

Journal of Contemporary European Research

Editor

Maxine David

Volume 9, Issue 3 (2013)

Special Issue Editors

Francesco Giumelli

Chantal Lavallée

Contents

Contributors

Introduction

- EU Security Governance: From Processes to Policies by *Francesco Giumelli and Chantal Lavallée* 365

Research Articles

- From the Rapid Reaction Mechanism to the Instrument for Stability: The Empowerment of the European Commission in Crisis Response and Conflict Prevention by *Chantal Lavallée* 372
- Empowering Brussels-based Actors in EU Security Governance: The Case of Restrictive Measures by *Francesco Giumelli* 390
- The EU in Geneva: The Diplomatic Representation of a System of Governance by *Caterina Carta* 406
- Six Years EUJUST LEX: The Challenge of Rule of Law in Iraq by *Alina Christova* 424
- Practicing Security Governance post Lisbon in Transatlantic Context: Fragmentation of Power or Networked Hegemony? by *Benjamin Zyla and Arnold Kammel* 440
- The External Dimension of the EU's Fight against Organized Crime: the Search for Coherence between Rhetoric and Practice by *Helena Carrapico* 460

Commentary

- Security Governance Matters by *Antonio Missiroli* 477

Book Reviews

- Review by Sophie Wulk of *The Organization of European Security Governance: Internal and External Security in Transition* 484
- Review by Yuliya Zabyelina of *The EU and Multilateral Security Governance* 486
- Review by Aukje van Loon *The EU's Common Foreign and Security Policy. The Quest for Democracy* 488

Contributors

Helena Carrapico *University of Dundee*

Caterina Carta *Vrije Universiteit Brussel / Université libre de Bruxelles*

Alina Christova *Vrije Universiteit Brussel*

Maxine David *University of Surrey*

Francesco Giumelli *Metropolitan University Prague*

Arnold Kammel *Austrian Institute for European and Security Policy*

Chantal Lavallée *European University Institute*

Antonio Missiroli *European Union Institute for Security Studies*

Aukje van Loon *Ruhr-University Bochum*

Sophie Wulk *University of Flensburg*

Yuliya Zabyelina *University of Trento*

Benjamin Zyla *University of Ottawa*

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

Introduction

EU Security Governance: From Processes to Policies

Francesco Giumelli *Metropolitan University Prague*

Chantal Lavallée *European University Institute*

Citation

Giumelli, F. and Lavallée, C. (2013). 'EU Security Governance: From Processes to Policies', *Journal of Contemporary European Research*. 9 (3), pp. 365-371.

First published at: www.jcer.net

The European integration process has led to the creation of a polycentric political configuration characterised by a decentralised policy-making process where several actors are involved in various domains, and the area of foreign and security policy is no exception to this. The recent developments in the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) show a growing synergy between national, transnational and supranational levels where a wide range of actors cooperate. Empirical research on CFSP/CSDP based on a social network analysis confirms that security management has been transferred to the European Union (EU) level, but remains controlled by state actors who interact through transgovernmental processes (Mérand et al. 2011). While diplomats and militaries are shaping those policies with their national and organisational social representations (Mérand 2008, 2006), they are also influenced by the supranational culture present in the official intergovernmental process which can be described as a supranational intergovernmentalism system (Howorth 2010). Moreover, because of the inclusion of supranational actors, it could be argued that European security has even become supranational (Kaunert and Léonard 2012; Ojanen 2006).

Over the last decade, we have noted two complementary trends. On the one hand, the formulation and implementation of CFSP/CSDP are increasingly performed in Brussels by state representatives, European civil servants and the politico-military structures permanently hosted there (Davis Cross 2011, 2010; Juncos and Pomorska 2011, 2006). On the other hand, the European Security Strategy (ESS), omnipresent in the EU discourse, emphasises a comprehensive approach to security, civilian and military, as well as the merging of internal and external security. The ESS insists notably on the need for using the right mix of instruments at the disposal of the EU because threats are not purely military (Biscop 2008). Furthermore, the ESS presents the EU as a global player 'particularly well equipped to respond to such multi-faceted situations' (Council 2003: 7). The Lisbon Treaty, aiming at bringing all EU external action tools together, strengthened this trend and even created an external action system entirely 'Brussels-ized' (Missiroli 2010: 444). This system is mainly based on the activities of the European External Action Service (EEAS) and is represented by the hybrid position of High Representative of the Union for Foreign Affairs and Security Policy (HR) and Vice-President of the Commission (VP). Therefore, 'Brusselization not only exists; it works' (Howorth 2012: 36).

However, the coherence and coordination between its instruments and policies remain a huge challenge for the EU as a whole. The state-based approach has failed to explain how this new system works. This perspective does not consider all players, and by doing so it minimises the importance in the policy process of non-state actors and their interactions, whether they engage in cooperative or competitive behaviours (Gegout 2010; Pollack 2003; Ginsberg 2001; Majone 2001; Moravcsik 1998; Hoffmann 1966). The security studies academic literature offers many interesting analyses (Gebhard and Norheim-Martinsen 2011; Biscop 2008; Duke and Ojanen 2006; Berenskoetter 2005), but it has mostly concentrated on the theoretical dimension of the EU comprehensive approach to security and its challenges. Therefore, analyses of practices in the post-Lisbon configuration of actors are missing and needed to understand the challenges facing the EU integrated approach.

This special issue aims at contributing to the security governance literature by further exploring how the EU external action system works. This is largely done through the analysis of case studies that can highlight how security is managed at the EU level and beyond. The special issue intends to bridge the theory and practice of European governance in the field of foreign affairs and security by investigating different aspects of the EU's international action. To this objective, the analytical tools provided by the multi-

level governance approach (Héritier and Rhodes 2011; Hooghe and Marks 2001; Armstrong and Bulmer 1998; Marks et al. 1996; Bulmer 1993), which was born in opposition to the idea that states were the only and most important actors involved in the European policy-making process, are helpful. More precisely, the 'security governance turn' in International Relations theory (Christou et al. 2010; Norheim-Martinsen 2010) opens a new avenue of research to understand the EU as a security actor (Wagnsson et al. 2009; Kirchner and Sperling 2007; Kirchner 2007, 2006; Webber et al. 2004; Krahmann 2003). This innovative analytical framework shifts the emphasis from the traditional intergovernmental approach of European security to a system whereby several actors, public and private, interact formally and informally at different levels in EU policy-making processes with various instruments to coordinate, to manage and to regulate security issues. However, both vertical and horizontal security governance should be considered to take into account the plurality and diversity of actors, whether in a hierarchical or non-hierarchical perspective, and also the merging of internal and external aspects of security (Schroeder 2011).

In recent years, several special issues and edited volumes on EU security governance (Breslin and Croft 2012; Kaunert and Léonard 2012; Christou and Croft 2010; Kirchner and Dominguez 2010; Wagnsson et al. 2009) have been published. The concept of governance has been useful to highlight how decisions are made, an alternative to the state-based approach, shifting the focus to non-state actors and the norms disciplining their interactions. The new institutional framework provided by the Lisbon Treaty, combined with the evolving norms, creates the need for constant attention to such processes so that further studies are needed to enhance further the EU security governance literature. This special issue attempts to contribute to the literature in three fundamental directions.

First, it identifies under which conditions the Brusselization process takes place and how the integrated approach to security works. It analyses EU processes towards policy implementation to determine how new practices structure EU security governance, when authority is shifted from the capitals of EU member states to Brussels, who is involved and how they cooperate at the different stages of the policy-making process.

Second, the special issue also contributes to the debate on how actors decide in the EU. There is an emphasis on the role of norms and interests, for instance with the study of the role of the High Representative and the diplomatic system of the EU, but also on the norms that regulate how supra-national institutions can direct/foster cooperation in foreign policy, with a special interest in the Commission and the recently established EEAS. The role of civil society and industries are not forgotten when defence matters are discussed, for instance, when the action of the EU is directed at targeting third civil society groups with the EULEX mission and the international cooperation in fighting organized crime. These examples provide additional insights into the role of the different actors in the governance of EU security issues.

Finally, the third added value is the empirical analysis of the post-Lisbon Treaty context and the new role for European institutions. The High Representative, the EEAS, the Commission and the diplomatic structure of the EU with the norms that discipline its functioning are at the core of the special issue. The newly established EEAS finds itself in between a rock and a hard place, swinging between relevance and apathy when it comes to forming EU external actions. The Commission does also exercise a growing role in foreign policy determined by the extended powers of the EU, but this process is limited by the intricacy of interests with other EU institutions as well as the member states.

The three values are cross-cutting themes of the six articles that compose this special issue. First, Lavallée's and Giumelli's articles explore the growing role of supra-national institutions in the governance of EU security. Second, Carta's and Christova's contributions elaborate on the implications for security governance, looking at how the EU has adapted and established new practices of governance. Third, Zyla & Kammel's

and Carrapico's articles complete the issue with analyses of specific security issues leading them to evaluate the concept of governance itself. Finally, the commentary by Missiroli further contributes to bridge the gap between theory and practice by analysing the general aspects of security governance after Lisbon.

Chantal Lavallée with her article 'From the Rapid Reaction Mechanism to the Instrument for Stability: the Empowerment of the European Commission in Crisis Response and Conflict Prevention' focuses on the underestimated role of the Commission as a supra-national actor in security. Lavallée argues that the Commission has empowered its role in crisis response and conflict prevention over the last decade from the inception of the Rapid Reaction Mechanism to the implementation of the Instrument for Stability and has contributed to structuring EU security governance. This interesting contribution gives another perspective to the EU role in security with an innovative community instrument which supports the objectives and completes the activities of CFSP/CSDP, strengthening therefore the integrated approach of security.

Francesco Giumelli with 'Beyond Intergovernmentalism: the Europeanization of Restrictive Measures?' argues that the decision-making process for EU sanctions cannot be understood through the intergovernmentalist approach. This article attempts to contribute to solving this problem by investigating the restrictive measures policy of the European Union in order to identify three conditions under which intergovernmentalism should be used. First, when EU institutions are dependent on EU member states for information and expertise; second, when decision-making powers are mainly in EU capitals; and third, when there are no exclusive *fora* for decision-making in Brussels. The study of the restrictive measures of the European Union does not meet any of these three conditions; therefore the article argues that the concept of supranational intergovernmentalism offers useful insights to understand the EU security governance of CFSP sanctions.

Caterina Carta focuses on the EEAS as representative of a system of governance. 'The EU in Geneva: the Diplomatic Representation of a System of Governance' presents a thorough analysis of the decision-making process in the post-Lisbon setting. In the new scenario, it is plausible to assume the EU diplomatic system is representative of a system of governance, and, through this, of its constitutive independent units. The way in which the EU's political system is represented through diplomatic practices is telling of two interrelated aspects of the EU's international actorness. First, it reveals the link between the foreign policy of a non-state actor and sheds light on the division of competences that characterises the EU's foreign policy-making system. Second, it highlights the complex institutional and organisational features of a non-state diplomatic system. The study of EU multilateral delegations at the United Nations and the World Trade Organization is key to understanding the processes and inter-relationships in practice between EU member states and EU 'non-state' institutions.

Alina Christova focuses on the security governance of CSDP missions. Focusing on the EU experience in Iraq, 'Seven Years of EUJUST LEX: The Challenge of Rule of Law in Iraq' elaborates on how the EU decides about projecting force and personnel beyond its borders and considers how such a presence is assessed within the EU. Her article deals with the implementation of collective actions in the security field to engage with long-term processes. EUJUST provides an interesting example to help understand under what conditions coherent policy is enacted by EU members. A relevant aspect is the evolution of how the mission and how the EU dealt with the shortcomings of the missions, the decisions undertaken to solve emerging issues and how these decisions originated. Christova's article highlights the establishment of governance practices in security for the EU, thus bearing great relevance for the special issue.

Ben Zyla and Arnold Kammel focus on how governance systems do not rule out the existence of hierarchical relations among the actors. In 'Practising EU Security Governance in the Transatlantic Context: A Fragmentation of Power or Networked

Hegemony?', the two authors challenge the 'orthodox view' that networks within the EU governance literature are often conceived as flexible and hierarchy-immune responses to increasingly global policy challenges. Through the application of a neo-Gramscian approach to governance, Zyla and Kammel show that a transnational (or supranational) hegemony exists to which the nation states are increasingly subordinate. The authors do so by looking at the experience of the EU in Libya to highlight how the ongoing practices are strongly influenced by existing hegemonies within the EU, arguing that the networks themselves are reproducing such power relations. Zyla and Kammel also hold that it is political leaders and high-ranking government officials who remain in charge of the political process, posing interesting questions for the concept of governance itself and suggesting a different reformulation of it.

Helena Carrapico deals with the issue of organized crime and security governance in the EU. The article 'The External Dimension of the EU's Fight against Organized Crime: the Search for Coherence between Rhetoric and Practice' analyses the link between the EU's cooperation with third actors in the area of organized crime, which has been neglected in the literature so far. The focus is on the externalization of knowledge, practice and norms that affect and characterise the functioning of systems of governance. Carrapico's article identifies EU practices in the development of the external dimension of organized crime policies, in light of the theoretical and empirical literature on the security governance of Justice and Home Affairs policies.

In conclusion, **Antonio Missiroli**, Director of the European Union Institute of Security Studies in Paris, presents his view from the perspective of his professional experience as academic and practitioner in EU institutions. Missiroli's perspective is of great value to the analysis of the post-Lisbon setting in the governance of EU security because he provides the necessary bridge between practice and theory if we are to understand how the EU works and what the implications are on the decision-making process of the new institutional setting established by the Lisbon Treaty. The commentary completes the review undertaken by the previous studies by offering an overview of the new practices (if any) established in Brussels since December 2009 and provides insights into how governance practice may develop in the future.

* * *

REFERENCES

- Armstrong, Kenneth and Bulmer, Simon (1998) *The Governance of the Single European Market*. New York: Manchester University Press.
- Berenskoetter, Felix Sebastien (2005) Mapping the Mind Gap: A Comparison of US and European Security Strategies. *Security Dialogue*, 36 (1): 71-92.
- Biscop, Sven (2008) The European Security Strategy in Context: A Comprehensive Trend, in Sven Biscop and Jan J. Anderson (eds) *The EU and the European Security Strategy: Forging a Global Europe*. London: Routledge: 5-20.
- Breslin, Shaun and Croft, Stuart (eds) (2012) *Comparative Regional Security Governance*. London: Routledge.
- Bulmer, Simon (1993) The Governance of the European Union: A New Institutional Approach. *Journal of Public Policy*, 13 (4): 351-380.
- Christou, George and Croft, Stuart (2010) Introduction. *European Security*, 19 (3): 337-340.
- Christou, George, Croft, Stuart, Ceccorulli, Michela and Lucarelli, Sonia (2010) European Union Security Governance: Putting the 'Security' Back in. *European Security*, 19 (3): 341-359.
- Council of the European Union (2003) *A Secure Europe in a Better World: European Security Strategy*. Brussels, 12 December.
- Davis Cross, Mai'a K. (2010) *Cooperation by Committee: the EU Military Committee and the Committee for Civilian Crisis Management*. European Union Institute for Security Studies Occasional Paper No. 82, Online: http://www.iss.europa.eu/uploads/media/op82_CooperationbyCommittee.pdf Accessed 03 May 2013.
- Davis Cross, Mai'a K. (2011) *Security Integration in Europe. How Knowledge Based Networks are Transforming the European Union*. Michigan: University of Michigan Press.
- Duke, Simon and Ojanen, Hanna (2006) Bridging Internal and External Security: Lessons from the European Security and Defence Policy. *European Integration*, 28 (5): 477-494.
- Gebhard Carmen and Norheim-Martinsen, Per Martin (2011) Making Sense of EU Comprehensive Security towards Conceptual and Analytical Clarity. *European Security*, 20 (2): 221-241.
- Gegout, Catherine (2010) *European Foreign and Security Policy: States, Power, Institutions and American Hegemony*. Toronto: University of Toronto Press.
- Ginsberg, Roy H. (2001) *The European Union in International Politics: Baptism by Fire*. Boulder, CO: Rowman & Littlefield.
- Héritier, Adrienne and Rhodes, Martin (eds) (2011) *New Modes of Governance in Europe. Governing in the Shadow of Hierarchy*. London: Palgrave Macmillan.
- Hoffmann, Stanley (1966) Obstinate or obsolete? The Fate of the Nation State and the Case of Western Europe. *Daedalus* 95 (2): 862-915.
- Hooghe, Liesbet and Marks, Gary (2001) *Multi-level Governance and European Integration*. Lanham: Rowman and Littlefield.
- Howorth, Jolyon (2012) Security Governance in the EU Space, in Shaun Breslin and Stuart Croft (eds) *Comparative Regional Security Governance*. London: Routledge: 23-43.
- Howorth, Jolyon (2010) *The Political and Security Committee: A Case Study in Supranational Inter-Governmentalism*. Centre d'études européennes Les Cahiers européens de Sciences Po No. 1, Online : www.cee.sciences-po.fr/en/publications Accessed 03 May 2013.
- Juncos, Ana E. and Pomorska, Karolina (2011) Invisible and Unaccountable? National Representatives and Council Officials in EU Foreign Policy. *Journal of European Public Policy*, 18 (8): 1096-1114.
- Juncos, Ana E. and Pomorska, Karolina (2006) Playing the Brussels Game: Strategic Socialisation in the CFSP Council Working Groups. *European Integration Online Papers*, 10: 1-15, Online: http://eiop.or.at/eiop/index.php/eiop/article/view/2006_011a/33 Accessed 08 August 2013.

Kaunert Christian and Léonard, Sarah (2012) Introduction: Supranational Governance and European Union Security after the Lisbon Treaty – Exogenous Shocks, Policy Entrepreneurs and 11 September 2001. *Cooperation and Conflict*, 47 (4): 417-432.

Kirchner, Emil J. and Sperling, James (2007) *EU Security Governance*. Manchester: Manchester University Press.

Kirchner, Emil J. (2006) The Challenge of European Union Security Governance. *Journal of Common Market Studies*, 44 (5): 947-968.

Kirchner, Emil J. (2007) EU Security Governance in a Wider Europe, in Paolo Foradori, Paolo Rosa and Riccardo Scartezzini (eds) *Managing a Multilevel Foreign Policy: the EU in International Affairs*. Lanham: Lexington Books: 23-41.

Kirchner, Emil J. and Dominguez, Roberto (eds) (2010) *The Security Governance of Regional Organizations*. London: Routledge.

Krahmann, Elke (2003) Conceptualizing Security Governance. *Cooperation and Conflict*, 38 (1): 5-26.

Majone, Giandomenico (2001) Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance. *European Union Politics*, 2 (1): 103-21.

Marks, Gary, Hooghe, Liesbet and Blank, Kermit (1996) European Integration since the 1980s. State Centric Versus Multilevel Governance. *Journal of Common Market Studies*, 34 (3): 343-378.

Mérand, Frédéric (2006) Social Representations in the European Security and Defence Policy. *Cooperation and Conflict*, 41 (2): 131-152.

Mérand, Frédéric (2008) *European Defence Policy: Beyond the Nation State*. Oxford: Oxford University Press.

Mérand, Frédéric, Hofmann, Stéphanie and Irondelle, Bastien (2011) Governance and State Power: A Network Analysis of European Security. *Journal of Common Market Studies*, 49 (1): 121-147.

Missiroli, Antonio (2010) The New EU 'Foreign Policy' System after Lisbon: A Work in Progress. *European Foreign Affairs Review*, 15 (4): 427-452.

Moravcsik, Andrew (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. London: University College of London Press.

Norheim-Martinsen, Per Martin (2010) Beyond Intergovernmentalism: European Security and Defence Policy and the Governance Approach. *Journal of Common Market Studies*, 48 (5): 1351-1365.

Ojanen, Hanna (2006) The EU and NATO: Two Competing Models for a Common Defence Policy. *Journal of Common Market Studies*, 44 (1): 57-76.

Pollack, Mark A. (2003) *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU*. Oxford: Oxford University Press.

Schroeder, Ursula C. (2011) *The Organization of European Security Governance. Internal and External Security in Transition*. New York: Routledge.

Wagsson, Charlotte, Sperling, James A. and Hallenberg, Jan (eds) (2009) *European Security Governance. The European Union in a Westphalian World*. Oxford: Routledge.

Webber, Mark, Croft, Stuart, Howorth, Jolyon, Terriff, Terry and Krahmann, Elke (2004) The Governance of European Security. *Review of International Studies*, 30 (1): 3-26.

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

From the Rapid Reaction Mechanism to the Instrument for Stability: The Empowerment of the European Commission in Crisis Response and Conflict Prevention

Chantal Lavallée *European University Institute*

Citation

Lavallée, C. (2013). 'From the Rapid Reaction Mechanism to the Instrument for Stability: The Empowerment of the European Commission in Crisis Response and Conflict Prevention', *Journal of Contemporary European Research*. 9 (3), pp. 372-389.

First published at: www.jcer.net

Abstract

The European Union (EU) plays an increasing role in the field of international security with various instruments at its disposal, managed by several actors. This article analyses the underestimated role of one of these actors, namely the European Commission. Treating the EU as a form of security governance, it claims that the Commission has empowered its role in it from the Rapid Reaction Mechanism (RRM) to the Instrument for Stability (IfS). The first section presents a review of the existing literature in order to clarify the theoretical framework, which uses the EU security governance approach with sociological insights; and to sketch the historical background of the Commission's role in crisis response and conflict prevention. Then, this contribution examines the Commission's position from a relational perspective to demonstrate its gradual empowerment in the European security field. Finally, it emphasises the challenges facing the Commission and the new practices structuring EU security governance post-Lisbon.

Keywords

European Commission; Rapid Reaction Mechanism; Instrument for Stability; crisis response; conflict prevention

European security has traditionally been described as an intergovernmental domain, mainly based on activities within the Common Security and Defence Policy (CSDP). However, this policy is only one of the tools at the disposal of the European Union (EU) to manage crises, and much is in flux, such that European security can be said to have been subject to 'evolving meanings' (Tardy 2009: 4). Over the last decade, EU activities in security have indeed involved a growing number of actors, and been operating at many different levels with several instruments. This article analyses the contribution of one of these actors, the European Commission, and its strategy to shape the European security field.

Although the Commission has played an increasing role in external relations and has contributed to the Common Foreign and Security Policy (CFSP) (Wright and Auvinen 2009; Duke 2007; Kirchner and Sperling 2007; Cameron and Spence 2004), 'it is nonetheless often denigrated' in the academic literature (Spence 2006: 398). The Commission's decline is judged to stem from the period 1985 to 1995 when Jacques Delors was its president (Kurpas et al. 2008; Kassim and Menon 2004). It has been claimed that with the increasing role of the Council (Spence 2006), the Commission is slowly losing its room for manoeuvre and influence, particularly in crisis response (Pfister 2009). With the development of CFSP there has been a 'pescisation'¹ (Gourlay 2006b: 120) and a 'esdpisation' with the expansion of the European Security and Defence Policy (ESDP), renamed CSDP² in the Lisbon Treaty (Pfister 2009: 115). According to some scholars (Puetter 2012; Stacey 2012; Dinan 2011), this treaty undermines further the role of the Commission, qualified as marginal in CSDP (Mérand et al. 2011).

However, it is necessary firstly to have 'a comprehensive understanding of European governance' (Kaunert 2010: 14) and secondly to take into account the role of EU institutions, even in domains where member states remain dominant: this contribution focuses its attention on the much maligned Commission. As argued in detail below, there is much evidence to suggest the Commission has reinforced its role of supranational policy entrepreneur and has contributed to shaping security policies (Kaunert 2010, 2007). Counter to those who argue (Nugent and Rhinard 2013) that, apart from CFSP/CSDP, the Commission's position in external relations remains essentially the same after the Lisbon Treaty, I argue that the Commission has actually gained influence as it has several instruments at its disposal which can be used for the EU's external action

purposes. By reason, therefore, of the underestimated position of the Commission, an examination of its instruments and its relations with other actors in this domain is crucial to building a comprehensive understanding of EU security governance, the aim of this special issue. This article argues that, despite the development of CSDP, from the inception of the Rapid Reaction Mechanism (RRM) in 2001, and with the implementation of the Instrument for Stability (IfS) which replaced it in 2007, the Commission has consolidated and even strengthened its position in the field of European security. With this flexible external assistance instrument, the Commission has developed the capacity to respond quickly to crises (Art. 3 of the IfS) and to offer 'assistance in the context of stable conditions for cooperation' (Art. 4 of the IfS).

The argument is developed in three sections. The first section explores the academic literature in order to clarify 1) the analytical framework, which uses an EU security governance approach with sociological insights, i.e. taking into account the power struggle between actors, and 2) the historical background of the Commission's role in crisis response and conflict prevention. Then, this contribution analyses the Commission's position from a relational perspective to demonstrate that the RRM and then the IfS reinforce its standing in the European security field. Finally, it emphasises the challenges facing the Commission in this field with this Community instrument and the new practices structuring post-Lisbon EU security governance.

EU CIVILIAN CRISIS MANAGEMENT AND CONFLICT PREVENTION: A CASE OF HORIZONTAL SECURITY GOVERNANCE

Since the beginning of the 1990s, the conceptual framework of governance has been particularly relevant to understanding the complexity of the EU as a fragmented political configuration. Scholarship (Héritier and Rhodes 2011; Cardwell 2009; Hooghe and Marks 2001) has underlined the activity of several actors who are involved at different levels with various instruments. Developments in security at the EU level have been such that it was apparent for some scholars (Wagnsson et al. 2009; Kirchner and Sperling 2007; Kirchner 2006; Webber et al. 2004) that this approach was also appropriate to understand the transforming configuration of European security. Treating the EU as a form of security governance enables a shift in emphasis from the traditional intergovernmental approach to that of a political system in which a broad variety of actors interact in EU policy-making processes through formal and informal institutionalisation procedures (Norheim-Martinsen 2010). This analytical approach more closely mirrors the reality of the EU security field, where governmental but also supranational actors coordinate, manage and regulate security issues with various instruments, and shape interests and identities through norm diffusion. Too often, security governance is studied as purely vertical in nature, whereas it is in fact also horizontal, and should therefore be considered in both ways (Schroeder 2011). There is a tendency to reproduce the EU's former pillar division, neglecting horizontal security governance. Instead, a 'double approach' is necessary to have a comprehensive understanding of European security because it takes into account the plurality and diversity of actors in a non-hierarchical perspective, their interactions and also the merging (as well as intermingling) of internal and external security. This dimension is especially important in the EU context where 'the need for better horizontal coordination and cooperation has become particularly obvious at two junctures: the interface between internal and external security policies and institutions, and interface between civilian and military security actors' (Schroeder 2011: 14), as I argue in detail below to demonstrate the way the Commission brings together different tools and actors in EU security governance.

This analysis therefore employs the concept of security governance from a relational perspective in order to go beyond the mapping of actors. The literature on security governance has neglected the power relations in the EU configuration which are

fundamental to underlining the practices (or 'usages') and to understand the logic of action (Saurugger and Mérand 2010: 9-10; see Kammel and Zyla in this special issue for an alternative explanation). 'Actors possess varying resources (Bourdieu calls these resources "capital") that determine their position in the field and thus their relations with each other' (Mérand 2010: 351) as well as their logic of action. EU security governance should therefore be considered as a field, i.e. as a social space, a configuration of relations, of power struggles and strategies among actors to influence policy processes (Bourdieu 2000). The notion of 'field' has been used and adapted by Bigo (2005) and Mérand (2008) to analyse both the EU's internal and external security challenges. Mérand (2010: 351), inspired by Bourdieu, mentions that in order to 'understand how a field operates and what motivates people to play a part in it, one must look simultaneously at power structures and the schemes of perception and action that they produce'. Hence, this article focuses on three interlinked aspects of the Commission's place in the EU's security governance, which can be seen as constituting its logic of action: i) an identification of the underpinning reasoning of the Commission as expressed through its rhetoric; ii) the concrete initiatives it undertakes as part of EU security governance; iii) its relations with all other relevant actors. These three foci clarify how this field operates and what the practices are that reinforce the position of the Commission within it.

Although social network analysis has demonstrated that 'state power is not diluted but reconstituted at the European level' (Mérand et al. 2011: 140), this contribution demonstrates that state representatives do not act alone but, rather, understand they need the support of the Commission to conduct certain actions, notably in crisis response. Moreover, at the EU level even CFSP/CSDP are regarded as cases of 'supranational intergovernmentalism' that necessarily translate the huge influence of supranational culture into the intergovernmental process (Howorth 2010). Actually, in practice, CFSP/CSDP (including EU civilian crisis management, as discussed in a moment) are the product of a mix of intergovernmental and community instruments, policies and programmes. The Commission plays an important role in CFSP/CSDP through budget management, training of staff or preparatory measures prior to missions (Wright and Auvinen 2009). In addition, in order to complement and support CSDP activities, the Commission has also increased its organisational capacity in the civilian aspects of crisis response and conflict prevention (Stewart 2008; Gourlay 2006a).

In fact, since the end of the Cold War, the European Commission has been keen to increase its role in EU external action, for instance through the enlargement process as well as cooperation, assistance and development programmes (Cameron and Spence 2004). In this respect, from the mid-1990s with CFSP development, the Commission has linked development and security first in the EU policy in Africa in order to keep what was perceived as its prerogatives in a privileged geographic area. 'From the early 2000s, the [European Commission] has thus been entering the African security field on tiptoes, through the politicisation and securitisation of its development policy' (Bagoyoko and Gibert 2009). The Directorate General (DG) of Development first played a role in conflict prevention; this was downsized by the creation of the Europe Aid Cooperation Office. Then, with the progress of the CFSP/CSDP, DG External Relations (Relex) became increasingly active, managing relations with every region of the world (Stewart 2008).

In June 1999, CSDP was officially launched as an intergovernmental policy during the Cologne summit. The next European Council (1999: Annex 2) in Helsinki agreed on an Action Plan on Crisis Management using non-military instruments. The plan aimed to develop rapid reaction capabilities, notably with 'Rapid financing mechanisms such as the creation by the Commission of a Rapid Reaction Fund' in order to ensure inter-pillar coherence with a comprehensive approach. For that purpose, the year after, the Commission created a Conflict Prevention and Crisis Management Unit inside DG Relex to coordinate activities among DGs involved and with the Council and CSDP structures. The definition of conflict prevention and crisis management remains quite ambiguous

because of 'the institutional split between the civilian instruments created under the [former] first and second pillars and the more complicated issue of competence-sharing in the civilian area of crisis management between the Council and the Commission' (Nowak 2006: 16). In its Communication on Conflict Prevention, the European Commission (2001: 4) made a first attempt to clarify this concept from a holistic approach, considering that the EU should 'address cross-cutting issues which may contribute to tension and conflict' with an appropriate mix of instruments for long term and short term action. The Commission divided the EU instruments between a long-term perspective for 'projecting stability' and a short-term one for 'reacting quickly to nascent conflicts'. This Communication, like many others, was an important step in the EU's foreign policy development, and it 'also contributed in terms of agenda setting, and putting "external policy" actions in a clear strategic "foreign policy" perspective' (Keukeleire and MacNaughtan 2008: 90). Therefore, through its various communications (norm diffusion) and instruments, the Commission took up a position in EU security governance, playing a pro-active role to shape it, reflecting its own perceptions.

A decisive step was made when the Commission (2000) proposed to the Council and the European Parliament the creation of a Rapid Reaction Facility (RRF), resulting in the establishment of the Rapid Reaction Mechanism (RRM) in February 2001. The next section emphasises the strategy of the Commission through the RRM, later the Instrument for Stability, to shape the European security field. An analysis of this external assistance instrument is relevant to understand the contribution of the Commission in the field of security. As academic literature is rare here, this article refers mainly to official documents and interviews conducted in Brussels in February and May 2012 with officials from EU institutions and actors from civil society.

THE RAPID REACTION MECHANISM: THE COMMISSION'S FOOT IN THE DOOR

Since its Communication on Conflict Prevention, the Commission (2006, 2001) has insisted on the need for an integrated approach which aims at coordinating all EU instruments, even if they are based on different decision-making procedures. This could be perceived as a strategy to ensure and even to enlarge its competencies in the EU's external relations despite the inception of CSDP. The CSDP was officially declared fully operational the same year the Rapid Reaction Mechanism (RRM) was launched to conduct crisis management operations. However, during the December 2001 European Council summit in Laeken, conflict prevention and crisis management were explicitly recognised as cross-pillar areas, requiring an integrated approach in order to increase the EU's external action efficiency. The declaration on the operational capability of CSDP stated overtly that 'the balanced development of military and civilian capabilities is necessary for effective crisis management by the Union: this implies close coordination between all the resources and instruments both civilian and military available to the Union' (European Council 2001: 28).

The preamble of the RRM regulation recognised that both institutions, namely '[t]he Council and the Commission are responsible for ensuring the coherence of the external activities conducted by the European Union in the context of its external relations, security, economic, social and development policies' (paragraph 6). In this perspective, the Council and the European Parliament agreed to launch the RRM which empowered the Commission in the field of security. Although the Commission (2000: Article 8) proposed the committee procedure to assure the political control of the Council, the RRM regulation opted for more flexibility. It obliged the Commission only to inform the Council of intended actions and projects (Article 9) and to ensure close coordination with the EU member states (Article 10). 'In accordance with accelerated decision-making procedures', the Commission can mobilise and deploy quickly specific financial resources 'to respond in a rapid, efficient and flexible manner, to situations of urgency or crisis or to the emergence of crisis' (Council 2001: 5). The management of this funding

instrument was held by the Conflict Prevention and Crisis Management Unit of DG Relex. The Commission was authorised to 'conclude financial agreements or framework agreements with relevant government agencies, international organisations, NGOs and public or private operators on the basis of their ability to carry out rapid interventions in crisis management' (Council 2001: Article 6.2).

The RRM offered relative autonomy to the Commission even if its room for manoeuvre was clearly delimited by the member states. This external assistance instrument had a very limited annual budget of only 30 million EUR. It could be used only for operations of up to six months when 'the action is intended to be immediate and cannot be launched within a reasonable time limit under the existing legal instruments, in view of the need to act rapidly' (Council 2001: Article 2.2a). Moreover, the RRM did not include EU humanitarian aid which has been traditionally conceived as a neutral assistance tool rather than a crisis management instrument (Commission 2003: 10). It fell under the European Community Humanitarian Office (ECHO) regulations, but the Commission could decide in 'particular security or crisis-management circumstances' that a coordinated action was necessary (Article 2.3). Despite these restrictions, the RRM gave an important degree of flexibility to the Commission (2003: 11), which could now act without any sectorial and/or geographical limitation. In view of the differentiation between short- and long-term conflict prevention introduced by the Commission (2001: 9), RRM worked 'both as an emergency instrument in its own right, and as a bridge to longer term assistance'.

Through the RRM, the Commission launched around 50 projects in 25 countries and regions which cost roughly 120 million EUR (Keukeleire and MacNaughtan 2008: 221) and consolidated its position in EU security governance (again, despite the inception of CSDP). While in many respects the RRM was innovative, the need for reforms was obvious due to the limited duration of its projects and budget. Ultimately, it was unable to ensure the link between short-term crisis response and long-term development assistance. The Commission (2004) therefore took the opportunity of the financial perspective for 2007–2013 to reorganise the assistance and cooperation programmes. It notably proposed the creation of a new community instrument, namely the Instrument for Stability (IfS). In accordance with the co-decision procedure, the IfS regulation entered into force in 2007. It repealed seven regulations, including the RRM, to create a single financial instrument (Article 26.1 of the IfS regulation).

INCREASED COMMISSION COMPETENCE THROUGH THE INSTRUMENT FOR STABILITY

Compared to the RRM, the IfS constitutes a substantial improvement, giving more resources to the Commission (which again strengthens its position in EU security governance) as regards the budget, the link between short- and long-term, the duration of the projects and the room for manoeuvre (more flexibility and faster reaction times). Firstly, the IfS got endowed with a budget of two billion EUR for the period 2007–2013. This allows the Commission to finance far more projects than it could through the RRM (European Community 2006: Article 24). Moreover, its annual budget has more than doubled over the years from 139 million EUR in 2007 to 282 million EUR in 2011 (European Commission 2012b: 6). Secondly, the IfS is divided into two components in order to assure tangible links between short-term crisis response and long-term development assistance, and to complement geographic instruments.

The short-term component gives 'assistance in response to situations of crisis or emerging crisis' (Article 3 of the IfS regulation). Managed by DG Relex until its demise and the creation of the European External Action Service (EEAS) in 2010, it 'represents the bulk of the IfS', with a budget of 1.4 billion EUR (72 per cent of the IfS budget) for the period 2007–2013 (European Commission 2010: 2). Until the end of 2011, the

Commission (European Commission 2012b: 5) managed '670 million EUR for some 203 actions responding to crises worldwide' through this instrument. This increased budget allows for a significant augmentation of the duration of any IfS project of up to 18 months. The new duration is three times longer than it was under the RRM regulation with the possibility to extend for a further six months if necessary, i.e. up to 24 months on the whole. This is clear progress, even if post-conflict situations often need more time to reach a minimum level of stability. To increase the rapidity for exceptional assistance measures, the Commission can adopt and implement projects of less than 20 million EUR with accelerated procedures (European Community 2006: Article 6.3). 'An example of the IfS speed of delivery: it took just one week from the conclusion of a mission to Mauritius in September 2010 to design a programme and take a formal decision' (European Commission 2011a: 7). As was the case with RRM, the Commission can respond to crises without sectorial and/or geographical restriction. In this perspective, IfS measures adopted since 2007 have reinforced the EU's holistic approach towards conflict prevention and peace-building and have positioned the Commission more strategically in EU security governance. It covers a broad range of issues concerning emerging conflict and post-conflict situations. Furthermore, the European Commission (2010: 6–7), emphasising closely the link between security and development, can use the IfS in four scenarios:

A major new political crisis or natural disaster [...]; an opportunity to pre-empt a crisis, to contribute to the resolution of an existing (frozen) conflict, to establish preconditions for post-conflict resolution, to promote immediate post-conflict consolidation of peace or stabilisation process [...] an urgent need to secure the conditions for the delivery of EC [European Community] assistance, in order to implement long-term assistance and cooperation policies and programmes; or to follow-up on a CSDP operation or Common Foreign and Security Policy (CFSP) priority (Ricci 2010: 42).

In 2011,³ the IfS was mainly used for crisis response in Africa (42 per cent of the annual budget), for instance to fund programmes to support piracy trials in the Horn of Africa in order to complement the EU's CSDP Atalanta counter piracy naval operation, to support the security sector reform in the Democratic Republic of Congo and to support the EU's Sahel Strategy (European Commission 2012b: 8). Then, in the particular context of the 'Arab Spring', the IfS responded to the crisis in the Middle East and North Africa (31 per cent of the annual budget), supporting elections and transition processes in Tunisia, Egypt and Libya (ibid: 7). In February 2013, a crisis response and stabilisation package under IfS was announced with 20 million EUR to support 'Mali's law enforcement and justice services, the Malian local authorities, dialogue and reconciliation initiatives at local level, and the first phases of the upcoming electoral process' (European Union 2013a: 1). This IfS package reinforces the EU response to the crisis, completing a variety of ongoing actions: EUTM Mali and EUCAP Sahel Niger as CSDP missions, the IfS long-term Counter-Terrorism project for the Sahel, EU humanitarian aid and development cooperation.

The long-term element is programmable to offer 'assistance in the context of stable conditions for cooperation' (Article 4 of the IfS regulation). This component is endowed with a budget of 484 million EUR, i.e. 23 per cent of the IfS budget to intervene in three main areas without geographical restriction (European Commission 2012a). First, it addresses security and safety threats in a trans-regional context, for instance to fight against organised crime, to prevent and combat terrorism and cybercrime (Article 4.1 of the IfS regulation). Second, it aims at risk mitigation linked to chemical, biological, radiological and nuclear materials (Article 4.2), 'improving the safety and security culture by spreading best practices and raising the general level of security and safety awareness' (European Commission 2012b: 12). Finally, it works to develop pre- and post-crisis capacity building based on relevant expertise through the Peace-building Partnership (Article 4.3). For instance, in September 2012, in collaboration with Libyan

authorities and INTERPOL, the IfS started to fund a project to improve Libyan border security and support security sector reform (European Union 2013b). This project took place before the launch of the EU-CSDP Border Assistance Mission in June 2013. Due to the programmable nature of the implementation of assistance under article 4 of the IfS regulation, the Commission should regularly propose 'multi-country strategy papers, thematic strategy papers and multi-annual indicative programmes' (Article 7 of the IfS regulation) which are adopted in accordance with the committee procedure and in consultation with partners from international organisations, civil society and third countries.

The Commission has indeed strengthened its position in the field of European security with this multi-dimensional instrument which contributes to preventing and managing key security threats identified by the European Council (2003: 3-5) in the European Security Strategy (ESS). Its high political impact and its interdependence with other EU external policies and instruments have imposed a close collaboration with a series of actors which allow the Commission to bring together all actors involved in the field and to contribute to its cohesion. First, and in contrast to the RRM, the EU member state representatives in the Council can exert control through the committee procedure, excluding exceptional assistance measures of less than 20 million EUR (Article 22 of the IfS regulation). This has, unsurprisingly, provoked the reaction that most of the missions to date have been less than this amount in order to guarantee a quick response from the Commission (European Commission 2011d). For missions of more than 20 million EUR, the procedure has been used only once, a result of the extensive and obligatory consultations that take place necessarily right from the early beginning of the process (interview with an EU official in the EEAS in February 2012). According to the European Commission (2008: 4), this intensive consultation practice has made the IfS a politically responsive instrument which legitimates its role. With the intention of avoiding any blocking, the Commission cooperates closely with the Council and CSDP structures. The Political and Security Committee (PSC) is informed on a regular basis, as well as the geographic working groups and the Committee for Civilian Aspects of Crisis Management (CIVCOM). The CIVCOM has been expressly 'created in order to improve relations between the military and the civilian components, including instruments from the [former] first pillar' (Kirchner and Sperling 2007: 69). The Commission also works closely with the EU Delegations in third countries, notably for crisis response actions. They

play a key role, providing early warning and developing concepts and options for responses. In 2011, the majority of new measures were "sub-delegated" for local implementation to EU Delegations [...] responsible for 85% of commitments and 82% of payments under the IfS (European Commission 2012b: 9).

Moreover, representatives from the Commission with the EEAS discuss both IfS components with the Working Group on Conflict, Security and Development of the Foreign Affairs Committee of the European Parliament, established in the framework of the democratic scrutiny of the IfS. Besides closer political consultations with actors inside the EU institutions, the Commission is in touch with appropriate authorities in third countries, the international community and civil society, dialogue with whom 'is an important part of the decision-making process' (European Commission 2010: 3).

As regards the crisis-preparedness component (Article 4.3), the Commission (2007: 18) cooperates with NGOs through the Peace-building Partnership, consisting of 'a broad-based network of specialised European NGOs with expertise in early warning, conflict prevention, peace-building and post-conflict and post-disaster recovery'. Since the Commission has increased its contribution to conflict prevention and with a clear need for external expertise, we have witnessed a growing interest on the part of NGOs, think tanks and the academic world to provide information and analysis in this field (Stewart 2008: 235). In 2010, under the IfS, the Civil Society Dialogue Network (CSDN) 'was launched to facilitate dialogue with non-state actors with a view to providing input to the

EU's policymaking processes' (European Commission 2011a: 10). The CSDN is managed by the European Peacebuilding Liaison Office (EPLO) which organised several meetings where all relevant actors informally exchanged ideas on peace-building in a holistic approach, i.e. beyond the IfS activities. Under the crisis-preparedness component, the IfS, in collaboration with EU member states, is also co-funding 'Europe's New Training Initiative for Civilian Crisis Management' which has been used for the training of the staff for CSDP missions since 2011.

On the ground, the Commission needs partners to implement actions. The United Nations (UN) is the key partner in conflict prevention, and nearly 50 per cent of 'IfS funds are implemented through UN agencies, which in many cases have existing field structures able to deliver first responses in crisis and conflict affected countries' (European Commission 2010: 4). For instance, in a long-term perspective, the European Commission (2011c) cooperates with the UN to develop national capacities for conflict prevention and conflict resolution. To be more effective, the Commission also works with NGOs. For many years, the Commission (2001: 28) has claimed that NGOs are the 'key actors in long-term conflict prevention' because they are on the ground with wide knowledge of local issues and contact networks. As a result, 'almost a quarter of all Instrument for Stability (IfS) funds [...] is implemented by NGOs worldwide' (Ricci 2010: 41). Therefore, its coordination, consultation and cooperation with all relevant actors in the field position the Commission at the centre of their activities, allowing it to stimulate interactions and to contribute decisively to the shaping of EU security governance (Lavallée 2011).

However, given that the Commission does not act directly on the ground and needs partners at all stages of its programmes, there are relations of interdependency that reflect the varying and complementary resources of each actor in the field. The cooperation between state representatives, European institutions and civil society is primarily about sharing expertise, ensuring coherence, efficiency and cost reduction. It would be pointless to deny that there is also competition between different positions, visions and perceptions about the goals, priorities and strategies of all actors (interviews with officials in EEAS and the Commission, February and May 2012). At the same time, the Commission is in a delicate situation – one of dependence. Its activities depend on the support of the member states, which, through the European Council, determine its competences. In addition, its programmes and budgets are renewed through the Council in cooperation with the European Parliament, for instance in the next multi-annual financial framework 2014–2020.

The current IfS regulation expires on 31 December 2013. In the wake of the presentation of the proposals for the multi-annual financial framework 2014–2020, the Commission had therefore adopted the proposal for its external instruments. This package was prepared over 2011 in close cooperation with the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission (HR/VP), Catherine Ashton, and based on the result of a public consultation on future funding for EU external action. It was submitted for evaluation and adoption to the European Parliament and the Council. It proposed particularly to renew the IfS regulation. In the current economic context, the European Commission (2011b: 2) asks for a minor augmentation of the budget to reach EUR 2.8 billion. The priority of the Commission is, rather, to simplify the current procedure,

Flexibility has been improved by expanding the maximum length of crisis response measures up to a maximum of 30 months and the deployment of a second Exceptional Assistance Measure in cases of protracted conflict to build on the results of a previous one. In addition, in exceptional situations of urgency, the Commission will be empowered to adopt Exceptional Assistance Measures for up to €3 million without prior information to Council. This improvement in speed of deployment will allow the EU to respond to crises within a period of 48-72 hours (European Commission 2011b: 8)

Despite CSDP developments in crisis management, the Commission has consolidated and has even strengthened its position in EU security governance from RRM to IfS with more budget and flexibility to act. The Commission has justified its role by referring to the integrated approach of the European Security Strategy to support the progress of CFSP/CSDP and to increase the efficiency of the EU's external action. The legitimacy of the Commission depends on its capacity to base its work on appropriate expertise and the right players to run the projects on the ground. The current negotiations for the financial perspectives 2014–2020 seem to consolidate and even reinforce the IfS regulation towards more flexibility and rapidity for Commission action. However, according to the new dispositions of the Lisbon Treaty (see Carta in this special issue) new actors are involved in the management of the IfS, challenging the position of the Commission in EU security governance post-Lisbon.

THE POSITION OF THE EUROPEAN COMMISSION IN CRISIS RESPONSE AND CONFLICT PREVENTION POST-LISBON

The European Council confirmed in the ESS the necessity of a comprehensive approach to security, civilian and military, as well as the merging of internal and external security. The ESS emphasised strongly the added value of the EU as a global player with a wide range of instruments at its disposal to respond to multi-faceted situations on the international stage. It presented conflict prevention as a central theme. Moreover, the ESS linked security closely with development, noting that 'security is a precondition for development' (European Council 2003: 2). In 2008, after the ESS review process, the European Council adopted the Report on the Implementation of the European Security Strategy. It 'emphasises the security-development nexus', arguing that '[i]n order to be most effective, the EU has to deploy the right mix of instruments, ranging from targeted military to civilian crisis management operations to conflict prevention, peace consolidation, mediation, humanitarian measures, [etc.]' (Wright and Auvinen 2009: 117). The ESS is now omnipresent in EU discourses, and 'functions as a reference framework for daily decision-making in all fields of foreign policy' (Biscop 2008: 8).

However, the application of an integrated approach is still a work in progress, but the efforts to increase cohesion within the EU have confirmed that the EU's tools in conflict prevention and crisis response are not limited to CFSP/CSDP (Nowak 2006). In this respect, with the Small Arms and Light Weapons (SALW) ruling,⁴ the Court of Justice of the European Union (CJEU), considering the broad objectives of the European development cooperation policy, agreed with the Commission on the links between security and development. It confirmed the contribution of the Commission in this field and the delimitation of the competencies of the Council under the CFSP, even though the Court dismissed this specific case (Eeckhout 2012).

Some scholars (Dijkstra 2009; Stewart 2008; Gourlay 2006b) have pointed out the challenges of inter-institutional coordination concerning EU civilian crisis management. As stressed by Schroeder (2011), many initiatives to increase synergies were proposed, such as common structures, action plans and the civilian headline goal. However, the comprehensive approach is not easy to put into practice. Within each institution, there are still different visions and understandings of the notion of security, different backgrounds and cultures. Therefore, differing priorities and strategies are evident when the time arrives to decide on which of the EU's external instruments to rely on to intervene. Through the IfS, the Commission fills the gap or complements CSDP with the risk of competition without proper consultation with member state representatives who are less involved in the process of IfS than in CSDP (interviews with officials in EEAS and the Commission, February and May 2012). Without agreement, the cross-pillar coordination has remained informal and this situation seems the optimal option for both the Commission and the Council (Schroeder 2011).

The implementation of the Lisbon Treaty should help to clarify the process with new dispositions aiming at formalising coordination among the EU institutions and their instruments. In this respect, the hybrid institutional position of HR/VP was created. Baroness Ashton is assisted by the EEAS to conduct CFSP/CSDP as HR and to manage community instruments for external action as VP. On the one hand, HR/VP and EEAS should strengthen the trend whereby formulation and implementation of CFSP/CSDP are done in Brussels, making contacts easier between actors involved in European security (Missiroli 2010). On the other hand, the EEAS' heterogeneous team and combined resources should increase the synergies among the EU's external instruments, moving further towards a strongly integrated approach in crisis response and conflict prevention. To that extent, DG Relex has effectively been integrated into the structure of the EEAS, in the geographical departments. After many years of rivalry between the Commission's Crisis room and the Council's Situation Centre (Boin et al. 2006: 490), both have been included in EEAS to increase coherence and complementarity of information.

Problems, however, remain. The Treaty of Lisbon introduced new ambiguities about the management of security issues and hence challenges the position taken by the Commission so far in EU security governance:

The paradox of the relationship between the CFSP and the other EU external action [...] is that the CFSP is intended to cover *all areas* of foreign and security policy. [...] Within the supranational context of other EU policies it creates concerns about contamination by the CFSP' (Eeckhout 2012: 269).

Article 21 of the Lisbon Treaty synthesised and enlarged further the principles and objectives which guide the EU's external action and reinforced the comprehensive approach to European security. The pillar logic was originally created specifically to insulate the community instruments (supranational) from CFSP/CSDP logics (intergovernmental). While Lisbon abolished the pillar system, it did not completely abandon the logic on which it was based. It did not establish a prioritisation system. Instead, it left such a degree of ambiguity that the involvement of the CJEU has become a necessity. Even though the SALW ruling has created a precedent, some vagueness remains.

Further to this, the hybridity of the institutional structures of the HR/VP and EEAS oblige the Commission to redefine its strategy in order to reinforce its position in the new power structure. The EEAS organisation chart confirms the link with the Commission to ensure coherence. However, in respect of the Service for Foreign Policy Instruments (FPI), the Commission is also in a grey zone. While many insiders affirm that in practice the FPI is virtually integrated in the EEAS (interviews with officials in the Commission and EEAS, February 2012), legally it cannot be part of the EEAS, in accordance with its budget prerogative. Over time, the management of the EU budget became the real technical expertise of the Commission which is responsible to the European Parliament. Moreover, it is its main resource ('capital') which positions itself strategically in the field in relation to the other actors. The Treaty of Lisbon did not modify this competency which explains why the FPI is linked directly to Ashton as VP. The FPI includes the budget unit, stability instruments operations (in charge of the IfS), CFSP operations and public diplomacy, as well as election observation. All these units are located in the same building of the EEAS, namely the Capital complex, in order to make contact easier among all actors involved in the EU's external action.

According to the decision establishing the organisation and functioning of the EEAS, the management of the Instrument for Stability is now shared between the EEAS and the Commission under the authority of the HR/VP (Council 2010: Article 9). In the EEAS, the Department of Security Policy and Conflict Prevention is responsible for the long-term component of the IfS. In close consultation with the Commission and the member states, it prepares the decisions regarding strategic papers and multi-annual programmes within the programming cycle adopted by the Council and the European Parliament. It also

manages the Peace-Building Partnership. While for EPLO, the main partner, this does not change anything because the partnership is still managed by the same people (interview with EPLO, February 2012), for the Commission it could be perceived as a loss of expertise even if the FPI is part of the joint steering committee of the Civil Society Dialogue Network. Although the EEAS is now involved in the IfS management (Article 4), the balance of power with the Commission is not obvious: the EEAS has a very limited budget, and the Commission is still involved in the long-term component. Moreover, the Commission remains in charge of the short-term component which constitutes 72 per cent of the budget. Furthermore, it is highly political due to its nature (non-programmable) and scope (without geographical limitation) and from the beginning of the process demands consultation on a huge scale with HR/VP, the PSC and all departments and units concerned in the EEAS.

The power struggle between the Commission and EEAS is therefore unsettled. First, many former colleagues moved from DG Relex to EEAS, thus each one knows each other well, which makes daily contact and coherence between both components of IfS easier (interviews with officials in the Commission and EEAS, February and May 2012). Then, and especially in accordance with article 9 of the Council decision, they are physically located in the same building. Due to the nature of IfS, the FPI also cooperates with all relevant actors and units in the EEAS depending on the topic. For instance, to prepare a response to a crisis in a specific region under article 3, the FPI asks for the expertise of geographical departments. This consultation helps to facilitate the policy process, avoiding any blocking and increasing cohesion.

To sum up, before the creation of EEAS, the elaboration of the IfS process involved mainly CSDP actors (the Council and its structures). Now, with the EEAS, the coordination involves all EU actors concerned with crisis response and conflict prevention (interviews with officials in the Commission and EEAS, February and May 2012). Amongst those actors, the Crisis Response and Operational Coordination (CROC) Department of the EEAS aims at creating a crisis platform in favour of a mass coordination between all actors involved in crisis response through a comprehensive approach to conflict prevention. However, this coordination remains informal and creates tensions inside EEAS because CROC has no legal mandate, no legal basis and no official link to justify its authority over the other EEAS departments and units (interviews with officials in EEAS, Brussels, February and May 2012). Moreover, institutional divisions between the former DG Relex, now integrated into EEAS, and the FPI, co-located in the EEAS building, and the other DGs and agencies of the Commission concerning development, humanitarian aid, trade and enlargement can create conflicts. This creates difficulties for Ashton, involved equally as HR and VP, and has already raised some criticism about her limited commitment to Commission activities (Blockmans and Laatsit 2012: 145; interviews with officials in the Commission and EEAS, Brussels, February and May 2012). Furthermore, the creation of EU Delegations (which replaced the Commission Delegations) could be perceived as a loss of power for the Commission, but on the other hand its staff is still part of the EU Delegations and so far remains quite influential (interviews with officials in the Commission and EEAS, Brussels, February and May 2012). The post-Lisbon reorganisation transforming practices demands time for adjustment of actors and before a conclusive evaluation can be delivered of how the Commission is positioning itself in this new and changing configuration.

In summary, notwithstanding the challenges facing the Commission in the European security field, it has consolidated its position through the IfS. The Commission gives added value by virtue of its resources, the budget and network of partners, and its approach. Its competence to manage the Union's budget, its experience and expertise in conflict prevention and crisis management, notably in election observation and professional training, for example of policemen in stabilisation missions, is still missing in the EEAS. The Commission, through Article 3 of the IfS, has the budget as well as flexibility and rapidity that other actors do not yet have. The integrated approach of the

Commission through the IfS helps to reinforce the link between the short- and long-term perspectives, to work across the conflict cycle – crisis response, conflict resolution, early recovery and long-term peace building. Through the IfS, the Commission can link community instruments and intergovernmental policies with CSDP missions, for instance, and be the interface between the different actors involved in crisis response, management and conflict prevention. This has served to strengthen the Commission's position in EU security governance so far, despite the implementation of the Lisbon Treaty and the new configuration of actors put in place.

CONCLUSIONS

This article has shifted the perspective on European security from CSDP to the EU's external action on the whole in order to understand better how EU security governance works in practice. The CSDP should not be studied in isolation from the international institutional environment, given the fact of an institutional overlap (Hofmann 2011). The timing of the parallel development between CSDP (intergovernmental policy) and RRM/IfS (a Community instrument) should be considered together from an integrated approach. Despite the growing role of the Council through CFSP/CSDP in this field, the Commission has increased its activities and has even contributed to the structuring of EU security governance, notably through the huge consultation process prior to the launch of any project. While this role has evolved over the last decade in parallel with intergovernmental policies, mainly CSDP, this article has demonstrated that in practice there is a tendency towards convergence and complementarity between them despite the inevitable competition which also structures the field.

The next step will be to evaluate to what extent the new IfS over the upcoming financial perspective 2014-2020 will affect the Commission's position in EU security governance. Despite the democratic scrutiny clause of the Lisbon Treaty and the improvement in the dissemination of information in recent years, the Commission could increase much more the credibility and visibility of its actions through the IfS, giving access to further details about the evolution of the funded projects, as the Council does with CSDP missions. The external challenges facing the EU as a global security actor require, however, increasingly more close coordination and an efficient use of expertise and resources among EU member states, institutions, structures and tools. In many respects, the European Commission appears as the key actor for that requirement because it has so far succeeded in legitimating its role and positioned itself at the centre of EU security governance.

ACKNOWLEDGEMENTS

The author is indebted to Maxine David, Francesco Giumelli, Jan Völkel and two anonymous JCER reviewers for their comments and suggested improvements. She is also grateful to Pascal Vennesson and the participants of the Security Working Group at the European University Institute for their relevant comments and suggestions on a previous version in December 2011. An earlier draft of this article was presented at the ISA Annual Convention, Montreal, March 2011. The author thanks the team of the Robert Schuman Centre for Advanced Studies of the European University Institute where she wrote this article as a visiting fellow with a two-year fellowship from the *Fonds de Recherche du Québec - Société et culture*.

¹ According to the French acronym of CFSP which is PESC: 'Politique Étrangère et de Sécurité Commune'.

² To facilitate the reading and avoid any confusion, this article will only mention CSDP – even when referring to the period before the Lisbon Treaty in 2009.

³ At the time of writing, the 2012 annual IfS report, containing data on activities for the year 2011, was the most recent one.

⁴ The SALW case 'concerned a Council decision implementing a joint action with the view to an EU contribution to ECOWAS in the framework of that organization's Moratorium on Small Arms and Light Weapons. The Commission claimed that the joint action [...] fell within the shared competences on which the Community development policy was based' (Eeckhout 2012: 270).

REFERENCES

- Bagoyoko, Niagalé and Gibert, Marie V. (2009) The Linkage between Security, Governance and Development: the European Union in Africa. *Journal of Development Studies*, 45 (5): 789-814
- Bigo, Didier (2005) La mondialisation de l'(in) sécurité? Réflexion sur le champ des professionnels de la gestion des inquiétudes et analytique de la transnationalisation des processus d'(in) sécurisation. *Cultures et Conflits*, 58: 53-100.
- Biscop, Sven (2008) The European Security Strategy in context: A comprehensive trend, in Sven Biscop and Jan J. Anderson (eds) *The EU and the European Security Strategy: Forging a global Europe*. London: Routledge: 5-20.
- Blockmans, Steven and Laatsit, Marja-Liisa (2012) The European External Action Service: Enhancing Coherence in EU External Action? in Paul J. Cardwell (ed.) *EU External Relations Law and Policy in the Post-Lisbon Era*. The Hague: T.M.C Asser Press: 135-159.
- Boin, Arjen, Ekengren, Magnus and Rhinard, Mark (2006) The Commission and Crisis Management, in David Spence and Geoffrey Edwards (eds) *The European Commission*. London: John Harper Publishing: 481-501.
- Bourdieu, Pierre (2000) *Propos sur le champ politique*. Lyon: Presses Universitaires de Lyon.
- Cameron, Fraser and Spence, David (2004) The Commission-Council Tandem in the Foreign Policy Area, in Dionyssis Dimitrakopoulos (ed.) *The Changing European Commission*, Manchester: Manchester University Press: 121-137.
- Cardwell, Paul J. (2009) *EU External Relations and Systems of Governance. The CFSP, EUROMED Partnership and Migration*. New York: Routledge.
- Council (2010) Council Decision of 26 July 2010 Establishing the Organisation and Functioning of the European External Action Service. *Official Journal of European Union*, 2010/427/U, 3 August, L201/30-40.
- Council (2001) Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism. *Official Journal of the European Communities*, L57/5, 27 February: 5-9.
- Dijkstra, Hylke (2009) Commission versus Council Secretariat: An Analysis of Bureaucratic Rivalry in European Foreign Policy. *European Foreign Affairs Review*, 14 (3): 431-450.
- Dinan, Desmond (2011) Governance and Institutions: Implementing the Lisbon Treaty in the Shadow of the Euro Crisis. *Journal of Common Market Studies*, 49 (issue suppl. 1): 103-121.
- Duke, Simon (2007) The Role of Committees and Working Groups in the CFSP Area, in Thomas Christiansen and Torbjörn Larsson (eds) *The Role of Committees in the Policy-Process of the European Union*. Cheltenham: Edward Elgar: 120-151.
- Eeckhout, Piet (2012) The EU's Common Foreign and Security Policy after Lisbon: From Pillar Talk to Constitutionalism, in Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU Law After Lisbon*. Oxford: Oxford University Press: 265-291.
- European Commission (2012a) Instrument for Stability, Online: http://ec.europa.eu/europeaid/how/finance/ifs_en.htm Accessed 25 July 2012.
- European Commission (2012b) Report from the Commission to the European Parliament, the Council, the European Economic and social committee and the Committee of the regions - 2011 Annual Report on the Instrument for Stability, COM (2012) 405 final, Brussels, 24 July.
- European Commission (2011a) Report from the Commission to the European Parliament, the Council, the European Economic and social committee and the Committee of the regions - 2010 Annual Report on the Instrument for Stability. COM (2011) 494 final, Brussels, 16 August.
- European Commission (2011b) The Multiannual Financial Framework: The Proposals on External Action Instruments. MEMO/11/878, Brussels, 7 December.

European Commission (2011c) EU and UN reinforce cooperation on Peacebuilding and Mediation. Brussels, 12 December.

European Commission (2011d) Commission Staff Working Paper accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and social committee and the Committee of the regions - 2010 Annual Report on the Instrument for Stability, Part 1, COM (2011) 494 final, Brussels, 16

European Commission (2010) *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2009 Annual Report from the European Commission on the Instrument for Stability*, Brussels, COM (2010) 512 final, 28 September.

European Commission (2008) *Report from the Commission to the Council and the European Parliament Annual report from the European Commission on the Instrument for Stability in 2007 – Executive Summary*, Brussels, COM (2008) 181 final.

European Commission (2007) *The Instrument for Stability Strategy Paper 2007-2011*, Online: http://www.eeas.europa.eu/ifs/docs/ifs_strategy_2007-2011_en.pdf Accessed 02 May 2013.

European Commission (2006) *Communication from the Commission to the European Council of June 2006 Europe in the World — Some Practical Proposals for Greater Coherence, Effectiveness and Visibility*, Brussels, COM (2006) 278 final, 8 June.

European Commission (2004) *Communication from the Commission to the Council and the European Parliament On the Instruments for External Assistance under the Future Financial Perspective 2007-2013*, Brussels, COM (2004) 626 Final, 29 September.

European Commission (2003) *Civilian Instruments for EU Crisis Management*. Brussels, Conflict Prevention and Crisis Management Unit, April.

European Commission (2001) *Communication from the Commission on Conflict Prevention*. Brussels, COM (2001) 211 final, 11 April.

European Commission (2000) Proposal for a Council Regulation creating the Rapid Reaction Facility. *Official Journal of the European Communities*, (2000/C 311 E/14): 213-216.

European Community (2006) Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 Establishing an Instrument for Stability. *Official Journal of the European Union*, L327/1-L327/11.

European Council (2003) *A Secure Europe in a better world-European Security Strategy*, Brussels, 12 December.

European Council (2001) Presidency Conclusions, European Council Meeting in Laeken 14 and 15 December 2001, Online: http://ec.europa.eu/governance/impact/background/docs/laeken_concl_en.pdf Accessed 31 May 2013.

European Council (1999) Presidency Conclusions, Helsinki European Council 10 and 11 December 1999, Online: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/ACFA4C.htm Accessed 04 September 2012.

European Union (2013a) EU releases extra €20 million crisis response and stabilisation support package for Mali, Online: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135462.pdf Accessed 16 February 2013.

European Union (2013b) EU-INTERPOL project to support border security in Libya, Online: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/135849.pdf Accessed 30 May 2013.

Gourlay, Catriona (2006a) Community Instruments for Civilian Crisis Management, in A. Nowak (ed.), *Civilian Crisis Management: the EU way*, Chaillot Paper, no. 90: 49-67.

Gourlay, Catriona (2006b) Civil-Civil Co-ordination in EU Crisis Management, in Agnieszka Nowak (ed.), *Civilian Crisis Management: the EU way*, Chaillot Paper, no. 90: 103-138.

Héritier, Adrienne and Rhodes, Martin (eds) (2011) *New Modes of Governance in Europe. Governing in the Shadow of Hierarchy*. London: Palgrave Macmillan.

Hofmann, Stéphanie C. (2011) Why Institutional Overlap Matters: CSDP in the European Security Architecture. *Journal of Common Market Studies*, 49 (1): 101-120.

Hooghe, Liesbet and Marks, Gary (2001) *Multi-level Governance and European Integration*. Lanham: Rowman and Littlefield.

Howorth, Jolyon (2010) *The Political and Security Committee: A Case Study in Supranational Inter-Governmentalism*. Centre d'études européennes Les Cahiers européens de Sciences Po No. 1, Online : www.cee.sciences-po.fr/en/publications Accessed 03 May 2013.

Kassim, Hussein and Menon, Anand (2004) EU Member States and the Prodi Commission, in Dionyssis Dimitrakopoulos (ed.), *The Changing European Commission*, Manchester: Manchester University Press: 89-104.

Kaunert, Christian (2010) *European Internal Security: Towards Supranational Governance in the Area of Freedom, Security and Justice*. Manchester: Manchester University Press.

Kaunert, Christian (2007) Without the Power of Purse or Sword: The European Arrest Warrant and the Role of the Commission. *Journal of European Integration*, 29 (4): 387-404.

Keukeleire, Stephan and MacNaughtan, Jennifer (2008) *The Foreign Policy of the European Union*. New York: Palgrave Macmillan.

Kirchner, Emil. J. (2006) The Challenge of European Union Security Governance. *Journal of Common Market Studies*, 44 (5): 947-968.

Kirchner, Emil. J. and Sperling, James (2007) *EU Security Governance*. Manchester: Manchester University Press.

Kurpas, Sebastian, Gron, Caroline and Kaczyński, Piotr Maciej (2008) *The European Commission after Enlargement: Does More Add Up to Less?* Centre for European Policy Studies, Special Report, February.

Lavallée, Chantal (2011) The European Commission's Position in the Field of Security and Defence: an Unconventional Actor at a meeting point. *Perspectives on European Politics and Society*, 12 (4): 371-389.

Mérand, Frédéric, Hofmann, Stéphanie and Irondelle, Bastien (2011) Governance and State Power: A Network Analysis of European Security. *Journal of Common Market Studies*, 49 (1): 121-147.

Mérand, Frédéric (2010) Pierre Bourdieu and the Birth of European Defence. *Security Studies*, 19 (2): 342-374.

Mérand, Frédéric (2008) *European Defence Policy: Beyond the Nation State*. Oxford: Oxford University Press.

Missiroli, Antonio (2010) The New EU 'Foreign Policy' System after Lisbon: A Work in Progress. *European Foreign Affairs Review*, 15 (4): 427-452.

Norheim-Martinsen, Per M. (2010) Beyond Intergovernmentalism: European Security and Defence Policy and the Governance Approach. *Journal of Common Market Studies*, 48 (5): 1351-1365.

Nowak, Agnieszka (2006) Civilian Crisis management within ESDP, in *Civilian Crisis Management: the EU way*, Chaillot Paper, no. 90: 15-37.

Nugent, Neill and Rhinard, Mark (2013) The European Commission and External Relations, in Michele Chang and Jörg Monar (eds) *The European Commission in the Post-Lisbon Era of Crises: Between Political Leadership and Policy Management*. Oxford: Peter Lang: 257-278.

Pfister, Stéphane (2009) La puissance européenne et la gestion civile des crises, in René Schwok and Frédéric Mérand (eds) *L'Union européenne et la sécurité internationale. Théories et pratiques*. Louvain-La-Neuve: Bruylant: 109-123.

Puetter, Uwe (2012) The latest attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination, in Paul J. Cardwell

(ed.). *EU External Relations Law and Policy in the Post-Lisbon Era*. The Hague: T.M.C Asser Press: 17-34.

Ricci, Andrea (2010) Interview with Karel Kovanda, in Andrea Ricci (ed.) *Making the Difference? What Works in Responses to Crises and Security Threats – the Debate Continues*. Brussels: Publications European Communities: 41-44.

Saurugger, Sabine and Mérand, Frédéric (2010) Does European Integration Need Sociology?. *Comparative European Politics*, 8 (1): 1-18.

Schroeder, Ursula C. (2011) *The Organization of European Security Governance. Internal and External Security in Transition*. New York: Routledge.

Spence, David (2006) The Commission and the Common Foreign and Security Policy, in David Spence and Geoffrey Edwards (eds). *The European Commission*. London: John Harper Publishing: 356-395.

Stacey, Jeffrey (2012) Informal Governance in the EU: the European Commission versus the European Parliament, in Thomas Christiansen and Christine Neuhold (eds). *International Handbook on Informal Governance*. Cheltenham: Edward Elgar Publishing: 395-411.

Stewart, Emma J. (2008) Capabilities and Coherence? The Evolution of the European Union Conflict Prevention. *European Foreign Affairs Review*, 13 (2): 229-253.

Tardy, Thierry (2009) Introduction, in Thierry Tardy (ed.) *European Security in a Global Context*. Abingdon: Routledge: 1-13.

Wagnsson, Charlotte, Sperling, James A. and Hallenberg, Jan (eds) (2009) *European Security Governance. The European Union in a Westphalian World*. Oxford: Routledge.

Webber, Mark, Croft, Stuart, Howorth, Jolyon, Terriff, Terry and Krahmann, Elke (2004) The Governance of European Security. *Review of International Studies*, 30 (1): 3-26.

Wright, Richard and Auvinen, Juha (2009) What ambitions for EU civilian crisis management? in Alvaro de Vasconcelos (ed.) *What ambitions for European Defence in 2020?* Second edition, Paris: EUISS: 117-128.

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

Beyond Intergovernmentalism: The Europeanization of Restrictive Measures?

Francesco Giumelli *Metropolitan University Prague*

Citation

Giumelli, F. (2013). 'Beyond Intergovernmentalism: The Europeanization of Restrictive Measures?', *Journal of Contemporary European Research*. 9 (3), pp. 390-405.

First published at: www.jcer.net

Abstract

The functioning of the European Union (EU) has been explored extensively in recent years. The dominant prism through which to look at the EU is still one of locus: i.e. whether decisions are made in the capitals of its member states or in Brussels. This debate is contained in the dualism between intergovernmentalism and supranationalism, but drawing the boundaries between the two concepts is still undone. This article attempts to contribute to solving this problem by investigating the restrictive measures policy of the EU in order to identify three conditions under which intergovernmentalism should be used. First, when EU institutions are dependent on EU member states for information and expertise; second, when decision-making powers rest mainly in EU capitals; and three, when there are no exclusive *fora* for decision-making in Brussels. The study of the restrictive measures of the European Union does not meet any of these three conditions; therefore the article argues that the concept of supranational intergovernmentalism offers useful insights to understand the EU security governance of CFSP sanctions. The article is divided into four parts. The first introduces the debate on security governance and justifies the selection of this specific approach to the study of sanctions. The second part presents the restrictive measures policy of the European Union and justifies its pertinence to the field of security. The third part of the article investigates the emerging patterns in security governance by testing the three conditions on the decision-making process for EU restrictive measures. Finally, the conclusion summarises the main argument and indicates ways forward in the study of EU sanctions from a governance perspective.

Keywords

European security governance; restrictive measures; intergovernmentalism; supranationalism; supranational intergovernmentalism

The governance of security at the European level has been the subject of extensive and thorough discussion (Mérand et al. 2011; Kirchner and Sperling 2007; Webber et al. 2004), with an enduring division between supranationalists and intergovernmentalists (Gegout 2010; Pollack 2003; Majone 2001; Moravcsik 1998). Another development, however, has occurred with work that focuses on questions relating to the Europeanization (or not) of foreign policy (Alecú de Flers and Muller 2012; Gross 2009; Featherstone and Radaelli 2003). At least in part because of this latter development, a number of scholars (Juncos and Pomorska 2011; Howorth 2010) have pointed out that the dualism of the supranational versus intergovernmental debate may have been surpassed by the emergence of a supranational intergovernmentalism. One question arises: 'How much integration can intergovernmentalism take before it stops being intergovernmental?' (Sjursen 2011: 1081). The evolutionary process is captured in the literature on security governance and on the *brusellization* of European policy (Juncos and Pomorska 2011; Tonra 2000; Allen 1998) with its focus on different institutions and institutional dynamics (Bátora 2010; Lewis 2007; Duke 2005). These efforts have been justified as the search for understanding how integration in foreign policy proceeds since the intergovernmental approach seems to be outdated, but further investigation is needed to identify the conditions under which intergovernmentalism is not intergovernmental anymore.

This article attempts to identify some of these conditions by investigating the restrictive measures policy of the European Union (EU) and identifies three conditions to establish whether intergovernmentalism should be used. First, EU institutions are dependent on EU member states for information and expertise; second, decision-making powers rest mainly in EU capitals; and three, there are no exclusive *fora* for decision-making in Brussels.¹ I argue that none of these three conditions is met in the case study of EU restrictive measures and it would be most appropriate to use the term supranational intergovernmentalism when describing the sanctioning policy of the EU and understanding trends in the decision-making process of the Common Foreign and

Security Policy (CFSP). A 'supra-national intergovernmental' approach should be used when: i) EU institutions have competence and expertise that member states do not have; ii) Brussels-based actors acquire decision-making powers and iii) certain policies cannot be discussed and decided anywhere but in Brussels.

The formalisation of these three conditions contributes to defining the concept of 'supra-national intergovernmentalism' insofar as it highlights three patterns showing how Brussels-based institutions are acquiring more importance in the decision-making process and in EU security governance. The EU appears to be a post-Westphalian actor in a post-Westphalian world (Wagnasson et al. 2009; Kirchner and Sperling 2007), dealing with challenges that are peculiar to this new setting of the international system. The governance approach allows us to capture the nuances and the changing dynamics that characterise decision-making processes in the field of security as attempted by the authors of this special issue. This analysis is based on interviews conducted with EU and national officials from February 2009 to February 2013 as well as other primary sources such as EU legal documents and Court rulings.

The article is divided into four parts. The first one introduces the debate on security governance and justifies the selection of this specific approach to the study of sanctions. The second part of the article presents the restrictive measures policy of the European Union and justifies its pertinence to the field of security. The third investigates the emerging patterns in security governance by testing the three conditions on the decision-making process for EU restrictive measures. Finally, the conclusion summarises the main arguments and indicates ways forward in the study of EU sanctions from a governance perspective.

EU SECURITY GOVERNANCE AND SUPRA-NATIONAL INTERGOVERNMENTALISM

The EU as an instance of regional integration was traditionally studied through the lenses of intergovernmentalism and neo-functionalism (Rosamond 2000). Intergovernmentalism gives special attention to the role of nation-states and understands the formation of EU policies as a bargaining process among independent states (Pollack 2003; Moravcsik 1998; Hoffmann 1966). However, the tenets of this approach have been increasingly questioned, with arguments that increasingly decisions are made more frequently in Brussels and that procedures have contributed to taking away sovereignty from EU member states. This phenomenon has been referred to through concepts such as 'supranational intergovernmentalism', 'Brussels-based intergovernmentalism', 'deliberative intergovernmentalism' (Juncos and Pomorska 2011; Sjursen 2011; Howorth 2010; Juncos and Reynolds 2007; Howorth 2001). Therefore, the challenge is to identify the conditions under which the different terms could/should be used, namely the operationalisation of supranationalism and intergovernmentalism.

The security governance literature can provide the conceptual framework for understanding the ways in which EU actors make decisions in the absence of a clear dominant role for state actors (Mérand et al. 2011; Kirchner and Sperling 2007; Webber et al. 2004). To elucidate, the concept of governance is 'premised on the fragmentation of state authority. Public and private actors work together in policy networks that are based on shared interests and/or norms and contribute to the formulation of public policy' (Merlingen 2011: 20). Thus security governance has to be seen as involving a range – a network – of actors – whose interactions depend on a sense of shared concerns and principles.

There are three bodies of literature that can be used to develop a conceptual framework that facilitates the solution of the problem of 'who decides' in the EU. The first is that literature relating to the principal-agent model (Rosamond 2007; Pollack 2003; Moravcsik 1998). In the EU system, the principals would be the member states and the

agents the EU institutions in Brussels. This understanding of governance that combines assumptions from classical theories of International Relations has demonstrated a certain degree of utility as seen by the growing number of contributions employing it over the years (Hix 1998). However, matters are not always so clear-cut and in reality the agents themselves can behave more like principals. Historical and sociological institutionalism particularly, can now provide added value to the understanding of the evolution of the sanctioning process in the European Union and how agents, EU officials and institutions, have gained greater autonomy from their principal, EU member states (Klein 2011; Pollack 2009; Hall and Taylor 1996). As Liberals have convincingly argued, due to limited resources, national governments cannot check on everything that is done in Brussels, which assigns some freedom of manoeuvre for the actors in Brussels. Constructivists have gone further, arguing that Brussels-based actors are able to exercise independent power and to grow apart from their principals.²

The second set is the literature on *brusselization*, defined as the gradual shift of foreign policy authority from the European capitals to Brussels (Juncos and Pomorska 2011: 1098; Allen 1998: 54). The Lisbon Treaty has further strengthened a process that started years ago and is intertwined with the Constructivist concept of socialization, i.e. a process of social interactions leading to the creation of a group of norms (Juncos and Pomorska 2011: 1098; Johnston 2001: 493). Constructivism has been used more recently and it focuses on the Europeanization of political processes in Europe. The key elements to this are identity, institutions and socialization.

The third one is on 'supra-national inter-governmentalism' (Howorth 2000: 36). There is an overlap between supra-nationalism and intergovernmentalism, but '[w]hile many scholars quoted this neologism, none attempted to develop it theoretically' (Howorth 2010: 434). Indeed, there are a number of studies focusing on the role of EU institutions in the decision-making for CFSP and Common Security and Defence Policy – CSDP (Mérand 2008; Salmon and Shepherd 2003; Smith 2003), but analytical tools that would facilitate cross-case comparisons are still underdeveloped.

The decision-making process in defence matters has been the focus of other studies and it has been generally argued that decisions are increasingly made by 'small groups of relatively well-socialised officials in the key committees' (Howorth 2012: 436). By relying on the distinction between the two levels of socialization – socialization and internalization – the argument is that the search for consensus at the European level goes well beyond the diplomatic practices that would exist among independent states. These literatures were useful inasmuch as they triggered debate about how to draw a line between intergovernmentalism and supranationalism. They were the starting point that led Sijrsen (2011) to identify four conditions to understand when intergovernmentalism would be applicable. Firstly, only sovereign states can be actors with decision-making powers. Secondly, states would not accept a kind of majority rule replacing unanimity in CFSP matters or the veto power constrained in 'less formal ways'. Thirdly, states can revoke or renegotiate powers that were delegated to Brussels-based actors, and the fourth is that the intergovernmental system which was created to serve the interests of the states should not have interests on its own. The violations of any of these four conditions would represent a departure from the intergovernmental model.

Building on the Sijrsen model, this article sets out three conditions that allow for the use of the term supranational intergovernmentalism. The first condition is the reversal of the information dependency problem. Having information is a power source and the reluctance of member states to share information with other EU members and with EU institutions would be explained by the desire to maintain this dependency link with the EU. In Brussels, EU institutions need the information provided to them by the member states. If member states become dependent on the information that is possessed by EU institutions the balance of power would be reversed. In other words, the principals would become EU institutions and the agents the EU member states. It is acknowledged that the asymmetry of information was never totally in favour of member states, but this

article identifies a trend according to which the balance is shifting in favour of supranational institutions.

The second condition is that decision-making powers are taken away from the capitals and are shifted to EU institutions. This is a similar condition to the first one identified by Sjursen. An intergovernmental approach establishes that decisions are made with the consent of EU members and that decisions would not be made if vital interests were at stake as pointed out in the Luxembourg compromise. However, if EU institutions decide against the will of member states and/or demonstrate the commitment to get involved in the decision-making process, then intergovernmentalism may not serve to understand CFSP decisions.

Finally, the third condition is that Brussels-based institutions become the exclusive forum for CFSP decisions. The intergovernmental approach would maintain the possibility of member states embarking on policies in pursuit of their interests, even if outside of the EU system. This is complementary to the third condition by Sjursen as member states may not be in the position to renegotiate the power delegated in the past. If the states have devolved decision-making power to the EU to a point that they cannot decide unless they go to Brussels to do so, then intergovernmentalism does not suffice to explain the functioning of the EU.

Table 1: Three conditions for intergovernmentalism

Condition One	EU institutions dependent on EU member states for information
Condition Two	Decision-making powers in EU capitals
Condition Three	Lack of exclusive fora for decision-making in Brussels

According to intergovernmentalists, EU member states are the driving force of integration or of the lack of it. However, there are policy areas wherein member states would not, or cannot, act outside of the EU framework, as in the case of sanctions. The case study of a specific CFSP instrument – sanctions or restrictive measures – provides an interesting ground of investigation to verify whether the conditions mentioned above indicate a departure from intergovernmentalism has occurred in the CFSP domain.

THE RESTRICTIVE MEASURES OF THE EUROPEAN UNION

The Treaty of the European Union (TEU) includes restrictive measures as one of the possible tools that can be employed to pursue the goals of the CFSP. The Council imposes sanctions also when mandated by the Security Council of the United Nations and according to the terms of the Cotonou Agreement, the Partnership Agreement between Africa, the Caribbean and the Pacific countries and the European Union. This agreement allows the EU to suspend humanitarian aid and to change the conditions of the agreement when signatory states have poor human rights records (Art 96). The focus of this article is on sanctions that are imposed independently from the will of the Security Council and on actions that fall beyond the scope of Cotonou. This is justified by the need to analyse security governance in decisions that are taken by the EU institutions.

Sanctions have been an available instrument since the Treaty of Rome in 1957, but they are the product of a strong coordination between different governments (Kreutz 2005: 7-8). The focus here is restricted to the sanctions imposed by the Maastricht Treaty, which came into force in 1993. The decision to design one of the EU's three pillars in

order to coordinate the foreign and security policy of the twelve member states represents the keystone for the external action of the EU as an international actor (Giumelli 2010). Thence, the range of purely economic instruments under the first pillar was joined by political instruments in the form of sanctions and military missions, in the second pillar. The Saint-Malo declaration (1998) and the creation of the European Security and Defence Policy (ESDP) in 1999 inaugurated the foreign presence of EU contingents abroad and was renamed CSDP with the entry into force of the Lisbon Treaty in 2009. Despite the fact that sanctions have been used more frequently over the years – in a growing trend there were 17 ongoing regimes administered by the EU in 2013 versus only two in 1992 (Giumelli 2013: 39) – and the Council has deliberated launching new operations abroad, the two instruments, sanctions and missions, were never really integrated in a comprehensive approach (Jones 2007; de Vries and Hazelzet 2005). Study of the sanctioning decision-making process to identify the specific role that the different actors play enhances understanding of EU security governance and contributes to us being able to draw lessons on how other foreign policy instruments are used.

Sanctions have evolved from their classical form of inter-state foreign policy instruments to a more 'targeted' version that goes beyond the boundaries of classifying them as foreign policy devices. While the typical form of restrictive measures used to be the 'embargo', namely the prohibition of trading with one political community (a city, region, state), the most frequently used targeted sanctions are now travel bans, commodity boycotts, financial sanctions and arms embargoes (Giumelli 2011; Cortright and Lopez 2002). Targeted sanctions, also known as smart sanctions, differ from the classical form of sanctioning as they are aimed at non-state actors (i.e. individuals, groups or companies for the most part) and/or they regard only specific economic sectors or specific products. The objective is to design the restrictive measures in order to maximise their impact on the actors responsible for violations, and to minimise the unintended consequences on innocent civilians (Cortright and Lopez 2002). This evolution began in the early 1990s, when the UN sanctions on Iraq and Haiti were accused of causing more harm than that which they were supposed to fight (Ali and Iqbal 1999; Gibbons 1999). Thereafter, the EU evinced signs of having learned the lessons of the UN's sanctioning experience and today mostly imposes targeted sanctions.

The political will to resort to sanctions created the demand for further institutionalisation, so member states prepared three documents establishing procedures for a sanctioning policy that aimed at improving the design, implementation and the effectiveness of restrictive measures. On 8 December 2003, the Council approved the 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy' (hereafter 'the Guidelines'). This document, which was updated in 2005, 2009 and 2012, contains definitions and directives on how to design restrictive measures, important information in regard to the different types of restrictions that can be imposed and on how to measure their effectiveness (European Union 2009c). The main principles that inspire the adoption of sanctions are presented in the 'Basic Principles on the Use of Restrictive Measures (Sanctions)' (hereafter 'Basic Principles'). This is the second relevant key document of the EU restrictive measures policy that was approved by the Council in June 2004 and it states that the EU should impose sanctions in accordance with the UN, but also autonomously whenever 'necessary' to meet the objectives of the EU (European Union 2004). Finally, the third ific expertise and competence necessary for EU member states to make decisions at the EU level. This information gap materialises in the RELEX meetings and itlast version of 'EU Best Practices for the effective implementation of restrictive measures' (hereafter 'the Best Practices') was approved in April 2008 and it contains relevant information on how to identify the correct designated individuals or entities, and on the administrative modalities for freezing assets and banning products, including the procedure on how to grant exceptions and exemptions to the measures (European Union 2008b).

The use of sanctions is considered to lie within the realm of foreign policy, therefore the EU can adopt them in order to fulfil any of these objectives: advancing 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' (Article 21, Paragraph 2 of the TEU). In more specific terms, restrictive measures have been adopted to support democracy and human rights, to preserve peace, to prevent conflicts, to strengthen international security, and to promote an international system based on stronger multilateral cooperation and good global governance.

The imposition of sanctions falls within the CFSP domain and its process is disciplined by articles 30 and 31 of the TEU. The right of initiative lies with any member state and in the hands of the High Representative of the Union for Foreign Affairs and Security Policy (HR), who as Vice-President (VP) of the Commission can act with its support. The sanction proposal is discussed by the subcommittees of the Council: the competent geographical group, the Political and Security Committee (PSC), and the Foreign Relations Counsellors Working Group (RELEX) in special 'Sanctions' sessions, which draft the legal text for the measures. Subsequently, it is the Committee of Permanent Representatives II (COREPER II) that has the responsibility for agreeing a text to be submitted to the Council for final approval.

As illustrated above, there are different types of targeted sanctions that fall within the former first and second pillars as described in the Treaty on the Functioning of the European Union (TFEU). When the Council decides under Chapter 2 of Title V of the TEU concerning CFSP, then trade and financial sanctions require a Council regulation according to Article 215 of the TFEU (financial and economic relations) to be implemented.³ Under this procedure, the European Parliament should be informed but Article 75 of the TFEU establishes an exception: when the EU acts to prevent and combat terrorism and related activities, the Council and the European Parliament should adopt a regulation via the ordinary legislative procedure. This new instance has opened a litigation case between the European Parliament and the Council that has been brought before the Court of Justice (European Parliament v Council of the European Union 2012). This is an interesting development that will be discussed later in the article.

Sanctions, namely travel ban and arms embargoes, that fall under the former second pillar, CFSP, do not need further legislation from the EU beyond the decision of the Council (mostly Common Positions until the Treaty of Lisbon, Council Decisions since). The movement of people from and to EU countries is disciplined by national governments, responsible for monitoring their borders and to ensure that the decisions of the Council are duly implemented. Arms embargoes are an exceptional case because of a provision on national security that has been part of the Treaties since 1957,⁴ even if the Common Rules on arms exports approved by the Council in 2008 strictly regulate the terms under which weapons can be sold. Together with travel bans, arms embargoes are probably the form of sanctions most typifying the resistance of member states to the establishment of a coherent foreign policy, but the next section highlights how the assumption according to which member states are the sole or main determinant for EU foreign policy may be misleading.

GOVERNANCE, SANCTIONS AND SUPRA-NATIONAL INTERGOVERNMENTALISM

The EU has acquired substantial experience in imposing restrictive measures (Beaucillon 2013; Eriksson 2011; Giumelli 2011). Analysis of the decision-making process can therefore provide an interesting test case to identify and understand those conditions and practices of security governance which mark a departure from the intergovernmental model and allow for the use of the term 'supranational' in the CFSP domain.

Condition one: EU institutions dependent on EU member states for information

This condition would be met if only member states had the necessary information to determine the EU's final decisions in the area of sanctions. However, this is challenged by the growing importance of the EEAS via its independent actions, the Heads of Missions and its role in RELEX. Member states used to decide whether to release information and, by doing so, they were the principal mandating what the agent did. This dynamic seems to be changing by inverting the power relations between Brussels-based institutions, which know increasingly more on sanctions, and EU member states, which know increasingly less and are dependent on the EU institutions to make decisions in this area.

The EEAS is in a position to collect exclusive institutional knowledge⁵ of the EU's restrictive measures policy. Despite the intention behind the Lisbon Treaty to move implementing powers in foreign policy from the Commission to the Council, and therefore back to the states, the institutional setting of the EEAS preserves its supranational character. The EEAS members participate in Council meetings and bring experience and specific knowledge that is not available at the Council and that used to belong to the Directorate General of External Relations (DG-RELEX) of the Commission until its inclusion in the EEAS (Bicchi 2012; Carta 2012; Lloveras Soler 2011). It is now the EEAS that provides legal expertise and institutional knowledge of sanctions cases to EU member states, which inevitably are influenced in their decisions by the EEAS. The EEAS's exclusive knowledge, supported by the expertise of the Commission on trade and financial issues, allows it to affect what states decide. This information gap materialises in the RELEX meetings where EEAS experts from the Security Policy Division take part and play the fundamental role in drafting the text since they bear the institutional memory of the EU in the field of sanctions. It is the rules that discipline the RELEX meetings that shape the decisions of the EU in sanctions matters. It is a clear example of supra-national understanding rather than an intergovernmental process, whereby the institutional knowledge of the RELEX Committee becomes centrally dominant in designing and deciding restrictive measures, rather than the interests of the member states.

The EEAS has another essential task in selecting the targets of sanctions. With the Lisbon Treaty, delegations were placed under the authority of the EEAS. The Heads of Missions (HoMs) are directly involved in selecting the targets, even though the role of member states is still important as HoMs have to rely on other EU embassies and on the information provided by the informative services of EU member states. Member states identify individuals to be included on the blacklist for sanctions, sending their reports to HoMs, who thus constitute not only the contact point for member states to discuss who will be on the list but also the locus for negotiating different views in order to agree solutions that will allow them to speak with a single voice. The HoMs' role, therefore, is one of competent broker. In addition, they are knowledge-bearers in their own right: given they are also in the field, they are in a position to make suggestions and influence the final list of targets that is sent to Brussels.

The EEAS is only a few years old, but it has already developed a specific competence which renders it a more relevant organisation, such that the member states become increasingly dependent upon it for information. Despite the continued dominance of a narrative according to which the capitals are responsible for setting up the foreign policy of the EU, the case study of sanctions draws attention towards the narrowing information deficit, a deficit which previously undermined the EU as an actor. The EEAS alone maintains a complete set of records about what was done, the legal framework and the eventual problems that could arise, therefore the EU member states are dependent on a Brussels-based institution for certain information. The intergovernmental premise is thereby weakened.

Condition two: decision-making powers in EU capitals

Another condition that would confirm the utility of the intergovernmental approach is if CFSP decisions in general, and sanctions in particular, were taken in the EU state capitals rather than in Brussels. Even this condition is at least partially discredited. Despite the heavy influence of certain member states in the decision-making process, Brussels-based institutions are increasingly making binding decisions and seeking greater roles outside of the will of the member states. The role of RELEX has already been outlined, but the new practice of implementing regulations is empowering the Council (versus the Commission), including that institution's committees and the EEAS itself, not just the member states. Additionally, the Court of Justice is annulling decisions of the Council and the European Parliament is claiming far more competence in this field since the Lisbon Treaty entered into effect.

The second element is the adoption of the silent procedure that constrains the role of the capitals in the decision-making process. The innovation in this procedure is given by Article 291 of the TFEU, which in the case of sanctions allows the Council to adopt an 'implementing act' when the list of targets has to be modified and this can be done with qualified majority voting instead of unanimity. Before Lisbon, the practice was that any alteration of the list that involved additional names of individuals or non-state entities required unanimity, this procedure gave the Council and EU institutions more power than in the past. Given the emergency under which certain decisions may need to be taken, the Council used the silent procedure to modify the listing of targets, which represents a novelty in CFSP. Since the Maastricht Treaty, the Council was the body that was supposed to vote and approve sanctions. A sense of urgency was passed on to EU member states by the sudden events that characterised the 'Arab Spring' in 2011, which favoured the use of a written procedure, (with no explicit vote of the Council) to impose restrictive measures. The crises following the Arab Spring were the first in which the Council resorted to this procedure, but they were considered by Article 7 of the Rule of Procedures approved in 2009 (European Union 2009b). Basically, COREPER II would agree on a list of targets and make it available to the 27 (now 28) governments of the EU for evaluation within a short timeframe (usually between 24 and 36 hours). In case no objection was raised, the measures would enter into force. This procedure had been in place already, but it was used by the Commission to implement regulations in first pillar policy areas, not by the Council in external relations matters (interview with EU officials February 2012). The third element is the key role of the Court of Justice in reviewing sanctions. EU restrictive measures are bound by the provisions of international treaties, UN regulations and, additionally, EU legislation. When individuals, companies or institutions feel that the rights granted by EU laws have been violated, they can appeal to the courts to exercise the right of remedy and to ensure due process. The CJEU plays a key role in the shaping and making of EU restrictive measures.

Targets of EU sanctions can make a request to be de-listed to the General Court of the European Union (GCEU – formerly the Court of First Instance, CFI). From an initial trend of rejecting the demands of applicants based on the principle that the Court did not exercise authority over such issues, the Court of First Instance and the Court of Justice reversed this trend in 2008, when the Court repealed certain decisions of the Council in the cases of Kadi and Al Barakaat (Yassin Abdullah Kadi v European Commission 2010) and Jose Maria Sison (Jose Maria Sison v Council of the European Union 2009). Alarmed by this trend, the Council decided to delist the People's Mojahedin Organisation of Iran (PMOI) before the judicial review was completed (Runner 2009). These precedents had the effect of boosting the enthusiasm of targets and in 2011 over 80 de-listing requests were registered (Rettman 2011).

The most well-known case is the Kadi and Al Barakaat decision delivered by the Court of Justice in September 2008. Yassin Abdullah Kadi from Saudi Arabia and the Al Barakaat Foundation, located in Sweden, were included in the UN counter-terrorist list and, therefore, their financial assets were frozen. Kadi and Al Barakaat appealed against the

EU regulation that implemented the resolution of the Security Council by claiming that their right to property and right to defence had been violated. After the case was rejected by the CFI on the basis of its inappropriateness since the court was not empowered to question matters of *jus cogens* (i.e. UN Security Council resolutions), the European Court of Justice (ECJ)⁶ upheld the appeal and annulled the regulation that froze the assets of the applicant on the basis of patent violation of the rights of the defence and the right to be heard, including the right to have access to the motivation of the listing. Thus, the ECJ decided that the assets of Kadi and Al Barakaat were to be unfrozen within three months, had the Council not acted in the meantime to solve the procedural irregularities identified (Kadi and Al Barakaat International Foundation v Council and Commission 2008). Kadi and Al Barakaat appealed again against the EU regulation and the General Court decided to annul the regulation on 30 September 2010 (Yassin Abdullah Kadi v European Commission 2010). The Commission appealed against this decision and the case is still pending at the CJEU (Commission v Kadi 2010). The conclusion of this case, which became known as Kadi II, is likely to have relevant consequences in the area of sanctions specifically, as well as in the relations between international and EU law. More generally, it will also have relevant consequences for how the governance of security works in the European Union.

While the Kadi case is probably the most well-known of this type (Vara 2011; de Búrca 2010; Isiksel 2010), it is by no means the only one. A further case of delisting occurred in January 2009, when the Council delisted the PMOI before the judicial process was completed. This case was slightly different from the previous one as the PMOI appealed because the right to information was violated, but also because the national courts of the state who proposed the listing decided to remove the organisation from its own national terrorists' list. A first ruling of the CFI annulled the decision of the Council on the basis that it failed to inform the PMOI about the reasons motivating its listing, but the restrictive measures were not lifted because the Council was given the opportunity to remedy. Following a decision of the UK government to de-list the PMOI, the Council based the motivation to deny delisting on the decision of a French prosecutor to open an investigation against the PMOI. When the French government failed to provide the classified information, the CFI decided to annul the contested regulation and asked the Council to remove the PMOI from the list (People's Mojahedin Organization of Iran v Council 2008). Renouncing the right to appeal at the ECJ, the Council decided to remove the Iranian organisation from the list with Decision 62 of 26 January 2009 (European Union 2009a). In the meantime, France had contested the decision of the CFI de-listing the PMOI, but the CJEU closed the case in favour of the PMOI on 21 December of 2011 (France v People's Mojahedin Organization of Iran 2011).

Another delisting Court case involves Jose Maria Sison, founder of the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA), but also a Dutch citizen. The CPP and NPA were included in the list in 2001, and Sison first appealed against the freezing of his funds in the forms of savings and social benefits in 2005, although in this case the CFI did not annul the Council regulation. Subsequently, Sison appealed against the decision of the Council to base the listing on previous rulings of Dutch courts that condemned Sison for crimes linked to his political militancy. In fact, the Court rulings were not based on terrorist accusations, and therefore they could not be used by the European Union to justify his listing on the counter-terrorist list. Thus, the CFI annulled the Council decisions insofar as they regard Sison (Jose Maria Sison v Council of the European Union 2009). These cases are instructive as indicators of a trend, to which the cases of the son of Tay Za (Pye Phyo Tay Za v Council 2012) and the Iranian banks Mellat and Saderat (Bank Mellat v. Council of the EU 2013; Bank Saderat v. Council of the EU 2013) could be added, that sees the Courts taking a direct and more active role in the sanctioning policy of the EU.

EU courts have been overwhelmed by requests for annulment coming from eighty two individuals and entities. The large majority have come from the crisis in Cote d'Ivoire

(37), but numbers are also high from Iran (14), Syria (11), Libya (6), Tunisia (6) and Egypt (3) (Rettman 2011). These decisions combined with the growing concern of further legal problems have given great importance to the Court of Justice and judicial power in general in the sanctioning process of the EU. More importantly, the Courts are playing a crucial role in shaping the practice of how the EU utilises a typical foreign policy instrument, which is usually outside the judicial review of national courts.

The Courts have not been the only Brussels actors to carve a discernible role for themselves, but they have also been used by other EU institutions to extend their powers. The European Parliament did not play a crucial role in foreign policy in the past, and the Treaty of Lisbon did not change this situation, but it opened a small window of opportunity in the field of sanctions to increase its influence. Article 75 of the TFEU establishes that the ordinary legislative procedure should be adopted when sanctions are to counter terrorism posing an internal threat to the Union. Basically, such a measure is considered as an instrument of the Freedom, Security and Justice field. The European Parliament was keen to extend its powers and it did not wait long to act. On 2 December 2009, the Council adopted Council regulation N. 1286, which amended regulation (EC) N. 881/2002 'imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban'. This was almost an ordinary act since the UN Security Council imposed financial sanctions after the terrorist attacks of 09/01. The Parliament claimed that such a measure fell under Article 75 of the TFEU or alternatively, that the conditions of Article 215 were not satisfied and filed a complaint before the CJEU on 11 March 2010. The Court rejected this interpretation (*European Parliament v Council of the European Union* 2012) on the basis that the contested regulation was adopted by the EU in order to implement a resolution of the Security Council imposed after the terrorist attacks of 11 September 2001, which qualified as a decision of foreign policy outside the scope of Article 75. However, the case is relevant to signal that the governance of European security is likely to see a more active European Parliament that looks eager to play a greater role in this field. As further evidence of this, in 2010 the General Directorate for External Policy of the European Parliament commissioned for the first time a study on the impact of sanctions and a report was published in June 2011. The results of the report did not bear any mandatory power for EU decisions in the area of sanctions, but it signals that the European Parliament is keen to participate in the process not only as a policy-maker, but also as an opinion-maker in the field and that this is likely to happen again in the future.

Condition three: Lack of exclusive fora for decision-making in Brussels

Intergovernmental systems rely on the assumption that states can decide to cooperate in their interests, but they can also decide not to cooperate if it is not in their own interests and, therefore, act independently. This does not appear to be the case when it comes to sanctions. Despite EU member states retaining part of their sovereignty through being able to implement sanctions, it is very rare to see EU member states imposing sanctions in isolation from their partners. In theory, EU member states could veto the imposition of new sanctions, but they do not have the capacity to impose sanctions autonomously from other EU members. Brussels has become the only place wherein sanctions can be imposed as we have seen in recent years (Eriksson 2011; Giumelli 2011; de Vries and Hazelzet 2005).

Member states are also required to implement and monitor the restrictive measures. Economic and financial restrictive measures are imposed with Council regulations, which 'provides that Member States must lay down rules on penalties applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented' (European Union 2009c: 16). Member states need to decide when exemptions can be granted and notify EU institutions. The national agencies

that can be asked to implement and monitor the restrictive measures also fall under the responsibility of member states (European Union 2009c).

When arms embargoes and travel bans are agreed upon, states shall enforce the decision of the Council, but since no regulation is needed, they are free to decide how they want to implement it. When an arms embargo is in place, a list of items cannot be sold to targets and member states shall deny any sale unless differently specified by the decision of the Council. The EU has a list of military items that was adopted on 21 February 2011 and published in the Official Journal of the European Union on 18 March 2011 (European Union 2011). Member states retain the power to grant export authorisations following the principles and the indications agreed in Brussels and they have to follow the 'Common rules governing control of exports of military technology and equipment' approved in 2008 (European Union 2008a), but since there is little apparent EU monitoring of what is decided at the national level, it is difficult to discern how much power is still in the hands of the capitals in this domain.

The recent debate about lifting the arms embargo on Syria confirms the exceptionality of EU member states 'bowling alone' in the field of sanctions. The arms embargo imposed by the EU on Syria does not discriminate between rebels and governmental forces. Since the Assad regime was from the beginning better equipped and supported by Russia and Iran, France and the UK suggested that the embargo should be changed to allow the exports of weapons to the rebel forces. The British Prime Minister, David Cameron, even threatened to move unilaterally if the embargo imposed by the EU was not modified (Chaffin 2013). Eventually, the Council decided to drop the arms embargo and confirm the other measures in place, which confirms the fact that unilateral action from one EU member state would be a rupture with the established praxis. Brussels became the exclusive forum to make decisions in the area of sanctions and the intergovernmental approach does not account for it.

CONCLUSIONS

The supranational and intergovernmental approaches have been useful to understand the EU in the past, but their distinction and even their opposition have become less useful in recent years. The newer concept of 'supranational intergovernmentalism', amongst others, is an attempt to create analytical tools that provide a better understanding of the problem, but the theoretical elaboration of the conditions under which intergovernmentalism loses its particularities is still underdeveloped. This article identified three conditions of intergovernmentalism that would justify the use of this term. The case study of sanctions has demonstrated that these three conditions are not valid any longer or are not likely to be in the near future. While not declaring the end of intergovernmentalism, this article found that intergovernmentalism does not fully explain and deliver understanding of a crucial security issue when, at least in theory, it should be the theory best suited to do so.

The first condition is that EU institutions are dependent on EU member states for information. The EEAS has already acquired the specific expertise and competence necessary for EU member states to make decisions at the EU level. This information gap materialises in the RELEX meetings and it is reduced by the competent brokering of the Heads of Missions in determining the targets of sanctions. The second condition is that decision-making powers remain in EU capitals, but even this condition is not fully met anymore. The role of RELEX, the Court of Justice and increasing pressures from the European Parliament would justify the claim according to which decision-making powers are also in Brussels. The third condition is that Brussels should not be the exclusive forum for EU decisions, but it has become so when it comes to imposing restrictive measures. Since the creation of the second pillar with the Treaty of Maastricht, the EU has slowly emerged as a sanctioning power. Its member states have increasingly

coordinated their policies of sanctions in Brussels, while also maintaining their own independent judgement. Today, the freedom of manoeuvre for member states lies in preventing sanctions from being imposed (voting against the decision of the Council when the use of veto is conceivable depending on the situation) and in implementing sanctions, but they no longer impose sanctions outside of the EU framework.

Brussels-based actors have acquired relevance at different phases of the sanctions cycle. The adoption of the written procedure in this regard empowers the representatives of member states to make decisions with a speedy procedure that, given the strict time limit, reduces the window of opportunities for business and political groups to influence the decisions through exercising pressure on their own governments. The role of EU Heads of Missions and the creation of the EEAS aims to institutionalise memory on the imposition of restrictive measures. Knowledge is power and it is foreseeable that the information gathered in Brussels will, over time, have more influence in designing sanctions. The role of EU institutions is relevant, especially considering the activity of the Court of Justice in recent months. Restrictive measures are subject to the judicial review of the Court and there have been multiple cases in which the procedures have changed in accordance with the Court's rulings, but regulations have also been annulled.

The governance approach applied to security has allowed us to identify emerging patterns in actors' behaviour that enhance the understanding of a policy process outcome. This article highlighted a shift of importance in deciding sanctions from European capitals to Brussels-based actors. However, more should be done to capture this apparently emerging trend. For instance, the findings of this article should be followed by a thorough investigation of individual case studies in order to trace the marginal weight of individual state preferences versus the dominant consensus in the Council of Ministers. Tracing the process of individual decisions can also contribute to understanding the extent to which member states consider sanctions as an EU tool or one at their own disposal. Finally, an additional field of investigation regards the undefined role of civil society groups in the whole sanctioning process, from design to evaluation. These studies would advance our knowledge on the governance of external security in the European Union in light of the radical changes taking place, change which clearly demands further theoretical attention.

* * *

ACKNOWLEDGEMENTS

I wish to thank Chantal Lavallée, Maxine David and two anonymous reviewers for their invaluable comments on the earlier drafts of this article.

¹ 'Brussels' is intended as the locus of a political entity, namely the EU. Expressions such as Brussels-based actors and Brussels-based institutions are often used in the text to refer to this concept.

² For a complete review of the literature, please refer to Merlingen (2011).

³ Before the Treaty of Lisbon, the Council used to approve Commission regulations. Since December 2009 and according to the new guidelines adopted in December 2009, the Council resorts to Council regulations to implement economic sanctions.

⁴ Art. 57 of the Treaty of Rome, ex-article 296 and now article 346 of the TFEU.

⁵ Knowledge, information and expertise are used as synonyms in this article. The terms refer to the fact that the EEAS is increasingly acquiring exclusive information on sanctions vis-à-vis member states.

⁶ This is the former name of the CJEU before the Lisbon Treaty entered into force. ECJ will be used when a judgment was issued before December 2009.

REFERENCES

- Alecu De Flers, Nicole & Muller, Patrick (2012) Dimensions and Mechanisms of the Europeanization of Member State Foreign Policy: State of the Art and New Research Avenues. *Journal of European Integration*, 34 (1): 19-35.
- Allen, David (1998). Who speaks for Europe? The search for an effective and coherent external policy, in John Peterson & Helene Sjursen (eds) *A Common Foreign Policy for Europe?* London: Routledge: 41-58.
- Bank Mellat v. Council of the EU (2013) General Court of the European Union, T-496/10.
- Bank Saderat v. Council of the EU (2013) General Court of the European Union, T-494/10.
- Bátora, Jozef (2010) European Defence Agency: A Flashpoint of Institutional Logics. *West European Politics*, 32 (6): 1075-1098.
- Bicchi, Federica (2012) The European External Action Service: A Pivotal Actor in EU Foreign Policy Communications? *The Hague Journal of Diplomacy*, 7 (1): 81-94.
- Carta, Caterina (2012) *The European Union Diplomatic Service. Ideas, Preferences and Identities*. London: Routledge.
- Chaffin, Joshua (2013) UK and France push to arm Syria rebels. *Financial Times*. 15 March.
- Commission v Kadi (2010) European Court of Justice, C-584/10 P.
- Cortright, David & Lopez, George A. (2002) *Smart sanctions : targeting economic statecraft*. Lanham, MD: Rowman & Littlefield.
- De Búrca, Gráinne (2010) The European Court of Justice and the International Legal Order After Kadi. *Harvard International Law Journal*, 51 (1): 1-49.
- De Vries, Anthonius W. & Hazelzet, Hadewych (2005). The EU as a New Actor on the Sanctions Scene, in Peter Wallensteen & Carina Staibano (eds) *International Sanctions: Between words and wars in the global system*. London, New York, NY: Frank Cass: 95-107.
- Eriksson, Mikael (2011) *Targeting peace: understanding UN and EU targeted sanctions*. Farnham: Ashgate.
- European Parliament v Council of the European Union (2012) Court of Justice of the European Union, C-130/10.
- Featherstone, Kevin & Radaelli, Claudio M. (2003) *The Politics of Europeanization*. Oxford; New York: Oxford University Press.
- France v People's Mojahedin Organization of Iran (2011) Court of Justice of the European Union, C-27/09 P.
- Gegout, Catherine (2010) *European foreign and security policy : states, power, institutions and American hegemony*. Toronto; Buffalo, NY: University of Toronto Press.
- Gibbons, Elizabeth D. (1999) *Sanctions in Haiti: human rights and democracy under assault*. Westport, CT: Praeger.
- Giumelli, Francesco (2013) The Success of Sanctions. Lessons Learned from the EU Experience. Farnham: Ashgate.
- Giumelli, Francesco (2011). *Coercing, Constraining and Signalling. Explaining UN and EU sanctions after the Cold War*. Colchester: ECPR Press.
- Giumelli, Francesco (2010) Bringing Effectiveness Back In. A Comment on the Restrictive Measures Policy of the European Union. *Central European Journal for International and Security Studies*, 4 (1): 81-100.
- Gross, Eva (2009) *The Europeanization of national foreign policy: continuity and change in European crisis management*. Basingstoke; New York: Palgrave Macmillan.

Hall, Peter A. & Taylor, Rosemary C. R. (1996) Political Science and the Three New Institutionalisms. *Political Studies*, 44 (5): 936-957.

Hix, Simon (1998) The Study of the European Union II: The "New Governance" Agenda and its Rival. *Journal of European Public Policy*, 5 (1): 38-65.

Hoffmann, Stanley (1966) Obstinate or obsolete? The fate of the Nation State and the case of Western Europe. *Daedalus* 95 (2): 862-915.

Howorth, Jolyon (2012) Decision-making in security and defense policy: Towards supranational inter-governmentalism? *Cooperation and Conflict*, 47 (4): 433-453.

Howorth, Jolyon (2010) The Political and Security Committee: a case study in "supranational inter-governmentalism". *Les Cahiers européens de Sciences Po*, 01/2010.

Howorth, Jolyon (2001) European defence and the changing politics of the European Union: hanging together or hanging separately? *Journal of Common Market Studies*, 39 (4): 765-89.

Howorth, Jolyon (2000) European Integration and Defence: The Ultimate Challenge. *Chaillot Paper no. 43*. Paris: European Institute for Security Studies, Online: <http://www.iss.europa.eu/uploads/media/cp043e.pdf> Accessed 10 July 2013.

Isiksel, Turkuler N. (2010) Fundamental rights in the EU after Kadi and Al Barakaat. *European Law Journal*, 16 (5): 551-577.

Johnston, Alastair I. (2001) Treating international institutions as social environments. *International Studies Quarterly*, 45 (4): 487-515.

Jones, Seth G. (2007). *The rise of European security cooperation*. Cambridge ; New York: Cambridge University Press.

Jose Maria Sison v Council of the European Union (2009) Court of First Instance of the European Communities, T-341/07.

Juncos, Ana E. & Pomorska, Karolina (2011) Invisible and unaccountable? National representatives and council officials in EU foreign policy. *Journal of European Public Policy*, 18 (8): 1096-1114.

Juncos, Ana E. & Reynolds, Christopher (2007) The Political and Security Committee: governing in the shadow. *European Foreign Affairs Review*, 12 (2): 127-147.

Kadi and Al Barakaat International Foundation v Council and Commission (2008) European Court of Justice, C-402/05 P.

Kirchner, Emil Joseph & Sperling, James (2007) *EU security governance*. Manchester; New York: Manchester University Press.

Klein, Nadia (2011) Conceptualizing the EU as a Civilian-Military Crisis Manager: Institutional Actors and Their Principals, in Eva Gross & Ana E. Juncos (eds) *EU Conflict Prevention and Crisis Management: Roles, Institutions and Policies*. London: Routledge: 66-83.

Lewis, Jeffrey (2007) The Janus face of Brussels: socialization and everyday decision-making in the European Union, in Jeffrey T. Checkel (ed.) *International Institutions and Socialization in Europe*. Cambridge: Cambridge University Press: 137-170.

Majone, Giandomenico (2001) Two logics of delegation: agency and fiduciary relations in EU governance. *European Union Politics*, 2 (1): 103-21.

Mérand, Frédéric (2008) *European defence policy: beyond the nation state*. New York: Oxford University Press.

Mérand, Frédéric, Hofmann, Stephanie C. & Irondelle, Bastien (2011) Governance of governments: the European security and defense policy network. *Journal of Common Market Studies*, 49 (1): 121-147.

Merlingen, Michael (2011) *EU Security Policy: What It Is, How It Works, Why It Matters*. Boulder: Lynne Rienner.

Moravcsik, Andrew (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. London: University College London Press.

People's Mojahedin Organization of Iran v Council (2008) Court of First Instance, T-284/08.

Pollack, Mark A. (2009) The New Institutionalisms and European Integration, in Antje Wiener & Thomas Diez (eds) *European Integration Theory*. 2nd ed. Oxford: Oxford University Press: 125-143.

Pollack, Mark A. (2003) *The Engines of European Integration: Delegation, Agency and Agenda Setting in the EU*. Oxford: Oxford University Press.

Pye Phyo Tay Za v Council (2012) General Court of the European Union, C-376/10 P.

Rettman, Andrew. (2011). Arab Spring villains bombard EU with lawsuits. *EUobserver.com*. 23 December, Online: <http://euobserver.com/foreign/114725> Accessed 10 July 2013.

Rosamond, Ben (2007) European Integration and the Social Science of EU Studies: The Disciplinary Politics of a Subfield. *International Affairs*, 83 (2): 231-252.

Rosamond, Ben (2000) *Theories of European Integration*. New York, NY: Palgrave Macmillan.

Runner, Philippa (2009) EU ministers drop Iran group from terror list. *EUobserver.com*. 26 January, Online: <http://euobserver.com/foreign/27472> Accessed 10 July 2013.

Salmon, Trevor C. & Shepherd, Alistair J.K. (2003) *Toward a European Army*. Boulder, CO: Lynne Rienner.

Sjursen, Helene (2011) Not so intergovernmental after all? On democracy and integration in European Foreign and Security Policy. *Journal of European Public Policy*, 18 (8): 1078-1095.

Smith, Michael E. (2003) *Europe's Foreign and Security Policy: The Institutionalization of Cooperation*. Cambridge: Cambridge University Press.

Tonra, Ben (2000). Committees in common: committee governance and CFSP, in Thomas Christiansen & Emil Kirchner (eds) *Committee Governance in the European Union*. Manchester: Manchester University Press.

Vara, Juan Santos (2011) The Consequences of Kadi: Where the Divergence of Opinion between EU and International Lawyers Lies? *European Law Journal*, 17 (2): 252-274.

Wagnasson, Lotta, Sperling, James & Hallenberg, Jan (eds) 2009. *European Security Governance: The European Union in a Westphalian World*. Abingdon: Routledge.

Webber, Mark, Croft, Stuart, Howorth, Jolyon, Terriff, Terry & Krahmann, Elke (2004) The governance of European security. *Review of International Studies*, 30 (1): 3-26.

Yassin Abdullah Kadi v European Commission (2010) General Court of the European Union, T-85/09

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

The EU in Geneva: The Diplomatic Representation of a System of Governance

Caterina Carta *Vrije Universiteit Brussel / Université libre de Bruxelles*

This research acknowledges the support of the FP7 integrated research project GR:EEN – Global Re-ordering: Evolution through European Networks (European Commission Project Number: 266809).

Citation

Carta, C. (2013). 'The EU in Geneva: The Diplomatic Representation of a System of Governance', *Journal of Contemporary European Research*. 9 (3), pp. 406-423.

First published at: www.jcer.net

Abstract

The European Union (EU) diplomatic system can be conceived as representative of a system of governance, and, through this, of its constitutive independent units. The way in which the EU's political system is represented through diplomatic practices is telling of two interrelated aspects of the EU's international actorness. First, it reveals the link between the foreign policy of a non-state actor and sheds light on the division of competences that characterises the EU's foreign policy-making system. Second, it highlights the complex institutional and organisational features of a non-state diplomatic system. This article locates the puzzle of EU diplomatic activity in the general debate about changes in the institution of diplomacy. Secondly, it explains how post-Lisbon institutional arrangements have been translated into practice in two multilateral delegations: the delegation to the UN and the mission to the WTO in Geneva. It finally draws some preliminary conclusions. The article concludes that beyond competition over the attribution of competences in the EU's diplomatic governance, different ideas coexist about what 'locating the EU in the international scene' means. Pursuing a 'single voice' by unifying forms of external representation is not necessarily perceived as the most convenient strategy envisaged by all EU actors. While institutional actors tend to believe that coherence and strength may descend from a more unified system of representation, the member states tend to believe that, in certain circumstances, differentiation could increase the EU's strength.

Keywords

EU; European delegations; EEAS; diplomatic governance; diplomatic representation; intergovernmental organizations

The diplomatic representation of the European Union (EU) relies on complex mechanisms of institutional and organisational engineering in order to represent aptly all actors involved in the European project. The concept of diplomatic governance highlights the way in which different actors – on the grounds of different sources of legitimacy (territorial or functional) and foreign policy leverage – formally and informally share competences in foreign policies and diplomatic representation. Governance depicts 'a system of interaction' (Lavenex 2011: 372) underpinning 'activities backed by shared goals' (Rosenau and Czempel 1992: 4) and signals 'a shift from hierarchical, territorial modes of government (based on the dominant position of the nation-state) to a more non-hierarchical functionally based system' (Boschma and Schobben 2000: 1). This definition suits well the analysis of the EU foreign policy system. In as much as foreign policy drives diplomatic action and organisation, diplomatic representation reflects the attribution of foreign policy competences and the informal interpretation of such distribution. In the EU, the management of foreign policy issues contributed to a plural arrangement to deal with foreign affairs. Accordingly, different actors possess distinctive foreign and external policy tools and take part in different instances of the EU foreign policy-making process.

This article aims at shedding light on the organisational and institutional arrangements that regiment the EU model of diplomacy governance. It does so by reviewing the main organisational problems that diplomatic representation in inter-governmental organizations (IGOs) imposes on the EU. Diplomatic representation in IGOs is illustrative of both internally- and externally-imposed sets of caveats. It sheds light on the complexity of the EU division of competences and overall coordination of all EU actors both at headquarters and on the ground. Additionally, it highlights the set of rules and procedures imposed on the EU by IGOs, and the overall question of the EU's status in these organisations. These two sets of issues are coupled with the general complexity of human and professional relations among European actors. These aspects contribute enormously towards shaping the EU's ability to speak with one voice in a given IGO.

The article proceeds as follows. It first reviews the literature on governance as applied to the external action of states and the EU. Second, it offers an analytical grid to make sense of the factors that affect the overall structure of the EU's diplomatic governance. It thereby focuses on the vertical dimension of governance in EU foreign policy and diplomacy and reviews the role of executive actors involved in diplomatic practices in Brussels. It then explores the ways in which the headquarters in Brussels liaise with the delegations in multilateral organisations; and the way in which the Union delegation and member states on the ground tune the EU voice. It draws on two empirical cases to describe the enmeshed character of the EU system of diplomatic representation: the delegation to the United Nations (UN) and the EU mission to the World Trade Organization (WTO).¹ It highlights how internal and external sets of constraints systematically impede a unified form of diplomatic representation. The article relies on 30 interviews conducted in the European External Action Service (EEAS), the European Commission in Brussels, the delegation to the UN, the mission to the WTO and the member states' embassies in Geneva in March 2012.

THE PUZZLE OF FOREIGN AND DIPLOMATIC GOVERNANCE: INSIGHTS FROM THE LITERATURE

During the twentieth century, the idea that diplomacy reflects an actor's foreign policy, set up 'by authoritative policymakers [...] directed toward entities outside the policymakers' political jurisdiction' (Hermann 1990: 5), was progressively dismissed. This idea implied a fictional distinction between an 'inside' and an 'outside', based on *separateness* and a need to ensure sound communication between parties (Hocking 2005: 3). Additionally, it spotted the locus of authoritative policy-making in the states' executives. Two main objections have been progressively raised against this ideal-typical definition of foreign policy: 1) the distinction between what is 'inside' and 'outside' the states has been contested; 2) and linked to this, the actors involved in foreign policy and diplomatic negotiations are not exclusively territorial representatives. In respect of the first, the practice and institution of diplomacy has undergone a steady process of change since the end of the Second World War and the beginning of the Cold War (Mingus 2006). Change is generally associated with a redefinition of the Westphalian system of states, as based on 'territorially defined, fixed, and mutually exclusive enclaves of legitimate dominion' (Ruggie 1993: 151). Breaches in the states' constitutive elements were envisaged as an effect of the dismantlement of three logical fictions: the separation of the economic from the political (Strange 1999), the separation of the nation from the state (Guéhenno 1995), and the distinction between the national and the international (Wallace 1999). Structural change in the global political economy engendered the emergence of a new model of statehood: a regulatory one (Majone 1990), characterised by dispersion and decentralisation of centres of political authority, intense and hybrid networking between public and private subjects, the fragmentation of the national economic space and the diffusion of power to various organisations and structures in civil society (Jayasuriya 2004). As a consequence, the concept of political space started to assume a double-edged meaning, whereas territorial space defines 'a political-juridical and administrative entity with legislative powers' which relates to the notion of "government"; while functional space defines 'a functionally defined homogenous or nodal entity [...] governed by a functionally-based system of "governance"' (Boschma and Schobben 2000: 3). As for the second objection, which is linked to the first, the actors doing the negotiations are not exclusively territorial/states' representatives. As a consequence of the overall process of evolution, change and adaptation of contemporary states, new diplomatic actors emerged both from within and from outside the state. Literature on paradiplomacy (Lecours 2002), or federalism (Blatter et al. 2008; Kerremans and Beyers 1996) has underlined the increasingly decentralised management of foreign policies at the state levels; while other streams of literature have described the participation of private subjects in diplomatic games (Devin and Toernquist-Chesnier

2010; Cutler, Haufler and Porter 1999). The emergence of new actors depends on structural and functional elements, tied up with the question of 'resource assets and deficiencies', 'knowledge assets and deficiencies' and 'legitimacy assets and deficiencies' (Cooper and Hocking 2000: 367-370), whereas states look at deeper interaction both with other states and non-state actors in order to cope with new challenges. In this context, two sets of actors interact on the international scene – at times in a complementary and at times conflicting way – on the grounds of two sources of professional specialisms: technocrats, i.e. those actors who engage in 'decision-making power based on technical expertise'; and topocrats (from the Greek *topos*, meaning 'place' and *kratos*, 'authority'), the plethora of generally elected state officials who represent a governmental unit with a political capacity (Beer 1978: 16-19). The principle according to which non-governmental actors are admitted into the diplomatic arena is based, however, on the concept of *unequal access*, itself based on limits imposed on international subjectivities other than states (Carta 2012).

The very nature of the problems that needed to be addressed challenged those narrow definitions of foreign policy which focused exclusively on the realm of high politics associated with questions of national security. Lower policy domains, including 'technical solutions to domestic economic and social problems' (Baun 1995: 624), have progressively dominated the international agenda. A complex blend of policies, therefore, contributes to defining an adequate answer to global problems, whereas 'low' external competences (like trade or international development) and other competences with an international spin-off (i.e. energy, agriculture and environment) need to be embodied in strategies towards third countries. The difficulty of defining the borders of what foreign policy is poses incredible organisational challenges, because policy domains are not 'legally recognised entities whose membership criteria are clear-cut and enforced by a central authority', but rather '[...] more or less fuzzy and porous [domain boundaries] allowing various participants, problems and policy proposals to enter and leave in a disorderly fashion' (Knoke et al. 1996:10).

Given these difficulties, the concepts of diplomatic governance (Hocking and Smith 2010) or multilevel networks (Krahmann 2003) help us to grasp the 'flexible mix between cooperation and competition between governmental actors as well as governmental and non-governmental actors, along both horizontal and vertical dimensions' (Esty and Gerandin 2000: 235). Along the policy spectrum, and throughout different policy fields, social and territorial pluralism shapes both political strategies and outcomes.

In the general framework of restructuring the institution of diplomacy, the EU stands as a particularly meaningful example of the process of governing without government (Rhodes 1996; Reinecke 2000). Firstly, the EU adds a highly institutionalised layer to the systems of its member states. Secondly, the system of competence sharing to deal with external relations and diplomacy reflects both the sensitivity of the policy field and the difficulty of imposing borders around policy domains. Finally, the EU adds its own complexity to that of the mutating diplomatic environment.

Accordingly, in the first place, the formal attribution of competences offers only a partial understanding of the living reality of EU foreign policy-making, which has been and is in reality cut across a set of complex and variegated dynamics of governance (Dijkstra 2009: 442). Along all policy-fields, a complex net of cooperation cuts across the making of common measures. This implies that an intense flow of communication between EU institutions and state governments (Bicchi and Carta 2010) supersedes the adoption of common measures; with regular meetings among all actors taking place at levels of capitals and in third-party states and IGOs, in addition to the traditional cooperation in Brussels and in capital format. The complexity of the system makes it hard to have any conceptualisation of the process of policy-making in dichotomist intergovernmental and supranational terms (Thomas and Tonra 2012). Beyond formal structures of cooperation,

a complex blend of cooperation and competition characterises the making of common policies.

In the second place, the borders of a given policy domain are produced by a 'social construction whose meanings result from participants' collective symbolization and negotiations' (Knoke et al. 1996: 10). Linked to this, the level of cooperation across policy domains varies hugely, whereas some fields, such as defence, are kept more firmly under nation-states' control, while others, such as environmental policy and the regulation of financial services, are 'examples of policy areas where effectiveness depends upon nation-states 'pooling' sovereignty or working with autonomous supranational institutions' (Coleman and Perl 1999: 693). This is particularly true in the realm of external action, inaugurated by the Lisbon Treaty. In fact, despite the rhetoric of depillarization launched by the Lisbon Treaty, a proper depillarization did not occur in the realm of foreign and external policies (Carta 2012). In this direction, both the division of competences and the institutional machinery for external action chalk out the borders previously established by the Maastricht Treaty.

In the third place, the EU – with its unprecedented attribution of competences and its inherently multi-vocal diplomatic system – is not necessarily welcomed in diplomatic circles. The EU's diplomatic representation in multilateral fora offers a good example of this. The way in which a regional and a global system of governance '*intersect multilateralism*' (Laatikainen and Smith 2006) convey different meanings as to what multilateral governance is supposed to be. The EU's diplomatic representation is, therefore, not only complicated by the complex system of internal governance, but also constrained by the set of rules which regiment different interstate systems of cooperation within multilateral fora.

A topical example could help to substantiate this point. With the entry into force of the Treaty of Lisbon, the bestowal of International Legal Personality (ILP) encouraged the EU and its members to ask for an upgrade of the EU status of observer to a status of special observer, like that conferred on the Holy See and the Palestinian Authority. The first attempt to upgrade the EU's status to the United Nations General Assembly (UNGA) and to other UN conferences met the opposition of a group of states, which presented a counter-resolution against the EU's resolution, adopted by 76 votes to 71 and 26 abstentions (Emerson and Wouters 2010). Eventually, the resolution was adopted by taking on board most of the concerns expressed by the Caribbean Community (Permanent Representative of the Bahamas on behalf of CARICOM; May 2011). The resolution was then generally considered as largely symbolic as it basically only allowed the EU to be inscribed on the list of speakers among representatives of major groups, after member states and the Holy See, and to participate in the general debate of the UNGA, under the existing order of precedence (UN Secretary General June 2011).

The opposition to an upgrade of the EU position was made on the grounds of three substantial objections, which can be reassumed in an emblematic one: several states strove to protect the intergovernmental nature of the UN. In this light, granting the EU a special status would represent both a break in the UN's rules and procedures and set the ground for similar claims on behalf of other Regional Economic Integration Organisations (REIOs). It would have, furthermore, given an unequal and excessive weight to the EU member states, 'as the voice of the EU would add on the already consolidated positions of its 27 member states' (Permanent Representative of Nauru to the UN 2011). As this example highlights, the EU diplomatic model still represents a pioneering and sophisticated example of diplomatic governance.

EU FOREIGN-POLICY GOVERNANCE AND DIPLOMATIC ARRANGEMENTS: A GENERAL OVERVIEW

The EU adds a highly institutionalised foreign policy and diplomatic layer to the diplomatic systems of its member states. The level of institutionalisation and the extent to which competences have been delegated at the EU level make it an interesting case of diplomatic governance. Three factors characterise the overall structure of the EU's diplomatic governance:

- 1) The EU is a 'many headed creature' (Jørgensen 2009: 194), in which different actors converge, on the grounds of territorial and functional sources of legitimacy;
- 2) A dynamic process of informal negotiation presides over the making of common foreign policies and diplomatic rules;
- 3) EU foreign and external policies are still divided policy fields. This policy fragmentation obliges all actors to switch role according to both the formal division of competences and informal and flexible interpretations of these competences.

These three sets of factors all impact on the enterprise of 'tuning the EU's voice' in both bilateral and multilateral diplomatic venues. To make sense of the EU's diplomatic action, therefore, one should intersect these factors with three instances of the EU's diplomatic activity: the logics of policy-making; the logics of diplomatic mandate; and the logics of diplomatic representation (see Table 1).

Table 1: Three instances of the EU's diplomatic representation

	The EU is a 'many headed creature'	A dynamic process of informal negotiation	A divided policy field
The logics of policy-making	Different actors converge in the making of common policies	Relationship of strength among EU's actors; relevance of informal agreements, beyond division of competences	Still different formal procedures regiment the adoption of common policies
The logics of diplomatic mandate	A fragmented system of diplomatic mandates at the EU level	Contested, dynamic, informal ways of interpreting diplomatic mandates	Need to make sense of different-headed diplomatic mandates and to ensure consistency among them
The logics of diplomatic representation	Different functional and territorial actors converging in the EU's external representation	Contested, dynamic, ever-changing rules for representing the EU on the ground	Several actors speaking for the EU in multilateral fora

The logics of policy-making require us to look at formal institutional arrangements and the informal relationships of power among the EU's actors who preside over the making of common policies. The logics of diplomatic mandates entails looking at ways in which headquarters communicate with diplomatic missions on the ground, on the basis of a set of formal and informal rules. The logics of diplomatic representation remind us that while the EU arrives at the negotiating table with its complex system of diplomatic representation, it also needs to respect the rules regimenting any given diplomatic

venue. This means that, in multilateral fora, the EU needs to respect the rules of the game of a given IGO. The next sections will look at these aspects in more detail.

The logics of policy-making: the Brussels arrangements

Both framing foreign policies and representing the EU through diplomatic practices are very complex exercises (Missiroli 2010; Duke 2009). The main reason for the complexity descends from the plethora of fully-fledged recognised diplomatic actors. Within the EU, all institutions represent relevant EU public actors,² whether on the grounds of territorial or functional representativeness.

Two institutions within the Union are representative of the member states' positions: the European Council and the Council of the European Union. The latter institution is at the core of both executive and legislative production of external policies, while the former holds a role of impetus. Three institutions and an institutional body represent instances of supranational governance. The European Parliament (EP), which is a second chamber of the legislative process, intervenes to various extents in the making of common external policies. The Commission and the EEAS, as administrative and executive bodies, intervene in the definition of the agenda, policy shaping and drafting, in the areas of external and foreign policies respectively. Finally, the Court of Justice of the EU, with its role of legal scrutiny, contributes to designing the borders of the policy field.

In terms of attribution of competences, the Lisbon Treaty maintained a definition of foreign policy as an artificially divided policy domain, with a different management for high and low policy fields. Therefore, while the Lisbon Treaty aimed at upgrading the diplomatic status of the EU, competences still respond to a fragmented rationale (Carta 2013). Four sets of competences converge in the EU external policy field: exclusive EU powers, where the member states are no longer allowed to act autonomously; collective foreign policy actions, which are pursued through the intergovernmental method of policymaking; and mixed competences, where both the Union and the member states share competences. Finally, there are competences of exclusive pertinence to the member states.

Consequently, the International Legal Personality (ILP) of the EU also relies on delegated functions and attributed competences. Accordingly, current arrangements contained in the Treaty on EU (TEU) create a quadruply-edged form of external representation, respectively imputed to the President of the European Council (Article 9B) and the High Representative/Vice President of the Commission, HR/VP (Article 13.2 (a)), the President of the Commission 'with the exception of the Common Foreign and Security Policy (CFSP), and other cases provided for in the Treaties, shall ensure the Union's external representation' (Art. 17 (1)). In addition to European actors, the rotating Presidency – which still chairs the bulk of first pillar configurations of the Council – speaks for the EU if this is necessary (see Table 2). This means that confusion about 'who is in charge of what' still remains for external partners.

Abroad, post-Lisbon arrangements allow the EU delegations to represent the EU on both CFSP and non-CFSP issues (Art. 221 (1) TEU). The delegations are under the authority of the HR/VP and perform their duty under the guidance of the Head of delegation, who has the final responsibility for the activities of the delegations. In operational terms, they work with a system of multiple mandates, depending on the nature of competences: if a competence touches upon the general responsibility of the Commission (i.e. development or trade), the delegations receive negotiating instructions from the Commission. If the competence is performed under the lead of the EEAS (i.e. foreign policy), the delegations will liaise with the desks of the EEAS. Travelling from the headquarters to the delegations, this means that EU diplomats need to liaise with both colleagues in the Commission and the EEAS, depending on the subject.

Table 2: Executive actors, foreign policy competences and diplomatic representation³

Executive actors converging in the process of foreign policy-making	Basis for representation	Attribution of competences	Diplomatic representation
The councils	Territorial	Ultimate decision makers, intervening in all EU measures	The President of the European Council speaks in the name of the EU
The Commission	Functional	Power of initiative, policy-formulation and policy-implementation of common measures in first pillar and mixed competences	The President of the EU Commission and different Commissioners speak in their areas of competence
High Representative-Vice President of the Commission (HR/VP); assisted by the European External Action Service (EEAS)	Functional	Power of initiative, policy-formulation in (formally, previously known as) second pillar competences	The HR/VP speaks on Common Foreign and Security Policy (CFSP)
The member states	Territorial	Still a role in mixed competences; still competences of exclusive pertinence to the member states	Member states' representatives in their own capacity, regardless of formal attribution of competences

If we define diplomacy as a function of foreign policy, the diplomatic representation of the EU logically reflects the borders of the European foreign-policy system. Often, competences are not easy to disentangle and a complicated system of inter-institutional coordination needs to be in place to ensure that all actors have a say in the coordination of the delegation activities on the ground. Therefore, the process of change from previous arrangements to the new system of representation has met several problems in its actual transposition. The next section describes the way in which headquarters liaise with the Union delegations in IGOs.

The logics of diplomatic mandates: linking headquarters and delegations

Unequivocally, all positions negotiated in the name of the EU in multilateral fora, are previously agreed upon by the Council of Ministers, in different configurations. Depending on the issue at stake, dossiers percolate between different Working Groups (WGs) of the Council and along different levels of the hierarchy. As different Council configurations are involved in the process, negotiations can be lengthy. This can cause problems on the ground, as timing in Brussels does not necessarily respond to a given IGO's timing (interview with a MS diplomat, 13 March 2012).

In terms of preparation and drafting of common positions and decisions, the EEAS and different Commission's Directorates General (DG) contribute, depending on the allocation of competences, to framing policy proposals. In the headquarters, an intense work of coordination between both the Commission and the EEAS is formally established through the strengthening and systematic consultation of the *Groupe Interservices des Compétences Externes* in the Commission. The system works through a dense pathway of informal exchanges that ensures that all relevant desks are duly informed. A given measure flows, therefore, from desk to desk before being presented to the Council. Once

arrived at the Council, the same position is discussed in several Council configurations, which liaise among themselves through both informal and formal channels of communication. To deal with multilateral affairs in Brussels, the EEAS relies on a Managing Directorate (MD).⁴ Depending on policy dossiers and the nature of competences, the EEAS liaises with its homologue within the Commission, which often has a Directorate or units dealing with multilateral issues (i.e. DG Trade Directorate F, which is in charge of coordinating multilateral trade issues).

Within the Commission, four DGs contribute systematically to the making of external policies. The DG for Development and Cooperation-EuropeAid (DEVCO), DG Enlargement (DG ELARG), DG International Cooperation, Humanitarian Aid and Crisis Response (ECHO), and DG Trade share competences to deal with specific macro policy-areas. However, not all relevant competences for multilateral dossiers fall under the remit of the DGs dealing with external affairs. The intervention of other DGs is mainly dictated by functional rationale. For instance, to deal with the International Labour Organization (ILO), coordination involves, in addition to the EEAS, DG Employment, DG DEVCO and DG Enlargement.

Importantly, the system of competences also informs the patterns of instructions and information exchanges between the delegations and the headquarters in Brussels. As Article 5 (3) of the Council decision establishing the organisation and functioning of the EEAS makes clear, the Union delegations receive instructions from both the EEAS and relevant Commission DGs. Therefore, both in the stage of preparation of policy proposals and in the stage of setting up of negotiations, the delegations need to liaise alternatively or in parallel with the EEAS or different Commission DGs. The delegations send information to headquarters, which contributes to the drafting of policy proposals. The division of labour and competences defines the frequency of contacts with both the Commission services and the EEAS. So, as an example, in light of the specific management of trade, the EU mission to the WTO will have contacts with DG Trade 'at least twice per day' (interview with two members of the WTO mission, 13 March 2012). For WTO dossiers, contacts with the EEAS occur more rarely, mostly on occasions in which country dossiers, horizontal issues and CFSP issues are at stake, as in the case of negotiations for the accession of Iran (interview with a member of the WTO mission, 13 March 2012). The way in which assessments and weekly reports are framed takes into account the different institutional roles of the EEAS and the Commission, whereby reports to DG Trade focus more on the 'substance of trade negotiations' and those to the EEAS on 'systemic factors' (interview with a member of the WTO mission, 13 March 2012). Analogously, a member of the UN delegation working at the Human Rights Council (HRC) will need to liaise more constantly with the EEAS (interview with a member of the UN delegation, 12 March 2012).

Interviewees tend to convey the idea that the new arrangements in terms of 'double lines of command' (interview with a member of the WTO mission, 13 March 2012) have been absorbed in a relatively unproblematic way. There is variation, however, in the ability to cope with the new system. This depends on the network that each member of the delegation/mission had at headquarters. In case of a conflict of competences, it is up to the head of delegation to solve all possible controversies.

In addition to this, the EU participation in IGOs is not clearly spelled out within the treaties (Jørgensen and Wessel 2011), and the Treaty of Lisbon did not and, arguably, could not give a clear indication of the rules to follow in all areas where the EU does not have exclusive competence to act. A homogeneous rule to regulate the chair of meetings; the order of intervention; the briefing on policy-dossiers and the overall management of internal coordination meetings is not in place. As we will see, this vagueness affects both internal coordination and external representation in multilateral fora. Patterns of cooperation on the ground reveal that, beside the problematic character of the vertical arrangements between Brussels and the delegations, the horizontal

coordination of all European actors on the ground makes for incredible difficulties and a litigious mood over competences.

THE LOGIC OF EXTERNAL REPRESENTATION: REPRESENTING THE EU IN THE UN AND THE WTO

Tuning the EU voice on the ground

The system of foreign-policy governance in place in Brussels is mirrored consistently in the delegations. If the situation in Brussels is characterised by an intricate system of attribution of competence and by an unclear and blurred way of defining responsibilities throughout the policy cycle (Carta 2013), the situation does not get easier when the moment arrives to take a seat, frame the EU position and negotiate it on the ground. Post-Lisbon arrangements in multilateral delegations replicated the unsolved problems that occur at headquarters. New rules, indeed, imposed a reorganisation of both internal coordination meetings and external representation, without any clear indication of how to proceed on the ground.

The Commission Secretariat General (CSG) insisted that the delegations in multilateral organisations should perform all functions of internal coordination and, wherever allowed by a given IGO, external representation. Some member states insisted on applying the 'Brussels rule'. The Brussels rule implied that, as happens in the Council, CFSP issues would be chaired by the members of the delegation, while issues related to former first pillar competences would be chaired by the rotating Presidency (interview with a member of the UN mission, May 2011; interview with a member state's diplomat, March 2012). The chasm which characterises the Council, according to which WGs dealing with former first pillar external competences are chaired by the rotating Presidency, while WGs dealing with CFSP competences are chaired by the EEAS, is partially reflected in the working arrangements set up to deal with both internal coordination and external representation.⁵

Eventually, a flexible arrangement was put in place in the two delegations under inquiry. In order to address misfits between internal coordination and external representation, each driven by a pragmatic way of proceeding, the Commission and the EEAS eventually combined a double-edged strategy. On the one hand, for both legally and non-legally binding measures, EU institutional actors on the ground constantly require negotiation authorisations and inform the relevant Council WG of the proceedings of the negotiations. On the other, transparency in conducting negotiations needs to be coupled with a great deal of flexibility. As in the past, therefore, flexibility and loose informal agreements are the instruments to overcome conflicts at the EU level (Carta 2012). This aspect has important repercussions for three broad sets of questions: 1) internal coordination among European actors (i.e. who sets the agenda, who chairs and coordinates external meetings, who shares information among all actors on the ground, and so forth); 2) external representation (i.e. who speaks for the EU); and 3) the nameplate under which all statements are given (i.e. in whose name do actors speak for Europe).

Beside the evident hindrances caused by the pluri-vocal diplomatic arrangements of the EU, the pooling together of diplomatic resources can also present some advantages. Often, in order to frame own negotiating positions, each actor needs to engage in a series of diplomatic *démarches* with third party states or organisations. According to several interviewees in Geneva, an outreach scheme was set up to discipline the member states' *démarches*. According to this working arrangement, each mission gathers information for all others, on the grounds of a common strategy. The agreement on a common outreach strategy can be seen as an important advancement in the state of

integration in foreign policy, whereby all actors divide the burden of diplomatic exchanges and share the contents of information to the benefit of all.

The next sections highlight the consequences of this twin set of burdens (IGO and EU) imposed on the EU diplomatic representation.

Representing the EU in multilateral fora: who sets the rules of the game?

The position of the EU within multilateral fora varies widely (Emerson, Balfour et al. 2011), ranging from the position of an observer to the position of full member. The EU position is generally associated with the competences that the EU holds. However, the existence of exclusive or mixed competences does not guarantee that the EU is a fully-fledged actor in a given organisation. As follows, the EU might be excluded from full participation in areas where it holds extensive competences, such as the International Maritime Organization (IMO) or the International Energy Agency (Jørgensen and Wessel 2011: 264). Each multilateral forum, therefore, imposes its own complexity over the organisation of the EU system of diplomatic representation. Accordingly, the EU's system of governance flexibly adapts to the internal rules of each IGO, with, alternatively, the rotating Presidency or the delegation that speaks and negotiates in the name of the EU.

The position of the EU in the UN complex landscape changes according to both the rules of procedures of each setting and the competences it effectively performs.⁶ Therefore, the EU's position within multilateral fora ranges from being able to attend to the proceedings of the plenary to the right to sign, ratify, accept, and approve adopted instruments on an equal footing as states. For example, the Union delegation to the UN and the mission to the WTO have a markedly different status, which emanates from the position that they have in the UN and WTO respectively. In contrast to states' missions, the EU has a *delegation* to the UN, which means, as a general rule, that it does not participate in the proceedings of the UN on an equal footing as states. Analogous to other states' missions, instead, the EU has a fully-fledged mission at the WTO, which signals that the EU has acquired a position that is very similar to that of states.

The procedures of each IGO, therefore, impose the rules of the game on the EU and define the margin of actorness to which it can effectively perform. As we shall see, diplomatic representation is profoundly complicated by this specific intersection of multilateralism. Linked to this, the rules and procedures of each IGO impact on the internal organisation of the EU's system of diplomatic governance. Beyond internal fights for competences, external representation, because of a restrictive definition of the functions of REIO, cannot be delegated to the EU level, resulting in a multiplication of actors who act and speak on behalf of the EU.

Who represents the EU? And in whose name?

With the rotating Presidency disappearing from the picture in foreign affairs, some member states wished to ascribe a restrictive interpretation of diplomatic representation in the aftermath of Lisbon. In the case of common statements or documents adopted, it is highly controversial as to how to establish 'in whose name' the diplomats speak. A long and harsh diatribe surrounded the question of what competences the Presidency and/or other member states present in the Governing Board should perform and on whether they should speak in the name of the EU exclusively or 'on behalf of the EU and its member states'. This issue – which an interviewee defined as the 'UK issue' (interview with a member state diplomat in Geneva, 15 March 2012) – caused an impasse and frustration among both the member states and all EU institutional actors. According to both internal documents and civil servants' accounts, this has been the case in all the multilateral delegations set out above.

With due caution, it could be said that the organisation of external representation reflects the overall institutional dynamics in Brussels and brings us back to the 'broader picture' of how member states interact with the EU, both in Brussels and in third countries. There is no straightforward translation of competences into external representation, however. Following Jørgensen (2009), the overall arrangements give rise to three governance models, depending on the relative weight of competences: an unconditional delegation model; a supervised delegation model; and a coordination model.⁷ As Jørgensen (2009: 197) warns, it is necessary to handle with care the guidelines offered by competences and 'ask who engages on behalf of the European Union in multilateral diplomacy', considering that, regardless of the existence of legal competences, officials may be 'accepted as part of the Presidency delegation' in given international conferences. In this direction, for instance, in the WTO multilateral trade diplomacy – where exclusive and shared competences converge – a 'supervised delegation' applies 'implying that member states during negotiations are essentially mute and instead carefully supervise how their agent [...] negotiates on their behalf' (ibid).

Accordingly, both the division of competences and the preferred model of external representation pose considerable problems of coordination at the horizontal level. In the first place, problems derive from the difficulty of disentangling EU exclusive competences from mixed and member states' competences in the course of negotiation of extremely enmeshed dossiers. In practical terms, mixed negotiations imply that both the EU representative and the representative of the state holding the EU rotating presidency can speak on behalf of the EU.

In matters of EU statements, in order to avoid confusing and swinging practices of external representation on the part of the EU, the Commission or the EEAS should be able to deliver all kinds of agreed positions, whether in matters of exclusive, shared or parallel competences. However, this is not always the case. It happens that, in the course of a negotiation or in a statement, elements of exclusive, shared or parallel competences coexist, with evident backlashes in external representation. In order to overcome this set of problems, the Commission tried to pursue a counterintuitive strategy of simplification of EU negotiation mandates, by explicitly asking the Council to avoid having the EU's competences and competences of exclusive pertinence to the member states coexist in a given statement.

Reportedly, hybrid-negotiating authorisations have been used by some member states to issue Council Decisions that combine the negotiating functions of both the Commission and the member states. In this case, the delegations can represent the EU in areas of exclusive competences (such as the customs union, competition, common commercial policy), while for shared competences (such as the internal market, social policy, cohesion, agriculture and fisheries, environment, energy, freedom, security and justice) some member states claimed that the decision on whether diplomatic representation is to be performed by the member state holding the rotating Presidency or in other forms is up to member states. Accordingly, in the WTO mission – where the bulk of competences are, to quote the words of a diplomat in the mission 'unionised' – the rotating Presidency chairs the bulk of internal coordination meetings, while the WTO mission represents the EU in all multilateral meetings. Contrary to this, the members of the EU delegation to the UN chair the bulk of internal coordination meetings, but do not have a great role in matters of diplomatic representation. Accordingly, in the HRC, it is up to the member state holding the rotating Presidency to speak for the EU in nearly all settings and for all dossiers other than those in which it is agreed the EU will talk (such as the interactive dialogue, where the EU can be rapporteur). At the ILO, the EU is mostly excluded from debates due to the rules governing the organisation. This is also the case of proceedings at the WHO and WIPO, where it is up to the Presidency or the EU member state represented in the board to talk in the name of the EU.

A divided diplomatic representation between the delegations and member states, therefore, is also urged by the rules of procedure of each IGO. This, in practical terms, implies that the members of the delegations do not necessarily sit at the negotiating table and are not necessarily allowed to speak. Reportedly, some Presidencies on the ground have adopted the practice of accrediting a member of the delegation as a member of their own mission, so that they can be in constant consultation during the *séances* (interviews with member states' diplomats, 12-14 March 2012).

Beside issues of diplomatic representation, disagreements occur regarding the nameplates under which all EU actors speak. Internal documents and interviews referred to some 100 statements that were to be issued in IGOs but then were blocked because the member states and the EU actors could not agree on whether the statements should have been issued under the nameplate 'on behalf of the EU' or 'on behalf of the EU and its member states'. In October 2011, the stalemate in multilateral organisations was finally overcome in COREPER II, with the adoption of a document prescribing the General Arrangements to be adopted in matters of EU Statements in Multilateral Organisations:

Should the statement refer exclusively to actions undertaken by or responsibilities of the EU in the subject matter concerned including in the CFSP, it will be prefaced by "on behalf of the European Union". Should the statement express a position common to the EU and its member states, pursuant to the principle of unity of representation, it will be prefaced by "on behalf of some of the EU and its member states". [...] Should the member states agree to collective representation by an EU actor of issues relating to the exercise of national competences, the statement will be prefaced by "on behalf of the member states" (Council 2011).

The agreement, however, did not simplify the way in which the EU presents its positions and coordinates with the member states in IGOs. The overall reform pursued by the Lisbon Treaty, therefore, left the most conflicting elements of the EU diplomatic governance mostly unsolved. While the Lisbon Treaty raised the expectation that a unified form of diplomatic representation could be pursued beyond the still fragmented division of competences, several conflicting strategies exist on how to improve the visibility and strength of the EU voice.

In the first place, the EU competences are neither exhaustive of the competences of the member states; nor do they cover the financial costs of all actions performed by the member states. Effectively, the 'follow the money' rule partially helps in individuating the areas of mixed competences in which the EU member states want to keep their own voice. This also explains member states' reluctance to empower the EU delegations even further: the EU cannot legitimately claim to represent the member states where they still perform their foreign policy activities under their own capacity and with their own resources. In the second place, several member states question the wisdom that an EU-led form of diplomatic representation would increase the overall strength of their negotiating positions vis-à-vis third parties. This reflection transforms the question 'who speaks for the EU' into a more pragmatic 'with what leverage does the EU speak'. As highlighted by some member states' diplomats, two different issues contribute to make the case for maintaining a strategy of 'going separately' in certain situations. Firstly, third party states in multilateral organisations are not supposed to know about the EU's system of diplomatic governance and the complex, competence-based distribution of powers among European actors. For a third party state's diplomat, a UK, German or French diplomat still represents a clear and easy-to-spot point of reference for negotiation, quite unlike the EU delegate. Secondly, the personal attributions of all individual actors contribute towards shaping the voice and face of the EU abroad.

As notorious turf battles over recruitment of the EEAS remind us, an immense amount of time, energy and resources were deployed to guarantee that the EEAS would recruit the 'best and brightest'. Criteria for recruitment tried to strike a difficult balance between

meritocratic and representational criteria. Beyond the issue of personal qualities and skills, the diplomatic skills of each European and national diplomat need to combine not only an overall generalist know-how, but also knowledge of the UN system of coordination and the dossiers that are discussed in all UN venues, in a way that goes well beyond the EU's division of competences. Reportedly, the UN's delegation staff was not necessarily trained to deal with foreign policy or often exhibited a lower diplomatic profile than colleagues within the UN working groups. So, not only were the EU member states not always keen to accept the upgraded role of the delegations' representatives, but neither were their counterparts within the UN. As a member state's diplomat laconically reported, 'in certain WG to the UN, you find incredibly specialised counterparts. An EU diplomat needs to confront a Cuban Ambassador who has 25 years experience in negotiating human rights, or, better, killing human rights. The delegation is not necessarily equipped to meet this challenge' (interview with a member state diplomat, 13 March 2012). As has previously been the case in the Commission's diplomatic experience (Carta 2012), the EU's diplomats and civil servants often find it difficult to reconcile headquarters' ambitions with acceptance into the wider diplomatic club.

As this section showed, two sets of caveats are imposed on the EU diplomatic representation. First, member states claim their own rights over their own reserved domains. Quarrels for both internal coordination and external representation have an undeniable impact on the construction of a climate of mutual trust between the member states and institutional representatives. Second, strategic considerations over the opportunity to 'play solo' also converge in rejecting the aspiration of a more unified diplomatic representation. Third party diplomats still adhere to a different, more traditional, conception of diplomatic representation. Member states' diplomats often refer to this caveat to claim back their voice in diplomatic representation.

CONCLUSIONS: STUDYING EU DIPLOMATIC GOVERNANCE

In line with the ambitions of this special issue, this article intended to locate studies on EU diplomacy in the general framework of studies of governance. It highlighted that both the EU and states adapted their foreign policy and diplomatic structures to the mutating nature of diplomacy. The fallacy of descriptions of foreign policy as being relegated to the area of high politics is the point of departure to unravel a monolithic idea of Ministries of Foreign Affairs as the exclusive repository of foreign policy competences.

The analytical toolbox offered by diplomatic governance encourages the pursuit of empirical research in order to unravel the extremely fluid and dense network of actors which systematically intervenes in shaping an actor's foreign policy profile and diplomatic action. However, the evolution of diplomacy still reflects different conceptions of what diplomacy is supposed to be, whether state-centric or inherently pluralistic.

The EU represents an interesting case to study practices of interstate cooperation in foreign policy matters, as it adds a further layer of governance to the general picture. The term co-opetition (Esty and Geradin 2000; Hocking and Smith 2010) depicts well the nature of interaction of all actors in the EU diplomatic system of governance. On the one hand, actors compete for the attributions of competences, sometimes adopting counterintuitive strategies to keep their own competencies (as in the case of the Commission calling for separated negotiating mandates which chalk out the borders of competences). On the other, the diplomatic environment and timing urge upon EU actors the need to find common solutions to challenging situations (as in the case of agreed outreach strategies to interact with third parties). Beyond competition over the attribution of competences in the EU's diplomatic governance, different ideas coexist about what 'locating the EU in the international scene' means. Pursuing a 'single voice', by unifying forms of external representation is not necessarily perceived as the most

convenient strategy envisaged by all EU actors. While institutional actors tend to believe that coherence and strength may descend from a more unified system of representation, the member states tend to believe that, in certain circumstances, differentiation could increase the EU's strength.

In a diplomatic governance system, therefore, tensions occur on the interpretation of common aims, whereas different emphasis can be placed on the *process* or on *outcomes* of diplomatic practices. Despite the complexity of the system, this also brings an additional resource to the member states, not only a burden.

ACKNOWLEDGEMENTS

The author wishes to thank Francesco Giumelli and Chantal Lavallée, Maxine David and two anonymous reviewers for their most valuable suggestions.

¹ The EU currently has eight such delegations: the delegation to the UN in New York; the delegations to the WTO and to the UN in Geneva; the delegation to the IAEA in Vienna; the delegation to the Food and Agriculture Organization (FAO) in Rome; the delegation to the OECD in Paris; the delegation in Nairobi; the delegation to the Council of Europe in Strasbourg.

² Private subjects enter the policy process in a less institutionalised way, by targeting those institutions – like the Commission and EP – which may have an interest in representing their entreaties (Broscheid and Coen 2003).

³ In addition to these actors, other EU actors can speak on behalf of the EU in more specific contexts. For instance, the President of the European Central Bank or the President of the Eurogroup may explain the EU position in multilateral fora such as the International Monetary Fund, the G8 or the G20.

⁴ The MD includes four units: multilateral relations and global governance (which also chairs the CONUN Working Group (WG) within the Council); Human Rights and Democracy (which chairs the COHOM WG, see Smith, 2006 on the work of the WG); Conflict Prevention and Security Policy; and Non Proliferation and Disarmament (which chairs the COARM; CONOP; CODUN WGs).

⁵ This difference is reflected also in the way in which the seating order is arranged for the rooms used for WTO and UN coordination meetings: in the WTO, the EU Mission's officials sit on the opposite side of the Presidency, close to the members of the Commission who might join the meetings to give debriefings or discuss instructions with the EU team. In the latter, the members of the delegation (UN) sit close to the Presidency, with members of the Commission coming from headquarters sitting right on the opposite side. This picture is, however, complicated by a high degree of variability among working practices adopted by all sections of the EU delegation to the UN; and the rules of procedures imposed on the EU by each IGO.

⁶ The European Economic Community first and the EU later are allowed to participate in UN fora on the grounds of the EC's status of Regional Economic Organization (REIO). Different treaties, adopted under the umbrella of different UN agencies, conferences or organisations, set the definition of REIO according to their own internal rules of procedures. A REIO is generally defined as 'an organization constituted by sovereign states of a given region which has competence in respect of matters governed'. The opening of this definition, which is the same for other Conventions, was given in the UN General Assembly's Framework Convention on Climate Change, available at:

http://unfccc.int/essential_background/convention/background/items/1349.php

⁷ The first model can be applied to the trade dispute system in the context of the WTO. The second model posits, 'EU member states delegate authority to negotiate with third parties, yet maintain formal representation, provide guidelines and mandates to their negotiator, closely supervise their negotiator's behaviour, and preserve the right to call back the delegation' (Jørgensen 2009: 107). This model applies to the WTO, development policy agreements and international climate policies. Finally, in the third model – which is the most commonly used – 'we witness an example of each member state for itself, not an example of the European Union in multilateral diplomacy' (Jørgensen 2009: 1999).

REFERENCES

- Batora, Jozef (2011) *European External Action Service as a Litmus Test of the Emerging Foreign Policy Making System in the EU: An Organization Theory Approach*, EUFORPOL WP 2/2011, Comenius University, Bratislava.
- Baun, Michael J (1995) The Maastricht Treaty as High Politics: Germany, France and the European Integration. *Political Science Quarterly*, 110 (4): 605-624.
- Beer, Samuel A (1978) Federalism, Nationalism and Democracy in America. *The American Political Science Review*, 72 (1): 9-21.
- Bicchi, Federica and Carta, Caterina (2010) The COREU/CORTESY network and the circulation of information within EU foreign policy, RECON Online Working Paper 2010/1, Arena, Oslo.
- Blatter, Joachim, Kreutzer, Matthias, Rentl, Michaela and Thiele, Jan (2008) The Foreign Relations of European Regions: Competences and Strategies. *West European Politics*, 31 (3): 464-490.
- Boschma, Ron and Schobben, Rob (2000) Introduction. *Regional & Federal Studies*, 10 (2): 1-9.
- Broscheid, Andreas and Coen David (2003) Insider and Outsider Lobbying in the European Commission. *European Union Politics*, 4 (2): 165-189.
- Carta, Caterina (2013) External and foreign policy cycle and the EU' institutional machinery: a glance into the Post-Lisbon arrangements, in Mario Telo and Frederik Ponjaert (eds), *The EU's Foreign Policy: What Kind of Power and Diplomatic Action?* Farnham: Ashgate: 87-104.
- Carta, Caterina (2012) *The European Union Diplomatic System: Ideas, Preferences and Identities*. London: Routledge.
- Coleman, William D and Perl, Anthony (1999) Institutionalised Policy Environment and Policy Network Analysis. *Political Studies*, 47 (4): 691-709.
- Cooper, Andrew F and Hocking, Brian (2000) Governments, Non-Governmental Organisations and the Re-Calibration of Diplomacy. *Global Society*, 14 (3): 361-376.
- Council of the European Union (2011) EU Statements in multilateral organizations general arrangements, 15901/11, 24 October 2011.
- Council of the European Union (2009a) Council Decision laying down measures for the implementation of the European Council Decision on the exercise of the presidency of the Council, and on the chairmanship of preparatory bodies of the Council. 16517/09. Brussels.
- Council of the European Union (2009b) Council Decision on 1 December 2009 adopting the Council's Rules of Procedure. (2009/937/EU). OJ L 325/35-61.
- Cutler, A Clara, Haufler, Virginia, and Porter, Tony (1999) *Private authority and international affairs*. New York: State University of New York Press.
- Devin, Guillaume and Toernquist-Chesnier, Marie (2010) Burst Diplomacy the Diplomacies of Foreign Policy: Actors and Methods. *Brazilian Political Science Review*, 4 (2): 60-77.
- Dijkstra, Hylke (2009) Commission versus Council Secretariat: An analysis of bureaucratic rivalry in European foreign policy. *European Foreign Affairs Review*, 14 (3): 431-450.
- Duke, Simon (2009) Providing for European-Level Diplomacy after Lisbon: The Case of the European External Action Service. *The Hague Journal of Diplomacy*, 4 (2): 211-33.
- Emerson, Michael and Wouters, Jan (2010) The EU's Diplomatic Debacle at the UN What else and what next? CEPS Commentary "Thinking ahead for Europe", Brussels, 1 October 2010.
- Emerson, Michael, Balfour, Rosa, Corthaut, Tim, Wouters, Jan, Kaczyński, Piotr M, Renard, Thomas (eds) (2011) *Upgrading the EU's Role as a Global Actor: Institutions, Law and the Restructuring of European Diplomacy*, Brussels: Centre for European Policy Studies.
- Esty, Daniel C and Geradin, Damien (2000) Regulatory Co-opetition. *Journal of International Economic Law*, 3 (2): 235-255.

General Assembly official records, 64th session: 122nd plenary meeting, Tuesday, A/64/PV.122, 14 September 2010, New York.

Hermann, Charles F (1990) Changing course: when governments choose to redirect foreign policy, *International Studies Quarterly*, 34 (1): 3-21.

Hillion, Christophe (2009) Mixity and Coherence in EU External Relations: The Significance of the Duty of Cooperation, *CLEER Working Papers*, 2.

Hocking, Brian (2005) Multistakeholder Diplomacy: foundations, forms, functions and frustrations, Paper presented at the International Conference on Multistakeholder Diplomacy, Malta 11-13 February 2005.

Hocking, Brian and Smith, Michael (2010) An emerging diplomatic system for the EU? Frameworks and issues, Paper Presented at the ECPR Standing Group on the European Union Conference, Porto, Portugal 24-26 June 2010.

Laatikainen, Katie Verlin and Smith, Karen E. (eds) (2006). *The European Union and the United Nations: Intersecting Multilateralisms*. Basingstoke, Hants: Palgrave Macmillan.

Jayasuriya, Kanishka (2004) Breaking the Westphalian frame: regulatory state, fragmentation, and diplomacy, Discussion Paper in Diplomacy, No 90, January, The Hague: Netherland Institute of International Relations 'Clingendael'.

Jørgensen, Knud Erik (2009) The European Union in Multilateral Diplomacy. *The Hague Journal of Diplomacy* 4 (2):189-209.

Jørgensen, Knud Erik and Wessel, Ramses A (2011) The position of the European Union in (other) international organizations: confronting legal and political approaches European Foreign Policy, in P. Koutrakos (ed.), *European Foreign Policy: Legal and Political Perspectives*, Cheltenham: Edward Elgar Publishing: 261-286.

Kerremans, Bart and Beyers, Jan (1996) The Belgian Sub-National Entities in the European Union: "Second" or "Third Level Players"? *Journal of Regional and Federal Studies*, 6 (2): 41-55.

Knoke, Davis, Pappi, Franz U, Broadbent, Jeffrey and Tzujinaka, Jutaka (1996) *Comparing Policy Networks: Labour Policy in the US, Germany and Japan*. Cambridge: Cambridge University Press.

Krahmann, Elke (2003) *Multilevel Networks in European Foreign Policy*. Aldershot: Ashgate.

Lavenex, Sandra (2011) Concentric circles of flexible 'European' integration: A typology of EU external governance relations. *Comparative European Politics*, 9 (4-5): 372-393.

Lecours, André (2002) Paradiplomacy: Reflection on the Foreign Policy and International Relations of Region. *International Negotiation*, 7 (1): 91-114.

Majone, Gian Domenico (1990) *Deregulation or Re-regulation: Regulatory Reforms in Europe and the United States*. London: Pinter.

Mingus, Matthew S (2006) Transnationalism and Subnational Paradiplomacy: Are Governance Networks Perforating Sovereignty? *International Journal of Public Administration*, 29 (8): 577-594.

Missiroli, Antonio (2010) The New EU 'Foreign Policy' System after Lisbon: A Work in Progress. *European Foreign Affairs Review* 15 (4): 427-452.

Permanent Representative of the Bahamas, Letter dated 2011/05/09 from the Permanent Representative of the Bahamas to the United Nations addressed to the Secretary-General, transmits, on behalf of the Caribbean Community (CARICOM), a document entitled "Interpretive declaration by the Bahamas on behalf of CARICOM, A/65/834, 3 May 2011, in connection with General Assembly resolution 65/276, entitled 'Participation of the European Union in the work of the United Nations'", A/65/834, 10 May 2011, <http://undocs.org/A/65/834> Accessed 20 February 2012.

Permanent Representative of Nauru to the UN, Ms. Crossen: Statement on the Draft resolution A/65/L.64/Rev.1 on behalf of Ambassador Moses, Permanent Representative of the Republic of Nauru to the United Nations at the United Nations General Assembly 65th Session, 88th Plenary meeting on "Strengthening of the United Nations system: draft resolution, 3 March 2011.

Reinecke, Wolfgang (2000) *Global public policy: governing without government?* Washington DC: Brookings.

Rhodes, R. A. W (1996) The New Governance: Governing without Government. *Political Studies*, 44 (4): 652-667.

Rosenau, James N and Czempiel, Ernst-Otto (1992) 'Governance, Order and Change in World Politics', in J. N. Rosenau and E.O. Czempiel (eds) *Governance without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press: 1-29.

Ruggie, John G (1993) Territoriality and Beyond: Problematising Modernity in International Relations. *International Organization*, 47 (1): 139-174.

Smith, Karen E (2006) Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations. *Journal of Common Market Studies*, 44 (1): 113-137.

Strange, Susan (1999) The Westfailure system. *Review of International Studies*, 25 (3): 345 -354.

Thomas, Daniel C and Tonra, Ben (2012) To What Ends EU Foreign Policy? Contending Approaches to the Union's Diplomatic Objectives and Representation. *The Hague Journal of Diplomacy* 7 (1):11-29.

UN General Assembly, United Nations Framework Convention on Climate Change: Resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189, available at: <http://www.refworld.org/docid/3b00f2770.html> Accessed 1 August 2013.

UN General Assembly document (2011), Participation of the European Union in the work of the United Nations: revised draft resolution / Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland, A/65/L.64/Rev.1, 21 April 2011, <http://undocs.org/A/65/L.64/Rev.1> Accessed 1 August 2013.

UN General Assembly Resolution (2011), Participation of the EU to the works of the United Nations, 65/276, 11 May 2011, <http://undocs.org/A/RES/65/276> Accessed 1 August 2013.

UN General Assembly Secretary-General (2011), Note by the Secretary-General A/65.856, Participation of the European Union in the work of the United Nations: note by the Secretary-General, 1 June 2011, <http://undocs.org/A/65/856> Accessed 1 August 2013.

Wallace, William (1999) The Sharing of Sovereignty: The European Paradox. *Political Studies*, 47 (3): 503-521.

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

Seven Years of EUJUST LEX: The Challenge of Rule of Law in Iraq

Alina Christova *Vrije Universiteit Brussel*

Citation

Christova, A. (2013). 'Seven Years of EUJUST LEX: The Challenge of Rule of Law in Iraq', *Journal of Contemporary European Research*. 9 (3), pp. 424-439.

First published at: www.jcer.net

Abstract

In July 2005, two years after the US-led invasion of Iraq, the European Union launched EUJUST LEX (the EU Integrated Rule of Law Mission for Iraq), tasked to address the urgent needs of the Iraqi Criminal Justice System by providing training for high and mid-level officials in senior management and criminal investigation. This mission is an important example of the practical implementation of collective action within the concept of security governance or the projection of EU rule of law standards beyond EU borders as a guarantor for stability. After seven years of operation, EUJUST LEX has trained more than 4,800 Iraqi senior level criminal justice officials in different EU member states. In order to provide a better understanding of the complex rule of law environment in which the mission operates, the article delivers an extensive overview of the institutional set up and functioning of the Iraqi Criminal Justice System as an integral part of the rule of law system in the country, as well as the multiple related challenges Iraq faces. Rule of law reform is a challenging, complex long-term undertaking. Therefore, the article discusses the impact of the seven year contribution of EUJUST LEX on the development of the rule of law sector in the country. Moreover, the article raises some questions with regard to the follow-up of Common Security and Defence Policy mission activities and the evaluation of their effectiveness.

Keywords

Rule of Law; European Union; CSDP; EU external action; EUJUST LEX; Iraq

Ten years after the US-led invasion in Iraq, the country is still experiencing insurgency, a high level of violence, instability and a challenging security situation. This article addresses the question of how a country which has not achieved peace can set up the structures for a well-functioning criminal justice system that can guarantee stability, fairness and the rule of law. It asks whether this was an endeavour that was doomed from the very outset and considers the nature of the goals and expectations for success. Further, it asks what can realistically be achieved in such situations. Any state's criminal justice system should be one of the major pillars for stability and security; at the same time it is a very complex and intricate system which can function properly only if numerous interdependent parameters are fulfilled and complement each other.

For the Iraqi case, therefore, it is first necessary to look at the legal basis for the criminal justice system, then to explore the different components of the system, how they function in praxis today and the challenges they face, and, finally, to examine the contribution of the European Union (EU) to the development of the rule of law in Iraq and the criminal justice sector.¹ The concept of security governance is crucial in this respect because it deals with the capacity of collective action to achieve and sustain security and explores those forms and mechanisms which facilitate effective management of transnational security risks and complex security challenges.²

This article addresses one of the challenges of security governance discussed by Ehrhart, namely the implementation of collective action and the specific actions on the ground to deal with security problems.³ It examines EU involvement in Iraq in the framework of the Common Security and Defence Policy (CSDP) and the specific measures undertaken by the EUJUST LEX Mission for Iraq to contribute to the reform of the rule of law/criminal justice sector. It is argued that such measures help the EU to project its common rule of law standards beyond the borders of the EU itself in order to address specific complex security challenges and transnational security risks. The main argument is that any type of EU involvement should be seen as a long-term undertaking that requires a long-term perspective. The complexity of the system as such, its interdependence with multiple factors, as well as the intricacy of the problems that can currently be found in the criminal justice sector mean that tangible and sustainable results will only be visible

after several years of the mission's operation. In other words, criminal justice reform in a destabilised post-dictatorial country facing grave internal stability and security challenges is not something which can be accomplished in a year or two and by a single actor alone.

The next section outlines the legal basis for the Iraqi Criminal Justice System and its fundamental set-up. It provides information on the separate components of this system, the police, judiciary and penitentiary, as the main building blocks of the rule of law sector in Iraq, considering as well the challenges they face today. This provides the necessary framework for analysing the specific aspect of security governance, namely collective action on the ground, in this case, focusing on the activities and role of the EU Integrated Rule of Law Mission for Iraq.

THE IRAQI CRIMINAL JUSTICE SYSTEM

The legal basis or legal provisions of the current Iraqi criminal justice system can be found in numerous legal documents including, amongst others, the Iraqi Constitution adopted on 15 October 2005 by national referendum,⁴ the Criminal Procedure Code adopted in 1971, the Criminal Code adopted in 1969, the Judicature Act adopted in 1977 and the Public Prosecutor Law adopted in 1979.⁵ The Iraqi Constitution contains a range of principles, guarantees, rights and procedures which are considered basic standards in terms of international law requirements for a criminal justice system. Principal guarantees for the protection of criminal defendants include the principle of equality before the law,⁶ forbidding arbitrary detention and guaranteeing the right to a fair trial,⁷ the right to remain silent, the right to be deprived of liberty only by decision of a competent judicial authority⁸ and the right to have preliminary investigative documents submitted to a competent judge within 24 hours from the time of arrest.⁹ Furthermore, the Iraqi basic law proclaims the inviolability of private residences, which may be searched only on the basis of a judicial decision and according to the law.¹⁰ It prohibits all forms of psychological and physical torture as well as inhumane treatment and interdicts the use of any confession made under force, threat or torture.¹¹ In addition, the Constitution forbids the retroactivity of the law and contains protections against double jeopardy.¹² It also contains a guarantee for the presumption of innocence until guilt is proved,¹³ sets out the right of those accused of a crime to a defence in all phases of the investigation and the trial as well as the right to a defence lawyer at the expense of the state.¹⁴

As far as international legal instruments are concerned,¹⁵ in January 1971, during Saddam Hussein's regime, Iraq ratified the International Covenant on Civil and Political Rights (ICCPR), which contains important safeguards regarding the operation of a criminal justice system such as the right not to be subjected to torture or ill treatment and the right not to be subjected to arbitrary detention. Needless to say, during this time, the ICCPR safeguards constituted nothing more than simple declarations on paper with little relevance for the daily operation of the criminal justice institutions. This highlights one of the general problems of international legal instruments, which in many cases have insufficient enforcement mechanisms.¹⁶ Other legal instruments that Iraq has ratified include the International Covenant on Economic, Social and Cultural Rights in 1971, the International Convention on the Elimination of All Forms of Racial Discrimination in 1970 and the Convention on the Elimination of All Forms of Discrimination against Women in 1986 with a reservation. In July 2011, the country finally acceded to the UN Convention against Torture. The ratification of international legal instruments is certainly an important step for Iraq; however, it is crucial that the standards set out in these international legal documents do not remain simple proclamations on paper, but are actually integrated into the national legal system and accompanied by safeguards ensuring adherence to these standards and attaching a negative consequence to their violation, for example a prohibition of use of evidence

obtained by torture in court proceedings. That way, the norms of international law can actually get implemented in the daily functioning of national criminal justice systems.

In the following paragraphs, the main components of the criminal justice system in Iraq are explored, namely the police, the judiciary and the penitentiary system.¹⁷

The Iraqi police

During Saddam Hussein's regime, the Iraqi police were at the bottom of the hierarchy of security forces; they were poorly trained and equipped, often brutal and corrupt and as a result were feared by the Iraqi public.¹⁸ For the Iraqi people, the police represented a ruthless repressive regime and could not be trusted.¹⁹ In 2003, the police force was entirely dissolved and replaced by the Iraqi Police Service, which assumed the role of a municipal law enforcement agency. The supervisory organ of the police is the Ministry of Interior. The Minister of the Interior in Iraq has seven deputies, two of whom are responsible for the Iraqi Police Service and the Iraqi Federal Police (formerly Iraqi National Police). The police force consists of provincial police departments with district chiefs and police departments in the major cities; the provincial directors of the police report to the provincial governors and are appointed at the provincial government level.²⁰ Most provincial, district and city police forces include patrol police, station police, traffic police and highway patrol police. Originally, the Iraqi National Police were created to strengthen the Iraqi Police Service and to serve as a bridge between the Iraqi National Police Service and the Iraqi army. In 2009, the Iraqi National Police were renamed Iraqi Federal Police to take into account government plans to create brigade headquarters in every province, including the Kurdish region.²¹ It is a rapid response police force in charge of counterterrorism and counterinsurgency operations entrusted with handling extensive civil disturbances, the protection of the Central Bank, high-ranking officials and embassies, as well as providing security services for antiquities and ruins. The Iraqi Federal Police encompasses around 44,000 officers organised in four divisions of seventeen brigades.²² According to the Iraq Status Report, the Iraqi Police Service and the Iraqi National Police encompass more than 400,000 officers, out of whom over 330,000 officers belong to the Iraqi Police Service.²³ Repeatedly, there have been allegations against the Iraqi police force regarding sectarianism, corruption, infiltration by militias and connections to death squads.²⁴

The Iraqi judiciary

Under Saddam Hussein, the Iraqi judiciary was under the full supervision of the Executive, namely the Ministry of Justice. Nevertheless, the Judicature Act adopted in 1977 set out on paper the independence of the judiciary. Since 2003, there have been efforts to restore the independence of judges as one of the essential elements in the criminal justice system. The independence of the judiciary and of individual judges has been regulated in the Iraqi constitution²⁵ and further substantiated in statutory law whereby respective infringements of this principle are banned and subjected to legal sanctions. In 2004, the Coalition Provisional Authority (CPA) issued Order Nr. 35 on the Reestablishment of the Council of Judges, which transferred all court employees from the Ministry of Justice to the Higher Judicial Council.²⁶ Thus, currently the Higher Judicial Council has responsibility for judicial affairs so that all matters concerning the judiciary are managed and overseen by the judges themselves.²⁷ The Higher Judicial Council also nominates the Chief Justice as well as the heads of lower judicial bodies and the Chief Prosecutor. Today, as set out in CPA Order Nr. 35, the Chief Justice at the same time occupies the post of President of the Supreme Court,²⁸ the highest appellate court in the country, acting also as a constitutional court and having exclusive jurisdiction to interpret the Iraqi constitution. This raises serious questions regarding the concentration

of power.²⁹ A possible solution to this problem could be to suspend the other position in the judicial system occupied by the Chief Justice for the time the duties of a Chief Justice are carried out.

The Constitution of Iraq does not contain any detailed provisions regarding the establishment of a court structure, but refers this issue explicitly to statutory law.³⁰ Only the role of the Federal Supreme Court is outlined at constitutional level.³¹ Moreover, the Constitution explicitly prohibits the creation of special or exceptional courts in Iraq.³² The Judicature Act of 1977 regulates the current organisation of courts in the country. Generally, the Iraqi judicial system comprises civil courts, criminal courts and courts of personal status regarding matters falling under Islamic law. As far as criminal jurisdiction is concerned, the first level of enquiry in criminal cases is carried out by an investigation court; this court can either have general jurisdiction or special jurisdiction for specific types of crimes. Investigation courts take decisions as a single judge (investigative judge or examining magistrate) and prepare cases for the criminal courts of first instance. Hereby, the investigation courts are responsible for gathering both incriminating and exculpatory evidence. An investigative judge is in charge of the criminal investigation; he can issue arrest warrants and determines whether the suspect should be remanded in custody. However, the actual work regarding the investigation is carried out by judicial investigators in the name of and under the supervision of the investigative judge. The judicial investigators supervise the work of police investigators and, thus, closely collaborate with the police regarding the examination of the crime scene, the collection of evidence, questioning witnesses and so forth. After closing the investigation, the judicial investigators prepare a report for the investigative judge, who takes the decision on the further steps to be followed regarding the case at hand. The criminal procedure in Iraq is based on the inquisitorial system so that judges play the central role in the court proceedings. Currently, the Iraqi criminal law system encompasses 132 investigative courts.³³

Legal provisions on the public prosecution in Iraq can be found in the Public Prosecutor Law Nr. 159 of 1979³⁴ with its respective subsequent amendments. The role of public prosecutors in Iraq is to monitor the criminal investigation and supervise the work of police detectives and judicial investigators; the public prosecutors are not in charge of the investigation, but they are present during the latter and have the power to challenge the decisions taken by the judicial investigators and subject them to judicial review. Moreover, criminal court hearings can only take place under the presence of a public prosecutor; in addition, the public prosecutors fulfil numerous other tasks like the supervision of the legality of the proceedings, filing means of redress, inspecting detention centres and submitting related reports, etc.

The courts of first instance take decisions in different configurations depending on the seriousness of the punishment determined by law. A single judge hears cases concerning misdemeanours, for which imprisonment of up to five years is legally determined, and a panel of three judges decides on felony cases, for which imprisonment for over five years is foreseen as a sanction. First instance courts on misdemeanours can specialise in a certain type of crime, traffic crimes, for example. At the moment, there are 105 courts on misdemeanours in Iraq.³⁵ Decisions of the courts of first instance can be appealed in regional appellate courts for misdemeanours and in the Federal Court of Cassation in Baghdad for felonies.

The Iraqi Criminal Justice System also encompasses juvenile courts,³⁶ a juvenile being defined in the Juvenile Welfare Law Nr. 76 of 1983³⁷ as a person between the ages of nine and 17.³⁸ There are specialised juvenile investigation courts in which a single judge (the juvenile investigation judge) takes all decisions regarding the investigation. These decisions can be challenged in front of the juvenile court. After completing its work, the juvenile investigation court transfers the matter to the juvenile court. The juvenile court takes decisions in two configurations depending on the gravity of the sanction determined by law: either as a single judge for misdemeanours or as a panel of three

judges for felonies. The decisions of juvenile courts undergo a review by the Federal Court of Cassation. All decisions of the juvenile court on felonies are subject to a mandatory cassation by the Federal Court of Cassation regardless of whether they have been challenged by the persons concerned or not.³⁹ Currently, there are 17 juvenile courts in Iraq.⁴⁰

The Iraqi penitentiary service

Throughout the regime of Saddam Hussein, the Iraqi penitentiary service was under the supervision of the Ministry of Labour and Social Affairs and the Ministry of the Interior. The Ministry of Labour and Social Affairs was responsible for post-conviction facilities, and the Ministry of the Interior was in charge of pre-trial detention centres. After the fall of the regime of Saddam Hussein, the CPA took over the governance in Iraq, and transferred all detention and prison facilities from the above-mentioned ministries to the Ministry of Justice in order to guarantee the separation of powers between the police, judiciary and the penitentiary as distinct parts of the criminal justice system. After the transfer of sovereignty to the Iraqi Government in June 2004, the legal acts enacted by the CPA remained in force.

However, in practice, the aforementioned transfer to the Ministry of Justice seems to be problematic and has not been completed yet with the consequence that currently four ministries in Iraq operate prison facilities: the Ministry of Justice, the Ministry of the Interior, the Ministry of Labour and Social Affairs as well as the Ministry of Defence.⁴¹ The Ministry of the Interior has continued responsibility for most detention centres in Iraq while the Ministry of Labour and Social Affairs continues to be responsible for male and female juvenile facilities. In addition, there are pre-trial prison facilities under the supervision of the Ministry of Defence for persons arrested during military raids and operations. Reportedly, there are 12 post-conviction facilities and 11 pre-trial detention facilities operated by the Ministry of Justice, six detention facilities of the Iraqi Federal Police, 294 pre-trial detention facilities of the Iraqi Police, around 1,200 smaller police holding stations throughout the country and 27 pre-trial detention centres operated by the Ministry of Defence.⁴²

The Iraqi Penitentiary Service is organised on the basis of the following five administrative regions into which Iraq is divided: the Baghdad, Central, Southern, Northern and Kurdish Regions. The Kurdish Region has a special status as it operates an autonomous prison system, independent from the central government in Baghdad. Most prison facilities are under the authority of the Ministry of Labour and Social Affairs, and a transfer is envisaged of the few facilities currently under the authority of the Ministry of the Interior. In addition, the internal security forces and intelligence services of the Kurdish Region operate separate detention centres.

CHALLENGES FOR THE CRIMINAL JUSTICE SYSTEM IN IRAQ

The Iraqi criminal justice system faces numerous challenges. The following section is far from exhaustive, serving only to provide an overview and highlight some of the most pressing issues the criminal justice system in Iraq is confronted with today. One of the most obvious challenges at the moment is the security situation, which has a hazardous effect on the functioning of the entire system.⁴³ After the collapse of a dictatorial regime, it is necessary to establish an effective criminal justice system complying with international standards fixed in international legal documents, such as the separation of powers, independence of the judiciary, respect for international human rights, etc. This is not an easy task, and it can take many years to guarantee a new democratic way of functioning. Iraq's fragile system, which is in the midst of this reform process, finds itself

confronted with one of the biggest challenges for any criminal justice system operating on the basis of human rights and the rule of law, namely the pressing need to counter a high level of terrorism and insurgency.

Policemen, judges, penitentiary officials and those working for the criminal justice system generally are often targets of insurgency and terrorist attacks and experience intimidation. According to Iraq Body Count reports, police are represented in the database of civilian deaths in Iraq more often than any other occupation, including politicians and legal professionals; for the period 2003-2011 8,986 deaths of police officials were reported, which constitutes the largest toll of any professional group in the country.⁴⁴ By contrast, in 2006, the Iraqi Ministry of the Interior issued a statement that 12,000 police officers have been killed since 2003, which only illustrates how difficult the assessment of the actual deaths in a challenging security situation is.⁴⁵ The numbers of police killed in 2012 highlight the fact that the situation is far away from being under control: there was both an increase in the absolute numbers in comparison with 2011 (724 vs. 939) and an increase in the proportion of police deaths in comparison with all deaths (17.5 per cent vs. 20.5 per cent).⁴⁶

Security is also a serious and primary concern for Iraqi members of the judiciary and their families.⁴⁷ In 2011, the Higher Judicial Council published information that since April 2003, 47 judges have been killed and numerous assaults against judges have been registered in Iraq including assassination attempts and abduction operations.⁴⁸ Repeatedly, orchestrated campaigns for the assassination of judges have been conducted. For example, in July 2008, the President of the Court of Appeals of the al-Rusafa court in Baghdad was killed leaving work in his unarmoured car. A few days later, five judges from the same court were targeted by bombings near their homes on the same day.⁴⁹ In 2010, eight judges were attacked with bombs and silenced weapons, killing two of them.⁵⁰ Despite declining overall numbers, the security of judges is still an issue today. According to the Chief Justice, the personnel of the Higher Judicial Council are left isolated in judicial security operations with the Ministry of the Interior obstructing the receipt of weapon permits and employment of additional security guards. Furthermore, the priority for the Chief Justice are plans to build secure judicial residencies outside Baghdad, which emphasises the absence of support for provincial judges.⁵¹

It is crucially important to create legal bases/adopt respective laws for fundamental guarantees regarding the rule of law and human rights in the criminal justice system including the implementation of international legal standards. The Iraqi Criminal Justice System still partly operates on the basis of laws that were adopted in the 1960s and the 1970s under a totally different political regime and legal acts of the foreign CPA. In this regard, it is essential as a first step to review all existing legislation, identify shortcomings, gaps and inconsistencies and adapt it to the current situation in the country, thereby creating a sound legal basis for the rule of law. However, it is important to stress that legislative reform is a long-term endeavour, which requires a lot of resources, the creation of an intricate, balanced system that includes different organs of state power and special attention to legislative procedure as such. In addition, it is obvious that simple codification is not enough, but that the legislation needs to be implemented appropriately in the day-to-day functioning of the institutions. Moreover, there should be a realistic check of whether the legal provisions in place achieve the desired objective or cause implementation problems and of where required amendments should accordingly be made to the legislation.

The discussion below illustrates the specific problems the police, judiciary and penitentiary face in their daily operations. The Iraqi police still have problems regarding equipment: many police stations do not have enough uniforms, weapons, vehicles and ammunition.⁵² There are many police officers without adequate training and adequate salaries. Moreover, the Ministry of the Interior had the problem of being a sectarian arena in which different political groups and rival militias fought each other; at certain

times officials moved around inside the ministry with heavily armed escorts, fearing assassination.⁵³ In addition, 'death squads' of Iraqi police have been responsible for sectarian violence.⁵⁴

The judiciary formally gained its independence from the other branches of state power after 2003, but the judicial system is still subjected to undue political interference. International Crisis Group reports different types of cases in this regard: threats of physical violence against judges and their friends and family, judges not conducting a fair hearing in cases of high-level corruption, dismissing the case for procedural reasons or issuing reduced sentences, the Federal Supreme Court providing interpretations of the Iraqi constitution which immutably follow the Government's point of view, etc.⁵⁵ There are on-going reports that legal provisions regarding the criminal justice system in Iraq are not being adhered to in practice: lack of due process and fair trials, long periods of pre-trial detention without judicial review, lack of ability to pursue a meaningful defence or to challenge evidence, abuse in detention, torture, etc.⁵⁶ Moreover, there is insufficient cooperation and collaboration between the different actors in the criminal justice system and a lack of understanding for each other's role. This applies especially to the relationship between the police and the judiciary. There have been repeated reports of cases in which the Ministry of the Interior detained persons without judicial authorisation in non-urgent situations and the police did not enforce court decisions, despite being legally entrusted with this task.⁵⁷ Another challenge for the Iraqi criminal justice system is the shortage of judges, judicial investigators and public prosecutors, which causes increasing delays in the investigation and adjudication of cases. Efforts have been made to face this challenge and recruit new staff, but the numbers still remain insufficient.

Some of the multitude of problems the Iraqi penitentiary service is facing are overcrowding, abuse of prisoners, the need for refurbishment of prison facilities in order to bring them into compliance with international standards, lack of adequate fiscal resources and equipment and a lack of re-socialisation programmes. The concept of re-socialisation, namely the focus of the detention regime on the return of the detainee to society, seems to be largely unknown in the Iraqi penitentiary system. Conditions in the detention facilities of the Ministry of the Interior and the Ministry of Defence and the treatment of prisoners are poor with inadequate sanitation, limited access to water and electricity, no facilities for family visits, extensive overcrowding, a deficiency of satisfactory food and medical care; in comparison, the prison facilities operated by the Ministry of Justice are reported as providing better living conditions and a better treatment of detainees.⁵⁸ Moreover, mistreatment, abuse and torture of prisoners in Iraq remain widespread.⁵⁹

There have been repeated reports about secret detention centres operated by the elite counterterrorism forces under the direct authority of Prime Minister Nouri Al-Maliki, outside the control mechanisms of the criminal justice system.⁶⁰ Predominantly, Sunni detainees have been held in these secret detention centres incommunicado, without formal charges, in inhumane conditions and subjected to torture.⁶¹ Initially, Prime Minister Nouri Al-Maliki denied the existence of the secret detention centres despite earlier allegations.⁶² At a later stage it was announced that the facilities had been shut down despite allegations to the contrary.⁶³

Last but not least, corruption is widespread throughout the entire criminal justice system. According to the Corruption Perception Index for 2012 of Transparency International, Iraq ranks 169 out of 174 and is among the bottom eight countries. Corruption takes different forms: procurement fraud, theft, the phenomenon of 'ghost employees', bribery and extortion.⁶⁴

In summary, the challenges the Iraqi criminal justice system is facing are multifaceted and characterised by a high degree of destabilisation, urgency and gravity; they encompass amongst others a very unstable security situation and violence towards

members of this system, shortage of personnel and resources, lack of training and repeated violation of legal norms. This is the background against which the EU decided to take action in order to make a contribution to the development of the rule of law sector in Iraq.

THE ROLE OF THE EU INTEGRATED RULE OF LAW MISSION FOR IRAQ

EUJUST LEX, the EU Integrated Rule of Law Mission for Iraq, is a civilian crisis management operation which was established in March 2005 under the CSDP to address the urgent needs of the Iraqi criminal justice system. It aims to do this by providing training in senior management and criminal investigation to high- and mid-level officials from the police, judiciary and penitentiary in order to improve the capacity, coordination and collaboration of the different components of the Iraqi criminal justice system with full respect for the rule of law and human rights.⁶⁵ The mission became operational in July 2005 and was established for an initial period of one year. Subsequently, the mandate was extended six times,⁶⁶ and currently EUJUST LEX will run until 31 December 2013, the sixth extension having been decided in 2012, taking into account further developments in the security conditions in Iraq and the outcome of the in-country mission activities. The initial budget for the mission was 10 million EUR, and it has been progressively increased to an amount of 27 million EUR in correlation with the growth of the mission (which currently encompasses 66 staff in Baghdad) and the recent inclusion of in-country activities in the portfolio of EUJUST LEX.

This is the first EU Integrated Rule of Law Mission simultaneously addressing several components of the criminal justice system by offering professional development opportunities to senior Iraqi police, judiciary and penitentiary officials.⁶⁷ The aim is to target the highest level of responsible officers, who would be in charge of the further development of the different sectors of the criminal justice system, and to expose them to best practices from EU member states. In this way, high-ranking officials will gain important knowledge and experience of the different ways in which the problems affecting the criminal justice system are handled in Europe so that they can transpose the newly learned methods, approaches and ideas upon their return to Iraq. The purpose is not to indoctrinate and to impose pre-made solutions to Iraqi counterparts, but to provide high-ranking decision-makers with a range of different options for dealing with the same problems in various EU member states so that they can take a decision on what and how alternatives can best be implemented in the Iraqi context. The added value of this approach is also that Iraqi officials have an opportunity to explore well-functioning criminal justice systems operating in peaceful times, outside the harsh reality of daily life in Iraq.

Initially, the course menu of EUJUST LEX activities encompassed two integrated courses on Senior Management and Management of Investigation. The aim of the course on Management of Investigation is to bring together Iraqi police and judiciary, to enhance knowledge and skills in the respective areas of responsibility, and through this to improve the understanding for and the application of joint working procedures in the field of criminal investigation. Over time, the mission developed a number of specialised courses for police, judiciary and penitentiary to meet the specific needs of the Iraqi criminal justice system while maintaining a focus on the rule of law and human rights. The course topics were determined and developed in close cooperation and coordination with Iraqi counterparts. A crucial part of the training intervention programme of EUJUST LEX is to demonstrate in very practical ways how rule of law principles and human rights protection form an integral part of professional best practices in criminal justice affairs.

Subsequently, the mission developed a course menu comprising the following courses for police, judiciary and penitentiary. The courses for police include senior police leadership, managing murder investigations, public order management and human rights,

management of training, major and critical incident management and train the trainer.⁶⁸ The judicial courses include fair trial and human rights, financial crime and forensic science (serious crime and modern techniques of investigation). The courses for the penitentiary sector deal with issues like senior prison leadership, developing prison standards within a human rights framework, strategies for managing vulnerable prisoners (females, juveniles and ethnic minorities), contingency planning and crisis management and train the trainer. It is important to emphasise that the courses take place in the different EU member states and provide examples of best practices from the country organising the course. That way, Iraqi participants can gain familiarity with different forms of organisation and different approaches to solving problems within the criminal justice system. The significant focus on practical aspects of the training interventions in the EU, whereby students visit police stations, courts and prison facilities, are a further important element of these courses.

In addition to the courses, EUJUST LEX conducts another type of training intervention in the form of a practical programme of work experience secondments, which give Iraqi police and penitentiary officers as well as judges the chance to work alongside their counterparts in the EU. That way, the Iraqi criminal justice officials have the opportunity to immerse themselves in the daily work experience of their colleagues from different EU member states, to interface with the practical day-to-day running of criminal justice institutions within the EU and to acquire modern European knowledge, skills and practical working procedures based upon the Rule of Law. In 2010, the first work experience secondments for judges from the Kurdish region in Iraq was held in London for six participants from the Kurdish Region Cassation Court, the Criminal Court of Sulaymanyia and different investigation courts; it was followed by another judicial work experience secondment in Germany later that year.⁶⁹

After more than seven years in existence, EUJUST LEX has trained over 4,800 Iraqi senior criminal justice officials (around 1,466 from the police, 684 from the judiciary and 826 from the penitentiary) with contributions made by almost all EU member states to the training sessions of the mission and recently including a contribution from Norway.⁷⁰ More than 171 activities took place in EU member states including courses and work experience secondments, and more than 72 activities have been carried out in Iraq so far. In addition, the mission organised three thematic seminars in the Middle East region at the end of 2008 and beginning of 2009: a judicial seminar on juvenile justice in Jordan,⁷¹ a penitentiary seminar in Jordan on the rehabilitation of prisoners and a police seminar on community policing in Egypt,⁷² as a preparation for the start of in-country activities. Currently, the mission fully operates in Iraq and carries out activities there.

Initially, the training interventions took place in the EU or in the Middle East region due to the challenging security situation in Iraq. However, the Joint Action establishing the mission determined that 'depending on development in the security conditions in Iraq and on the availability of appropriate infrastructure, the Council shall examine the possibility of training within Iraq'.⁷³ In July 2009, the Council of the EU extended the mandate of EUJUST LEX for the third time and authorised a pilot phase of activities in Iraq including the provision of strategic advice, follow-up mentoring and training activities 'as and where security conditions and resources allow'.⁷⁴ This decision can be described as a breakthrough in EU policy towards Iraq as the Council finally managed to achieve a unanimous decision on in-country involvement of the EU with regard to activities strengthening the rule of law. In 2003, when the military intervention in Iraq started, the Council was not able to find a common stance on Iraq because of strong Franco-German opposition.⁷⁵ Already by June 2009, the mission had conducted three preliminary pilot activities regarding the judiciary and the penitentiary in various locations in Iraq as a preparation for the start of in-country training interventions. Since the start of the fourth phase of the mission in June 2009, more than 72 training interventions in Iraq were successfully conducted including three pilot policing seminars on crime scene management and domestic violence in Baghdad and in the Kurdish

region, a high level summit on the Iraqi Judicial Development Strategy Five Year Plan 2009-2013, and a seminar for female prison officers.⁷⁶

It is important to provide training activities on the ground. However, it is also of crucial importance to provide opportunities for senior criminal justice officials to gather experiences from abroad in order to be able to reform their own system successfully.⁷⁷ Needless to say, to be able to evaluate critically the shortcomings of one's own system, it is necessary to take a look at it from the outside and compare it to other established and comparatively well-functioning systems, being aware of best practices regarding the problems and challenges a criminal justice system faces. This is of particular importance for post-dictatorial countries, which for many years formed closed societies, where international standards for the functioning of the criminal justice system were not applied, and it was difficult to travel abroad and participate in professional exchange programmes during the regime. Furthermore, the training interventions for senior officials provide expertise on single topics regarding criminal justice, which represent only a tiny fraction of the whole complex system; this makes continuous training and professional development a necessary prerequisite for a successful reform process. Another issue relates to whether and how change can be effected by single individuals, who, even at the top of the hierarchy, return to an environment that has not gone through similar experiences and might not be convinced that the solution proposed is the right one. A further issue is the coordination of international contributions to the development of the Rule of Law sector, which are numerous in the case of Iraq and can lead to a duplication of efforts or even counter-effects.

With the fourth extension of the mission in June 2010, the Council of the EU authorised training activities in Iraq as well as setting up mission offices in Basra and Erbil, and determined that the Head of Mission and the majority of its staff would move from Brussels to Iraq as soon as the security situation permits. The mission was almost completely transferred to Iraq in 2011, leaving only a very limited number of staff in Brussels, with the full transfer of staff to Iraq being completed in 2012.

FOLLOW-UP OF CSDP MISSION ACTIVITIES AND EVALUATION OF CONTRIBUTIONS TO THE DEVELOPMENT OF THE RULE OF LAW SECTOR

Generally, follow-up and evaluation of CSDP mission activities form a crucial part of the implementation of collective action in the realm of security governance, aiming to ensure the effectiveness and success of the undertakings on the ground. Follow-up of EUJUST LEX activities is a challenging task. The mission has put in place a system facilitating the follow-up of courses and work experience secondments. At the end of each training intervention, the participants present an action plan on those parts of the course content they consider could be implemented in Iraq. Mission staff put efforts into keeping up contact with course participants although these efforts have been jeopardised by a range of factors, mostly related to the challenging security situation in the country which poses difficulties regarding follow-up meetings in general and especially regarding meetings in the working place of the persons concerned, irregular internet access of former participants, etc. Nevertheless, some meetings with former participants did take place with encouraging results. For example, penitentiary officials from the Kurdish region saw the creation of prisoner employment opportunities they observed during their course in the EU as a significant innovation and contribution to the re-socialisation process in their prison facilities after their return to Iraq. Prisoner employment opportunities did not previously exist in the Iraqi penitentiary service. Similarly, one participant from the Kurdish region introduced visiting facilities for family members into the prison facility he is running, based on the model he became acquainted with during one of the courses in the EU.⁷⁸

Currently, there is no system in place for external evaluation regarding EU missions in the realm of the CSDP. Moreover, this topic remains largely un-discussed in the academic literature. As far as EUJUST LEX activities are concerned, the mission conducted an internal evaluation process in 2007 to assess the achievements of the mission during the first two phases of its operation (July 2005 – June 2006, June 2006 – December 2007). Together with independent experts from EU countries, the mission developed detailed questionnaires and other instruments for former participants of EUJUST LEX training interventions and their superiors and held a number of evaluation seminars. Some questionnaires sent to former participants from the police were not returned due to the fact that they were killed on duty. Nevertheless, overall the mission received a high response rate and witnessed a high degree of positive feedback regarding the training delivered. Former participants and their supervisors attested an improvement in learning and competence performance as well as a high degree of impact of the training on the everyday duties of the attendees.⁷⁹

With the start of the fourth phase of operations of EUJUST LEX, the mission received the mandate to commence follow-up mentoring of former participants in Iraq. At the end of 2009, two evaluation penitentiary workshops were held in the Kurdish region with former EUJUST LEX course participants to assess the outcome of the implementation of the individual action plans and to identify opportunities for in-country mentoring and further training needs.⁸⁰ With the new mandate on follow-up mentoring, the mission was specifically tasked by the Council to commit resources to follow-up activities, which is a welcome development. In 2010, EUJUST LEX held an annual evaluation conference for the penitentiary and organised a workshop in Brussels on the evaluation of mission courses and activities with the participation of course organisers from EU member states and EUJUST LEX Mission staff.⁸¹ The purpose of the seminar was to exchange lessons learned and best practices as well as ideas on the evaluation of the performance of course participants, improving feedback on the courses and alumni follow-up. In 2011, six evaluation workshops were held in Baghdad, Erbil, Soran and Brussels.⁸² However, this does not replace the need to conduct an independent and objective evaluation of mission activities in the area of the CSDP, preferably before every extension of the operational phase of a mission in order to assess the impact made and correct the course taken if needed. An evaluation of activities in the rule of law sector is a challenging task in itself because of the complexity of the system, the need for legislative action to conduct a reform, the different actors involved and their interdependencies as well as the long years needed to conduct a successful reform of the entire system. However, evaluation activities are not new for the EU institutions. In evaluation, an assessment is made as to the relevance, impact/utility, coherence, effectiveness, efficiency and economy of the specific activities.⁸³ Any evaluation must take into account the specific nature of the contribution made to the strengthening of the rule of law sector and its small-scale impact on the complex system as a whole.

CONCLUSION

EUJUST LEX has provided training for around 5,000 police, judiciary and penitentiary officials so far, emphasising not quantity but quality by taking the decision to offer professional development opportunities to senior criminal justice officials only. It is clear that this contribution will not be able to transform the entire rule of law system in Iraq immediately bearing in mind the dictatorial past of the country and the numerous challenges the system faces at the moment including the security situation. Rule of law reform is a long-term endeavour, which can only be successful in the long run if each component of the system is successfully transformed and proper collaboration is ensured.

The question of how to measure the effectiveness and sustainability of such undertakings is worth further research and exploration. It is difficult to change the mentality of a whole system that has been isolated in a dictatorship for many years. As a

start, the right anchor points in this regard are individuals in high-ranking positions, who can have an impact on restructuring the system and the professional development of their staff in line with international standards; they are the people who can provide a new vision and incentives for a change in terms of mentality and culture. However, a sustainable change can ultimately only be achieved if it is taken up and applied in the day-to-day operations by the grass roots level of any organisation. Small changes like the introduction of employment opportunities in one prison facility or visiting facilities for family members might seem insignificant, but many small changes of such a nature can contribute to the ultimate achievement of a big change.

* * *

¹ For further information on the importance of the rule of law principle for the external action of the European Union see L. Pech, 'A Union Founded on the Rule of Law: Meaning and Reality of the Rule of law as a Constitutional Principle of EU Law', 6 *European Constitutional Law Review* 2010, pp. 359-396 and L. Pech, *Rule of law as a guiding principle of the European Union's external action*, CLEER Working papers 2012/3, (2012), The Hague: Asser Institute.

² H.-G. Ehrhart, 'Security Governance as a Framework and Basis for Multi-stakeholder Partnerships', in: M. Brozka, H.-G. Ehrhart, and J. Narten, *Multi-stakeholder Security Partnerships: A critical assessment with case studies from Afghanistan, DR Congo and Kosovo* (2011), pp. 37-60

³ *ibid.*

⁴ The new Iraqi Constitution was drafted by a Constitution Drafting Committee, which has been appointed by the Coalition Provisional Authority (CPA) and consisted of 55 members of the National Assembly (see S. Ottermann, 'Q&A: Drafting Iraq's Constitution', *New York Times*, (2005, May 12), Online: http://www.nytimes.com/cfr/international/slot2_051205.html?_r=0 [Accessed 16 June 2013]); the Constitution replaced the Law of Administration for the State of Iraq for the Transitional Period. For a comprehensive analysis of the text of the Constitution see N. Brown, *The Final Draft of the Iraqi Constitution: Analysis and Commentary*, (Carnegie Endowment for International Peace, 2005), Online: <http://carnegieendowment.org/files/FinalDraftSept16.pdf> [Accessed 16 June 2013].

⁵ The author has used the official English translation of these laws and all other laws cited for the purposes of this article.

⁶ Art.14 of the Iraqi Constitution.

⁷ Art.19 Nr.5 of the Iraqi Constitution.

⁸ Art.15 of the Iraqi Constitution.

⁹ Art.19 Nr.13 of the Iraqi Constitution.

¹⁰ Art.17 of the Iraqi Constitution.

¹¹ Art.35 of the Iraqi Constitution.

¹² Art.19 Nr.2, 5, 9, 10 of the Iraqi Constitution.

¹³ Art.19 Nr.5 of the Iraqi Constitution.

¹⁴ Art.19 Nr.11 of the Iraqi Constitution.

¹⁵ The following paragraph does not contain an exhaustive list of all international conventions to which Iraq is a party, but serves the purpose of providing background information and context on some conventions having relevance for the criminal justice system.

¹⁶ For further information on this topic see amongst others J. Kleinfeld, 'Enforcement and the Concept of Law', 121 *Yale Law Journal Online* 293 (2011), Online: <http://yalelawjournal.org/2011/11/22/kleinfeld.html> [Accessed 10 June 2013] and F. Cross, 'The Relevance of Law in Human Rights Protection', *International Review of Law and Economics* 19 (1), pp. 87-98.

¹⁷ This article concentrates on the components of the system representing the state and does not take into account the role of lawyers/defenders in criminal proceedings.

¹⁸ J. Jones, *Report of the Independent Commission on the Security Forces of Iraq* (2007), p. 95.

¹⁹ R. Perito, *The Iraqi Federal Police: US Police Building Under Fire*, (Washington: United States Institute of Peace, 2011).

²⁰ J. Jones, *op. cit.* n18.

²¹ R. Perito, p. 6, *op. cit.* n19.

²² R. Perito, p. 12, *op. cit.* n19.

²³ US Department of State, *Iraq Status Report* (2009, February 4).

²⁴ R. Perito, *op. cit.* n19.

²⁵ Art.84 and 85 of the Iraqi Constitution.

²⁶ See also CPA Memorandum Nr. 12 on the Administration of an Independent Judiciary (2004, August 5). Online: <http://gjpi.org/wp-content/uploads/cpa-memo-12.pdf> [Accessed 16 June 2013], which

implements CPA Order Nr. 35 Reestablishment of the Council of Judges (2003, September 13), Online: <http://gjpi.org/wp-content/uploads/cpa-order-35.pdf> [Accessed 16 June 2013].

²⁷ Art.88 of the Iraqi Constitution.

²⁸ Section 2, Membership, Paragraph 1 of CPA Order Nr. 35, op. cit. n26.

²⁹ For further information see International Crisis Group *Failing Oversight: Iraq's Unchecked Government*, Middle East Report Nr 113 (2011), Online:

<http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/113%20-%20Failing%20Oversight%20-%20Iraqs%20Unchecked%20Government.pdf> [Accessed 16 June 2013]; an overview of different models for Judicial Councils can be found in W. Voermans & P. Albers, *Councils for the Judiciary in EU Countries*, (Leiden/The Hague, 2003).

³⁰ Art.93 of the Iraqi Constitution.

³¹ Art.89-91 of the Iraqi Constitution.

³² Art.92 of the Iraqi Constitution.

³³ M. Mahmoud, *The Judicial System in Iraq: A Review of the Legislation Regulating Judicial Affairs in IRAQ*, (Baghdad, 2004).

³⁴ Public Prosecutor Law No. 159 of 1979, Online: http://gjpi.org/wp-content/uploads/2009/02/prosecution_law.pdf [Accessed 16 June 2013].

³⁵ M. Mahmoud, op. cit. n33.

³⁶ For further information on juvenile justice in Iraq see I. Catlett, *Juvenile Justice in Transition: Past Challenges and New Opportunities in Post-Conflict Iraq* (2010), Online: <http://sites.tufts.edu/jha/archives/787> [Accessed 16 June 2013].

³⁷ Juvenile Welfare Law Nr. 76 of 1983, Online: <http://gjpi.org/wp-content/uploads/juvenile-welfare-law-76-of-1983.pdf> [Accessed 16 June 2013].

³⁸ Art.3 of the Juvenile Welfare Law Nr. 76 of 1983.

³⁹ Art.16 of the Public Prosecution Act Nr. 159 of 1979.

⁴⁰ M. Mahmoud, op. cit. n33.

⁴¹ http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=176 [Accessed 16 June 2013].

⁴² Bureau of Democracy, Human Rights and Labour, *2010 Human Rights Report Iraq*, Online: <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154462.html> [Accessed 16 June 2013].

⁴³ For key security/violence indicators see K. Katzman, *Iraq: Post-Saddam Governance and Security*, Congressional Research Service (2009), p. 28.

⁴⁴ Iraqi Body Count Report, *Iraqi Deaths from violence 2003-2011*, Online: <http://www.iraqbodycount.org/analysis/numbers/2011/> [Accessed 16 June 2013].

⁴⁵ 'Iraqi Police Deaths Hit 12,000' (2006, December 24) *BBC*, Online: http://news.bbc.co.uk/2/hi/middle_east/6208331.stm [Accessed 10 June 2013].

⁴⁶ Iraqi Body Count Report, *Iraqi Deaths from violence in 2012*, Online: <http://www.iraqbodycount.org/analysis/numbers/2012/> [Accessed 16 June 2013].

⁴⁷ American Bar Association, *Iraq Legal Development Project: Judicial Reform Index for Iraq*, (Washington, 2006).

⁴⁸ Special Inspector General for Iraq Reconstruction (SIGIR), *Quarterly Report and Semi-annual Report to the United States Congress*, July 2011, Online: http://www.sigir.mil/files/quarterlyreports/July2011/Report_-_July_2011.pdf [Accessed 16 June 2013]; see also United Nations Assistance Mission for Iraq (UNAMI), *2010 Report on Human Rights in Iraq*, Online: <http://unami.unmissions.org/LinkClick.aspx?fileticket=9hA1KMfch4I%3D&tabid=3174&language=en-US> [Accessed 16 June 2013].

⁴⁹ Bureau of Democracy, Human Rights and Labour, *2008 Human Rights Report Iraq*, Online: <http://www.state.gov/j/drl/rls/hrrpt/2008/nea/119116.htm> [Accessed 16 June 2013].

⁵⁰ I. Waleed & A. Rasheed, 'Judges Targeted as Bomber Kills 57 Iraq Army Recruits', Reuters (2010, August 17), Online: <http://www.reuters.com/article/2010/08/17/us-iraq-violence-idUSTRE67G0U520100817> [Accessed 16 June 2013].

⁵¹ SIGIR, op. cit. n48.

⁵² J. Jones, op. cit. n18.

⁵³ See N. Parker, 'Interior Ministry Mirrors Chaos of a Fractured Iraq', *Los Angeles Times* (2007, July 30), Online: <http://articles.latimes.com/2007/jul/30/world/fg-interior30> [Accessed 16 June 2013]; M. Deflem and S. Sutphin, 'Policing Post-war Iraq: Insurgency, Civilian Police, and the Reconstruction of Society', *Sociological Focus*, Vol. 39, Nr. 4, 265-283 and International Crisis Group, *Loose Ends: Iraq's Security Forces between US Drawdown and Withdrawal*, Middle East Report Nr 99 (2010). On the difficulties in reforming the Ministry of Interior see A. Rathmell, *Fixing Iraq's Internal Security Forces: Why is Reform of the Ministry of Interior so Hard*, (CSIS, 2007), Online: http://csis.org/files/media/csis/pubs/071113_fixingiraq.pdf [Accessed 16 June 2013].

⁵⁴ R. Perito, op. cit. n19.

⁵⁵ International Crisis Group 2011, op. cit. n29.

⁵⁶ Bureau of Democracy, Human Rights and Labour 2010, op. cit. n42; Amnesty International, *Carnage and Despair: Iraq Five Years On*, (London, 2009); Human Rights Watch, *The Quality of Justice: Failings*

of Iraq's Central Criminal Court (2008), Online:

<http://www.hrw.org/sites/default/files/reports/iraq1208web.pdf> [Accessed 16 June 2013]; United Nations Assistance Mission for Iraq (UNAMI), *Human Rights Report 1 January – 30 June 2008* (2008), pp. 22ff.

⁵⁷ American Bar Association, op. cit. n47.

⁵⁸ Bureau of Democracy, Human Rights and Labour 2010, op. cit n42.

⁵⁹ UNAMI 2010, op. cit n48.

⁶⁰ K.-C. Redmon, 'In Iraq, Torture and Secret Prisons Continue', *The Atlantic*, (2011, February 15), Online: www.theatlantic.com/international/archive/2011/02/in-iraq-torture-and-secret-prisons-continue/71266 [Accessed 16 June 2013]; N. Parker, 'Elite units under an office of Maliki's linked to secret jail where detainees face torture, Iraq officials say', *Los Angeles Times*, (2011, July 14), Online: <http://articles.latimes.com/2011/jul/14/world/la-fg-iraq-prison-20110715> [Accessed 16 June 2013]; N. Parker, 'Secret Prison Revealed in Baghdad', *Los Angeles Times*, (2010, April 19), Online: <http://articles.latimes.com/2010/apr/19/world/la-fg-iraq-prison19-2010apr19> [Accessed 16 June 2013]; Amnesty International, *New Order, Same Abuses: Unlawful Detentions and Torture in Iraq*, (London, 2010); Human Rights Watch, *Iraq: Detainees Describe Torture in Secret Jail* (2010), Online: <http://www.hrw.org/news/2010/04/27/iraq-detainees-describe-torture-secret-jail> [Accessed 16 June 2013]; Human Rights Watch, *At a Crossroads: Human Rights in Iraq Eight Years After the US-led Invasion*, (New York, 2011); Human Rights Watch, *Iraq: Secret Jail Uncovered in Baghdad*, (New York, 2011), Online: <http://www.hrw.org/news/2011/02/01/iraq-secret-jail-uncovered-baghdad> [Accessed 16 June 2013].

⁶¹ For detailed information see Human Rights Watch 2011, op. cit n60.

⁶² 'Iraq's Maliki Denies Reports of Secret Prisons', Al Arabiya News, (2011, February 6), Online: <http://www.alarabiya.net/articles/2011/02/06/136493.html> [Accessed 16 June 2013].

⁶³ N. Parker, op. cit n60.

⁶⁴ See International Crisis Group 2010, op. cit n53, for further information.

⁶⁵ Council of the European Union, Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX.

⁶⁶ Council of the European Union, Joint Action 2006/413/CFSP on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX; Council of the European Union, Joint Action 2007/760/CFSP on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX; Council of the European Union, Joint Action 2009/475/CFSP on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX; Council of the European Union, Decision 2010/330/CFSP on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX; Council of the European Union, Decision 2011/380/CFSP amending Decision 2010/330/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX-IRAQ; Council of the European Union, Decision 2012/372/CFSP amending Decision 2010/330/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX-IRAQ.

⁶⁷ G. Steinberg, 'The European Union Integrated Rule of Law Mission for Iraq (EUJUST LEX): A Policy Surrogate with Potential.', in: Asseburg, M. & Kempin, R. (ed.), *The EU as a Strategic Actor in the Realm of Security and Defence?*, SWP Berlin, pp. 125-134. On individual contributions of EU MS in Iraq see E. Burke, *The Case for a New European Engagement in Iraq*, Fridtjof Working Paper, (Madrid, 2009), Online: <http://www.fride.org/publication/555/the-case-for-a-new-european-engagement-in-iraq> [Accessed 16 June 2013].

⁶⁸ S. White, 'EUJUST LEX – The EU Integrated Rule of Law Mission for Iraq', *Journal of Defense and Strategy*, Vol.8 (2), December 2008, pp. 97-103.

⁶⁹ EUJUST LEX, *News in brief 2010*, Online: http://eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/news/archives/index_en.htm [Accessed 16 June 2013].

⁷⁰ EUJUST LEX factsheet 2013, Online:

http://www.consilium.europa.eu/uedocs/cms_data/docs/missionPress/files/20130314%20FACTSHEET%20EUJUST%20LEX%20-%20EN%20Mar%202013.pdf [Accessed 16 June 2013].

⁷¹ EUJUST LEX, *News in brief 2008*, Online: http://eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/news/archives/index_en.htm [Accessed 16 June 2013].

⁷² EUJUST LEX, *News in brief 2009*, Online: http://eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/news/archives/index_en.htm [Accessed 16 June 2013].

⁷³ Art.2 Nr.3 Council Joint Action 2005/190/CFSP of 7.3.2005 on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX.

⁷⁴ Art.2 Nr.3 Council Joint Action 2009/475/CFSP of 11.6.2009 on the European Union Integrated Rule of Law Mission for Iraq EUJUST LEX.

⁷⁵ Comprehensive information on this issue can be found in J. Spyer, 'Europe and Iraq: Test Case for the Common Foreign and Security Policy', *Middle East Review of International Affairs*, Vol. 11 (2), Article 7/8; J. Lewis, 'EU Policy on Iraq: The collapse and reconstruction of consensus-based foreign policy', *International Politics*, Vol.46 (4), pp. 432-450 and G. Steinberg (op. cit n67). On coordination issues during the Iraq crisis see also U. Puetter & A. Wiener, 'Accommodating Normative Divergence in European Foreign Policy Coordination: The Example of the Iraq Crisis', *JCMS*, Vol. 45 (5), pp. 1065-1088.

⁷⁶ For further information see footnote 72.

⁷⁷ For a critical evaluation of out-of-country training see D. Korski, 'The Integrated Rule of Law Mission for Iraq (EUJUST LEX)', in: G. Grevi et al. (eds), *European Security and Defence Policy: The first ten years (1999-2009)*, Institute for Security Studies, (Paris, 2009); R. Gowan & D. Korski, 'The EU, So Far', in: Heinrich Boell Stiftung (ed.), *What Can Europe Do in Iraq. Recommendations for a New European-U.S. Collaboration*, (2009), pp. 73-85; C. Gourlay & A. Monaco, 'Training civilians and soldiers to improve security in Iraq: An update of EU and NATO efforts', *European Security Review* 25, pp. 1-3, Online: www.isis-europe.org/pdf/esr_26.pdf [Accessed 16 June 2013].

⁷⁸ Visit and interview in August 2008.

⁷⁹ Interviews with former participants in Iraq.

⁸⁰ EUJUST LEX 2009, op. cit n72.

⁸¹ EUJUST LEX 2010, op. cit n69.

⁸² EUJUST LEX 2011, *News in brief*, Online: http://eeas.europa.eu/csdp/missions-and-operations/eujust-lex-iraq/news/archives/index_en.htm [Accessed 16 June 2013].

⁸³ For more comprehensive information see http://ec.europa.eu/dgs/secretariat_general/evaluation/index_en.htm [Accessed 16 June 2013].

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

Practising EU Security Governance in the Transatlantic Context: A Fragmentation of Power or Networked Hegemony?

Arnold Kammel *Austrian Institute for European and Security Policy*

Benjamin Zyla *University of Ottawa*

Citation

Kammel, A. and Zyla, B. (2013). 'Practising EU Security Governance in the Transatlantic Context: A Fragmentation of Power or Networked Hegemony?', *Journal of Contemporary European Research*. 9 (3), pp. 440-459.

First published at: www.jcer.net

Abstract

Security governance is commonly understood as an answer to the new and constantly changing security environment after the Cold War. In the context of the European Union (EU), the governance approach is believed to understand better the evolving institutional characters, networks, and processes of the EU's actions in global politics. By employing a neo-Gramscian framework we challenge the 'orthodox view' in the EU governance literature that networks are flexible and hierarchy-immune responses to increasingly global policy challenges. We argue that networks in and of themselves reproduce existing power structures, and discuss the presence and replication of hegemony through these networks by examining the EU's governance system post the Lisbon Treaty.

Keywords

European security governance; Gramsci; transatlantic relations; CFSP; critical theory

The end of the Cold War and the bi-polar conflict between the Soviet Union and the United States of America (USA) heralded a new series of challenges and changes regarding how we understand and theorise about the emerging structures of international politics. Security governance is conceived as a response to these new challenges and complexities. It is posited as an alternative and yet complementary theoretical construct that seeks to capture and explain the contemporary changes, emerging dynamics, and fluidity amongst the wider range of public and private actors and agents operating within the context of the new global security environment. Governance thus has quickly become a competitor to existing theories, especially in the field of International Relations (IR) that are prone to neglect the 'concepts of change, complexity, and dialectics' (Rosenau 2000: 162). In a sense, the security governance approach is an attempt to bridge this lacuna by providing an alternative theoretical framework that facilitates the observation and identification of the changing features, players, and networks of international actors.

Network analysis has become one of the core aspects in the governance research design. Traditional theoretical approaches to security are seen to be increasingly unable and ill-equipped to account for the diminishing nature of inter-state conflicts, as well as the rise of non-traditional, non-state based security threats and actors such as terrorism, civil wars, cyber wars, or transnational crime (Krahmann 2008: 1). This is so because the authors and perpetrators of these security threats are increasingly non-state actors and networks who themselves are not confined to a centralised territorial space. Kirchner (2007: 5) echoed these limitations by noting that 'agency is now attributed overwhelmingly to non-state actors that are beyond the reach of states or the traditional instruments of states in which threats posed against states are now indirect rather than direct'.

In the context of the European Union (EU), the governance framework is well equipped to analyse the evolving institutional characters, networks, and processes of the EU's actions (Sperling and Kirchner 2008: 1). It does so by recognising the existence of the member states as heterogeneous rather than homogenous actors (Sperling 2009: 2), and acknowledging the 'porousness of states, the involuntary abnegation of sovereignty, and the emergence of malignant non-state actors [that] has affected these states in different measure' (ibid: 1).

As a result of this porousness of states, a great degree of fragmentation and diffusion of authority has been noted in the EU governance literature. This is especially the case in

the area of European integration and Europe's foreign and security policy. Today, a multiplicity of security actors are involved in the management of the EU's security affairs who are themselves members of formal and informal networks (see Mérand 2008; Wolin 2000). Indeed, the sociologically informed concept of networks is often identified in the EU governance literature as a flexible and hierarchy-immune response to increasingly global policy challenges (Jessop 2003: 101-102) that fosters a new pluralism and empowers civil society groups, and is thus believed to enhance the democratization of public policy.

According to some, this view can be conceived as the 'orthodox view' in EU governance studies and has long prevailed in the literature (see Marinetto 2003). It is the objective of this article to challenge this orthodox view of governance, and European (security) governance in particular. We argue that networks simply reproduce existing power structures and relations among the relevant actors. More specifically, these often-times loosely constituted networks reproduce the same hierarchies and power structures that can be found in states, governments, trade unions or any other type of political organisation (Davies 2011). We elaborate our theoretical critique of the governance approach in the empirical section by examining the practice of EU governance after the Lisbon Treaty of 2009 and focusing on the EU's experience in Libya as a case in point. Through the application of a neo-Gramscian approach to governance networks (Lowndes 2001) and positing that a transnational (or supranational) hegemony exists to which the nation states are increasingly subordinate (Cox and Schechter 2002) we discuss the presence and replication of hegemony through these networks in the context of transatlantic affairs. Specifically, based on the case of the EU's experience in Libya in 2011 we show that political leaders and high-ranking government officials particularly remain the true orchestrators of governance networks and thereby replicate existing social structures. We also show how decisions and outcomes produced are highly constrained by market-based considerations.

This neo-Gramscian approach to European governance provides an innovative perspective to existing scholarship by questioning the normative aspects of global governance, which is an element that is often overlooked in mainstream analysis of European security governance. A network analysis was chosen as the focus of this article because policy networks are known to be relatively stable and show a steady yet dialectical interdependence between, in the case of the EU, political elites in the member states and those at the supranational level.

In order to show that existing power structures and possibly hegemony are replicated through the governance approach and almost entirely blended out of existing studies on governance, it is necessary to revisit the ontological underpinnings of the governance, and particularly the security governance, concept. We accomplish this in the first and second sections of the article. While the first section discusses the governance approach from a broader political science perspective, the second section discusses the epistemological and ontological tenets of security governance with a particular focus on the European Union. By grounding our argument in the existing literature, we achieve two objectives. First, we are able to place our theoretical critique firmly within the existing literature on governance and security governance. Second, this approach allows us also to show that ideas such as systems of rule, heterarchy of self-organisation, networks, the absence of authority and hierarchy, and fragmentation of power are to be found at the core of that literature. Third, it allows us to show that the literature on EU security governance particularly mainly discusses the external dimension of the EU's external actions, including the EU's preferred policy tools such as assurance, prevention, compulsion, and protection. However, in so doing, it fails to pay attention to the internal dimension of the EU's policy and preference formation processes and thus power structures. The penultimate section empirically applies and tests our theoretical critique on the governance approach as discussed in sections one and two of the article. Specifically, we use the EU governance system after the Lisbon Treaty, with a focus on

Libya in 2011, to show that the European security governance literature shows a gap in the sense that networks in and of themselves reproduce already existing power structures.

FROM GOVERNMENT TO GOVERNANCE: (RE)FRAMING THE POLITICAL PROCESS

The current manifestation of the government-governance debate is rooted in the political and economic changes of the late twentieth century, especially in an ever-increasing global connectedness of people, goods, and services, which some scholars label 'globalization'.¹ These forces have undoubtedly affected the institution of the nation state, particularly in its ability to govern sovereignly. To be sure, government is *not* synonymous with governance although at one point in time governance was indeed associated with government, namely through 'the exercise of power by political leaders' (Kjaer 2004: 1). Rosenau (1992: 4) echoes this by noting that 'both [governance and government] refer to purposive behaviour, to goal-oriented activities, to systems of rule'.

Although sometimes used interchangeably within the mainstream political discourse, the more specialised literature signifies and defines each term by its own meaning and by a distinct set of practices, methods, and processes. The concept of authority—informal or formal—is at the heart of the debate. Rosenau, for example, distinguishes the two terms by arguing that:

government suggests activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance (ibid).

Rhodes (1996: 652) builds on this definition by finding that the term government can be defined as the 'activity or process of governing or governance, a condition of ordered rule, those people charged with the duty of governing, or governors and the manner, method or system by which a particular society is governed'.

The interchangeable use of the two terms has its roots in history, especially in Europe, starting with *government*. In the aftermath of World War II and the processes of rebuilding and reconstructing broken societies, Western liberal democracies in Europe and North America experienced an expansive definition of government. The term became synonymous with expanded civil liberties, freedoms and the construction of a welfare state system that provided generous social programmes and services for European citizens. In many ways, this expansion resulted in a growing bureaucratic apparatus that was needed to manage, administer, and regulate the new social programmes. Indeed, western liberal democratic governments 'took on a higher profile embarked on political projects of regulation, economic redistribution and, more generally, an expansion of the political sphere of society' (Pierre and Peters 2000: 2). Put differently, the post-war period witnessed an ontological shift of the political and economic classes regarding the perceived obligations and responsibilities accorded and afforded to the nation state. No longer was the state expected to remain a passive actor regulating the functions and operations of the domestic and global order but instead to become an active participant in the ordering, regulating and governing of the political, social and economic spheres. Thus, 'this period of time is associated with western liberal governments acting as appropriate, legitimate and unchallenged engines for social change, equality and economic development' (ibid.). In short, until about the mid-1970s, the processes and practices associated with post-war governing meant expanding

administrative duties and centralised bureaucracies as well as increased legitimacy, leverage and power accorded to state officials.

This consensus on the role and interventionist nature of the state started to disintegrate in the late 1970s as a consequence of the turmoil in the global economy and financial instabilities resulting in fiscal cutbacks of government programmes, especially the institution of the welfare state writ large (Mayntz 1993: 9). Indeed, the pushback in the 1980s led to a shift towards the governance paradigm both in terms of theory and practice while acknowledging problems associated with 'bureaucratization, fiscal deficits, inefficiencies, and overregulation' (ibid). Those attacks were launched predominantly by free-market pundits who challenged the activist and interventionist role of the state philosophically and ideologically by calling upon the primacy of the market to manage the ever-increasing forces of globalization. This ideologically driven narrative became institutionalised domestically with the electoral victories of Ronald Reagan and Margaret Thatcher who called for replacing the role of the state with the free market — that is 'privatization, deregulation, cut-backs in public spending, tax cuts, monetarist economic policies, radical institutional and administrative reforms' (Pierre and Peters 2000: 2) — while advocating a strong role for the state in the area of foreign and security policies and expressing a clear distrust for international institutions. Such change of practice was believed to be foundational for the continued health and prosperity of advanced liberal democratic governments. As these tenets became more legitimised and accepted in society, there was a concomitant shift in emphasis conceptually, empirically, and rhetorically from a discourse of government to one of governance. Indeed, *governance* established itself as an acceptable and preferred ideological alternative to government, and *ergo*, governing.

At the most general level, the term governance 'denotes a conceptual or theoretical representation of co-ordination of social systems as well as the role and function of the state in that process' (Pierre 2000: 3). Above all, governance seeks to provide an explanatory framework to illustrate and navigate the increasing complexity and accelerated change(s) associated with the (inter)national environment as well as the socio-political and economic processes and practices that accompany it. It is thus conceived as being a distinct and more encompassing concept than government (Rosenau 1992: 4) and denotes a shift from 'institutions to processes of rule' (Pattberg 2006: 4; Walters 2004: 29; Rosenau 1992: 7) to the 'pluralization of the forms of government' (Walters 2004: 31). Others have defined governance as 'systems of rule, as the purposive activities of any collectivity that sustains mechanisms designed to insure its safety, prosperity, coherence, stability and continuance' (Rosenau 2000: 162). Kjaer (2004: 3), on the other hand, defined governance as the 'stewardship of formal and informal political rules of the game. Governance refers to those measures that involve setting the rules for the exercise of power and settling conflicts over such rules'.

In spite of these definitional variances, scholars appear to be in agreement that at the ontological core of the governance term is the delinking of a central authority (i.e. government) from the political process of rule and governing at the local, national, and international levels. As Rosenau (2005: 122) puts it, 'the process of governance is the process whereby an organization or society steers itself, and the dynamics of communication and control are central to that process'. To be clear, the absence of a central authority does not equate to a descent into chaos or anarchy, but rather an organisational reshuffling and diffusion of the centres or networks of power and the advent of other political actors into the process of governing (Bevir and Rhodes 2010).² The resulting 'heterarchy of self-organization' at the international level assumes the existence of multiple centres of power and a 'multiplicity of responses to a globalizing world' (Webber et al. 2004: 5). Therefore, the notion of 'steering' is foundational in understanding the mechanisms and policy outcomes of governing denoting 'the structures and processes that enable governmental and nongovernmental actors to coordinate their interdependent needs and interests through the making and

implementation of policies in the absence of a unifying authority' Krahmann (2003: 331). Indeed, within the theoretical (re)framing of governance theory is the understanding that 'political institutions no longer exercise a monopoly of the orchestration of governance' (Pierre 2000: 4). No longer are governments and their associated bureaucracies and agencies the monolithic and hegemonic player in the process of governing. Governance catapults and redefines the goals of government by 'managing the rules of the game in order to enhance the legitimacy of the public realm' (Kjaer 2004: 15). It does so by propagating the notions of efficiency, accountability and responsibility while denoting the fragmentation of a political authority amongst the variety of local, national and international agents towards formal and informal networks and non-governmental organisations.

Yet, while the discourse on governance perpetrates and advances the principle of accountability, the political reality is one of diminishing transparency and public accountability of the processes and practices of governing to beholden national and global publics. More abstractly speaking, the concept of governance broadens the spatial boundaries by recognising the existence, interplay and ascending power of a variety of actors in the processes of governing and policy outcomes. Above all, it does so by placing emphasis on self-governing networks, for by 'drawing on the imagery of cybernetics and complexity theory, governance presents a conceptual landscape of self-regulating systems and proliferating networks [...]' in which governance 'takes place within, and in relation to, networks presumed to have their own autonomy and materiality' (Walters 2004: 30).

By doing so, governance provides a window that widens the spatial landscape by acknowledging that no single governing agency—either public or private—is capable of individually solving the diverse, complex and dynamic problems that are arising as the result of the growing global interdependence of economies, societies and political cultures writ large (see Pollitt 2003: 36). There is no longer a precise top-down hierarchy with regards to policymaking and governance in governing institutions whereby the national government is singled out as being the preeminent actor (Kennett 2008: 4). Indeed, governance denotes the blurring of boundaries between the public and private spheres in regard to the policy process and its outcomes, and is seen as being decentralised and horizontal (Daase and Friesendorf 2010: 2). This transformation, however, has not rendered the role of the state irrelevant or even obsolete (Jessop 2000)

What all these definitions of governance seem to share is the assumption that the new form of social relations by way of social networks is free from power structures or even hierarchy. Indeed, some analysts have mistakenly implied that the concept of governance somehow suggests an absence of coercion, strong material incentives, or hard power for the management of networks (Stoker 2011). However, networks do not exclusively operate on mutual trust and respect to help facilitate social relations inside the network as commonly assumed (Lambright et al. 2010: 77). On the contrary, they are full of power games, bullying, and coercive practices (Kickert et al. 2009). Above all, they are subject to powerful states or their particularistic interests. As Davies (2011: 5) puts it, '[t]he historical ubiquity of governance networks itself says nothing about the power relations they embody, hierarchical or otherwise, their authenticity as vehicles for democratic inclusion or their changing form and function over time.' Indeed, in building on neo-Gramscian approaches to governance it is vital to understand the nature, quality and purpose of connections among the members of the network as well as the power relations they embody.

Neo-Gramscian perspectives were initially applied to the study of hegemony and questions of world order in the field of International Political Economy by highlighting the historical specificity of capitalism and production in the areas of knowledge, institutions, and products (Cox 1987, 1983, 1981). Hegemony in the Gramscian sense tried to understand how a ruling group establishes and maintains its rule, for example through

consent, domination (Rupert 1995) within the state and its institutions, or the development of ideas and norms. Those ideas then allow one to analyse the extension of power relations beyond the nation state and the economy into civil society where a particular perception of the world was developed and maintained. In other words, Gramscian approaches tried to understand how dominant states are configured and how they transport ideas and construct institutional structures. However, Cox's analysis of hegemony largely remained state centric (Moss 2000; Carchedi 1997: 108-109). More recent modifications to those established approaches (Bonefeld 2002, 2001) focused their analysis on the social relations of production, which are equally expressed in the state and the labour (or the 'market'). Both engender social forces. Consequently, this social ontology suggests that class struggle in the neo-Gramscian sense can be understood as a 'heuristic model for the understanding of structural change' (Cox and Sinclair 1996: 57-58), also at the international level whereby the class struggle takes place between national capital and labour and the transnational forces of capital and labour (van Apeldoorn 2002: 26-34). Against this backdrop, it is evident that neo-Gramscian approaches acknowledge agency in the social relations of production, which is considered dialectical (Joseph 2008, 2002). In that sense, one is equipped to uncover, for example, the social forces behind processes of globalization or networks, and to highlight the role of social ideas in that process. Specifically, in the neo-Gramscian sense, ideas have two functions: first, they form a constitutive part of intersubjective meanings whereby individuals and groups understand their social situation and the possibilities for social change (Gill and Law 1988). Second, ideas can be used to legitimise material interests (i.e. certain policies and decisions) by intellectuals or members of the elite (Bieler 2006: 123) who are able to articulate and enforce those ideas due to their class location. This has sometimes been referred to as 'transnational hegemony' (Morton 2003; Gill 2003, 1993, 1990; Gill and Law 1988: 355). What is interesting and important in the context here is that these so-called historical blocs involve reproduction and ongoing consent and coercion. In responding to a call to widen the concept of hegemony to include issues such as identity (and its formation), culture, and the role of class at different levels of analysis, this article discusses through a network analysis how existing power structures within the European Union, for example amongst policy elites (Marsh and Rhodes 1992), are essentially replicated through either formal or informal channels and processes, and do not depend on mutual trust (Davies 2011). Moreover, network analysis has shown that networks are heavily governmentalised by a dominant alliance (or alliances) while social partners are marginalised (Kokx and van Kampen 2009). By the same token, when networks experience openness and plurality, they tend to close (Lawless 2004).

In summary, simply because networks became the prevalent focus of recent literature on governance, this does not necessarily mean that a networked society or community is open, non-hierarchical or that power relations are symmetric (Hart 2003: 221). As we show below in discussing the most recent institutional changes under the Lisbon Treaty, even a relatively close network, such as the transatlantic partnership, is full of power relations that are asymmetrical. Indeed, it shows a reflection of hierarchy that is usually found in the international system of states, and does not require high levels of trust to function (Klijn 2008: 119). That is to say that transatlantic connectivity is a form of power in itself, and thus can be used as a vehicle to include or exclude states in and from the decision-making process. More specifically, a network such as the transatlantic partnership consists of formal rules and regulations that are enforced by states (Lagadec 2012), which in turn recreates existing power relations. Contrary to liberal conceptions of the state and civil society, neo-Gramscian approaches show that societal groups (or social classes) are competing for leadership (political or otherwise) and sometimes dominance (hegemony) of social relations. This is particularly visible in the current Euro crisis where, at the time of writing, Germany and France appear to be the two hegemonic players (Paterson 2011). In short, networks reproduce and sometimes perpetuate existing hierarchies and inequalities, and thus create distrust amongst its members. Networks are, as Stone (2009: 266-7) noted, as routine and unexceptional as

command. They show that hierarchy is still the norm (Magnetite 2003: 144; Davies 2000), which is inscribed in elites and their language (Hayward 2004; Habermas 1987). This suggests that the democratic potential of policy networks according to the orthodox view of governance is exaggerated.

This critical perspective and sometimes partial misconception of the governance concept can also be found in the more specialised literature on security governance, which we will discuss in the next section and which is relevant to understanding the transatlantic partnership conceived of as a network between European states, the United States, and Canada.

FROM GOVERNANCE TO SECURITY GOVERNANCE

Security governance scholars are united in sharing the ontological assumption that in the age of globalization threats to national security 'extend beyond national borders and also are structured along functional lines' (Krahmann 2005: 23). This allowed for the outsourcing of security tasks from governments to private companies or NGOs to maintain order. In that vein, security governance delineates itself from traditional IR theory in its treatment of security policy in that the former 'is marked by non-linear and horizontal policy coordination while under traditional notions, security policy was seen as having a specific chain of command' (Daase and Friesendorf 2010: 2). The theoretical challenge remains how to address adequately 'the internal differentiation and fragmentation' (ibid) of the post-Cold War security architecture. Rosenau's observation that the world is a 'globalizing space' and that national sovereignty is transferred from the domestic to the European level holds merit here. Moreover, 'this multi-centric world competes, cooperates or otherwise interacts with the state-centric world' (Rosenau 2005: 163), and thereby renders the pure national and international levels of analysis obsolete. In short, we are told that the new world order is so decentralised that it does not appear to lend itself either to hierarchy or coordination under hegemonic leadership. The result is a multi-level system of governance—a system of continuous negotiation among interconnected governments at several territorial tiers (Marks et al. 1996). Specifically, the concept of multi-level governance points at the consequences of European integration for domestic political institutions, actors, and policy processes and vice-versa (Kohler-Koch 2003, 2000, 1998; Börzel 1999) whereby the state assumes the role of a 'meta-governor'—that is 'coordinating different forms of governance without necessarily providing exact coherence amongst them' (Walters 2004: 31). It also indirectly suggests an increased level of participatory democracy by promising to engage a wider share of civil society as well as an absence of power relations or hegemony in a given network of states and their policy elites. In short, the multi-level governance concept implies a fragmentation of political authority and absence of power as a currency to manage those networks at different political levels.

As with the debates on governance, there is a multiplicity of applications regarding the theorising of security governance. It has been conceived as a general social theory:

as a theory of networks, as a system of international and transnational regimes and as a heuristic device for recasting the problem of security management in order to accommodate the different patterns of interstate interaction, the rising number of non-state actors, the expansion of the security agenda, and conflict regulation or resolution (ibid: 5).

As noted by Wagnsson and Hallenberg (2009: 127), 'security governance gains its conceptual purchase from a broad view of what constitutes security, the process of securitization, the role of non-state actors as agents of threat, and the importance of non-state referents as central components of many security governance systems'. Put differently, security governance is seen as a platform in which alternative forms of

governance can be categorised while being elastic enough to accommodate theoretical frameworks that focus on other aspects and facets of the security dilemma. Security governance, especially in contrast to competing concepts such as security communities or regimes, is thus arguably more global in its conceptual application and scope given its capacity to account for a large number of actors and 'its focus on institutionalized co-operation on shared norms' (ibid: 128). As such, security governance is an inherently interdisciplinary analytical device while situating itself firmly within the wider security and governance discourses. More specifically, it borrows from the discourse on security by recognising the ascendancy of other threats beyond those associated with the military defence of the state. Security governance thus accepts and acknowledges the utility of a broadened non-military orientated security agenda. By the same token, it delineates itself from rationalist IR theory ontologically by recognising the loss of primacy of state-centric approaches to international politics as well as the ascendancy of multiple private and public actors in the realm of security policy making. It also borrows from the governance approach by recognising the diffusion of authority, the process of coordination and management by a diverse set of actors into the sphere of security as well as states subcontracting many of their security tasks to other international actors and institutions (ibid: 4). It also seems to suggest an absence of power relations, the existence of mutual trust among members of a network, and a fragmentation of political authority.

Indeed, the conceptual appeal of the security governance concept is its ability to cast a wider net of framing and capturing the interests, actions and players involved in the attainment of group security and the containment of threats and new found risks. While security governance acknowledges the central role still played by the state, theorists also acknowledge the evolving trend towards a new system of security architecture, particularly in regards to governing transatlantic relations. Specifically, the security governance concept comprises five central features:

heterarchy; the interaction of a large number of actors, both public and private; institutionalization that is both formal and informal; relations between actors that are ideational in character, structured by norms and understandings as much by formal regulations; and finally collective purpose' (Webber et al. 2004: 8).

More abstractly speaking, the security governance literature delineates four categories of national security governance policy: assurance (post-conflict intervention), prevention (pre-conflict intervention), compulsion (military intervention), and protection (internal security) (Sperling 2009: 7). These categories fulfill two associated functions: institution building and conflict resolution while employing two sets of instruments of governance — the persuasive (economic, political and diplomatic) and the coercive (military intervention and policing). These four categories of security governance can be pursued simultaneously. For post-Westphalian entities like the European Union, a strong normative reliance and use of civilian policy instruments such as the above-mentioned persuasive tools is seen to be the preferred instrument of statecraft over the use of more coercive or military measures. It is in this way that security threats and the regulation of those threats are cast as problems of governance rather than government.

However, following recent scholarship on governance (Newman 2004), we take issue with such conceptualisations of security governance. First, we hold that even a networked society is not free from existing power structures. Indeed, it replicates them as the level of trust amongst the members of a network is generally found to be decreasing. This is especially the case in the context of the current Euro crisis where national (self-) interests seem to prevail over community (or network) interests (Oppermann 2012); one may also think of the transatlantic rift that was caused by the Iraq war in 2003 (Pond 2004). Above all, the current literature often blends out existing power relations in networks such as the transatlantic partnership and tends to sell the network approach as the conventional wisdom (some would say ideology) in governance studies. However, as Hart (2003: 221) reminds us, even though people are social

animals and are inclined to network, not only is the assumption that networks are non-hierarchical misleading, connectedness in and of itself is a form of power and can be used as a tool for inclusion or exclusion of members of the network (Jansen 2002: 272). Moreover, even if trust among members of the network exists, one should ask who has an interest in maintaining the trust, at what cost, and to what end. As the case study below on the EU post-Lisbon Treaty and its experience in Libya will show, powerful nation states especially continue to impose their national preferences on other members of the network.

Second, conceptualisations of multi-level governance structures seem to assume that networks are more inclusive of societal predispositions and foster participatory engagements amongst European citizens. However, as neo-Gramscian studies have shown (Davies 2011) networks are not self-governing entities but rooted in existing hierarchies of European states. Third, the concept of multi-level governance operates in the context of a policy market place where diverse interests and ideas are traded among the members of the network and at different levels of analysis. In turn, this market place is dominated by existing power structures and the existence of rights and regulations that constitute and enforce the rules for the operation of the marketplace. Such rules and regulations in and of themselves can be considered a form of coercion that provides discipline to agents. Above all, the rules were made and at least indirectly enforced by the coercive powers of the state.

Finally, as we show in the next section, the instruments of security governance (assurance, prevention, compulsion, and protection) only discuss the external dimension of European security governance - that is how the EU governs externally with other states or on certain policy issues - while overlooking the internal dimension. Moreover, these instruments are the mere reproduction of existing power relations among the various actors (Schmidt and Zyla 2012) and hegemony within these governance networks by powerful member states. Therefore, we will explicate our theoretical critique on the governance literature empirically in the following section, by discussing EU governance structures after the Lisbon Treaty with a focus on the transatlantic security partnership.

TRANSATLANTIC SECURITY PARTNERSHIP POST-LISBON: MULTIPLE ACTORS – COHERENT ACTION?

The transatlantic partnership is based on two pillars: NATO in security terms and the bilateral relations between the EU and the USA (Burghardt 2006: 5). With regards to the former, for forty years, West Europeans became accustomed to dependence on the United States via NATO for their very survival, and debates over burden-sharing dominated the agenda (Howorth 2012: 1). In the mid-1990s in the course of adopting the Maastricht Treaty and as a consequence of the European failure to address developments in former Yugoslavia, European integration moved from a mainly economic endeavour towards the relatively new area of foreign, security and defence policy. The latest integration step took place with the entry into force of the Lisbon Treaty on 1 December 2009. The Treaty's aim was to enhance the coherence of the external action of the EU and to reply to the long existing request by the United States to clarify who is responsible for Europe's foreign and security policy. To judge the innovations brought to the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) with the Lisbon Treaty two years after its entry into force, it is necessary to take a closer look at the institutional setting and to discuss whether the theoretical concept of security governance applies when put into practice. Specifically, this section will analyse the networks and the interplay between the various actors that governed the EU's security and defence policy in Libya in 2011.

The new EU institutional framework can best be described as single by name, dual by regime and multiple by nature (Keukeleire and MacNaughtan 2008: 66). Contrary to the Treaty establishing the Constitution for Europe, which also set up a common regime for the different aspects of the Union's external action, the Lisbon Treaty formally separates CFSP and thus CSDP from other areas of EU external relations such as trade and development aid. Indeed, it is the only policy field covered by the Treaty on the European Union (TEU) declaring that 'the common foreign and security policy is subject to specific rules and procedures' (Art 24 (1) TEU). This norm already implies a limited role for the EU as a supranational organisation and creates differentiated institutional dynamics that hinder the coherence of the EU's foreign policy (Wouters et al. 2012: 7).

Thus it is not surprising that CFSP and CSDP still remain strongly intergovernmental, and unanimity in the Council as well as the European Council remains the general rule (see Art. 31 (1) TEU) (cf. Giumelli 2013 in this issue). It is therefore up to the member states to decide within the EU network in which direction CFSP and CSDP shall develop according to their national interests. As a result, existing power relations among EU member states are very likely to be mirrored rather than eliminated from the institutional set ups as well as policy decision-making processes. Despite the strong role of EU member states in CFSP/CSDP, European capacities remain limited. By 2010, only three EU and NATO countries, the UK, France and Greece, spent above the new post-Cold War benchmark of 2 per cent of GDP on defence while the remaining 21 European member states of NATO spent an average of 1.3 per cent (Howorth 2012: 1). Therefore it is not surprising that the dominant two, the UK and France, and with some exceptions Germany, form the club of the big three in CFSP/CSDP, remain the dominant actors and initiators for CFSP/CSDP actions. All member states are equal, but there is a need to recognise that some naturally contribute more than others, and take more of the burden and the risk, whether in political clout, financial resources or military capabilities (Crowe 2003: 546). Chris Patten (2005: 159–160) pointed out that there is no European policy on a big issue unless France, Germany and the UK are on side. This could clearly be witnessed by the events in Libya in 2011 where France and the UK were mainly pushing for action, but not necessarily within the EU framework; that was to a certain degree blocked by Germany, as will be shown later.

The Treaty of Lisbon did not change the intergovernmental character of the policy field and member states continue to exercise their national interests with regards to the EU's foreign, security and defence policy whereby the powerful nation states especially, such as the big three, impose their national preferences on other members of the network. The most obvious example underpinning this argumentation was the mission EUFOR Tchad/RCA transferring a French national interest into a European one (Asseburg and Kempin 2009: 75). At the same time, certain competences that are relevant for CFSP and CSDP are spread over all EU actors, including the European Council, the Council, the European Parliament and the Commission as well as the 28 member states. This set of different actors raises questions about the coherence of EU external relations and the dominant role of powerful nations within CFSP and CSDP and calls for defining the core principles of the EU's policy.

However, today's security challenges are not confined to the CFSP and CSDP policy areas: EU security and defence actors also have to cooperate 'across' EU policy domains (see Carta 2013 in this issue) and with national and international actors. One of the main novelties of the Lisbon Treaty in the area of security and defence was the creation of the new office of the High Representative (HR). The new office is triple-hatted, covering the tasks of the former High Representative for CFSP/Secretary General of the Council, the Commissioner for External Affairs and the Chair of the External Relations Council. The rationale behind this new configuration was to inject more visibility and stability into the external representation of the EU on CFSP matters and more consistency between the different sectors of the EU's external action (Piris 2010: 245). The HR covers a wide range of competences. S/he conducts the CFSP (Art. 18 (2) TEU),

presides over the newly established Foreign Affairs Council (Art. 18 (3) and Art. 27 (1) TEU) and holds the post of one of the Vice-Presidents of the Commission (Art. 18 (4) TEU). Facing this job profile, the HR has only limited resources compared to the Council and the Commission, and must therefore depend on his/her power of persuasion vis-à-vis the two other institutions and the capacity to move and act between the different hats (Wessels and Bopp 2008: 22). Despite possible conflicts with the President of the European Council, the post of the HR should increase the coherence and efficacy of CFSP and CSDP.

In line with previous ideas laid down in the failed Constitutional Treaty, the Lisbon Treaty includes provisions for the establishment of the EEAS that should serve as a functional interface between all the main institutional actors of European foreign policy and support the HR in carrying out his/her tasks (CEPS et al. 2007: 133). In 2010, the Council adopted the Decision establishing the organisation and functioning of the EEAS (Council 2010), after having consulted the European Parliament (EP) and having obtained the consent of the Commission (Art. 27 TEU). The EEAS has been created as an autonomous body of the Union under the authority of the HR, made up of a central administration and of the Union Delegations to third countries and to international organisations (Art. 1). The EEAS is tasked with supporting the HR in the fulfillment of tasks foreseen in Art. 18 and Art. 27 TEU. According to Art. 2 paragraph 2 of the decision, the EEAS assists the President of the European Council, the President of the Commission and the Commission in the exercise of their functions in the area of external relations. Its mandate and responsibilities are much broader than those of a traditional diplomatic service. The Crisis Management and Planning Directorate (CMPD), the Civilian Planning and Conduct Capability (CPCC) and the Military Staff (EUMS) form part of the EEAS and are placed under the direct authority and responsibility of the HR (Wouters et al. 2012: 22).

The EEAS is likely to become the centre of information-sharing on the latest political developments outside the Union and foreign policy-making with EU institutions and ministries. Serving the HR, the President of the Council and the Commission, it could complement and harmonise their activities and contribute to horizontal and vertical coherence in European foreign policy (Gaspers 2008: 33).

How do the new instruments work when put into practice and what are the power dynamics that can be witnessed? The first test case for the new institutional setting in CFSP and CSDP, also with regard to the transatlantic perspective, proved to be the Arab Spring and the intervention in Libya in 2011 in particular. The Libyan revolution against the Qaddafi regime began on 17 February 2011 in the context of similar turmoil that occurred in Tunisia and Egypt. After heavy bombardments on the Libyan population by the Qaddafi forces, international pressure for intervening in Libya accelerated, and the EU found itself, as with the Iraqi crisis, in a situation of divergence. France and the UK – partly due to domestic pressures and interests – pushed for military action while Germany abstained from the UNSC resolution vote and rejected the participation of the German forces in the war; this as a non-permanent member of the UN Security Council and in spite of the adoption of the UNSC Resolution 1973/2011 that authorised ‘all necessary measures’ to protect civilians in Libya from pro-Qaddafi forces. In so doing, Berlin obstructed the perception of a united and common European approach to the crisis in Libya and contributed to a malfunctioning of the network. Germany’s abstention from the vote on Security Council Resolution 1973 has undermined the EU’s attempts to become a credible global defence player. Germany’s concerns were not to be found in the ends however, but in the means of how to deal with the situation (Corts Díaz 2012: 50).

On the EU level, the first reactions by EU officials were statements issued by the HR, the Council President and the Commission condemning the violence in Libya. While these statements demonstrated a common European approach to the situation in Libya, the later statements by the HR and the Council President proved to be different with regards to the means and ends of the military intervention (Koenig 2011: 8). The events in Libya

showed that the newly created post of the HR has not contributed to strengthening the Union's common voice and coordination as was originally expected. There are two main reasons underlying this assessment. The first one is that Lady Ashton has been exercising her duties as HR for a relatively short period of time and it could be argued that, in the long term, the new post will become a point of reference under which the EU's responses towards conflict prevention and crisis management could be orchestrated. The second reason is more related to the personality chosen for this post; contrary to her predecessor, Javier Solana, Lady Ashton does not embody the strong and charismatic personality required to coordinate such an international response vis-à-vis the USA, NATO, China, Russia and other regional organisations (Corts Díaz 2012: 48). On 22 May, the EU in the framework of the EEAS opened a Liaison Office in Benghazi in order to support 'the nascent democratic Libya in border management, security reform, the economy, health, education and in building civil society' (Vogel 2011). Nonetheless, the role of the EEAS remained very limited throughout the whole Libyan operations and this fact was heavily criticised by the European Parliament (ibid: 8-9).

Focusing on EU member states, it was not just Germany that was reluctant to support a stronger EU military engagement in Libya. From an operational perspective, a Concept of Operations (CONOPS) for the mission EUFOR Libya was elaborated during an extraordinary meeting of the EU Military Committee on 11 April 2011. But due to the opposition of Sweden in the Foreign Affairs Council on 12 April, no agreement could be reached on the concept, the operational plan, or a military operation itself. Sweden's significance here was its position as the framework nation of one of the two battle groups on stand-by, whose deployment was debated with regard to a possible engagement in Libya (Bloching 2011). The Swedish position was also supported by Finland that was also taking part in the Nordic battle group in that half year. Obviously, the EU's response in setting up EUFOR Libya was not supported by all member states, nor did it seem to fulfill the UN's needs and thus appeared to be rather a symbolic gesture (Koenig 2011: 11). Due to the fact that there was also a disagreement among NATO member states, a coalition of the willing was set up between the USA, Canada, Denmark, France and the UK. Thus, it was mainly a European NATO endeavour backed by the United States to fight the Qaddafi troops, because due to internal pressures, the USA ceded the command of a NATO operation to its European allies. France took the lead as commander of the operation, but President Sarkozy soon discovered that he lacked the support of the majority of EU member states. France's worst expectations of its EU counterparts' reliability were confirmed. The UK continued its tradition of unconditionally staying on the side of the USA. As Corts Díaz (2012) rightly points it out, it is interesting to observe how France and Britain have travelled back to the old days of *Realpolitik* in order to regain importance on the world stage via a pure idealistic logic. The strategic culture of both countries clashes with Germany's pacifism which has become an object of 'national pride'. Speck (2011: 3) summarised Germany's position succinctly by noting that: 'Since others still make war, we [Germans] have learnt the lessons of history and become a force for peace'. It must be stated though that technically a compromise that would have allowed German participation without military intervention was possible. The Libya crisis has therefore shown the reluctance of German leaders to seek compromises with the international community. The conclusion can be drawn that Germany's increasing role in the EU's economy is not leading to a 'will to exercise foreign policy leadership' (Speck 2011: 1). Thus, CSDP is faced with a lack of coherence due to the divergence of interests, ideas, norms among the big three major players in foreign, security and defence terms.

On the other hand, the transatlantic security partnership is also the subject of change. Already in January 2012, in its 2012 Defense Strategic Guidance document, an American pivot towards the Asia-Pacific region could be witnessed, which left the Europeans with more responsibility for managing the security needs in their immediate neighbourhood. Operation Unified Protector introduced the concept of the United States 'leading from behind', but this term was misleading due to the vital engagement of the United States

in carrying out the operation. But the Obama administration's insistence that the Europeans should at least be perceived to be 'taking the lead' in Libya represented a paradigm shift in both political and symbolic ways (Howorth 2012: 2). Nonetheless, the non-existence of a common European approach led to frustration on both sides of the Atlantic and the distribution of responsibilities on the European side was not solved. It also showed that in spite of many efforts, powerful EU member states continued to be in the driver's seat.

CONCLUSION

If we understand governance in the EU as the emergence of new governing arrangements, processes and practices and accept heterogeneity and different interests among actors, the conduct of European foreign, security and defence policy could serve as the best example. Indeed, as shown above, the Lisbon Treaty foresees many players in the making of CFSP and CSDP. With regard to Europe's foreign, security and defence policy, the EU constitutes a network of these various actors that still operate under the hegemony of national prerogatives. Thus, it is not surprising that for the time being, no real common foreign and security policy has been developed and this still remains at stake, even after the entry into force of the Lisbon Treaty. Although the primary objective of the Lisbon Treaty was to allow the EU to become a more effective global actor, the Libya crisis has shown the EU is still far from this goal. Whether or not the capabilities exist to facilitate rapid and effective EU action, it is an open question as to whether member states would be able to agree on their troops' deployments. The positions of the EU's major powers concerning Libyan affairs are the most recent and public illustration of a division that has haunted the CSDP. For the near future, no major improvements are visible. With regard to the role of the big three, it seems that France will follow its logic of pragmatism and flexibility in order to pursue its own interests as much as possible. The driving engine concerning UK foreign policy will remain tied to its special relationship with the USA. Until the UK is not forced to choose between the USA and Europe, it will remain caught 'between a rock and soft place' (Corts Díaz 2012: 53). Germany, on the other hand, finds itself within 'a renewed pacifist drift in its foreign policy' (Speck 2011: 1) that together with its rising economic power makes it seem that Germany is not likely to contribute to a fully-fledged EU foreign policy, as long as its aspirations of building a fully federal Union are not fulfilled.

Despite this negative experience, EU member states are continuing and deepening the institutionalised co-operation in foreign, security and defence policy based on shared norms and thereby reproducing hierarchical structures already in place at the member states level (see Schmidt and Zyla 2012). This political power game within the EU network makes it difficult for other actors to interact properly with the EU. However, due to exogenous forces in global politics, the transatlantic partnership will undergo fundamental changes in the future as the USA is shifting its interest towards Asia-Pacific and is asking whether retreat from Europe will force the EU to do its homework in the immediate neighborhood. Thus, it will be up to the network and the power relations within the network to make European security governance more efficient and better structured.

* * *

¹ The term globalization should not be understood restrictively by simply connoting its economic dimension. The more recent literature has also pointed to processes in other policy areas such as social, environmental, or health policy. For a discussion see Scholte (2008) and Zürn (2003).

² Indeed, Rhodes (2007: 1246) goes a step further and characterises governance as networks by showing an interdependence between organisations, continuous interactions among network members, game-like interactions rooted in trust, and a significant autonomy from the state.

REFERENCES

- Asseburg, Muriel and Kempin, Ronja (2009) Die EU als strategischer Akteur in der Sicherheits- und Verteidigungspolitik. Eine systemische Bestandsaufnahme von ESVP-Missionen und -Operationen. *SWP Studie*, No. 32.
- Bevir, Mark and Rhodes, R. A. W. (2010) *The State as Cultural Practice*. Oxford: Oxford University Press.
- Bieler, A. (2006) Class Struggle over the EU Model of Capitalism: Neo-Gramscian Perspectives and the Analysis of European Integration. *Critical Review of International Social and Political Philosophy* 8 (4): 513-526
- Börzel, Tanja (1999) Towards Convergence in Europe? Institutional Adaptation to Europeanization in Germany and Spain. *Journal of Common Market Studies*, 37 (4): 573-596.
- Burghardt, Gunther (2006) The European Union's Transatlantic Relationship *College of Europe EU Diplomacy Papers* No 2: 2-25.
- CEPS, Egmont Institute, EPC (2007) *The Treaty of Lisbon: Implementing the Institutional Innovations*, Brussels: EGMONT Institute.
- Carchedi, G. 1997. The EMU, monetary crises, and the single european currency. *Capital and Class* 21 (3): 85-114.
- Corts Díaz, Carlos (2012) *A constitutional leap, The Big Three and the Capability Expectation Gap: theorizing the never-ending story of framing a truly CFSP/CSDP*, Study Paper 1/2012, Europa Kolleg Hamburg
- Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU), OJ L 201/30.
- Cox, Robert W. (1987). *Production, Power, and World Order*. New York: Columbia University Press
- Cox, Robert W. (1983). Gramsci, Hegemony and International Relations: An Essay in Method. *Millennium - Journal of International Studies* 12 (2): 162-175.
- Cox, Robert W. (1981). Social forces, states and world orders: Beyond international relations theory. *Millennium - Journal of International Studies* 10 (2): 126-155.
- Cox, Robert W. and Schechter, Michael G. (2002) *The political economy of a plural world: critical reflections on power, morals and civilization*, London: Routledge.
- Cox, Robert W. and Sinclair, Timothy J. (1996). *Approaches to World Order*. Cambridge: Cambridge University Press.
- Crowe, Brian (2003) A common European foreign policy after Iraq?. *International Affairs*, 79 (3): 533-546.
- Daase, Christopher and Friesendorf, Cornelius (2010) Security governance and the problem of unintended consequence in Christopher Daase and Cornelius. Friesendorf (eds) *Security governance and the problem of unintended consequences*. New York: Routledge: 1-20.
- Davies Jonathan S. (2011) *Challenging Governance Theory: From Networks to Hegemony*. Bristol: The Policy Press.
- Davies, Jonathan S. (2000) The hollowing-out of local democracy and the fatal conceit of governing without government, *British Journal of Politics and International Relations* 2 (3): 414-28.
- Gaspers, Jan (2008) The quest for European foreign policy consistency and the Treaty of Lisbon. *Humanitas Journal of European Studies*, 2 (1): 19-53.
- Gill, S. & Law, D. (1988). *The Global Political Economy: Perspectives, Problems and Policies*. London: Harvester and Wheatsheaf.
- Gill, Stephen (1990). *American Hegemony and the Trilateral Commission*. Cambridge: Cambridge University Press.

- Gill, Stephen (ed.) (1993). *Gramsci, Historical Materialism and International Relations*, Cambridge: Cambridge University Press.
- Gill, Stephen (2003). *Power and Resistance in the New World Order*. Basingstoke: Palgrave.
- Habermas, Jürgen (1987) *The philosophical discourse of modernity*. Cambridge, MA: MIT Press.
- Hart, Keith (2003) Epilogue: Studying World Society. In T. H. Eriksen (ed.), *Globalisation: Studies in Anthropology*. London: Pluto Press: 217-227.
- Hayward, Clarissa Rile (2004) Doxa and deliberation. *Critical Review of International Social and Political Philosophy* 7 (1): 1-24.
- Howorth, Jolyon (2012) CSDP and NATO Post-Libya: Towards the Rubicon?, *Egmont Security Policy Brief*, No. 35.
- Jansen, Erin (2002) *NetLingo: The Internet Dictionary*. California: NetLingo.
- Jessop, Bob (2003) Governance and Meta-governance: On Reflexivity, requisite variety and requisite irony. In Henrik P. Bang (ed.), *Governance as Social and Political Communication*. Manchester: Manchester University Press.
- Jessop, Bob (2000) Governance Failure, in Gerry Stoker (ed.). *The new politics of British local governance*. Basingstoke: Macmillan: 11-32.
- Joseph, J. (2008) Hegemony and the structure-agency problem in International Relations: a scientific realist contribution. *Review of International Studies* 34 (1): 109-128.
- Joseph, J. (2002) *Hegemony: A Realist Analysis*. London: Routledge.
- Kennett, Patricia (2008) 'Introduction: governance, the state and public policy in a global age,' in Patricia Kennett (ed.) *Governance, globalization and public policy*. Northampton: Edward Elgar Publishing Limited: 3-15.
- Keukeleire, Stephan and Jennifer MacNaughtan (2008) *The Foreign Policy of the European Union*. Basingstoke, Hants: Palgrave Macmillan.
- Kickert, K. J. M., Klijn, E-H., & Koppejan, J. F. M. (eds) (2009) *Managing Complex Networks: Strategies for the Public Sector*. London: Sage.
- Kirchner, Emil (2007) Regional and global security: Changing threats and institutional responses, in Emil J. Kirchner, James Sperling (eds), *Global Security Governance: competing perceptions of security in the 21st century*. New York: Routledge: 1-22.
- Kirchner, Emil (2006) The Challenge of European Union Security Governance. *Journal of Common Market Studies*, 5 (2): 947-68.
- Kjaer, Anne Mette (2004) *Governance*. Cambridge: Cambridge Polity Press.
- Klijn, Erik-Hans (2008) 'Policy and implementation networks: managing complex interactions', in Steve Cropper, Mark Ebers, Chris Huxham and Peter Smith Ring (eds). *The Oxford handbook of inter-organizational relations*, Oxford: Oxford University Press: 118-46.
- Koenig, Nicole (2011) The EU and the Libyan Crisis: In Quest of Coherence?. *IAI Working Papers* 1119.
- Kohler-Koch, Beate (2003) Interdependent European Governance. In Beate Kohler-Koch (ed.), *Linking EU and National Governance*. Oxford: Oxford University Press.
- Kohler-Koch, Beate (2000) *Europäisierung: Plädoyer für eine Horizonterweiterung*. Frankfurt a.M.: Campus Verlag.
- Kohler-Koch, Beate (1998) Europäisierung der Regionen: Institutioneller Wandel als sozialer Prozess. In Beate Kohler-Koch (ed.), *Interaktive Politik in Europa. Regionen im Netzwerk der Integration*. Opladen: Leske und Budrich.
- Kokx, Anita and Ronald van Kempen (2009). Joining Forces in Urban Restructuring: Dealing with Collaborative Ideals and Role Conflicts In Breda, The Netherlands. *Environment and Planning A* 41 (5):1234-1250.

Krahmann, Elke (2008) The End of the World Order? Security Governance and US Imperialism after 9/11. *TranState Working Paper*, no. 36: 1-27.

Krahmann, Elke (2005) Security Governance and Networks: New Theoretical Perspectives in Transatlantic Security. *Cambridge Review of International Affairs*: 15-30.

Krahmann, Elke (2003) National, Regional, and Global Governance: One Phenomenon or Many? *Global Governance*: 323-346.

Lagadec, Erwan (2012). *Transatlantic Relations in the 21st Century*. London, New York: Routledge.

Lambright, Kristina T., Mischen, Pamela A., and Laramee, Craig B. (2010) Building trust in public and nonprofit networks: personal, dyadic, and third-party influences. *The American Review of Public Administration*. 40 (1): 64-82.

Lawless, P. (2004). Locating and explaining area-based urban initiatives: new deal for communities in England. *Environment and planning C: policy and politics*, 22 (3), 383-399."

Lowndes, Vivien (2001) Rescuing Aunt Sally: taking institutional theory seriously in urban politics. *Urban Studies*, 38 (11): 1953-71.

Magnette, Paul (2003) European governance and civic participation: beyond elitist citizenship?. *Political Studies*, 51 (1): 144-60.

Marinetto, Michael (2003) Governing beyond the Centre: A Critique of the Anglo-Governance School. *Political Studies*, 51 (3): 592-608.

Marks, Gary, Hooghe, Liesbet and Blank, Kermit (1996) European Integration from the 1980s: State-centric versus Multi-level Governance. *Journal of Common Market Studies*, 34 (3): 341-378.

Marsh, David and Rhodes, Roderick. A. W. (1992) *Policy Networks in British Government*. Oxford: Oxford University Press.

Mayntz, Renate (1993) Governing Failures and the Problem of Governability: Some comments on a theoretical paradigm, in Jan Kooiman (ed.) *Modern Governance: New Government-Society Interactions*. London: Sage: 9-20.

Mérand, Frédéric (2008) *European defence policy: beyond the nation state*. New York: Oxford University Press.

Morton, A.D. (2003). Historicising Gramsci: situating ideas in and beyond their context. *International Political Economy* 10 (1): 118-146.

Moss, B.H. (2000). "The European Community as monetarist construction: a critique of Moravcsik." *Journal of European Area Studies* 8 (2): 247-265.

Newman, Janet (2004) 'Modernizing the state: a new form of governance?' in Jane Lewis and Rebecca Surrender (eds) *Welfare state change: towards a third way?*. Oxford: Oxford University Press: 69-88.

Oppermann, Kai. (2012). National Role Conceptions, Domestic Constraints and the New 'Normalcy' in German Foreign Policy: the Eurozone Crisis, Libya and Beyond. *German Politics* 21 (4): 502-519.

Paterson, William E. (2011) The Reluctant Hegemon? Germany Moves Centre Stage in the European Union. *Journal of Common Market Studies*, 49 (s1): 57 -75.

Pattberg, Philipp (2006) Global Governance: Reconstructing a contested social science. *GARNET Working Paper*, No. 04/06: 1-22.

Patten, Chris (2005) Not Quite the Diplomat: *Home Truths about World Affairs*. London: Allen Lane.

Pierre, Jon (2000) Introducing: Understanding Governance, in Jon Pierre (ed.) *Debating Governance: Authority, Steering and Democracy*. Oxford: Oxford University Press: 1-10.

Pierre, Jon and Peters, B. Guy (2000) *Governance, Politics and the State*. New York: St. Martin's Press.

Piris, Jean-Claude (2010) The Lisbon Treaty. *A Legal and Political Analysis*. Cambridge: Cambridge University Press.

- Pollitt, Christopher (2003) Joined up Government: A Survey. *Political Studies Review*, 1 (1): 34-49.
- Pond, Elizabeth (2004). *Friendly fire: the near-death of the transatlantic alliance*. Washington, D.C.: Brookings Institution Press.
- Rhodes, Rod A.W (1996) The New Governance: Governing without government. *Political Studies* 44 (4): 652-667.
- Rosenau, James N. (2005) *Study of World Politics: Globalization and Governance*: Vol 2. New York: Routledge.
- Rosenau, James N. (2000) 'Change, Complexity, and Governance in Globalizing Space,' in Jon Pierre (ed.) *Debating Governance: Authority, Steering and Democracy*. Oxford: Oxford University Press: 167-200.
- Rosenau, James N. (1992) 'Governance, Order and Change in World Politics,' in James N. Rosenau & Ernst Otto Czempiel. *Governance without government: order and change in world politics*. Cambridge: Cambridge University Press: 1-29.
- Rupert, Mark. 1995. *Producing Hegemony: The Politics of Mass Production and American Global Power*. Cambridge: Cambridge University Press.
- Schmidt, Peter and Zyla, Benjamin (2012) *European Security Policy and Strategic Culture*. London: Routledge.
- Scholte, Jan Aart (2008) Defining Globalization. *The World Economy* 31 (11): 1471-1502.
- Speck, Ulrich (2011) Pacifism Unbound: Why Germany limits EU hard power. *FRIDE Policy Brief*, No. 75.
- Sperling, James A. (2009) 'Introduction: Security governance in a Westphalian world,' in Charlotte Wagnsson, James A. Sperling & Jan Hallenberg (eds) *European Security Governance: the European Union in a Westphalian World*. New York: Routledge:1 -15.
- Sperling, James A and Kirchner, Emil (2008). *EU security governance*. Manchester: Manchester University Press.
- Stoker, G. (2011) Was Local Governance such a Good Idea? A Global Comparative Perspective. *Public Administration*, 80 (3): 417-434.
- Stone, Clarence N (2009) 'Who is governed? Local citizens and the political order of cities', in Jonathan S. Davies and David L. Imbroscio (eds) *Theories of urban politics*, 2nd edn, London: Sage: 257-73.
- van Apeldoorn, B. (2002) *Transnational Capitalism and the Struggle over European Integration* London: Routledge.
- Vogel, Toby (2011) 'EU opens office in Benghazi'. *European Voice Online*: <http://www.europeanvoice.com/article/2011/may/eu-opens-office-in-benghazi/71147.aspx> accessed 07 June 2013.
- Wagnsson, Charlotte and Hallenberg, Jan. (2009) 'Farewell Westphalia? The prospects of EU security governance.' in Charlotte Wagnsson, James A. Sperling and Jan. Hallenberg (eds) *European Security Governance: the European Union in a Westphalian World*. New York: Routledge, 2009: 127-140.
- Walters, William (2004) Some Critical Notes on 'Governance'. *Studies in Political Economy* 73: 27-45.
- Webber Mark, Croft, Stuart, Howorth, Jolyon, Terriff, Terry and Krahmann, Elke (2004) The governance of European security. *Review of International Studies* 30 (1): 3-26.
- Wessels, Wolfgang and Bopp, Franziska (2008) The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?. *CHALLENGE, Research Paper*, No. 10.
- Wolin, Shelton S. (2000) Political Theory: From Vocation to Invocation. In Jason Frank and Jon. Tambornino (eds), *Vocation of Political Theory* Minneapolis, MN: University of Minnesota Press: 3-22.
- Wouters, Jan Bijlmakers, Stephanie and Meuwissen, Katrien (2012) The EU as a multilateral security actor after Lisbon: Constitutional and Institutional Aspects. *Leuven Centre for Global Governance Studies Working Paper*, No. 80.

Zürn, Michael (2003) Globalization and Global Governance: From Societal to Political Denationalization. *European Review* 11 (3): 341-364.

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

The External Dimension of the EU's Fight against Organized Crime: The Search for Coherence between Rhetoric and Practice

Helena Carrapico *University of Dundee*

Citation

Carrapico, H. (2013). 'The External Dimension of the EU's Fight against Organized Crime: The Search for Coherence between Rhetoric and Practice', *Journal of Contemporary European Research*. 9 (3), pp. 460-476.

First published at: www.jcer.net

Abstract

Since the external dimension of the European Union's Justice and Home Affairs (JHA) began to be considered, a substantial amount of literature has been dedicated to discussing how the EU is cooperating with non-member states in order to counter problems such as terrorism, organized crime and illegal migration. According to the EU, the degree of security interconnectedness has become so relevant that threats can only be adequately controlled if there is effective concerted regional action. This reasoning has led the EU to develop a number of instruments, which have resulted in the exporting of certain elements of its JHA policies, either through negotiation or socialization. Although the literature has explored how this transfer has been applied to the field of terrorism and immigration, very little has been written on the externalisation of knowledge, practice and norms in the area of organized crime. This article proposes to bridge this gap by looking at EU practice in the development of the external dimension of organized crime policies, through the theoretical lens of the EU governance framework.

Keywords

External dimension; Area of Freedom, Security and Justice; Organized Crime policies; EU Governance

European Union (EU) organized crime (OC) policies have been developed in the context of Justice and Home Affairs (JHA), a policy space that also encompasses asylum and immigration policies, judicial cooperation in civil and criminal matters, the management of EU borders, police cooperation, and Fundamental Rights. Together, these areas form the fastest growing policy field the EU has known in recent years. This startling evolution has also been reflected in the development of an external dimension of JHA, marked by the projection of traditional internal security concerns onto the European Union's foreign affairs policies, strategies and instruments. Within the space of just a few years, this external dimension has come to promote rule of law objectives, human rights, institution building, and good governance in general, by pursuing an approach of coherence with EU internal security policies. Focusing on the fields of immigration, asylum, terrorism, and OC, this cooperation is aimed not only at EU neighbouring areas, but also at more remote strategic countries, such as China and India (Council 2006).

Rhetorically, OC occupies a key position in EU strategic documents as one of the main drivers for the need to expand the external dimension of JHA (Council 2005). Cooperation in the field of criminal matters is considered a very high priority given the degree of dangerousness attributed to OC, which is understood as posing a challenge not only to the good functioning of markets, but also to the fabric of democracy and the security of citizens (Allum and Siebert 2003). Given the perceived external origin of OC groups and activities, the EU is focusing its efforts on preventing criminals from operating across its external borders. An analysis of the EU's efforts in translating this priority into practice, however, shows us a very different reality. The external dimension of the EU's fight against OC, far from being a cohesive and strategically-led policy area, rather resembles a schizophrenic field, with a disconnection between rhetoric and practice, as well as a lack of coherence among its different constitutive sub-policies.

Although the EU's external dimension of JHA has now become quite a recurrent object of academic study, very few works have actually focused on its OC policy elements. Bearing this background in mind, this article explores how the EU is integrating OC policy initiatives into the external dimension of JHA. In order to achieve this objective, the article will, firstly, discuss how the research question can be situated and understood in the broader debate on EU governance. The second section looks at how the development of an EU organized crime threat perception was used as one of the motors for the

creation and expansion of the external dimension of JHA. It also points out, however, that this process has had serious limitations, resulting in a rhetoric-practice gap. Finally, the third part will focus on the evolution of the external dimension of OC policies specifically, and how the co-existence of different forms of governance has led to a disjointed field.

UNDERSTANDING THE EXTERNAL DIMENSION OF ORGANIZED CRIME POLICIES THROUGH THE THEORETICAL LENS OF GOVERNANCE

The issue of how the EU is integrating OC policy initiatives into the external dimension of JHA can be inscribed in a broader theoretical debate concerning EU governance. The latter theoretical framework seeks to provide insights into the institutionalisation of structures and processes of decision-making in the EU (Scharpf 2001). Although a complete literature review on EU governance is beyond the scope of this article, a brief introduction to the concept is necessary. This discussion is followed by a consideration of how the external dimension of JHA has been conceptualised in EU governance literature and how that fits with the focus of this article.

The understanding of the EU as a system of governance has become a prominent approach both in policy-making (European Commission 2001) and in academia (Lavenex et al. 2010; Hooghe and Marks 2001). Despite ongoing discussion as to the exact meaning of the concept of governance, the latter has generally been associated with 'a process and a state whereby public and private actors engage in the intentional regulation of societal relationships and conflicts' (Kohler-Koch and Rittberger 2006: 28). Such an approach emerged in opposition to the idea, typical of classical European integration theory, that society is managed through hierarchical structures, where a unified EU features as the main actor (Lavenex et al. 2010). Instead, the EU governance theoretical framework suggests that decision-making patterns in the EU are increasingly marked by non-traditional government structures, where state and non-state actors, independent of their hierarchical level, coordinate to achieve desired policy outcomes (Hooghe and Marks 2001). The rationale behind such a proposal is that the EU's decentralised institutional and power settings have led to the emergence of alternative forms of governance (Jachtenfuchs 2001). From this perspective, EU governance has two main features: 1) a reduced hierarchy and 2) the participation of both public and private actors in decision-making processes.

More recently, it has been argued that this increased prevalence of non-hierarchical modes of governance has not been fully validated by empirical data. In fact, case studies seem to indicate that the EU encompasses a mix of different co-existing forms of governance, which vary considerably according to the policy area in question (Börzel 2010). In this view, even though decision-making can be the result of a combination of different modes of governance, some of these modes may be dominant, thus creating a conditioning effect over other forms of governance that varies according to the policy context (ibid). This perspective provides us with a more complex understanding of EU governance and allows us to add three features to those mentioned in the previous paragraph: 1) forms of governance are usually mixed; 2) dominant forms of governance will limit those other forms with which they combine; 3) governance modes vary according to policy fields.

In terms of how the EU governance framework has been applied to the external dimension of JHA, theoretical approaches engaging with this area have stemmed from fields as different as European Integration Studies, Foreign Policy Studies, Legal Studies, Sociological Studies, and Critical Security Studies (Trauner and Carrapico 2012). They have all contributed to the theoretical conceptualisation of the external dimension of JHA by addressing the question of how the EU's influence is exercised beyond its borders (Wolff et al. 2010). Of the various fields, however, the most prolific literature stems from

European Integration Studies, and from EU governance more specifically. In the context of the external dimension of JHA, EU governance has focused in general on the processes by which third countries' policies are shaped by EU norm transfers (Lavenex and Schimmelfenning 2013). Particular attention has been paid to specific geographical areas, namely the Enlargement countries during the 2004 and 2007 accession processes, followed by the EU's neighbouring states (Balzacq 2009). This theoretical approach has underlined that the EU has gradually been distancing itself from hierarchical modes of governance, defined by conditionality, and moving in the direction of socialisation approaches through transgovernmental networks of actors (Lavenex et al. 2010). It has also pointed to the importance of internal governance dynamics in shaping the development of the external dimension of JHA (ibid). Conclusions stemming from this area have underlined, however, that outcomes vary significantly according to the region and policy field under analysis (Lavenex et al. 2010).

These conclusions, however, have been reached on the basis of a limited number of JHA policy fields. Despite often mentioning the threat of OC as a key driver for the development of the external dimension (Wolff et al. 2010), the governance literature has essentially focused on migration and terrorism (Freyburg 2012; Argomaniz 2009). In fact, European Integration Studies analysing OC policies have been mainly limited to the internal dimension, with the external one only being briefly mentioned (Allum and Den Boer 2013; Fijnaut and Paoli 2004). Even when looking beyond the governance literature, studies focusing on the external dimension of OC policies are not abundant: with the exception of works such as Mitsilegas (2009), Scherrer (2009), and Longo (2003), the export of OC norms to third countries is a field which has received limited attention.

Given this relative gap in the literature, the present article applies the governance theoretical framework to the external dimension of OC policies, in order to consider whether it is a suitable lens to understand the dynamics and practice occurring in this field. It therefore focuses on verifying whether the main features of governance theory can be found in this policy field: 1) a reduced hierarchy; 2) the participation of both public and private actors in decision-making processes; 3) mixed forms of governance; 4) dominant forms of governance that restrict the secondary forms of governance they are combined with; 5) varying forms of governance, depending on the policy field; 6) internal governance dynamics that shape the development of the external dimension of JHA. As the remainder of this article demonstrates, the governance theoretical framework can be partly useful in understanding the integration of OC policy initiatives into the EU's external dimension of JHA. In particular, this study underlines the fact that the external dimension of OC policies includes mixed forms of governance, with hierarchical modes still being dominant, reflecting the way EU internal OC policies developed. The usefulness of this theoretical framework, however, is hampered by the concept of OC itself. As the second and third parts of this article show, despite being discursively very present in the external dimension of JHA, the concept of OC is not easy to operationalise, resulting in a disconnection between rhetoric and practice, and, consequently, in a fragmented field where sub-policies of OC develop autonomously.

THE PERCEPTION OF ORGANIZED CRIME AS A SECURITY THREAT TO THE EU AND ITS LIMITATIONS

Having established how governance literature can help us understand the development of the external dimension of OC policies, this section focuses on the emergence of an understanding of OC as a very serious security threat, which has served as the basis for the development of domestic policies, as well as a motor for the expansion of the external dimension of JHA. Such an understanding, however, has remained limited to the rhetorical level, which has had an impact on the EU's OC governance practice.

The emergence and development of OC as a threat to the EU

OC is currently considered to be one of the most dangerous threats facing the European Union, with the capacity to destabilise the economic and social fabric of societies, as well as endanger the safety of its citizens (European Parliament 2011). This phenomenon, one of the greatest challenges to law enforcement due to its diversity in operational methods, group structures, and activities, is understood as requiring concerted action by the EU if it is to be tackled successfully (Council 2000a). OC activities range from drug and human trafficking at one end of the scale to cybercrime at the other (Europol 2013).

Although OC is currently understood to be one of the EU's highest-ranking threats, it is actually a considerably recent concept in the European political and legal landscape. While countries such as the United States of America and Italy have long fostered public debates underlining the severity of OC's impact on society and the urgent need to take political and legal action, as late as the early 1980s most European countries still considered this phenomenon to be an external problem with negligible impact within their own borders (Fijnaut and Paoli 2004). This situation gradually started to change, however, with the export of the OC debate from the USA to Europe (Woddiwiss 2003).

It was only with preparations for the implementation of the Single Market, and the perceived need to protect it from abuse, that the European Economic Community (EEC) started to make the case for cooperation in the area of criminal matters (Delors 1991). OC played a particularly relevant role in this process as the perceived need to compensate for the abolition of borders mainly stemmed from the idea that criminals would take advantage of free circulation and that, consequently, their activities would flourish (European Commission 1985). Such a rationale quickly enabled the EEC to move in the direction of introductory measures in the area of police and judicial cooperation in criminal matters: starting with the Schengen Agreement's compensatory measures, member states were soon discussing the German proposal to create a central European Criminal Investigation Office (Fijnaut 1992). By 1992, this security logic, based on internal market negative externalities, had become institutionalised with the acknowledgement of the need to develop a Justice and Home Affairs Pillar and, in particular, of addressing the threat of OC as a common interest (Maastricht Treaty 1992: Art. K1).

It would take another five years, however, before the EU produced the first Action Plan to Combat OC (Council 1997). The latter proposed, in particular, the establishment of the European Police Office, increased cooperation among member states, and pushed for national legislation to be harmonised in this area (Calderoni 2010). These ideas were then transposed onto the Treaty of Amsterdam in 1999, leading to the fight against OC to be fully inscribed as one of the main objectives in the completion of the Area of Freedom, Security and Justice. This implied, in particular, that OC instruments would become part of the JHA five-year programmes: Tampere, The Hague and Stockholm. Since then, the EU has chosen to work towards a common strategy to fight OC, through recommendations and strategies aimed at fostering cooperation between law enforcement bodies, as well as the approximation of national legislation in this area (Longo 2002). There has also been a push for the harmonisation of national definitions of sub-types of OC, such as trafficking of drugs, financial crimes, and trafficking of human beings (Council 2000a). Recently, the attempt to develop a common approach to OC resulted in the adoption of a multi-annual policy cycle with regards to serious international and organized crime (Europol 2012). The latter aims to improve cooperation between all the actors involved in this field, including member states, national law enforcement agencies, European institutions and agencies, and third countries (Council 2010).

The understanding of OC as a very serious security threat has also been reflected in the external dimension of JHA, taking its place as the second-highest priority (after terrorism) of the EU's 2005 Strategy for the External Dimension (Council 2005).

Portrayed as being capable of taking advantage of EU external border vulnerabilities, OC is also perceived as fuelling a vicious circle of poverty, crime, corruption and instability, at a high cost for individuals living on either side of the border (ibid). Despite the relevance of EU home-grown OC groups, OC stemming from neighbouring countries and beyond is interpreted as representing a higher degree of threat and urgency (Europol 2013). In this sense, the current understanding of OC has been highly instrumental in the development of the external dimension of JHA, one of the main justifications for the need to develop and expand the external dimension (Wolff et al. 2010; Balzacq 2009; Henderson 2005).

The limitations created by the EU's rhetoric on OC

Although this rhetoric has become very visible in EU official documents (European Commission 2008a; Council 2006, 2005, 2000b, 1998a), it is not clear whether it has been entirely transposed into EU practice. As the third section of this article shows, despite a strong awareness of the need to provide further coherence to the fight against OC, the external dimension of OC policies has resulted in a disjointed field (Council 2011a; Council 2009). It has been characterised by an absence of a common approach, with sub-policies (such as drugs or trafficking of human beings) often being developed in an isolated fashion, not only from each other but also from the rationale of the fight against OC. As well as the reasons for this disconnection between rhetoric and practice, this section explores the difficulty in operationalising the concept of OC, and the lack of express legal competences for the external dimension of OC policies.

Regarding difficulties in operationalising the concept, the EU's definition of OC has remained extremely vague, despite attempts to develop a common classification (Allum and Den Boer, 2013; Carrapico 2011). Although there seems to be a consensus regarding the degree to which OC is dangerous, academic discussions on whether OC should be defined on the basis of its organisational structure, or on the basis of its activities, have not produced substantive results (Dorn 2009; Von Lampe 2008; Fijnaut and Paoli 2004). The definition provided by the 2008 Framework Decision on the fight against OC¹ is problematic in the sense that it sheds little light on what constitutes a criminal organisation, and even less where the concept of OC is concerned (Council 2008: 2). It provides no specific indication of the level of organisation necessary for a group to be classified as such, nor does it refer to the length of time the association needs to have existed. From this perspective, it is not a definition that can be easily operationalised, as it opens the door to the inclusion of phenomena as different as the Italian 'Ndrangheta, a group of hooligans, or a teenage street gang. Furthermore, the vagueness of the definition has also discouraged national approaches to OC from becoming harmonised, with the effect of preventing the emergence of a EU common approach to OC, capable of being projected beyond its borders (Allum and Den Boer 2013).

There are also legal consequences, in particular for the clarity, precision and legal certainty of the measures adopted (European Parliament 2009; Mitsilegas 2003). In order to be able to operationalise the European definition, national legislators often have had to be more precise by adding their own interpretation (Calderoni 2010). Given that the EU instruments provided them with such freedom, the end result has been something of diversity in the implementation of the concept of OC, which is likely to affect the way OC external policies are developed (Allum and Den Boer 2013).

In addition to the problem in operationalising a vague concept, there is also the limitation created by the absence of express competences in the area of the external dimension of organized crime policies (Trauner 2011a). In order to circumvent this obstacle, the Union has had to rely on existing competences in other areas, such as trade and development (Smith 2003), or to rely on what Ripma and Cremona (2007)

have called an elaborate set of implied competences based on internal security ones, already provided by the Treaties. Since the Treaty of Lisbon, the EU is now able to act on the external dimension of JHA, provided that there is a corresponding internal objective and external action is considered an essential condition to reach it (Monar 2012; Treaty of Lisbon 2008). In the case of OC, the Treaty specifies in Title V that the Union aims to ensure a high level of security for its citizens, which, together with the perceived external origin of OC, provides it with the possibility of acting externally in this field. This implied competence, however, is still not sufficiently precise to allow for a concrete strategy to be developed on OC. This situation is further complicated by the fact that the Area of Freedom, Security and Justice is a space of shared competence, where member states continue to act in parallel with the Union (Treaty of Lisbon: Art. 4 (2j); Monar 2012). The third section of this article explores how these different limitations are impacting on OC governance practices and resulting in a fragmented field.

THE INTEGRATION OF THE EU'S FIGHT AGAINST ORGANIZED CRIME INTO THE EXTERNAL DIMENSION OF JUSTICE AND HOME AFFAIRS

The fact that OC is a recent concept in the European political and legal landscape does not mean that member states did not have criminality problems prior to its introduction, but rather that they did not conceive of it as OC - thinking of it more as separate types of criminality such as drug trafficking, cigarette and alcohol smuggling, amongst others (Fijnaut and Paoli 2004). This element is of particular importance in understanding the external dimension of OC policies. In fact, what is interesting about the way the latter developed is that, although it constituted a subsequent move towards the internal prioritisation of OC, it also coincided with pre-existing external initiatives in areas that were previously not understood as OC. This overlap, together with the limitations explored in section two, has resulted not in a common approach, but in a policy patchwork due to the lack of coherence among sub-policies (Knelangen 2007). Despite this absence of coherence, the external dimension of OC policies has attempted to follow a governance pattern similar to the remainder of the external dimension of JHA: there has been an expansion of the forms of governance used, with the multiplication of policy instruments and the enlargement of the geographical focus, and new actors have started to participate in governance practice. However, unlike other areas of JHA (Lavenex et al. 2010), hierarchical forms of governance remain very much the rule, as a reflection of OC policies' internal dynamics. In addition, the difficulty in operationalising the concept of OC and the limitations regarding external competences of the EU have also created further obstacles to the external governance of OC policies. The latter's development is analysed in three phases: 1) the genesis phase, 2) the convergence phase, and 3) the geographical diversification phase.

The genesis of the external dimension of OC policies: 1990-1996

The genesis phase is mainly represented by a lack of strategic governance: it includes uncoordinated external initiatives related to the fight against drugs and no reference to the concept of OC, mirroring the domestic EU field of OC policies. Those different initiatives also reflect diverging modes of governance as exemplified by the hierarchical and rigid relations with Central and Eastern European countries, compared to the loose relations with other areas of the world.

Despite timid initiatives in the late 1980s aimed at developing specific external aspects of JHA, attempts to work with third countries to improve EU internal security only started to appear consistently on the EU's agenda with the prospect of EU enlargement to Central and Eastern Europe (CEE) (Balzacq 2009). Motivated mainly by migration concerns (Lavenex 2005; European Council 1992), the Union began to develop a number

of instruments aimed at curbing current and potential migratory pressures stemming from that region (Wolf et al. 2010). Cooperation with CEE states was further reinforced with the 1993 Copenhagen European Council decision to create conditionality criteria for EU membership, according to which new members would be expected to incorporate the EU JHA's *acquis* (European Council 1993).

Although migration is widely regarded as the first field to have led to the development of a JHA-related external dimension (not only due to external migratory pressures, but also because migration and asylum were the first JHA areas to be communitarised, thus facilitating the emergence of an external dimension), OC does not fall much behind. In 1990, the Rome European Council specified that any policy and future agreements towards third countries should take into account the objective of combating drugs (European Council 1990). From this point onwards, there was a mushrooming of drug-related clauses within foreign affairs and trade agreements (Smith 2003). We can see a direct parallel with the European Community's (EC) internal situation, where OC itself had not yet become an issue of debate at European level, but drugs were very much at the centre of health and security concerns (Commission 1985). These agreements included, for example, the Association Agreements signed between Central and Eastern European countries and the European Communities from the early 1990s onwards. The latter included elements aimed at fostering cooperation to increase the efficiency of the fight against the illicit traffic of narcotics (for example: the Association Agreement with Hungary: art. 96).

In addition to trade instruments, we can also observe the emergence of more focused tools, tailored specifically to assist the CEEs in their JHA-related transition. PHARE (Poland and Hungary Assistance for Restructuring their Economies), for instance, was particularly aimed at market restructuring, but also included a multi-beneficiary Drugs Programme. The latter was initiated in 1992 and had a budget of 22 million EUR (from 1992 to 1997) to cover cross border cooperation on drug law enforcement and the transposition of the *acquis* in the areas of money laundering and synthetic drugs (PHARE 1999). This first phase was, however, not limited to the geographical region of Central and Eastern Europe. It also included the granting of special trade preferences to the Andean Region, in 1990, under the terms of the Generalized System of Preferences, a system of exemption to the World Trade Organization rules (Boekhout van Solinge 2002). The special trade preferences aimed at encouraging countries like Bolivia, Ecuador, Peru and Colombia, which were perceived as drug exporters, to replace the cultivation of illicit drugs with legal substances (Atkins 1996). These trade arrangements were complemented by political dialogue (The Declaration of Rome 1996) and by specific technical agreements on the development of mechanisms for the exchange of information on drugs (European Community and Bolivia 1995). This approach marks the EC's attempt to deal with the supply side of drugs, by preventing the arrival of narcotics at its borders (Boekhout van Solinge 2002).

From 1990 to 1996, this was an area with a mix of different instruments focusing on drugs, but characterised by a clear lack of strategy. On the one hand, it includes instruments such as the Association Agreements, which point to the existence of direct and hierarchical forms of governance through conditionality (Lavenex and Schimmelfennig 2013). On the other hand, this phase also includes instruments such as the agreement with the Andean Region, which resemble much more traditional foreign affairs' instruments, but which are also combined with other more flexible and indirect forms of governance, such as political dialogue. Where actors are concerned, it is interesting to note that private actors are essentially absent from this area, which mirrors very much the priorities of the domestic dimension of JHA. Furthermore, this is a phase where the concept of OC is not yet present, being driven instead by the perceived need to fight drug trafficking.

The convergence phase: 1997-2005

As the perceived need to improve the protection of internal security grew, so did the prioritisation of the external dimension of JHA. In this context, the second phase is mainly defined by a convergence process with the remainder of the external dimension of JHA in relation to forms of governance. Furthermore, the publication of the 1997 Action Plan to Combat OC marks the beginning of a distinct phase by mentioning, for the first time, the need to develop an external dimension for OC policies (Longo 2002; Council 1997). From this perspective, it marks an official policy shift from a focus on drugs to the larger concept of OC. Not only is there the recognition of an official strategy for the external dimension of OC policies, there is also an increase in the number of formal structures emerging in this area. However, at the same time as these formal structures seem to point towards a reinforcement of hierarchical forms of governance, the geographical expansion of the external dimension of OC policies has led to the emergence of more flexible modes of governance in relation to more distant countries. Furthermore, despite the increasing rhetorical relevance of OC and the need for coherence within the external dimension, the policy on drugs continued to evolve autonomously in this second phase.

In 1997, the EC agreed to start negotiations with five of the CEE countries and proposed to launch pre-accession instruments that would provide them with the necessary financial and administrative support for the transition (European Council 1997). CEE countries were perceived as a source of OC, as their institutions were seen as unable to guarantee the same degree of protection as could be found in Western Europe (Henderson 2005). Moreover, there was considerable apprehension regarding whether acceding candidate countries would be able to meet their membership obligations (Misilegas 2007). One of the most relevant instruments for the area of OC was the Pre-Accession Pact on OC, signed in 1998 by the candidate countries, which were made to incorporate the EU *acquis* and to strengthen their institutional capacity to fight OC (Henderson 2005; Smith 2003). Among other instruments, PHARE was expanded to new areas, including JHA. The programme involved upgrading the technical skills of criminal investigation forensic units to EU standards, equipment modernisation related to visual records of suspected criminals, and training in the detection of radioactive materials (Czech National PHARE Programme 1999). PHARE also had mechanisms for evaluation as increasing emphasis was put on membership being dependent on achieving explicit objectives. PHARE assistance in JHA was further reinforced through a pre-accession pact on OC between member states and applicant countries, which aimed to foster a common understanding of this phenomenon and of future policy responses (Council 1998a). In addition to the general PHARE programme, which included provisions on OC, the multi-beneficiary Drugs Programme also continued to develop in parallel (PHARE 1999).

With further action being taken in respect of acceding countries, and the increasing perception that an official and coherent unified external dimension of JHA should be developed, it quickly became apparent that the new EU neighbourhood would also need to be addressed (Kaunert 2010). The decision was taken to develop, from 1999 onwards, Partnership and Cooperation Agreements (PCA) with Eastern European and Asian countries² (Wolff et al. 2010; European Council 1999). Like other previous agreements in this phase, the PCAs included JHA provisions, focusing on border detection and on training border staff (Hillion 2005). Some of these agreements were also used as a basis for more specific action in the area of OC, such as the 'EU Action Plan on Common Action for the Russian Federation on Combating OC' (Council 2000c). The number of countries benefitting from EU assistance in the area of OC was further expanded following the Kosovo War. In an attempt to ensure lasting peace in the region, the Stability Pact for the Balkans was created in 1999, followed by the CARDS Programme (2000), which was aimed at involving South-Eastern European countries in the stabilisation and association process (Trauner 2011b).

With the development of the Pre-Accession Programme, EU member states started to fear that concentrating EU resources in Central and Eastern Europe could lead to an imbalance in the geographic centre of power, and to instability in the Mediterranean region (Bach and George 2006). The Presidency of the EU responded to these concerns by launching the Euro-Mediterranean Agreements, which were signed with seven countries³ between 1998 and 2005 (Wolf et al. 2010). Their objective was to provide a framework for a North-South political dialogue that would encourage trade liberalisation in the Mediterranean region (Council 1998b). While these agreements also included JHA elements, OC was not included in a systematic way (Instituto de Estudios Europeos 2006).

Although at this stage the issue of drugs was starting to be understood in the framework of OC, the EU drugs external agenda continued to evolve autonomously from that of OC. Just as in the first phase, Latin America continued to be the main priority of this agenda, although the EU also decided to expand this type of cooperation to ACP countries (Africa, Caribbean and Pacific), in particular in the areas of drug trafficking, the production of precursors and money laundering (The Declaration of Rome 1996). Cooperation with ACP countries in the fight against drugs was initially developed in the context of the United Nations 1996-2001 Barbados Plan of Action and then continued in the framework of the Panama Action Plan (1999) and the Cotonou Agreements (2000). In the case of both Latin American and ACP agreements, countries continue to have a substantial say in the planning of changes and in the way they decide to use EU funds (Boekhout 2002).

This period of the external dimension of JHA is defined by two trends: a deepening of existing cooperation and a diversification of the instruments used (Trauner and Carrapico 2012; Longo 2003). In this convergence phase, the external dimension of OC began to align itself with the general external dimension and to follow a similar governance pattern. Where deepening is concerned, we can see the emergence of more aggressive governance modes on the part of the Union, closely monitoring agreements with acceding countries and creating a more hierarchical process of norm transfer, including: the transfer of legal norms through the incorporation of legislation; the transfer of skills through training; and the transfer of technology through funding (Lavenex and Schimmelfennig 2013). In addition, we can also observe a diversification of the modes of governance with a rapid increase in the number of instruments and geographical foci, with the EU multiplying the number of agreements including OC provisions, and running anti-drug trafficking programmes in more than 100 different countries (Smith 2003). By comparison with phase one, there is a tendency to deepen the hierarchical forms of EU governance with neighbouring countries, at the same time as more flexible modes of governance continue to emerge with Latin American and ACP countries. Also characteristic of this phase is the maintenance of the drugs priority as a separate strategy, which is reflected in different instruments. It is indicative of a lack of coherence between the EU's rhetoric (which tries to develop a holistic approach to OC) and the EU's external practices.

The geographical and policy diversification phase: 2005-present

The transition between the second and third phases of the external dimension of OC policies is marked by the publication of the EU's 'Strategy on the External Dimension of JHA: global freedom, security and justice', which refers to the fight against OC as its second priority after terrorism (Council 2005). However, the creation of a general strategy for this area did not bring further coherence to the field of OC policies, which continued to be represented by fragmented forms of governance, tailored to specific geographical regions and sub-types of OC activities.

The beginning of this phase also coincides with the development of the European Neighbourhood Policy (ENP) in 2004, which was first outlined in the Commission

Communication 'Wider Europe' (2003) and further expanded upon in the 'Strategy paper on the European Neighbourhood Policy' (European Commission 2004). The purpose of the ENP is to deepen the agreements mentioned in the convergence phase, by replacing them with bilateral agreements between the EU and Eastern European countries/Mediterranean countries, and thus accelerating economic and political reforms (Commission 2004). The ENP is complemented by regional multilateral co-operation initiatives: the Eastern Partnership (2009), the Union for the Mediterranean (2008) and the Black Sea Synergy (2008).

Where organized crime is concerned, again, the objective of the ENP remains very much connected to the protection of the EU external border (Commission 2006). The Eastern Partnership has promoted the adoption of OC legislative and institutional frameworks and their effective implementation, focusing specifically on regional cooperation, law enforcement training, and the ratification of international instruments (Commission 2012). In addition to the traditional institutions in this field, new actors have also emerged in the context of the Eastern Partnership: Europol, in particular, has invested greatly in strategic and operational cooperation with this region (Strategic Agreements with Ukraine and Moldova). This is a model of governance which the Commission is encouraging other European internal security agencies, such as the EMCDDA, CEPOL and Eurojust, to pursue (Commission 2011).

The Union for the Mediterranean was created with the objective, amongst others, of developing instruments to fight cross-border OC, but due to complications in the Arab-Israeli peace process and instability in general in the Mediterranean, very little has been put into practice regarding OC (Balfour and Schmid 2008). Finally, the Black Sea Synergy finds itself in a similar situation as the Union for the Mediterranean, with limited progress being achieved regarding its cross-border crime objectives. With the exception of a few projects in the area of trafficking of human beings, the Black Sea Synergy has focused its efforts more on environmental and energy security (Commission 2008b).

The third phase of the external dimension of OC has also been marked by an expansion to new geographical regions beyond the European neighbourhood, in particular West Africa (Aning 2009), Brazil (European Commission 2007), China (Bienkowski 2012) and India (European Commission 2013). Given the importance acquired by the cocaine route passing through West Africa, the EU has decided to step up its cooperation with countries in this area by providing law enforcement authorities with training, technical support and funding through the Instrument for Stability (European Commission 2013). Cooperation with Brazil was equally motivated by drug trafficking concerns, although so far it has expressed itself in a looser format, with both sides exploring the possibility of exchanging best practices and information (Council 2011b). In 2007, the EU and China started negotiations to sign a EU-China Partnership and Cooperation Agreement, given the EU's interest in cooperating with China in the area of readmission, visas, trafficking of human beings and cyber crime (Parliament 2012). For the moment, however, OC is mainly discussed at the political level through EU-China Regular High Level Consultations (Bienkowski 2012). Finally, the cooperation with India is taking place within the framework of the EU-India Strategic Partnership, which has recently started to include JHA issues (European Commission 2013). Although the focus seems to be more on counter-terrorism cooperation, there is also political dialogue related to the fight against OC, drug trafficking and money laundering.

Despite this geographical expansion including an increase in the number of policies associated with the concept of OC (trafficking of human beings, money laundering, cyber crime), we continue to observe a disconnection between the different initiatives, especially regarding the area of drugs (Council 2011c). The third phase of the external dimension of OC policies constitutes a continuation of the trends inherited from previous phases. It is defined not only by a further expansion of hierarchical forms of governance in the context of ENP (although with mixed results, see Monar 2010), but also by an extension of the external dimension to new geographical regions, such as West Africa,

Brazil, China and India, through flexible networks of governance between law enforcement authorities and local administrations. The latter has also started to include a larger array of OC-related activities, although there is, so far, little indication of any coherence among them. This last phase has, nevertheless, an innovative aspect with new actors emerging in the external dimension of OC policies and contributing to new modes of governance, namely more operational ones, as is the case of Europol.

CONCLUSION

This article contributes to the literature on the external dimension of JHA by exploring the policy area of OC, which has, so far, received limited attention. In particular, it focused on how the EU has been developing its external dimension of OC policies, and on whether we can consider this field to be evolving in the direction of a coherent set of practices. In the first section, I proposed to inscribe this topic within the broader theoretical debate of EU governance and, on the basis of how this framework understands the external dimension of JHA, sought to verify throughout the second and third sections of the article whether the main features of EU governance could also be identified in the case of OC policies. The first section identified six features, namely: a reduced hierarchy; the participation of both public and private actors in decision-making processes; mixed forms of governance; dominant forms of governance that restrict the secondary forms of governance they are combined with; forms of governance that vary according to the policy field; and internal governance dynamics which shape the development of the external dimension of JHA. On this basis, the second part of the paper discussed the emergence of the EU's OC threat perception and its rhetorical projection onto the external dimension. This section also proposed that the development of an external dimension of OC policies might be hampered by two important elements: the difficulty in operationalising the concept of OC and the lack of EU legal basis for external action in this field. As a result, I identified a disconnection between the rhetorically emphasised importance of OC and the practice being developed in the external dimension. The purpose of the last section was to apprehend how that disconnection has been taking shape in practice, and whether there is any evolution towards a more coherent approach.

Throughout three distinct phases of the external dimension of OC policies, the EU governance theoretical framework was applied in order to understand how the EU has been integrating OC initiatives into its JHA external dimension. I concluded that the governance theoretical framework can only be partly useful in understanding the integration of OC policy initiatives into the EU's external dimension of JHA. On the one hand, this study underlines that the external dimension of OC policies includes mixed forms of governance, with hierarchical modes still being dominant, reflecting the way EU internal OC policies developed. On the other hand, however, the usefulness of this theoretical framework is hampered by the concept of OC itself. As the second and third parts of this article showed, despite being discursively very present in the external dimension of JHA, the concept of OC is not easy to operationalise, resulting in a disconnection between rhetoric and practice, and, consequently, in a fragmented field where sub-policies of OC develop autonomously. Finally, I proposed that the field has been evolving in the direction of differentiated forms of governance, due to the co-existence of hierarchical and flexible forms of governance, which are being applied to different geographical regions and sub-policy areas of OC. In fact, it is the case that despite trying to mirror other areas of the external dimension of JHA, the concept of OC and the lack of an explicit legal basis prevent this field from becoming more coherent. It would, therefore, be interesting for future research to explore how the EU external dimension of OC policies will continue to be governed and to analyse in greater detail which tools the EU will use in order to bridge the rhetoric-practice divide.

* * *

ACKNOWLEDGEMENTS

The author would like to thank the editors of this Special Issue, as well as the two anonymous reviewers and Dr Maxine David, for their insightful comments, which substantially contributed to improving this article. The research for the development of this article was funded by the Foundation for Science and Technology of the Portuguese Ministry of Education and Science.

¹ According to the 2008 Framework Decision on the fight against OC, a 'criminal organisation' means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit (Council 2008).

² The countries in question were the Russian Federation (1998), Ukraine (1998), Moldova (1998), Armenia (1999), Azerbaijan (1999), Georgia (1999), the Republic of Kazakhstan (1999), the Kyrgyzstan Republic (1999), and Uzbekistan (1999).

³ The seven countries that signed Euro- Mediterranean Association Agreements between 1998 and 2005, were the Republic of Tunisia (1998), the Kingdom of Morocco (2000), the State of Israel (2000), the Hashemite Kingdom of Jordan (2002), the Arab Republic of Egypt (2004), and the People's Democratic Republic of Algeria (2005).

REFERENCES

- Allum, Felia and Den Boer, Monica (2013) United we stand? Conceptual diversity in the EU strategy against organized crime. *Journal of European Integration*, 35 (2): 135-150.
- Allum, Felia and Siebert, Renate (eds) (2003) *Organized Crime and the Challenge to Democracy*. London and New York: Routledge.
- Aning, Kwesi (2009) *OC in West Africa: options for EU Engagement*. International Institute for Democracy and Electoral Assistance. Sweden: Bulls Graphics.
- Argomaniz, Javier (2009) When the EU Is the "Norm-taker": the Passenger Name Records Agreement and the EU's Internalization of US Border Security Norms. *Journal of European Integration*, 31 (1): 119-136.
- Balfour, Rosa and Schmid, Dorothée (2008) *Union for the Mediterranean, disunity for the EU? Policy Brief*. European Policy Center. February. Available at: http://www.epc.eu/documents/uploads/235206674_Union%20for%20the%20Mediterranean.pdf Last accessed: 31 July 2013.
- Balzacq, Thierry (ed.) (2009) *The External Dimension of EU Justice and Home Affairs- governance, neighbours, Security*. Hampshire: Palgrave Macmillan.
- Bienkowski, Pawel (2012) *The EU and China as Partners in Security: the case of transnational threats*. Centre for International Initiatives. 17/ 2012. Available at: <http://centruminiciatyw.org/sites/default/files/Pawel-%20CIM%2017.pdf>. Last accessed: 31 July 2013.
- Boekhout van Solinge, Tim (2002) *Drugs and Decision-Making in the European Union*. CEDRO, Amsterdam: Mets & Schilt.
- Börzel, Tanja (2010) European Governance: Negotiation and Competition in the Shadow of Hierarchy. *Journal of Common Market Studies*, 48 (2): 191- 219.
- Calderoni, Francesco (2010) *OC Legislation in the European Union: harmonization and approximation of Criminal Law, national legislations and the EU Framework Decision on the fight against OC*. London, New York: Springer.
- Carrapico, Helena (2011) Transnational OC as a Security Concept, in Felia Allum and Stan Gilmour (eds) *Routledge Handbook of Transnational OC*. Oxon and New York: Routledge: 19- 35.
- Council of the European Union (2011a) *Fourth Implementation Report of the 'Strategy for the External Dimension of JHA'*. Doc. 11678/11, 4th July.
- Council of the European Union (2011b) *V European Union- Brazil Summit Joint Statement*. Doc. 15084/11. 4th October.
- Council of the European Union (2011c) *Council Conclusions on Cooperation between the EU and Eastern Europe in the field of Drugs*. 13th and 14th of June, Brussels.
- Council of the European Union (2010) *Council conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime*. 3043rd Justice and Home Affairs Council meeting, Brussels, 8th and 9th November.
- Council of the European Union (2009) *Action-Oriented Paper on Strengthening the EU external dimension on action against Trafficking in Human Beings*. Doc. 11450/5/09, REV5, 19th November.
- Council of the European Union (2008) *Council Framework Decision on the fight against OC*. 2008/841/JHA, Official Journal of the European Union, L 300/42, 24th of October.
- Council of the European Union (2006) *Progress report on the implementation of the strategy for the external dimension of JHA: global freedom, security and justice*. Doc. 15363/06, 20th November.
- Council of the European Union (2005) *A Strategy for the External Dimension of JHA: global freedom, security and justice*. Doc. 14366/3/05, 30th November.
- Council of the European Union (2000a) *The Prevention and Control of Organized Crime. A European Union Strategy for the beginning of the New Millennium*. Official Journal C124/1- 124/33, 3rd May.

Council of the European Union (2000b) *European Union priorities and policy objectives for external relations in the field of Justice and Home Affairs*. Doc. 7653/00, 6th June.

Council of the European Union (2000c) EU Action Plan on Common Action for the Russian Federation on Combating OC. *Official Journal of the European Communities*, C 106/5, 13th April.

Council of the European Union (1998a) Pre-accession Pact in OC between the member states of the European Union and the applicant countries of Central and Eastern Europe and Cyprus'. *Official Journal of the EU*, C220, July 15.

Council of the European Union (1998b) Decision of the Council and the Commission of 26 January 1998 on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part. *Official Journal of the EU*, L 97/1, 30th March.

Council of the European Union (1997) Action Plan to Combat OC. *Official Journal of the EU*, C251, August 15.

The Declaration of Rome (1996) *Joint Declaration on Political Dialogue between the European Union and the Andean Community*, June.

Dorn, Nick (2009) The End of OC in the EU. *Crime, Law and Social Change*, 51 (2): 283- 95.

European Commission (2013) *Press Release: The EU steps up its response to fight money laundering and drug trafficking in West Africa*. 18th March.

European Commission (2012) *Eastern Partnership Roadmap 2012- 2013: the bilateral dimension*. SWD(2012) 109 final, 15th of May.

European Commission (2011) *On Cooperation in the Area of Justice and Home Affairs within the Eastern Partnership*. COM (2011) 564 final. 26th of September.

European Commission (2008a) *Second Progress Report on the implementation of the 'Strategy for the External Dimension of JHA: Global Freedom, Security and Justice'*. Commission Staff Working Document, SEC (2008) 1971, 27th of May.

European Commission (2008b) *Report on the First Year of Implementation of the Black Sea Synergy*. COM (2008) 391 final, 19th of June.

European Commission (2007) *Communication from the Commission to the European Parliament and the Council Towards an EU- Brazil Strategic Partnership*. COM (2007) 281 final, 30th May.

European Commission (2006) *TACIS Regional Action Programme 2006*, 19th June, Brussels.

European Commission (2004) *European Neighbourhood Policy Strategy Paper*. COM (2004) 373 final, 12th of May.

European Commission (2003) *Communication from the Commission to the Council and the European Parliament Wider Europe- Neighbourhood: a New Framework for Relations with our Eastern and Southern Neighbours*. COM (2003) 104 final, 11th March.

European Commission (2001) *European Governance, a White Paper*. COM (2001) 428 final, 25th July.

European Commission (1985) *White Paper from the Commission to the European Council on completing the Internal Market*. COM (85) 310 final, June.

European Community and Bolivia (1995) *Agreement between the European Community and the Republic of Bolivia on Precursors and chemical substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances*. Available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21995A1230\(10\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21995A1230(10):EN:NOT). Last accessed: 31 July 2013.

European Council (1999) *Tampere Council Conclusions*, Tampere.

European Council (1997) *Luxembourg Council Conclusions*, Luxembourg.

European Council (1993) *Copenhagen Council Conclusions*, Copenhagen.

European Council (1992) *Edinburgh Council Conclusions*, Edinburgh.

European Council (1990) *Rome Council Conclusions*, Rome.

European Parliament (2012) *Report on EU- China Relations*. Doc. 2012/2137. 20th December.

European Parliament (2011) *Report on OC in the European Union*, Committee on Civil Liberties, Justice and Home Affairs. A7- 0333/2011, Brussels.

European Parliament (2009) *The EU Role in Fighting Transnational OC*. Directorate General Internal Policies of the Union, Committee on Civil Liberties, Justice and Home Affairs, PE 410.678, Brussels.

Europol (2013) *EU Serious and OC threat Assessment (SOCTA)*, The Hague.

Europol (2012) EU Policy Cycle Serious OC Threat Assessment, Management Board Meeting, 3- 4 October. Available at: https://www.europol.europa.eu/sites/default/files/publications/eu_policy_cycle__socta__empact_1.pdf Last accessed: 31 May 2013.

Fijnaut, Cyrille (1992) Policing Western Europe: Interpol, TREVI and Europol. *Police Studies*, 15(3): 101-106.

Fijnaut, Cyrille and Paoli, Letizia (2004) *Organized Crime in Europe: concepts, patterns and control policies in the European Union and beyond*. Netherlands: Springer.

Freyburg, Tina (2012) The Janus Face of EU Migration Governance: Impairing Democratic Governance at Home – Improving It Abroad? *European Foreign Affairs Review*, 17 (Special Issue): 125- 142.

Henderson, Karen (2005) Perceptions of Internal Security Issues in the New Member States, in Karen Henderson (Ed.) *The Area of Freedom, Security and Justice in the enlarged Europe*. New York: Palgrave Macmillan: 1- 16.

Hillion, Christophe (2005) *The Evolving System of European Union External Relations as Evidenced in the EU Partnerships with Russia and Ukraine*. Doctoral Thesis, Leiden University, Faculty of Law. Full text available at: <https://openaccess.leidenuniv.nl/handle/1887/4338>. Last accessed: 4 August 2013.

Hooghe, Liesbet and Marks, Gary (2001) *Multilevel Governance and European Integration*. Lanham: Roman & Littlefield.

Instituto de Estudios Europeos (2006) *The Political Economy of Governance in the Euro- Mediterranean Partnership*. GoEuroMed Project, deliverable n°5, 6th Framework Programme. Available at: http://www.go-euromed.org/documents/working_paper/SP_WP_Security.pdf Last accessed: 4 August 2013.

Jachtenfuchs, Markus (2001) *The Governance Approach to European integration*. *Journal of Common Market Studies*, 39 (2): 245- 264.

Kaunert, Christian (2010) *European Internal Security: Towards Supranational Governance in the Area of Freedom, Security and Justice*. Manchester: Manchester University Press.

Kohler-Koch, Beate and Rittberger, Berthold (2006) The Governance Turn in EU Studies. *Journal of Common Market Studies*, 44 (Annual Review): 27- 49.

Knelangen, Wilhelm (2007) A Neighbourhood of Freedom, Security and Justice? in Johannes Varwick and Kai Lang (eds) *European Neighbourhood Policy*. Opladen: Verlag Barbara Budrich: 87-101.

Lavenex, Sandra (2005) Justice and Home Affairs and the EU's New Neighbours: Governance beyond Membership? in Karen Henderson (ed.) *The Area of Freedom, Security and Justice in the enlarged Europe*. New York: Palgrave Macmillan: 89- 109.

Lavenex, Sandra and Schimmelfennig, Frank (2013) EU democracy promotion in the neighbourhood: from leverage to governance?, in Sandra Lavenex and Frank Schimmelfennig (eds) *EU democracy promotion in the neighbourhood: from leverage to governance?* London: Routledge: 1- 14.

Lavenex, Sandra; Lehmkuhl, Dirk and Wichmann, Nicole (2010) Modes of External Governance: a cross-national and cross- sectoral comparison. In Sandra Lavenex and Frank Schimmelfennig (eds) *EU External Governance- projecting EU rules beyond membership*. London: Routledge: 23- 43.

Longo, Francesca (2003) The Export of the Fight against Organized Crime Policy model, in Michelle Knodt and Sebastiaan Princen (eds), *Understanding the European Union's External Relations*. London: Routledge: 158- 172.

Longo, Francesca (2002) *The EU and the fight against OC: towards a common police and judicial approach*. Milano: Giuffrè.

Mitsilegas, Valsamis (2009) *EU Criminal Law*. Oxford and Portland: Hart Publishing.

Mitsilegas, Valsamis (2003) From National to Global, from Empirical to Legal: the Ambivalent Concept of Transnational OC, in Margareth E. Beare (ed.) *Critical Reflections on Transnational Organized Crime, Money Laundering, and Corruption*. Toronto: University of Toronto Press: 55- 87.

Monar, Jorg (2012) *The External Dimension of the EU's Area of Freedom, Security and Justice: Progress, Potential and Limitations after the Treaty of Lisbon*. SIEPS. Available at: http://www.sieps.se/sites/default/files/Rapport%202012_1_A5.pdf Last accessed 31 May 2013.

Monar, Jorg (2010) The EU's Externalisation of Internal Security Objectives: Perspectives after Lisbon and Stockholm, *International Spectator*, 45 (2): 35.

PHARE (1999) *PHARE multi-beneficiary program for the fight against drugs: technical assistance to drug demand reduction: national project on harm reduction in the Republic of Macedonia*. National Research Project on Drug User's Risk Behaviour, Republic of Macedonia.

Scharpf, Fritz (2001) Notes Toward a Theory of Multilevel Governing in Europe. *Scandinavian Political Studies*, 24 (1): 1–26.

Scherrer, Amandine (2009) *G8 against Transnational Organized Crime*. Farnham: Ashgate.

Smith, Karen E. (2003) *European Union Foreign Policy in a Changing World*. Cambridge: Blackwell.

Trauner, Florian (2011a) The internal-external security nexus: more coherence under Lisbon? *Occasional Paper*, 89, March. Paris: European Union Institute of Security Studies.

Trauner, Florian (2011b) *The Europeanization of the Western Balkans: EU Justice and Home Affairs in Croatia and Macedonia*. Manchester: Manchester University Press.

Trauner, Florian and Carrapico, Helena (2012) The External Dimension of Justice and Home Affairs after the Lisbon Treaty: analyzing the dynamics of expansion and diversification. *Foreign Affairs Review*, 17 (special issue): 1- 18.

Von Lampe, Klaus (2008) Organised Crime in Europe: Conceptions and Realities. *Policing: a Journal of Policy and Practice*, 2 (1): 7- 17.

Wolff, Sarah; Wichmann, Nicole and Mounier, Grégory (eds) (2010) *The External Dimension of Justice and Home Affairs: a different security agenda for the European Union?* London: Routledge.

Journal of Contemporary European Research

Volume 9, Issue 3 (2013)

Commentary

Security Governance Matters

Antonio Missiroli *European Union Institute for Security Studies*

Antonio Missiroli is Director of the European Union Institute for Security Studies (EUISS) in Paris. He writes here in a personal capacity.

Citation

Missiroli, A. (2013). 'Security Governance Matters', *Journal of Contemporary European Research*. 9 (3), pp. 477-483.

First published at: www.jcer.net

WHERE FROM

With the end of the Cold War and the launch of the Common Foreign and Security Policy (CFSP) - and then the Common Security and Defence Policy (CSDP) as an integral part thereof - the European Union (EU) and its member states have played (both individually and collectively) an increasing role in international affairs, in particular through their participation in various types of peace-building operations.

In some contingencies, European countries have provided military troops or equipment under their own governments' auspices, mostly as part of 'coalitions of the willing', and occasionally within the framework of the United Nations (UN), NATO, as well as under the EU flag proper (both with and without NATO cooperation). These operations have entailed the provision of military training and support, humanitarian assistance, and peacekeeping. Moreover, EU countries have increasingly engaged in civilian operations, ranging from executive policing and training of local law enforcers to border monitoring and judicial assistance [see Christova in this issue]. Indeed, CSDP and other EU-led operations started in late 2002, grew in number and type in the following years (when the term 'mission-shopping' was coined to express the Union's eagerness to prove its worth as an autonomous international player), reached a peak around 2007-08, and then gradually declined. All these types of mission are now well reflected in Art. 43 of the Lisbon Treaty (Treaty on European Union, TEU): they are commonly defined as 'crisis management' operations, although they are essentially about peace-building, not 'peace-making' (as the Treaty still calls 'peace-enforcement' according to Chapter VII of the UN Charter). Their theatres, too, have varied significantly, from the Balkans to North Africa, from the Middle East and the Gulf of Aden to Central and even South-East Asia.

Over the past decade, such tasks have been carried out by and through a set of bodies that the EU has built up incrementally, starting from the thin structures allowed by the Amsterdam Treaty (1999) and ending up with the new architecture enshrined in and implemented after the Lisbon Treaty (2009).

The period 1999-2009 coincided with Javier Solana's tenure as High Representative for CFSP, and EU 'crisis management' was then identified with and labelled as European Security and Defence Policy (ESDP). A number of subsidiary bodies were gradually set up for military (EU Military Committee/EU Military Staff) and civilian (Committee for Civilian Aspects of Crisis Management, CIVCOM) activities. To these one could add also the integration - or creation *ex novo* - of dedicated agencies, specialised centres, special representatives, coordinators and working groups under the aegis of the Council Secretariat. Specific procedures, guidelines and doctrines (including the 2003 European Security Strategy) and targets (including the so-called 'Headline Goals') were agreed and put in place. And bilateral cooperation agreements were struck with NATO and the UN. All this has come to represent an *acquis* in its own right.

In parallel and addition to that, *security* policy was conducted also by and through the European Commission, whose competences in 'external action' at large were and have remained quite substantial: that was the case with trade (including its 'negative' side, notably sanctions [see Giumelli in this issue], development and humanitarian aid, enlargement, crisis response and conflict prevention [especially with the Instrument for Stability, see Lavallée in this issue] and also external *relations* proper. Typically, each such policy area had a dedicated Directorate-General (DG) and, since 1999, even an own Commissioner. The degree of 'exclusive competence' of the Commission varied significantly across the board, but the combination of a single bureaucratic structure (encompassing all EC Delegations in third countries and international organisations) and

budgetary endowment and control made it an indispensable player in the EU external game.

These two main policy and administrative ‘boxes’ were long seen and presented - following the Maastricht Treaty (1993) - as neatly separate ‘pillars’, one intergovernmental and the other communitarian. In fact, the CFSP ‘pillar’ soon turned out to be much less purely intergovernmental as normally assumed, while the Community ‘pillar’ encompassed also much more hybrid arrangements (e.g. in the field of development aid).

More importantly, the relationship between them went through various stages. Initially, the good personal relations between Javier Solana and Chris Patten, the first Commissioner for External Relations (Relex) shaped a type of co-existence and even cooperation that, in turn, triggered the call for creating a personal union between their functions (‘Pattana’, as it was jokingly branded) to achieve better coherence and synergy. That call translated soon into the provisions that were incorporated in the Constitutional Treaty (July 2003) and then, following subsequent adaptations, in the Lisbon Treaty itself. Yet the uncertainty over the fate of the new provisions on foreign and security policy which characterised the entire second part of Solana’s mandate – he was initially expected to become the first double-hatted EU ‘Foreign Minister’ in late 2006 - contributed to a more tense relationship between ‘the two sides of Rue de la Loi’ (as they were called in the Brussels jargon), which often tended to look at issues of shared or overlapping legal competence and policy execution as institutional zero-sum games.

Come as it may, when the Lisbon Treaty eventually came into force in November 2009, the two main ‘boxes’ (or at least large volumes of each) were brought together under the authority of the multi-hatted High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission (HR/VP). When Baroness Catherine Ashton was appointed to the post, however, very little preparation had been made to implement the new provisions. As a result, a fresh round of inter-institutional negotiations had to be held (involving also quite substantially the European Parliament) in order to put in place, in particular, the brand new European External Action Service (EEAS), which soon turned out to be the centrepiece of the new EU foreign and security policy system of governance.

Interestingly, the end result of those negotiations - concluded in October 2010 - and their subsequent implementation (all Brussels-based EEAS officials were initially scattered across eight different buildings and were eventually gathered under the same roof only in September 2012) was in part different from what was arguably expected and, above all, is still subject to transformations and adjustments. Meanwhile, the operational dimension of CSDP has further evolved: the declining number of EU missions has been somewhat offset by one major success story, namely the naval counter-piracy operation off the coast of Somalia coupled with humanitarian and capacity-building missions offshore and onshore.

As the promised ‘review’ of the EEAS is now in the pipeline, and the much expected European Council devoted to defence proper approaching, it may be worth trying at least to identify some emerging issues, especially from a security policy perspective.

WHERE NOW

Any evaluation of the state of play of the Lisbon Treaty *sub specie* foreign and security policy has to be made (and taken) with caution. First, as mentioned above, its actual implementation has *just* started: after the many twists and turns of the long ratification process and the ensuing re-negotiations over the EEAS, the new ‘system’ is still under construction – and under review. Second, expectations need to be adjusted: the HR/VP

is *not* the EU foreign (or defence) 'minister' and the EEAS is *not* Europe's single 'foreign service' in the making. Third, some unintended consequences of both the treaty itself and the way in which EU security governance has taken shape over the past decade are beginning to become apparent, and may need to be addressed sooner rather than later. What follows is just a tentative catalogue of trends and issues that have emerged lately and may deserve political attention – and possibly action.

To begin with, Catherine Ashton's current job description is not manageable by any human being. Maybe Javier Solana was not entirely wrong when, roughly a decade ago, he argued that, while the 'personal union' between the HR and the Relex Commissioner did make sense, the creation of a single structure under the sole responsibility of the double-hatted supremo was less sensible: his main point was that he could operate as a sort of 'roving diplomat' and trouble-shooter in (certain) crises only because he was not, at the same time, in charge of a sizeable bureaucracy and the policy and administrative coordination efforts that requires. Maybe, too, the European Parliament was not sufficiently foresighted when, during the 2010 negotiations over the EEAS, it squarely vetoed the appointment of possible 'deputies' by and for the HR/VP: the main point was not their legitimacy but their utility, scope and accountability. At any rate, the outcome so far is a situation in which the HR can hardly be also a full vice-president of the Commission and is constantly torn between the management of the EEAS' fledgling machinery and the need to travel worldwide, to mediate with and among the member states, to shape innovative policy approaches, and to fight her own institutional corner.

On top of all this, as the 'appointing authority' for all positions in her policy and administrative domain, the HR/VP is bound to make many EU capitals unhappy: grumblings over the 'geographical balance' inside the EEAS or the procedures adopted for one or the other nomination do indeed abound, and are there to stay. They are a fact of life, in many ways, but they have also become a manifestation of member states' concerns about the role and the future of their own diplomatic services, often leading them to see the EEAS as a rival and a threat rather than a vehicle for and a complement to national foreign policies. This feeling has perhaps been stronger among the smaller and newer EU members, who also believe - rightly or wrongly - that with the end of the EU rotating presidency system they have lost out in terms of agenda-setting and access to policy-shaping.

Among the unintended consequences of the Lisbon Treaty, one should also underline the fact that EU foreign ministers are no longer members of the European Council. As a result, foreign and security policy is rarely on its agenda (it has been only once since 2009, in the autumn of 2010, but was then overtaken by other controversies at the summit), and the widespread feeling of marginalisation of national foreign ministries risks further weakening the sense of common ownership of the new system. The creeping 'presidentialisation' of policy-making in the EU, as epitomised by the number of European Council meetings held over the past three years, also means that the two presidents - Barroso and van Rompuy (and their respective staff) - now take central stage also in external relations, be it at G-8/G-20 level or at summits with strategic partners and regional organisations. The marginalisation, in other words, partially affects also the HR/VP and occurs inside EU institutions as much as vis-à-vis foreign players.

Regarding the EEAS proper, it is essential to differentiate between the Brussels 'headquarters', so to speak, and the EU Delegations abroad. Even in the former, at least two distinct realities have taken shape: on the one hand, in fact, both the geographical and the functional/horizontal directorates have seen a difficult process of integration between officials from the Commission's DG Relex, the Council Secretariat and - to a lesser but now growing extent - the diplomatic services of the member states. Such integration is far from complete and has produced mixed results, in part also due to personal and occasional factors: in this domain, indeed, only time can help (and will tell).

On the other hand, the previous CSDP-related structures from the Council Secretariat have been transferred almost integrally - i.e. en bloc and without any significant insertion of officials from other institutions - into the relevant military and civilian crisis management bodies of the EEAS, thus encompassing elements of not just a foreign but also a defence, interior and even justice 'ministry'. The challenge for them seems to be of another nature, namely the functional integration into the overall *modus operandi* of the new system at a time when the volume of operations is decreasing in number and scope.

Lastly, remnants and leftovers of the previous inter-institutional tug-of-war across Rue de la Loi still affect work relations with some Commission departments, especially when it comes to setting modalities and priorities for financial planning and execution: while tensions over development and humanitarian aid still persist (and trade remains uncontaminated Commission territory), an effective *modus vivendi* has instead developed with enlargement policy, as the recent success in brokering the deal between Belgrade and Pristina has proved. But that is also an area where the old 'soft power' of the EU still has considerable traction. It is also worth mentioning that other Commission DGs originally not much involved in external relations – such as those once operating under and along the third 'pillar' – are now developing their own capacity to act internationally and are not much willing to share it.

As for the 140 EU Delegations in third countries and multilateral organisations (accredited in as many as 163 states), the picture looks fairly good. Their gradual integration into the service - which, interestingly, was not foreseen by the Lisbon Treaty (that simply put them under the authority of the HR/VP) and was only inserted later on in the 2010 Decision on the EEAS - has proceeded rather smoothly so far [see Carta in this issue]. Experienced diplomats from the member states have been appointed to head some of them, especially those with more political significance, while the rest of the staff is still mainly from Commission DGs. Yet the arrival of professional diplomats has clearly filled a vacuum and complemented the existing local know-how, thus becoming a qualified success story. The flip side of this is the still relatively unclear role of the Special Representatives (EUSRs), who are *not* part of the EEAS nor belong to the Delegations - they are directly appointed by the Council, partly funded by the member state they come from, and accountable only to the HR - but operate alongside them in a number of countries and regions.

WHERE NEXT

Apart from and beyond these functional problems, a few underlying policy and institutional issues deserve to be mentioned. First, as with the Lisbon Treaty the CFSP becomes ever more global in scope and outreach and integrated in design, the CSDP is still largely limited to military and civilian 'crisis management' as carried out especially through the EUMS and the Crisis Management and Planning Directorate (CMPD). It has no direct relation to territorial defence, despite the qualified obligation to mutual aid and assistance in the event of an armed aggression enshrined in Art. 42.7 of the Treaty. The commitment (Art. 42.2 of TEU) to 'the progressive framing of a common defence policy' is quite vague and has hardly been followed up with action - as has the other 'solidarity clause' in Art. 222 of the Treaty on the Functioning of the European Union (TFEU) - while 'homeland' security (encompassing inter alia cyber-security, intelligence sharing, and civilian protection) is dealt with by other EU institutions and agencies [see Carrapico in this issue].

Nor is the CSDP linked up with - or backed up by - any consistent industrial policy and procurement framework: the only treaty reference to that (namely in Art. 346 TFEU) is of a restrictive nature and, at any rate, the regulatory powers the Union has in this domain still lie with the European Commission. Finally, medium- and long-term

investment programmes that are relevant to security and defence, albeit to varying degrees, are being implemented through different bodies, in the Commission - where they are still spread across separate DGs (Internal Market and Services (Markt), Enterprise and Industry (Entr), Trade, Research and Innovation (Rtd), Mobility and Transport (Move) - or by the European Defence Agency (EDA). And while energy 'security' falls nowhere in the institutional picture, space policy tools are scattered not only inside the EU (Commission, EU Satellite Centre (EUSC, commonly known as SatCen)) but also beyond, including the European Space Agency (ESA).

Finally, parliamentary oversight of security-related matters is minimal at EU level (although the European Parliament keeps trying to widen its turf by using the budget lever) and extremely diversified at national level, among the member states themselves: the rights and powers of the Bundestag, the Assemblée Nationale and the House of Commons – just to name the most important ones – are not even remotely comparable in this domain. As a consequence, it is extremely difficult to identify a fair and effective way to bring together not only Members of the European Parliament (MEPs) and Members of Parliament (MPs), but even MPs from national parliaments alone – some of which have considerable influence over such matters.

As a result, EU security policy is spread thin across distinct and often separate mini-'boxes' – each one with its own internal procedures, bureaucratic structures, funding rules and schemes – with tools that are hard to bring together to generate the desired coherence and synergies. This may not be that different from what happens at national level but it does make EU policy formulation and execution even more complicated.

On top of that, both the CFSP and the CSDP have to face rising external challenges with declining internal resources: financial and material resources, of course, but also *political* ones – as amply demonstrated by the recent intra-European divisions over the sovereign debt crisis and the shortage of mutual trust among EU member states. The internal constraints, in other words, are not simply economic and budgetary: they include a substantial lack of interest and determination to act in this domain (despite occasional exceptions, as in the case of Libya); a tangible loss of cohesion and ambition among the member states; and, last but not least, a reluctance among citizens and voters, despite widespread concerns about their own 'security' (in socio-economic terms), to consider security *policy* – as framed here – a political priority [see Zyla and Kammel in this issue].

Europeans still appear relatively (and comparatively) well equipped to mobilise the tools needed to tackle possible direct security threats. Yet, even without bringing into the picture NATO, the sheer range and variety of EU bodies, procedures, doctrines and budgets that affect security policy is striking. This is, arguably, the result of the incremental accumulation of ever more detailed functional arrangements to deal with specific sub-policies in the absence of an overarching and comprehensive political framework. The Lisbon Treaty has represented just a first effort to streamline such a fragmented picture, but both the HR/VP and the EEAS are still struggling to make their mark and prove their added value. In part, of course, this is also due to the economic and political challenges that have dominated the EU agenda since early 2010: the context has hijacked the text. And yet further improvements in EU security governance are both necessary and possible, even without changing the Treaty, at least right away. For instance, assembling all security and defence-relevant Commission competences and units under a single administrative roof and possibly Commissioner would bring only one person to the Council table and significantly reduce bureaucratic fragmentation: neither this nor launching more targeted, 'hybrid' Council formations to address the issues of policy coordination mentioned above would require a revision of the Treaty.

The so-called 'comprehensive approach' embraced by HR/VP Catherine Ashton and the EEAS is notably trying to bridge some of the gaps identified here by bringing together the so-called '3 Ds' (diplomacy, defence and development) and involving both EU institutions and member states, and to devise joined-up policy approaches to current

and future challenges. But when it comes to mobilising financial resources or producing legislation to back them up, the need for an even more comprehensive approach (and political framework) becomes apparent. The forthcoming European Council of December 2013 should thus represent a point of departure for a general reassessment of Europe's *common* strategic interests and ambitions, and of the *shared* policy instruments required to pursue them.

The EU appears indeed to be the most appropriate and effective framework in which to undertake these efforts, precisely because its member states can bring to bear all the different policy levers (including their collective regulatory power) built up over decades of economic and political integration.

* * *

Book Review

Sophie Wulk *University of Flensburg*

The Organization of European Security Governance: Internal and External Security in Transition

by Ursula Schroeder

Routledge, ISBN: 9780415601597 (hb)

This book analyses the impact of the increasingly complex security political environment on the EU's approach to security provision and its underlying organisational structures. The study shows that, while new modes aiming at a more comprehensive approach to security have been established, in practice the ultimate goal has proved elusive, despite organisational restructuring. The careful analysis of the EU's security governance framework in this volume provides insights in a solid and accessible way. Therein this book is a valuable source for researchers or students who seek to gain insights into the underlying organisational logics of EU security governance which, as the study shows, definitely determine its course.

To constitute a strong empirical base for her research, the author conducted an intensive qualitative study based on over 30 semi-structured interviews with policy experts, complemented by an in-depth document analysis. Schroeder treats the field of security holistically, considering both its internal and external dimensions, tracing the major institutional changes between 1999 and 2010. The two fields of counter terrorism and crisis management serve as case studies to illustrate the dominant features of the EU's security framework. This empirical study is complemented by a historical analysis of the former second and third pillar policies, their legal dimension and the actors involved. From a conceptual point of view, the analysis follows a governance approach and builds in particular on historical institutionalist perspectives.

With the collapse of the Soviet Union and the rise of new forms of security threats, the internal and external dimensions of security became increasingly difficult to separate. This led EU policy makers to demand a comprehensive approach to the provision of security. In this context, Schroeder questions the extent to which these complex security challenges and the rhetorical claim for comprehensive approaches to security have translated into a change in governance structures at EU level. The volume begins by identifying a need to analyse the evolution and transformation of organisational structures in the security environment. Subsequently, the increasingly overlapping nature of internal and external security challenges and the growing interdependence of threats is described. It then goes on to determine two major developments in EU security politics, namely the vertical Europeanisation of national security policies and horizontal convergence of internal and external security challenges bringing formerly separated actors closer together. In the following chapters, the book discusses the EU's security governance framework, identifying the strategies developed and the actors involved from a historical perspective. Schroeder concludes that administrative and operational capacities have been developed and competences acquired, however intergovernmentalism and inter-institutional conflicts remain crucial obstacles for a comprehensive security framework.

The cases show that, although the internal and external security strategies have generally been merged, the new bodies are predominantly merely symbolic and have not

substantially altered organisational behaviour. Hence, there remains a persistent gap between the EU's political rhetoric and the organisational and administrative dimensions of EU security policies. Moreover, boundaries between internal and external security actors largely remain in place, and organisational changes are initiated and pursued along pre-existing organisational or professional divides. In this context, actors continue to prefer more informal forms of coordination and cooperation. Summing up the findings of her research, the author concludes that the preferred informal mode of policy making and coordination in the sector of security provision raises substantial questions about accountability, transparency and hence the legitimacy of the actors involved and their activities in this field. She discusses the normative implications thereof and calls for more public visibility and political debates concerning this critical condition.

The volume is designed in a concise manner and provides many novel insights into the field. One of its evident strengths is its organisation and structure which ease processing of the information and the argumentation. The overall argument of the book is solidly developed throughout its seven well and logically arranged chapters which are equally balanced in length and composition. Another explicit strength of the work is that, despite the complex material treated therein, Schroeder has managed to produce a reader-friendly yet detailed illustration of the EU's security governance structures and the actors and bodies involved, as well as their historical and legal background. Further, the work succeeds in presenting the theoretical underpinnings and conceptual framework in a concise and clear manner.

The book represents a decidedly valuable and compelling source for students and scholars engaging in research related to the former second and third pillar policies of the EU. It is highly recommendable both to experts and novices in the field of EU security governance, as Schroeder not only succeeds in providing her readers with a thorough analysis of the field and its actors, but beyond that supplies original insights into the organisational structures which are essential to understand policy making and coordination in this policy area. Chapters 1 to 4 serve as an excellent introduction into the subject matter and are thus of particular use for those who are searching for a comprehensive yet concise and well-written basic text. Researchers well versed in the topic of EU security governance might also find these chapters helpful in refreshing and/or updating their knowledge on the changes introduced with the Lisbon Treaty. Beyond that, experts will find particular pleasure in the in-depth case studies presented in Chapter 5 and 6. They stand out as valuable and innovative analyses of the different actors and bodies involved and thus provide an excellent and detailed insight into the organisational structures that make up the EU's security architecture. One criticism of the presentation of the case studies is that the listing and naming of the various bodies, institutions and actors can at times be confusing if one is not too familiar with the existing structures. Thus, on behalf of the less-well versed, it would have been useful to introduce each case study with tables or graphs to provide an overview of the respective actors and bodies and how they interrelate. This would decisively enhance the tangibility of the analysis and would make the work more accessible to a broader audience.

The normative implications drawn from this analysis of governance structures which are dominated by informality are of essential value for students and researchers alike. The salience of the topic and the questions regarding accountability and transparency as well as its consequences for democratic legitimacy prompt a range of important questions to be discussed on any number of levels. Hence, this book will be eminently useful to both specialists and newcomers to the field of EU security governance.

* * *

Book Review

Yuliya Zabyelina *University of Trento*

The EU and Multilateral Security Governance

by Sonia Lucarelli, Luk Van Langenhove and Jan Wouters (eds)

Routledge, ISBN: 9780415679305 (hb)

Whereas discussions on unipolarity and the United States as the leading actor in global security are common among academics and policy-makers in the North American context, scholars in Europe seem to be particularly interested in exploring the various ways European countries work in concert on security issues. A distinct group of studies on *multilateral security governance* (MSG) emerged in the early 2000s. This research framework studies the complex social interactions and relationships among various kinds of actors engaged in discussing and acting on a wide range of security issues. This volume, edited by Sonia Lucarelli, Luk Van Langenhove and Jan Wouters, is one of the most recent collections that feature conceptual and empirical analyses of MSG and the EU's role in it. The volume calls for increased effectiveness in the EU's actorness and representation that can help cope with problems bearing on common peace and sustainable development both regionally and globally.

The book is divided into two parts: Part 1 addresses the main theoretical concepts; Part 2 is dedicated to studying the role of the EU in multilateral security governance empirically. In Chapter 1, Michela Ceccorulli and Sonia Lucarelli provide an assessment of the literature on MSG and address some of the ways the research in this area is likely to develop in the future. James Sperling's contribution in Chapter 2 provides a theoretical analysis of a post-Westphalian state and its key features juxtaposed with preceding forms of statecraft. Largely relying on the Constructivist approach to security, the authors of Chapter 3, Luk Van Langenhove and Tiziana Scaramagli, analyse the extent to which the human security discourse is related to MSG, thus beginning to draw the strands of the first two chapters together. Although the connection between human security and MSG is not explicit, the argument the authors develop contains an important theoretical premise: the human security agenda is argued to challenge gravely the Westphalian world order, in that way fostering a continued debate on the issues of state sovereignty, governance, and multilateralism. Chapter 4 by Siobhan Gabriella Gibney and Sven Biscop argues that the EU is itself a product of multilateral cooperation because of its extensive bureaucratic framework based on common laws and shared values, and as such is one of the good examples of MSG. Chapter 5 by Jan Wouters, Stephanie Bijlmakers and Katrien Meuwissen engages in an examination of the extent to which the constitutional and institutional changes introduced by the Treaty of Lisbon enhance the EU's capacity to be an effective multilateral security actor. This chapter discusses the legal personality of the EU and its potential to enhance EU coherence and visibility, the importance of post-Lisbon de-pillarisation and the future of the CFSP and the CSDP, as well as new mechanisms for coordination and solidarity among the member states.

Part 2 of the volume is a collection of case studies on the EU as a multilateral governance actor. Chapter 6 by Emil Kirchner presents the analysis of the EU's participation in multilateral organisations that engage in peace and security such as the G20, the UN, and the OECD and OSCE. This chapter is primarily concerned with the EU's policies that promote democratic principles and good governance, policies that prevent

the occurrence of major conflicts, and policies related to the use of force to end hostilities or maintain stability when hostilities are over. Proceeding with the analysis of EU policies, Ruth Hanau Santini engages in a discussion of the EU's democracy promotion in the Middle East and North Africa in Chapter 7. Santini argues that the engagement of the EU in bringing peace to the Middle East after the 'Arab awakening' is guided primarily by *realpolitik*. Rather than promoting democracy as a good per se, EU's policy-makers engage non-democratic regimes in contractual and trade relations. Chapter 8's authors, Sijbren de Jong, Jan Wouters and Steven Sterkx, explore the EU's role in MSG in another area of 'non-traditional' security. By studying the case of the 2009 Russian-Ukrainian gas dispute and its consequences for EU-Russian energy relations, they study the EU's interventions during the dispute. Taking a critical stance on the EU's position in the gas crisis, the authors are sceptical about the EU's ability to handle similar crisis situations in the future due to its incapacity to take action on a global or interregional level. The last chapter of the volume, by Michela Ceccorulli and Emmanuel Fanta, touches upon the EU's management of migration from North and West Africa. Having compared the discourses and practices of migration in these regions, the authors suggest that the EU has been more successful in establishing interregional management of migration in West Africa because of ECOWAS - a well-established regional organisation with mandates in migration and security. The EU's position of turning a blind eye to the internal situation in North African states, such as in the case of Libya, has led to little consensus and poor coordination between the EU and North African states on issues related to migration.

Regardless of its multiple merits, the volume is not without limitations. MSG may be an excellent general framework for thinking about state interactions, but it is far too abstract and amorphous. Due to its manifold interpretations and multifaceted nature, the term inevitably causes gaps in research consistency, case selection, and operationalisation of concepts. How, for instance, can one measure the effectiveness of MSG? Other questions also arise in terms of case selection. It is not clear why the cases of energy security, migration, and democracy promotion were preferred to other areas. The volume could have also been improved if there were a concluding chapter. A well-crafted conclusion could have helped the audience to digest the complexity of contemporary interpretations of multilateralism, governance, and security.

Despite these minor defects, the volume is undoubtedly an insightful collection of articles that collectively endorse multilateral security governance as the conceptual framework for understanding complex forms of regulation and coordination of different actors at different levels. The edited book is an eminently readable and understandable work featuring solid contributions on the transformation of security agendas and the EU's role in international security and will certainly be appreciated by academics and policymakers alike.

* * *

Book Review

Aukje van Loon *Ruhr-University Bochum*

The EU's Common Foreign and Security Policy: The Quest for Democracy
by Helene Sjursen (ed)

Routledge, ISBN: 9780415508544 (hb)

This volume edited by Helene Sjursen was originally published as a special issue in the *Journal of European Public Policy* in November 2011. It examines the main structures, the institutional setting and the procedures that govern decision-making in the EU's Common Foreign and Security Policy (CFSP). This is accomplished by means of a focus on the question of democracy and the wider challenges it poses in this field of policy-making. Whereas some of the book's contributors address the significance of intergovernmentalism as a conceptual tool, others highlight the contested problems of democracy and legitimacy that exist in this policy area. Intergovernmental decision-making has been equally essential to both the EU and the CFSP. In this context, it is argued, a move beyond intergovernmentalism, if it occurs, should be accompanied simultaneously by democratic control and accountability. The aim of the eight chapters in this contribution is to examine and evaluate developments in the CFSP by applying perceptions from democratic theory and international relations studies.

Sjursen begins by setting out the aims and scope of the collection. In the next chapter, she engages in an exploration of the key elements of democratic intergovernmentalism, assessing its empirical status. She recalls the significant elements of intergovernmentalism where power and authority was originally conceived as residing entirely at the national level. Sjursen's argument is that the CFSP may have moved beyond intergovernmentalism, implying a fragmentation of national governments' accountability and autonomy has occurred, particularly with regard to decision-making. This makes it more difficult to determine who decides, as well as where decisions are made and who should be accountable. Sjursen proposes an analytical scheme which facilitates identification of a potential move beyond intergovernmentalism as well as its supposed democratic challenges.

The following two chapters highlight the core principles of intergovernmentalism by concentrating on specific actors. Ana Juncos and Karolina Pomorska investigate the role of officials from working groups in the Council of the EU, as well as officials from the Council Secretariat dealing with EU external relations. According to the authors, these two case studies need more empirical attention which they aim to provide by uncovering the continuous process of Brusselization and socialization taking place in the CFSP. Their analysis determines the impact of individuals' socialization, meaning the effect a collective identity has on the decision-making process, as well as how socialization affects cooperation patterns and influences individual and national roles and positions. This contribution is followed by Federica Bicchi's analysis of the CORrespondence Européenne (COREU) network. Like the previous two case studies on the Council working groups and the Council Secretariat, the author finds empirical application in respect of COREU to be limited. She aims to go beyond intergovernmentalism, maintaining that officials involved in CFSP policy-making can be perceived as a group of people who regularly share day-to-day practice and communication, thereby integrating diverse national systems. Her research shows that the actors involved have established

a common language and routine which has contributed to the diminishment of a purely national dimension of foreign policy.

Thus far, the various chapters in the book engage in a theoretical discussion and empirical investigation of the core elements of intergovernmentalism. The fifth contribution by Christopher Lord changes this focus by addressing the question of democracy. Lord uses democratic theory to identify the need for democratic control in foreign policy in general as well as specifically focussing on the EU's Common Security and Defence Policy (CSDP). Furthermore, his contribution highlights the question of whether democratic control requires parliamentary control and parliamentary participation. Jutta Joachim and Matthias Dembinski widen the actor-centred approach by assessing the political participation of non-governmental organisations in the case of the European Code of Conduct/Common Position of Arms Export. Providing several empirical observations, this chapter comes to the conclusion that the processes involved in developing the Code are in line with intergovernmental approaches. Any further developments since the actual adoption of the Code, however, seem to follow a governance perspective. This chapter's focus on the intergovernmental versus governance approach leaves the authors with limited space to dedicate to democratic challenges or implications. This, however, is picked up again in the next contribution by Erik Oddvar Eriksen who stresses the limits of the democratic governance approach in balancing the role of expertise and accountability in security policy. Contemporary issues, such as the global financial crisis, present the EU with complicated and interwoven security threats. The author finds that the EU is currently underdeveloped with regard to the separation of powers and decision-making, which creates a challenging environment in which to secure democratic accountability. The final chapter by Ben Tonra, aims to address the weakness of democratic accountability in foreign, security and defence policies. Tonra argues that the lack of democratic accountability is due to the poor narrative foundation in Europe; currently, there is no sound linkage between national and European narrative constructions. This has ultimately led to a missing sense of ownership and collective identity over the international actions of the EU.

In summary, the book makes a good contribution to understanding the EU's foreign, security and defence policy making. Although the issues discussed within the volume are not new, it provides a satisfactory account of intergovernmentalism and the questions drawn from the related democracy debate. As such, this is a useful book for both students and practitioners interested in the EU's CFSP and CSDP. That said, the book does have several shortcomings. First of all, it does not include a concluding chapter. This is an unfortunate omission. Such a chapter could have provided the reader with a summary that delivered a comprehensive comparison of the arguments and approaches set out by the contributors. It could also have delivered some guidance to understanding the extent to which the collection's aims were fulfilled and given some hint also as to where further research should be directed. Secondly, the authors only apply or refer back to the editor's analytical scheme introduced in chapter two on a very limited basis. A more stringent application of that scheme would have benefited the reader and added coherence to the collection. Thirdly, although the book does deliver insights from both Democratic and International Relations theories, it unfortunately does not explain the logic or added value of a concentration on intergovernmentalism and democratic theory alone. The approach adopted does provide the reader with an understanding of the issues concerned. However it fails to broaden perspectives in the direction of other significant theories that offer contrasting perspectives regarding the quest for democracy in the EU's CFSP.
