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Explaining the Pattern of CSDP-Operations: Towards a Theoretical Synthesis

Tim Haesebrouck¹

Abstract: *The EU's Common Security and Defence Policy (CSDP) has mainly been used to deploy small-scale operations, which generally did not provide the member states with clear security benefits. This article combines insights from different theories of international relations to explain this disappointing track record. It argues that liberal theories adequately identify the domestic pressures the member states' governments need to accommodate in the area of crisis management. Constructivism, on its part, properly emphasises the diverging strategic cultures of the member states. Both theories however fail to explain why domestic pressures and diverging strategic cultures lead to small-scale operations. Rational-choice institutionalism does provide a convincing explanation for the latter by drawing attention to the CSDP's ineffective institutional design. Realism, in turn, is best positioned to explain why the CSDP was not designed more effectively, by emphasising the reluctance of states to transfer sovereignty to international organisations. The article concludes by discussing two measures that could alleviate the impact of the identified impediments on the CSDP's track record: devising a CSDP-strategy and adapting the consensus rule. However, since the latter is very unlikely in the near future, the CSDP is not expected to develop into a more effective framework for crisis management.*

Keywords: *Common Security and Defence Policy, liberal theories, constructivism, rational-choice institutionalism, institutional design, realism, sovereignty*

Introduction

Over fifteen years after France and the United Kingdom agreed in Saint-Malo that “the [European] Union must have a capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so”, Europeans seem to be “sorely disappointed” with the EU's Common Security and Defence Policy (CSDP).² One of the main reasons for this disappointment is the pattern of operations deployed under the aegis of the policy. Although an impressive number of CSDP-operations has been launched, these were generally of a relatively small scale and rather unambitious. Moreover,

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² Daniel Fiott, ‘The CSDP Is Dead, Long Live the CSDP?’, *European Geostrategy*, 2014 at 1, Maartje Rutten, ‘From Saint-Malo to Nice’, *European defence: Core documents, Chaillot Paper*, 4 (2001) at 22.

critical evaluations consistently conclude that these operations barely made “a dent in serious defence issues” and question whether any of them had a long-term impact on the ground.³ On top of that, the CSDP remained strikingly inert when confronted with crises in which the EU had a significant stake, like Gadhafi’s atrocious repression of the Libyan uprising or the 2012 Tuareg rebellion in Mali.⁴ How can this pattern of operations be explained? Why have an impressive number of small-scale operations that did not provide the member states with clear security benefits been launched under the aegis of the CSDP, while the policy remained oddly inert when confronted with crises in which the member states did have a significant stake? The answer to this question essentially determines the response to what is perhaps the most fundamental question: can the CSDP evolve into a more effective framework for crisis management or are the impediments that hampered its development so fundamental that there can be little hope of overcoming them?

A large number of policy-oriented works have been written on the practical obstacles that hampered the CSDP’s development, drawing attention to the absence of operational headquarters, the lack of adequate military capabilities, and the failure to identify clear strategic objectives for the policy.⁵ In line with the general trend in scholarship on the CSDP, there are however no theory-informed studies on the subject.⁶ This is unfortunate, since theoretical approaches drawn from the wider study of international relations can provide valuable insights on the limits and possibilities of the CSDP. In this article, I aim to fill this gap in the scholarly literature by drawing on theories of international relations to explain the pattern of CSDP-operations and determine the obstacles that hampered the CSDP’s development. Because no single theory can be expected to explain the complex dynamics behind CSDP operations, I draw on insights from liberal, constructivist, institutionalist and realist theories of international relations.⁷ Subsequently, I suggest two measures that could alleviate the identified impediments and allow the CSDP to evolve into a more effective framework for crisis management: devising a strategy for the CSDP and amending its institutional design.

The article proceeds as follows. In the first section, I describe the pattern of CSDP operations. In the second section, I draw on theories of international relations to explain this pattern. In the third section, two feasible initiatives to increase the CSDP’s effectiveness are discussed, after which I recapitulate the article’s major findings in the conclusions.

³ See inter alia: Fiott, ‘The CSDP Is Dead, Long Live the CSDP?’, Muriel Asseburg and Ronja Kempin, *ESDP in Practice: Crisis Management without Strategic Planning*, *Journal of International Peacekeeping*, 15/1-2 (2011), 178-99, Bastian Giegerich, ‘European Military Crisis Management’, *Studia Diplomatica*, 62/3 (2009), 37-42, Daniel Keohane, ‘Lessons from EU Peace Operations’, *Journal of International Peacekeeping*, 15/1-2 (2011), 200-17.

⁴ Rik Coolsaet, Sven Biscop, and Jo Coelmont, ‘Mali: Another European Intervention without the EU?’, *Egmont Security Policy Brief*, 42 (2013), Nicole Koenig, ‘The EU and the Libyan Crisis – In Quest of Coherence?’, *The International Spectator*, 46/4 (2011), 11-30.

⁵ Sven Biscop and Jo Coelmont, *Europe, Strategy and Armed Forces: The Making of a Distinctive Power* (Routledge, 2013). Nik Hynek, ‘EU Crisis Management after the Lisbon Treaty: Civil–Military Coordination and the Future of the EU OHQ’, *European Security*, 20/1 (2011), 81-102, Luis Simón, *Command and Control? Planning for EU Military Operations* (Paris: European Union Institute for Security Studies, 2010). Bastian Giegerich and Alexander Nicoll, ‘The Struggle for Value in European Defence’, *Survival*, 54/1, 53-82.

⁶ Chris J. Bickerton, Bastien Irondelle, and Anand Menon, ‘Security Co-Operation Beyond the Nation-State: The EU’s Common Security and Defence Policy’, *JCMS: Journal of Common Market Studies*, 49/1 (2011), 1-21 at 2.

⁷ Roy H. Ginsberg and Susan E. Penksa, *The European Union in Global Security: The Politics of Impact* (Basingstokes: Palgrave Macmillan, 2012) at 3.

The disappointing pattern of CSDP operations

Ever since its very beginnings in 1998, the EU's Common Security and Defence Policy has been focusing on crisis management.⁸ In their joint declaration in St-Malo, the Heads of State and Government of France and the United Kingdom explicitly agreed that the EU needed a military capacity to "respond to international crises."⁹ The conclusions of the 1999 Cologne European Council further specified that the EU wanted to develop an autonomous capacity for performing the "Petersberg tasks", which include "humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking."¹⁰ The type of operations the EU aimed to conduct was further expanded during the 2000 Feira Council, where the member states agreed to develop capabilities for conducting civilian operations in the areas of the rule of law, civilian administration, civil protection and policing.¹¹ In 2003, the European Security Strategy added disarmament operations, missions to combat terrorism and security sector reform to the CSDP's task list.

Arguably, the most impressive aspect of the CSDP's short history is the sheer number of times it actually served as a framework for crisis management operations. At the time of writing in January 2015, no fewer than 32 missions have been launched under the CSDP-framework. However, when looking at the scale and ambition of these operations, the level of activity is far less impressive. The bulk of the CSDP's operational activity consists of small-scale and/or civilian operations.¹² In consequence, the around 6,000 troops that were averagely deployed under the CSDP-framework between 2003 and 2012 only constitute a small share of the 53,000 European troops active in crisis management operations during the same period.¹³ Furthermore, CSDP operations were generally rather risk averse and not very ambitious. Most missions did not involve the deployment of coercive force or were deployed for a very limited period of time.¹⁴ Moreover, although operations generally achieved the goals of their limited mandates, analysts consistently question their long-term impact on the area of operations as well as whether they provided the member states with strong security benefits.¹⁵ On top of that, no operations were deployed through the CSDP in response to crises that did pose a clear threat to European interests, like when the stability of Europe's immediate neighbourhood was threatened by the Tuareg rebellion in Mali or Gaddafi's atrocious repression of Libya's popular uprising.

⁸ Luis Simón, 'CSDP, Strategy and Crisis Management: Out of Area or out of Business?', *The International Spectator*, 47/3 (2012), 100-15 at 101-03.

⁹ Rutten, 'From Saint-Malo to Nice', at 22.

¹⁰ *Ibid.*, at 163.

¹¹ Maria Raquel Freire, 'The European Security and Defence Policy: History, Structures and Capabilities', in Michael Ostrauskaite Merlingen, Rasa (ed.), *European Security and Defence Policy an Implementation Perspective* (London: Routledge, 2008), 9-25 at 12-15.

¹² Alyson J. K. Bailes, 'The EU and a 'Better World': What Role for the European Security and Defence Policy?', *International Affairs*, 84/1 (2008), 115-30 at 123, Giegerich, 'European Military Crisis Management', at 38.

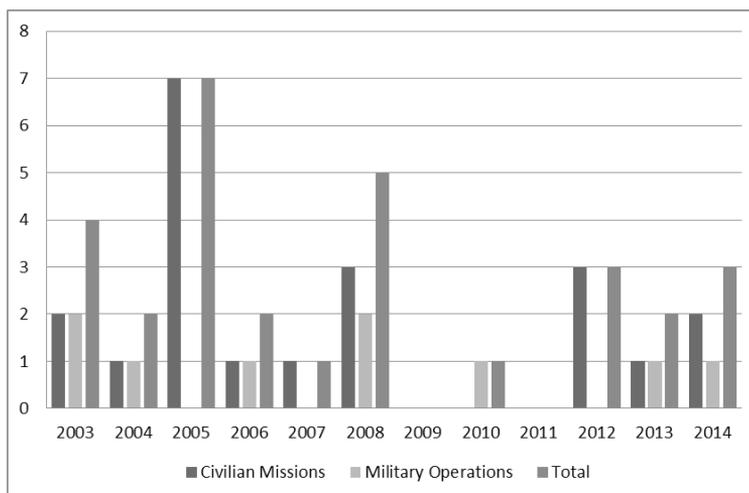
¹³ Giegerich and Nicoll, 'The Struggle for Value in European Defence', at 59.

¹⁴ Giegerich, 'European Military Crisis Management', at 37.

¹⁵ See inter alia: Asseburg and Kempin, 'ESDP in Practice: Crisis Management without Strategic Planning', Catherine Gegout, 'The West, Realism and Intervention in the Democratic Republic of Congo (1996-2006)', *International Peacekeeping*, 16/2 (2009), 231-44, Giegerich, 'European Military Crisis Management', Keohane, 'Lessons from EU Peace Operations', Gorm Rye Olsen, 'The EU and Military Conflict Management in Africa: For the Good of Africa or Europe?', *International Peacekeeping*, 16/2 (2009), 245-60.

This should not necessarily induce a negative assessment of the viability or usefulness of the CSDP as a framework for operations. The CSDP is still a relatively young policy, which could be expected to be developing into a more important framework for crisis management. However, exactly the opposite evolution seems to be taking place. The number of personnel deployed under CSDP peaked at 9,000 in 2008, after which it dropped dramatically, resulting in a total of only 4,500 in 2012.¹⁶ This downward pattern can mostly be accounted for by a loss of appetite for new operations. While on average one new mission was launched every three months during the first five years after the CSDP became fully operational, only one new operation was established in the three years between 2008 and 2011 (see figure 1). Between 2012 and 2014, eight new operations were deployed under the CSDP-framework. However, even EUFOR RCA, the most ambitious of these recent operations, is of a far more narrow scale than the largest missions conducted under the CSDP before the downward pattern started.¹⁷

Figure 1 – Yearly Breakdown of New CSDP operations¹⁸



In summary, the CSDP has not been used for launching large-scale, ambitious operations in response to crises where European interests were clearly at stake. Moreover, the downward pattern in CSDP-operations suggests it will not likely be used for such operations in the near future. Unsurprisingly, this state of affairs gave rise to a widespread disappointment on the CSDP's track record. In a report of the renowned European Council of Foreign Relations, former European Defence Agency Chief Executive Nick Witney and his co-authors for example assert that "the CSDP is doing more harm than good to the EU's reputation, and

¹⁶ Tim Haesebrouck and Melanie Van Meirvenne, 'Eufor RCA and CSDP Crisis Management Operations: Back on Track?', *European Foreign Affairs Review*, 20/2 (2015), at 29. Tim Haesebrouck and Melanie Van Meirvenne, 'EU-Geleide Crisis Management-Operaties: Minder, Kleinschaliger en Pragmatischer', *Internationale Spectator*, 67/2 (2013), 28-32.

¹⁷ Tim Haesebrouck, 'Interventie in De Centraal Afrikaanse Republiek: Het Eerste Succesverhaal Voor R2P?', *Internationale Spectator*, 68/5 (2014), 28-32.

¹⁸ Data retrieved from ISIS, 'CSDP Mission Chart October 2014,' (retrieved from www.csdpmap.eu on 30 December 2014).

to the contribution to global security that member states might otherwise be making under the more effective auspices of the UN, or simply as coalitions of the willing”, Daniel Fiott, editor of “European Geostrategy”, contends that “Europeans have been sorely disappointed with, or even deluded by, the European Union’s (EU) Common Security and Defence Policy” and Jolyon Howorth, one of the most prominent scholars of European defence cooperation, argues that “even after twenty years of preparation, the EU’s capacity to mount a significant military mission in its own backyard is grossly inadequate.”¹⁹ The next section builds on theories of international relations to shed light on the CSDP’s disappointing pattern of operational activity.

International relations theories and the pattern of CSDP operations

In spite of their small scale and lack of ambition, the crisis management operations conducted under the CSDP have spurred a huge body of literature. However, this mainly consists of normative inquiries on the impact of military operations on the EU’s global role and detailed empirical investigations of the operational record of the CSDP.²⁰ In consequence, there are few theory-informed studies on the pattern of CSDP operations. An important exception is the work of Benjamin Pohl, who builds on liberal international relations theory to develop a general argument about the drivers behind CSDP operations.²¹ Furthermore, several authors have drawn on insights from realist, constructivist and institutionalist theories of international relations to formulate expectations on the scope and ambition of the EU’s Common Security and Defence Policy. This section builds on these insights to explain why the CSDP has not been used for conducting large-scale, ambitious operations in response to crises where European interests were clearly at stake, in spite of the large number of operations launched under its aegis.

Liberalism: Domestic Politics Matter

In one of the rare theory-informed studies on the pattern of CSDP-operations, Pohl draws attention to the explanatory power of a key argument of liberal theories of international relations: domestic politics matter for international relations.²² According to liberal theories, governments primarily focus on what their domestic societies want when they formulate

¹⁹ Fiott, ‘The CSDP Is Dead, Long Live the CSDP?’, Nick Witney et al., ‘Rebooting EU Foreign Policy’, *ECFR Policy Brief*, 114 (2014) at 6. Jolyon Howorth, ‘CSDP and Nato Post-Libya: Towards the Rubicon?’ *Egmont Security Policy Brief* No. 35, July 2012, (2012) at 3.

²⁰ e.g. Lisbeth Aggestam, ‘Introduction: Ethical Power Europe?’, *International Affairs*, 84/1 (2008), 1-11, Asseburg and Kempin, ‘ESDP in Practice: Crisis Management without Strategic Planning’, Giovanni; Helly Grevi, Damien; Keohane, Daniel, *European Security and Defence Policy: The First 10 Years (1999-2009)* (Paris: EU Institute for Security Studies, 2009) 450, Ian Manners, ‘Normative Power Europe Reconsidered: Beyond the Crossroads’, *Journal of European Public Policy*, 13/2 (2006), 182-99, Michael; Ostrauskaite Merlingen, Rasa (ed.), *European Security and Defence Policy an Implementation Perspective* (New York: Routledge, 2008).

²¹ Benjamin Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, *European Security*, 22/3 (2013), 307-25, Benjamin Pohl, ‘To What Ends? Governmental Interests and European Union (Non-) Intervention in Chad and the Democratic Republic of Congo’, *Cooperation and Conflict*, 49/2 (2014), 191-211.

²² Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, at 316.; see also Andrew Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’, *International Organization*, 51/4 (1997), 513-53.

foreign policy. Although Pohl does not clarify which variant of liberal theory he applies, his argument corresponds to “Ideational Liberalism”, which contends that “core domestic social identities” constitute an important source of state preferences.²³ Pohl argues that these domestic identities incite two countervailing pressures in the area of crisis management. On the one hand, governments want to demonstrate “that they are capable of influencing international events in line with domestic values and priorities”; on the other hand they do not want to be accused of “paying too high a price in treasure or casualties for foreign policy projects which turn out ill-conceived.”²⁴ In other words, “governments need to pre-empt the twin dangers of standing accused of pointless activism and excessive risk-taking or complacency and weakness.” According to Pohl, these countervailing pressures explain why CSDP operations have been risk-averse, limited in time and generally unambitious.

By drawing adequate attention to the domestic pressure on the Member States’ governments to demonstrate they are capable actors in international relations, Pohl’s liberal theory of the drivers behind CSDP-operations accounts for the impressive number of missions that were launched under the policy. However, the argument does not fully account for the pattern of operations, since the small-scale operations that were conducted under the CSDP could not reasonably be expected to help governments demonstrate that they are “capable of influencing international events.” As mentioned above, critical assessments of CSDP-operations do not suggest that these have impressed the foreign policy elite in the media, non-governmental organizations or academia, whose opinion, according to Pohl, is supposed to confer domestic legitimacy on the government’s foreign policy. By only conducting small-scale operations, governments only seem to pre-empt the danger of “standing accused of pointless activism and excessive risk-taking”, but not of standing accused of “complacency and weakness.”²⁵

Pohl’s liberal explanation fails to provide a convincing explanation for the pattern of the CSDP-operations for two reasons. First of all, he largely ignores a fundamental assumption of liberal theory: it is the “configuration of interdependent state preferences” that “determines state behaviour.”²⁶ While liberalism emphasises the importance of domestic preferences, it also accepts that the interaction between states is important for explaining collective state behaviour. According to Andrew Moravcsik, one of the leading scholars on liberal international relations theory, collective state behaviour should be analysed as “a two-stage process of constrained social choice. States first define preferences [...] Then they debate, bargain, or fight to particular agreements – a second stage explained by realist and institutionalist (as well as liberal) theories of strategic interaction.”²⁷ A narrow focus on domestic preferences can thus not fully explain the pattern of the CSDP-operations and needs to be complemented with insights from realist and institutionalist theories. Second, Pohl overemphasises the shared interest of EU governments in “demonstrating that they are capable of influencing international events in line with domestic values and priorities” and hereby, underestimates

²³ The two other major variants of liberalism are “Commercial Liberalism” and “Republican Liberalism”, see Andrew Moravcsik, ‘The New Liberalism’, in Christian Reus-Smit and Duncan Snidal (eds.), *The Oxford Handbook of International Relations* (Oxford: Oxford University Press, 2010), 234-54.

²⁴ Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, at 317.

²⁵ Benjamin Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, *European Security*, (2012), 1-19 at 318.

²⁶ Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’, at 520.

²⁷ *Ibid.*, at 544.

the significant differences between the domestic values and priorities of the EU Member states.²⁸ In order to account for these differences, insights from constructivist theories on the strategic culture of the member states must be taken into account.

Constructivism: Norms Matter

Constructivist international relations theories draw attention to the importance of “norms, identities and cultures” for understanding political outcomes.²⁹ Constructivists are divided on the relative importance of domestic versus international environments.³⁰ While systematic constructivists focus on how the international environment shapes state identities, other constructivists stress the importance of domestic environments. Insights from the latter strand provide most insights on the pattern of CSDP-operations, since they draw proper attention to “the differences between EU Member states in terms of their foreign policy traditions, and strategic and bureaucratic cultures.”³¹ Scholars building on this variant of constructivism generally examine the CSDP from a strategic culture perspective. “Norms within the context of strategic culture can be conceptualised as beliefs about what is appropriate, legitimate, or just regarding the goals and modalities concerning the use of force.”³² Elites embedded in different strategic cultures are expected to make different choices when confronted with a similar situation.³³ The latter can hamper effective collective action in crisis management operations. “It could lead to an inability for initiating or sustaining operations due to lack of public support for the goals of a mission [...] or incoherent strategies and rules of engagement, or insufficient resources and delays of action.”³⁴ To explain the small scale and lack of ambition of the CSDP operations, constructivist theories would thus point to the diverging norms of the EU member states on the use of force. In other words, they would draw attention to the absence of a common European strategic culture.

Several scholars have examined the extent to which the strategic cultures of the member states diverge.³⁵ Generally, they conclude that there are persistent differences and incompatibilities between the strategic cultures of the EU-members. For example, Jolyon Howorth argued in 2002 that six dichotomies needed to be transcended if the EU was ever to move towards a common approach:

²⁸ Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, at 317.

²⁹ Mette Eilstrup-Sangiovanni, *Debates on European Integration: A Reader*, eds Neill Nugent and William Paterson (The European Union Series; Basingstokes: Palgrave MacMillan, 2006) at 393.

³⁰ Robert Jackson and Georg Sørensen, *Introduction to International Relations: Theories and Approaches* (Oxford: Oxford University Press, 2007), at 170-171.

³¹ Christoph O. Meyer and Eva Strickmann, ‘Solidifying Constructivism: How Material and Ideational Factors Interact in European Defence’, *JCMS: Journal of Common Market Studies*, 49/1 (2011), 61-81, at 64

³² Christoph O. Meyer, ‘The Purpose and Pitfalls of Constructivist Forecasting: Insights from Strategic Culture Research for the European Union’s Evolution as a Military Power’, *International Studies Quarterly*, 55/3 (2011), 669-90 at 677.

³³ Alastair Iain Johnston, ‘Thinking About Strategic Culture’, *International Security*, 19/4 (1995), 32-64 at 35.

³⁴ Christoph O. Meyer, ‘European Defence: Why Institutional Socialization Is Not Enough?’, *Oxford Journal of Good Governance*, 2/1 (2005), 51-54 at 54.,

³⁵ Alessia Biava, Margriet Drent, and Graeme P. Herd, ‘Characterizing the European Union’s Strategic Culture: An Analytical Framework’, *JCMS: Journal of Common Market Studies*, 49/6 (2011), 1227-48, Geoffrey Edwards, ‘Is There a Security Culture in the Enlarged European Union?’, *The International Spectator*, 41/3 (2006/07/01 2006), 7-23, J. M. Howorth, ‘The CESDP and the Forging of a European Security Culture’, *Politique européenne*, 4/8 (2002), at 21.

“differences between allies and neutrals, between “Atlanticists” and “Europeanists”, between those favouring power projection and those prioritising territorial defence, between emphases on military as opposed to civilian instruments, between large states and small states, between weapons systems providers and weapons systems consumers, between nuclear and non-nuclear states.”³⁶

Five years later, he concluded that “some of those dichotomies have begun to be resolved, but most have not.”³⁷ According to Christoph Meyer, “the Achilles heel” of the CSDP is the lack of consensus on whether force can be used in very hostile environments.³⁸ This can be expected to severely hamper the ability of the CSDP to act as a framework for high-intensity operations:

“In order to achieve a higher ambition regarding the use of force [...] one would need to see the gradual transformation or upgrading of particularly the more pacificist or defensive-minded strategic cultures toward accepting the legitimacy of military interventions not only for humanitarian but also for realpolitik reasons, a higher tolerance for risks, lower thresholds for the authorization of force, and a higher acceptance of working with highly activist countries such as the United States, or indeed the European Union, with increasingly ambitious definitions of goals for security and defence policy.”³⁹

Next to the persistent differences between the member states, there are also indications of an increasing convergence between their strategic cultures.⁴⁰ Meyer, for instance, found substantial agreement amongst the member states on the legitimacy of humanitarian intervention and a general preference for civilian over military instruments. Other authors even claim that a distinct EU strategic culture has evolved, in which there is a broad consensus on a comprehensive approach to security and a preference for non-military instruments.⁴¹ The risk-averse nature of the CSDP operations and the prevalence of civilian over military missions is thus in line with constructivist expectations on the constraining impact of norms: collective action under the CSDP-framework was largely limited to areas in which norms converged.

However, constructivists have been predominately occupied with questions about whether and how norms converge into a common European strategic culture, not with the political outcomes of the interaction between states with diverging strategic cultures. In consequence, constructivist theories do not explain why CSDP operations were consistently

³⁶ Howorth, ‘The CESDP and the Forging of a European Security Culture’, at 4.

³⁷ J. M. Howorth, ‘Towards a European Strategic Culture’, in Jolyon Howorth (ed.), *Security and Defence in the European Union* (New York: Palgrave MacMillan, 2007), 178-207 at 179.

³⁸ Christoph O. Meyer, *The Quest for a European Strategic Culture Changing Norms on Security and Defence in the European Union* (New York: Palgrave Macmillan, 2006) 209 at 185.

³⁹ Meyer, ‘The Purpose and Pitfalls of Constructivist Forecasting: Insights from Strategic Culture Research for the European Union’s Evolution as a Military Power’, at 680.

⁴⁰ Paul Cornish and Geoffrey Edwards, ‘The Strategic Culture of the European Union: A Progress Report’, *International Affairs (Royal Institute of International Affairs 1944-)*, 81/4 (2005), 801-20, Edwards, ‘Is There a Security Culture in the Enlarged European Union?’, Meyer, *The Quest for a European Strategic Culture Changing Norms on Security and Defence in the European Union*.

⁴¹ Biava, Drent, and Herd, ‘Characterizing the European Union’s Strategic Culture: An Analytical Framework’, Per M. Norheim-Martinsen, ‘EU Strategic Culture: When the Means Becomes the End’, *Contemporary Security Policy*, 32/3 (2011), 517-34.

in line with the preferences of countries with more “pacifist” strategic cultures instead of with the preferences of countries with a more “active” strategic culture.⁴² In summary, constructivist approaches draw adequate attention to differences between the EU member states, but in order to account for their collective behaviour, they need to be complemented with insights from theories capable of explaining the results of their interaction: institutionalism and realism.

Rational-Choice Institutionalism: Institutions Matter

The basic assumption of institutionalism is that “institutions matter in world politics.”⁴³ According to the rational-choice variant, states create institutions to solve cooperation problems. Two specific problems need solving before an operation can be launched. First, the member states need to agree on whether an operation is appropriate, its specific goals and the best way to achieve these. Second, they need to agree on the division of the burden of this operation.⁴⁴ Given the persistent differences between the member states’ strategic cultures, bargaining over when and how an operation should be launched constitutes a challenging process. Agreeing on the division of its burden, on the other hand, will be difficult because states want to avoid domestic criticism for “paying too high a price in blood or treasure.”⁴⁵ Especially in military operations, which entail a risk of military casualties and significant financial costs, member states will be reluctant to make contributions that are fully commensurate to their capabilities. Instead, they can be expected to try to ride cheap on the efforts of others, hoping that the latter “will do the job that the actor would like to see done.”⁴⁶ In fact, successful free or easy riding is one of the most effective ways for national governments to accommodate the countervailing pressures mentioned by Pohl. By only making symbolic contributions, governments can pretend to be “capable of influencing international events”, without facing the risk of being accused of “pointless activism.”⁴⁷ However, if all member states attempt to ride cheap and only make minor contributions, only relatively small operations will be deployed.

The disappointing pattern of CSDP-operations suggests that the CSDP’s institutional design is not apt to solve these cooperation problems. An important institutional characteristic of the CSDP is that it is based on consensus decision-making: every member state has to agree before an operation can be launched.⁴⁸ Since many member states have a pacifist or defensive-minded strategic culture (cf. supra), the need to arrive at a consensus disposes the

⁴² Meyer, ‘The Purpose and Pitfalls of Constructivist Forecasting: Insights from Strategic Culture Research for the European Union’s Evolution as a Military Power’, at 680.

⁴³ Andreas Hasenclever, Peter Mayer, and Volker Rittberger, ‘Interests, Power, Knowledge: The Study of International Regimes’, *Mershon International Studies Review*, 40/2 (1996), 177-228 at 178.

⁴⁴ Anand Menon, ‘Empowering Paradise? The ESDP at Ten’, *International Affairs*, 85/2 (2009), 227-46 at 237.

⁴⁵ Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, at 317.

⁴⁶ Joseph Leggold, ‘Nato’s Post-Cold War Collective Action Problem’, *International Security*, 23/1 (1998), 78-106 at 87.

⁴⁷ Pohl, ‘The Logic Underpinning EU Crisis Management Operations’, at 317.

⁴⁸ Anand Menon, ‘European Defence Policy from Lisbon to Libya’, *Survival*, 53/3 (2011/07/01 2011), 75-90 at 82. Sten Rynning, ‘The European Union: Towards a Strategic Culture?’, *Security Dialogue*, 34/4 (2003), 479-96 at 487, Asle Toje, *The European Union as a Small Power after the Post-Cold War* (New York: Palgrave Macmillan, 2011) 250 at 132.

EU towards lower level commitments, for which consensus is easiest achieved. A second important feature of the CSDP's institutional design is the lack of obligations to contribute significantly to operations. While all member states need to agree before an operation can be launched, every state is free to decide whether it seconds personnel to the area of operations. In civilian operations, the financial costs are covered by the community budget. However, in military operations, only the so-called common costs are shared between all member states, which usually only cover around 10% of the total operations costs.⁴⁹ In the absence of a "centralised enforcement mechanism" that obliges states to make significant contributions to operations, member states will be tempted to try to ride cheap on the efforts of others, resulting in a pattern of small-scale and unambitious operations.⁵⁰

To make matters worse, the combination of consensus decision-making and the lack of an obligation to contribute makes the CSDP an unappealing framework for the governments that see most benefits in deploying an operation. On its face, conducting operations through the CSDP should be an attractive option, since it allows to share the burden between the member states. However, using the CSDP-framework requires compromising on the operation's goals to arrive at a consensus between the member states. Governments in favour of launching an operation thus face a trade-off between the material benefits of sharing the burden with the other member states and the policy loss that results from compromising on its goals. If the benefits of burden-sharing do not outweigh the disadvantages of the policy-loss, they can be expected to conduct the operation unilaterally, through an ad hoc coalition or under the aegis of other international organisations.

The institutional design of the CSDP causes the member states that are most strongly in favour of an operation to gain little support in return for compromising relatively much. While consensus decision-making forces them to take the preferences of all other member states into account when deciding on an operation's goals, they have no guarantee that these will carry a part of its burden. Moreover, the member states that see most benefits in launching an operation are in a weak bargaining position. Since no consensus means no operation, the states most strongly in favour of an operation have the highest incentive to avoid non-agreement. In consequence, they will be most inclined to moderate their demands. Similarly, persistent free-riding creates the risk that an operation is insufficiently resourced to achieve its goals. Since the member states with the most at stake in crisis have the highest incentive to avoid an under-resourced operation, they can be expected to contribute more than proportionately. Member states that see most benefits in launching an operation thus need to make a lot of concessions on its goals, in return for relatively little support of the other member states. Since member states are less likely to compromise a lot if vital interests are at stake, they will be inclined to deploy military operations through other frameworks when strong security interests are at stake.

In summary, the institutional design of the CSDP explains why the interaction between member states results in a pattern of small-scale operations, deployed in crises where the

⁴⁹ Giovanni Grevi and Daniel Keohane, 'ESDP Resources', in Giovanni Grevi, Damien Helly, and Daniel Keohane (eds.), *European Security and Defence Policy: The First Ten Years (1999-2009)* (Paris: European Union Institute for Security Studies, 2009), 69-114 at 78.

⁵⁰ Menon, 'European Defence Policy from Lisbon to Libya', at 82.

member states have few interests at stake. Consensus decision-making disposes the CSDP towards lower-level commitments, the lack of an obligation to contribute incites free-riding. The combination of these two features makes the CSDP an unattractive framework for states that see benefits in launching operations. However, rational-choice theories assume that “states use international institutions to further their own goals, and they design institutions accordingly.”⁵¹ In consequence, rational-choice institutionalism cannot explain why the CSDP was not designed more effectively. For explaining the latter, realist arguments must be taken into account.

Realism: Sovereignty Matters

Realists operate with the core assumption that world politics consists of an international anarchy of states, which jealously guard their sovereignty. In consequence, realists do not believe that states would cede strong enforcement capacities to supranational institutions.⁵² Realist scholars were sceptical about the feasibility of a strong European security and defence policy long before it was launched. In 1966, Stanley Hoffman argued from a classical realist perspective that integration is not likely in a high politics area like security and defence policy. According to Hoffman, the diversity of domestic determinants and geo-historical situations results in diverging foreign policy priorities, on which states are not willing to compromise for the uncertain result of more integration.⁵³ After the launch of the CSDP, several authors reverberated Hoffman’s “observations concerning the uneasy relationship between the “high politics” of security and the functional messiness of international integration.”⁵⁴ Sten Rynning builds on Hoffman’s assertions to warn for too high hopes for the CSDP.⁵⁵ Because of Europe’s complex and pluralist history, efforts to push the CSDP too hard will not advance the policy but cause it to fail. Adrian Hyde-Price argues from a neorealist perspective that “Europe’s great powers will continue to jealously guard their sovereign rights to pursue their own foreign and security policy priorities. Consequently the CFSP/ESDP is destined to remain firmly intergovernmental.”⁵⁶

Scholars have explicitly turned to realist arguments for explaining the two aspects of the CSDP’s institutional design that render it ineffective. According to Asle Toje the reason for consensus decision-making can be captured in one word: sovereignty.⁵⁷ “While most

⁵¹ Barbara Koremenos, Charles Lipson, and Duncan Snidal, ‘The Rational Design of International Institutions’, *International Organization*, 55/4 (2001), 761-99 at 762.

⁵² Kenneth W. Abbott and Duncan Snidal, ‘Why States Act through Formal International Organizations’, *The Journal of Conflict Resolution*, 42/1 (1998), 3-32 at 8. For realist assessments of international organizations see Kenneth N. Waltz, ‘Structural Realism after the Cold War’, *International Security*, 25/1 (2000), 5-41 at 18-17. John J. Mearsheimer, ‘The False Promise of International Institutions’, *ibid.* (1994), 5-49.

⁵³ Stanley Hoffmann, ‘Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe’, *Daedalus*, 95/3 (1966), 862-915 at 862-64.

⁵⁴ J. M. Howorth and A. Menon, ‘Still Not Pushing Back: Why the European Union Is Not Balancing the United States’, *Journal of Conflict Resolution*, 53/5 (2009), 727-44 at 738.

⁵⁵ Sten Rynning, ‘Realism and the Common Security and Defence Policy’, *JCMS: Journal of Common Market Studies*, 49/1 (2011), 23-42.

⁵⁶ Adrian Hyde-Price, ‘“Normative” Power Europe: A Realist Critique’, *Journal of European Public Policy*, 13/2 (2006), 217-34.

⁵⁷ Toje, *The European Union as a Small Power after the Post-Cold War*, at 138.

member states would like to carry the weight of 27 states when pursuing their own foreign policy objectives, the thought of having foreign policy objectives defined by 26 other states is generally less appealing." Howorth and Menon point to the "reluctance of states to entrust matters of high politics to powerful central institutions" for explaining the absence of an enforcement mechanism for contributing to operations.⁵⁸ The institutional design of the CSDP thus clearly corresponds to realist expectations on the reluctance of states to cede strong enforcement capacities to supranational institutions.

International relations theories and the pattern of CSDP operations

Why has the CSDP not been used for conducting large-scale, ambitious operations in response to crises where European interests were clearly at stake, in spite of the large number of operations launched under its aegis? In line with the story of the blind men and the elephant that Donald Puchala used to grapple with European integration, different schools of thought must thus be combined to fully understand what caused the disappointing pattern of CSDP operations.⁵⁹ Liberal theories properly identify the domestic pressures that the member states' governments need to accommodate in the area of crisis management. However, while these account for the large number of operations conducted under the CSDP, domestic pressures does not explain why these were not sufficiently ambitious to make governments look effective in the eyes of domestic constituencies. Constructivism draws proper attention to the diverging strategic cultures of the member states, which makes collective operations difficult. However, it cannot explain why the interaction between states with different strategic cultures consistently results in small-scale operations. Rational-choice institutionalism suggests this can be explained by the CSDP's ineffective institutional design. Realism, in turn, was best positioned to explain why the CSDP was not designed more effectively, by emphasising the reluctance of states to transfer sovereignty to international organizations.

Limits and possibilities of the CSDP

In recent years, various attempts have been made to develop the CSDP into a more effective framework for crisis management. The most noticeable of these was the December 2013 European Council meeting, where the heads of state and government of the member states agreed that "increasing the effectiveness, visibility and impact of CSDP" constitutes a top priority. The insights derived from international relations theories provide valuable lessons on whether such a more effective CSDP is possible, as well as on the specific initiatives that could get the policy on track. Unfortunately, some of the impediments on the CSDP are unlikely to ever fully disappear. In line with realist theories, member states cannot reasonably be expected to transfer sovereignty on defence issues. Differences in the strategic cultures of the member states are also likely to persist, just like governments will continue to have an incentive to shift the burden of operations on the other member states. Two specific measures could however alleviate the impact of these obstacles: devising a CSDP-strategy and amending the consensus rule.

⁵⁸ Howorth and Menon, 'Still Not Pushing Back: Why the European Union Is Not Balancing the United States'

⁵⁹ Donald J. Puchala, 'Of Blind Men, Elephants and International Integration', *JCMS: Journal of Common Market Studies*, 10/3 (1971), 267-84.

First, the CSDP would become more effective if the member states agreed on a well-defined strategy for the CSDP, which sets out the priorities and objectives of the policy, as well as the “types of operations that can potentially be undertaken to meet them.”⁶⁰ It would be much more difficult for the member states to oppose or not contribute to an operation that aims to secure an objective that was previously defined a strategic priority for the CSDP. In consequence, such a mission statement would make it easier to agree on whether or not to respond to a crisis with a CSDP operation, as well as to assemble the required resources for such an operation. In the past, several attempts at devising such a strategy have been made. In 2003, the then-High Representative for Common Foreign Policy Javier Solana drafted the European Security Strategy. However, this only provides an overall mission statement of the EU as an international actor, which, so far, has not been translated into clear objectives and priorities for the CSDP. However, during the December 2013 European Council, the heads of state and government tasked the High Representative with developing a European Strategy on Security and Defence. If this eventually results in agreement on the strategic objectives and priorities of the CSDP, the latter could become a more effective framework for crisis management.

Second, the CSDP’s effectiveness would increase if the member states amended its institutional design. Since the combination of consensus decision making and the lack of an obligation to contribute hampered the CSDP’s development, changing these institutional characteristics should have a positive impact on the pattern of operations. Insights from realism suggest that it is very unlikely that the member states would accept an obligation to contribute if the unanimity rule was abolished, since this could force them to contribute to operations they do not support. A more feasible alternative would be to preserve consensus decision-making, but obliging the member states to carry a more equitable share of the costs of the operation. Hereby, the CSDP would become more attractive for states that favour the launch of an operation, since the material benefits of sharing the burden of the operation would more likely compensate for the policy loss incurred by the requirements of consensus decision making. However, obliging all member states to make an equitable contribution would make a large-scale operation even less likely, since it would provide states that do not fully support the goals of an operation an additional reason to block it.⁶¹ It appears that the best option is to amend the consensus rule, without increasing the obligation to contribute. Adopting less demanding voting rules like Qualified Majority Voting would strengthen the bargaining position of states in favour of launching an operation, making the CSDP a more attractive framework for conducting operations. Moreover, as long as states would be allowed to withhold their resources when they have no interests in an operation, this would not necessarily infringe on the sovereignty of the member states and could, in theory, be a feasible option.

Agreeing on a CSDP-strategy and amending the consensus rule would only partially solve some of the impediments on the CSDP. Qualified Majority Voting still requires significant agreement on when and how an operation should be launched, which will still be difficult to achieve even if the member states agree on the strategic objectives of the CSDP. Moreover,

⁶⁰ Sven Biscop and Jo Coelmont, *Europe, Strategy and Armed Forces: The Making of a Distinctive Power*, at 35.

⁶¹ Anand Menon, ‘Empowering Paradise? The ESDP at Ten’, at 239.

governments can still be expected to try to shift the burden of the operation to the other member states. Nevertheless, it would allow the CSDP to evolve into a framework through which the EU member states could conduct more ambitious operations. Unfortunately, changing the voting rules of the CSDP would require a Treaty revision, which is highly unlikely in the near future. In consequence, even a modestly optimistic scenario seems improbable.

Conclusion

So far, the EU's Common Security and Defence Policy has mainly been used to deploy small-scale operations, which generally did not provide the member states with clear security benefits. To explain the CSDP's disappointing track record, this article combined insights from different theories of international relations. It argued that liberal theories adequately identify the domestic pressures the member states' governments need to accommodate in the area of crisis management, but fail to explain why CSDP-operations were not sufficiently ambitious to make governments look effective in the eyes of domestic constituencies. Constructivism, in turn, draws attention to the diverging strategic cultures of the member states, which makes collective operations difficult. However, it cannot explain why the interaction between states with different strategic cultures consistently results in small-scale operations. Rational-choice institutionalism does provide a convincing explanation for the latter by drawing attention to the CSDP's ineffective institutional design. Realism, in turn, seems best positioned to explain why the CSDP was not designed more effectively, by emphasising the reluctance of states to transfer sovereignty to international organisations.

While these impediments on the CSDP's effectiveness are unlikely to fully disappear, this article put forward two specific measures that could alleviate their impact on the pattern of operations deployed under its aegis. First, devising a CSDP-strategy would facilitate agreement on when and how an operation could be deployed and make it more difficult for member states not to contribute to operations. Second, amending the consensus rule would make the CSDP a more attractive framework, without infringing on the national sovereignty of the member states. Unfortunately, the latter seems very unlikely in the near future. Consequently, the future pattern of operational activity can be expected to resemble more closely that of the previous years: small-scale, unambitious operations, that do not provide the member states with clear security benefits.

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Crafting a Wider Strategy for Conflict Management in the Neighbourhood? A Comparative Perspective on the European Union's Civilian Missions in Georgia and Kosovo

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Abstract: *The European Union's wider neighbourhood hosts some of the world's main unresolved conflicts. As the EU developed its foreign and security policy, a blend of internal security and external stability concerns, as well as the reference to international legal and humanitarian norms, required it to try tackling (some of) these conflicts. Through both the European Neighbourhood Policy and the Stabilisation and Association Process the EU establishes contractual relations with its neighbours and tries to incentivise them for the adoption of economic and political reforms and legislative approximation to EU standards. Also, in some cases, the EU is providing support for conflict management through political dialogue, financial assistance or deployment of missions under the Common Security and Defence Policy. At its core, this paper is concerned with comparatively analysing the degree of integration between CSDP and the ENP and SAP frameworks respectively. The comparative case-study will therefore analyse CSDP missions undertaken in the Georgia/ Abkhazia and South Ossetia and Kosovo/Serbia cases, in order to identify common challenges across the two EU policy frameworks for its neighbourhood and to explore the perspectives for the emergence of an EU strategy of conflict management based on CSDP operations and various forms of engaging third countries.*

Keywords: *conflict management, Common Security and Defence Policy, Stabilisation and Association Process, European Neighbourhood Policy, Kosovo, Georgia*

Introduction

The European Union's (EU) "neighbourhood" hosts some of the world's main unresolved conflicts. In the Western Balkans² external intervention was attempted in two cases – in Bosnia and Herzegovina and Kosovo – and outside powers imposed settlements underpinned

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² The term "Western Balkans" is used by the European Union and covers Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Kosovo under UN Security Resolution 1244, Montenegro and Serbia. http://eeas.europa.eu/western_balkans/index_en.htm.

by internationally-controlled institutions. In the former Soviet space the conflicts became "frozen" after *de facto* secession, as in the cases of Abkhazia and South Ossetia, Transnistria and Nagorno-Karabakh. In the Middle East the dominant conflict with recurring violent episodes remains the one between Israel and the Palestinians, with the international community constantly attempting mediation. As the EU developed its foreign and security policy, it became more or less involved in conflict management in each of these cases.

In 2003 the European Security Strategy defined the stabilisation of the EU's neighbourhood as a key priority, soon after the crisis management component of the Common Security and Defence Policy (CSDP)³ became operational. As CSDP operations need to relate to broader policy frameworks in order to be successful, the European Neighbourhood Policy (ENP) and the Stabilisation and Association Process (SAP) could serve as possible examples. By deploying CSDP missions in the countries covered by ENP and SAP, the EU indicates both a significant political interest in each particular case and security concerns regarding the unresolved conflicts in its vicinity. Through both ENP and SAP the EU establishes contractual relations with its neighbours, which gives it the opportunity to provide the parties with incentives for negotiating peace. This paper will therefore compare the ENP (the Eastern dimension) and the SAP on the basis of how these macro-policy frameworks can integrate the more specific CSDP crisis management operations. The comparative case-study will analyse the EU involvement in conflict management in the Georgia/Abkhazia and South Ossetia and Kosovo/Serbia cases, with an emphasis on the CSDP missions it deployed. The objective is to identify common challenges across the two policy frameworks and to explore the perspectives for the emergence of an EU strategy for conflict management in the neighbourhood, based on CSDP operations and their link to existing frameworks for cooperation with third countries.

The literature concerning the EU's involvement in conflict management outside its borders has developed significantly in the last ten years. Some scholars analysed various case studies in order to identify the EU's "Europeanisation" approach to ethno-political/secessionist conflicts in its geographical proximity⁴. Others focused on the legal and policy aspects of the EU's performance in conflict prevention, crisis management and peace-building⁵. A comparative approach was used to study the impact of EU contractual relations on conflict resolution in several cases from the neighbourhood⁶. A more recent strand of literature addressed the EU's motivations for involving in crisis management through CSDP⁷ or the strategies of non-involvement ("stealth intervention") in conflict resolution in the

³ For consistency reasons, I will use the term "Common Security and Defence Policy" (CSDP) throughout this paper, including when referring to the pre-Lisbon treaty European Security and Defence Policy (1999-2009).

⁴ B. Coppeters, M. Emerson, M. Huyseune, T. Koviridze, G. Noutcheva, N. Tocci and M. Vahl, *Europeanization and Conflict Resolution. Case Studies from the European Periphery*, Ghent, Academia Press, 2004.

⁵ V. Kronnenberger and J. Wouters (ed.), *The European Union and Conflict Prevention. Policy and Legal Aspects*, the Hague, T.M.C Asser Press, 2004; S. Blockmans (ed.), *The European Union and Crisis Management. Policy and Legal Aspects*, the Hague, T.M.C Asser Press, 2008; S. Blockmans, J. Wouters and T. Ruys, *The European Union and Peacebuilding. Policy and Legal Aspects*, the Hague, T.M.C Asser Press, 2010.

⁶ N. Tocci, *The EU and Conflict Resolution. Promoting Peace in the Backyard*, London and New York, Routledge, 2007.

⁷ B. Pohl, "But We Have to Do Something". The Drivers behind EU Crisis Management Operations. PhD Thesis, Leiden University, 2012.

former Soviet space⁸. Also, scholars tried to identify the main elements which determine the EU's success – or lack thereof – as a “global conflict manager”, targeting various regions of the world⁹. But comparative perspectives on EU policy frameworks for the neighbourhood remain scarce, as the literature on EU in conflict management usually focuses on intra-region case-studies, individual ones or multiple case-studies emphasising the type of conflict (e.g. ethno-political) rather than the EU frameworks for dealing with them. The paper tries to address this gap, based on the belief that it is important to understand the commonalities and differences of EU policy frameworks for engaging its neighbours. Hence, this paper takes a horizontal and sectoral perspective, analysing ENP and SAP comparatively, as wider policy frameworks potentially creating linkages with CSDP missions.

The current events in Ukraine and the annexation of Crimea by Russia brought the temptation to invoke comparisons with Kosovo and Georgia. It is true that in the current context a closer look at past successes, failures and unintended consequences in these two cases could indeed be useful for designing better responses to secessionist claims and state-building endeavours in Europe and around the world. However, careful attention has to be devoted to studying the particularities of each of them in order to ensure that comparisons between regions and cases are not forced and that generally debates in this regard are based on a thorough understanding of the facts and specific conflict contexts.

I. CSDP operations and conflict management by the European Union

The EU started to engage in conflict management as it began developing a common foreign policy, but it was more by necessity and less by choice. When the Maastricht Treaty was adopted in 1992, creating the European Union and its Common Foreign and Security Policy (CFSP), the dissolution of former Yugoslavia was unfolding, soon to become an irreversible process. The failure of the EU's mediation attempts to keep the federation together and the following wars exposed the need for the EU to emphasise the “common” in the CFSP and to develop a capacity for effective crisis management¹⁰. The literature thus highlights the role that the wars in the Western Balkans played in developing the EU's security structures and especially CSDP¹¹.

But developing the Common Defence and Security Policy was only one instrument among the many developed by the EU in response to violent or “frozen” conflicts in its geographical proximity. Focusing predominantly on short-term crisis management, CSDP provided the EU with “an autonomous capacity of action”, translated into either military or civilian operations or a combination thereof, to be employed abroad. CSDP military operations seek to stabilize countries, reform their armed forces, ensure security during critical times (negotiation of peace accords, elections in post-conflict environments, etc.) or provide entry/exit strategies for more complex missions deployed within the UN framework. Civilian missions of training, monitoring, reforming, and assisting local police forces or law enforcement agencies envisage ensuring democratic standards in the targeted countries and making them more efficient in

⁸ N. Popescu, *Stealth Intervention. The EU and Post-Soviet Conflicts*, PhD Thesis, Central European University, 2009.

⁹ R. G. Whitman and S. Wolff (ed.), *The European Union as a Global Conflict Manager*, London and New York, Routledge, 2012.

¹⁰ R. Danreuther, R., *European Union Foreign and Security Policy. Towards a neighbourhood strategy*, London, Routledge, 2004, p. 3.

¹¹ C. Bretherton and J. Vogler, *The European Union as a Global Actor*, 2nd edn., London, Routledge, 2006, p. 196.

fighting organised crime, corruption or terrorism. Also, monitoring missions help observe ceasefires and provide the conditions for stabilisation and confidence-building between former warring parties. They can all contribute to peace-building and state-building, based on the assumption that the transformation of conflict requires the prior establishment of the rule of law and effective governance structure¹². The EU thus tries to foster sustainable peace in third countries by supporting capacity building for local authorities through CSDP missions, alongside financial assistance and political dialogue undertaken through different legal frameworks.

Scholars who studied the EU's performance as a "global conflict manager" argued that conflict management by the EU generally refers to a "long-term engagement with a particular country or region, an engagement that, over time, will necessitate different conflict management policies, including military crisis management, development and humanitarian aid efforts, and mediation between conflict parties"¹³. This was best illustrated in the Western Balkans (especially in Bosnia and Herzegovina, FYROM) and selectively in Africa (in DR Congo and Darfur, Sudan), while some countries like Georgia and the Republic of Moldova, which fall "somewhere between the cases with a clear accession perspective (Western Balkans) and those with clearly none (Africa and Middle East)" have witnessed a reluctant EU getting more and more engaged through comprehensive policies, including in conflict management¹⁴.

For the purpose of this article, conflict management is referred to as a generic term covering the entire range of "positive conflict handling", although some authors¹⁵ use it in a more limited way, as the settlement and containment of violent conflict. On the other hand, conflict resolution is a more comprehensive concept referring to the "efforts to address the underlying causes of conflict by finding common interests and overarching goals"¹⁶, by "fostering positive attitudes and generating trust through reconciliation initiatives, and building or strengthening the institutions and processes through which the parties interact peacefully"¹⁷. It is interesting to note that the terms "conflict management" and "conflict resolution" are rather common in the literature of Conflict Studies and almost absent from the lexicon of international organisations, which prefer to refer to "conflict prevention"/"preventive diplomacy", "peace-making" and "peace-building". The EU documents typically use the terms "conflict prevention" and „crisis management", while "conflict management" is rarely employed. This made some scholars claim that when performed by the EU, conflict management "subsumes these two sets of policies, but also covers a third, commonly referred to as conflict settlement or resolution, that is, policies aimed at finding a compromise between the parties that will allow them to address remaining and/or future disputes between them by political or judicial means, rather than by recourse to violence"¹⁸.

¹²Tocci, N., 'The EU as a peacebuilder: Actorness, potential and limits', in Blockmans, S., J. Wouters and T. Ruysted., *The European Union and Peacebuilding. Policy and Legal Aspects*, the Hague, T.M.C Asser Press, 2010, p. 60.

¹³R. G. Whitman and S. Wolff, op. cit., p. 5.

¹⁴ibid., pp. 6-7.

¹⁵ O. Ramsbotham, T. Woodhouse and H. Miall, *Contemporary Conflict Resolution*, 2nd edn, Cambridge, Polity Press, 2007, p. 27.

¹⁶United States Institute of Peace (USIP), 'Peace Terms. Glossary of Terms for Conflict Management and Peacebuilding', Washington, 2011, p. 15, <http://glossary.usip.org/>.

¹⁷ibid.

¹⁸R. G. Whitman and S. Wolff, op. cit., p. 5.

The European Union is not the only international organisation involved in conflict management, but the advent of the CFSP enabled it to try maintaining stability and contributing to peace in its vicinity and beyond - from the Western Balkans to Indonesia. Its set of instruments is broad, but its record remains mixed. At the same time, through contractual relations or some form of cooperation with almost every country in the world, be it a in a bilateral or regional format, the EU is well positioned for engaging third countries in conflict management. But not all contractual relations are the same – some of them are equal partnerships, while others have an in-built asymmetry that places the EU in a position to make demands. Whatever the case might be, the EU usually enjoys enough political leverage to try to make its involvement in conflict management count.

II. EU policy frameworks for engaging the neighbours – SAP and ENP

The EU engages with third countries mainly by developing a web of contractual relations with institutional, political, economic and legal components which bring them closer to the EU framework¹⁹. The Stabilisation and Association Process for the Western Balkans, the Euro-Mediterranean Partnership for North Africa and the Middle East, the European Neighbourhood Policy for the neighbours in the South and East and more recently the Eastern Partnership for the latter, together with the enlargement process, are all illustrations of the EU's attempt to "shape" its neighbourhood and share (to different extents) the stability and prosperity within its borders. All these initiatives "make use of, and are embedded in- EU institutional, legal and policy frameworks"²⁰.

Enlargement has been the most successful tool in the EU's foreign policy toolbox used for stabilisation, helping the democratic transition in Central and Eastern Europe and enhancing good neighbourly relations between the states emerging from communist rule. Today, the prospects of EU membership for the countries in the Western Balkans are expected to contribute in a similar way to solving the region's persistent ethno-political conflicts. These countries are involved in the Stabilisation and Association Process, initiated by the Commission in 1999 following the war in Kosovo. Through the SAP the EU "expresses its determination to take up the challenge and responsibility to contribute to the stability of the Western Balkans region"²¹. In other words, it commits on the long term to invest in post-conflict stabilisation, peace and security, as part of a "comprehensive approach" which also includes CSDP missions and operations²². Participation in the SAP is a two-phased process: during the first, the EU helps implementing a free trade area and support the states' convergence to EU standards; once political and economic stability and institutional capacity are positively assessed in a feasibility study, the Balkan countries sign a Stabilisation and Association Agreement (SAA) with the EU, which becomes the contractual basis of the bilateral relation. The European perspective for the Western Balkan countries was unequivocally stated in 2003 by the Thessaloniki European Council, showing that "the Western Balkan countries will become

¹⁹N. Tocci, op. cit. (2007), p. 10.

²⁰ibid.

²¹ European Commission, 'Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo', Brussels, 10 October 2012, p. 2, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

²² E. Prifti, 'Introduction: from stabilisation to integration', in Prifti, E. (ed.), *The European Future of the Western Balkans. Thessaloniki@10 (2003-2013)*, Paris, EU Institute for Security Studies, 2013, p. 14, http://www.iss.europa.eu/uploads/media/Thessalonikiat10_01.pdf.

an integral part of the European Union once they meet the established criteria"²³. Hence, the SAP offers these countries "a structured path towards EU accession and substantial assistance for the promotion of democracy, institutional capacity and political dialogue"²⁴, which features political conditionality. Similar to the association process for the Central and Eastern European countries, but with its own specificities, the SAP underpins asymmetric relationships, through which the EU can grant incentives or apply punitive measures. The SAP has a significant dimension of regional cooperation as well, due to the complex issues that need to be addressed, like security, refugees and displaced persons, reconciliation, etc. But unlike the previous wave of enlargement, when cooperation among the Central and Eastern European states was "encouraged", the EU made regional cooperation a prerequisite for participating in the SAP²⁵.

An alternative to EU membership is the participation in the European Neighbourhood Policy, launched in 2004 for the Eastern and Southern neighbours in an attempt to "avoid drawing new dividing lines in Europe and to promote stability and prosperity within and beyond the new borders of the Union"²⁶. Among the challenges that the EU tried addressing through the new initiative, the Commission highlighted "the negative effects of conflict on economic and political development", which could not be "over-estimated" and triggered the danger of spill over²⁷. Conflict and political division in the Mediterranean and unrecognised "statelets" that became magnets for organised crime in the Eastern neighbourhood were among the EU's concerns when launching the ENP, only to promise "greater EU political involvement in conflict prevention and crisis management" as an "incentive"²⁸ for neighbouring countries to participate in the initiative. Although conflict resolution *per se* was not among the initial objectives of this policy, its underlying logic is that by providing political association and deeper economic integration with the EU, together with increased mobility, the partner states are incentivised to contribute to ensuring stability, to commit to sharing EU values and to support regional cooperation. It is in this framework that conditionality and passive enforcement²⁹ can be used by the EU in order to change beliefs, behaviours and strategies of the conflict parties, rendering them more willing to negotiate for conflict settlement.

Based on bilateral agreements with individual countries, the ENP represented a qualitative improvement of the EU's relations with its neighbours, except for Russia, which preferred

²³Referring to the Copenhagen criteria and the implementation of the requirements of the SAP, especially regional cooperation.

²⁴ S. Marsh and W. Rees, *The European Union in the Security of Europe. From Cold War to Terror War*, London and New York, Routledge, 2012, p. 126.

²⁵*ibid.*, p. 128.

²⁶In view of the enlargement wave which took place in 2004 and 2007. European Commission, 'Communication from the Commission to the Council and European Parliament –Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours', Brussels, 11 March 2003, p. 14, http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf.

²⁷*ibid.*, p. 9.

²⁸*ibid.*, p. 12.

²⁹ According to Nathalie Tocci, *op. cit.* (2007), p. 10, there are three main mechanisms through which the EU exerts its influence in the neighbourhood and tries to provide incentives in order for the conflict parties to alter their behaviour towards settlement and resolution. These are: conditionality (positive/negative), social learning and passive enforcement.

the framework of a strategic partnership³⁰. At the same time, by introducing cross-border cooperation programmes, the ENP tried to enhance regional cooperation, although this dimension is weaker than in the case of the SAP³¹. The application of differentiation and positive conditionality was meant to encourage competition between the ENP partners for EU aid and benefits, while also acknowledging the possibility of making progress at their own speed³². But as the competition between the Eastern and Southern neighbours and between the EU member states which share borders with them became fiercer, the ENP was complemented by more targeted regional cooperation initiatives such as the Eastern Partnership (since 2009), the Union for the Mediterranean (re-launched in 2008) and the Black Sea Synergy (since 2008). What is fundamentally at stake in the ENP is “the EU’s ability to develop an external policy complementary to enlargement that is effective in promoting transformation and reform”³³. Participating in the ENP is thus a long-term commitment, but because the end state is rather elusive, the conditionality is somewhat “diluted” and obtaining progress is slow and sometimes difficult.

Having emerged as an atypical international organization founded on reconciliation between former enemies, the EU aimed to create a “peace community” legitimising its political and economic model of liberal democracy. Its enlargement was considered a very successful foreign policy tool, but the EU cannot expand everywhere. Notoriously presented as “an economic giant and political dwarf”³⁴, the EU is currently perceived more as a “club” which uses conditionality, political influence and economic incentives in order to stabilise its neighbourhood, sometimes together with civilian missions and military operations deployed through CSDP. However, the absence of real “military teeth”, the use of “double standards” in reacting to conflicts around the world and the lack of coherence between EU policies account for the EU’s mixed record in conflict management.

III. The comparative case-study: linking CSDP operations to stabilisation through the ENP and SAP

The selected case-studies are Serbia/Kosovo and Georgia/Abkhazia and South Ossetia. The EU engages these countries through two frameworks – the SAP and the ENP respectively – and it has deployed civilian CSDP missions in both cases. The essential question to be discussed is thus to what extent can common challenges be identified across the two different EU policy frameworks – SAP and ENP – in the context of the Union performing conflict management in its neighbourhood? In answering this question, the present study aims to highlight some lessons learned by the EU when deploying CSDP civilian missions in post-conflict settings and attempting to craft a wider conflict management strategy for its neighbourhood.

Crisis management and stabilisation through CSDP represent an essential EU tool in targeting ethno-political conflicts in the vicinity, but the Union does not always employ its entire “toolbox”. The EU becomes deeply involved in conflict management in some cases,

³⁰ S. Marsh and W. Rees, *op. cit.*, p. 134.

³¹ *ibid.*

³² *ibid.*

³³ European Commission, ‘Communication from the Commission A Strong European Neighbourhood Policy’, Brussels, 5 December 2007, p. 2, http://ec.europa.eu/world/enp/pdf/com07_774_en.pdf.

³⁴ F. Cameron, *An Introduction to European Foreign Policy*, London, Routledge, 2007, p. 173.

while in others it only addresses their potential implications for European security. As one observer remarked, "EU policies and approaches toward conflicts have been geographically wide but institutionally shallow, with the exception of the Balkans"³⁵. The next section will present the historical background of the selected case-studies and analyse the EU involvement through CSDP, highlight common challenges across SAP and ENP and explore the potential for an emerging wider conflict management strategy for its neighbourhood.

III.1. Background of the conflicts and EU involvement in conflict management

III.1.1. Serbia/Kosovo

The Socialist Federal Republic of Yugoslavia emerged at the end of the Second World War as an "edifice dedicated to the doctrine of brotherhood and unity"³⁶, in which ethnic conflict belonged to the past. Five of the constituent republics were dominated by a certain ethnic group (Serbia, Croatia, Slovenia, Montenegro and Macedonia), while the sixth had a strong multiethnic character (Bosnia and Herzegovina). The two territories officially subordinated to Serbia but inhabited by a majority of non-Serbs – Kosovo and Vojvodina – became the beneficiaries of a delicate constitutional balance introduced by Tito in 1974, which granted them a broad autonomous status³⁷. In the context of emerging nationalism and post-communist transition, Slobodan Milosevic revoked Kosovo's autonomy in 1989 during his accession to power in Belgrade. Later on, as SFR Yugoslavia was disintegrating, the Badinter Arbitration Commission refused to accept Kosovo's request for consideration as an independent state. A "Parallel Government" structure was thus formed by Ibrahim Rugova, who promoted peaceful resistance in an attempt to elicit international attention. The Kosovo issue was again sidelined in 1995 at the Dayton negotiations ending the war in Bosnia, mainly due to Milosevic's pivotal role in the peace process. Disillusioned with Rugova's peaceful resistance movement, and confronted with increasing repression from Belgrade, the Kosovo Albanian population started resorting to violent means. Serbian policy thereafter helped streamline a factious and disorganised armed struggle into a deeply rooted and almost universal popular movement for national liberation led by the Kosovo Liberation Army (UCK). By 1998, the Serbian forces had succeeded in breaking the UCK resistance. However, the choice by Milosevic to employ "tactical ethnic cleansing"³⁸ not only further radicalised the Kosovo Albanians, but it also united the international community against him, facilitating three UN Security Council Resolutions and ultimately the 78-day NATO bombardment. Finally, the UNSC Resolution 1244/1999 confirmed that Serbia had to withdraw from Kosovo, the latter being placed under UN administration. UNMIK was designed to help develop institutions of self-government in Kosovo that would progressively assume the functions of public authorities during an interim period of three years, at the end of which final status negotiations would be held³⁹. The UN started to prepare the final status process in 2005, under the leadership of the Finnish diplomat Martti Ahtisaari⁴⁰.

³⁵ N. Popescu, *op. cit.*, p. 116.

³⁶ M. Weller, 'The failure of prevention – Kosovo', in S. Wolffand C. Yakinthou (ed.), *Conflict Management in Divided Societies. Theories and Practice*, London and New York, Routledge, 2012, p. 218.

³⁷ *ibid.*, p. 219.

³⁸ The term denotes "deliberate, organized, and usually violent expulsion of people from an area on the basis of their perceived ethnic, communal, sectarian, or religious identity". United States Institute of Peace, *op. cit.*, p. 11.

³⁹ M. Weller, *op. cit.*, p. 227.

⁴⁰ *ibid.*, p. 228.

In the meantime, Kosovo was included on the Thessaloniki Agenda (2003) which confirmed the European perspective of the Western Balkan countries and in the Stabilisation and Association Process, as “the overall framework for the European course of the Western Balkan countries, all the way to their accession”⁴¹. It is in this context that the EU established the European Partnership with Serbia and Montenegro including Kosovo as defined by UNSC Resolution 1244/1999, with a separate plan for addressing the priorities regarding Kosovo, which were complementary to the ones set by the “Standards for Kosovo” endorsed by the UN Security Council⁴². Both the main and complementary priorities envisaged ensuring “a stable future for a secure, democratic and multi-ethnic Kosovo”⁴³. The European Partnership was revised in 2006⁴⁴ and again in 2008, after the introduction of the Instrument for Pre-Accession (IPA) as the renewed framework for providing financial assistance to pre-accession countries⁴⁵.

In February 2008 Kosovo unilaterally declared independence, recognised by the United States, Great Britain, Germany and France among others, while Russia reacted in anger and joined Serbia in a vocal opposition to the move, considered illegal⁴⁶. Five member states⁴⁷ of the EU refused to recognize Kosovo’s self-proclaimed independence. Nevertheless, in December the same year, the EU launched the integrated rule of law mission EULEX as part of the efforts to stabilise Kosovo, and gave it an executive mandate enabling it to perform functions of police, customs and judicial systems. In 2010, following Serbia’s request through the UN General Assembly, the International Court of Justice delivered a non-binding advisory opinion according to which Kosovo’s declaration of independence was not adopted in violation of general international law⁴⁸. The five non-recognizing states within the EU maintained their stance, and EULEX continued its work based on a “status neutral” approach. In 2012 EULEX was reconfigured and its personnel downsized by 25%, in order to “reflect increasing capacities of the Kosovo authorities”⁴⁹. At the same time, the

⁴¹ Council of the European Union, Council Regulation (EC) No. 533/2004 of 22 March 2004 on the establishments of European partnerships in the framework of the stabilisation and association process, in *Official Journal of the European Union* L86, 24.03.2004, p. 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0533&from=EN>.

⁴² Council of the European Union, Council decision of 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 (2004/520/EC), in *Official Journal of the European Union* L227, 26.06.2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0520:EN:HTML>.

⁴³ *ibid.*

⁴⁴ A distinct European Partnership with Montenegro was adopted in 2007, following its peaceful secession from Serbia.

⁴⁵ Council of the European Union, Council decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing decision 2006/56/EC (2008/513/EC), in *Official Journal of the European Union* L80, 19.03.2008, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0213&from=EN>.

⁴⁶ L. Harding, ‘Kosovo breakaway illegal, says Putin’, *The Guardian*, 15 February 2008, <http://www.guardian.co.uk/world/2008/feb/15/russia.kosovo>.

⁴⁷ The five member states are: Spain, Romania, Slovakia, Cyprus and Greece.

⁴⁸ International Court of Justice, ‘Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo’, Advisory Opinion of 22 July 2010, <http://www.icj-cij.org/docket/files/141/15987.pdf>.

⁴⁹ European Commission, ‘Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo’, Brussels, 10 October 2012, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

High Representative of the Union for Foreign Affairs and Security Policy Catherine Ashton, assisted by the European External Action Service (EEAS), convinced the parties to participate in negotiations in view of normalising the relations between Pristina and Belgrade. Final status aside, the talks had to concentrate on “practical coexistence” of Serbia and Kosovo. In April 2013 a groundbreaking agreement was obtained, establishing a power-sharing arrangement in the Serbian-dominated Northern Kosovo (Mitrovica) run by authorities supported by Belgrade after 2008. This was the result of both the EU's diplomatic efforts and the two capitals' interest in advancing their relationship with the EU – to obtain candidate status and to get closer to signing a Stabilisation and Association Agreement respectively⁵⁰. Under the Stabilisation and Association agreement – which is yet to be signed⁵¹ – Kosovo has to meet certain obligations regarding the rule of law, the judiciary, public administration, electoral reform and the Assembly, human and fundamental rights, protection of minorities, trade and internal market issues⁵². With EULEX helping Kosovo improve its performance with the first two, CSDP effectively becomes an instrument for attaining SAP goals. In fact, the Commission showed that “if an association agreement were concluded, this EU mission would, within its remit, support the Kosovo authorities in the implementation of such an agreement”⁵³. At the same time, by tackling serious and organized crime, together with fighting corruption and entrenching the rule of law, EULEX enhances the link between CSDP (the civilian component) and the external dimension of the Area of Freedom, Security and Justice, which share the objective of “protecting the EU's safe internal space from an «unsafe» external environment”⁵⁴.

According to the EEAS, EULEX “forms part of a broader effort undertaken by the EU to promote peace and stability in the Western Balkans and to support the Kosovo authorities as they undertake necessary reforms, in line with their and the regions overall European perspective. EULEX skills and expertise are also being used to support the key objectives in the visa liberalisation process, the Stabilization and Association Process Dialogue and the Belgrade-Pristina dialogue”⁵⁵. Despite positive developments over the past years, the area of justice still requires international assistance, so EULEX retains an executive capacity, which enables it to investigate and prosecute serious crimes or those involving high-ranking officials. The main challenges for EULEX Kosovo in the current phasing-out stage⁵⁶ are not

⁵⁰ Lehne, S., ‘Serbia-Kosovo Deal Should Boost the EU's Western Balkans Policy’, Carnegie Europe, 13 April 2013, <http://carnegieeurope.eu/2013/04/23/serbia-kosovo-agreement-should-reenergize-eu-s-western-balkans-policy/g0q8>.

⁵¹ It was initialed in July 2014.

⁵² European Commission, Commission Staff Working Document ‘Kosovo 2013 Progress Report Accompanying the document Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014’, Brussels, 16 October 2013, http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf.

⁵³ European Commission, ‘Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo’, Brussels, 10 October 2012, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

⁵⁴ Mounier, G., ‘European Police Missions: From Security Sector Reform to Externalization of Internal Security Beyond the Borders’, *ETC HUMSEC Journal*, no. 1, 2007, p. 48, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail?id=110394&lng=en>.

⁵⁵ Common Security and Defence Policy (CSDP), EULEX Kosovo EU Rule of Law Mission in Kosovo Factsheet, February 2014, http://eeas.europa.eu/csdp/missions-and-operations/eulex-kosovo/pdf/factsheet_eulex_kosovo_en.pdf.

⁵⁶ EULEX's mandate was extended until 14 June 2014 and then again until 14 June 2016. <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>.

only to transfer responsibility to the Kosovo authorities, but also to facilitate the transfer of capacity-building activities to the projects financed by IPA, a transition which sometimes causes friction between the EEAS and the Commission⁵⁷.

To sum up, with EULEX Kosovo, the EU took a step further from police reform, as previously undertaken in the Former Yugoslav Republic of Macedonia and Bosnia and Herzegovina respectively, to “tackling the entire spectrum of rule-of-law activities, which offers a better formula for ensuring the sustainability of good governance reforms”⁵⁸. The EU’s involvement in solving the Serbia/Kosovo conflict stemmed more from its sense of responsibility for the region and the “coming of age” of CFSP/CSDP after a slow start in the 1990s than from local demand, but there were no real alternatives to it. While the United States still enjoy great political leverage in Kosovo and maintain a significant level of troops in KFOR on the ground, the EU has become the main guarantor of Kosovo’s future. By engaging deeply in Kosovo through generous financial assistance, SAP, a CSDP mission and mediation by the HR and by also granting a European perspective to Kosovo under Resolution 1244/1999, the EU effectively provided the international community with an exit strategy from this last Balkan “hot spot”.

III.1.2. Georgia/Abkhazia and South Ossetia

Georgia declared its independence from the Soviet Union on April 9, 1991. The newly independent republic comprised Georgia with the capital in Tbilisi, the Autonomous Republic of Abkhazia and the Autonomous Oblast of South Ossetia. The international community recognised the new independent state within the borders of the former Soviet Socialist Republic of Georgia. Soon after that, a series of nationalist measures⁵⁹ taken by the transition regime of President Zviad Gamsakhurdia together with the emergence of local nationalism alienated both South Ossetia and Abkhazia, who fought secession wars with Georgia in the ‘90s⁶⁰. The cease-fire agreements signed in Sochi (1992) and Moscow (1994) ended the wars with South Ossetia and Abkhazia respectively, in the aftermath of which Georgia lost control of large parts of both territories. Both agreements provided for the deployment of peacekeeping forces (mainly Russian) in the former war theatres and international missions (UN in Abkhazia and the CSCE/OSCE in South Ossetia) to facilitate the peace processes. The EU established relations with Georgia in 1992, after it became an independent state, and signed a Partnership and Cooperation Agreement (PCA) in 1996, institutionalising political dialogue and establishing economic cooperation. For the next few years however the EU’s interest in Georgia was minimal.

With the election of Mikhail Saakasvili as President of Georgia in 2003, the country started enjoying massive support from the EU (for reconstruction and rule of law) and the United States (which provided military advisers and armament deals). However, the South

⁵⁷Interview with EU official, European External Action Service, 6 October 2014, Brussels.

⁵⁸I. Ioannides, ‘EU peace support operations in the Western Balkans since 2003’, in Prifti, E.(ed.), *The European Future of the Western Balkans. Thessaloniki@10 (2003-2013)*, Paris, EU Institute for Security Studies, 2013, p. 63, http://www.iss.europa.eu/uploads/media/Thessalonikiat10_01.pdf.

⁵⁹Imposing of Georgian as the unique language throughout the country and restraining autonomy for the non-Georgian entities.

⁶⁰Independent International Fact-Finding Mission on the Conflict in Georgia Report, volume I, 2009, p. 13, <http://www.ceig.ch/Report.html>.

Caucasus was not included in the Commission's initial Communication on the European Neighbourhood Policy, but it was later mentioned in the European Security Strategy as a region where the EU "should take a stronger and more active interest"⁶¹. As a consequence, the EU appointed a Special Representative for the South Caucasus for the first time⁶². The EUSR's mandate regarding conflict resolution in Georgia was limited to supporting the activity of the UN and OSCE and the existing conflict resolution mechanisms, with no autonomous EU involvement⁶³. In June 2004 the South Caucasus was finally included in the newly launched European Neighbourhood Policy and soon after EU deployed EUJUST Themis to Georgia its first ever rule of law ESDP mission, which was also the first in the post-Soviet space. EUJUST Themis was designed "to assist local authorities in developing an overarching criminal justice reform strategy based on the principle of local ownership"⁶⁴. While Georgia was not necessarily in crisis – despite the post-revolutionary tension – the mission was sent in the CSDP framework in order to raise the political profile of the EU, ensure effective control over the mission and implement quick-impact measures, as its mandate was only for a year⁶⁵. A reform strategy was adopted by the Georgian authorities in July 2005, thus indicating that the mission fulfilled its objective, but it did not lead to a more assertive EU policy in this area⁶⁶. The framework for bilateral relations remained a rather technical one, but due to the first ENP Action Plan and the amending of the EUSR's mandate the EU began contributing more to conflict management in Abkhazia and South Ossetia, based on the principle of maintaining Georgia's territorial integrity⁶⁷. Conflict resolution was the sixth among the priorities in the Action Plan, and it did not envisage "clear steps toward greater EU contribution" in this field⁶⁸. But in 2006 the EU became the biggest international donor to the breakaway regions Abkhazia and South Ossetia, except Russia⁶⁹. At this point, the EU's policy towards conflict resolution was focused on developing Georgia in order to make it more attractive for the people in the two separatist provinces; after 2008, the EU targeted the secessionist entities themselves, relying on economic incentives and investments in their rehabilitation⁷⁰.

In the first half of 2008 there was an increase in violent incidents both in Abkhazia and South Ossetia. The war started on the night of 7 to 8 August when Georgia launched an artillery attack on South Ossetia. Twenty-four hours later the 54th Russian Army stationing in North Ossetia intervened in order to counteract the Georgian attack. It thus became a combined inter-state and intra-state armed conflict, opposing Georgian and Russian forces at one level of confrontation, as well as South Ossetians together with Abkhaz fighters and the Georgian

⁶¹ Council of the European Union, 'A Secure Europe in a Better World' - European Security Strategy. Brussels, 12 December 2003, p. 8, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

⁶² N. Popescu, op. cit. p. 179.

⁶³ *ibid.*, p. 184.

⁶⁴ Kurowska, X., 'EUJUST Themis (Georgia)', in G. Grevi, D. Helly and D. Keohane (ed.), *European Security and Defence Policy. The First 10 Years (1999-2009)*, Paris, the EU Institute for Security Studies, 2009, p. 205.

⁶⁵ *ibid.*, p. 204.

⁶⁶ *ibid.*, p. 207.

⁶⁷ Whitman, R. G. and S. Wolff, 'The limits of conflict management in the case of Abkhazia and South Ossetia', in Whitman, R. G. and S. Wolff (ed.), *The European Union as a Global Conflict Manager*, London and New York, Routledge, 2012, p. 96.

⁶⁸ N. Popescu, op. cit., p. 196.

⁶⁹ *ibid.*, p. 176.

⁷⁰ *ibid.*, p. 165.

army at another⁷¹. The Russian troops advanced on the Georgian territory and stopped the offensive as a result of a cease-fire mediated by the French president Nicolas Sarkozy. Tbilisi denounced a Russian “aggression”, while Moscow called it a “peace enforcement operation”, but the EU refrained from labelling⁷². On August 26 Moscow recognised the independence of the separatist regions Abkhazia and South Ossetia. Condemning the move, the EU insisted that conflict resolution in Georgia had to be based on the respect for the principles of independence, sovereignty and territorial integrity. The EU’s support for conflict resolution efforts translated into an enhanced personnel and financial contribution to the OSCE mission in South Ossetia and the sending of a fact-finding mission to prepare future CSDP involvement; the EU also decided to appoint a Special Representative for the crisis in Georgia and to suspend the negotiations for a new Partnership Agreement with Russia until the latter withdrew its troops to the lines prior to August 7⁷³.

On October 1 a 200-strong European Union Monitoring Mission (EUMM Georgia) was deployed in theatre, with the mandate to monitor the *entire* territory of Georgia – including Abkhazia and South Ossetia – and undertake stabilisation, normalisation, confidence-building and information tasks⁷⁴. The mission has been hailed as “the EU’s first active intervention in a serious armed conflict”⁷⁵ and prolonged several times since then. In the meantime, Russia vetoed the continuation of OSCE and UN missions in South Ossetia and Abkhazia. EUMM Georgia is currently tasked also with running the Incident Prevention and Response Mechanisms for Georgia’s both conflicts⁷⁶.

Georgian president Mikhail Saakashvili hoped that the EU would undertake a military mission with a robust mandate and commit to help significantly with the resolution of the conflict⁷⁷. As the EU deployed a civilian mission, Tbilisi had to accept less than it had hoped for and decided to cooperate closely with EUMM. Having recognised the independence of the two separatist regions, Moscow tried to impose it on the EU, especially by claiming that EUMM had to ask permission from Tskhinvali and Sukhumi in order to patrol on their administrative borders within Georgia (and *de facto* secession borders). As a consequence of the EU’s refusal, EUMM cannot fully implement its mandate. There are voices claiming that due to the lack of EUMM’s access to the separatist side of the administrative boundary, the current *status quo* is actually consolidated on the ground⁷⁸. The EUMM’s main contribution is thus to deter potential violent incidents or the resuming of hostilities, while a peace process

⁷¹ Independent International Fact-Finding Mission on the Conflict in Georgia Report, p. 10.

⁷² *ibid.*, p. 22.

⁷³ Council of the European Union, ‘Council Joint Action 2008/736/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia (as amended by Joint Action 2008/759/CFSP of 25 September 2008)’, in *EU Security and Defence Core Documents 2008*, volume IX, compiled by Catherine Glière, Paris, EU Institute for Security Studies, 2009, pp. 300-301.

⁷⁴ *ibid.*, p. 302.

⁷⁵ Independent International Fact-Finding Mission on the Conflict in Georgia Report, p. 2.

⁷⁶ O. Ditych, ‘EU Security Policy in the South Caucasus. The Need to Move from Hydra to Hercules’, SWP Working paper no. 05, 2011, p. 8, <http://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/EU%20Security%20Policy%20in%20the%20South%20Caucasus.pdf>.

⁷⁷ Fischer, S., ‘The European Union Monitoring Mission in Georgia (EUMM)’, in G. Grevi, D. Helly and D. Keohane (ed.), *European Security and Defence Policy. The First 10 years 1999-2009*, Paris, EU Institute for Security Studies, 2009, p. 387.

⁷⁸ O. Ditych, *op. cit.*, p. 9.

undertaken with international mediation addresses the unresolved issues. The Geneva International Discussions co-chaired by the UN, the OSCE and the EU⁷⁹ started in October 2008 in order to negotiate the status of the breakaway regions Abkhazia and South Ossetia. Although representatives from South Ossetia and Abkhazia take part in the Geneva talks regarding their future status, neither the EU nor the international community has the intention to provide recognition to the separatist authorities.

Launched in April 2009, in the aftermath of the August war, the Eastern Partnership involving Georgia alongside Armenia, Azerbaijan, Belarus, Moldova and Ukraine was meant to provide them a privileged relation with the EU, thus stressing the renewed importance of the region. In June 2014 the EU and Georgia signed an "unprecedented" Association Agreement deepening their economic and political ties and started the visa liberalisation dialogue, thus trying to firmly anchor Tbilisi on the path of reforms and bring the country closer to the EU. This is the culmination, so far, of engaging Georgia (and other Eastern neighbours like Ukraine and Republic of Moldova) through the European Neighbourhood Policy and the Eastern Partnership.

III.2. Lessons learned and remaining challenges

The main lessons learned by the EU from conflict management in the three conflicts belong to two categories – lessons for the EU as a political organisation and for doing conflict management respectively. One lesson is that of internal cohesion – when the member states act together, the EU can obtain positive results. This was the case in August 2008, when the member states rallied around the French Presidency of Council in its mediation efforts and agreed unanimously on sending EUMM on the ground, which became the fastest deployed CSDP mission ever. As unity waned later on, the EU was not capable to react to developments such as Russia's failure to withdraw from Georgian territory by the deadline set in the Implementation Agreement or its recognition of Abkhazia and South Ossetia's independence. In fact, the member states' different attitudes towards Russia were the main reason why the EU was reluctant to engage earlier and more consistently in managing the conflicts in Georgia.

On the other hand, the complexity of the EU as an organisation can lead to some interesting compromises. This is the case with EU involvement in the Serbia/Kosovo conflict. The EU supported the political dialogue initiated by the High Representative with the two parties, which delivered promising results. At the same time, despite the lack of unity within the EU regarding the recognition of Kosovo's independence, EULEX Kosovo is actually helping with state-building there.

An interesting shortcoming of EU policy in ethno-political conflict management could be the undertaking of what was labelled as "apolitical peace-building"⁸⁰, meaning the funding of peace-building projects aimed at reforming the socio-economic, institutional and cognitive

⁷⁹The EU Special Representative for South Caucasus and the Crisis in Georgia co-chairs the negotiations for the EU side. After a short co-existence of a EUSR for the South Caucasus with a EUSR for the Crisis in Georgia, the two posts merged in 2011.

⁸⁰Merlingen, M. and R. Ostraukaité, 'EU peacebuilding in Georgia: Limits and achievements', in Blockmans, S., J. Wouters and T. Ruys (ed.), *The European Union and Peacebuilding. Policy and Legal Aspects*, the Hague, T.M.C Asser Press, 2010, p. 291.

conditions of the frozen conflicts, but with no political conditionality. Although this helps with gradual bottom-up conflict transformation, it cannot substitute for “tackling conflicts head-on at the highest political level”⁸¹. This approach is favoured through the ENP and Commission diplomacy and includes the limited mandates of EU Special Representatives too. While technical cooperation with the Commission provides access to funds and expertise that can be used for altering the context and actors’ behaviour or interests in ethno-political conflicts, the deployment of CSDP missions sends a much stronger message. But even these operations – especially if their mandate is limited to technical aspects – cannot make a real impact on conflict management unless there is strong political backing. CSDP crisis management usually entails short-term missions deployed to contain violence or to help create the context for conflict settlement and peace-building through monitoring cease-fires, upholding the rule of law, reforming the security sector, etc. However, in some contexts, these operations remain in theatre up to ten years, establishing linkages with other EU policies. For example, it has been argued that “the CSDP missions have been instrumental in the development of the Western Balkans, increasingly moving the region from stabilisation and security (linked to the war legacies) to an agenda focused on the countries accession process. Indeed, the operations were deployed in support of the long-term EU membership perspective offered by the Stabilisation and Association Process (SAP) which constitutes the general framework of cooperation between the EU and the Western Balkans countries”⁸².

The selected cases show that political dialogue between the EU and the third country where the Union attempts conflict management is the real asset. But its use is limited in the case of those entities that the EU does not recognise as parties to conflicts and partners to negotiation respectively. In the context of multi-layered, ethno-political and/or secessionist conflicts, the EU needs to establish modalities for engaging with non-recognised actors (such as Abkhazia and South Ossetia) or actors whose status is yet to be determined (Kosovo to a certain extent) in order not to lose the opportunity for democratisation or making a contribution to conflict resolution. Engagement does not equate recognition of statehood or independence⁸³, but it enables the EU to participate in conflict resolution efforts and support positive developments on the ground (democratisation, good governance, free and fair elections, change of leadership bringing more moderate actors to the forefront, etc). Abkhazia and South Ossetia were never included in the ENP, so in both cases there is no direct exposure to EU policies, thus no possibility for social learning and no incentives to change⁸⁴. In time, this can lead to the entrenchment of their positions and the strengthening

⁸¹ *ibid.*, p. 292.

⁸² Ioannides, *op. cit.*, p. 55.

⁸³ Even concluding an international agreement with such an entity does not constitute recognition. This was made clear in the case of Kosovo, for example. According to the Communication from the Commission on the Feasibility Study of concluding a SAA with Kosovo, “The possibility for the Union to conclude international agreements is not limited to generally recognised independent states or international organisations. Such agreements can be concluded with any entity with regard to which the other Contracting Party accepts that it can enter into an agreement that will be governed by public international law” European Commission, ‘Communication from the Commission to the European Parliament and the Council on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo’, Brussels, 10 October 2012, p. 3, http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf.

⁸⁴ N. Tocci, *op. cit.*, (2007), p. 141.

of the links to their protector⁸⁵ – Russia. The Non-Recognition and Engagement Policy towards Abkhazia and South Ossetia, adopted by the EU in December 2009 represents an initiative which partially responds to this challenge, by “opening a political and legal space in which the EU can interact with the separatist regions without compromising its adherence to Georgia’s territorial integrity”⁸⁶. Adapted to other conflicts in the neighbourhood, it could transform into a framework for enhancing conflict resolution through the ENP, especially if associated with other instruments⁸⁷.

Within the EU, member states that do not officially recognise various entities resulting from conflicts can abstain from derailing the Union’s efforts to contribute to those respective actors’ evolution towards democratic entities (the final status of which is to be decided by negotiations). This was the case with Spain, for example, which does not recognise Kosovo’s independence, but refrained from vetoing the launch of EULEX Kosovo in 2008, as long as it did not have to contribute personnel to the mission⁸⁸. Nevertheless, the five EU member states not recognising Kosovo’s independence opposed the negotiation of a Stabilisation and Association Agreement with Kosovo which would have made them sign it and thus recognise Kosovo statehood, and the SAA will be signed as an only-EU agreement, between the Commission and Kosovo⁸⁹. This was possible because the Lisbon Treaty provided the EU with legal personality, but the SAA had to contain explicit provisions that its signing did not entail recognition of Kosovo’s independence.

All in all, in the Serbia/ Kosovo case the EU managed to equate the “power of the purse” with political leverage by complementing generous financial assistance with effective mediation efforts, but the overall political clout could be occasionally undermined by the lack of unity among member states. In the Georgia/Abkhazia and South Ossetia case, while being co-chairman of the Geneva International Talks and the only actor providing an international presence on the ground, the EU has not proven capable of making Russia join the resolution efforts in a constructive way or of outdoing Moscow’s influence.

Conclusion

The EU has a complex set of tools for undertaking conflict management in its neighbourhood. These are diplomatic tools (political dialogue, EU delegations worldwide and EU Special Representatives), civilian and military CSDP missions, financial instruments for external assistance and technical mechanisms for early warning and conflict assessment, together with a diplomatic service meant to coordinate their use in a targeted manner in each specific case. The enlargement in Central and South-Eastern Europe provided the EU some useful lessons to apply when dealing with the countries in the Western Balkans and

⁸⁵ibid.

⁸⁶ Fischer, S., ‘The EU’s non-recognition and engagement policy towards Abkhazia and South Ossetia’, Seminar Report, 1-2 December, Paris, EU Institute for Security Studies, 2010, p. 1, http://www.iss.europa.eu/uploads/media/NREP_report.pdf.

⁸⁷ibid.

⁸⁸ P. J. Kuijper, ‘Preface’ to Blockmans, S. (ed.), *The European Union and Crisis Management: Policy and Legal Aspects*, the Hague, TMC- Asser Press, 2008, p. vi.

⁸⁹ UK Parliament, House of Commons – European Scrutiny Committee, ‘Joint Report on Kosovo’s progress in addressing issues set out in the Council Conclusions of December 2012 in view of a possible decision on the opening of negotiations on the Stabilisation and Association Agreement’, 30 July 2013, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xii/8327.htm>.

Eastern Europe, which benefit from participating in various EU policy frameworks. While very different, the countries covered by ENP and SAP have similar needs: peace, stability, prosperity and good governance. From this perspective, the EU could offer them many things: trade preferential treatment, energy integration, increased mobility for their citizens, as well as support for conflict resolution, economic development, democratisation and state-building. The existing contractual relations are an indication of the EU's and Member States' political interest in a certain country or region, and the deployment of CSDP missions could serve as a confirmation of that interest and provide the opportunity to strengthen ties with the host country. Also, when deploying CSDP missions to deal with post-conflict legacies of instability and state fragility, the EU should look for the best ways to link them to other instruments it uses there so as to ensure that the established linkages consolidate the results achieved through its conflict management efforts and provide it later with a successful exit strategy.

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Diversity in Unity. The European Union and Member States Emergency Aid to the Countries of the Middle East and North Africa (MENA) Region

Fulvio Attinà¹

Abstract: *This paper² draws the attention of the EU foreign policy professionals and researchers community towards the aid policy of the European Union and the major Member States towards the countries affected by humanitarian emergencies and disasters. The determinants and vertical coherence of this policy are put under observation. In particular, by measuring and comparing financial aid to the countries of the Middle East and North Africa, the MENA region, the present study assesses the importance of the aid policy vertical coherence. The analysis of the data supports the mainstream view about the common values and goals of the foreign aid policies of the Union and the Member States but warns about coherence between the Union and the state level as the European countries' aid allocation to the MENA countries is apparently driven by different priorities.*

Keywords: *EU humanitarian policy, MENA region, Emergency policy, Vertical coherence*

State policy-makers and international organizations officers are very much concerned today with building efficient policies of response to the large-scale emergencies that are caused by disastrous events. Such emergencies are hardly faced with routine procedures and normal courses of action. Exceptional, apposite actions are to be launched fast to cope with the emergency conditions and come back to the normal conditions. The later the appropriate response is given to an emergency problem, the longer the consequences will last. Since disaster-triggered emergencies result in serious instabilities within the event-afflicted country and drop their effect into near and distant areas, international organizations, non-governmental groups and the governments of many states, especially those of the advanced ones like the European Union (EU) Member States, are willing to aid the countries hit by disasters bursting into emergency conditions. Normally they do it in the post-event phase but are willing also to give assistance, know-how and resources before any disaster event and provide aid for disaster preparedness and prevention to the states of disaster-prone areas.

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International cooperation when disasters and emergencies occur is a research theme visited by political scientists from time to time. In the last few years, the study of prevention and response policies towards serious natural and human-made emergencies has been gaining momentum (see Ansell, Boin and Keller, 2010; Attinà, 2012; Boin, Ekengren and Rhinard, 2013; Boin, Busuioac and Groenleer, 2013; Clapton, 2011; Ekengren *et al.*, 2006; *Journal of Contingencies and Crisis Management*, 2014). In general, researchers look at an emergency as the critical condition of a society hit by an un-pre-empted event that (a) causes serious human sufferings, life losses and huge material damages, and (b) can be faced only with exceptional means and special actions. In a past study (Attinà, 2013), four areas of emergency problems have been distinguished, namely (1) the problems caused by *man-made disasters*, i.e. by large-scale human violence like war, genocide, and mass persecution; (2) the problems arising out of the enduring conditions of massive *poverty* of a society in which the population has little or no means for decent life like food, shelter, clothes, healthcare, and education; (3) the *natural disaster* problems caused by floods, volcanic eruptions, earthquakes, droughts, wildfire, and geologic processes that bring huge distress and loss of life and property to people; and (4) the *systemic-risk* problems, i.e. the problems that come into existence as a risk turns into a real event like the break down of important infrastructures and technological systems, or into a chain of negative events in one of the main sectors of social life like the last global crisis in the financial sector. Such areas of emergency problems, though different from one another in important aspects, need similar response capabilities and the employment of almost the same exceptional instruments to relieve the victims, provide security, rebuild infrastructures, re-launch the economy and improve the political institutions and administration offices of the affected societies and states.

The objective of the present study is twofold. First, it wants to deepen the existing knowledge about the EU's and Member States' involvement in disaster aid and in emergency cooperation. Second, it processes official data in order to assess the state of coherence and Europeanisation of this policy area. In particular, it aims at expanding the knowledge base of the debate about two issues of concern to the community of the EU foreign policy analysts. The first issue is the nature of the European aid policy determinants. An answer to the question "why the EU and the Member States give financial aid to states in need?", however, is not found by uncovering a EU-specific set of determinants as these do not differ from those of other donor states. The second issue is about the coherence of the policy the two actors of concern to this study, the EU and the Member States, run on their own in humanitarian and emergency affairs. The analysis is aimed at responding to the question "do the European Union and the Member States address the same emergencies and fund recipient countries with the same amount of money as they share principles and goals of humanitarian aid?".

After the short presentation of the research objectives and the dataset, this chapter first discusses the two issues, and then analyses the relevant data. As stated in the concluding remarks, the results of the present analysis support the common view about "one voice Europe", i.e. the importance of shared values and goals in the Union's policies, but it warns about the diversity overarching the unity as the data show the existence of four groups of EU countries and each group has a priority order of aid allocation to the countries of the MENA region different from the order of the other groups.

The research objectives and the data source

The article “European Aid to Foreign Countries in Emergencies - Are ECHO and the EU Large-Donor Countries on the Same Track?” (Attinà, 2014) demonstrated that the European Union countries and the Commission’s ECHO Directorate-General allocate similar amounts of emergency-aid funds to countries of seven international regions, Africa, Asia, Caribbean & Latin America, Central & Southern Asia, East Europe & Balkans, and the MENA region. Africa, as the region with the largest number of countries undergoing emergency crises, has been the largest aid-recipient region in the examined time period 1999-2012. Either the MENA or the Central & Southern Asia region was the second largest recipient region of the aid of individual EU Member Countries but Spain³. In the present chapter, the ECHO’s and TEDD countries’ allocation of emergency-aid funds to the states of the MENA region is further analysed. ECHO is the European Commission Directorate-General for Humanitarian Aid in charge of the EU’s response to disasters inside and outside of Europe. The TEDDs, i.e. the Top Eleven Direct Donors, are the EU member countries that give the highest amount of humanitarian and emergency aid to foreign countries. They are Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Spain, Sweden and the United Kingdom. MENA is the acronym in use to indicate the region including the countries of the Middle East and North Africa, namely Algeria, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Territories, Syria, Tunisia, Turkey, and Yemen. The source of the data and information about the foreign assistance given to third countries by the ECHO and the TEDD EU Member States is EDRIS, the “European Disaster Response Information System”. It was created in 1999 after the Member States agreed to inform DG ECHO about the funding for humanitarian aid activities (Council Regulation (EC) No 1257/96 concerning humanitarian aid, Article 10). Data are recorded by the Member States’ Ministries of Foreign Affairs according to the standard 14 points format of HOLIS (Humanitarian Office Local Information System), which was set up by the DG ECHO in 2002⁴. The definition of what constitutes humanitarian aid is left up to the Member States but in 2003, DG ECHO established “Guidelines” for a harmonized approach to the definition of humanitarian aid. For reasons of compatibility, the Member States have to distinguish operations corresponding to DG ECHO’s mandate as defined in the Council Regulation from “other” operations that correspond to varying definitions and/or practice.

European emergency aid policies: determinants and coherence

The determinants of foreign aid, i.e. the donor state reasons to aid countries in need, are the object of a continuing debate among concerned scientists and professionals. The analysis of the EDRIS dataset shows that no EU country overwhelmingly concentrates aid in a particular region of the world (Attinà, 2014). In other terms, the aggregate data analysis does not support the view about the primary drive to emergency aid being the TEDD countries’ particular interest. One can say that the EU and the TEDD countries, by aiding countries in emergency need in any region of the world, pursue the general interest of preventing systemic instabilities and sustain as well their own particular interests, either political or

³ Data and charts are available also at <http://www.archiviofscpo.unict.it/europa/JMAP/reshapeprin.htm>

⁴ Read more at http://ec.europa.eu/echo/funding/key_figures/ms_en.htm (June 02 2013)

economic in nature. Accordingly, the aid given by the EU countries to the MENA countries is explained by the general European interest in containing the political conflicts that ravage many countries of the nearby MENA region. Such assertion is not undisputed but is supported as well by a large group of scientists and professionals. The analysts of foreign aid maintain that aid is given either in the interest of the donor or to respond to the urgent needs of the recipient country (see, for instance, McKinley and Little, 1979) but many analysts argue that both motives play a role in determining the decision to aid. This is the view of Vicky Reynaert (2011) in a study of particular concern to the present analysis. She detailed a long list of motives to explain the EU's decisions to allocate different amounts of aid to the Mediterranean countries in the period from 2002 to 2010. In particular, she employed four empirical models, namely the 'donor interest', 'recipient need', 'good governance', and 'economic reform' model, to analyse the allocation of the EU's MEDA and ENPI funds⁵ to Algeria, Egypt, Jordan, Lebanon, Morocco, Syria and Tunisia. Reynaert's empirical analysis defends the view that the EU aid was aimed at rewarding the countries that "*made good progress in reforming themselves into market-based economies*". Accordingly, she affirms that the EU's decisions to aid the Mediterranean countries in the 2002-2010 years were driven to the achievement of a *long-term objective* (Reynaert, 2011: 422), namely strengthening market economy all over the world, a goal which is seen as of universal interest and of EU's particular interest as well. Reynaert's conclusion matches my generalization that the donor country promotes the *general interest* of preventing instability and crisis as well as the *self-interest* upholding its own concern in the receiving country (Attinà, 2014).

The assessment of the European foreign aid determinants is tightly linked to the analysis of policy coherence. The more the determinants are clearly identified and shared by the EU institutions and the Member State governments, the stronger the coherence of their policy actions is. Coherence between foreign, security and defence policy, development aid policy, humanitarian aid policy, and other external relations policies like trade, environment and so on, is the permanent object of interest of the analysts and professionals that are concerned with the efficiency of the decision-making, and the efficacy of the actions, of the EU as a player on the world system stage. But policy coherence is a multifaceted quality and, consequently, an elusive concept, difficult to study and assess thoroughly, especially in the double dimension this concept has in the multilevel system of the European Union. The first dimension is the coherence of the various policies of the foreign relations area that are issued and implemented by the EU institutions. The second dimension is the coherence of the EU's and Member States' policies in the same area.

In a recent study that critically examines the policy coherence concept, and overviews the state of the art in the relevant literature, Mayer (2013) distinguishes five faces or dimensions of coherence worth distinguishing in researching and assessing the EU foreign relations. *Vertical* coherence is the substantial agreement existing between the member states' and the EU institutions' foreign policies and actions. *Horizontal* coherence is the smooth coordination of the decisions and actions of the different EU institutions about the same object. *Strategic* coherence exists as all the EU external policies go straight towards the same

⁵ MEDA (*Mesures d'Ajustement*) was a program of the Euro-Mediterranean Partnership (EMP) set out by the so-called Barcelona Process between 2002-2006. ENPI is the European Neighbourhood Partnership Instrument, created after the new program European Neighbourhood Program (ENP) that incorporated the EMP into the EU initiative towards the countries on the Eastern and Southern border.

objectives and follow the same principles, values and goals. Coherence between what the EU claims to do and what it actually does is the fourth dimension that Mayer calls *narrative coherence*. Last, *external engagement* coherence consists in matching the EU actions with the actions of the international partners, as the EU's room of action is dependent on the smooth and viable dialogue with the partners and allies. All such dimensions are in relation to one another and, consequently, all of them may be of concern to the analyst of European foreign policy matters. However, vertical coherence is of greater concern to the study of the emergency aid policy than the other dimensions because humanitarian and emergency affairs represent an area of the shared competence of the Union and the Member States. Accordingly, the EU institutions are in power of shaping and conducting the humanitarian and emergency policy of the Union as much as the governments are in power of doing the same policy for their state. At the same time, sharing competence in a policy area means that both the EU institutions and the member state governments are/should be driven by non-contrasting values, principles and goals in running their own policy. In this perspective, the vertical coherence of the humanitarian and emergency policy of the EU and the Member states is firmly tied to the strategic coherence of the policies of all these actors. Finally, the Lisbon Treaty Article 24.3 demands that the states comply with the principle of vertical coherence as it requires from them to refrain from any action that may impair the EU's action effectiveness in international relations. Since the competence is shared in the EU multi-level governance system, the Member State' policy has to be in tune to the EU's policy and as well to the policy of the other Member States so as to develop the positive synergies one expects from the states involved in the integration process. In other terms, all attempts on enlarging policy coherence in all the dimensions are attempts at furthering the Europeanisation of the humanitarian policy within the shared competence scheme.

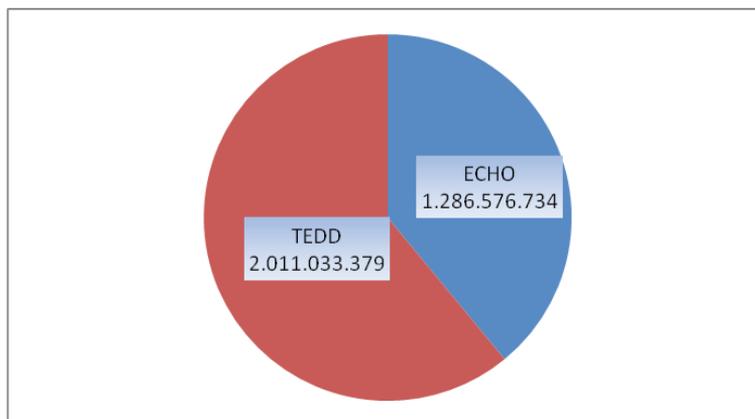
In the last 10 years, despite of the fact that the analysts have not supported unreservedly and have instead expressed multiple views about the link between insecurity and underdevelopment (Merket, 2013), the EU official documents have endorsed the development-security nexus as the driving principle to enhance the horizontal coherence of the EU's aid policy with the Common Foreign and Security Policy. The European Consensus on Humanitarian Aid, adopted in December 2007 by the Council, the European Commission, the European Parliament and the Member States (European Union, 2008) stipulates that the EU humanitarian aid is guided by the four internationally agreed principles of neutrality, impartiality, humanity and independence. Additionally, the Lisbon Treaty has defined humanitarian aid as an EU external policy in its own right and, therefore, independent from the Common Foreign and Security Policy and all other external relations policies as well. In contrast to this perspective that seems to undervalue the requisite of policy coherence in the case of humanitarian affairs, Orbie, Van Elsuwege and Bossuyt (2014) have called the attention of concerned professionals and students towards the necessary condition of reconciling humanitarian policy with the other EU foreign relations policies, i.e. towards the importance of the horizontal coherence dimension, since all the foreign relations policies matter in responding effectively to humanitarian crises. The response of a state and an international organisation like the EU to the social, economic and political problems caused by a civil war, a natural disaster, and the persistent conditions of extreme poverty in a country involves humanitarian aid as much as other foreign policy actions and instruments. Since this is true for the EU as well as for the Member States, the vertical coherence issue comes to the

fore and mixes with the horizontal one in the very complex game that is played by the policy-makers of the EU multilevel system. The EU as well as each Member State has to account for the horizontal coherence of all its foreign relations policies, the humanitarian one included. At the same time, each Member State is expected to link the national foreign relations policies to the EU's policies within the shared competence scheme. However, as Mayer (2013) rightly remarks, policy coherence is hardly achieved by any state but to an indefinite and variable extent. In agreement with this assertion, it is here admitted that assessing policy coherence in the EU is a matter of good sense. Above all, it means finding and pointing out that great lack of coherence problems, should they be really existent, have critical consequences on the efficacy of the EU's actions and policies. Accordingly, the present analysis of the allocation of the emergency aid of the EU and the largest donor Member States is aimed at checking whether vertical coherence in this area is so large as to be the potential cause of inefficient humanitarian and emergency actions or, on the contrary, it is not that large and remains behind the line of the 'harmless difference' that any shared competence area can bear on.

Analysis of the aid allocation: the donors and the recipients

In the 14 years under study, 1999-2012, the TEDD countries threw in almost 2/3 of the aggregate (i.e. of the EU and the Member States) funds of the humanitarian and emergency aid given to the 14 countries on the southern shores of the Mediterranean and the Middle East (Figure no.1). The large surplus of the TEDDs funds on the ECHO funds may raise concern about the consequence missing coherence between the EU's and Member States' aid may have on their performance as emergency aid-givers. Hence, deepening the existing knowledge about the member states' emergency aid *vis-a-vis* that of the EU is of significance to assess the all-Europe emergency cooperation and how coherent to one another are the EU's and member states' actions.

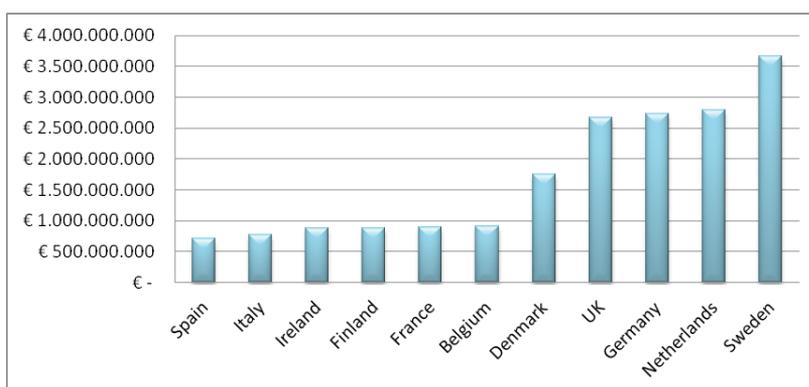
Figure no. 1 – Total aid by ECHO and the TEDD countries to the MENA countries (in Euros) – 1999-2012



Source: EDRIS dataset, ECHO

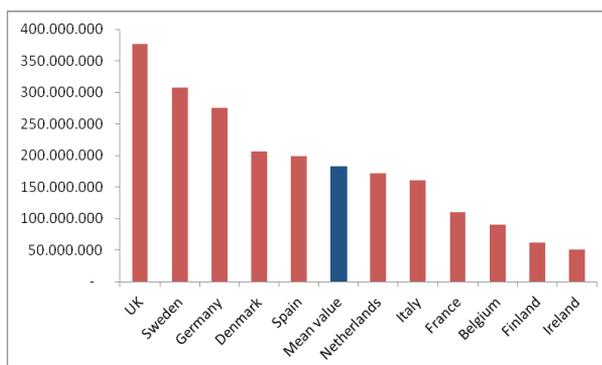
In the aggregate analysis (Attinà, 2014), two groups of the TEDD countries have been distinguished according to the size of the aid to the seven regions of the world in the time period 1999-2012. The top donors group comprises, in decreasing order, Sweden, the Netherlands, Germany, the United Kingdom, and Denmark. The low donors group comprises, in decreasing order, Belgium, France, Finland, Ireland, Italy, and Spain (Figure no.2). Such a two-size group picture does not fit to the data of the MENA case. A different pattern emerges from the data of the total aid of each TEDD country to all the MENA region countries. In this case, the TEDD countries set one after the other in a rather regular decreasing order. In contrast to the aid rank order of the aggregate world data, UK jumps from the fourth to the top place. Spain moves from the last to the fifth place, namely above the mean value. Italy leaves the second last and goes to the seventh place, a little below the mean value. Also countries like Belgium, Finland and the Netherlands place themselves in different positions in each of the two rank orders (Figure no.3).

Figure no. 2 – The total emergency-aid of the TEDD Countries to all the world regions – 1999-2012



Source: EDRIS dataset, ECHO

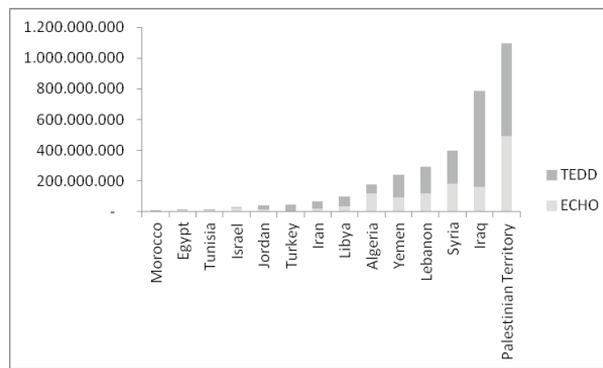
Figure no. 3 – TEDD countries' total aid to MENA countries (in Euros) – 1999-2012



Source: EDRIS dataset, ECHO

Important information is given also by the data of the recipient countries. Three groups of aid-recipient countries are distinguished according to the size of the donation given by the TEDD countries and ECHO. Eight out of the 14 MENA states have been small recipients, namely Israel, Jordan, Turkey, Iran, and Libya; and very small recipients, namely Morocco, Egypt, and Tunisia. Four are middle-rank recipients, i.e. Algeria, Yemen, Lebanon, and Syria. The great recipients of the whole European aid are Iraq and the Palestinian Territories (Figure no.4).

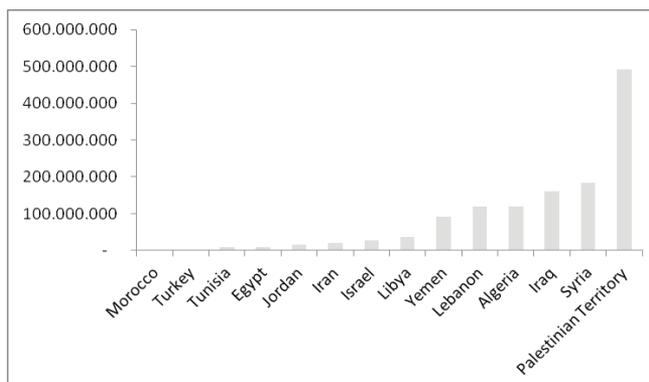
Figure no. 4: ECHO's and TEDD countries' aid to MENA countries (in Euros) – 1999-2012



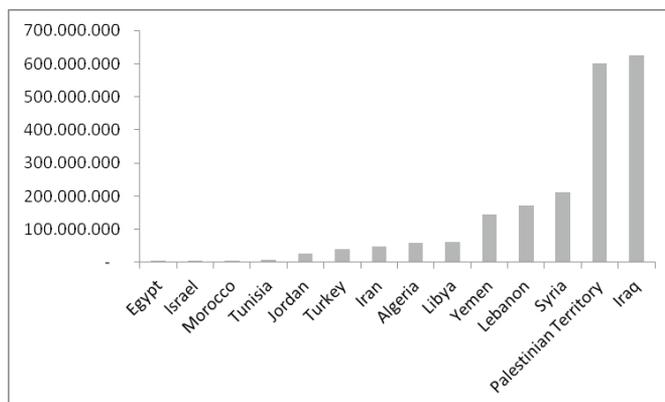
Source: EDRIS dataset, ECHO

Separating the ECHO's from the TEDDs' aid, two different orders of aid-recipient countries are apparent. The Palestine Territories are the only great recipient of the ECHO's aid while Yemen, Lebanon, Algeria, Iraq and Syria are mid-level recipients and the remaining eight MENA countries are small and very small recipients of the ECHO's aid (Figure no. 5). But the aid given by the 11 major European donor countries gives place to a different rank order (Figure no. 6). Iraq jumps to the top position, a bit ahead of the Palestinian Territories, while Algeria falls down to the small-recipient group.

Figure no. 5: ECHO's aid to MENA countries (in Euros) – 1999-2012



Source: EDRIS dataset, ECHO

Figure no. 6: TEDD countries' aid to MENA countries (in Euros) – 1999-2012

Source: EDRIS dataset, ECHO

The EDRIS data, then, make apparent few but important differences between the allocation priorities adopted by the Commission and the aggregate allocation priorities of the TEDD countries' policy-makers. In particular, Algeria is an important recipient of the ECHO's aid while giving aid to Iraq gets the highest score from the TEDDs but not from all of them as it is demonstrated in the following. From knowledge about the different position of the EU member countries about the Iraq war, it is easy to infer that in giving aid to this country the TEDD countries divided themselves in different groups as they did in response to the war on Saddam Hussein declared by the American ally.

Though each TEDD country sets alone in the scale of donation to the MENA region countries, as it has been remarked above (see Figure no.3), a four-type sorting of the major European countries' approach towards emergency-aid allocation is apparent from the close inspection of the EDRIS processed data of the single donor and recipient state (see Appendix). 'Type One' countries prioritise Iraq and the Palestinian Territories. This is the largest, homogeneous group formed by four North European countries, Denmark, Ireland, the Netherlands, and Sweden. The "Type Two" group gathers Germany, Finland, and Spain. They gave large aid to the Palestinian Territories and Iraq and also significant funds to other MENA countries, namely Syria and Yemen. "Type Three" countries are Belgium and France. They gave about half the total aid to one country, the Palestinian Territories. Lastly, Italy and UK are the "Type Four", residual group. Both of them allocated emergency aid in a disparate way. Italy is the only country concentrating aid on Lebanon where it contributed significantly to the UNIFIL peace operations up to 2008 and to a lower extent to the Palestinians and Iraq. The United Kingdom concentrated aid on Iraq and to a lower extent to Syria and Yemen.

Conclusion

As the MENA region has not been the theatre of numerous nature disaster events in the time of this analysis and less so of systemic-risk problems, two of the four emergency problems that have been distinguished in the introductory part of this chapter, occupy the

space of the emergencies of the region, namely the problems caused by large-scale human violence, and the problems of poverty and lack of adequate means of living born by large groups of people. One can argue that in the Middle East and North Africa the problems of violence and poverty are strictly linked to one another. Accordingly, the data analysis demonstrates that ECHO and the TEDD countries adopt different aid allocation priorities to select the most-funded recipient countries but they all share the same perspective on the foundation of emergency aid to the MENA countries, namely they all prioritise the allocation of large amounts of aid to the countries, albeit different ones, that are affected by violent conflicts. In this perspective, problems of vertical coherence do exist but against the overall horizontal coherence that exists between the emergency aid policy and the foreign and security policy of the EU and the Member States as far as the emergency aid policy matches the goal of security enhancement of the Common Foreign and Security Policy. The present analysis, however, wants to draw the attention of the scientists and professionals towards the importance of the different priority orders of the recipient countries that have been adopted by the EU member states' governments as the four priority types demonstrate. Consequently, the implications of this coherence problem have to be further studied by those concerned with the conditions for the efficacious actions of the European Union towards the conflicts causing humanitarian problems in the MENA region.

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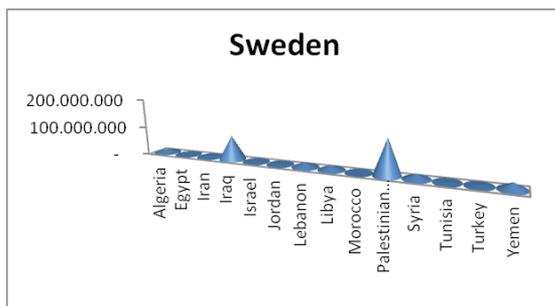
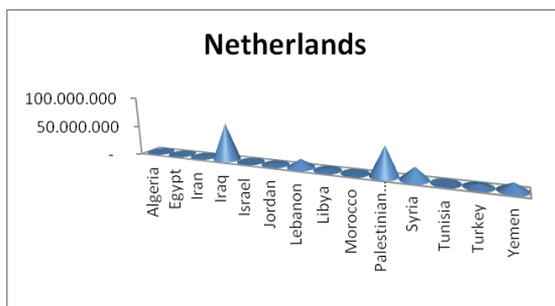
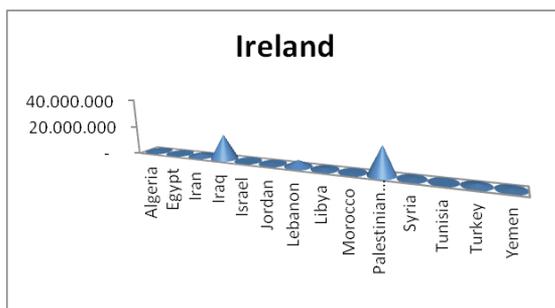
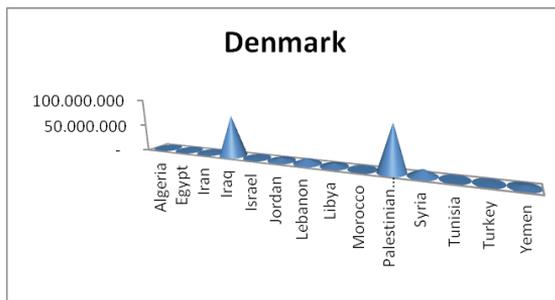
Appendix

Individual TEDD countries' emergency-aid allocation to individual MENA countries – 1999-2012

	Belgium	Denmark	Finland	France	Germany	Ireland	Italy	Netherlands	Spain	Sweden	UK
Algeria	3.831.068	77.052	3.068.188	2.428.065	2.603.921	700.000	6.724.726	156.045	25.206.222	12.330.753	375.336
Egypt		73.735			2.290.926		2.000.000			321.700	
Iran	1.757.606	1.079.592	1.000.000	1.220.645	9.981.029	2.012.627	1.009.948	1.441.457	20.204.373	2.620.007	4.594.451
Iraq	8.830.630	77.138.433	14.100.000	10.443.506	49.117.172	17.808.749	20.469.550	62.701.580	92.677.264	85.043.548	185.738.804
Israel		1.163.394	1.707.754	73.260	307.435			13.682		2.100.068	
Jordan	1.000.000	6.002.897	870.000	534.784	6.678.532	530.000	4.755.974	2.450.000	1.100.000	2.213.982	
Lebanon	5.600.000	10.390.141	5.409.588	18.307.261	16.075.622	4.634.212	59.767.116	14.219.873	5.727.702	16.713.829	14.958.925
Libya		6.222.158	1.650.000	2.840.440	10.872.415	1.000.000	6.978.120	2.500.000	7.400.345	15.807.690	5.264.750
Morocco	3.798.948			881.159		200.000	410.340	28.009		32.062	228.792
Palestinian Territory	59.004.036	87.007.005	18.100.000	52.405.175	94.054.502	20.475.571	41.625.572	49.644.878	36.200.588	124.886.902	18.900.860
Syria	2.000.000	12.597.064	3.547.418	13.811.421	47.522.179	800.000	5.586.190	20.787.564	3.000.000	16.581.415	85.600.173
Tunisia	1.000.000	214.612	1.200.000	167.284	978.348		1.873.585		362.539	2.031.881	
Turkey	2.786.595	586.137	1.282.074	722.156	17.787.818	1.641.549	1.818.836	5.588.844	2.127.071	4.624.982	1.605.371
Yemen	1.000.000	3.626.272	9.661.697	6.345.306	17.081.191	800.000	7.763.313	12.834.188	4.551.156	22.502.607	59.729.487
Total	90.608.883	206.178.492	61.596.719	110.180.462	275.351.090	50.602.708	160.783.270	172.366.120	198.557.260	307.811.426	376.996.949

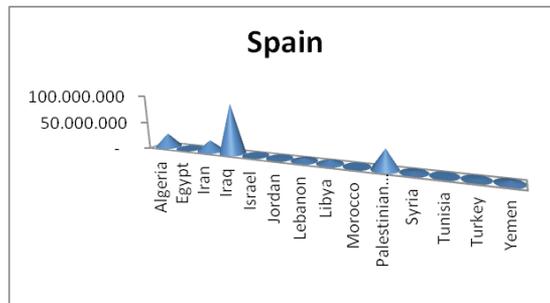
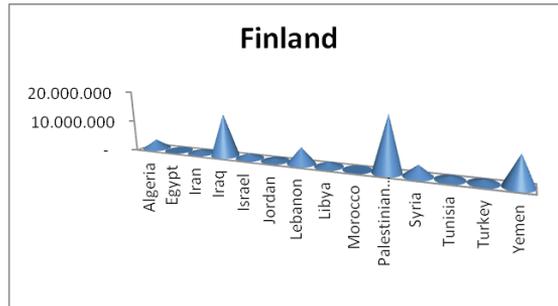
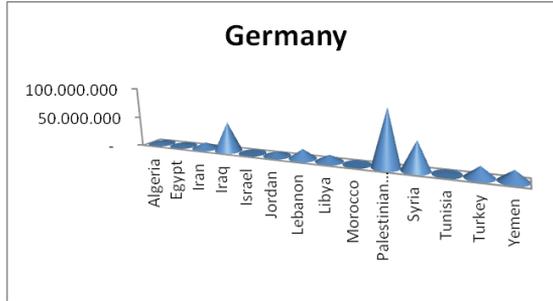
Source: EDRIS dataset, ECHO

Type One "Iraq/Palestinian Territories" - Denmark, Ireland, the Netherlands, and Sweden



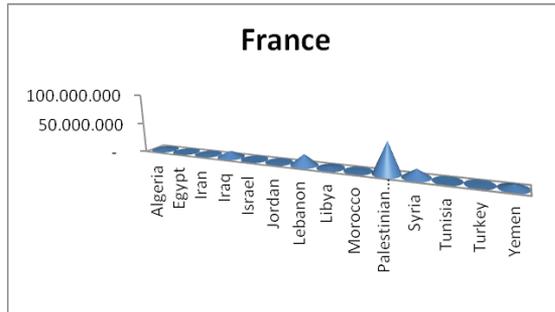
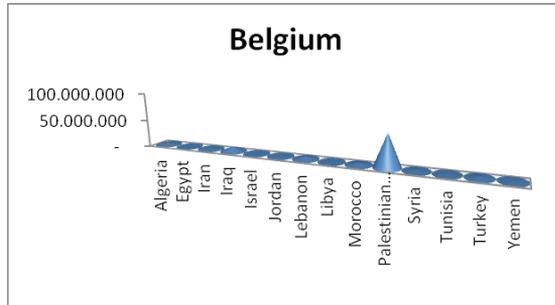
Source: EDRIS dataset, ECHO

Type Two “Iraq/Palestinian Territories and Others” - Germany, Finland, and Spain



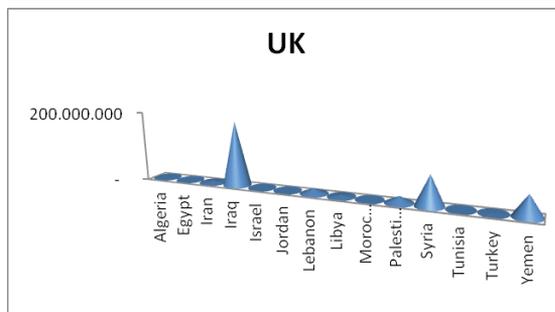
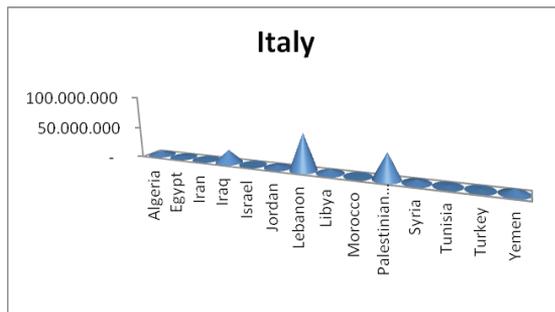
Source: EDRIS dataset, ECHO

Type Three “Palestinian Territories foremost” - Belgium and France



Source: EDRIS dataset, ECHO

Type Four “Residual” - Italy, and UK



Source: EDRIS dataset, ECHO

The Trans-Atlantic Trade and Investment Partnership – A Challenge for the European Union?

Oana–Antonia Colibășanu, Victor Vlad Grigorescu¹

Abstract: *Since the early 2000s, the United States and European Union have discussed the development of bilateral and regional trade agreements. The TTIP – Trans-Atlantic Trade and Investment Partnership was announced in February 2013 and is currently under negotiation. The initiative aims at establishing a trade agreement between the two blocs, removing all trade barriers, including the non-tariff ones, in a wide range of economic sectors. The paper looks at several key elements that the bilateral negotiations are set to challenge from the European Union perspective. We focus on the main causes for resistance within the EU towards establishing the agreement, seeking to understand the future framework for international trade for the European states. While the EU continues integration to establish a functioning internal market, still continuing the process of diminishing and eliminating non-tariff barriers among the member states, we examine whether liberalisation of trade and investment between the US and the EU will benefit the EU as a whole, considering the current socio-economic trends at the Union’s level.*

Keywords: *TTIP, tariff and non-tariff barriers, international negotiation mandate, international trade, FTA, EU, US, regulatory convergence, regulatory coherence, mutual recognition, equivalence, regulatory compatibility*

JEL Classification: *E66, F13, F15, H77, K23*

Introduction – brief historical and conceptual approach for the TTIP

The idea of establishing a Trans-Atlantic Trade and Investment Partnership (TTIP) goes back to 1995 when the then-Foreign Minister Klaus Kinkel suggested a Transatlantic Free Trade Agreement (TAFTA). Later that decade, Sir Leon Brittan, the UK’s longest serving British commissioner, proposed the “Transatlantic Economic Partnership Agreement”². However, it

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² **Sir Leon Brittan Speech/99/60 - http://europa.eu/rapid/press-release_SPEECH-99-60_en.htm, retrieved on November 2, 2014

was too early for progress to be made, considering the integration level of the EU and the priorities then in place, as well as the focus of the US foreign policy at the time. It was in 2007 that Trade Commissioner Peter Mandelson gave a new push of the idea, with the “Framework for Advancing Transatlantic Economic Integration” signed and the Transatlantic Economic Council established to address commercial issues between the US and the EU. The modern version of the TTIP was first discussed in 2011, when the leaders of both the US and the EU formed the High Level Working Group for Jobs and Growth, whose report laid the foundation for the launch of the TTIP in 2013.

The theory of economic integration shows the upside effects of trade liberalisation. While David Ricardo³ set the framework for discussing about economic cooperation between nation states at the beginning of the 19 century, focusing on and conceptualising the comparative advantage of a country relative to another, Jacob Viner established the background for the theory of economic integration in 1950⁴, discussing the custom unions. The way things evolved in the world economy determined the pace and mechanisms of cooperation between countries. The 19 century set out rules of trade between nations, the 20th, being marked by the two world wars for the first half, saw regional integration being used both for ensuring the power balance in the world and for sustaining socio-economic development.

At the beginning of the 21st century we are no longer talking about international trade but also about global production and supply chains, naturally integrated by multilateral agreements like the former General Agreement on Tariffs and Trade and, consequently, by the transnational companies policies. A series of studies published in late 90s and early 2000 were even pointing towards the fading role of the nation state⁵, considering the companies gaining in importance in what was shaping up to be the system of the global economy. However, taking into account the recent world economic crisis – first conceived by the irregularities of the most deregulated and integrated sector: the financial secondary markets, it is clear that the nation state still plays an important role in the international economy. Therefore, in a world where information and technological progress have a large impact on production factors, determining both trade and investment flows, an agreement between the two largest economic blocs of the world is carefully considered. As the momentum is marked by decisions bearing in mind the rules of Adam Smith’s political economy⁶, taken with ever more prudential behaviour – coming from policy makers heavily scrutinised by a public facing the social hurdles resulted from the economic problems the EU members states encountered – the negotiations of the TTIP are both difficult and ambitious. It is clear that an agreement on trade is no longer enough to stand for coordination between the two actors, considering the characteristics of international trade today, investment policies are key to facilitating cooperation and therefore the non-tariff barriers (NTBs) are the most significant element in current negotiations.

³ Ricardo D., “On the Principles of Political Economy and Taxation”, 1817

⁴ Viner J., “The Customs Union Issue”, Carnegie Endowment for International Peace, 1950, pp. 41–55

⁵ On this topic, it is worth noting the work of Susan Strange and her book “States and Markets”, 1996 – Strange S., “Retragerea statului. Difuziunea puterii în economia mondială”, Ed. Trei, 2002

⁶ Smith A., “The Wealth of Nations”, 1766

1. Literature review - a comparison of existing impact studies of the TTIP

Taking into account the socio-economic background, both sides have looked at the impact such an agreement could have on their economy and on their relation to the world. Notably, most impact studies have been pursued by academics in the EU.

Table 1. List of most important impact studies published by the end of 2014

Study title	Date of publication; Institute; Authors
Analysis commissioned by the negotiating parties or interested members in negotiations	
“Non-Tariff Measures in the EU-US Trade and Investment – an Economic Analysis” – Ecorys (2009)	2009, December 11, Ecorys Netherlands BV, for the EU Commission, Authors: Francois J., Berden K., Tamminen S., Thelle M., Wymenga P.
“Study on the EU-US High Level Working Group” – Ecorys (2012)	2012, October 22, Ecorys Netherlands, for the Netherlands Ministry of Economic Affairs, Agriculture and Innovation, Authors: Plaisier N., Mulder A., Vermeulen J., Berden K.
“Reducing Transatlantic Barriers to Trade and Investment – an Economic Assessment” – CEPR	2013, March, CEPR – Centre for Economic Policy Research, London, for the EU Commission, Authors: Francois J., Manchin M., Norberg H., Pindyuk O., Tomberger P.
“Transatlantic Trade – Whither Partnership, Which Economic Consequences?” - CEPII	2013, September, CEPII - Centre d’études prospectives et d’informations internationales, Paris, Authors: Fontagné, L., Gourdon J., Jean S.
“TTIP Negotiations” – CRS	2014, February, CRS – Congressional Research Service Report for Members and Committees of Congress, Washington D.C., Authors: Akhtar I.S., Jones C. V.
“Trade Barriers that SMEs Perceive as Affecting Exports to the EU” – USITC	2014, March, US ITC - International Trade Commission, Washington D.C., Authors: Williamson I.A., Aranoff S.L., Pinkert D.A., Johanson D.S., Broadbent M.M., Kieff F.S.
Independent Analysis:	
“Transatlantic Trade and Investment Partnership – Who Benefits from a Free Trade Deal?” – Bertelsmann	2013, June, Bertelsmann Foundation – Global Economic Dynamics, Germany, Authors: Felbermayr G., Heid B., Lehwald S.
“Macroeconomic Potentials of Transatlantic Free Trade: A High Resolution Perspective for Europe and the World” – CES Ifo	2014, October, CES IFO – Center for Economic Studies & IFO Institute, Germany, Authors: Felbermayr G., Heid B., Larch M., Yalcin E.

<p>“The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability” - GDEI</p>	<p>2014, October, GDEI – Global Development and Environment Institute, Tufts University, Medford - US, Authors: Capaldo J.</p>
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Source: authors⁷

While the tariffs’ levels between the EU and the US are relatively low, the real challenge refers to the correct assessment of the NTBs impact on trade and investment between the two actors and quantifying the way that their lowering would affect the two and their partners. The first research regarding the NTBs between the US and EU was conducted by the Dutch institute Ecorys and published in 2009. The NTBs estimations are the results of a large business survey conducted in 23 sectors of trading between the US and the EU. The following two impact studies, conducted by CEPR and CEPII, have based their findings on Ecorys (2009) assessment of NTBs effects. The Bertelsmann analysis uses a computable equilibrium model developed by Ifo Institute that is simulating scenarios considering a gravitation equation taking into account NTBs modeled for the 126 countries whose trade costs have been taken into account⁸. The Congressional Research Service Report for Members and Committees of Congress refers to and builds upon the findings of Ecorys (2009) study on NTBs. In the same time, the US administration has also inquired into the level of NTBs as they are perceived by the American small and medium enterprises (SMEs) as the US International Trade Commission has analysed and released the findings of a survey on the topic in March 2014.

As the core of all impact studies is the assessment of NTBs, we have observed the lack of an agreed-upon method to estimate the effects of the NTBs on trade and investment. In the same time, considering the nature of the TTIP and its envisaged extent of integration, no comparison can be made with existing preferential trade agreements. This makes the findings of the existing studies on the impact of the TTIP highly sensitive to the approach taken on estimating and analysing the NTBs.

The CEPR study, requested by the European Commission as foundation for its negotiation mandate, considers tariffs as well as NTBs on trade, investment and public procurement, reaching the conclusion that TTIP will not only bring positive effects to the signing parties, but also to third parties. Its vision on spillover effects is however arbitrary, considering that the access to the U.S. and the EU will be less costly for third countries, taking into account standards harmonisation. On the other hand, lowering cost of business and preference erosion affecting products imported from outside TTIP area will increase competitiveness of EU and US companies vis-à-vis third country exporters. Indirect positive spillovers would come in the shape of induced policies. The EU-US standards would become a sort of ‘minimum regulation’ that will supposedly be adopted by third countries, considering the

⁷ We have considered to be ‘commissioned studies’ the reports that were financed by the interested parties or the EU member states; while there were more reports on the way the TTIP would influence particular member states, we have left out the reports on individual countries built on findings of previous (quoted) reports.

⁸ Felbermayr G., Heid B., Lehwald S., “*Transatlantic Trade and Investment Partnership – Who Benefits from a Free Trade Deal?*”, Bertelsmann Study, June 2013, pp. 5-7 <http://www.bfna.org/sites/default/files/TTIP-GED%20study%2017June%202013.pdf>, retrieved November 10, 2014

importance of the TTIP bloc at the global level. The third possibility for the TTIP to bring upon positive outcomes regarding uniformed standardisation is considered to be the third countries or the signing parties explicitly attempting to negotiate the equivalence of rules set by the agreement. However, the CEPR forecast is not backed by historical argumentation or econometrical analysis.

As far as the macroeconomic impact⁹ of TTIP is concerned, CEPR concludes that trade flows between the EU and the US will increase, with net growth in exports of 6% for the EU and 8% for the US by 2027. Overall, the report concludes that services and procurement liberalisation have relatively less impact on trade, even if important structural changes take place at sectorial levels¹⁰. The report also refers to a growth in labor markets for EU and US of 0.2% and 0.5%, in terms of both wages levels and new job opportunities.

The impact analysis released by CEPII is also built on findings resulted from Ecorys survey, but the measurement of the cross-border protection in terms of trade and investment is being made using a quantitative method for 9 service sectors in 65 countries. Its conclusion is also overall positive for the TTIP. The study outlines the way several sectors will be affected, considering 2025 as reference year and a gradual removal of tariffs and NTBs. Agriculture would be benefiting the most in terms of exports growth, while the increase will be limited for services, if a low level of liberalisation is envisaged for the first years of the TTIP. Intra-EU regulatory divergences and the fact that EU is not expected to complete the internal market liberalisation in the short term plays a big role on the services market, with financial services, insurance and generally, business services being the most exposed.

In the table below we have gathered the main quantitative findings referring to TTIP impact, considered in the above-cited reports.

Table 2: Main quantitative findings – TTIP impact

	Ecorys (2009) – baseline: 2018			CEPR - baseline: 2027			CEPII - baseline: 2025		
	GDP change (%)	Bilateral exports change (%)	Net exports change (%)	GDP change (%)	Bilateral exports change (%)	Net exports change (%)	GDP change (%)	Bilateral exports change (%)	Net exports change (%)
EU	0.32	0.91	-0.1	0.49	28.03	5.91	0.3	48.0	2.3
US	0.13	2.68	0.03	0.40	36.57	8.02	0.3	52.5	10.1

Source: authors' calculation¹¹

⁹ Francois J., Manchin M., Norberg H., Pindyuk O., Tomberger P., "Reducing Transatlantic Barriers to Trade and Investment", CEPR Study for the EU Commission, pp. 36, http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf, retrieved on December 2, 2014

¹⁰ *ibid*, pg. 41

¹¹ Data from cited reports, considering equivalent of limited/reference ambitious scenarios for long term (2018, 2025 or 2027)

While the baseline years differ much and only CEPR and CEPII reports are somewhat comparable considering timing, the three (with Ecorys 2012 report – the four) are methodologically similar. They all use the World Bank-style Computable General Equilibrium (CGE) model and the first two studies – Ecorys and CEPR – use exactly the same CGE analysis method: the Global Trade Analysis Project (GTAP)¹². CEPII uses MIRAGE¹³. While CGE models are the best-known tools for assessment of trade liberalisation as a result of signing an FTA at a regional level, they also have two limitations:

- they have been developed as research tools during the liberalisation of the 80s and 90s: the models don't take into account the evolution of trade into an integrative mechanism, considering production delocalisation, based on FDI;
- it is assumed that, after the liberalisation of trade, a new macroeconomic equilibrium is reached on the short term. The model presumes that the more competitive sectors of the economy absorb automatically all the resources, including labor, released by the shrinking sectors, assuming a situation of perfect elasticity of the international costs, represented mainly through tariffs.

The Bertelsman report¹⁴, is concluding on the general growth of transatlantic trade as an effect of the TTIP, taking a deeper look on specific countries and groups of countries within the EU when it discusses the effects on bilateral trade. The study determines that while the cut in tariffs scenario has a minimum impact on trade, comprehensive liberalisation is positively affecting the trade flows between countries like Germany and the ones most affected by the economic crisis: Portugal, Ireland, Italy, Greece and Spain with the US.

In the same time, the report is taking into account the intra-EU trade flows, assuming that the levels of the German trade with countries in the PIIGS group will suffer a negative impact, with volumes of both imports and exports decreasing. It is forecasted a decrease in British trade with the EU member states, Germany included¹⁵.

The weakness of the methodology of the Bertelsman report is the fact that the authors do not consider their assumptions based on current negotiation chapters, but they're combining a typical econometric exercise, creating scenarios taking into account two different liberalisation levels, just as an integration similar to the EU's would be possible over the Atlantic in the long-term. While this is a quite extreme exercise, it gives an idea on how things would stand if TTIP would create a new economic bloc completely integrated.

The CES-Ifo report is another independent analysis on the TTIP impact employing a different method than the classical CGE. Instead, the authors use a structurally estimated general equilibrium model, employing econometric estimates of average trade cost effects of

¹² Francois J., Berden K., Tamminen S., Thelle M., Wymenga P., "Non-Tariff Measures in the EU-US Trade and Investment – an Economic Analysis" – Ecorys (2009), pp. 31-32, http://www.i4ide.org/content/wpaper/ntm_book_final.pdf, retrieved November 16, 2014

¹³ For a technical description of the model: <http://www.mirage-model.eu>

¹⁴ Felbermayr G., Heid B., Lehwald S., "Transatlantic Trade and Investment Partnership – Who Benefits from a Free Trade Deal?", Bertelsmann Study, June 2013, <http://www.bfna.org/sites/default/files/TTIP-GED%20study%2017June%202013.pdf>, retrieved November 10, 2014

¹⁵ *ibid*, pp. 18

existing agreements. The authors mention¹⁶ that their analysis is meant to be complementary to CEPR, testing the robustness of the initial assessment made by the study. Indeed, employing a different methodology, the study finds that the real income increase is superior to the find of the CEPR report, for EU – 3.9% and the US – 4.9%. However, the results obtained show a decrease of 0.9% in real income for the rest of the world. Considering the effects of TTIP on individual countries, the analysis determines that countries with a peripheral geographical position like Spain or Italy would have larger gains compared to central countries like Germany. The report also brings several nuances to the spillover effects announced by CEPR, noting that states enjoying preferential agreements with the EU or the US would lose due to preference erosion. However, losses are dependent on the existing levels of commerce between those countries and the EU or the US. Critics of the report have pointed out its methodological simplicity and the fact that the quantitative econometrical model disregards sectorial industry-level effects, which are heterogeneous in nature.

The only report outlining potential negative effects of the TTIP is published by the GDEI¹⁷. The author, Capaldo J. notes that income distribution and important dimensions of macroeconomic adjustment have not been taken into account by previous impact analysis. Therefore, he chose to use the United Nations Global Policy Model (GPM) in assessing the impact of policy changes on net exports, GDP, government finance and income distribution as they're given by the changes in total trade flows estimated as a result of TTIP. The main result of the study is that TTIP would „reinforce the downward trend of the labor share in GDP, leading to a transfer of income from wages to profits with adverse social and economic consequences“¹⁸. The main problem we see with the method used by the author is the fact that the GPM is working with datasets involving an analytical structure of standardised models of countries or country groups¹⁹, the behavioural specification being considered homogenous across countries on mid and long term (15-20 years). While this brings interesting results when we are talking about countries having similar patterns, we consider that it is not the case of the US and the EU, especially when talking about the labour markets and their integration or disintegration, causing the socio-economic problems mentioned in the Capaldo report, if only we take into account the evolution of the intra-EU policies with respect to immigration and labor market during the last 15 years, which proved to be able to tackle, at least to some extent, labor market disintegration processes.

2. Quantitative notes on the current transatlantic relationship

The TTIP represents the first time that the two largest economic blocs in the world negotiate a free-trade agreement solely between themselves. In 2013, the two have produced

¹⁶ Felbermayr G., Heid B., Larch M., Yalcin E. - *“Macroeconomic Potentials of Transatlantic Free Trade: A High Resolution Perspective for Europe and the World”*, pp. 4, http://www.cesifo-group.de/portal/page/portal/DocBase_Content/WP/WP-CESifo_Working_Papers/wp-cesifo-2014/wp-cesifo-2014-10/cesifo1_wp5019.pdf, retrieved December 3, 2014

¹⁷ Global Development and Environment Institute at Tufts University

¹⁸ Capaldo J., *“The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability”*, Global Development and Environment Institute, Tufts University, Medford, <http://www.ase.tufts.edu/gdae/Pubs/wp/14-03CapaldoTTIP.pdf?body=>, retrieved on December 20

¹⁹ ***The UN Global Policy Model – Technical Description*, UNCTAD, http://unctad.org/en/PublicationsLibrary/tldr2014_bp_GPM_en.pdf - retrieved on December 22

41.11% of the world GDP and they account together for 12% of the world population. To understand the links between the two, we have worked with dependencies in terms of trade and investment. We have considered trade flows, investment flows and stocks for EU member states and the US in order to see if we are able to track dependencies on groups of countries, seeking the results for the countries most affected by the recent economic crisis in the EU (PIIGS) as well as for the non-euro countries, that, by definition, have a lower integration level with the core member-states in terms of implemented policies. To calculate dependencies we have employed the following formulas:

Trade dependency for country X relative to the US:

$$d_t(X) = \frac{\sum(\text{exports} + \text{imports})(X) \text{ with US}}{\sum(\text{exports} + \text{imports})(X) \text{ with world}}$$

A similar equation was used for establishing Y dependency on investments coming from country X at a certain point in time, using FDI stocks as main indicator:

$$d_{FDI}(X) = \frac{\sum FDI(X)_{to Y}}{\sum FDI(X)_{to world}}$$

Results over the last 5 years indicated a strong trend of constant, slowly increasing dependencies on US trade in time, for all EU member states. Moreover, results have pointed out geographical positioning is important in maintaining a strong link with the US: EU countries having access to naval transportation routes (sea) have higher dependency to the US than the rest.

Table 3. EU member states trade dependency on the US

Country/ group of countries	2009		2010		2011		2012		2013	
	All world	Extra EU	All world	Extra EU	All world	Extra EU	All world	Extra EU	All world	Extra EU
Germany	5.61%	8.19%	5.66%	8.42%	5.44%	8.23%	6.14%	9.46%	6.18%	9.58%
France	6.13%	9.24%	6.03%	9.57%	5.43%	8.70%	6.10%	10.12%	6.51%	10.81%
United Kingdom	10.31%	12.05%	9.44%	11.55%	8.75%	10.64%	9.46%	11.62%	8.37%	9.95%
Netherlands	6.01%	7.92%	5.85%	7.84%	6.54%	8.44%	6.03%	8.32%	5.81%	7.94%
Belgium	4.91%	9.76%	5.19%	10.33%	5.06%	9.83%	5.32%	10.54%	5.11%	10.67%
Italy	4.81%	6.13%	4.67%	6.16%	4.72%	6.21%	5.46%	7.32%	5.71%	7.64%
Spain	3.32%	5.12%	3.39%	5.19%	3.34%	5.00%	3.55%	5.16%	3.48%	5.07%
Poland	1.55%	3.49%	1.84%	4.15%	1.93%	4.39%	2.20%	4.72%	2.24%	4.74%
Austria	3.22%	6.74%	3.13%	6.73%	3.50%	7.72%	3.93%	8.73%	3.97%	8.63%

Sweden	5.17%	7.33%	5.07%	7.49%	4.69%	7.19%	4.67%	7.64%	4.20%	6.96%
Czech Republic	1.35%	4.04%	1.54%	4.24%	1.64%	4.57%	1.98%	5.62%	1.98%	5.76%
Hungary	2.19%	4.61%	2.10%	4.60%	2.10%	4.61%	2.46%	5.85%	2.70%	6.53%
Denmark	4.51%	7.48%	4.62%	8.22%	4.39%	7.84%	4.59%	8.40%	4.26%	7.93%
Slovakia	0.77%	2.16%	1.06%	2.72%	1.11%	3.19%	1.37%	3.98%	1.26%	3.79%
Finland	4.69%	6.34%	4.47%	6.18%	4.76%	6.87%	5.28%	7.79%	4.75%	7.45%
Portugal	2.39%	5.59%	2.65%	6.16%	2.87%	6.44%	2.91%	6.21%	2.73%	5.98%
Romania	1.52%	3.17%	1.61%	3.35%	1.74%	3.67%	1.97%	4.37%	1.81%	3.99%
Ireland	19.90%	27.79%	23.08%	33.17%	24.19%	36.44%	22.48%	36.34%	21.15%	34.18%
Greece	3.86%	4.45%	2.28%	2.55%	2.15%	2.34%	1.90%	2.15%	1.81%	2.07%
Lithuania	2.95%	4.22%	2.93%	3.87%	3.73%	5.24%	3.20%	5.00%	3.62%	5.48%
Bulgaria	1.17%	1.70%	0.96%	1.48%	1.14%	1.78%	1.29%	1.94%	1.35%	2.11%
Slovenia	1.39%	2.64%	1.59%	3.03%	1.89%	3.66%	1.60%	3.08%	1.50%	2.93%
Luxembourg	5.58%	9.63%	5.58%	14.31%	4.97%	13.53%	6.49%	13.73%	6.72%	13.64%
Croatia	1.47%	1.92%	2.08%	2.83%	2.69%	4.18%	2.33%	4.31%	2.25%	3.99%
Estonia	1.62%	3.84%	3.08%	7.96%	3.61%	6.88%	2.00%	4.19%	1.91%	6.51%
Latvia	2.67%	4.80%	2.76%	5.47%	3.50%	6.18%	2.65%	5.28%	2.60%	5.26%
Malta	6.59%	6.84%	7.34%	10.37%	7.58%	12.37%	4.77%	8.96%	5.92%	10.13%
Cyprus	2.31%	7.16%	1.44%	4.43%	1.11%	3.11%	2.13%	5.51%	2.21%	5.13%
EU Total	5.55%	8.36%	5.50%	8.48%	5.36%	8.31%	5.73%	9.08%	5.59%	8.89%
Eurozone	5.44%	8.19%	5.47%	8.40%	5.40%	8.32%	5.75%	9.07%	5.73%	9.14%

Source: authors' calculations, using Eurostat data²⁰

Trade dependency between the US and the EU averages at 5.5% considering total trade with the world, if we are to take into account the intra-EU trade and at 8.6% considering extra-EU trade with world. We also noticed that the Eurozone registers almost the same dependency as the EU total, which indicates a stronger tie between the US and the countries in this group. There haven't been major changes in the quantitative trade balance between the EU and the US during the 5 years analysed – which proves that the bilateral relationship between the two hasn't been affected by the economic crisis. It is noticeable that while the dependency rates in countries outside the euro-area, especially in the Central and Eastern Europe, have a growing trend during the last 3 years, those of the countries that were most affected by the economic crisis, except Spain and Ireland, have a decreasing trend.

²⁰ <http://ec.europa.eu/eurostat/data/metadata>

Table 4. FDI dependencies: EU member states - US

	2004 FDI stocks		2008 FDI stocks		2012 FDI stocks	
	Into EU	Into US	Into EU	Into US	Into EU	Into US
Belgium	0.00%	0.00%	2.86%	5.19%	-2.72%	7.27%
Bulgaria	0.06%	-1.15%	0.15%	2.70%	0.06%	4.61%
Czech Republic	0.29%	0.58%	0.23%	0.11%	0.23%	0.30%
Denmark	1.14%	11.58%	0.86%	7.94%	0.61%	9.13%
Germany	11.14%	23.21%	6.98%	17.03%	4.89%	14.88%
Estonia	0.05%	0.19%	0.02%	0.15%	0.02%	1.64%
Ireland	1.39%	15.70%	1.12%	15.39%	0.77%	8.15%
Greece	0.14%	7.88%	0.12%	3.62%	0.14%	5.74%
Spain	6.39%	6.33%	4.43%	8.55%	1.98%	9.29%
France	7.50%	18.11%	8.03%	16.95%	5.03%	15.40%
Italy	2.20%	0.51%	0.68%	0.23%	0.76%	0.45%
Cyprus	0.02%	7.45%	0.03%	5.57%	0.21%	6.01%
Latvia	0.03%	0.60%	0.03%	0.57%	0.02%	0.64%
Lithuania	0.04%	3.98%	0.02%	0.14%	0.01%	0.00%
Luxembourg	0.69%	0.00%	0.63%	0.00%	0.64%	0.05%
Hungary	0.23%	16.04%	0.28%	3.82%	0.12%	3.61%
Malta	0.00%	0.32%	0.01%	4.36%	0.00%	1.44%
Netherlands	8.97%	16.24%	9.95%	11.20%	4.06%	10.38%
Austria	0.00%	0.00%	0.97%	2.98%	0.93%	3.37%
Poland	0.59%	2.40%	0.71%	1.71%	0.53%	3.52%
Portugal	0.20%	1.08%	0.12%	1.40%	0.10%	1.83%
Romania	0.08%	0.00%	0.09%	0.48%	0.12%	0.10%
Slovenia	0.01%	2.47%	0.00%	0.30%	0.00%	0.73%
Slovakia	0.08%	15.67%	0.07%	0.80%	0.04%	0.03%
Finland	0.14%	7.54%	0.16%	10.75%	0.08%	8.53%
Sweden	3.64%	15.52%	1.89%	13.78%	1.58%	16.66%
United Kingdom	22.51%	21.93%	17.61%	24.08%	21.49%	18.85%

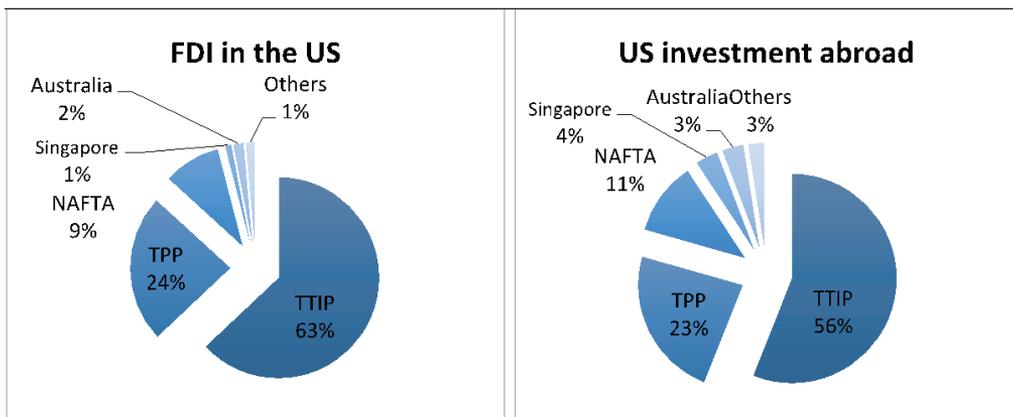
Source: authors' calculations, using Eurostat data

Given the results in the table, we can observe an increase in foreign investments between the two sides, with the EU investments into the US surpassing the American investments in Europe starting with 2006. Most investments into the US have come from the UK, Germany, France, Netherlands, Italy and Spain. While the growing trend is visible, the crisis years have slowed down the growth.

In the same time, the EU dependency on the US investment is at an average of about 12%. Since 2004, the major retainers in the EU have been the UK, the Netherlands, Germany, France and Spain. However, if we look at the dependencies level of these countries, only the UK balances well between the level of FDI stocks internally and the British investments in the US.

In terms of both foreign direct investments, the US and the EU are the largest partner to each other.

Figure 1. US – global investments dependencies



Source: authors' calculations, based on US ITC data²¹

The analysis of the FDI flows shows Luxembourg being preferred both by American investors into the EU as well as by Europeans investing in the US. The preference has been sustained particularly in between 2008 – 2013, when FDI flows to Luxembourg increased in both directions. An explanation to this trend is the relaxed fiscal policies of the country. Considering the economic crisis, the European member states started implementing austerity measures, which, in general, have translated into heightened taxation, making them less attractive for investments, especially in the early months of setting up shop in a certain country. Luxembourg has been an exception to this.

As the TTIP doesn't imply an ease of the fiscal policies on new investments, but regards standardisation to be the most important tool for supporting investments, it's hard to say whether the 'transit' points for investment flows will change. Netherlands is another example to this, being one of the EU countries registering highest FDI stocks from the US. We believe that a similar explanation is valid.

Qualitative assessments pointed out the fact that intra-industry trade and investment have dominated the relationship between the two parties. Some estimates have also considered

²¹ <http://dataweb.usitc.gov/>

that intra-firm trade has accounted for about 60% of total exports from the EU to the US in 2012 and for about 30% of total American exports to the EU in the same year²².

Taking into account both trade flows and investments, we can conclude that the FDIs act as a natural driver for trade between the two. This is why the effects of the TTIP need to be judged depending on the creation of new business cycles and thus, through the prism of all markets included as well as through the eyes of policymakers considering the socio-economic problems in all countries concerned. The stakeholders are therefore diverse and a quantitative and qualitative analysis is difficult.

3. Analysis on the negotiation mandate – juridical and policy related notes

When one looks at the negotiation mandate, TTIP is mainly about three elements: tariff cuts, elimination or reduction of non-tariff barriers (NTBs) and investor-state dispute settlement (ISDS). They all are part of an integral scheme to bust transatlantic trade in the decades to come, in the most comprehensive manner ever attempted outside a Custom or an Economic Union type of agreement.

TTIP intends to allow free circulation of goods and services, devoid of custom tariffs and the usual regulatory compliance burden encountered when such products are put into circulation onto a foreign market. TTIP will reduce almost all tariffs and tariff rate quotas with regard to trade in goods, increase market access for the trade in services, tackle NTBs, open up the public procurement market while caring about environmental standards, consumer rights and sustainable development. It will increase foreign direct investments while providing more certainty to the investor that national regulations are not used as a mean to backtrack on previous commitments on the side of the receiving country.

3.1. Main elements referring to tariffs negotiations

According to WTO, the average most-favored nation (MFN) tariff for the EU is 5.2%²³, while the US tariffs average around 3.2%²⁴. Although relatively low in comparison with the tariff regime of other WTO members, the EU and US tariff systems are designed in such a manner that each of the parties continue to shield from competition sectors of interest for the other party. Tariff peak analysis for EU shows increased protection in agriculture and fisheries, some industrial sectors, mainly motor vehicles, some electronics or clothing. Agricultural sectors turn out to be protected in the US too, with a clear accent on processed agricultural products, of particular interest for some EU member states, or industrial sectors such as textiles, clothing or leather and footwear. Commercial flows in protected sectors account for a small fraction of the total bilateral trade (2% and 0.8% of EU and

²² Hamilton D.S., Quinlan J.P., - *"The Transatlantic Economy 2012"*, Center for Transatlantic Relations, Volume 1: Headline Trends, 2012, pp.11, http://transatlantic.sais-jhu.edu/publications/books/Transatlantic_Economy_2012/120321_TAE_2012_vol1_final.pdf, retrieved on December 26

²³ WTO database - http://stat.wto.org/TariffProfiles/E28_e.htm, retrieved on November 20

²⁴ WTO database - http://stat.wto.org/TariffProfiles/US_e.htm, retrieved on November 20

US imports respectively²⁵). However, reduced trade flows are also generated by tariff and regulatory protection rather than derived from particular preferences of the final consumers.

3.1.1. Tariffs on industrial goods

Since average tariffs for industrial products are generally low on both sides, negotiations will have a narrow focus, looking for market access in sectors that can create further GDP growth like automotive, chemicals, machineries or some manufactured products. Nevertheless, as shown by the impact studies already mentioned, significant economic gains would come from efficiently tackling the NTBs area. Negotiations in sectors like IT and pharmaceuticals, to take into account the technological advance in the last decade, are meant primarily as a signal for other international partners. EU and US have been promoting open trade in these sectors for a long time, supporting plurilateral agreements under the umbrella of the WTO.

Main point of contention is however agriculture, especially the processed agricultural products, fisheries and forestry products, even more so since EU applies a complex duty mechanism at the border, using specific duties instead of an *ad valorem* equivalent. Farmers associations like Copa-Cogeca have taken a strong position against full liberalisation, looking to maintain the current tariff protection or build a solid transitional mechanism in the agreement to ensure their members would cope adequately with the increased competition.

In the context of the tariff negotiations, two other issues would have to be dealt with: trade defence measures (including the so-called zero-ing practice used by the US when collecting anti-dumping duties) and rules of origin. Most of the time outside the spotlight, the rules of origin are the most important instrument for transnational chains of supply, since only products considered to be originating in EU and US would be able to take advantage of the new reduced tariffs. Rules of origin are also a trade facilitation instrument for third countries exporting to EU and US under preferential tariff regime; their market access will be dependent on the ability to comply with the new legal framework.

3.1.2. Trade in services

Services are an important part of the value-added created in EU and US, since production of physical goods is most of the time outsourced, totally or partially, around the globe. Significant progress has been achieved in the past in areas like establishment of companies, intra-corporate transfers of key personal or the cross border supply of services. Important reservoirs of economic growth and enhanced competitiveness still remain untapped in sectors traditionally closed for competition like the health and sanitation services, education, public utilities, legal services or the free movement of workers in the low paid, low skilled professions, where both EU and US have their own reasons for not encouraging further liberalisation.

²⁵ ** *Impact Assessment Report on the future of EU-US trade relations Accompanying the Recommendation for a Council Decision authorizing the opening of negotiations on a comprehensive trade and investment agreement, called the Transatlantic Trade and Investment Partnership, between the European Union and the United States of America*, http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150759.pdf, retrieved on November 25

Financial services are at the centre of the discussions, where EU member states like the UK but also US companies have a clear interest. The recent economic crisis pushed for a new set of rules to increase transparency and accountability. TTIP should ensure harmonised implementation of agreed international rules and common assessment of new measures to be implemented, while safeguarding against disruption of financial flows, due to measures implemented by financial regulators in times of turmoil. According to the position papers published by European Commission (EC), TTIP would create the conditions for EU and US to relay on third party standards in the financial sector, if they are equivalent in outcome.

3.2. A discussion on non-tariff barriers

Regulatory protection or NTBs²⁶ form a rather intricate protectionist mechanism, allowing EU and US to shield up so-called “sensitive” sectors from competition. NTBs may take the form of technical regulations, standardisation and conformity assessment procedures or legislation in the sanitary and phytosanitary (SPS) field. According to the Ecorys (2009)²⁷ analysis, the elimination of NTBs would bring a significant reduction in the cost of trade in goods: 21.5% for US exporters and 25.4% for EU exporters. For the services sector, similar scenario exercises showed a decrease of 8.5% for US service providers and 8.1% for the EU companies. Nevertheless, as shown in our earlier analysis regarding the economics of the TTIP, assessing the impact of streamlining the regulatory system on both sides of the Atlantic remains a complex exercise.

The negotiations have shown so far a clear distinction between the parties’ intentions to significantly reduce NTBs and their protective call on safeguarding what they consider to be better standards, by comparison of one side to the other. This is where the national-level debate on public health, consumer rights, product safety, anti-globalisation feelings are overlapping with the formal negotiation, acting as external pressing factors.

Text Box 1: Focus - Discussions referring to public procurement (PP) process

Public procurement (PP) is a key element discussed under the TTIP, considering the opportunities arising from a transatlantic agreement on trade and investment. The EC assessment shows that, in case of a comprehensive trade agreement, liberalising the public procurement market account for roughly 10% of the potential GDP gains by 2027. Currently, public authorities are acquiring products and services mainly from their local markets. US provisions like the “buy American” clause establish a commitment to local/national stakeholders. Similar practices are currently in place in the European Union member states, being seen as support policy for the national businesses, particularly in times of crisis or economic slowdown. While the European member states don’t promote “buy local” clauses in the PP process, as public acquisitions are being subject to open tender bids, subjectivity in choosing a provider over another is likely to have appeared, particularly at regional and local levels. If TTIP is successful, we deem that such practices are going to fade away to a certain extent.

²⁶ Non-tariff barriers, NTMs – ‘non-tariff measures’ acronym is also used

²⁷ Francois J., Berden K., Tamminen S., Thelle M., Wymenga P., “Non-Tariff Measures in the EU-US Trade and Investment – an Economic Analysis” – Ecorys (2009), http://www.i4ide.org/content/wpaper/ntm_book_final.pdf, retrieved on November 3, 2014

The EU aims to open up the American PP sector not only at the federal level but also when it comes to local authorities, on the basis of the National Treatment principle, which means that any EU company shall be afforded the same conditions as US entity and vice versa. EC has already used a similar approach in the FTA negotiations with Canada.

Our assessment is that despite efforts to open up, public tenders will continue to remain, even after TTIP, a highly regulated sector where sovereign states preserve their influence, especially when it comes to public utilities or national health systems, considered strategic from the national security point of view. Ever more so, since PP process is ultimately financed from taxpayer's money, coming with a certain nationalistic flavor attached.

EU and US will negotiate a set of rules that will apply across the board, to all matters related to NTBs, while for nine industrial sectors (cars, textiles, information technology and communication, cosmetics, pharmaceuticals, medical devices, chemicals and engineering) they intend to agree on specific provisions. Landmark legislation in the EU and the US, like motor vehicle testing and safety measures, waste disposal legislation, the famous REACH Directive governing the chemical sector in EU or the complicated trial rules designed by the US Food and Drugs Administration, would need to be adapted in the long run in order to make the business environment more friendly and ensure market access. Part of the solution stands in the mutual recognition of standards, legislative approximation and supporting international developments like UNECE standards in the automotive sectors.

Negotiators are looking to establish a framework for dialogue for the regulatory authorities to discuss standards of the future, taking account of technological developments of tomorrow. It has not passed unnoticed that Russia and China were taking important steps in the last decade to create or to revive their own standards. Russia is using the Soviet era GOST standard to shield their newly created Custom Union with Belarus and Kazakhstan from foreign competition, while China limits the access of western companies to its public tender in the telecom sector for non-compliance with local security standards. We consider that cooperation in developing future standards will increase EU's and US' credibility and leverage during negotiations in international fora, while putting pressure on other major economic partners to gradually align to a more uniform approach on medium to long term.

Text Box 2 – Focus: Energy and raw materials – a key sector for TTIP

EU has strong offensive interest in energy and raw materials, due to its dependence on energy imports from Russia and lack of access to technological advances that would allow better exploration and exploitation of conventional and unconventional energy resources. EU seems to have lost the race for raw materials in Africa to a rising China. On top, Europe is under assault from environmentalist and anti-nuclear activists and avoids, sometimes for political reasons, to confront and properly debate these issues internally.

Driven by its security needs, EU is bound to be aggressive on the external front. In the context of TTIP, the Europeans need US to eliminate export restrictions to energy products and energy raw materials (excluding, however, agricultural products) and not to intervene in energy price

formation. Local content requirements would be excluded when granting explorations or exploitation licenses for raw material projects, to allow EU companies to drill on US territory, since they are not allowed to drill in Europe, without the obligation to connect to US market operators. Transport infrastructure could be regulated to allow third party access, on the model set by EU unbundling rules. In turn, the EU might be ready to discuss State Owned Enterprises (SOE) regime, especially where exclusive rights are granted to them over energy resources or infrastructure, which is the case in Europe. US has already signaled that energy would not constitute a distinctive chapter in TTIP and that, while open to ease restrictions concerning energy exports, such concession is dependent on the overall evolution of the negotiations.

3.3. Foreign Direct Investment and Investor-State Dispute Settlement

Trade liberalisation through both tariffs cuts and NTBs reduction as well as enhanced market access for public procurement are expected to have a straight-forward positive impact on FDI flows. An investor-state dispute settlement (ISDS) mechanism is therefore on the negotiation table, aiming to enhance the foreign investor protection and ultimately to increase even further current investment flows between the two economies. The ISDS is an instrument of the public international law that allows foreign investors to use arbitral-like dispute settlement proceedings against the host country²⁸. First fully-fledged ISDS system was set up under the North American Free Trade Agreement (NAFTA), between US, Canada and Mexico. Foreign investors were able to submit to international arbitration a large array of claims, bypassing the traditional jurisdiction of national courts. Moreover, under NAFTA, investors were consistently able to claim damages caused by the host country enacting new legislation, deemed to have equivalent effect to expropriation or nationalisation²⁹. Although ISDS cannot restrict state actors to perform their regulatory tasks *per se*, it will entitle companies to claim injury if the legislation in question impairs previously acquired rights.

While ISDS clauses exist already in the over 1400 EU member states Bilateral Investment Treaties (BIT), their implementation rarely had a significant impact on the EU side. Such provisions were initially designed to protect EU companies investing in third countries. UNCTAD statistics shows that investors are favouring more and more ISDS. In 2012, 58 new cases were registered³⁰, the highest number of treaty-based international disputes ever recorded. According to UNCTAD, investor claims targeted public tenders irregularities, license regime and, more importantly, changes to domestic regulatory frameworks, withdrawal of previously granted subsidies or measures related to the fiscal regime and taxation. It is worth noting that in 2012, there were 59 intra-EU investment disputes, 8 being filed that year alone³¹. Most of these disputes are based on intra-BITs but some use the Energy Charter Treaty as a base as well.

²⁸ Abbott R., Erixon F., Ferracane M.F., “Demystifying the investor-state dispute settlement”, ECIPE, pp. 6, http://www.ecipe.org/app/uploads/2014/12/OCC52014_1.pdf, retrieved November 25, 2014

²⁹ Called “indirect expropriation”.

³⁰ **Recent developments in ISDS, UNCTAD, April 2013, pp. 1, http://unctad.org/en/publicationslibrary/webdiaepcb2013d3_en.pdf, retrieved December 23, 2014; also consulted 2013 developments published by UNCTAD at http://unctad.org/en/publicationslibrary/webdiaepcb2014d3_en.pdf, retrieved December 23, 2014

³¹ *ibid*, pp. 3

Recent arbitration awards are but increasing the public concern that the state may have its power diminished. Left wing social groups have campaigned against it very vocally in Germany, due to a recent case involving the Swedish company *Vattenfall* suing Germany³² on matters concerning issuance of an environmental permit for a nuclear site. Governmental officials, too, are anxious with the leeway an arbiter has in deciding on the claims. In the end, the arbitration would assess if national legislation complies with international law concepts like fair and equitable treatment, for example. In the long tradition of the international law, it is rarely that the international courts, let alone arbitral tribunals, are empowered to rule over domestic legislation, with the clear exception of human rights issues. Moreover, the EC has exclusive competence over a future common EU investment policy since the Lisbon Treaty adoption. Existing BITs between the EU member states, are still in force and they would continue to be for some time, further complicating the legal landscape in Europe in terms of investor protection.

Against strong sentiments of the public administrations in Europe, the EC insists that ISDS would not depart from previous practice, but increase investors' confidence, allowing the claimant a less burdensome path to solving disputes with the host state. We consider that an FTA aiming to respond to the challenges of a globalised world economy cannot afford otherwise. Deeply rooted concepts in the international investment practice like national treatment, most favoured nation clause might lose some of their relevance, leaving matters to be judged more and more *ex aequo et bono*.

3.4. Current trading disputes between the EU and the US

There are long standing trade disputes between EU and US, mainly in the agricultural sector but not only. Far from being an exhausting list, we would include here imports of chlorinated poultry, beef meat with hormones or genetically modified organisms (GMO), most of them linked to the SPS rules. For the industrial sector, US methodology in collecting anti-dumping duties (zeroing), or subsidies discipline in the aeronautical sector (Airbus/Boeing case) are economically as prominent as the measures affecting the agricultural trade but they certainly lack in emotional impact. Food safety is a matter of public perception in as much as it is a matter of rigorous scientific evaluation. Neither party was however able to prove in a definitive way that there are undeniable scientific reasons for or against. Differences in terms of testing standards and methods, sometimes insufficient time to reach a relevant conclusion on these matters, makes the negotiations even more difficult. Thus, the EU and US positions continue to rely mainly on the concept of carve out in trade liberalisation for public safety reason. Behind SPS issues lay strong defensive interest on the EU producers. They need to dilute the clear competitive advantage of the bigger, more productive American farms, making use of production practices forbidden in Europe that decrease costs significantly.

On the other hand, concepts like geographical indications (GIs) and denominations of origin are less appealing to the US. Americans claim that there is no way they will grant exclusive rights to use a product name based solely on the geographical site of manufacture,

³² The case was settled in 2011

like the Parma ham or Port wine. Instead, US favors a trade marks system that gives priority to the commercial rationale rather than to intangible traditional values³³ linked to a certain location or area.

4. State of play of the negotiations

There have been seven official rounds of negotiations concerning TTIP. In parallel, negotiators teamed up in numerous inter-sessions, videoconferences or meetings in order to bridge their positions and agree on text language of the agreement. According to the chief negotiators³⁴, a number of text proposals were put on the table, while, for a number of chapters, agreement was reached. Nevertheless, both parties are rather cautious when it comes to the elements that would confer TTIP its projected level of ambition.

As far as tariffs and market access are concerned, negotiators refrained from discussing a comprehensive proposal for now. EU seems not to be ready to accept a negative list approach (full market access, across the board, with a list of punctual exceptions) in services as in the EU-Canada agreement. In particular, for the financial services, the EU aims for a comprehensive approach (market access and regulatory issues), while the US would rather see regulatory issues discussed in other international fora, outside TTIP. Negotiators hold to the initial promise that public utilities will be carved out of the agreement³⁵, as response to, among others, critics for the trade unions in EU.

Discussions are currently focused on the regulatory side for both industrial and agricultural products, where the EU and the US are testing a number of approaches, from mutual recognition and regulatory convergence to designing a less controversial framework for cooperation between their regulatory authorities, in order to reduce red tape and avoid unnecessary duplication in the approval process. Various degrees of progress have been achieved on sectors like cars, textiles, medical devices, pharmaceuticals, engineering or chemicals. Ways to bridge significant differences have been identified in certain sensitive sectors like chemicals (avoiding test duplication and sharing work over priority chemicals to be assessed) and cars (cooperation on future regulatory challenges, under UNECE framework and reduce the bureaucracy and paper load). For the agricultural goods, EU has already put forward a SPS proposal. Although GMOs are not on the table, the EU is opened to assess individual applications, while the US continues to insist that the assessment should be based solely on scientific evidence.

Both parties are eager to stress out the advantages TTIP will bring the small and medium size enterprises (SMEs), especially the ones involved in the new, innovative sectors like the digital economy, bioscience or engineering. The new agreement would reduce red tape and delays at the border, making it easier to comply with local product regulations, export and invest abroad and, generally, to integrate in global supply chains. Experts are in the process

³³ Such as methods of production, climate conditions, and geographical conditions.

³⁴ 7th of negotiations for TTIP: Joint press conference by Dan Mullaney and Ignacio Garcia Bercero, <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=1093277&videolang=INT>; Sixth round of negotiations for TTIP: extracts from the joint press conference by Ignacio Garcia Bercero and Dan Mullaney, <http://ec.europa.eu/avservices/video/player.cfm?ref=1091332>, retrieved on October 23, 2014

³⁵ No privatisation of water utilities, education or national healthcare systems

of defining what would be practical tools to reduce cost of doing business over the Atlantic for small and medium size companies³⁶.

There is progress with regard to protection of Intellectual Property Rights (IPR), especially when it comes to fighting counterfeit goods, including car parts or medicine. Such provisions will have an impact not solely on the transatlantic trade but also on imports shipped from third parties.

Each party is refraining from bringing forward some important points of contention until the other is ready to sit at the negotiation table. Important progress on state-to-state dispute settlement (SSDS) has been reported, but the subject of ISDS remains off the table for now, at least until EU finishes its internal debate on this issue. The EU is not insisting for now on the so-called non-conforming measures through which US states would restrict access to public procurement at local level, allowing US to work over its proposals at the level of the advisory committees where the federal officials are meeting the states representatives.

Both negotiators are rather cautious when it comes to discussing the possibility for completing the agreement by the end of 2016. They are stressing however the need for a renewed political commitment in order to bridge gaps, especially on the side of the newly appointed European Commission. Although the President of the Commission, Juncker, stated TTIP among his top ten priorities³⁷, his task would not be an easy one. US Congress still needs to issue a Trade Promotion Authority to the Obama Administration in order to conclude the agreement. It will be a good opportunity for vested American interests to make their weight felt on the Washington political arena.

Transparency of the negotiations is still an issue of concern, despite increased efforts to directly engage with more and more stakeholders. EU has published the negotiation mandate for TTIP, along with a number of position papers explaining the rationale behind its approach. According to Chief Negotiator Dan Mullaney, US consult with over 600 technical advisors on the positions taken on TTIP, but these documents are not opened for public consultation.

Conclusions

The TTIP is probably the most ambitious project of the EU concerning international trade cooperation. The geographical size covered as well as the far-reaching substance of the negotiated chapters are supporting the idea once agreed upon that the transatlantic partnership will take global economic integration to a new level, directly influencing the current balance of power. What we understand to be, however, both a challenge as well as an opportunity is the chosen momentum for conducting such negotiations. The EU has not completed its own integration process and the European internal market still needs to be built upon.

³⁶ Williamson I.A., Aranoff S.L., Pinkert D.A., Johanson D.S., Broadbent M.M., Kieff F.S. - "Trade Barriers that SMEs Perceive as Affecting Exports to the EU", <http://www.usitc.gov/publications/332/pub4455.pdf>, retrieved on November 24, 2014

³⁷ **Setting EU priorities, 2014 -19, <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-538963-Setting-EU-Priorities-2014-19-FINAL.pdf>, retrieved on October 10, 2014

The European Commission is negotiating over a unified position on FDI and investor protection provisions, while the member states are still acting on the bilateral investment treaties still in force, including those concerning their own intra-EU relations. A common investment policy has been established through the Lisbon Treaty, but a number of years are needed before it will be properly implemented, before BITs will phase out to be replaced by uniform provisions for all EU Member States. Thus, we consider that the TTIP will shape the EU integration process itself, constituting an opportunity for accelerating the process of policy consolidation, delegating more competences at EC level.

It is our assessment that TTIP, along with other FTAs, will contribute also to the elimination of barriers against free circulation of services between member states. This is, unless EU aims to be more integrated with foreign partners than within its own internal market, which is politically unsustainable. Increased competition due to market liberalisation will require adjustments in order to maintain competitiveness. For the EU, completing the internal market, through services liberalisation, would allow companies to make full use of the wide range of production cost across the continent.

From a legal point of view, the EU and the US will engage in a vast regulatory approximation process, to be developed directly by the regulators themselves, entailing gradual but significant changes in existing legislation. If negotiators will not agree on concrete actions but will only establish loose cooperation provisions, the EU agencies will need to translate into practice 'the spirit of agreement'. If the TTIP is to be smoothly implemented, the member states regulators will see their influence gradually diminishing, allowing for a uniform and cost effective decision-making process.

International scholars, commentators, and policymakers agree on the fact that the TTIP have put under the spotlight the investor-to-state dispute settlement (ISDS) provisions. Sufficient empirical evidence exists as to conclude that traditional SSSDS vehicles, like WTO Dispute Settlement Mechanism (DSM), have reached their full potential. In a globalised economy, companies cannot wait for a long time for arbitral awards to be implemented or retaliation measures to be approved in case of noncompliance. However, ISDS provisions and the way they are implemented worldwide and in the EU in particular deserve more attention and research, to take into account the way these provisions affect the existing legal framework and international trade flow. ISDS becomes as a solution for the EU and the US to adapt their legislation to properly respond to market developments in real time. The provisions implementation would imply a dramatic transformation of the way states are accountable for the way they legislate, once the stakeholder's base becomes truly transnational. It is here where more research is needed, in order to establish the different potential reactions to such transformations. For the EU, the process is understandably painful, since after 50 years of integration efforts, legislation at member states level is still in some cases associated with national identity. ISDS adoption at the EU level would translate into a mentality change, where "when in Germany, do like the Germans" phrase will disappear, being replaced by "wherever you do business, you are entitled to fair and equitable treatment". Our assessment is that this will only happen in the medium and long-term.

In the broader international arena, the strategic role of the TTIP appears to be the way the EU and the US are responding to the growing influence of economies like China or India, with their large markets. The Transatlantic Partnership is as much about trade as it is about global security and political influence. It is about developing technical standards for the others to follow, pulling energy resources to reduce dependence on potentially unreliable third party suppliers or maintaining a leading position in technological advances.

We hold the view that the negotiation of TTIP is sufficiently advanced in order to allow for an even more harmonised approach in the future, during the multilateral negotiations at the WTO level, during the bilateral negotiations both parties are conducting in parallel with ASEAN countries, China and Japan in particular. Analysis shows that the TTIP, when enforced, would increase pressure on developing economies. It is likely that countries currently enjoying free trade agreements with the EU and the US lose their preferential status through the trade diversion process caused by the fact that the two establish a duty free regime among themselves.

Analysing the scholars and professionals debate on whether WTO provisions related to trade in goods and services could be applied to energy goods, in order to discipline states like Russia, we believe the EU and the US should be first ready to grant non-discriminatory access to energy infrastructure among themselves and in the case of EU, internally. Harmonisation of rules relating to energy export and exploration of natural resources is needed and current negotiations on TTIP may lead the way to this purpose.

Amid bitter controversy linked to transparency of the negotiations, technical discussions are advancing at a steady pace. However, both chief negotiators agree that a renewed political impetus is needed to achieve progress. The EC is under a clear mandate to negotiate the agreement, but the new Trade Commissioner Malmstrom trades carefully with the European Parliament. The US faces a more acute problem with a Congress less inclined, up to now, to grant the Trade Promotion Authority to the Administration, speeding up the negotiation process. Political debates have always preceded EU ratification of trade agreements, especially in the case of Korea or the undergoing approval of the deal with Canada. Yet, the European Parliament and member states did not fail to ratify rather speedily important trade deals in the past, unlike the US Congress that delayed proceedings concerning similar agreements with Korea or Columbia.

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EU and US External Policies on Human Rights and Democracy Promotion: Assessing Political Conditionality in Transatlantic Partnership

Beatriz Pérez de las Heras¹

Abstract: *This contribution² aims at advancing existing research about the role that the Transatlantic Partnership may play within the specific field of human rights and democracy promotion in the current changing global order. It examines recent changes to the foreign policies of the European Union and the United States on this area and assesses the impact of these changes on the transatlantic partnership over the last five years. The paper argues that these modifications entail a greater convergence between the policies of the two regions, though some ideological divergences, lack of coordination and differences in implementation are still observable. However, the increasing mutual realignment could foster a truly transatlantic partnership in the field if both partners attain to define a joint strategy and establish common institutions to ensure permanent dialogue and policy coherence. At the same time, this enhanced co-operation could enable them to remain the principal supporters of human rights and democracy in the current multi-polar order.*

Keywords: *human rights; democracy promotion; political conditionality; transatlantic co-operation; multi-polar world.*

Introduction

The European Union (EU) and the United States (US) have traditionally been the chief supporters of human rights and democracy promotion throughout the world. Over the last three decades, the two have been committed to strengthening dialogue on these issues both unilaterally and bilaterally. Throughout this period, however, areas of transatlantic discrepancy have also emerged, although the first post-Cold War decade was generally marked by significant convergence between the two partners. Indeed, with new states

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emerging in Central and Eastern Europe, the issue of human rights and democracy promotion became a central feature in the transatlantic relationship.

Over the last decade, global power shifts and the rise of a whole array of actors participating in human rights and democracy promotion policies, such as international organizations, new democracies and non-governmental organizations (NGOs), have put an end to transatlantic hegemony in this field. There is now a range of divergent approaches in the international arena of human rights and democracy promotion. As a consequence, in the current multi-polar world context, the EU and the US are no longer the sole players in this field. In addition, the current global environment, with non-democratic countries run by entrenched regimes and failed states, makes democratisation an especially challenging task. Driven by different factors and geopolitical circumstances, the two partners have recently made significant adjustments to their policies in order to improve their capacities in the field of human rights and democracy promotion.

In light of these factors, this paper considers whether these policy reforms will enable the transatlantic partners to maintain their position as leaders in the promotion of human rights and democracy in the current multi-polar world. In addressing this question, this paper argues that recent adjustments in EU and US external human rights and democracy promotion policies have narrowed the ideological gap between them, which may have the potential to foster a more sustained transatlantic co-operation in this area. Drawing on this hypothesis, the first part of the paper reviews the basic tenets, actors and instruments of current EU and US policies. It demonstrates that while recent adjustments by the two regions come in response to different stimuli, in practice the changes entail a growing convergence between their respective policies, in terms of both approach and instruments. The second part goes on to assess the potential of this mutual realignment on the transatlantic human rights and democracy agenda and in the global context. It finds that despite co-operating in various forums and conflicts, divergences and lack of coordination still persist between the two partners. Nonetheless, enhanced co-operation is possible if the EU and the US define a joint strategy that ensures policy coherence, while enabling them to remain the primary leaders in the international arena.

The EU and the US as Human Rights and Democracy Promoters: Adapting Foreign Policies and Instruments to the Changing Global Order

The EU and the US both view the advancement of human rights and democracy as an international endeavour. They are both western powers and share the same commitment to liberal democracy in their foreign and domestic policies. Historically, however, there have been differences in the ideological motivation given for supporting human rights and democracy and consequently in the methods used to implement them. The EU approach has been developmental, focusing primarily on socio-economic measures, while the US has traditionally tended towards a political form of democracy promotion, concentrating on elections, parties, political rights, civil society, and the media. In addition, human rights promotion has occupied a more modest place in US policy. In practice, the EU has focused primarily on human rights while the US has focused more on promoting democracy.

These divergences in the two approaches to human rights and democracy support abroad are a result of the two regions' different historical experiences, political systems and positions in the international context. However, in response to separate impulses and developments, both partners have recently altered their strategies and these changes could contribute to bringing them closer in this field.

EU Human Rights and Democracy Policy: Responding to External Pushes through Enhancing Political Support

Over the last 30 years, the EU has exercised leadership in human rights and democracy promotion both inside and outside its borders. Article 21, 2b of the Treaty on European Union (TEU) states that one of the Union's central roles is to promote and support democracy and human rights worldwide, identifying democracy, rule of law and the universality of human rights and fundamental freedoms as guiding principles of the EU's external action. In keeping with this commitment, the EU has placed democracy and human rights at the heart of its enlargement policy, currently governed by the Copenhagen criteria³. The promise of membership, closely tied to this conditionality policy, has played a significant role in democracy and human rights promotion in Central and Eastern Europe, since accession countries are required to adopt EU standards in this area. The imminent prospect of EU accession to the European Convention on Human Rights and the entry into force of its Charter of Fundamental Rights has more recently reinforced the EU's profile as a global champion of human rights.

Parallel to these initiatives within its borders, the EU has also pursued democracy and human rights in third countries that are unlikely to become EU members. Indeed, since 1995 a human rights protection clause has been included in political framework agreements with more than 120 countries (European Commission, 1995). This clause provides the legal basis for co-operation on this issue in all areas covered by these agreements. Trade association and development co-operation agreements are the most noteworthy indicators of the EU's conditionality policy. Human rights violations can result in the suspension of co-operation or the imposition of economic sanctions, which is known as negative conditionality. In practice, EU conditionality clauses have a very wide geographical scope, but they are not universal. Indeed, trade and co-operation agreements with developed countries contain no clause of this kind. Moreover, no human rights and democracy conditions are included in sectorial agreements in areas such as fisheries, steel and textiles. This can lead to a certain inconsistency in EU policy. For example, development aid may be suspended under the Cotonou Agreement between the EU and 79 African, Caribbean and Pacific countries, while financial payments continue to be made under a Fisheries Partnership Agreement (Bartels, 2008).

From the mid-90s on, the passive approach of negative political conditionality was complemented by a more active dimension, which has basically been reflected by the

³ The first of these criteria is 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'. European Commission, 'Conditions for membership', available at: http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm (accessed 13 March 2015).

establishment of explicit democracy and human rights promotion programmes and policies. The Initiative for Democracy and Human Rights (EIDHR), the European Neighbourhood Policy (ENP) and the Eastern Partnership (EaP) are clear examples of this approach.

Created in 1994, the EIDHR was originally designed to promote the rule of law and human rights worldwide. However, the mechanism was felt to suffer from a lack of flexibility and excessive bureaucracy in granting financial assistance and in 2006, it was reformed and renamed the 'European Instrument for Democracy and Human Rights' (EIDHR II). The EIDHR II now uses a thematic approach, focusing on advancing human rights and fundamental freedoms in countries where civilians are most at risk and on supporting civil society to become an effective force for political reform and the defence of human rights. It operates at national, regional and international level. Its broad scope means that it complements other EU tools used to implement democracy and human rights policies. However, despite the reforms, some problems still remain, such as long waiting periods for project evaluation and the numerous rules to be followed by Commission officials, with the result that this instrument is neither very effective nor very flexible (Herrero, 2009).

Following the success of its fifth enlargement in 2004, the EU launched the ENP, a new approach to foreign policy covering relations with the new neighbour countries at its eastern borders. It encompasses 16 countries, not only from Eastern Europe, but also North Africa and the Middle East. The ENP is based on the same positive political conditionality as the enlargement policy, but without the incentive of membership. Since its inception, the EU has introduced elements of positive conditionality through specific ENP Action Plans and reinforced its financial assistance to neighbour countries in the east. In a further step, in 2007 the Technical Assistance to the Commonwealth of Independent States (TACIS), which had mainly focused on trade promotion and government capacity building, was replaced by the European Neighbourhood and Partnership Instrument (ENPI). Most ENPI funds were initially channelled to governments, while only cross-border and regional co-operation mechanisms involved local authorities and civil society. In an overall assessment of the ENP implementation, little attention was given to improving the political context for civil society or involving civil society actors in monitoring and managing EU aid. Only since 2007 has the EU sought to enhance its direct support to civil society organizations in the eastern neighbourhood under EIDHR II. However, the ENP has not proved to be a fully effective tool for promoting democracy and human rights. It has been criticised for focusing on ensuring stability and security, rather than promoting human rights and democracy (Shapovalova and Youngs, 2012). In addition, despite Article 8 TEU, as introduced by the Lisbon Treaty, which formalized the neighbourhood policy, subsequent practice has not shown any real progress beyond the initial soft-law approach (Casorali, 2013).

In 2008, a number of Member States, including Poland and Sweden, proposed strengthening the EU's policy towards its eastern neighbours. Security concerns aggravated by the armed conflict between Russia and Georgia ensured broad EU support for the new initiative. As a result, the EaP was adopted to include ENP countries Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The EaP is a strengthened version of the ENP. One of the most important innovations of the new programme is greater involvement of non-governmental actors in EU dialogue. New means of engaging with civil society organizations

have been introduced, such as the Civil Society Forum and the Civil Society Facility (Balfour, 2010). Based on the principle of conditionality, the EaP provides closer political co-operation and economic integration with the EU through Association Agreements. Unlike the Action Plans, Association Agreements are legally binding and include clauses on developing democracy and human rights, together with an enhanced system of monitoring and evaluation. In June 2014, Ukraine, Georgia and Moldova signed Association Agreements with the EU, an alliance seen by Russia as a threat to its Euro-Asian Union project (Pugsley, 2014).

Nevertheless, it was the EU's inability to react in timely and effective fashion to the failure of the democratic process in Belarus and, in particular, to social changes in North Africa, that drove the Union to rethink its strategy in this field. The events leading to the Arab Spring of early 2011 brought a change in rhetoric. A new concept, 'deep and sustainable democracy' was introduced in the Joint Communication 'A New Response to a Changing Neighbourhood' adopted by the European Commission and the High Representative (HR) for Foreign Affairs and Security Policy. This new concept refers to a lasting socially and institutionally internalised democratic model in the target states (European Commission and the HR, 2011). At the same time, a review of the ENP was undertaken, based on the 'more for more' conditionality mechanism. In other words, instead of prioritising stability and security, the aim is now to ensure better funding based on the concrete performances of the states in question. The 'more for more' principle now provides for a higher level of differentiation among partners, since the form and amount of bilateral co-operation depends on the country's efforts in progressing towards deep and sustainable democracy. The differentiation is consequently based on political, rather than economic criteria, with the largest financial incentives going to the most ambitious reformers. In line with this new approach, as of 1 January 2014 the ENPI was replaced by the European Neighbourhood Instrument (ENI), which currently accounts for the bulk of funding for the 16 ENP countries.⁴ Despite these changes, the term 'deep democracy' does not mark a *volte-face* in EU policy, but the concept has brought the EU closer to the concept of liberal democracy, supported by the US (Kurki, 2012).

In any case, the most concrete manifestation of renewed EU commitment to democracy and human rights is probably the European Endowment for Democracy (EED). Two years after the Polish presidency called for its creation, the EED began operating in 2013. The EED does not replace existing mechanisms better suited to situations of stability, but instead is mainly intended to support transition movements at times of profound change. Geographically, it focuses particularly on the European neighbourhood, but also includes regions where similar processes are already ongoing, such as Azerbaijan, Belarus, Syria and Myanmar (Youngs and Brudzinzka, 2012).

The EED was created with the primary aim of supporting bottom-up initiatives from civil society and movements. Potential beneficiaries include loose networks, journalists, bloggers, social media activists, unregistered NGOs, political movements and emerging leaders, when they operate in a very uncertain political context. Under its slogan 'Supporting the

⁴ Its allocation for the 2014-2020 period amounts to EUR 15.4 billion (Article 17 of Regulation (EU) 232/2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27).

Unsupported', the EED is currently supporting, for instance, the newspaper Azadliq – one of the few independent media in Azerbaijan – the Syrian Transition for Democracy and the most urgent needs of civil activists in Ukraine⁵. One of the distinctive features of the EED, therefore, is that it seeks to operate with more flexibility and more politically than existing European foundations, institutions and funding agencies. It is expected to make EU support for democracy more flexible and responsive, even though this might politicise the EU agenda on democracy which has traditionally been relatively technical and ideology-free. Indeed, the EED has already been compared to the highly-politicised US National Endowment for Democracy, something which might arouse mistrust among recipients (Kurki, 2012).

It is still early to assess whether the new structure, among others in the EU's democracy support toolkit, will mark a significant upgrade in European democracy and human rights promotion. What is fairly clear, however, is that the aftermath of the Arab Spring has highlighted the democratic identity of the EU. Moreover, the adjustments have been made despite the severe economic crisis in the Eurozone, which has not deterred the EU from introducing new mechanisms nor from seeking to improve the existing ones. Indeed, apart from the EED, a number of other decisions taken by European leaders over the last five years appear to sketch out a conceptually new and upgraded EU policy on human rights and democracy.

For example, the EU has increased the use of negative conditionality tools. Libya, Syria, Iran and, more recently, Russia have been subject to unprecedented sanctions (Giumelli and Ivan, 2013; Council of the Union, 2014; European Commission, 2014). Under the new framework of the Generalized System of Preferences + (GSP+), reformed in 2010, target states have to prove that they meet and support the democratic values prescribed to qualify for the GSP+, reflecting the EU's concern about rights monitoring, a role it had always shown very little interest in playing. In December 2011, the HR and the European Commission adopted the Joint Communication 'Human Rights and Democracy at the Heart of EU External Action. Towards a More Effective Approach', a new policy intended to respond to developing global challenges (European Commission and the HR, 2011a). This document led to the adoption of the 'EU Strategic Framework and Action Plan on Human Rights and Democracy', which includes 36 points with concrete deliverables and an increased number of human rights dialogues. This comprehensive package reaffirms the EU's commitment 'to the promotion of all human rights, whether civil, political, or economic, social and cultural'. It also 'anchors a commitment to genuine partnership with civil society' and 'reaffirms the EU's determination to promote human rights and democracy through all its external actions', in line with Article 21 TEU (Council of the European Union, 2012). One of the first outcomes of this strategy was the appointment of Mr. Stavros Lambridinis as the first EU special representative on human rights. Similarly, a large number of EU Guidelines on Human Rights dialogues provide an instrument for EU officials and Member States in their dealings with third countries, international organizations and civil society⁶.

In addition to recent developments and new approaches, such as the one represented by the EED, EU human rights and democracy policy will need to address relevant challenges

⁵ Updated information is available at: <https://www.democracyendowment.eu/news/eed-initiatives/> (accessed 13 March 2015).

⁶ Available at: http://eeas.europa.eu/human_rights/guidelines/dialogues/index_en.htm (accessed 13 March 2015).

in coming years. Perhaps one of the most pressing of these is the need to strengthen the Union's internal democratic identity in order to be globally credible. There is a perception that EU statements on human rights and democracy are not always matched by its external and internal policies (Hillion, 2013). However, there are some positive indications that the EU is becoming aware of this inconsistency and is seeking to address it. In this line, in a recent resolution the European Parliament considers that 'effectiveness of EU action rests on its exemplariness and consistency between internal and external actions'. Consequently, in a section entitled 'Credibility, Coherence and Consistency of EU Policy', the European Parliament 'calls on all Member States to repeal any existing laws which contradict the fundamental freedom of religion and conscience and freedom of expression' (European Parliament, 2014).

With new approaches and instruments in process of being implemented, and despite charges of too many ambiguities and too much inconsistency, we may conclude that the EU continues to be a visible, committed supporter of democracy and human rights in the world.

The US External Policy: Realigning Democracy Promotion with Human Rights Protection and Development

Promotion of democracy and human rights has traditionally been one of the core elements of US foreign policy, though human rights have usually occupied a more modest position than in EU policy. Indeed, the American approach to human rights promotion abroad has been controversial, given that the US has yet to ratify several of the most important international instruments. So, for example, since 1974 the US General System of Preferences has linked the granting of trade preferences to the development of internationally-recognized labour rights in developing countries, despite the fact that the US has not ratified all the fundamental International Labour Organization (ILO) conventions. Its reluctance to sign up to these and other binding international treaties, such as the American Convention on Human Rights, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights or the Optional Protocol to the Convention against Torture among others, has undermined US legitimacy in advancing human rights abroad (Bradley, 2010). The US, unlike the EU, has therefore traditionally focused on the promotion of democracy, directing aid at core political processes and institutions (Carothers, 2009; Babayan, 2013).

The longstanding, underlying rationale for this approach is that democratisation abroad is intrinsically good, protects both American and universal values and is a useful instrument since it provides security and economic benefits to the US. This motivation has remained constant, with variations in policy and intensity under different administrations. In particular, the end of the Cold War and the demise of the Soviet Union gave the US the chance to promote democracy with an 'explicit political purpose' (Carothers, 2000). In line with this approach, American government has been promoting democracy through programs that support good governance, human rights, independent media, and the rule of law, and otherwise strengthen the capacity of democratic political parties, NGOs, and citizens (USAID, 2013).

Over the last decades, these efforts have been pursued and funded under the Foreign Assistance Act of 1961, subsequently amended, as in 1975, to make aid conditional on respect for human rights and civil liberties⁷. The 1961 Act also forms the basis for the National Endowment for Democracy (NED) Act of 1983⁸, the Freedom Support Act of 1991⁹ and the Millennium Challenge Act of 2003¹⁰. Since the end of the Cold War, the Agency for International Development (USAID) has become the most important state programmatic actor. Created in 1961, USAID receives direct policy guidance from the US Department of State. One of its core goals is 'Democracy and Governance', which is principally pursued by the Centre of Excellence on Democracy, Human Rights and Governance and the Office of Transition Initiatives, both created in 1994. USAID has developed democracy promotion programs, but in most cases these are implemented by an NGO that has submitted a successful tender, as well as by local political forces involved in democracy reform.

Indeed, NGOs have traditionally been and remain a consistently active part of American democracy and human rights promotion efforts abroad. While the extent of the commitment has varied from administration to administration, American NGOs have remained consistently engaged in democracy and human rights. Many of them even provide policy advice and wield influence over policy-makers and public-sector programmatic options. One of those that focus on programming is the NED, upon which the recently-created EU EED is largely inspired. Created in 1983, the NED, together with other NGOs (e.g. Freedom House and the Carter Centre), has contributed to the establishment of a growing civil-society community for democracy promotion in the US (NED, 2012).

All along the last years, the extent of democracy promotion by US actors has increased and evolved in line with political changes in the global order. Thus, after many years implementing a uniform approach to fostering democracy in former Soviet Union countries, an attempt was made in 2001 to diversify strategies based on specific country needs. This variable strategy has also been tried by the EU over the last ten years. In both cases, it has not yet been fully consolidated, but unlike the EU, the US did not historically introduce explicit conditionality into its economic and trade relations with third countries in order to encourage democratisation. This changed when President George W. Bush launched the Millennium Challenge Corporation in 2004, a new approach that conditions development aid to beneficiary countries on a commitment to good governance and democratic principles. These democratic indicators were reinforced in 2011 and have become the cornerstone of development co-operation (Tarnoff, 2014).

In an overall assessment, American democratic rhetoric has remained consistent at a global level, though certain inconsistencies have also been observed at regional and country scale. For example, for many years there was almost no criticism of US-friendly dictators in Africa (e.g. Nigeria, Zaire, Egypt, Tunisia, Rwanda). In Asia, US has not taken a

⁷ Committee on International Relations (2003) 'Legislation on Foreign Relations through 2002'. Available at: <http://www.usaid.gov/sites/default/files/documents/1868/faa.pdf> (accessed 13 March 2015).

⁸ H.R. 2915, 97 STAT 1039. Available at: <http://www.gpo.gov/fdsys/search/home.action> (accessed 13 March 2015).

⁹The USA Freedom Act H.R.3361/ S.1599. Available at: <http://www.gpo.gov/fdsys/search/home.action> (accessed 3 October 2014).

¹⁰ Millennium Challenge Act H.R.1966 / S. 571. Available at: <http://www.gpo.gov/fdsys/search/home.action> (accessed 13 March 2015).

strong, visible pro-democracy stance, except when there have been internal breakthroughs (e.g. Indonesia and Philippines) (Sedaca and Bouchet, 2014). However, what has visibly evolved from administration to administration has not been the rhetorical commitment to promoting democracy itself, but the specific form of implementation: by consent or openly by force (Babayán, 2013). Thus, while the Clinton administration pursued peaceful and non-interventionist democracy promotion, the subsequent Bush administration opted for a hard-line approach of military intervention whenever the target country failed to comply with democratic requirements. National security was pushed to the top of President Bush's foreign policy priorities by the September 11 attacks. One of his most controversial acts was, perhaps to invade Iraq with the stated purpose of disarming Saddam's regime and dismantling his weapons of mass destruction.

The Obama administration has tried to bring democracy and human rights back into the centre stage of US foreign policy and thus restore US credibility (Hassan and Ralph, 2011). Deliberately avoiding the language of his predecessor – who linked democracy promotion to the 'war on terror' – President Obama has slowly shaped his own rhetoric and approach, closely linking it to human rights and development policies in general (Poppe, 2010). Another significant difference from his predecessor is Obama's multilateral approach. The president has called for a more proactive United Nations' role in fostering global democratic developments, while endorsing multilateral initiatives. For example, the US government co-sponsored the United Nations Human Rights Council (UNHRC) resolution endorsing the Guiding Principles on Business and Human Rights to further promote business respect for human rights globally. In the same line, the Organization for Economic Co-operation and Development (OECD)'s updated Guidelines for Multinational Enterprises were negotiated in 2011 by a multi-lateral group of governments, including the US administration. These guidelines included a new chapter on human rights. The US is also supporting the ILO Decent Work agenda and funds ILO projects to promote decent working conditions in several countries. Another area in which the current US administration seeks to promote respect for human rights is information and communication technology¹¹.

In addition, President Obama is making efforts to restore leadership by providing a positive example abroad, a stance which won him the Nobel Peace Prize a few months after taking office. As he declared in 2010: 'there is no more powerful tool for advancing democracy and human rights than our own example. We promote our values by living our values at home'¹². This passive form of democracy promotion, based on leading by example, is remarkably different to the approach not only of the Bush administration but also that of President Clinton.

As a result, democracy promotion has lost its prominent position in US foreign policy, since human rights have now become an explicit key component of the approach to democratic development. This new perspective represents a marked change in practice and not a mere

¹¹ Bureau of Democracy and Human Rights and Labor (2013) 'U.S. Government approach on business and human rights'. Available at: <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/> (accessed 13 March 2015).

¹² Barack Obama (2010), Statement by the President on the 10th Anniversary of the Communities of Democracies. Available at: <http://www.whitehouse.gov/the-press-office/statement-president-10th-anniversary-community-democracies> (accessed 13 March 2015).

adjustment, although certain shortcomings on the part of the current administration have also been observed. For example, Obama has been criticized for his reluctance to support Iranian democratic activists, his hesitation to respond to the onset of the Arab Spring, his confused reaction to Syrian chemical attacks, and for striking Islamic State inside Syria with no Congressional or UN authorization (Carothers, 2012; Outzen, 2014; Liptak and Cohen, 2014).

Nevertheless, from a broad perspective, we could conclude that as a result of internal changes in the administration, current US foreign policy is based on a broader rights-based, developmental and civil-society approach. This approach is more similar to the European style of democracy promotion, all of which may foster a closer partnership between the two regions in this area.

The Transatlantic Dialogue: Reinforcing Co-operation to Promote Democracy and Human Rights Globally

Improved dialogue between the US and the EU is essential to deploying coordinated efforts for human rights and democracy promotion both bilaterally and globally. Within the relationship between the two, democracy has fallen from the transatlantic agenda in the last two decades, with dialogue focusing primarily on economics and foreign and security issues. Nevertheless, this situation is expected to change as a result of recent adjustments in both partners' policies. Indeed, with current US foreign policy reflecting a broader rights-based, developmental civil-society approach and with the EU's new focus on sustainable democracy, based on political criteria and support for civil society, there is a political basis for increased co-operation in this area.

Towards Greater Convergence and Co-operation in the Transatlantic Partnership

The US and the EU established diplomatic relations in 1953, but co-operation was officially formalised in November 1990 with the Transatlantic Declaration. As of December 1995, the New Transatlantic Agenda provides the basis for an increasingly broader and more fruitful partnership. Co-operation at multilateral level (such as at the UN and other forums) is also included in the bilateral agenda. The main areas of work have traditionally been economic policy (trade, regulation, competition), security issues and democracy and human rights (Díaz, 2012). In this last domain, however, transatlantic dialogue has mostly been relegated to a lower level of technical policy. In addition, over the recent years of economic crisis in the US and the EU, trade and economic relationships have been prioritised over human rights in the bilateral partnership. Nevertheless, geopolitical shifts arising out of the emergence of potential democracies in North Africa and other Arab states are currently leaving their mark on the content of transatlantic dialogue in this area.

Indeed, a shared, long-term approach respectful of home-grown political developments and encouraging sustainable economic growth seems to be emerging as a joint tool for re-launching transatlantic co-operation. Both partners seek to favour long-term democratic systems by providing support primarily for bottom-up initiatives from civil society. Another

priority – and a substantial part of their strategy to generate political self-confidence – is to achieve sustainable economic development that provides employment and housing. In line with these attempts, for example, both the EU and the US have long supported pro-western democratic movements in Ukraine and have made contributions through the International Monetary Fund (IMF).¹³ Likewise, US-EU dialogue on long-term support for democratisation mainly focuses on countries which the EU has identified for implementing its Agenda for Action on Democracy Support, particularly in the Middle East and North Africa (MENA). The new scenario in this region undoubtedly provides broad scope and opportunities for democratic and human rights reform. US and European views on the region have been closely aligned since the onset of the ongoing political changes. They both share a common vision of the political and economic direction they would like to see the region evolve, toward democratic norms, more equalitarian societies and open market economies (Harbors, 2015). Nevertheless, in some cases both partners have not been able to coordinate their policies, ending up in visible contradictions, such as in Egypt, where following the military coup that toppled President Mohamed Mursi, US cut part of its aid, while the EU maintained the same amount (Dworkin and Michou, 2014). Therefore, both partners should coordinate efforts and actions in order to develop a coherent joint strategy that encompasses the whole region, including the Gulf regimes, by reaching out to governments of countries already in transition. In this sense, some existing forums, such as the Deauville Partnership with Arab Countries in Transition, which already provides a platform for political and economic dialogue, could be exploited by the EU and the US to implement their democratisation joint strategy.

Likewise, in consistency with their new, common approach, the strategy of the US and the EU should include encouragement of greater economic integration within the MENA. Specifically, when offering conditionality-based aid, the US and the EU should pursue the ‘more for more’ approach introduced by the EU in its revised ENP. This common approach will be critical if both partners aim to encourage trade and investment in the MENA and the Gulf region in the framework of their future Transatlantic Trade and Investment Partnership.

Finally, beyond annual meetings and punctual co-operation in imminent crises, the establishment of joint institutions to address permanently democracy and human rights issues, as there are in other domains, could foster a more sustained co-operation in this field.

This enhanced co-operation will also entail working together in multilateral forums.

Transatlantic Co-operation in Global Forums: Supporting Normative Processes in Multilateral and Regional Organisations

In an increasingly multilateral world, with economic and political power shifting eastwards and southwards, the US and the EU have no choice but to reinforce their partnership in order to maintain their position as leaders in upholding human rights and democratic values globally. In fact, multilateralism itself is currently being challenged; classic universal institutions, like the UN, created in the aftermath of World War II, are coming to be considered obsolete

¹³ Treasury Secretary Lew on Economic Program for Ukraine, available at: <http://iipdigital.usembassy.gov/st/english/texttrans/2014/05/20140501298600.html#axzz37H0vPOdn> (accessed 13 March 2015); European Commission (2014) Memorandum of Understanding on Macro-Financial Assistance Programme for Ukraine, IP/14/488, 28 April.

and inadequate to address current global challenges. In their place, regional arrangements, functional state groups and informal solutions have emerged. As a result, increasing global interdependence, political fragmentation of the international community, and new rising powers, of which not all have a democratic profile, pose a serious challenge to human-rights legal building (Maull, 2011).

Indeed, part of the world is currently living through what has been called a ‘global political awakening’, which is challenging the old powers’ ability to influence the international order (Brzezinski, 2012). In this sense, despite a growing global desire for democracy, this political activism is not necessarily driving the world towards liberal democracy. A clear illustration can be found in the Arab uprisings, which were welcomed by both the EU and US but which are also challenging their policies; many countries in the region, including Egypt and Algeria, are actively seeking emancipation from western influence and norms (Denison *et al.*, 2013). In addition, the increasing assertiveness of authoritarian capitalist countries, such as China, has broken the link between liberal democracy and economic development. China and other emerging powers, such as Russia, Iran and Saudi Arabia, are currently offering loans, investment and trade opportunities without imposing any democratic commitment on recipient countries (Denison and Dworkin, 2010). Worse still, some authoritarian regimes have also learnt to manipulate the democratic institution in order to give an appearance of genuine political legitimacy (Schedler, 2010).

In this new context, the need for co-operation in defence of shared political and democratic values is critical. As noted above, such co-operation already exists at a practical level; in cases of urgent intervention, American and European diplomats regularly join forces to pressurise governments or support popular democratic movements, as they did in Libya in 2011 and Ukraine in 2014. In multilateral forums, such as the UNHRC, the Organization for Security and Co-operation in Europe (OSCE)’s Conference on the Human Dimension, and the more informal meetings of the Community of Democracies, European and American representatives usually co-operate smoothly on practical matters. For example, through UN human rights bodies they have pressed for an end to – and accountability for – the grave human rights abuses in Syria, South Sudan and Ukraine.¹⁴ Likewise, through the Working Group on Enabling and Protecting Civil Society, within the Community of Democracies, the US and several EU Member States have participated throughout 2013 and 2014 in a large number of initiatives which focus on protecting civil groups in Mali, Tunisia and Botswana¹⁵.

At present, with the Obama administration’s commitment to multilateralism, there is a renewed impetus on the American side, in particular, for effective engagement on international forums. But a new transatlantic strategy must look beyond defending democratic norms against alliances of non-democratic or authoritarian regimes in global forums, such as the UN or the OSCE. In this line, both partners could play a leadership role in promoting shared principles for democracy and human rights assistance, including a common vision for reinforcing the national democratic processes within development co-operation frameworks.

¹⁴ Information available at: <http://www.wfuna.org/news/un-human-rights-achievements-in-2013> (accessed 13 March 2015).

¹⁵ Information available at: <http://www.community-democracies.org/Working-for-Democracy/Initiatives/Governmental-Bodies/Working-Group-on-Enabling-and-Protecting-Civil-Soc#Membership> (accessed 13 March 2015).

Another line of transatlantic co-operation might consist of supporting normative processes within regional organizations. Such organizations have enormous potential for embedding human rights norms in different parts of the world. The willingness shown by some of them, such as the African Union and the Economic Community of West African States (ECOWAS), to react against undemocratic behaviour and serious human rights violations is very positive (Aning *et al.*, 2012). However, the process of establishing regional systems of human rights protection is currently uneven, particularly in Asia and the Middle East. For example, the Arab League has the Arab Charter on Human Rights which could become a useful human rights tool in coming years¹⁶. Likewise, the Organization of Islamic Co-operation (OIC) adopted the Cairo Declaration on Human Rights in Islam in 1990¹⁷. In Asia, the Association of South East Asian Nations (ASEAN) has not adopted a specific charter on human rights, but it has established actions and mechanisms to safeguard them (ASEAN, 2009). The US and the EU have good relations with many of the member countries of these organizations. They could therefore support the development and capacity of regional human rights systems as a key complementary tool for UN norms and institutions and as a major path to promoting human rights and democracy globally.

The transatlantic agenda should also include political support for international human rights law, including relevant provisions of the UN Charter and the Universal Declaration of Human Rights. However, as we have already seen, the US is limited in this task by the fact that it has not ratified some key treaties itself. The EU is therefore likely to be more effective in leading advocacy on this issue. Notwithstanding, the US and the European states could find new ways and improve their co-operation within the UNHRC to exert leverage on states within their regional bloc. Finally, human rights violations committed by the US and the European states jeopardize their credibility in their dealings with the rest of the world in this field. In order to restore their credibility, both partners need to renew their own commitment to the international legal framework on human rights, while correcting recent practices that are detrimental to their human rights compliance records¹⁸.

Conclusions

Democracy and human rights promotion is a key component of the foreign policies of both the US and the EU, though America has traditionally focused on democracy and Europe on human rights. In addition, concepts of democracy and human rights promotion have been divergent, the American definition being more ideologically liberal, the European more orientated towards social-democracy. Over the last ten years, both parties have made changes to their respective policies. In the US, changes are mainly determined by changes in the administration, while recent modifications in the EU have primarily come in response to social uprisings in its neighbourhood. There have always been notable ideological differences between the two players, but the Obama administration's current approach, explicitly linking human rights to development policies, has brought European style to American attitudes.

¹⁶ It was adopted in 2004. An English version is available at: [http://www.acihl.org/res/Arab Charter on Human Rights 2004.pdf](http://www.acihl.org/res/Arab_Charter_on_Human_Rights_2004.pdf) (accessed 13 March 2015).

¹⁷ Text available at: <http://www.refworld.org/docid/3ae6b3822c.html> (accessed 13 March 2015).

¹⁸ For instance, the indefinite detention of suspected terrorists in Guantanamo by the US or the deportation of irregular immigrants by some European states.

This evolution has taken place against an increasingly complex global backdrop. On the one hand, there are non-democratic states with entrenched regimes, which make democracy and human rights promotion, either at bilateral or multilateral level, a challenging task. On the other, in terms of international relations and balance of power, the world has become multi-polar in the last 20 years. Nevertheless, the realm of human rights and democracy seems not to be as multi-polar. Indeed, though sharing their influence with other players, one could, in an overall overview of the international context, argue that the US and the EU remain the main actors, if not in terms of effectiveness, at least in terms of their willingness and capacity to commit themselves to the issue. As yet, there are no other states with the drive and the resources of the US and EU. Consequently, the EU and the US still have the potential to wield a powerful degree of leverage, in particular on democracy, human rights and development.

To this end, the definition of a joint strategy within the transatlantic partnership could increase their potential for action, now that their policies converge on certain topics, such as support for civil society and linking human rights to sustainable democracy. However, a truly transatlantic co-operation in this area will require the establishment of common institutions that may ensure permanent dialogue and policy coherence within both their bilateral relationship and the multilateral forums.

Beyond occasional co-operation, a sustained transatlantic partnership may be achieved in areas on which the two partners most agree, such as bringing pressure to bear on all countries to observe the tenets of the Universal Declaration on Human Rights, or working with representatives of local civil society in countries where they can provide democracy assistance. The US and the EU could strengthen their links within the UNCHR, establishing dialogue with new democracies and preventing election to the UNCHR of countries with records of human rights abuse. Potential partnership with other democracy and human rights promoters may also become an effective tool to counteract some authoritarian countries. Finally, supporting existing and emerging human rights regional systems could also prove fruitful.

The evolution of the current economic recession, the role of new rising global powers and political developments in the MENA region and at the EU's eastern borders will be key factors that will affect the extent and degree to which the US and the EU promote democracy and human rights within their foreign policy and in their bilateral relationship. As far as the EU is concerned, however, the greatest obstacle to a renewed EU-US partnership are the internal divisions on foreign and security policy, an ambit retained under national sovereignty despite institutional and functional reforms introduced by the Lisbon Treaty. A serious debate is therefore needed in Europe as to which foreign and security issues are considered truly important for the EU in transatlantic terms and can therefore be collectively presented by the EU and the US as a basis for a renewed transatlantic agenda on democracy and human rights.

Finally, the EU and the US need to continue to safeguard democracy and human rights at home in order to have legitimacy and credibility. Leading by example in this area is the best contribution both partners can make to the well-being of American and European society, their bilateral partnership and the world.

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