

EU External Relations Law and Policy in the Post-Lisbon Era

Paul James Cardwell
Editor

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T · M · C · A S S E R P R E S S

 Springer

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Foreword

The growth of the European Union (EU) from a small regional coordinating organisation devoted to the management of coal and steel resources into a global political actor with a full range of power resources and unique responsibilities represents one of the most remarkable achievements in the history of international organisation. No other regional organisation on the planet has managed to take on so many of the traditional governing functions of its Member States while simultaneously developing its own power projection capabilities, involving trade policy, development and humanitarian aid, economic and financial sanctions, diplomacy and good offices, policing forces, and military forces.

This achievement is even more remarkable when one considers the uneven and even disorganised institutional history of European integration, which involves numerous actors with a wide range of power resources, policy interests and institutional preferences for various forms of European integration. These actors involve not just institutions in Brussels and Luxembourg, such as the Commission and the European Court of Justice, but also national governments and policy-makers, private firms, academics and think-tanks, concerned citizens and other interested players, all organised in dense webs of formal and informal networks across the EU and beyond.

Despite this diffusion of actors, or perhaps because of it, European integration is critically dependent on the emergence of rules to govern the activities of these players, in the form of customs, norms, international treaties, regulations and other laws at the EU and national levels. This system of law has been associated primarily with, and instigated by, the steady development of the single European market since the 1950s. However, as the EU's global ambitions have increased, so has its concern with the overall purpose and effectiveness of its various international activities. The EU is paying more attention than ever before to the external impact of European integration, and in areas well beyond the more traditional—for the EU—trade and economic development policy domains. This concern to improve the overall coherence of the EU's foreign policies was a major impetus behind the failed effort to produce a constitution for the EU, followed by the more successful effort to reform various EU policy domains under the Treaty of Lisbon.

Now that the Treaty of Lisbon has finally entered into effect, the time is ripe for a comprehensive analysis of how the Treaty reforms will impact on the EU's external relations policy ambitions. As with most major Treaty reforms in the EU, the general blueprint for Lisbon was finalised in a series of complicated inter-governmental conferences and periodic negotiations, yet the true impact of the Treaty will only be known after policymakers at the EU and national levels attempt to put its various provisions into practice. This process has now begun, and it is already clear that the Treaty reforms have created numerous challenges and opportunities for revising EU policy-making procedures, and for both internal and external policies. As always, these challenges and opportunities have inspired a range of interesting solutions in the form of informal and formal norms, soft law, socialisation processes, network-building and other 'behind the scenes' institutional reforms as various policy experts and legal officials attempt to put flesh on the bones of the Lisbon Treaty.

This volume provides us with a wide range of analyses targeted at these law-making and law-following efforts in the realm of European foreign policy. Together, they can help us determine whether the Lisbon Treaty will work as intended, and whether another round of institutional reform is necessary in the EU. Towards this end, the volume covers topics such as the principle of coherence in EU foreign policy, the creation of the new European External Action Service, the Common Foreign and Security Policy, the role of the High Representative of the Union for Foreign Affairs and Security Policy, the role of the European Court of Justice, networking mechanisms in the realm of EU foreign policy, the EU's efforts regarding weapons proliferation, European Neighbourhood Policy, relations across the Atlantic and with NATO, the Area of Freedom, Security and Justice, EU climate change policy, Common Commercial Policy and new provisions on investment and other critical issues regarding the EU's increasingly prominent role as a global actor.

The specific theories, methodologies, and arguments presented in these chapters vary widely, yet taken as whole they clearly indicate that the EU possesses nearly as many foreign policy competencies as those of a nation-state, and that legal procedures—involving national, EU-level, and international law—are absolutely critical in the way that the EU develops and pursues these competencies. However, this wide range of competencies, and the complex interactions among (at least) three major legal jurisdictional levels, make it extremely difficult for scholars to compare and generalise their findings beyond their specific cases. This is why it is so critical for volumes such as this, based as it was on a very stimulating interdisciplinary conference held at the University of Sheffield, to offer insights drawn from a range of viewpoints but always with an eye towards the creation of cumulative knowledge about one of the most important and theoretically interesting actors in the international system, the European Union.

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Preface

The present volume originates from a two-day conference, *EU External Relations Law and Policy in the Post-Lisbon Era*, hosted by the Sheffield Centre for International and European Law (SCIEL) at the School of Law, University of Sheffield on 13 and 14 January 2011. The conference was generously funded by the *Modern Law Review* and the University Association for Contemporary European Studies (UACES).

Participants at the conference were invited to consider the scope, nature and practice of EU External Relations Law and Policy in the Post-Lisbon Era. At the time of the conference, the Treaty had entered into force some 13 months earlier, so authors were able to reflect on some of the immediate consequences—both theoretically and practically—brought about by the Treaty as well as some of the incremental changes occurring during the period of Treaty reform. The response and the breadth of papers discussed was testament to the healthiness of EU external relations as a research area. The approach taken was deliberately interdisciplinary in order to promote a wide understanding of the contemporary nature of this dynamic field of study.

Sheffield, August 2011

Paul James Cardwell

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I am extremely grateful to the Modern Law Review and UACES for their generous financial support. I would also like to thank all the participants in the conference and contributors to this collection for helping make it such a successful event and making this book one of the first substantial publications about EU external relations since the Treaty entered into force. My thanks also go to the editors of the *European Foreign Affairs Review* and *Studia Diplomatica* for permitting the inclusion of previously published articles.

At Sheffield, I am especially grateful to Duncan French, Director of SCIEL, for his support as well as my colleagues in the School of Law and the Department of Politics who were involved in the conference and the production of this volume: Diego Acosta, Estella Baker, Russell Buchan, Simon Bulmer, Richard Collins, Tamara Hervey and Emma Nesbit, as well as Tawhida Ahmed (University of Reading) and Daniel Wunderlich (University of Bath). Sarah Beedham, Harriet Godfrey and Audrey Pang provided their excellent skills in helping organise the conference and I am grateful to them. I would also like to express my sincere gratitude to Katie Tunstall for her research assistance in the preparation of the manuscript; Philip van Tongeren, Marjolijn Bastiaans and Antoinette Wessels at TMC Asser Press; Ursula Gramm and Arul Johny Marcus at Springer, and Seethalakshmi S at SPS. Finally, my eternal gratitude for love and support goes to Etienne Dunant.

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Abbreviations

AAU	Assigned Amount Units
ACP	African, Caribbean and Pacific states
AETR/ERTA	European Road Transport Agreement
AFET	Foreign Affairs Committee of the European Parliament
AFSJ	Area of Freedom, Security and Justice
AG	Advocate General at the Court of Justice of the European Union
AMM	Aceh Monitoring Mission
ASEAN	Association of Southeast Asian Nations
AU	African Union
BASIC	Brazil, South Africa, India, China
BIT	Bilateral Investment Treaty
BRICs	Brazil, Russia, India, China
CAP	Common Agricultural Policy
CBRN	Chemical, Biological, Radiological and Nuclear
CCP	Common Commercial Policy
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEE/CEEC	Central and Eastern Europe/Central and Eastern European Countries
CEPOL	European Police College
CFI	Court of First Instance
CFP	Common Fisheries Policy
CFR	Charter on Fundamental Rights
CFSP	Common Foreign and Security Policy
CHOD	Chiefs of Defence
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEF	Combined Joint Expeditionary Force
CJEU	Court of Justice of the European Union

COLAT	Council Working Group for Latin America
COP	Conference of the Parties
COREPER	Comité des représentants permanents (Permanent Representatives Committee of the Council)
COWEB	Council Working Group on the Western Balkans
CPM	Civil Protection Mechanism
CSDP	Common Security and Defence Policy
DCI	Development and Cooperation Initiative
DDA	Doha Development Agenda
DRC	Democratic Republic of Congo
EC	European Community
ECAP	European Capability Action Plan
ECFR	European Council on Foreign Relations
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOWAS	European Community of West African States
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EDA	European Defence Agency
EDC	European Defence Community
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
EFP	European Foreign Policy
EMEA	Euro-Mediterranean Economic Area
EMU	Economic and Monetary Union
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Partnership Instrument
EP	European Parliament
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
ESS	European Security Strategy
EU	European Union
EU SITCEN	EU Situation Centre
EUBAM	EU Border Assistance Mission
EUMC	European Union Military Committee
EUMS	European Union Military Staff
EURATOM	European Atomic Energy Community
Eurojust	The European Union's Judicial Cooperation Unit
EuroMed	Euro-Mediterranean Partnership
Europol	The European Police Office
FAC	Foreign Affairs Council
FAO	Food and Agricultural Organisation of the United Nations
FCO	Foreign and Commonwealth Office

FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
GAM	Free Aceh Movement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Court of the European Union
GCC	Gulf Cooperation Council
GSC	General Secretariat of the Council
GSP	General System of Preferences
HLCG	High Level Contact Group (on Data Protection)
HR	High Representative of the Union for Foreign Affairs and Security Policy
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy/Vice-President (of the Commission)
ICJ	International Court of Justice
IfS	Instrument for Stability
IGC	Intergovernmental Conference
IIA	International Investment Agreement
ILO	International Labour Organisation
INSC	Instrument for Nuclear Safety Cooperation
ISAF	International Security Assistance Force
ISCID	International Centre for Settlement of Investment Disputes
ISTC	International Science and Technology Centre
JHA	Justice and Home Affairs
KEDO	Korean Peninsula Energy Development Organisation
LAC	Latin America and Caribbean
LAIF	Latin America Investment Facility
LIBE	Civil Liberties, Justice and Home Affairs Committee of the Parliament
LULUCF	Land Use, Land Use Change and Forestry
MEP	Member of the European Parliament
MERCOSUR	Mercado Común del Sur (Southern Common Market)
MFN	Most Favoured Nation
MIC	Monitoring and Information Centre
MONUC	United Nations Organisation Mission in the Democratic Republic of Congo
MPoI	Minimum Platforms on Investment
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
NSC	New Strategic Concept
OECD	Organisation for Economic Co-operation and Development
PCA	Partnership and Cooperation Agreement
PCIJ	Permanent Court of International Justice

PESCO	Permanent Structured Cooperation
PJCCM	Police and Judicial Cooperation in Criminal Matters
PNR	Passenger Name Record
PoCo	Political Committee
PSC	Political and Security Committee
QMV	Qualified Majority Voting
REIO	Regional Economic Integration Organisations
RPC	Rules of Procedure of the Council
RPCJEC	Rules of Procedure of the European Parliament
SALW	Small Arms and Light Weapons
SEA	Single European Act
SIRENE	Schengen Information System
SitCen	CFSP's Joint Situation Centre
SNE	Seconded National Experts
STCU	Science and Technology Centre in Ukraine
TACIS	Technical Aid to the Commonwealth of Independent States
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFTP	Terrorist Finance Tracking Programme
TLD	Transatlantic Legislators Dialogue
TRIMs	Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
UMFA	Union Minister of Foreign Affairs
UN	United Nations
UNAMID	African Union/UN Hybrid operation in Darfur
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNITA	National Union for the Total Independence of Angola
UNSC	United Nations Security Council
USA	United States of America
WAEMU	West African Economic and Monetary Union
WEU	Western European Union
WHO	World Health Organisation
WMD	Weapons of Mass Destruction
WTO	World Trade Organisation