THE RATIONALE FOR THIS VOLUME: A MEETING AND A CONVERSATION

To argue that the European Union has become an international actor is to state the obvious. Since the establishment of the Communities in the 1950s, and in the light of successive rounds of internal constitutional and institutional reform, the Union has developed a sophisticated network of relations with its neighbours, considerable links with third states and international organisations, a framework for a political, security and defence policy to accompany its external economic policies, an institutional infrastructure to support it, and has engaged in a wide range of security and defence operations around the globe.

A number of internal and external factors have raised the profile of the Union’s international role: the consolidation of European integration, the introduction of a common currency, and the recent rounds of enlargement, along with the new international environment shaped by the terrorist attacks first in New York and then in Madrid and London, the wars in Afghanistan and Iraq, the increasing interdependence on the international scene, to name a few, have all rendered the development of the Union’s international relations fast and that of its ambition even faster.

This ambition is reflected in the long and painful process of group therapy which the Union has undergone in the last nine years. The Laeken Declaration on the Future of the European Union, which initiated the process of reform of the Union’s Treaties in December 2001, referred prominently to ‘Europe’s new role in a globalised world’ and raised the bar quite high: ‘Does Europe not, now that it is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples?’\(^1\) The role it envisaged was directly linked to ‘its responsibilities in the governance of globalisation’ which ‘Europe needs to shoulder’.\(^2\) This notion of increased involvement in world

---

\(^1\) European Council, 14–15 December 2001, p2.

\(^2\) Ibid.
affairs, coupled with a sense of responsibility, was further underlined in the European Security Strategy (ESS) which, against the backdrop of the terrorist attacks in New York, stated that ‘Europe should be ready to share in the responsibility for global security and in building a better world’.3

The focus on the Union’s international role was also apparent in the process of the ratification of the Treaty Establishing a Constitution for Europe. On the day of the signing of that Treaty, the then President of the European Commission Romano Prodi stated that ‘today, Europe is reaffirming the unique nature of its political organization in order to respond to the challenges of globalisation, and to promote its values and play its rightful role on the international scene’.4 And the Lisbon Treaty, which drew upon the Constitutional Treaty, maintained this focus, and was widely viewed as enabling the Union to carry out a more effective and coherent foreign policy. During the Russia–Georgia crisis in 2008, for instance, President Sarkozy of France, then holder of the rotating EU Presidency, argued that, had the Lisbon Treaty entered into force, the Union would have had the appropriate institutions to deal with international crises.5

Far from being confined to academic exchanges between specialists and policy-makers, the discussion of the Union’s foreign policy has attracted considerable attention from a wide audience. The Common Foreign and Security Policy and the Common Security and Defence Policy are two of the most popular EU policies, commanding wide support of EU citizens (including those in the United Kingdom). And the debate about the direction of the Union on the world scene has also attracted publicity beyond the circles of experts. For instance, the analysis which associates the Union and its attachment to soft power with Venus and contrasts it to the United States’ Mars, has been discussed widely.6

The increasingly prominent position of the Union’s foreign policy in policy-making circles and public opinion has been matched in academic literature. There is voluminous literature on the role of the EU in the world, its ambitions, scope, effects and future. A considerable part of it is written by political scientists and international relations theorists7 and it has given rise to

---

5 Le Figaro, 18 August 2008.
a healthy debate about the Union’s international posture. On the other hand, it seems that, for a long time, legal scholars were mainly concerned with the unique features of European integration which were developed incrementally over the years and shaped, to a very considerable extent, by the European Court of Justice. The attraction of the development of European integration for lawyers was encapsulated by Weiler in an essay he wrote originally in the early 1990s: ‘[i]n some ways, Community law and the European Court were everything an international lawyer could dream about: the Court was creating a new order of international law in which norms were norms, sanctions were sanctions, courts were central and frequently used, and lawyers were important’. 

However, the development of the Union’s international posture, the widening scope of the Union’s activities, and the increasingly prominent involvement of the European Court of Justice in the area have attracted the attention of legal scholars too. In the last few years, there has been an increasing stream of publications. These examine the principles governing the conduct of the EU’s external economic and political relations in their constitutional and institutional context,\(^8\)

---

8 See the recent outline of the different ‘stories’ about the Union’s international role in Manners, I., ‘Global Europa: Mythology of the European Union in World Politics’ (2010) 48 JCMS 67.


or provide a reasonably comprehensive analysis of components of EU external relations,\textsuperscript{11} or do both.\textsuperscript{12}

The starting point for this book is the realisation that legal and political science scholarship on the EU’s foreign policy has developed along distinct paths. On the one hand, in terms of its approach, the existing legal literature examines EU foreign policy as a distinct area of legal analysis, at times independently from the political context and international dynamics within which the relevant legal rules are applied, hence illustrating a tendency to overestimate the significance of legal rules and procedures. On the other hand, the political science and international relations scholarship tends, at times, to underestimate the significance of the latter and the role of the law as the expression of the constitutionally idiosyncratic nature of the European Union. Thus, these lines of scholarship have been dealing with similar issues in a compartmentalised fashion and developing in parallel paths which rarely meet.

This volume makes no claim to comprehensiveness, and hides no ambition of putting forward an inter-disciplinary agenda. Its claim is more modest, namely to make legal, political science and international relationship scholarship meet around certain threads which underpin the EU’s international relations. This was, literally, the origin of the volume, as it is based on a workshop held at the University of Bristol on 23 January 2009 which aimed to bring together scholars from these different disciplines and engage them in a dialogue on these threads. By discussing each topic from the legal and political science point of view, it seeks to move away from the compartmentalised analysis which characterises the existing literature and to highlight the different perspectives which these disciplines bring to the central issues of EU foreign affairs.

\begin{itemize}
\end{itemize}
THE THREADS

In terms of its focus, the subject-matter of the book meets three criteria. First, it examines issues of EU foreign affairs which have attracted considerable interest from both legal scholars and political scientists. This offers considerable scope for useful ‘compare and contrast’ analyses. Second, these issues are so central to the direction of the Union as to touch upon its relevance on the international scene, as well as upon its identity. Third, rather than dealing with them as distinct areas of activity, each of the issues examined in the book relates to the entire range of the diverse components of the EU’s external relations (economic as well as political, and security). In terms of both the substantive (on the EU’s neighbourhood, and the Common Security and Defence Policy) and the horizontal chapters (on coherence and judicialisation), the choice of subject-matter focuses on the cross-pillarisation of the EU’s international action: this is examined not as a characteristic of the EU’s external relations in general, but as the core theme of each of its most central features.

On the basis of the above three criteria, this volume focuses on certain threads which bring together different strands of EU foreign affairs, and organises them around a conversation between scholars of different backgrounds. Cremona and Duke produce a complementary perspective on coherence organised around some central themes, the former examining what it means in legal terms and how it is understood by the Union’s legislature and courts, and the latter, based on his experience in and around Brussels, setting out the challenges which its application as a political imperative faces. To Klabbers’s legal critique of the role of the Court of Justice, Skordas responds with a systems theory counter-argument. In relation to Europe’s neighbourhood, whilst Van Vooren examines the European Neighbourhood Policy as a laboratory for developing new frameworks of wide-ranging relations relying upon incrementally developed soft-law instruments, Keukeleire, Kalaja and Çollaku assess the effects of the EU’s practices on the ground in one of its most sensitive neighbours, namely Kosovo. In relation to security and defence, whilst Webber sets out the challenges which the EU faces in a multilateral world, this author examines, amongst others, the shifting legal understandings of one of its most important aspects, namely the defence industries. And, finally, this dialogue between legal and political perspectives inspires Jørgensen and Wessel to combine the insights offered by these disciplines and reflect on a joint research agenda on the European Union’s participation in international organisations.
Coherence

This volume starts off with two horizontal chapters, that is two analyses of a principle which underpins the conduct of the entire range of the Union’s foreign policy. The coherence of this policy is a *conditio sine qua non* of its effectiveness. Garton-Ash points out that ‘Europe has a hundred left hands and none of them knows what the right hand is doing. Trade, development, aid, immigration policy, education, cultural exchange, classic diplomacy, arms sales and anti-proliferation measures, counter-terrorism, the fight against drug and organized crime: each European policy has an impact, but the effects are fragmented and often self-contradictory.’

The coherence of the EU’s international action as a normative and political imperative has been central to the debate about the Union’s constitutional order in general as well as any assessment of the EU’s international affairs in particular. Its role has been apparent at various levels. In relation to substantive policy-making in specific areas, the political institutions have sought to set out the main contours of the interactions between different policies. The European Council, for instance, has adopted a Resolution on Coherence between the Community development cooperation and its other policies, followed the European Parliament and the Commission. Furthermore, the Council, the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission adopted a Joint Statement in November 2005 entitled *The European Consensus on Development*. Two years later, the same actors adopted a similar document in the area of humanitarian aid entitled *The European Consensus on Humanitarian Aid*. These documents stress the multifarious dimensions of development and humanitarian aid policies, set out common principles and good practice, and underline the need for coherence, complementarity and effectiveness as a matter of policy. In addition to this specific policy-focused

---

16 COM (2005) 134 fin. *Policy Coherence for Development*. Furthermore, and following a request by the Council (on 19 November 2002), the Commission refers specifically to progress in terms of coherence in its annual report on development policy.
activity, the European Commission has put forward some proposals about the overall international role of the Union.\textsuperscript{19}

In other words, all the relevant actors appear to acknowledge the significance of the links between the different EU external policies and the need to manage them effectively. In this vein, the European Security Strategy made it one of the main priorities for the Union’s international role,\textsuperscript{20} and the 2008 Report on the Implementation of the European Security Strategy reaffirmed it.\textsuperscript{21} Against this background, it is hardly surprising that the main changes introduced by the Lisbon Treaty in the area of external relations aim at enhancing the coherence of the Union’s external action. This was acknowledged in the mandate of the 2007 Intergovernmental Conference which mentions it in its very first paragraph.\textsuperscript{22}

As already mentioned, the coherence of the EU’s foreign policy is examined in two chapters. Duke examines it as a political imperative, and places the specific institutional and procedural tools developed to achieve it in their evolving political framework. Cremona, on the other hand, approaches coherence as a legal requirement, and analyses its multilayered nature and various facets both in the process of decision-making and in judicial adjudication.

**Europe’s Judges and the International Order**

To suggest that the role of the European Court of Justice has been pivotal to the development of European integration is to state the obvious. In fact, it is so obvious that this terrain \textit{par excellence} for legal scholarship has been gradually brought to the centre of political science studies on European integration.\textsuperscript{23} The influence of the Court of Justice on the law of the EU’s external


\textsuperscript{20} p13.

\textsuperscript{21} ‘We must strengthen our own coherence, through better institutional co-ordination and more strategic decision-making’ (p9).

\textsuperscript{22} See IGC 2007 Mandate, Council SG/11218/07, POLGEN74, para.1. The 2008 Report on the Implementation of the European Security Strategy states that ‘[t]he provisions of the Lisbon Treaty provide a framework to achieve [the coherence of the EU’s action through better institutional co-ordination and more strategic decision-making]’ (p9).

relations was apparent early on as, in the early 1970s, it articulated in broad terms the competence of the then Community to negotiate and conclude international agreements and in the subsequent years it set out the legal principles which govern the co-existence between the Community (now Union) and the Member States on the international scene.24

In recent years, a number of legal developments have rendered the role of the Court in the area even more prominent. For instance, the Court of Justice annulled EU legislation freezing assets of individuals pursuant to United Nations Security Council Resolutions.25 Along with a series of subsequent rulings, this has attracted considerable attention not only for its practical implications and the interpretation of fundamental human rights as a central tenet of EU law, but also for its emphasis on the autonomy of the Union legal order and the force with which the Court held that its constitutional foundations may not be impinged upon by any other international instrument. This and other developments become the subject-matter of a conversation between two international lawyers about the proper role of Europe’s judges in the international legal order. They present two radically different interpretations of the approach of the Court of Justice. Klabbers argues that the Court has adopted an increasingly introverted approach, clearly focused on enhancing its own jurisdiction and showing distinct reluctance to apply international law. Skordas, on the other hand, puts forward a different approach, based on systems theory. He suggests that Europe’s judges engage with international law in a creative manner and argues that theirs is a relationship which is constantly evolving, enabling both European Union and international law to adjust. He concludes that the European Court of Justice interacts in a distinctly positive manner with the international order in which the Union belongs.

The European Union and its Neighbours

The European Union’s approach to its neighbours has been central not only to its own development but also to its identity. Its enlargement, achieved incrementally since the early 1970s and most significantly in the early 2000s, has been its most significant and visible act of foreign policy. As the European Security Strategy puts it, ‘[s]uccessive enlargements are making a reality of the vision of a united and peaceful continent’.26 Furthermore the wars in the Balkans in the late 1980s shocked the Community: the distinctly fragmented

---


26 N3 above at p1.
approach adopted by its Member States and their failure to prevent a catastrophe of such proportion in their neighbourhood produced considerable momentum for greater cooperation in the area of foreign policy. This was illustrated by, for example, the transition from the European Political Cooperation to the somewhat tighter Common Foreign and Security Policy. The significance which the Union attaches to its relations with its neighbours is also illustrated in the European Security Strategy where building security in our neighbourhood is set out as one of the three main strategic objectives of the Union.27

It is also illustrated by the more concerted efforts which the Union makes in order to develop its relations with its neighbours. Two chapters deal with these efforts. Van Vooren examines the European Neighbourhood Policy (ENP) as an area for legal experimentation. He examines the dynamic nature of this framework and focuses on two specific aspects, namely its territorial scope and the increasing use of soft law instruments. In relation to the former, he discusses the ways in which the diversity of national interests within the Union has affected its efforts to draw up a policy dealing with its neighbours in a comprehensive way, and has given rise to different sets of relations and legal frameworks. In relation to the latter, he starts off with the central role of soft law in the ENP and examines the various ways in which it has gradually given rise to new instruments and has affected the EU’s policies within the ENP and beyond. In their chapter, Keukeleire, Kalaja and Çollaku focus on Kosovo, a neighbour which has caused the Union considerable anxiety as to how to approach it in a way which would be effective in its support and transcend the internal disagreements about its legal status amongst the Member States. It is recalled that on 18 February 2008, the day after the unilateral declaration of Kosovo’s independence, the Council accepted expressly that it could not adopt a common position on the matter28 and instead it recalled the Union’s ‘longstanding commitment to the stability of the Western Balkans region’ and reaffirmed its ‘commitment to fully and effectively support the European perspective for the Western Balkans’.29 Keukeleire, Kalaja and Çollaku examine the ways in which this commitment is implemented. Based on their work on the ground, they point out the multifaceted dimensions of the Union’s approach and assess its effectiveness in the light of the prevailing political environment.

27 N3 above, pp7–8 (the others are addressing the key threats to the Union and developing effective multilateralism).
28 2851st External Relations Council Meeting, Council Conclusions on Kosovo: ‘[t]he Council notes that Member States will decide, in accordance with national practice and international law, on their relations with Kosovo’ (at 1).
29 Ibid.
Common Security and Defence Policy

The security and defence policy of the Union has become increasingly prominent: the Union has been carrying out a range of missions around the world and the Lisbon Treaty focuses, and the long process which led to its drafting and entry into force focused, on its implementation. This is illustrated not only by devoting a specific section in the Treaty on the European Union to the policy and beefing up the institutional and substantive framework for its implementation, but also by renaming it from European Security and Defence Policy to Common Security and Defence Policy.

Two chapters examine this policy from an international relations and legal perspective respectively. Webber charts the development of the Union’s security and defence policy and sets out its institutional framework and substantive outcomes in the light of its legitimacy and commitment to effective multilateralism. His is a mixed review which identifies a gap between the policy’s potential and its performance. In his chapter, this editor explores the role and limitations of legal provisions in areas central to the Common Security and Defence Policy. He focuses on the mutual assistance clause and the permanent structured cooperation mechanism (both introduced by the Lisbon Treaty) and the application of EU law to defence industries. He advises against overestimating the significance of legal rules and provisions in this area and approaches law as a living phenomenon which should be understood as but a part of a gradually shifting, constantly evolving, multi-faceted political space.

The European Union in International Organisations

Since the early days of European integration, the Court of Justice has articulated its understanding of the legal order established by the Treaty of Rome as ‘a new legal order of international law’. Gradually, this understanding provided the basis for the introduction of the main constitutionalising characteristics of the EU Treaties, and led to the safeguarding of the autonomy of the EU legal system in Kadi. As the Union is an international organisation like no other, its participation in international organisations has attracted the attention of both legal and political science scholars. In their chapter, Jørgensen and Wessel, a political scientist and a legal scholar respectively, discuss the different focus which their disciplines have in their approach to this topic. The former explains how different schools develop different theories which they then set out to apply to specific organisations, at times empirically; the latter

---

31 See n25 above.
describes the emphasis on the question of competence, that is the extent to which EU law has endowed the Union with the power to accede to an international organisation, and its various repercussions for the Union’s participation and its co-existence with Member States. It is appropriate that this volume should end with this chapter: its starting point was to get together legal, political science and international relations scholars and provide different approaches to a number of threads which underpin the EU’s foreign affairs. Jørgensen and Wessel actually set out a research agenda aiming to combine the questions in which both legal and political science scholars are interested and which would, then, combine legal and political insights.