Διεθνές Δίκαιο

EU GOVERNANCE ON GLOBAL EMERGENCIES – EFFECTS OF GLOBAL EMERGENCIES TO EU LEGAL ORDER- THE SOLIDARITY CLAUSE- THE HUMANITARIAN AID AND POLICY: LEGAL, INSTITUTIONAL AND POLITICAL ASPECTS

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1. INTRODUCTORY REMARKS

a. The EU As a Global Actor : Human rights and EU crisis management

Aside from its foreign policy, the EU in itself, as a coordinating institutionalized framework among national entities, exerts a bottom-up influence on its near and far external environment.

Seeking to play a more active role in global affairs, the EU has developed a Common Foreign and Security Policy (CFSP) and a Common Security and Defense Policy (CSDP).

On many foreign policy and security issues, the 28 EU member states exert a powerful collective influence.

On the other hand, some critics assert that on the whole the EU remains an economic power only, and that its foreign and security policies have little global impact. Some of the shortcomings in the EU's external policies stem from the inherent difficulties of reaching a complete consensus among the member state governments. Moreover, past institutional arrangements have often failed to coordinate the EU's full range of resources.

However, we are obliged to respect the position that the European Union is growing in importance as a global security actor due to its engagement in more than 20 civilian and military crisis management missions under the auspices of the European Security and Defence Policy.

One of the EU's policy goals and biggest challenges ahead is to channel human rights into all phases and aspects of crisis management.

The successful mainstreaming of human rights in EU crisis management missions is essential for the Union's credibility as a global security actor and therefore for its international legitimacy.

The mainstreaming of human rights adds a new dimension to the promotion and protection of human rights through the European Union.

Internally, the European Union is based on the protection of fundamental rights, democracy and the rule of law.

Driven forward by dynamic judgements of the European Court of Justice, fundamental rights are recognised as representing general principles of Union law that have to be respected not only by EU institutions but also by the member states.

Externally, the EU also has been active in the promotion of human rights through various instruments, including human rights clauses in agreements with third states.

Although being part of the EU's external human rights policy, the mainstreaming of human rights into European security and defence policy is not primarily concerned with the solving of critical human rights situations as such.

The concept rather is about incorporating human rights considerations in all aspect of crisis management operations in order to ensure that the EU and its various actors themselves respect human rights in the actual undertaking of an EU mission; thereby contributing to the success of an operation.

Put differently, with the concept of mainstreaming of human rights, the EU reacts to the potential danger of human rights violations either witnessed or committed during an EU operation.

For example, EU personnel need to be educated in order to act in an appropriate way if they get information on human trafficking, witness the discovery of a mass grave or are faced with child soldiers.

If the EU would not live up to its own proclaimed standards of human rights protection, it would not only jeopardise the success of its missions

but, it would also weaken its credibility as an international actor, capable of loosing its international legitimacy in the long-run.

The implementation of mainstreaming of human rights into crisis management operations (ESDP operations) is viewed as one of the EU's biggest foreign policy challenges ahead.

b. Adaptation of EU External Policy to technical areas and especially to humanitarian actions

The Common Foreign and Security Policy is based on unanimous consensus among the member states.

CFSP is a mechanism for adopting common principles and guidelines on political and security issues, committing to common diplomatic approaches, and undertaking joint actions.

Many analysts argue that Europe's relevance in world affairs increasingly depends on its ability to speak and act as one.

The EU is currently conducting 16 operations under its Common Security and Defence Policy.

To establish a more robust CSDP, EU member states have been exploring ways to increase their military capabilities and promote greater defence integration. These efforts have met with limited success thus far. Civilian missions and capabilities, however, are also central components of CSDP; the majority of CSDP missions have been civilian operations in areas such as police training and rule of law.

External policies in technical areas such as trade, humanitarian aid, development assistance, enlargement, and neighbourhood policy are formulated and managed through a "community" process at the level of the EU institutions.

In contrast to the intergovernmental nature of CFSP and CSDP, many common external policies are formulated and managed under the EU's supranational "community" process. In areas such as trade, aid, neighbourhood policy, and enlargement negotiations—what some

observers call the "technical" aspects of external relations—the member states have agreed to pool their sovereignty and decision making at the level of the EU institutions. Accordingly, EU external policies are most integrated and firmly established in these areas.

In general, for issues in these areas the member states mandate the European Commission to act as the policy initiator or the lead negotiator with an outside country. External agreements and legislative or funding proposals must be approved by the member states in the Council of Ministers and by the European Parliament. Approved measures are then implemented and managed by the European Commission.

(Note: The European Neighbourhood Policy seeks to deepen the EU's relations with its southern and eastern neighbours while encouraging them to pursue governance and economic reforms.)

These are the EU's most deeply integrated external policies.
Given events in North Africa, the Middle East, and some of the former Soviet states, EU policymakers have been rethinking how such external policy tools might be used to better effect.

The Commission is divided into departments called directorates-general (DG). Each covers a portfolio of issues, and each is headed by a commissioner. The DGs are, in effect, the EU's executive departments and agencies, and the commissioners are comparable to U.S. department secretaries or agency heads. There are four Commission DGs with a distinctly external focus:

trade, humanitarian aid, development, and enlargement.

The High Representative is responsible for coordinating the external dimensions of the commission's activities—she absorbs the former job of Commissioner for External Relations, and the former DG for External Relations has been folded into the European External Action Service.

The High Representative is also responsible for coordinating the Commission's external policies with CFSP and CSDP.

The President of the European Commission, José Manuel Barroso, is the highest authority in representing its policies. As with Van Rompuy in the intergovernmental sphere, Barroso may be considered the voice of the EU's "community" policies at the heads of state or government level.

As is also the case with regard to CFSP, the High Representative is the key voice of Commission external policies at the ministerial level, although the other commissioners carry comparable weight within their areas of responsibility.

The member states and institutions of the EU have agreed to detailed frameworks and sets of principles that affirm humanitarian aid and development assistance as key elements of external policy. The EU is the world's largest aid donor (Commission funds plus bilateral member state contributions), accounting for more than 40% of official global humanitarian assistance and over half of official global development assistance.

The European Commission's Humanitarian Aid and Civil Protection directorate-general (DG ECHO) manages the delivery of emergency EU assistance in crisis situations created by armed conflict or natural disaster. The European Commission spends an average of €1 billion (about $1.28 billion) per year through DG ECHO. The initial DG ECHO budget for 2013 is €856 million (approximately $1.1 billion), with more than half programmed for sub-Saharan Africa.

The EuropeAid Development and Cooperation directorate-general designs EU development policies and delivers assistance geared toward longer-term issues such as poverty, hunger, health, education, and governance.

c. The Lisbon Treaty's contribution

The Lisbon Treaty that took effect in December 2009, introduced changes designed to improve the coherence and effectiveness of EU external policies, by enhancing the coordination between these two strands. The

treaty set out to remedy **three main weaknesses** that analysts had identified with regard to EU external policies and the EU policymaking process.

First, while consensus does exist on many issues, achieving political agreement among 28 member countries can be inherently difficult. Differences between the member states can leave the EU with a thinly developed policy or with no common policy at all. A lack of consensus and direction can hinder the development of longer-term strategic approaches to an issue or region.

The absence of a common policy can breed confusion if the EU "speaks with many voices" as national leaders express their own views and preferences.

Second, critics regularly asserted that EU foreign policy tended to suffer from insufficient institutional coordination and coherence. Too often, it is argued, the intergovernmental and supranational strands of external policy had not been linked in a meaningful or complementary way. According to this view, the EU has punched below its global weight because it did not fully leverage the considerable array of policy instruments at its disposal.

Third, prior institutional arrangements—namely, the former prominence of the rotating six-month national presidencies in external affairs—were susceptible to shifting priorities, with results sometimes detrimental to policy continuity.

2. GLOBAL AND EU GOVERNANCE: AN INNOVATIVE AND INTERACTIVE MANAGERIAL SYSTEM
Balancing exercises or stunts for a global system or inter-regional systems?

While detailing the variations in institutionalization and providing an assessment of their different impacts, the chapter highlights common

features, aims and emerging problems within the EU's interregional arrangements.

For example, to what extent is the '*mirror-effect*' of inter-regionalism - as reflexively strengthening the EU's own regional common identity – undermined by the growing number of *'Strategic partnerships'* with individual large countries (such as Brazil and China)?

Are they an inevitable consequence of the maturation of the EU as a leading global actor?

How do interregional relationships interplay with bilateralism and global governance?

How are the multidimensional agendas, including political dialogue, about to evolve?

Of course, a growing political actor is expected to establish special bilateral and comprehensive relationship with the biggest global and regional states. The EU has thus established '*strategic partnership*' with China, Japan, India, Brazil, Canada, Russia, and the US. We recall that China, Brazil, India and Russia form the BRIC system (four countries which are all deemed to be at a similar stage of newly advanced economic development). Furthermore, varying ways to regional cooperation imply difference in the nature of the interregional relations with the EU.

The next stop of our reflection is the European Union's contribution to global governance and its relations with other continents and regions.

In our view, a crucial question is, at this level:
To what extent and how does the sombre legacy of national history still matter with regard to the role of EU in the world?
And our arguments to answer to this question:

Over the last five centuries, European states have profoundly shaped the world.

On the one hand, through colonization, empire, exporting the model of nation-state; thus ensuring that mainly intra-European conflicts became the background of two tragic world wars.

On the other hand, multilateral trade underpinned capitalist development, the spreading of culture, ideas and political philosophies, amongst which including democracy and human rights.

The growing relationships between the EU and its abroad are still ambiguously affected both by Eurocentric tendencies reminiscent of past domination, as well as by novel features and distinctive aims, which underpin new partnerships at the bilateral and inter-regional level.

This poses the question of the existing balance between continuity and discontinuity?

We adopt an innovative hypothesis: what matters when considering the nature of the EU's contribution to global governance is that within only fifteen years - from 1945 to the '60s - almost all European states experienced the harsh realities of defeat, either as losers in WW2 or as colonial powers because of the decolonization process.

It is time, therefore, to justify, why we have taken up the concept of 'global governance' as a shared communication tool.

'Global governance' is a familiar concept in multidisciplinary literature, which this report – avoiding the ideological euphoria of the 1990's - seeks to interpret beyond the trivial opposition between the emerging decentralized and informal forms of governance and the declining traditional institutionalized state-centric government of political and security issues. Understanding to what extent global governance could be driven by economic globalization and complex interdependence will be crucial in defining the EU's future status as either a leader or a marginalized international player.

As for the scope and efficiency of the EU's impact on global multilevel governance, is it about to increase or decline? We share the hypothesis that since WW2 and in particular following 1989 the European role has been increasingly significant.

However, in spite of its recognized spontaneous bottom-up influence, the EU's actorness and its incipient contribution to a more stable continental and world order is still not convincing enough to answer such a question without qualifications.

A comparative evaluation should allow for a discriminate understanding. *Firstly* according to varying geographical and policy agendas, first and foremost amongst which: the various priorities associated with the surrounding regions; the new strategic partnerships with the BRICs and other overseas regions; the transatlantic relation; and the future of the UN and Bretton Woods institutions.

Secondly, bearing in mind the broad variety of concerned policy fields, variations are particularly wide: from economy to trade; from human welfare to defence; from environmental standard-setting to security issues. Even the mix, between spontaneous attraction and incentivized persuasion on the one hand; and coercion (through multiple clauses of conditionality, commercial sanctions, or peace-making measures) on the other, varies significantly in keeping with both geographical agenda and policy field.

Throughout this comparative impact evaluation, a twofold horizontal question emerges:

Which are the internal causes of success and failure?

And what influence should be attributed to external variables, namely changes within the heterogeneous international system?

We will in turn focus on the near abroad and the far abroad agendas, while distinguishing between the regional and global levels, as well as between civilian governance and political regulation.

The first approach is dictated by the enlargement process, the EU conditionality, the neighbourhood policy, the multilateral/ bilateral association agreements and partnerships.

The second case is devoted to the study of the political credibility of the EU's contribution to global governance within the international system; this contribution is founded on the consolidation of the peaceful settlement of a historically extremely turbulent region.

Despite overarching dramatic changes within the global environment, the EU stands out as a remarkable source of peace.

Through its absolute existence within the changing international system, the EU constitutes a factor of stability and exemplifies successful management of globalization, consolidation of democracies, and prevention of political conflicts.

What makes the most significant difference is that the EU focuses the partner's attention away from the eternal truths of national sovereignty, and onto the changes affecting the conditions under which said sovereignty is exercised.

In order to better summarize the input of this course, we break down the new challenges facing the EU into three sub-questions:

1°- is the EU's experience a relevant '*model*' for regional governance elsewhere?

2°- Are the EU's policies relevant for international organizations and global governance mechanisms?

3°- Is the EU's fledging power pertinent with regard to future evolutions of the interstate-system?

The first sub-question already benefits of a large international and multidisciplinary comparative literature on regional cooperation.

It has shown that in every continent there are diffused, internal and international factors, as well as endogenous and exogenous pressures, favoring a continent wide dissemination, deepening and enlargement of regional groupings among neighbouring states.

All these factors foster regional cooperation worldwide. Regionalism is a structural and multidimensional feature of global governance, and thus the international society has become increasingly regionalized.

The EU offers the most advanced laboratory for institutionalized regional cooperation and integration to date.

About the second sub-question, we consider that whatever our forecast regarding the relevance of new regionalism, it is however quite evident that the global governance and world order of the 21st century will not simply emerge out of a sum of regional entities, neither as far as security challenges nor as civilian issues are concerned.

The regional entities are too various and still far from including all the major global players in a sufficiently binding way, to make overcoming and substituting the global level of regulation a plausible prospect.

The EU's role is very relevant although laden with several astonishing paradoxes.

On the one hand, the EU is not only underpinning the traditional economic and political international organizations;

but is also the main supporter of the new multilateral regime-building, started or revised after the end of the cold war - i.e. OSCE, WTO, ICC, Kyoto Protocol, multilateral environmental Treaties and post-Kyoto process, UN global conferences (from Monterrey to Johannesburg), etc.

More broadly speaking, the EU's support for international organizations includes the entire scope of their role and functions from cooperation/coordination (all the international organizations), to conflict management (UN, IMF, WTO), to political confrontation (UN Charter, chapter VII) in extreme cases.

On the other hand, the European states (rather than the EU as such) clearly share a large responsibility in the failure of the UN Security Council reform of 2005/06 and the shortcoming of the WTO Doha Development Round in 2006/08.

Furthermore, the IMF micro-reform of 2008 cannot hide the still anachronistic asymmetrical representation of the IMF, where not only US has a *de facto* veto power but, for example.

Belgium's weight is heavier than that of India, and European countries with less than 10% of the world's population have 60% of the voting rights.

European states share huge responsibilities in the still poor results in the fight against poverty and underdevelopment. All in all, the European states

have failed to address the legitimacy and efficiency gap within the present global network.

According to many observers, contrary to its discourse, Europe's image is deteriorating because of its contradictory practices. At times, the EU appears as follows: similar to the US, a kind of '*hub and spokes model*' rather than combining its particular regional interests with the universal ones in a more credible and acceptable fashion.

Is the EU a relevant, but particularist and egoistic player, acting in contradiction with global rules, and its own universal values;

or is it, despite the oscillations of member states, a forerunner and even a fledging agent of institutional innovation at the global level striving towards enhanced efficiency and legitimacy?

In the light of the third sub-question, we ask what of the EU within the international political system? Here we broach the third challenge: **the EU's political impact on the alternative, competing, world orders.**

If we opt for approaching the EU facing competing models of global governance and world order, we try to interpret the concept of '*global governance*' that is challenged by the high international political stakes emerging within a still asymmetrical and heterogeneous system of world politics.

The challenge is how to better grasp the post-Cold War global system, notably by explaining the crisis of the multilateral network itself, which has had previously been quite successful for several decades.

Furthermore, a historically important legacy, the multilateral system created after World War II, is being tested both by the contemporary efficiency deficits and legitimacy gaps, as well as by an increasingly unequal and varied process of globalization.

But for this third challenge, there is also another path that will allow us to know EU leadership and power. **The starting point is the global governance and the terminus is the world politics.**

To cross this path, it is possible under certain conditions that could define the EU mature from a pre-political patchwork-like actor of multilevel global

governance towards a co-leadership role within a multilateral regional and global order. But, we have to know the main variables:

This virtuous scenario, which is rooted in various important existing multilateral tendencies, is still in part *terra incognit*a, a not yet clearly defined territory.

It firstly depends on the readiness of states, including greater states, to cooperate in a more binding way, even in the absence of traditional hegemonic power clearly underpinning financing and fostering cooperation.

We agree that the European Union cannot afford to retreat from the world, and that it cannot limit its responsibilities and role by a mere down-graded, pre-political, kind of regional governance.

However, while a just and legitimate '*world government*' remains a more or less utopian perspective, this approach is characterized by situating the European Union international actorship within the real context of the vast evolving network of regional, national and global institutions, trans-national agencies and actors, which are currently dealing with the complex regulation of the common affairs of humanity. An enhanced role for the EU in global governance and a new multilateralism is presented as two sides of the same coin.

Regarding the evolution of the inter-state cooperation system itself, the existing multilateral governance institutions already entails very diverse degrees of delegation of power and functions, including rule-setting at various levels of institutionalization: from simple informal arrangements to international single issue regimes (with common rules and procedures), up to reformed or newly established regimes and organizations.

The legitimacy of the decision-making process, the participation of citizens and stakeholders vary as well, according to the different institution and policy field.

Only a scenario of real progress in multilateral and multilevel global governance is compatible with the emergence of the EU as a regional and global leader, or more exactly as a co-leader. The EU is essentially interested in multilateralizing the multipolar tendencies, by including new and old powers within institutionalized cooperation networks.

To become a full co-leading actor, the EU has to further develop its current feature as an incipient power of an unprecedented kind. It is irrefutably a global player, in several policy fields, and even the first or second global actor in some. The emerging European power is neither the one of an intrinsically hierarchical Empire, nor that of a '*world running*' superpower, or a fledging hegemonic power. When looking at the next decades, it could ultimately only evolve as a form of shared leadership that is a part of a collective multilateral leadership system. In other words, the EU can only be conceived as a '*collective power.*' By '*collective power*' we mean a power acting both on behalf of a multilateral entity as well as globally, so as to strengthen multilateral cooperation, coordination and communication at the regional and global level. The concept of '*normative power*' plays an important role in the international debate surrounding the distinctive identity of the EU and its perception by others. This concept seeks to combine the Union's norm setting function with both the material, social and institutional backgrounds of the EU's external influence and '*structural foreign policy.*' The limits and paradoxes of its international action (mentioned above) are also addressed. The notion of a '*civilian power*' - contrary to the ones referring to a '*civilizing*' or '*normative power*' - appears best suited to comprehensively include all crucial variables: the interplay between EU and the various national foreign policies; the constraints on the external consistency with regard to internal policies, among which socio-economic cohesion; the memory of the past tragedies and defeats; the effective external economic and technological impact; the limits of disposable effective capacities; the evolving, but highly decentralized institutional framework; the limited concentration of decision-making in foreign policy; or the difficult trade-offs between the open-ended enlargement process and the neighbourhood.

3. EU crisis management ways in relation to global Challenges and their impact on International Humanitarian Action

Humanitarian stakeholders are increasingly concerned about the impacts of current or emerging global challenges, such as climate change, the food crisis and financial crises, extreme poverty, urbanization, water scarcity, energy security, migration and population growth, on the caseloads that humanitarian agencies work with and the operational environments they will have to work in.

While anticipating the evolution of these challenges – propelled by various political, economic, legal, demographic, environmental, and technological factors – is a complex task at best, it is clear that their individual and combined impacts are already shaping, and will continue to shape international humanitarian action.

In order for international humanitarian actors to be able to plan and react accordingly, they should consider two main questions:

• **Caseloads:** In what ways do today's global challenges impact emerging humanitarian needs?

• **Operational Environment:** How will today's global challenges impact the environments in which international humanitarian actors will operate?

These reflections emphasize on three main conclusions for further discussion and debate:

(1) The humanitarian community may need to broaden its notions of vulnerability and risk, reconsider what drives a humanitarian emergency and, subsequently, what triggers an international humanitarian response. A new type of humanitarian emergency may emerge: one not caused by a definable event or process, but rather by the confluence of global challenges;

(2) While traditional inter- and intra-state conflicts will continue, insecurity will also stem from instability and violence driven by the intersection of non-traditional threats from natural resource scarcities, volatile markets, and structural trends, such as urbanization and extreme poverty tipping-points; and,

(3) There will increasingly be a need to transcend traditional definitions of what is 'humanitarian' and what is 'developmental' to advance toward more integrated country plans and partnerships that look to simultaneously promote actions that increase resilience in the short-term and reduce overall vulnerability in the long-term.

The term 'global challenges' will be defined as any major trend, shock, or development that has the potential for serious global impacts and thus to create humanitarian needs and change the environments in which humanitarian actors will operate in coming years.

Below is a non-exhaustive list of global challenges we have identified:

• **Climate change:** With a predicted increase in temperature that will indirectly lead to the disappearance of territory, spark widespread (and, in many cases, permanent) displacement (already 20 million people are estimated to have been temporarily displaced by climate- related disasters in 2008, a comparable number to the 26 million conflict-related IDPs in the same period), change morbidity disease patterns, and promote a monumental shift in global policies, climate change will fundamentally transform the way humanity approaches global security and livelihood sustainability.

• **Extreme poverty and inequality:** With a marked increase in extreme poverty and profound inequalities of income and wealth plaguing most nations (as approximately half the world's population lives on less than 1% of its wealth), extreme poverty and inequality continue to leave whole communities and households in an almost irreversibly devastating state of vulnerability and need.

• **Financial and economic crisis:** With the world economy now predicted to contract by 1.7%, remittances which accounted for some 2% of the major developing countries' GDP in 2007 having decreased to 1.8% in 2008 and falling by an additional 0.9% this year, private capital flows dropping by some $700 billion compared to previous years, and an additional 90 million people being pushed into poverty, the financial and economic crisis is leading to unemployment, an increase in poverty, and the curtailment of critical safety-nets, thereby threatening an even larger caseload in need of humanitarian assistance.

• **Food crisis:** With over 1 billion people worldwide (one-sixth of the world population) suffering from hunger, over 30 cases of food-related unrest having erupted around the world since 2008, 25,000 children dying daily from malnutrition, 2 billion people currently suffering from micro-nutrient deficiencies, local food prices in most developing countries being too expensive for hundreds of millions of people, disputes over depleting land resources, and projections that by 2025 food production will not be able to increase by the necessary 50% over current levels to keep up with population growth, the food crisis will continue to threaten lives and livelihoods worldwide.

• **Water scarcity:** With the number of people who do not have access to safe water rising just over 1 billion to 2 billion by 2025 (roughly one third of the world population), water scarcity represents a major political, economic and human rights issue driving vulnerability and conflict.

• **Energy security:** With the projected one and a half times increase in energy demand by 2030, energy security could cause supply-side gluts stoking fears of scarcity and reigniting geopolitical rivalries, whilst also providing the impetus to invest in renewable energies.

• **Migration**: With the potential for hundreds of millions of people forced to uproot their lives and rebuild them across borders, continents and oceans, migration will be one of the biggest challenges both within and across borders.

• **Population growth and demographic shift**: With a population that will grow from 6.7 billion today to over 8 billion by 2025, and the number of

people aged over 65 rising from 390 million now to 800 million in the same time frame, population growth and demographic shifts will put massive strains on global resources and institutions.

Localized demographic trends will also be a source of challenges: the number of 15 – 24 year olds in the Middle East and North Africa region is unprecedented and set to rise as a proportion of population. (In an extreme case, the Palestinian Territories are set to see an 84% increase in youth population between 2005 and 2025.) This trend, combined with the MENA region claiming the highest youth unemployment rates in the world, may be a source of further regional insecurities.

• **Urbanization**: With an urban population that will double in Asia and increase by 150% in Africa between now and 2050, urbanization will create massive social inequities and risks as well as tangible health problems, malnutrition rates, unemployment, and income deficits, which represent an almost permanent threat to the security of billions.

• **Health pandemics and infectious diseases**: With projections that any large-scale influenza pandemic could result in from 2 up to 60 million potential deaths, and the discovery that infectious diseases that have been controlled historically are now demonstrating increased virulence, changing incidence, and shifting vectors of transmission, health pandemics and infectious diseases threaten to further degrade the lives of many, potentially increasing feelings of injustice and amplifying the pressures on weak and fragile states.

In most cases, these challenges are not unfolding *sui generis*. A number of underlying economic, legal, social, environmental, and technological factors, as well as geopolitical developments, will influence or mitigate the impacts of the challenges on states, communities, and individuals.

For example: *politically*, we are now witnessing a widening of power with the rise of the BRIC countries, and a shift in the direction of U.S. foreign policy; economically, we are seeing larger gaps in inequality, continued commodity price volatility, changing patterns of trade and donor relations, and the widening of economic governance beyond G8 countries;

legally, there are new norms and laws being developed; socially, we are seeing rising demands from a growing middle-class and new calls for corporate responsibility and accountability;

environmentally, there is increasing natural resource degradation and loss of soil fertility;

and, *finally, technologically*, there is growing entrepreneurialism and technological innovation.

It is clear that the relationship between the challenges and factors is a complex one whereby each contributes to shaping and influencing the other.

In some cases, these factors demonstrate how populations can adapt and strengthen already existing coping mechanisms to address these global challenges.

However, it must also be anticipated that the speed and sheer magnitude of some of these challenges, their current confluence, and their often cumulative effects will progressively widen the gap between coping mechanisms and humanitarian impacts, thereby contributing to a net increase in vulnerability globally, but particularly in those countries already affected most by a lack of capacity and resources and incidences of conflict or disaster.

Over recent decades, an increasing emphasis has been placed on the importance of the coordination of humanitarian response. When

emergencies occur coordination is necessary. Good coordination means less gaps and overlaps in the assistance delivered by humanitarian organizations

These efforts were based partly on the assumption that no actor could afford to work in isolation if we wanted to reach the population in need as efficiently as possible.

These efforts have produced certain results, even though they may be imperfect.

The humanitarian response system is now arguably more structured and more accountable than it was before.

To a certain extent, the above challenges identify the need for the humanitarian response system to adapt to a new environment.
Possibly the most important aspect of this process will be to encourage an attitudinal shift.

This humanitarian coordination will be needed to help the international humanitarian system step up to its capacity to synthesize and to act on a wider base of knowledge and information on drivers of emergencies.

Humanitarian coordination must move past focusing on 'reactive,' 'event-driven' analysis and do away with the somewhat artificial dichotomy of preparing for and responding to humanitarian needs versus responding to developmental needs, as this approach often no longer aligns with global realities of what, when, and how people need emergency assistance.

Now that a more responsive, more or less well-functioning system is in place, it may be time for coordination to look ahead and become more flexible.

In addition, these coordination systems include more diverse actors and strategic partnerships; this means:

The structures, agendas and membership of our international humanitarian coordination systems will need to be assessed (characteristic example: **The Inter-Agency Standing Committee (IASC) that is the primary mechanism for inter-agency coordination of humanitarian assistance. It is a unique forum involving the key UN and non-UN humanitarian partners.**

The IASC was established in June 1992 in response» to United Nations General Assembly Resolution 46/182 on the strengthening of humanitarian assistance). It refers to the cluster approach. This approach concerns groups of humanitarian organizations, both UN and non-UN, in each of the main sectors of humanitarian action, e.g. water, health and logistics. They are designated by the Inter-Agency Standing Committee (IASC) and have clear responsibilities for coordination.

The international humanitarian community may need to find ways to work more strategically with non-traditional partners (e.g., development, scientific, financial, legal, governance agencies; regional organizations; religious groups; private sector; armed opposition groups and militaries).

In many cases, these actors are increasingly becoming larger stakeholders in international humanitarian response with whom we may need to develop more formalized relationships.

In addition, many of these actors (development, financial, and economic agencies) have the expertise and capacity to analyze longer-term structural trends and to operate in the emerging non-traditional humanitarian environments and with new and emerging caseloads (e.g., the urban poor, the elderly, highly-insecure environments, etc.).

Similarly, these partnerships will help the international humanitarian system stay aware and be able to take advantage of technological developments.

The nationalities and affiliations of the international humanitarian partners considered to be key stakeholders may also need to be broadened as humanitarian actors from advanced developing countries increase their contributions in monetary and in-kind terms.

They will more actively look for new roles as well as demand recognition and respect as a *sine qua non* condition for cooperation.

The distinctive EU concept of conditionality is thus challenged and questioned on account of its controversial impact and complex implementation.

Furthermore, our reflection on this concept assesses to what extent the EU's wavering between aid and trade on the one hand, and between multilateral (for example, the African, Caribbean and Pacific) and bilateral approaches (such as the Economic Partnership Agreements) on the other, are a long term feature of its development policy.

The EU's response to global governance emergencies (from poverty and underdevelopment, to the consequences of climate change and water shortage) is thus viewed in the light of the ambiguous impact of these fluctuations.

Most informed observers recognise that the word 'crisis' is over-used when it comes to the European Union.

The story of European integration has been most frequently described in terms of a perpetual sense of division, diplomatic wrangling and failure to meet targets and deadlines.

Similarly, the perceived failure of the EU to punch its weight in both global and regional geopolitics is often criticised.

Both as a 'soft power' and in its approach to harder security issues, the EU is often perceived by others as unstable, weak and ineffective.

While it is an undeniable fact that, in little more than fifty years, war between the European Member States themselves has become unthinkable, the Union's record in terms of 'crisis management' abroad, especially in wars waged in its neighbourhood, is indeed mixed at best.

In the international context, the word 'crisis' is widely understood as an acute situation in which armed force is (likely to be) used. The much broader 'conflict' is intended to denote every national or international situation where there is a threat or breach to priority values, interests and goals. The concept of 'conflict prevention' is thus to be understood as the adoption and implementation of measures that aim to impede the escalation of a non-violent dispute into a crisis.

'Crisis management' then refers to the organisation, regulation, procedural frameworks and arrangements to contain a crisis and shape its future course while resolution is sought.

'Conflict resolution' refers to efforts to impose a (partial) settlement in the case of a crisis and consolidate the cessation of violence. Actions meant to address the root causes of crises which have been resolved are dubbed 'post-conflict reconstruction and rehabilitation measures' or, perhaps again confusingly, 'peace building'.

European crisis management is comprised of all types of military and civilian ESDP operations, covering the whole life-cycle of a conflict reaching from conflict prevention to post conflict rehabilitation and covering the whole external dimension of security, across the different policy areas of the European Union, as well as a variety of economic, diplomatic and political tools.

In the EU context, the notion of 'crisis management' thus serves as a catch-all phrase for both military and civilian ESDP operations, whether they are deployed to prevent conflict from bursting into crisis, assist in enforcing the peace, keep the peace or build the peace.

The EU not only faces legal and political challenges in crisis management that forces it to explain its interpretation of public international law and redefine its approach to both unlike-minded countries, as well as powerful allies demanding a bigger input in operations elsewhere, it also has to ensure that internal political and administrative cohesion is maintained and that operational demands posed by big and increasingly hybrid missions in difficult and dangerous situations are met and are translated into successful action.

While these narrow definitions are in tune with the firm terminological distinctions employed in Article 17(2) of the current TEU and Article 43(1) of the new TEU, the dividing lines between the different categories are often blurred in practice.

For instance, the strategies and actions aimed at the stabilisation of a country or a region, adopted in the wake of a crisis, are intended to prevent the resurgence of armed violence in both the short, medium and longer term. As such, these measures could fall within the realm of both peace building and (future) conflict prevention.

The same holds true for the unclear concept of crisis management, as evidenced by the several guises under which the EU may act as crisis manager:

As a military force to 'keep' or 'make' the peace and to fend off threats to international peace and security posed by, for example, separatist groups, terrorist organisations or pirates; and in its civilian capacity by way of a wide variety of ESDP operations: police missions, rule of law missions, civilian administration missions, civil protection missions, peace monitoring missions, support missions to EU Special Representatives, border assistance missions, and security sector reform missions.

4. EFFECTS OF GLOBAL EMERGENCIES TO EU LEGAL ORDER

Lisbon Treaty's amendments in the field of the Union's foreign, security and defence policy and questions whether they sufficiently equip the

European Union with the legal and institutional framework to face the maturity test in crisis management which it is currently facing. To this end, some legal as well as semantic clarifications will be made before a critical overview is given of the legal-institutional build-up and conduct of EU missions in the first five years since the European Security and Defence Policy (ESDP) was declared operational. On the basis of an analysis of the operational shortcomings which the EU faces in the formulation of a solid strategy, the translation of that vision into policy, and the implementation thereof by way of the capabilities created, the amendments introduced by the Lisbon Treaty will be assessed with an aim to answer the question whether the new 'Common' Security and Defence Policy (CSDP) will prepare the Union for bigger, more complex and longer term operations in more dangerous theatres around the world

The preamble of the Lisbon Treaty thus makes clear that strengthening the Union's role in the world is one of the reasons for its conclusion.

Indeed, coherence of the EU's external action was seriously hampered by the institutional structure of the Union, in which external competences and procedures in all ex- three pillars (the European Communities, the Common Foreign and Security Policy, and the Police and Judicial Cooperation in Criminal Matters) were artificially kept apart.

In that respect, the dissolution of the pillar structure and the merger of the European Union and the European Community potentially add to the coherence of the Union's external action.

When we assume that the phrase "improving the coherence of its action" in the preamble of the Lisbon Treaty refers primarily to the Union's role in international affairs, it is indeed this aspect that needs to be assessed.

The case studies of some key ESDP missions revealed that the classic distinctions between internal-external and soft-hard security policies are blurring.

Yet, the institutional structures do not (and will not) reflect this fact.

The pillar structure introduced an inherent risk of inconsistency by dividing the Union's external relations over two different legal treaty regimes. In that

respect the fact that the Common Foreign, Security and Defence Policy (the ex- 'Second Pillar') continues to be in another treaty than all other Union policies should be seen as a missed opportunity. Both with regard to the decision-making procedures and the available instruments it will remain difficult to combine CFSP with other Union policies; which means that part of the Union's energy in international relations, including crisis management, will continue to be devoted to internal delimitation questions. After all, as a result of the complete 'communitarisation' of the ex- 'Third Pillar' (Police and Judicial Cooperation in Criminal Matters), there will be a more uniform decision-making regime in the other parts of the Union: more impetus will be given to qualified majority voting and the application of the co-decision procedure with the European Parliament.

Apart from an adaptation of the so-called 'constructive abstention' provision the unanimity principle for decision-making with regard to CFSP/ESDP has been maintained.

This means that consensus-building among (or more) Member States should become easier in the field of internal security policies but remain elusive in the field of external security policies.

On the other hand, the above analysis reveals that a number of things will change in the Common Foreign, Security and Defence Policy and that the Lisbon Treaty can certainly be seen as yet another step in the ongoing integration process in this policy field.

The upgraded role of the High Representative is certainly the most innovating aspect. Apart from his extensive role as the key representative of the Union in (all) international affairs, his function has the potential of bridging the currently existing divide between Community and CFSP external relations.

The same holds true for the future European External Actions Service, although at this stage it is far from clear what its competences will entail.

The Lisbon Treaty not only integrates the European Community into the European Union, but the new Treaty on European Union also explicitly provides that **"The Union shall have legal personality" (Art. 7), thus**

making an end to the academic discussion on the legal status of the Union.

That there is still some uneasiness on the part of some Member States, is reflected in Declaration No. 24, attached to the Lisbon Final Act: "The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties." Like many Declarations, this one also states the obvious.

After all, the principle of attributed (or conferred) powers forms a starting point in international institutional law and is even explicitly referred to in the new TEU, this time with no exception for the Common Foreign and Security Policy (CFSP): "Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States" (Art. 5).

The new TEU contains all institutional provisions, whereas all policy areas (including the ex- EU Third Pillar on Police and Judicial Cooperation in Criminal matters) will be part of the reformed EC Treaty, the new TFEU. It is therefore striking that the new Common Foreign, Security and Defence Policy will remain part of the TEU. Indeed, the ex-'Second Pillar' will be the *only* policy area that will continue to have a separate status in EU law and even within Title V on the 'General Provisions on the Union's External Action' there is a separate section on 'Special Provisions on the Common Foreign and Security Policy'.

A theme which is perhaps difficult to discern but which nevertheless emerges from the 'test cases' elaborated above is that the classic distinctions between internal and external security and hard and soft security no longer apply to the analytical framework in which the issues related to these concepts are approached.

What we are observing is a merging of the concepts of internal and external security and a shifting emphasis between **soft and hard security.**

The first point, that the internal and external security concepts are both trans-boundary in nature, is illustrated by, e.g., the need to

o stabilise Kosovo and draw it closer to the EU so as to prevent refugees, illegal immigrants and organised crime from being imported into the Union; and (ii) fight terrorist groups on the Afghan-Pakistani border in order to better protect the EU's internal security against terrorist attacks.

The point can be made in other contexts too, as evidenced by the need to monitor the transit of natural gas to secure deliveries to the EU in the wake of the dispute between Russia and Ukraine in January 2009 over the payment of supplies.

While it is true that the European integration process has always been a transboundary security project, for the first forty years of its existence the EC/EU promoted inter-state security through a system of cross-border networks. External security relations among Member States were turned into 'domestic' EU policies and law.

Now, in an era of trans-boundary threats and security challenges, the task of the Union is to defend and boost its security through similar networks beyond the internal-external divide. But the unhelpful distinction between internal 'securitarisation' of relations between EU Member States and an external Common Foreign and Security Policy, a distinction which originates in the tradition of territorial security and border defence, has been cemented into the EU's pillar structure, abolished by the Lisbon Treaty:

The ex-Second Pillar (CFSP) has been set in contrast – politically as well as legally – to the 'internal' security domains of the ex-First Pillar (civil protection, energy, environment, health, etc.)

and ex-the Third Pillar (police, border control, etc.).

However, the question is to what extent a practical and analytical line between external and internal security can be drawn for an entity set up with the aim to erode borders to enhance inter-state security.

The 2003 European Security Strategy (ESS) declares that 'internal and external aspects are indissolubly linked'.

However, the implications of this merger for the EU's protection are hardly reflected in the creation and analysis of European Union security institutions, law, policies, and operational planning. It is widely acknowledged that there is great potential in a more efficient combination of the EU's cross-pillar security policies and capacities.

o   On the second point raised at the outset of this section, it is clear that, while a lot of (media) attention is devoted to the EU increasingly equipping itself for harder-type security missions in higher-risk theatres around the world, the kind of security challenges which it has to deal with more routinely on the European continent have a softer security character (e.g. illegal immigration, organised crime and the disruption of the flow of energy resources).

Increasingly though, the distinction between the 'hard' and the 'soft' security nature of EU policies and operations is shifting. EULEX KOSOVO and EUPOL AFGHANISTAN are cases in point.

As already mentioned in connection with the first point raised in this section, one consequence of this trend may be that the consistency in the implementation of different policies is undermined.

Another consequence may be that the choice for the legal basis becomes more difficult. This is most strikingly visible in the European Union's Border Assistance Missions (EUBAM) deployed in the EU's neighbourhood and the Security Sector Reform (SSR) missions elsewhere in the world.

Whereas the legal basis for EUBAM Moldova/Ukraine was assigned to the First Pillar, EUBAM Rafah was based on the Second Pillar because of the especially dangerous environment of the Gaza Strip.105 EUSEC RD CONGO, the Union's first SSR mission was designed to provide advice and assistance to the Congolese authorities responsible for security, while also taking care to promote policies compatible with human rights and

international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.

Consultations between the Council and the Commission on the planning of an integrated mission (including a military, a police and a justice component) failed as no compromise could be reached on how to delineate the line of command that could preserve the respective competences of the institutions.

As a result, such an integrated mission was never set up.

It was only after a joint assessment mission to the DRC that the Council and the Commission presented a joint paper outlining the EU approach to security sector reform.

 In the end, the military and police component was entrusted to a Second Pillar mission, EUPOL RD CONGO, while the mandate for the justice component, EUSEC RD CONGO, was based on the First Pillar.

5. THE SOLIDARITY CLAUSE IN THE EPICENTRE OF THE EU HUMANITARIAN AID AND POLICY. LEGAL, POLITICAL AND INSTITUTIONAL ASPECTS

The enhancement of civil protection at European level through solidarity and mutual aid between Member States has shaped the debate about the particular nature of defence matters vis-à-vis non-conventional threats to the EU's security and stability.

Recent natural and manmade disasters within and outside the territorial boundaries of Europe have generated a growing tendency within the EU to advance its prevention, mitigation and response capabili-ties by using existing means and military capacities. Indeed, the coming into force of the Treaty of Lisbon has seen European security law expanding beyond the margins of the Common Security

and Defence Policy (CSDP) by bridging military and civilian crisis management.

The general provisions on the EU's external action elaborated in Article 21 TEU are extensive and encompass all areas of traditional foreign policy, putting emphasis on security, peace, conflict prevention and assistance in case of natural and man-made disasters.

A glance at both Title V of the TEU and Title VII of the TFEU is sufficient to establish that the EU security model now encompasses a wide array of security policies: from military operations to civil cooperation and joint EU action in case of terrorist attacks suffered by Member States. To put it differently, there is an air of convergence blowing in the Treaty of Lisbon regarding 'hard' and 'soft' defence.

Indeed, the EU's commitment to 'protect its citizens' found in Article 3 (5) TEU as well as the addition of 'grey areas' such as the fight against terrorism in Article 43 TEU has added to the 'fuzziness' of competence delimitation between those aspects of security tied within EU external relations and those related to judicial cooperation in criminal matters.

The utilization of military capabilities for the implementation and enforcement of civilian aims, owes largely to the security connotation attributed to EU legal values, such as solidarity and mutual assistance between Member States. These values, spread over different provisions of the TEU and the TFEU, are ambitiously exported internationally by the Treaty of Lisbon. Solidarity, for instance, constitutes one of the jewels to the crown of European integration. In the context of the former EC Treaty it was primarily associated with the internal market, economic and social cohesion, and industrial relations.

As such, it proved to be fundamental in the development of the concept of 'social Europe'. Conversely, in connection to the TEU, solidarity in the form of mutual aid has played an important role in shaping the EU's external and security policy 'actively and unreservedly'. Post-Lisbon, mutual solidarity appears in Article 67 (2) TFEU (framing a common policy on asylum, immigration and external border control), Article 122 TFEU (financial assistance in cases of severe difficulties caused by natural disasters or exceptional occurrences), and Article 194 TFEU (Union policy on energy). In the area of security and defence, solidarity has acquired a new legal dimension, which not only has it consolidated the old collective defence provisions of the WEU and NATO Treaties but it has also formulated an EU response to events such as 9/11, the more recent

terrorist bombings of Madrid and London, earthquakes and pandemics.

Two provisions introduced by the Treaty of Lisbon are preoccupied with solidarity in the field of security and defence. First, Article 42 (7) TEU, the so-called 'mutual aid and assistance clause' or 'mutual defence clause', consists of a replica of the historic WEU and NATO military alliance etiquette. It concerns solidarity in the event of armed aggression and encompasses the collective obligation of Member States to assist one another in the event of attack on their territory by deploying their military assets.

Second, and most relevant to this analysis, Article 222 TFEU, the so-called 'solidarity clause', distinguishes the EU's code of conduct from traditional intergovernmental military alliances. It constitutes an express commitment of Member States to assist each other in the mention that the Treaty of Lisbon has introduced a supporting competence in the area of civil protection under Article 6 TFEU.

What is more, Title XXIII entitled Civil Protection provides through Article 196 (1) TFEU that 'the Union shall encourage co-operation between Member States in order to improve the effectiveness of systems for preventing against natural or man-made disasters'.

Accordingly, under Article 196 (2) TFEU, the European Parliament and the Council can establish supplementary measures to assist Member States achieving such objectives. The introduction of Article 222 TFEU constitutes a further development in the field of EU civil protection. As it was the case with Articles I-43 and III-329 of the EU Constitutional Treaty, Article 222 TFEU, which can be read in conjunction with Article 196 TFEU (cooperation between Member States), constitutes a soft mutual defence commitment for non-conventional threats to the Union's

security and stability. Textually, Article 222 TFEU merges together Articles I-43 and III-329 of the EU Constitutional Treaty and comprises what can be described as a verbose 'solidarity' provision. It states that the EU and its Member States 'shall act jointly in a spirit of solidarity'.

Hence, Article 222 TFEU addresses modern threats from non-state entities or natural or manmade disasters and provides, inter alia, for the mobilization of hard military resources in event of a terrorist attack or natural and manmade disaster. It is worth noting from the outset that at the time of writing both pro-visions have not yet been used. This renders certain conclusions made hereafter speculative.

Despite public awareness campaigns related to terrorist attacks, cyber attacks and large-scale natural disasters, little legal academic commentary has taken place post-Lisbon on the merits of civil protection cooperation and disaster response capacities at EU level and beyond.

We believe that is useful to provide an insight to the origins and added value of the Treaty's Article 222 TFEU 'solidarity clause' in the context of the EU's internal and external security strategy. To that effect, this contribution will discuss the role of this new provision as a means of broadening the notion of 'threat' in Europe. It will further attempt to assess the significance of the 'solidarity clause' vis-à-vis its legal geography in the Treaty and the level of commitment required by Member States for its coherent implementation. It will then briefly compare the Lisbon 'solidarity clause' with the so-called 'mutual defence clause' of Article 42 (7) TEU and finally point into certain legal 'grey areas' that may have a diminution effect upon the potential of the EU as a community based on solidarity.

It is therefore clear that Article 222 TFEU does not represent a clause on the defence of the EU's territorial integrity, although one cannot deny that internal security has, in recent years, become increasingly dependent on external security.

The Stockholm Programme made explicit reference to Article 222 TFEU. Under the broad headline 'Political Priorities', the European Council high-lighted the value of 'an internal security strategy' as an important tool for achieving the objective of a 'Europe that protects'

the lives and safety of its citizens. The Stockholm Programme also considered the main aspects of such strategy comprising judicial cooperation in criminal matters and the 'solidarity clause'.

It appears, therefore, clear that Article 222 TFEU may be utilized alongside other legal bases for speeding up the adoption of civil protection legislation in the name of solidarity.

It remains to see whether the same may occur by employing Article 222 TFEU on its own as a legal basis for the development of new legislative proposals which aim at protecting civilian populations through cooperation.

In terms of the threat scenarios that Article 222 TFEU addresses, one can draw inspiration from the 2003 European Security Strategy drafted by the then High Representative Javier Solana. The Strategy lists the combating of proliferation of weapons of mass destruction, the fight against terrorism and organised crime, cyber security and energy security as high priority areas. Most significantly, for the purpose of this article, the Strategy mentions that 'the increasing convergence of European interests and the strengthening of mutual solidarity of the EU makes us a more credible and effective actor.'

Yet, it does not provide EU Institutions with a direct mandate to develop defence policy instruments.

Other than countering various forms of criminal acts, Article 222 TFEU aims at boosting the role of the EU in crisis management by enhancing its response in situations equivalent to the 'volcanic ash crisis' of April 2010 and pandemics such as the H1N1 swine flu which hit the continent in April 2009.

In all those events, it will be possible for the EU to activate its civil protection mechanism.

Yet, Article 222 TFEU seems to be placing a lot more emphasis on prevention and protection than on assistance following a disaster. The European Parliament has, for instance, emphasised that an EU

Chemical, Biological, Radiological and Nuclear (CBRN) Action Plan would enable both the EU and its Member States to implement effectively the Article 222 TFEU solidarity clause in order to counter CBRN disasters, whether caused accidentally or intentionally. What remains unclear in Article 222 TFEU is the position taken in relation to mitigating or alleviating the damage following a disaster. To that effect the Council has been clear that 'reinforcement of the Union's disaster response capacity should be achieved through a balanced approach guided by two principles: national responsibility and EU solidarity'.20 What is more, Commission Decision 2010/481/EU establishing a civil protection mechanism, provides that EU civil protection operations need to extend to ground forest firefighting, flood containment and rescue modules.

The arrangements for implementing the solidarity clause under Article 222 TFEU are not different from those proposed by the EU Constitutional Treaty where EU Institutions and Member States shall act jointly in a spirit of cooperation. The Commission has to put together a proposal for the implementation of the solidarity clause jointly with the High Representative for Foreign Affairs and Security Policy (called the Union Minister for Foreign Affairs in the EU Constitutional Treaty).

The Council will then decide by qualified majority unless the decision in question involves the use of military resources or has defence implications, in which case unanimity applies. Other actors in the process would involve the new (Article 71 TFEU) Standing Committee on Internal Security (COSI), which would assist the Council in the coordination of internal security operational actions (police and customs cooperation and judicial cooperation in criminal matters) but would not be involved in the preparation of legislation or the operations themselves.

Moreover, in the event of a military response, the Political and Security Committee (PSC) would be authorized by the Council to take decisions related to the political control and strategic direction of the operation. In this case also, the Chairman of the PSC would participate in the Committee of Permanent Representatives II (COREPER II), which would be responsible for the preparation of legislative acts. Finally Eurojust, Europol and Frontex representatives would have the opportunity to attend CORE-PER's meetings.

As with the relevant Declaration on Articles I-43 and III-329 of the EU Constitutional Treaty, Declaration No. 37 on Article 222 TFEU establishes that Member States are free to choose the most appropriate means to comply with their own solidarity obligation towards their counterparts.

To put it plainly, it would be up to them to decide how they would assist another Member State. This is important when one considers the possible legal implications arising from a breach of Article 222 TFEU vis-a-vis the effect of such a breach upon the principle of sincere cooperation under Article 4(3) TEU.

Furthermore, the European Commission and the High Representative have committed themselves to put together a proposal for the implementation arrangements of the Solidarity Clause within 2011.

Finally, it is expected that by 2012 the Commission have established the necessary links between sector-specific early warning and crisis cooperation functions (in the area of health, civil protection, nuclear risk monitoring, and terrorism) and have utilized EU-led operational initiatives. These will presumably bring into the 'civil protection equation' both EU agencies and the European External Action Service, which will in turn contribute to information sharing and threat/risk assessment reports.

In terms of its location in the Treaty of Lisbon, it can be argued that Article 222 TFEU sits, somewhat, in isolation. Perhaps this reflects the sentiment of the Treaty drafters that such a provision neither dovetails neatly with the European Union's external action (Part Five, TFEU) nor does it sit comfortably in Section 2 of the TEU (CSDP), for instance, as an inherent part of Article 42 (7) TEU, which encompasses the collective obligation of Member States to assist one of their counterparts in the event of attack on their territory by deploying their military assets.

This, of course, seems to negate the reality being, in the words of a commentator, that 'the terrorism dimension of [C]SDP is today fast becoming a permanent field of EU policy'.

In other words, there is no obstacle in the TEU that would have prevented CSDP actions entailing the use of Member States' armed forces to realise soft security objectives within the EU in times of emergency. As a result, one finds it hard to rationalise the existence of a separate 'solidarity' civil protection provision in the TFEU. This is especially since the implications Article 222 TFEU for EU Institutions and Member States have yet to be fully clarified.

There are a number of unanswered questions related to the nature of the objective of such a 'soft' solidarity commitment.

This is especially since Article 222 TFEU stretches beyond the CSDP by also engaging with non-military instruments.

For instance, there is nothing in Article 222 TFEU which suggests that the 'solidarity clause' extends to attacks carried out by state-sponsored terrorist groups (the so-called acts by legitimate liberation movements in Cuba, North Korea, and Syria) or, so to call them, rogue states' attacks.

In these situations, the former pillar demarcation that Lisbon has taken pride of dissolving is as relevant as ever. This is be-cause the

fight against terrorism seems to concern equally the CFSP (and, by extension, CSDP actions) and the Criminal law *acquis* of the Treaty (e.g. Article 75 TFEU on smart sanctions and Article 83 TFEU on the definition of criminal offences). Perhaps a clearer demarcation of pillar-overarching areas would have been desirable so that the two clauses would occupy different fields. For instance, Article 42 (7) TEU could deal with state violence against one or more Member States and state-sponsored terrorism through CSDP military means.

On the other hand, Article 222 TFEU could focus on countering oppositional terrorism by non-state actors and serious crime through the EU Criminal law *acquis*.

The overlap between the TFEU 'solidarity clause' and the TEU 'collective defence clause'

The Nice Treaty modified Amsterdam's Article 17 TEU, which left all EU decisions with defence implications to the WEU, and deleted all references to it.

By 1999, most of WEU's functions were taken over by the EU and in 2010, having 'accomplished its historical role', the Treaty was terminated.

This created a new competence for the EU to operate within the full range of the Petersberg tasks.

This development aside, the Treaties still lacked a collective assistance clause in the form of a Treaty-based commitment.

With the coming into force of the Treaty of Lisbon, one can witness in Article 42 TEU the enhancement of the EU's ability to implement decisions that have defence implications by extending the Petersberg tasks to include disarmament operations, humanitarian and rescue

tasks, peacekeeping tasks, and tasks of combat forces in crisis management.

At the same time, the Treaty of Lisbon has provided for the termination of the Modified Brussels Treaty 1949 (WEU) and the end of WEU operations by July 2011. Most significantly, using, what has been described as 'a long tradition of collective defence clauses', the Treaty of Lisbon introduced the abovementioned 'solidarity clause' of Article 222 TFEU and a 'mutual defence clause' under Article 42 (7) TEU which comprise the 'EU version' of Article 5 of the Washington Treaty 1949 (NATO) and Article V of the Modified Brussels Treaty 1949 (WEU).

Article V of the modified Brussels Treaty:

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

Both these provisions offer a joint commitment which goes be-yond the NATO and WEU collective security provisions.

Complementary to mutual cooperation in the case of an armed attack on one of the Member States, the Treaty of Lisbon has created a link between the CSDP and the external dimension of the Area of Freedom, Security and Justice vis-à-vis improving security by con-trolling serious criminal threats, both inside and outside the European continent.

The strengthening of the international role of the European Union and the aim to improve its external actions' efficiency and coherence have been considered as two of the most important features of the Lisbon Treaty. Within this framework, the incorporation of provisions on mutual assistance and solidarity creates explicit and unprecedented demands upon

EU Member States to assist one another in the face of armed attacks, natural or man-made disasters, emergencies and crises on EU territory.

Yet, three years after the entry into force of the Lisbon Treaty, the practical implementations of the mutual assistance and solidarity clauses still remain undefined, thereby contributing to the general confusion and misunderstanding over the cases that could potentially trigger the invocation of either one of them.

The adoption of these clauses raises a number of questions regarding their scope and interpretation, their political meaning, their practical and technical implications.

The European institutions need to make full use of the clauses' potential and address these core challenges sooner than later, if the mutual assistance and solidarity clauses are to have some credibility in the current security environment.

Before considering the similarities and differences between the two provisions we should provide a very brief account of the role of Article 42 (7) TEU, which has only been hinted so far in this article.

This, so-called, 'mutual defence clause' commits Member States to the aid and assistance of their counterparts in case of armed aggression against them. The first paragraph of the Article reads as follows:

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

The similarities with Article 5 of the Treaty of Washington are obvious, although Article 42 (7) TEU does not explicitly mention 'the use of armed force'.

What is more, contrary to NATO, the EU does not maintain strong military readiness structures or joint military planning. Thus, while such a military assistance obligation may at first glance be seen as a move towards EU military autonomy, a close interpretation of Article 42 (7) TEU puts into question the role of the EU as a 'defence organisation'.

Obviously the EU defence cooperation capacities can change over time considering the potential of the European Defence Agency (Article 45 TEU) and the use of the newly-introduced permanent structured cooperation in defence, which features high among the Treaty of Lisbon provisions.

Having said that, mutual assistance at EU level still has to be compromised with the broader security commitments of the Member States in NATO, especially, those related to collective self-defence, under Article 51 of the Washington Treaty 1949.

The second paragraph of Article 42 (7) TEU is more explicit about the NATO-EU relationship.

It reads:

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Hence, the clause's activation falls upon each Member State individually and does not depend on the EU as a whole. This is because Article 42 (7) TEU does not aim at transferring any competence upon the EU Institutions but rather creates responsibilities between Member States. Equally when it comes to the implementation of Article 42 (7) TEU, the EU Institutions play no role since all relevant

arrangements will have to be unanimously agreed among the Member States. As such, a lot depends on the Member States' political consensus, especially within non-aligned countries, over the use of armed force under the EU banner.

Having briefly considered Article 42 (7) TEU, our focus will now shift towards a cross-examination of Article 42 (7) TEU and Article 222 TFEU. It can be argued that the military aspect of Lisbon's internal security commitments under Article 222 TFEU has enriched the CSDP. Considering the erosion of the schism between internal and external security, a preliminary comment would be that Article 222 TFEU could have been expressly mentioned in Article 42 (7) TEU.

It however, does not take into account that despite the confusing similarities between the two provisions there are also fundamental differences. On the one hand, Article 42 (7) TEU applies only in cases of 'armed aggression' against the territory of a Member State. As such, it constitutes in its entirety an intergovernmental device and does not foresee for the involvement of EU institutions by creating any sort of new supranational competences. Conversely, Article 222 TFEU re-quests Member States to coordinate between themselves in the Council and provides the EU with power to mobilize all instruments at its disposal in order to protect and assist them in the event of a terrorist attack, or natural or man-made disaster. It is argued that Article 222 TFEU can be used alongside other legal bases to justify new legislative acts that will foster solidarity between Member States in the fight against serious crime and disaster response.

The mutual solidarity clause, however, is only one component of the Union's references to solidarity; for instance, it is strongly linked to Art. 122 for support in the case of "supply crisis",

Article 122 TFEU:

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. […]

Art. 194 aiming at ensuring the Union's energy supply,

Article 194 TFEU:

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

(a) ensure the functioning of the energy market;

(b) ensure security of energy supply in the Union;

(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

(d) promote the interconnection of energy networks. […]

and Art. 196 on the prevention and protection against natural and manmade disasters.

Article 196 TFEU:

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

(a) support and complement Member States' action at national, regional and local level in risk prevention, in

preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

(b) promote swift, effective operational cooperation within the Union between national civil-protection services;

(c) promote consistency in international civil-protection work. […]

Concluding remarks on solidarity clauses

The Lisbon Treaty and the mutual assistance and solidarity clauses that it has introduced for the EU, do not answer any of the fundamental and controversial questions regarding the direction of European defence.

On the contrary, in its attempt to appease the diverging views on the issue of further integrating defence at the EU level, the described development clearly lacks direction at this stage.

The EU now needs to prove that the inclusion of the clauses into the Lisbon Treaty was not a merely symbolic gesture, but rather a consistent and purposeful move. European and national policymakers need to seat together to spell out details regarding the commitments embedded in the assistance clause.

As long as this work is not being done, the clause will be condemned to remain the "empty letter" of the Lisbon Treaty. Although it seems unlikely that the clauses, especially the mutual assistance clause, would be triggered in the foreseeable future, assuming that they will not be is wishful thinking. If properly put into practice, the mutual assistance and solidarity clauses will undoubtedly heighten the profile of EU defence and cooperation on crisis and disaster issues.

The combined commitments of Art. 42(7) and Art. 222 go beyond the NATO and WEU collective security provision, in terms of scope and envisioned obligations.

Now is the moment for the Union to make the most of the potential of these clauses and through the establishment of clear operational mechanisms, make full use of the added value of the mutual assistance and solidarity clauses in the context of the EU's internal and external security strategy.

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