment from a competence perspective, see below “Political Implementation of Non-commercial Policy Objectives within CCP”.

³⁸ E.g. Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, [1997] OJ L 327/3.

³⁹ Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, [2010] OJ L 127/1.

based on the Commission's communication "Global Europe: Competing in the World" of 2006.⁴⁰ This new strategy relates virtually exclusively to commercial and economic aspects and does not yet reflect the general external action objectives. However, the agreement with South Korea in its Art. 1.1 lit (g) recognizes "that sustainable development is an overarching objective" and in Art. 1.1 lit. (h) refers to the recognition of the standard of environmental and labour laws.⁴¹ Also, Art. 13. 1 f. contains a chapter about "Trade and Sustainable Development".⁴²

Human Rights Clauses

Human rights clauses, which on a reciprocal basis incorporate the respect for human rights as an integral part of the respective agreement, belong to the constant repertoire of CCP, but also other agreements of the EC.⁴³

The Cotonou Agreement

The Cotonou Agreement of the year 2000,⁴⁴ as successor to the Lomé Agreement and its predecessors, which reach back to the 1960s, is an early and meaningful example for connecting with CCP instruments. The preamble and Art. 9 f. of the Cotonou Agreement formulate, as objectives of the agreement the sustainable development of economy and society, the integration of the parties into the world economy,⁴⁵ protection of the environment and the preservation of natural resources,⁴⁶ the respect

⁴⁰ Communication from the Commission of 6 October 2006, COM (2006) 567 final.

⁴¹ "to promote foreign direct investment without lowering or reducing environmental, labour or occupational health and safety standards in the application and enforcement of environmental and labour laws of the Parties".

⁴² In Art. 13.4 the Parties recognize the fundamental rights at work of the ILO; furthermore, the Union and South Korea accept in Art. 13.5 that responsible international environmental governance as well as international environmental agreements, especially the Kyoto Agreement and the future fight against climate change, are of significance.

⁴³ E.g. Cooperation Agreement between the European Community and the People's Republic of Bangladesh on partnership and development of 22 May 2000, [2001] OJ L 118/48; Council Decision concerning the conclusion of the Cooperation Agreement between the European Community and the Islamic Republic of Pakistan of 29 April 2004, [2004] OJ L 378/23; Simma/Aschenbrenner/Schulte, Human rights considerations in development cooperation activities of the European Community, in: Alston/Bustelo (eds.), *The European Union and Human Rights*, 1999.

⁴⁴ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, [2000] OJ L 317/3 as amended in [2005] OJ L 209/27 and [2010] OJ L 287/3.

⁴⁵ Preamble: "Affirming their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy; [...]".

⁴⁶ Art. 20 para. 1: "The objectives of ACP-EC development cooperation shall be pursued through integrated strategies [...]. In this context [...] shall aim at: [...] e) promoting environmental sustainability, regeneration and best practices, and the preservation of natural resource base".

for human rights, especially rights dealing with the social and working life, democracy and rule of law,⁴⁷ good governance,⁴⁸ regional “peace building and conflict prevention and resolution”,⁴⁹ fight against terrorism,⁵⁰ cooperation in countering the proliferation of weapons of mass destruction,⁵¹ climate change,⁵² ratification of the Rome Statute,⁵³ fight against HIV/AIDS,⁵⁴ as well as cross-cutting themes.⁵⁵

⁴⁷ Art. 9 para.1 sub.-para. 2: “Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development”.

⁴⁸ Art. 9 para. 3 sub.-para. 1: “In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development”. Art. 9 para. 3 sub.-para. 2: Good governance [...] shall [...] constitute a fundamental element of this Agreement.”

⁴⁹ Art. 11 para. 1: “The Parties shall pursue an active, comprehensive and integrated policy of peace building and conflict prevention and resolution, and human security, and shall address situations of fragility within the framework of the Partnership. This policy shall be based on the principle of ownership and shall in particular focus on building national, regional and continental capacities, and on preventing violent conflicts at an early stage by addressing their root-causes, including poverty, in a targeted manner, and with an adequate combination of all available instruments”.

⁵⁰ Art. 11a: “The Parties reiterate their firm condemnation of all acts of terrorism and undertake to combat terrorism through international cooperation, in accordance with the Charter of the United Nations and international law [...] the Parties agree to exchange:

– Information on terrorists groups and their support networks; [...].”

⁵¹ Art. 11b para. 1: “the proliferation of weapons of mass destruction [...] represents one of the most serious threats to international stability and security. [...] this provision constitutes an essential element of this Agreement”.

⁵² Art. 32a: “The Parties acknowledge that climate change is a serious global environmental challenge and a threat to the achievement of the Millennium Development Goals [...] cooperation shall:

a) recognise the vulnerability of ACP States and in particular of small islands and low-lying ACP States to climate-related phenomena”.

⁵³ Art. 11 para. 7: “In promoting the strengthening of peace and international justice, the Parties reaffirm their determination to:

– share experience in the adoption of legal adjustments required to allow for the ratification and implementation of the Rome Statute of the International Criminal Court; and

– fight against international crime in accordance with international law, giving due regard to the Rome Statute.

The Parties shall seek to take steps towards ratifying and implementing the Rome Statute and related instruments”.

⁵⁴ Article 31a: “Cooperation shall support the efforts of ACP States to develop and strengthen across all sectors policies and programmes aimed at addressing the HIV/AIDS pandemic and preventing it from hampering development”.

⁵⁵ Art. 20 para. 2: “Systematic account shall be taken in mainstreaming into all areas of cooperation the following thematic or cross-cutting themes: human rights, gender issues, democracy, good governance, environmental sustainability, climate change, communicable and non-communicable diseases and institutional development and capacity building. These areas shall also be eligible for Community support”.

Euro-Mediterranean Agreements

The EU has concluded Euro-Mediterranean Agreements with the southern and eastern neighbouring countries of the Mediterranean Sea within the framework of the Mediterranean Strategy, and in recent times as part of the Union for the Mediterranean.⁵⁶ Such Euro-Mediterranean Agreements include democracy and the rule of law, the respect for human rights and international law as well as for the UN Charter as integral parts of the respective treaties.⁵⁷ The Euro-Mediterranean Agreements of the new generation include in continuation of the afore concluded association agreements a free trade regime.⁵⁸

Stabilisation and Association Agreements with the Western Balkans

The Stabilisation and Association Agreements which have been concluded with the Western Balkan States, especially those which emanated out of the dissolution of former Yugoslavia, clearly serve far-reaching policy objectives such as the cooperation with the ICTY.⁵⁹ They also include the option for accession to the Union, which, in the light of Art. 49 TEU that provides the requirements for

⁵⁶ Founded at the European Mediterranean Conference of 13 July 2008 in Paris, Joint Declaration of the Paris Summit for the Mediterranean, available at: <http://www.auswaertiges-amt.de/cae/servlet/contentblob/363400/publicationFile/3694/EuroMed-ErklParis.pdf>.

⁵⁷ E.g. Art. 2 of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part of 18 July 2005, [2005] OJ L 265/1: "Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the domestic and international policies of the Parties and shall constitute an essential element of this Agreement".

⁵⁸ E.g. Art. 6 of the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part of 18 July 2005, [2005] OJ L 265/1.

⁵⁹ Art. 2 et seqq. of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part of 9 April 2011, [2004] OJ L 84/1; Art. 2 et seqq. of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part of 29 October 2001, [2005] OJ L 26/1; Art. 1 of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Serbia, of the other part of 29 April 2008, [2010] OJ L 28/1; Art. 1 of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part of 16 June 2008, [2008] OJ L 169/10; Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part of 12 June 2006, [2009] OJ L 107/165; Art. 2 and 4 Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part of 15 October 2007, [2010] OJ L 108/3.

accession to the Union, must be seen in a particular context. However, the first major step on that way consists in the establishment of a free trade regime.

Autonomous CCP Legislation

Also, autonomous commercial policy instruments, generally regulations stand beyond their trade-related subject matter in the service of non-commercial objectives. Unlike trade agreements in which the EU, with its bargaining power, is free to include non-commercial policy objectives, the EU—as a WTO member—is bound by WTO law when it issues autonomous CCP instruments. Regulations which include non-commercial matters must be in conformity with WTO law. Concerning trade in goods, such provisions must be justified through Art. XX GATT—which foresees general exceptions for specific legitimate interests—or Art. XXI GATT—which foresees security exceptions. Such commercial policy instruments can be effective in accomplishing especially environmental and human rights objectives.

Generalized System of Preferences

The Generalized System of Preferences (GSP) is in existence since 1971 and rotationally renewed by regulation.⁶⁰ It grants—on the basis of an UNCTAD agreement—preferential access for goods of developing countries to the EU market, therefore creates a unilateral free trade area. Similarly to the Lomé Agreement and confirmed by the ECJ,⁶¹ the GSP from its beginning served for the implementation of development cooperation objectives.

Today, the GSP stands also in the service of other external action objectives mentioned in Art. 21 para. 2 TEU. According to Art. 7 et seqq. of Regulation 732/2008,⁶² economic incentives are granted if a state complies with the principles of sustainable development and responsible good governance. It is essential under the regulation that the respective state has “effectively implemented” a number of international agreements enlisted within the regulation that are concerned with subjects such as human rights, rights of workers, safety at work, child and forced labour, environmental protection, and the fight against drugs and crime. Such beneficial treatment is actually granted to 15 mainly Latin American countries.

⁶⁰ For a description, see Vedder/Lorenzmeier, Art. 133 EC-Treaty, para. 273 et seqq., in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

⁶¹ ECJ, Case 45/86, *Tariff Preferences*, [1987] ECR 1493.

⁶² Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences from 1 January 2009 and amending Regulations (EC) No 552/97, (EC) No 1933/2006 and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007, [2008] OJ L 211/1 as amended [2011] L 145/28. This Regulation is according to its Art. 32 para. 2 applicable until “31 December 2013 or until a date laid down by the next Regulation, whichever is the earlier”. A Commission proposal for a new Regulation of the European Parliament and the Council applying a scheme of generalised tariff preferences can be found in COM(2011) 241 final.

Another effective way of implementing a value-oriented commercial policy is the possibility under Art. 15 et seqq. of the GSP regulation to withdraw preferential arrangements from a beneficiary state in case of “serious and systematic violation” of the above mentioned agreements concerned with the protection of human rights and labour standards, or if the state does not effectively fight against drugs and crime. Such withdrawals were actually implemented against Sri Lanka, Belarus and Myanmar.⁶³ The Union is currently reviewing if the situation in Myanmar allows a full re-instatement of Myanmar to the GSP.⁶⁴

The Capture of the CCP for CFSP Objectives

Since 1980, trade embargos were based on the CCP power within the EC Treaty.⁶⁵ The introduction of a specific competence for economic embargos through the Maastricht Treaty does not change the fact that a trade embargo is a quantitative restriction and therefore a CCP instrument. Trade embargos were and still are instruments aimed at international security, exclusively. This is evidenced by the necessity of a prior decision within the CFSP framework, in Art. 215 TFEU.

The trade regime in dual-use goods, which was originally regulated within the CFSP,⁶⁶ was, under direct reference to the ECJ judgements *Werner*, *Leifer* and *Centro-Com*⁶⁷ and therefore recognizing the exclusive competence of the Union, transformed into a regulation based on the sole foundation of the former Art. 133 EC Treaty.⁶⁸

⁶³ According to Art. 19 IV of the Regulation No 732/2008: Regulation (EU) No 143/2010 of the Council of 15 February 2010 temporarily withdrawing the special incentive arrangement for sustainable development and good governance provided for under Regulation (EC) No 732/2008 with respect to the Democratic Socialist Republic of Sri Lanka, [2010] OJ L 45/1; Council Regulation (EC) No 1933/2006 of 21 December 2006 temporarily withdrawing access to the generalised tariff preferences from the Republic of Belarus, [2006] OJ L 405/1; Council Regulation (EC) No. 552/97 of 24 March 1997 temporarily withdrawing access to generalized tariff preferences from the Union of Myanmar, [1997] OJ L 85/8.

⁶⁴ Joint statement of EU High Representative Catherine Ashton and EU Trade Commissioner Karel de Gucht on Burma-Myanmar of 15 June 2012, MEMO/12/449.

⁶⁵ Proof: Vedder/Lorenzmeier, Art. 133 EC-Treaty, para. 90 et seqq., in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

⁶⁶ Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council of the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods, [1994] OJ L 367/8, and Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods, [1994] OJ L 367/1.

⁶⁷ ECJ, Case C-70/94, *Werner*, [1995] ECR I, 3189, para. 10 f.; ECJ, Case C-83/94, *Leifer*, [1995] ECR I, 3231, para. 9; ECJ, Case C-14/95, *Centro-Com*, [1997] ECR I, 81, para. 26 et seqq.

⁶⁸ Council Decision 2000/402/CFSP of 22 June 2000 repealing Decision 94/942/CFSP on the joint action concerning the control of exports of dual-use, [2000] OJ L 159/218 and Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology goods, [2000] OJ L 159/1, following Council Regulation (EC) No 394/2006 of 27 February 2006 amending and updating Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, [2006] OJ L 74/1; see also Vedder/Lorenzmeier, Art. 133 EGV, para. 17, 53, 182, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

After trade in weapons and military items had been regarded by the Member States as being completely outside the CCP because of Art. 346 TFEU and its predecessors, the trade in weapons firstly fell in the scope of the CFSP in 1998.⁶⁹ However, aspects of trade in arms start to be covered by the CCP.⁷⁰

Goods which are covered by non-proliferation regimes for nuclear, biological and chemical weapons are subject of the Dual-Use Regulation. As unilateral acts of the Union, such measures are justified through the security exception of Art. XXI GATT.

The CCP in the Service of the Environmental Policy

A restriction or prohibition of trade in specific species of flora and fauna and products thereof have proved to be efficient instruments for environmental protection. Thus, the Union implemented the Washington Agreement for the protection of endangered species (CITES) through unilateral regulations since 1994.⁷¹ This far-reaching barrier to trade is justified by Art. XX lit. g GATT.⁷² Furthermore, the EU has set conditions for the “placing on the market of seal products”.⁷³

⁶⁹ European Union Code of Conduct Arms Exports of 8 June 1998, Doc. 8675/2/98 Rev. 2; replaced by Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, [2008] OJ L 335/99; and the Common military list of the European Union of 27 February 2012, [2012] OJ C 85/1; the Common Position 2008/944/CFSP obliges the Member States to pay attention to the respect for human rights and the maintenance of peace and security when licensing the export of munitions; see also Thirteenth Annual Report According to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, [2011] OJ L 382/1; Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, [2002] OJ L 191/1; Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, [2003] OJ L 156/79; Council Decision 2009/1012/CFSP of 22 December 2009 on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries, [2009] OJ L 348/16.

⁷⁰ ECJ, Case C-91/05, *ECOWAS*, [2008], ECR I, 3651 para. 71 et seq. Eeckhout, The EU’s Common Foreign and Security Policy after Lisbon: From Pillar Talk to Constitutionalism, in: Biondi/Eeckhout/Ripley (eds.), *EU-Law After Lisbon*, 2012, p. 265 (270 et seq.).

⁷¹ Council Regulation (EEC) No 3626/82 of 3 December 1982, [1982] OJ L 384/1; replaced by Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, [1997] OJ L 61/1; lastly amended by Commission Regulation (EU) No 101/2012 of 6 February 2012 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, [2012] OJ L 39/133.

⁷² In detail see Vedder/Lorenzmeier, Art. 133 EGV, para. 188 f. in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

⁷³ Art. 3 Regulation (EC) No 1007/2009 of 16 September 2009 of the European Parliament and of the Council on trade in seal products, [2009] OJ L 286/38: “The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence”.

Integration of the CCP into the General External Policy

According to the established practice of the EU, trade agreements and autonomous trade regulations have been in the service of general external policy objectives as now formulated within the TEU.

The substantial scope and legal intensity of the implementation of non-commercial policy objectives in the instruments of the Union vary in relation to the respective third parties involved and their willingness to accept the implementation of further-reaching objectives, such as in the field of human rights. General external policy objectives can be found in the preambles of trade agreements, and increasingly as fundamental obligations in the operative parts of such agreements. The determination of non-commercial policy objectives as a fundamental basis of the agreed cooperation entitles the Union to suspend contractual obligations according to Art. 60 VCLT or to terminate an agreement according to Art. 62 VCLT in case of non-compliance.⁷⁴

Political Declarations

The integration of the CCP into the general framework of external relations of the Union has for a long time been the subject of Commission documents.⁷⁵ On the occasion of the conclusion of commercial agreements, the European Parliament (EP), through resolutions or comments on the respective agreement, emphasizes the significance of clauses on the protection of human rights and on other non-commercial policy objectives.⁷⁶

After the entry into force of the Lisbon Treaty, on 16 September 2010 the European Council adopted the “EU External Relations Strategy 2010”⁷⁷ which seeks a “more integrated approach” for the entire external policy and internal policies of the Union to achieve strategic interests and objectives. This integrated approach which also includes the national policies of the Member States, covers besides trade as one of

⁷⁴ ECJ, Case C-162/96, *Racke*, [1988] ECR I, 3688, para. 42.

⁷⁵ Communication from the Commission to the EP, the Council, the Economic and Social Committee and the Committee of the Regions of 20 October 2005, COM (2005) 525, “European values in the globalised world”; Communication from the Commission of 6 December 2006, COM (2006) 763 final, “Europe’s trade defence instruments in a changing global economy, A Green Paper for public consultation”; Communication from the Commission to the Council and the EP of 24 October 2006, COM (2006) 631 final, “EU – China: Closer partners, growing responsibilities”; Communication from the Commission to the Council, the EP, the European Economic and Social Committee and the Committee of the Regions of 4 October 2006, COM (2006) 567 final, “Global Europe: Competing in the World, A Contribution to the EU’s Growth and Jobs Strategy”.

⁷⁶ See e.g. European Parliament resolution of 24 April 2008 on the free trade agreement between the EC and the Gulf Cooperation Council, [2009] OJ C 259E/83.

⁷⁷ See Annex I para. a) Conclusions of the European Council of 16 September 2010, EUCO 21/1/10 REV 1, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/116547.pdf.

many other objectives, the fight against climate change, security of energy supplies, global development, migration and visa affairs.⁷⁸

Impact of the General External Action Objectives on the CCP

Until today, there is little CCP practice under the Lisbon Treaty which can show to what extent the general external action objectives shape the conduct of the CCP. The trade agreement with South Korea which is the first in a row of envisaged trade agreements of a new generation has been negotiated under the Nice Treaty. In recent jurisprudence of the Court, only the Kadi decision of 30 September 2010 mentions Art. 21 TEU, however without relevance to the outcome of the decision.⁷⁹

Expansion of the General External Objectives

The inclusion of external policy principles and objectives in Art. 21 TEU essentially codifies the already established practice of the Union, which is expressed by the conclusion of international agreements, in particular but not exclusively agreements concluded within the CCP, or by autonomous legislation of the Union. Art. 21 TEU continues the objectives of the CFSP formulated in the Treaty of Maastricht, as they were lastly phrased in Art. 11 and Art. 3 para. 2 TEU (as amended by the Treaty of Nice) and expands them on the entire external action of the Union. In addition, Art. 21 TEU includes objectives, which were before and are even today requirements for specific external policies, e.g. in the field of environmental protection in Art. 191 TFEU, for the development cooperation in Art. 177 para. 2 EC Treaty (as amended by the Treaty of Nice), which purported for the development cooperation policy, *inter alia*, the objectives of democracy, rule of law and human rights.

⁷⁸ Annex I para. a) Conclusions of the European Council of 16 September 2010, EUCO 21/1/10 REV 1, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/116547.pdf: “The importance of issues like climate change, energy policy, trade, development or Justice and Home Affairs issues, including migration and visa policy in dealings with partners and at a multilateral level must be fully taken into account in preparations for summits and international events. In this regard the European Union should further enhance the coherence and complementarity between its internal and external policies. The practice of holding orientation debates well before summits should be further developed, with a particular emphasis on setting priorities and concrete tasking”.

⁷⁹ ECJ, Case T-85/09, *Kadi*, [2010] ECR II, 5177, para. 115.

Mandatory Orientation Towards the General Objectives for the Union's External Action

The introduction of the general external policy objectives in Art. 21 TEU does, however, change the legal quality of the hitherto existing practice in respect to the CCP. The consideration of non-trade-related objectives within the CCP practice has, until now, only been made possible through the ECJ case law.⁸⁰ The power to conduct the CCP *enabled* the EU to pursue other objectives. As the ECJ case law was concerned whether the Union *can* follow non-commercial policy objectives through its competences, the question is nowadays, whether the Union is *obliged* to align its CCP with the range of general objectives set forth in Art. 21 TEU.

Self-commitment Under Treaty Law

Art. 21 TEU constitutes up through the many references, *inter alia*, in Art. 207 para. 1 sentence 2 TFEU, a primary law based self-commitment of the Union and its organs⁸¹ to pursue also within the CCP the implementation of the general external policy objectives. The predecessors of Art. 206 TFEU have been seen to be of binding character by the ECJ⁸² and the prevailing literature.⁸³ However, the Union's organs enjoy a wide margin of discretion. Art. 131 EC Treaty (as amended by the Treaty of Nice) was not seen to have direct effect⁸⁴; third states could not derive any claim from that provision.⁸⁵

⁸⁰ See above "The Dispute about Finality".

⁸¹ Kaufmann-Bühler, Art. 21 TEU, para. 6, in: Grabitz/Hilf/Nettesheim (eds.), *Das Recht der Europäischen Union*, 46th suppl. 2011: "Selbstbindung"; Nettesheim/Duvigneau, Art. 206 TFEU, para. 25, in: Streinz (ed.) *EUV/AEUV. Kommentar*, 2nd ed. 2012; Vedder, Ziele der Gemeinsamen Handelspolitik und Ziele des auswärtigen Handelns, in: Herrmann/Krenzler/Streinz (eds.), *Die Außenwirtschaftspolitik der Europäischen Union nach dem Verfassungsvertrag*, 2006, p. 43 (46).

⁸² See ECJ, Case 112/80, *Dürrbeck*, [1981] ECR, 1059, para. 42 et seqq.; ECJ, Case 245/81, *Edeka v. Germany*, [1982] ECR, 2745, para. 22; ECJ, C-150/94, *UK v. Council*, [1998] ECR I, 7235, para. 64.

⁸³ Vedder, Art. 131 EC-Treaty, in: Grabitz/Hilf/Nettesheim (eds.), *Das Recht der Europäischen Union*, 41st suppl. 2010, para. 14; Hahn, Art. 206 TFEU, para. 7, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011; Müller-Ibold, Art. 206 TFEU, para. 3, in: Lenz/Borchardt (eds.), *EU-Verträge. Kommentar nach dem Vertrag von Lissabon*, 5th ed. 2010; Kahn, Art. 206 TFEU, para. 3, in: Geiger/Khan/Kotzur, *EUV/AEUV. Kommentar*, 5th ed. 2010: "unionsrechtliches bindendes Programm"; Dimopoulos, The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy, EFAR 15 (2010) 2, p. 153 (160).

⁸⁴ Vedder, Art. 131 EC-Treaty, para. 16, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 40th suppl. 2009; Nettesheim/Duvigneau, Art. 206 TFEU, para. 5, in: Streinz (ed.), *EUV/AEUV*, 2nd ed. 2012; Osteneck, Art. 206 TFEU, para. 4, in: Schwarze (ed.), *EUV/AEUV. Kommentar*, 3rd ed. 2012.

⁸⁵ Vedder, Art. 131 EC-Treaty, para. 14, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 40th suppl. 2009; Hahn, Art. 206 TFEU, para. 4, in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011.

These deliberations must be transferred to Art. 21 TEU: the provision is legally binding and justiciable, yet it does include for the EU organs a wide margin of discretion in applying it.⁸⁶ The binding character follows from the indicative phrasing of the norm. The intensity of its binding character, however, is yet diversified by the wording of the respective objectives, which speak of “foster”, “support”, etc. The few authors, who address the legal nature of the objectives set forth in Art. 21 TEU, express the view that the objectives under Art. 21 TEU are legally binding.⁸⁷

Scrutiny by the ECJ

As secondary law,⁸⁸ trade agreements and legislative acts that are based on Art. 207 TFEU can be reviewed by the ECJ for their conformity with the Union’s primary law. Thereby, the standard of review may also include the principles and objectives for the Union’s external action provided by Art. 21 para. 1 and para. 2 TEU. The ECJ may either render an opinion according to Art. 218 para. 11 TFEU, or a judgement in an annulment procedure according to Art. 263 para. 1 TFEU, which both can be initiated by, inter alia, the EP or the Commission.

Political Implementation of Non-commercial Policy Objectives within the CCP

Within the Union’s framework, especially the EP, but also the Commission are hitherto willing to strive for the external policy objectives.⁸⁹ Since, under the Lisbon Treaty, the fundamental trade-related acts are henceforth enacted according to Art. 207 para. 2 TFEU through the ordinary legislative procedure, the EP, for the

⁸⁶ Explicitly: Dimopoulos, *The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy*, EFAR 15 (2010) 2, p. 153 (161 et seq.); Kahn, Art. 206 TFEU, para. 3, in: Geiger/Khan/Kotzur, *EUV/AEUV, Kommentar*, 5th ed. 2010; Bungenberg, *Außenbeziehungen und Außenpolitik*, in: Schwarze/Hatje (eds.) *Der Reformvertrag von Lissabon*, EuR-Beiheft (2009) 1, p. 195 (242): “klarer Auftrag”.

⁸⁷ Krajewski, *The Reform of the Common Commercial Policy*, in: Biondi/Eeckhout/Ripley (eds.), *EU-Law After Lisbon*, 2012, p. 292 (296 et seq.); Hahn, Art. 207 TFEU, para. 4 f., in: Callies/Ruffert (eds.) *EUV/AEUV. Kommentar*, 4th ed. 2011; Nettesheim/Duvigneau, Art. 207 TFEU para. 24 et seqq. in: Streinz (ed.), *EUV/AEUV*, 2nd ed. 2012, Osteneck, Art. 207 TFEU, para. 4, in: Schwarze (ed.), *EUV/AEUV. Kommentar*, 3rd ed. 2012.

⁸⁸ International agreements concluded on the basis of Art. 218 TFEU have according to consistent case law of the ECJ the rank of secondary law, however with primacy before autonomous secondary law, ECJ, Case 181/73, *Haegmann*, [1974], ECR, 449 (460); ECJ, Case C-308/06, *Intertanko*, [2008] ECR I, 4057, para. 42.

⁸⁹ Brok, *Die neue Macht des Europäischen Parlaments nach “Lissabon” in Bereichen der gemeinsamen Handelspolitik*, *Integration* 33 (2010) 3, p. 209 (216 et seq.); Bungenberg, *Going Global? The EU Commercial Policy After Lisbon*, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law*, 2010, p. 123 (129); before the ratification of the Lisbon Treaty, see European Parliament resolution of 24 April 2008 on the free trade agreement between the EC and the Gulf Cooperation Council, [2009] OJ C 259E/83.

first time, has a co-decision power in the CCP.⁹⁰ The reference of essential CCP acts to the ordinary legislative procedure entails that, according to Art. 218 para. 6 subpara. 2 lit a (v) TFEU, trade agreements need the approval of the EP.⁹¹ Moreover, association agreements, which cover trade arrangement also require the approval of the EP according to Art. 218 para. 6 subpara. 2 lit. a (i) TFEU.

If the Union wants to include non-commercial policy objectives within trade agreements with third states, the success of such efforts depends upon the political capability of the Union to induce the parties to the agreements to accept such provisions. Even though the Union, measured by its imports and exports of goods and services, is amongst the two biggest trade partners in the world, it is not certain that the Union can actually enforce its objectives in every instance. The contrast between commercial and economic interests, on the one hand, and an active human rights policy, on the other hand, is well-known.

Competence and Choice of Legal Basis

According to the case law of the ECJ, trade agreements and autonomous commercial policy acts can, partially or entirely, be in the service of non-trade-related objectives.⁹² Yet, the more such instruments serve objectives other than commercial policy ones, e.g. in the field of development cooperation or environmental policy, the more urgently the question arises, upon which legal basis such instruments must be based. The determination of the correct legal basis results from the intention and predominant subject-matter of the respective legislative act.⁹³ This differentiation will not be affected by the general external policy objectives in Art. 21 TEU.⁹⁴

The obligation to implement the general external action objectives does not entail an extension of powers, not even of particular existing competences, such as the CCP.⁹⁵ The existing scope of the CCP in respect of substance and instruments is not touched and remains unchanged as determined before the ratification of the Lisbon Treaty by both the ECJ and prevailing literature on this subject.⁹⁶

The limits of the power to conduct the CCP mark the borderline for the inclusion of substantial non-commercial policy topics in CCP instruments. These limits must

⁹⁰ On this subject see the contribution of Krajewski, New functions and new powers for the European Parliament: Assessing the changes of the common commercial policy from the perspective of democratic legitimacy, within this volume.

⁹¹ Cf. the contribution of Krajewski, New functions and new powers for the European Parliament: Assessing the changes of the common commercial policy from the perspective of democratic legitimacy, within this volume.

⁹² See above “The Dispute about Finality”.

⁹³ ECJ, Opinion 2/00, *Cartagena Protocol*, [2001] ECR I, 9713, para. 22 et seqq.

⁹⁴ Dimopoulos, The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy, EFAR 15 (2010) 2, p. 153 (165).

⁹⁵ See above “Preclusion of competence extension”.

⁹⁶ See e.g. Vedder/Lorenzmeier, Art. 133 EC-Treaty, para. 29 et seqq., 57, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 38th suppl. 2008.

in future be determined through case law and actual practice under the Lisbon Treaty. If measures exceed the CCP limits, the Union's legislative acts or agreements can and must, as the case may be, be based on other competences, such as for development cooperation or environmental policy in the case of the Cartagena Protocol.⁹⁷

For general objectives such as democracy, rule of law and human rights, but also global governance, a particular substantial competence of the Union is missing. However, according to Art. 207 para. 1 TFEU, the CCP competence to pursue the general external action objectives includes the power to put the agreements and legal acts in the service of the general objectives mandatory for the conduct of all external action. In particular the grant of trade benefits can be made conditional upon the fulfilment of non-commercial policy objectives, as it has already been consistently done in practice so far. Whether the obligation to respect the general external action objectives extend beyond such conditional linkages⁹⁸ is questionable.

The Union's International Obligation to Implement the General External Action Objectives

With the codification of the principles and objectives governing its external action, the Union does not solely reveal itself as a responsible political actor, worried about the world's well-being. In fact, with the codification of the principles and objectives of its international action in Art. 21 TEU and other parts of the TEU and TFEU, the Union responds to international obligations arising out of international treaties and customary international law, or which exist due to non-legal commitments.

The Union is either directly,⁹⁹ so far as it acts on the international plane because of its competences instead of the Member States, or through the Member States indirectly, without being a party to the respective treaty, bound by international agreements. The latter is *inter alia* true for the ICCPR and ICESCR, as well as other human rights treaties such as the Convention on Rights of the Child,¹⁰⁰ under the condition that all Member States are parties to such international treaties.

⁹⁷ ECJ, Opinion 2/00, *Cartagena Protocol*, [2001] ECR I, 9713, para. 44.

⁹⁸ Dimopoulos, *The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy*, EFAR 15 (2010) 2, p. 153 (164).

⁹⁹ See e.g. the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006, [2010] OJ L 23/35; see also Treaty of Amity and Cooperation in Southeast Asia of 24 February 1976 to which the Union acceded to through Council Decision 2012/308/CFSP of 26 April 2012 on the accession of the European Union to the Treaty of Amity and Cooperation in Southeast Asia, [2012] OJ L 154; the Council Decision takes special regard to the aim of the treaty to "promote peace, stability and cooperation in the region" and "calls for the settlement of disputes by peaceful means, the preservation of peace, the prevention of conflicts and the strengthening of security in Southeast Asia", thus, "the rules and principles set out in the Treaty correspond to the objectives of the Union's common foreign and security polity".

¹⁰⁰ See above "Democracy, Rule of Law, Human Rights and Human Dignity, Art. 2, Art. 3 para. 5, Art. 21 para. 1, Art. 21 para. 2 lit. b TEU".

In consequence, the ECJ has occasionally consulted both UN Human Rights Covenants as international binding obligations for the Union.¹⁰¹ Even though the Union is no member of the UN, it is, according to the ECJ, bound by the UN's mandatory measures which are adopted by the Security Council under Chapter VII of the UN Charter.¹⁰²

Through its general external action objectives as a self-commitment, the Union avows itself to other international obligations such as the UN Millennium Development Goals¹⁰³ or human rights of third generation.¹⁰⁴ As an example, in the field of development cooperation, Art. 208 para. 2 TFEU explicitly provides that “The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations”.

Value-Orientated Foreign and Trade Policy

Through Art. 21 TEU, the Union commits itself by means of primary Union law—thus absorbing international obligations and values—to an active, value-orientated foreign policy, in general, and an international trade policy, in particular, which, besides the liberalization and expansion of world trade, is above all aimed at sustainable development, the preservation of the environment and sustainable management of natural resources, promoting democracy and the rule of law, the respect for human rights, and international peace and security within the framework of the UN, and international relations on the basis of international law and the promotion of good global governance.

¹⁰¹ ECJ, Case 347/87, *Orkem*, [1989] ECR, 3283, para. 31; ECJ, Joined Cases C-297/88 and C-197/89, *Dzodzi*, [1990] ECR I, 3763, para. 68; ECJ, Case C-249/96, *Grant*, [1996] ECR I, 621, para. 44.

¹⁰² See CFI, Case T-315/01, *Kadi*, [2005] ECR II, 3649, para. 193: “Nevertheless, the Community must be considered to be bound by the obligations under the Charter of the United Nations in the same way as its Member States, by virtue of the Treaty establishing it”; ECJ, Joined Cases C-402/05 P and C-415/05, *Kadi/Al Barkaat*, [2008] ECR I, 6351, para. 293: “Observance of the undertakings given in the context of the United Nations is required just as much in the sphere of the maintenance of international peace and security when the Community gives effect, by means of the adoption of Community measures taken on the basis of Articles 60 EC and 301 EC, to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations”.

¹⁰³ UN GA Res. 55/2, *United Nations Millenium Declaration of 18 September 2000*, UN GOAR, 55th Sess., Supp. No. 49, p. 4.

¹⁰⁴ Tomuschat, *Human Rights: Between Realism and Idealism*, 2nd ed. 2008, p. 25 (54 et seqq.).

Conflict of Objectives, Politicization of the CCP

The external policy objectives serve for the achievement of international values but do not necessarily aim at the same direction and can conflict with each other. This is in particular true for possible conflicts between specific commercial policy objectives and the wider foreign policy objectives such as the promotion of human rights. The various codifications of the objectives in the Union's primary law do not lead to a prioritization of particular objectives.¹⁰⁵ Conflicts of objectives could be solved by the following guidelines:

Specific objectives of particular external policy fields such as the CCP objectives in Art. 206 TFEU can be unrestrictedly pursued as long as they do not create a conflict with the general objectives.¹⁰⁶

However, Art. 21 TEU superimposes on the special commerce policy objectives of Art. 206 TFEU the more general trade-related objectives such as "the integration of all countries into the world economy" according to Art. 21 para. 2 lit. e TEU and especially the obligation to "free and fair trade" in Art. 3 para. 5 TEU. "Fair" does not solely mean trade in conformity with WTO law, but also includes social considerations and the equitable allocation of trade advantages, especially an adequate price for traded goods that approximates work, expended resources and other factors.¹⁰⁷

The alignment of the CCP with the general objectives of the external action leads to a politicization of the CCP¹⁰⁸ in that not only specific CCP objectives are to be pursued. Inevitably, Art. 207 para. 1 sentence 2 TFEU has put the CCP in the service of the wider objectives which govern the whole of the EU's external action.

Vice versa, mentioning trade related objectives in Art. 21 para. 2 TEU does also lead to an integration of non-commercial external policy fields into the CCP objectives.

The embedment of the CCP into non-commercial policy objectives is not new as practice shows. New is solely the legal obligation to consider non-commercial

¹⁰⁵ Streinz/Ohler/Herrmann, *Der Vertrag von Lissabon zur Reform der EU*, 3rd ed. 2010, p. 133; Bungenberg, *Going Global? The EU Commercial Policy After Lisbon*, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law*, 2010, p. 123 (128); Dimopoulos, *The Effects of the Lisbon Treaty on the Principles and Objectives of the Common Commercial Policy*, EFAR 15 (2010) 2, p. 153 (166 f).

¹⁰⁶ Vedder, Art. 131 EC-Treaty, para. 15, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, 40th suppl. 2009; Kahn, Art. 206 TFEU, para. 4, in: Geiger/Khan/Kotzur, *EUV/AEUV, Kommentar*, 5th ed. 2010.

¹⁰⁷ See above "Free and fair trade, Art. 3 para. 5 TEU".

¹⁰⁸ Bungenberg, *Going Global? The EU Commercial Policy After Lisbon*, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law*, 2010, p. 123 (128); Bungenberg, *Außenbeziehungen und Außenpolitik*, in: Schwarze/Hatje (eds.) *Der Reformvertrag von Lissabon*, EuR-Beiheft (2009) 1, p. 195 (212); Boysen/Oeter, *Außenwirtschaftspolitik*, in: Schulze/Zuleeg/Kadelbach (eds.), *Europarecht. Handbuch für die deutsche Rechtspraxis*, 2nd edition, 2010, § 32, para. 124; with criticism: Nettesheim/Duvigneau, Art. 206 TFEU, para. 39 et seqq., in: Streinz (ed.), *EUV/AEUV*, 2nd ed. 2012

policy objectives. An independent CCP of its own, if it had existed before the Lisbon Treaty, will now be less distinctive.¹⁰⁹ The general external policy objectives will—as far as WTO law permits—overarch the CCP.

To this end, the CFSP together with the CSDP will provide the substantial and institutional framework. The High Representative, through his or her function to assist the Council and the Commission in ensuring “consistency between the different areas of its external action and between these and its other policies”, according to Art. 21 para. 3 subpara. 2 TEU, gains some influence on the CCP.¹¹⁰

Especially the European Council has a major institutional and substantial influence on the CCP. According to Art. 22 TEU, it is the European Council’s task to identify, through decision, on the basis of the objectives set forth in Art. 21 TEU, the “strategic interests and objectives of the Union” in the field of the CFSP and “other areas of the external action of the Union”, thus also within the field of the CCP. Such decisions can be connected with a prioritization of certain objectives in regard to a specific country or region and/or in regard to a specific subject-matter.

The institutional and substantial integration of the CCP in the CFSP is a consequence of the abolition of the Union’s pillar-structure. Despite the fact that the ECJ still exercises no jurisdiction over the CFSP according to Art. 24 para. 1 subpara. 2 TEU and Art. 275 TFEU, continues to have jurisdiction to defend the CCP against violations, according to Art. 275 para. 2 TFEU in conjunction with Art. 40 TEU. The general objectives do yet become part of the CCP by means of Art. 207 para. 2 sentence 2 TFEU. Similarly, through the principle of consistency and its concretion via Art. 22 TEU, other policy fields, including the CFSP, are connected with the CCP.

The External Economic Constitution of the Union

Parallel to the economic constitution of the Union,¹¹¹ whose main pillars are free and social market economy with a distinctive competition law and the control of state aid together with the fundamental freedoms of the internal market, one can determine an external economic constitution of the Union under the Lisbon Treaty. The essential elements of the Union’s external economic constitution are the liberalization of trade in conformity with WTO law, the integration of countries into the global economy, fair trade, the usage of commercial policy instruments for the purpose of sustainable

¹⁰⁹ Streinz/Ohler/Herrmann, *Der Vertrag von Lissabon zur Reform der EU*, 3rd ed. 2010, p. 149: termination of the single status of the CCP; Nettesheim/Duvigneau, Art. 206 TFEU, para. 38, in: Streinz (ed.), *EUV/AEUV*, 2nd ed. 2012

¹¹⁰ On this subject see the contribution of Dederer, The Common Commercial Policy under the influence of Commission, Council, High Representative and European External Action Service, within this volume.

¹¹¹ Nowak, Binnenmarktziel und Wirtschaftsverfassung der Europäischen Union vor und nach dem Reformvertrag von Lissabon, in: Schwarze/Hatje (eds.) *Der Reformvertrag von Lissabon*, EuR-Beiheft (2009) 1, p. 129.

global development, global protection of the environment on the basis of sustainable management of natural resources, global peace and security policy and good global governance, which is committed to democracy, the rule of law, human rights and responsible governance.

However, the awareness that commercial policy instruments can be used to achieve and implement international policy objectives and values, has come a long way. The embargo against South Rhodesia that was implemented by the UN Security Council through the Resolution of 16 December 1966, was implemented by Germany solely through a circular decree on external commerce of 21 December 1966¹¹² and Hans-Peter Ipsen, within his legal opinion on the embargo, did not respond at all to the EEC and its already existing exclusive competence for a CCP.¹¹³

The CCP and the external trade law of the Union are part of a value-orientated integral external policy of the Union. The Union has obliged itself to act internationally as an entity which is based on western-occidental values and to pursue these values as the Laeken Declaration¹¹⁴ already pointed out. This constitutional commitment to a value-based global governance must be seen as unique.¹¹⁵ As the world's largest economic power, the Union—especially through its exclusive competence over the CCP—has significant impact on the implementation of these objectives. As a community of values, constitutionally built upon common political and societal values—instead of a national identity that is unreachable for the Union—the Union is a model for a post-national community of states in a globalized world. In this spirit, “supranational” turns into “post-national”.

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¹¹² German Bundesanzeiger No. 241 of 24 Dezember 1966.

¹¹³ Ipsen, Außenwirtschaftsrecht und Außenpolitik. Rechtsgutachten zum Rhodesien-Embargo, 1967.

¹¹⁴ Cf. above “Introduction: European external relations in a globalized world”.

¹¹⁵ Bungenberg, Going Global? The EU Commercial Policy After Lisbon, in: Herrmann/Terhechte (eds.), *European Yearbook of International Economic Law*, 2010, p. 123 (128); approves this determination that had been made in 2005: Vedder, Ziele der Gemeinsamen Handelspolitik und Ziele des auswärtigen Handelns, in: Herrmann/Krenzler/Streinzi (eds.), *Die Außenwirtschaftspolitik der Europäischen Union nach dem Verfassungsvertrag*, 2006, p. 43 (47).