



Research framework

The EU's contribution in enhancing regional and global stability and prosperity

1. Introduction

The Treaty of Lisbon has created a new legal and institutional framework for the EU. The Treaty merges the European Community with the European Union and endows the latter with legal personality. It makes an end to the three pillar structure and includes several institutional innovations in the field of EU external relations, in particular the permanent President of the European Council, the transformation of the High Representative for the CFSP into a High Representative for Foreign Affairs and Security Policy, a post culminated with that of Vice-President of the European Commission, and the creation of a European External Action Service. The Treaty, however, leaves many questions as to the operability of these mechanisms. Yet, the answers to the questions will have a direct impact on the way the European Union will play its role on the international plane and contribute towards enhancing regional and global stability and prosperity.

CLEER takes the Treaty provisions on the European Union's institutional framework and its external policies (CFSP, CSDP, enlargement, ENP, trade, development), and the external dimension of the Union's other policies as a point of departure for its Research Programme. In this framework, three clusters of concepts are set out to serve as tools for a legal analysis of the Unions' actions in the world:

- the projection of EU norms abroad and the development of international law;
- the observance of international law and the reception thereof in the EU legal order;
- the coherence, consistency and effectiveness of the Unions' external actions.

Derived from Articles 3 and 21 TEU, these concepts will be used both as independent topics for research and as guiding principles for studies on the EU's external actions in designated fields. As to the latter, CLEER's inter-faculty research focus is on the external dimension of those policies which are considered particularly relevant to evaluate the European Union's contribution in enhancing global and regional stability and prosperity:

- the protection and promotion of economic and financial interests;
- the protection of the environment, climate and energy;
- the fight against illegal immigration and crime; and
- military security.

Current developments in these domains find themselves in flux at both the international and the European level and offer ample opportunities for inter-disciplinary research. At the crossroads of the above-mentioned concepts and policies, numerous specific fields of research will be explored.

2. Guiding principles of the Unions' actions

Article 5(3) TEU outlines the principle mission statement of the European Union's external relations:

"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter." [Emphases added]

The binding nature of the mission statement ('the Union shall') does raise the question: what will the Union do, which instruments will it put in place to fulfil this mission in an effective and hence credible way?

The EU's actions on the international scene are given further direction by Article 21(1) TEU:

“The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”

In other words, while maintaining and developing its external relations, the Union shall be guided by a body of legal principles which makes up its constitutional fabric. The projection of these EU values and norms on the international plane should assist in the further development of international law. By the same token, the Union will assure the proper reception and observance of the international law in its external actions. In the following paragraphs both guiding concepts will be explained in more detail.

3. Observance and reception of international law

Since the start of the European integration process, the legal order of the EC/EU has co-existed and been influenced by the international law to which its Member States (and the other organizations of which they form part) have to abide. Where conflicts between EC/EU law and general international law exist, whether spurred by bilateral or multilateral conventions or the result of EC/EU secondary legislation or case-law of the European Court of Justice, they have been the subject of extensive academic literature. The same goes for the legal positions of the Member States in such conflicts and the ways and means which have been used to solve these disputes.

Although not new on the research agenda, the reception of international norms in the EU's legal order merits ongoing critical and constructive legal analysis. New conflicts and discrepancies arising out of the rapidly evolving international and EU legal systems mean that the research topic is far from being exhausted. The interaction between the EU and other international organizations, for instance, remains a research domain which is as deep as it is wide. The incorporation in the EU legal order of international economic law (incl. WTO law), international financial law (through actions of, e.g., the IMF, IBRD, FATF),

international environmental law (e.g., the Kyoto Protocol and its successors), international human rights law (originating in the frameworks of, inter alia, the Council of Europe, OSCE and the Human Rights Council), international humanitarian law (as a result of, inter alia, a bolder security and defence policy and EU troop deployments in crisis situations), international criminal law (driven by, inter alia, the case law of the ICTY and the ICC) and the law on international peace and security (e.g., UN Charter and Helsinki Final Act), to name just a few, will spur new research questions as the EU becomes more active in these dynamically evolving fields of international law.

A topical research question which is central to all of the above-mentioned issues is the extent to which the EU itself will contribute to 'the strict observance of international law' in its relations with the wider world (Art. 3(5) TEU).

4. Projection of EU norms

The EU's role in the world today and tomorrow rests essentially on its internal strength, *i.e.* the development of its internal policies and the enforcement of the law adopted to attain the policies' objectives. The external dimensions of, e.g., the single market, the euro, and the Union's rules on competition testify to the fact that the EU is a regulatory superpower with a policy lead in many areas. To name the most recent examples, the chemicals legislation and the climate and energy package are paving the way towards global governance on these critical international challenges.

The EU's external impact will, also in the future, essentially be based on its internal (political, economic and legal) strength. Thus far, however, the EU has not been using its internal competences with the maximum possible impact. The Member States and the EU institutions could reinforce their capacity to act together externally on, for example, economic policy and energy relations with third states. Political leaders have singled out the development of the latter as a priority of any future European security strategy. In fact, energy could be as important as the single market project in the future European integration, but only if a collective will emerges for a common policy. And yet, while the

Member States are not far apart on the goals – on securing supply, reducing carbon emissions and ensuring sustainable energy policies, they are still too distant on means.

In terms of regulatory power, size matters. That's why the enlargement policy is one of the main assets of the European Union. With the accession of 15 more states in the past two decades, the current EU of 500 million consumers has much more weight in the global economy than the Common Market did in 1993. Both size and internal strength are essential for the Union's policy lead in global economic and ecological governance. Partly for those reasons, as well as for the export of EU values, norms and interests (accompanied with financial and technical support), the Union wields soft (transformative) power in both its immediate neighbourhoods and farther afield. The exercise of soft power is a very successful example of long-lasting system (regime) change. On a more practical level, the expansion of the Schengen Area of passport-free travel has triggered the EU to match a better border management with a renewed immigration policy. Third countries, especially neighbouring states, are directly confronted with the EU's internal policies and *acquis* and given little choice but to adapt.

The idea at the heart of the European integration project is a simple one: create institutions and rules within which countries can conduct their business more effectively than through bullying and war-mongering – and other countries will seek to do the same. The success of European integration has stimulated the creation of many other regional projects, such as ASEAN and Mercosur. If the EU's creation of a rule-based framework for cooperation is respected worldwide, then that makes the Union a global actor.

5. Coherence, consistency and effectiveness of the EU's external actions

The Lisbon Treaty has amended the Treaty on European Union (TEU) and the Treaty establishing the European Community, the latter being renamed to *Treaty on the functioning of the European Union* (TFEU). Both Treaties bear the same legal force but their scope is different. The TEU consists more in particular of the constitutional structure and legal principles of the Union. The TFEU deals with substantive law and sees upon the policies for which the EU is competent. As such, the TFEU incorporates the external policies

on trade, development cooperation, enlargement and the ENP. Yet, the general objectives on external action of the EU and the specific provisions on its Common Foreign and Security Policy (CFSP) are laid down in the TEU. The choice for a different Treaty framework, different decision-making procedures and different instruments can be seen as a symbolic expression of the intergovernmental character of the EU competences regarding CFSP and – as an integral part thereof – the Common Security and Defence Policy (CSDP): in accordance with Article 24(1) TEU, decisions on CFSP have to be taken unanimously; legislative acts are excluded; and the European Parliament has no right of co-decision. Once a decision has been agreed upon it shall be implemented by the High Representative. Crucially:

“The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union’s actions in this area.” (Art. 24(3) TEU)

To a large degree the effectiveness of EU external policies will be determined by the skilfulness of the Union and the Member States to deal with the swing of this metaphoric pendulum. In other words, the objectives of the Union’s policies will not be achieved without instruments which are directed at creating the necessary synergies to ensure implementation. A critical analysis is needed of both the legal, political and other tools available to the Union and the way they are applied. Also, the institutional dimensions of the EU’s role externally (the High Representative and the EEAS, for instance) will be of major importance to glean insights in the ways to ensure effectiveness.

An issue intimately related to the foregoing is the level of internal cohesion which is attained in the formulation of external policy objectives and the implementation thereof in concrete actions. In this respect, Article 21(3) TEU creates an obligation for the Council and the Commission, assisted by the High Representative, to pursue *consistency* between the different areas of the Union’s external action and between these and the EU’s other policies. What is meant here by consistency is more aptly phrased in the French language version of the provision, which uses the term *cohérence*: a positive obligation resting on the shoulders of the administration to integrate different (aspects of) external policies and instruments.

The understanding here is that external actions will not be effective without being coherently initiated/formulated and consistently implemented. The latter refers to a negative obligation, namely the prevention of disparities in the implementation of external actions on the international scene.

At the crossroads of external effectiveness and internal cohesion stands the issue of consistency, as aptly illustrated by the external representation of the EU and its Member States in upholding its interests and protecting its citizens in the wider world. At this stage, it remains to be seen whether the new division of competences and instruments, the amendments of voting mechanisms, the creation of new institutions and tweaking of existing positions, and interplay between all different actors (incl. the President of the Commission, the rotating Presidencies in domains other than foreign policy, and the Member States' embassies) will provide the answer for a more coherent, more consistent and thus more effective diplomacy in bilateral and multilateral settings, so as to justifiably speak about the Union's *Common Foreign and Security Policy*.

The Hague, 1 December 2009