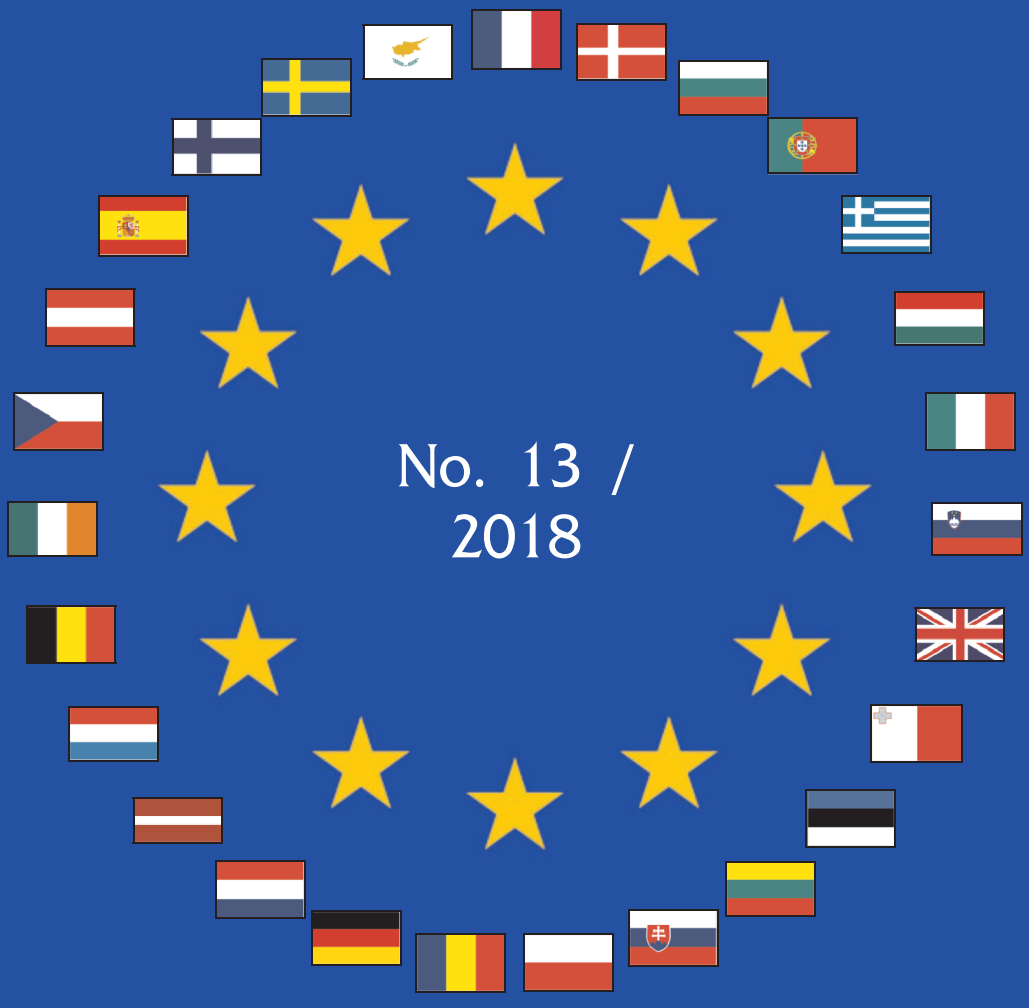
L'EUROPE UNIE

UNITED EUROPE



No. 13 / 2018

Revue d'études européennes

PARIS

SUMMARY

European Union Security and Defence Relations with ASEAN

MARKO SUSI
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *The European Union has developed from a purely economic organization to the one that aims to integrate its Member States in a variety of fields, including security and defence policy and foreign policy. To achieve the objectives of those policies, cooperation with third countries and international organizations is vital as such issues can have a global impact. In its security and defence-related relations with ASEAN, it can be seen that despite emphasising the importance of such cooperation, both sides have demonstrated a lack of commitment, which can be partly explained by the fundamental difference of the natures of the two organizations, with ASEAN countries unwilling to subject themselves to a foreign intitution's power. This individualist approach can severely hamper the cooperation of ASEAN members within the organization and with the EU.*
Keywords: *EU, ASEAN, CSDP, cooperation*

INTRODUCTION

The beginning of the European Union is directly related to war. The Union was envisaged on the aftermath of the Second World War. The devastation of the conflict made leaders of post-war Europe think how future wars could be avoided. The experience had shown that methods used after the First World War actually played a large part in the occurrence of the Second World War. The harsh punishment imposed on Germany increased economic troubles during the Great Depression, creating discontention with democratic government and the humiliation of imposed conditions were used by the extremist parties to gain popular support. After the end of the war, it became clear that mere punishment does not work. Although Germany was occupied by allies, its industry was rebuilt. It was found important that no country in Europe should be able to secretly develop its military capability and switch to wartime economy under the cover of secrecy. Therefore, it was decided to pool together the main resources used for war effort – steel and coal. Coal as the major source of energy in Continental Europe, with oil having to be imported from elsewhere, is essential for any motorized conflict. Steel as the main construction component of weapons and vehicles used in combat is essential for building armies. Pooling the resources together allows to keep track on the production rates of these two essential materials and would reveal any efforts of increasing military power. On the basis of this logic, Robert Schumann held his famous speech in 1950 where he proposed the unision of French and German coal and steel production while submitting it under common High Authority control[1]. Inspired by this speech, the European Coal and Steel Community was created in 1951. This Community later became the European Economic Community after the Treaty of Rome in 1957. After the creation of the Single Market, the Treaty of Maastricht created the European Union. Further treaties, especially the Lisbon Treaty, expanded the role of the Union, adding defence, foreign policy, political, diplomatic, humanitarian and security dimensions to the Union's actions, both internal and external.

In parallel to the European Union, defence cooperation developed between the European states which led, after the failure of Western European Union, to the North Atlantic Treaty Organization (NATO). The cooperation within the EEC, however, did not include defence

[1] *The Schuman declaration – 9 May 1950*. URL: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en, Accessed: July 13th, 2018.

cooperation. This cooperation did not occur because Member States wished to keep control over their defence policy and state secrets. In addition, the defence alliance of NATO functioned well and duplication would have been seen as unnecessary. Additionally, the EEC was seen as an economic union and defence issues were seen as topics falling out of the scope of the union, its purpose. For this reason, cooperation was not extended to the field of defence and security. NATO cooperation has remained a fundamental defence alliance in Europe and although European Union has taken steps towards greater security and defence cohesion, NATO has remained as a main security platform in the continent. Although recently, EU peacekeeping forces as well as fast-responding units have been created, defence policy coordination has not been in EU's focus. Recently, though, a new cooperation on a voluntary basis, PESCO (Permanent Structured Cooperation) Agreement[2], was initiated that would facilitate cooperation between the EU Member States in the provision of the ability to have greater joint decision in defence matters.

Seeing that the European Union developed as a means of avoiding a new world war and that the developing Union has included ever more defence-related cooperation, despite being secondary to NATO and UN-related cooperation and hindered by the individual interests of the Member States, it can be seen that the defence cooperation is a further developing field in the EU's process of development. For this reason, it is important to assess how these developments are reflected in the external actions of the EU, namely, in the EU's cooperation with other States and international organizations in this field.

Association of South East Asian Nations (hereafter referred to as ASEAN) is a community of ten nations in Southeast Asia. It is one of the largest importers from the EU as well as one of the largest exporters to EU. The relations between EU and ASEAN are of great importance. For this reason, the discussion relating to EU's external actions in terms of security and defence focus on the cooperation with ASEAN. Followingly, the legal basis for security and defence cooperation of the EU as well as existence and character of these relations between the EU and ASEAN will be discussed.

LEGAL BASIS FOR SECURITY AND DEFENCE COOPERATION

Common Foreign and Security Policy objectives, especially those of the Common Security and Defence Policy were already brought out in the Constitutional Treaty of the EU[3]. After the Lisbon Treaty, the main agreements governing the affairs of the EU are the Treaty on the European Union and the Treaty on the Functioning of the European Union. Article 3 paragraph 2 of the Treaty on the European Union (hereafter referred to as TEU) obliges the EU to provide for the area of freedom, justice and security[4]. Paragraph 5 further provides for the external actions of the EU for the provision of security and promoting peace throughout the world[5]. Nevertheless, Art. 4 maintains that the national security issues of the Member States exclusively fall under the Member State jurisdiction[6]. Title V of TEU deals with the Union's external action. Article 21(1) aims to develop

[2] *Permanent Structured Cooperation (PESCO) – Factsheet*. URL: https://eeas.europa.eu/headquarters/headquarters-Homepage/34226/permanent-structured-cooperation-pesco-factsheet_en, Accessed: May 23rd, 2018.

[3] Naert, F., *"European Security and Defence in the EU Constitutional Treaty"* Journal of Conflict & Security Law, Vol. 10, No. 2, 2005, pp 187-207, pp 190-198. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/jcsl10&collection=journals&id=191&startid=&endid=212, Accessed: May 20th 2018.

[4] *Consolidated Version of the Treaty on the European Union,* in *The Official Journal of the European Union*, C 326/13, 2012, Art 3(2), p 17. Accessed at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, Accessed: March 18th, 2018.

[5] *Ibidem*, Art 3(5), p 17.

[6] *Ibidem*, Art 4, p 18.

relations to other states and other entities to promote the values of the Union throughout the world[7]. Paragraph 2, subparagraph (a) puts one of the aims for cooperation between Member States to promoting the security of the Union[8]. Subsection (b) can also be connected to defence as it aims to promote democracy and human rights throughout the world[9], the purpose which can be brought up in the case of external conflicts and can result in the involvement of the European Union. Subparagraph (c) puts the emphasis on the preservation of peace in the world and to the prevention of military conflicts[10]. Article 22 of the TEU gives the EU competence in foreign policy areas relating to the Union's security and to the possible development of the common defence policy of the Union[11]. The second subparagraph of the Article puts the definition and implementation of provisions relating to common foreign and security policy on the shoulders of the European Council and the Council of the European Union (hereafter referred to as the Council), while giving the High Representative of the Union for Foreign Affairs and Security Policy implementing powers together with the Member States[12]. Article 26 determines the European Council to put in place strategy of the Union in these matters, including in matters related to defence[13]. The Article also gives implementing powers to the High Representative and the Member States[14]. This is further strengthened by Article 27 of TEU[15]. The third paragraph of the Article provides for the European External Action Service to assist the High Representative[16]. Article 28 allows the Council to adopt decisions arising from rapid international developments in an urgent way[17]. Article 31 requires military or defence decisions taken by the Council or the European Council to have unanimity by excluding the application of qualified majority voting in the area[18]. It is also important to consider the last paragraph of TEU Article 34 that Member States that are members of the United Nations Security Council defend Union interests and if necessary, invite the High Representative to explain the Union's position[19]. Article 36 gives consultational authority to the European Parliament[20]. Article 37 allows the Union to conclude international agreements related to the field[21]. Article 38 provides for the Political and Security Committe that has the task of observing the developments in this field in the international arena[22]. Article 41 excludes the implementation of military or defence actions on the basis of the Union budget but requires the creation of a specialized fund by the participating Member States where they contribute based on their GDP, excluding dissenting Member States[23]. The first paragraph of Article 42 gives the Union the ability to conduct operations to further peace and prevent conflicts[24]. The second paragraph sees the establishment of the common defence policy of the Union, communicated by the Council in the form of a

[7] *Ibidem*, Art 21(1), p 28.
[8] *Ibidem*, Art 21(2)(a), p 28.
[9] *Ibidem*, Art 21(2)(b), p 29.
[10] *Ibidem*, Art 21(2)(c), p 29.
[11] *Ibidem*, Art 22, p 30.
[12] *Ibidem*, Art 22, p 30.
[13] *Ibidem*, Art 26, p 31.
[14] *Ibidem*, Art 26, p 31.
[15] *Ibidem*, Art 27, p 32.
[16] *Ibidem*, Art 27(3), p 32.
[17] *Ibidem*, Art 28, p 32.
[18] *Ibidem*, Art 31, pp 33-34.
[19] *Ibidem*, Art 34, p 35.
[20] *Ibidem*, Art 36, pp 35-36.
[21] *Ibidem*, Art 37, p 36.
[22] *Ibidem*, Art 38, p 36.
[23] *Ibidem*, Art 41, p 37.
[24] *Ibidem*, Art 42(1), p 38.

recommendation to the Member States[25] that can then adopt it on a voluntary basis. The second subparagraph allows the members to retain their own defence policy nevertheless and specifically excludes any influence on the relations of members to NATO[26]. The third paragraph obliges the Member States to provide their military and civilian capabilities for the implementation of the common security and defence policy[27]. It also provides the Member States establishing joint forces amongst themselves the opportunity of allowing their use under the policy, also obliging Member States to increase their military capabilities, setting the European Defence Agency responsible for the development of technological and operational capabilities as well as research and development, aquisition of armaments[28]. Paragraph 6 obliges Member States entered into binding agreements and having higher standards than required to establish a more permanent form of cooperation[29]. The seventh paragraph obliges the Member States to assist a Member State under aggression, in line with United Nations Charter and NATO policies[30]. Article 43(1) further specifies that the scope of such military action is related to peacekeeping, conflict prevention, stabilization, prevention of terrorism, disarmament and humanitarian actions, also crisis management[31]. Article 45 sets the principles for the European Defence Agency[32]. Article 46 provides for the creation of a permanent structured cooperation between willing Member States that fulfill necessary criteria[33]. It can be seen that the Articles setting rules of Common Foreign and Security Policy can be thought of as general in nature, with some specifics. It has been noted that the CFSP appears to be separated from other areas of cooperation and policies of the Union, at least legislatively, with main objectives laid out in the TEU instead of TFEU[34]. At the same time, it appears that the CFSP should be integrated with other areas, raising notions that the role of CFSP is rather ambivalent, unclear, in the Union's system[35]. In terms of one subarea of CFSP, namely, the Common Security and Defence policy, it has also been seen that the decision-making in this area is nation-specific and any common actions in the community level need Council unanimity that is difficult to achieve, especially in relation to national defence spending of Member States as well as different understandings of the role of the military in Member States[36], same applies for CFSP in general, with individual Member States able to block initiatives for national interests reasons[37,38]. In the defence matters, it is seen that there is a lack of unity deriving from lack of political will, united command and strategy, public procurement

[25] *Ibidem*, Art 42(2), p 38.
[26] *Ibidem*, Art 42(2), p 38.
[27] *Ibidem*, Art 42(3), p 38.
[28] *Ibidem*, Art 42(3), p 38.
[29] *Ibidem*, Art 42(6), p 39.
[30] *Ibidem*, Art 42(7), p 39.
[31] *Ibidem*, Art 43(1), p 39.
[32] *Ibidem*, Art 45, p 40.
[33] *Ibidem*, Art 46, pp 40-41.
[34] Koutrakos, P., *"Judicial Review in the EU's Common Foreign and Security Policy"* International and Comparative Law Quarterly, Vol. 67, 2018, pp 3-4. Accessed through https://www.cambridge.org/core .
[35] *Ibidem*, pp 4-5.
[36] Constantinescu, M., *"Economic Challenges for European Defence"* Europolity: Continuity and Change in European Governance, Vol. 10, No. 2, 2016, pp 77-79. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/eurpol10&collection=journals&id=223&startid=&endid=256, Accessed: May 22nd, 2018.
[37] Leal-Arcas, R., *"EU Legal Personality in Foreign Policy"* Boston University International Law Journal, Vol. 24, 2006, p 181. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/builj24&collection=journals&id=169&startid=&endid=216, Accessed: May 22nd, 2018.
[38] Staridis, S., Hutchence, J., *"Mediterranean Challenges to the EU's Foreign Policy"* European Foreign Affairs Review, Vol. 5, 2000, p 42. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0005&collection=kluwer&id=37&startid=&endid=64, Accessed: May 22nd, 2018.

in this area, among others[39,40]. It has been found that there are also questions regarding the nature of the competences for CFSP and CSDP, whether they should exclusively belong to the EU, to be shared or should they belong to the Member States as the legislation does not appear to make absolutely clear distinctions[41]. It has been opined that the EU does not always apply its principles in external sphere and merely attempts to achieve stability[42].

Article 2 paragraph 4 of the Treaty on the Functioning of the European Union (hereafter referred to as TFEU) gives competence to the EU to implement common security and defence policy and work towards establishing a common defence policy[43]. Article 73 of TFEU allows Member States to cooperate in terms of national security[44]. Part V of TFEU concerns the EU's external action. Enhanced cooperation in the field of security and military fields are permitted under Article 329(2)[45] and Article 331(2)[46]. Budgetary issues related to military and defence are covered in Article 333(3)[47]. Article 346 gives the Member States the opportunity not to publish sensitive data related to national security issues nor does it oblige to follow community rules in terms of military trade[48].

As can be seen from the Treaties, the security cooperation has been thoroughly regulated. Despite the inclusion of security and defence cooperation in the Treaties, there are several key points to be made. Firstly, the objectives and procedures mentioned are highly vague and general. This likely results from the necessity to arrive to an agreement that would satisfy all Member States and ensure the approval of Lisbon Treaty. This generality can be viewed as both positive and negative from the Union's point of view. The negative view would suggest that the Member States are able to block any integration and enhanced cooperation in the field, thus maintaining their own supremacy over the area. This would prevent any further cooperation and would mean halting to the common security and defence policy. On the other hand, the vagueness allows the Union and its willing Member States to progress with such integration much more rapidly than would be possible with strict, narrow definition of the specific rules. The willing members can become more integrated in the field whereas dissenting members can at first, remain outside of the cooperation, with likely chance that they will join in the future. Some of the rules, especially purposes of enhanced cooperation for this field are narrow nevertheless. Peacekeeping, conflict prevention, humanitarian measures and stabilization, maintenance of security are main reasons for which this policy can be implemented. On first sight, they might seem narrow. On the other hand, they can, in the realities of the international diplomacy, be interpreted widely and most military actions can be and often are, defined through providing assistance to abused groups, reducing security threats or preventing larger conflicts in areas. If viewed from this angle, it can be seen that the possibilities of

[39] Constantinescu, *op. cit.*, pp 87-88.

[40] Salmon, T., *"The European Security and Defence Policy: Built on Rocks or Sand?"* European Foreign Affairs Review, Vol. 10, 2005, p 379. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0010&collection=kluwer&id=367&startid=&endid=388, Accessed: May 22nd, 2018.

[41] Wessel, R. A., *"Division of International Responsibility between the EU and Its Member States in the Area of Foreign, Security and Defence Policy"* Amsterdam Law Forum, Vol. 3, No. 3, 2011, pp 34-48. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/amslawf3&collection=journals&id=422&startid=&endid=436, Accesed: May 22nd, 2018.

[42] Staridis, S., Hutchence, J., *op. cit.*, pp 61-62.

[43] *Consolidated Version of the Treaty on the Functioning of the European Union*, in *The Official Journal of the European Union*, C 326/47, 2012, Art 2(4), p 50. Accessed at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF, Accessed: March 18th, 2018.

[44] *Ibidem*, Art 73, p 74.

[45] *Ibidem*, Art 329(2), p 190.

[46] *Ibidem*, Art 331(2), p 191.

[47] *Ibidem*, Art 333(3), p 192.

[48] *Ibidem*, Art 346, p 194.

action for the EU are actually quite large. Therefore, this area appears to be developing within the EU. In addition, the PESCO Agreement showed that the majority of Member States are supportive of greater cooperation in defence matters. This agreement shows that the field of defence is rapidly developing in the EU and will become a major part of the Union's policies as the questions regarding the functioning of NATO become more pressing in the current political climate.

EU'S EXTENSION ABROAD

Common Foreign and Security Policy covers EU's external action in the world and allows the EU to act as a single power in the world arena. Before continuing towards analyzing the specific agreements and other measures of cooperation between EU and ASEAN, it is necessary to review EU's role in the world.

It can be seen that most, if not all, policy areas also have an external dimension that necessitates EU's action beyond its territorial limits. In terms of internal affairs such as police investigations, there is the external dimension of extradition as well as aspects of national jurisdictions, international cooperation and international crime. Likewise, a policy area that has received great attention and development in the EU in recent years, cybersecurity, also has these two dimensions – internal and external. Therefore, cybersecurity legislation requires actions also on international level[49], such as that of the EU's cooperation in that area with the US[50]. Several objectives in the EU's Cyber Security Strategy have an external dimension, including cooperation with the US specifically and with organizations such as NATO, OECD, ASEAN[51]. However, the EU nevertheless relies on providing a model for national authorities as the cybercrime does not stop at borders but is a worldwide issue[52]. In this light, the EU and US cooperation on cybercrime issues has a global dimension[53].

In terms of outwards dimension of security, the difficulties imposed by EU's complex institutional system can make it tedious to coordinate foreign policy actions in security aspects[54]. Despite the EU being one of the largest markets in the world and one of the largest traders, there are concerns that in reality, trade forms one of the foreign policy implementation instruments in theory but there is lack of concrete objectives and measures, despite general understanding of conditional trade[55]. Also, it appears that new agreements that the EU signs with partners such as ASEAN are mainly of economic nature rather than security and foreign policy-related[56]. It has also been noted that the EU appears to be reluctant in using trade sanctions against states[57].

---

[49] Fahey, E., *"The EU's Cybercrime and Cyber-Security Rulemaking: Mapping the Internal and External Dimensions of EU Security"* European Journal of Risk Regulation, Vol. 5, No. 1, 2014, p 46. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/ejrr2014&collection=journals&id=51&startid=&endid=65, Accessed: May 20th, 2018.

[50] *Ibidem*, p 47.

[51] *Ibidem*, pp 49-50.

[52] *Ibidem*, pp 49-50.

[53] *Ibidem*, p 56.

[54] Bossuyt, F., Drieghe, L., Orbie, J., *"Living Apart Together: EU Comprehensive Security from a Trade Perspective"* European Foreign Affairs Review, Vol. 18, Special Issue, 2013, p 64. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0018&collection=kluwer&id=543&startid=&endid=562, Accessed: May 20th, 2018.

[55] *Ibidem*, pp 69-71

[56] *Ibidem*, pp 73-74.

[57] *Ibidem*, pp 78-79.

The EU has strong relations to partners such as US and Canada, in addition, it has developed a category of strategic partnerships with other countries such as those in Latin America as well as with Japan and China, amongst others, supplemented by other regional cooperation attempts[58]. It has been noted that despite the EU's understanding of its economic weight and the adoption of strategies in external sphere, the EU remains rather weak in actual policymaking and as such is often not as noticeable in the international sphere as it could be[59]. There exists a view that despite the existence of general strategies, there is no clear policy objective present as well as no clear goals with deadlines and necessary measures[60]. The beginnings of external relations of the EU with other areas began from economic and development cooperation[61]. There is also an issue with different interests of members of regions that the Union wishes to cooperate with, such as differences in the North African or Latin American regions[62]. In terms of strategic parnerships, even widespread security concerns such as terrorism prevention have rarely become detailed cooperation instruments[63]. There also appears to be ambiguity relating to the interaction between bilateral instruments in regions such as the African Union, ASEAN and Mercosur and the instruments on the regional levels, with ASEAN having made progress in both economic and political integration despite concerns of implementation and African Union having differentiating interests amongst its members, while Latin America struggles to implement policies in that heterogenous region[64]. In terms of the definition of EU in the international arena, it can be viewed as a civilian power despite using troops in various missions throughout the world[65]. In the Asian context, it has been pointed out that the EU is rather inactive in the region due to its lack of political power and military presence for the main part[66]. The EU is also often seen as employing a hegemonial style, using different hard and soft measures to further the interests of the Union as a whole and also individual Member States[67]. It appears also that the EU often creates individual partnerships with countries in wider regions, inducing multiple bilateralism[68]. It appears that the EU's foreign relations suffer from a multitude of issues. The lack of clear objectives, the diverse nature of different regions and differing interests of states involved as well as the questions regarding the EU's motivations in pursuing cooperation schemes appear to inflict damage on the ambitions of the EU in being a relevant global actor. Its practice of concluding bilateral deals with states more easily than with regions can also be seen as a damaging practice towards regional agreements.

SECURITY AND DEFENCE MATTERS COOPERATION BETWEEN EU AND ASEAN AND ISSUES THEREOF

EU-ASEAN cooperation involves several fields, from trade and development aid to security and defence cooperation. Due to economical aspects, EU is interested in maintaining stability in the

[58] Bendiek, A., Kramer, H., *"EU as a Strategic International Actor: Substantial and Analytical Ambiguities"* European Foreign Affairs Review, Vol. 15, 2010, p 453. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0015&collection=kluwer&id=461&startid=&endid=482, Accessed: May 20th, 2018.
[59] *Ibidem*, p 455.
[60] *Ibidem*, p 456.
[61] *Ibidem*, p 458.
[62] *Ibidem*, p 459.
[63] *Ibidem*, p 460.
[64] *Ibidem*, pp 461-462.
[65] *Ibidem*, p 465.
[66] *Ibidem*, p 466.
[67] *Ibidem*, p 470.
[68] *Ibidem*, p 471.

region[69]. It appears that security cooperation also reflects the growing role of EU in global affairs[70]. The EU has participated in several meetings and conferences in the region such as ASEAN Regional Forum Ministerial meetings[71]. The High Representative participated in the 2013 Shangri La dialogue that consists of discussion of military personnel, defence ministeries and other defence-related entities in the region[72]. In her address at the dialogue, the High Representative laid out the means the EU uses for fulfilling its security cooperation objectives, these are diplomacy, economy, humanitarian aid, development and security instruments[73]. In 2015, the High Representative Frederica Mogherini confirmed the military, strategic, security dimension of the EU in its cooperation with Asia-Pacific region[74]. The High Representative noted some areas of concern, including maritime disputes between the Asian powers, security as a means of ensuring supply chain operation, with the emphasis on cooperation and rule of law, including international law[75]. The EU High Representative also exposed EU's commitments towards ASEAN, including cooperation in maritime surveillance, prevention of piracy and maintaining security of ports as well as focus on preventive diplomacy[76]. Terrorism was also named as one of the major security challenges that has a military dimension[77]. It was also confirmed that the EU maintains five military missions and also eleven civilian missions throughout the world[78]. Maritime security is also high on the agendas of EU cooperation in military and security matters. In 2013, the ASEAN-EU High Level Dialogue on Maritime Cooperation in Jakarta took place[79]. Security aspects brought out were trafficking in weapons and people, terrorism and piracy[80]. In 2015, another conference on the topic was held[81]. The dialogue focused on developing inter-agency cooperation, investigations, continuing to provide security for ports and sharing experiences of EU in the area[82]. Measures against organized crime were also discussed and it was agreed that international legal framework for ensuring security must be used[83]. Similar dialogues occurred also in 2016 and 2017[84]. In the meeting of 2017, two of the four main topics were related to security and defence – maritime law enforcement and prevention of conflicts[85]. The dialogue discussed mutual cooperation in law

[69] *EU-ASEAN relations, factsheet*. URL: https://eeas.europa.eu/headquarters/headquarters-homepage_lv/30722/EU-ASEAN%20relations,%20factsheet, Accessed: May 14th, 2018.
[70] *Ibidem*
[71] *Ibidem*
[72] European Commission, *Press Release: Catherine Ashton travels so Singapore for Asia Security dialogue*. URL: http://europa.eu/rapid/press-release_IP-13-489_en.htm, Accessed: May 14th, 2018.
[73] *Ibidem*
[74] *Statement: Speech by High Representative/Vice-President Frederica Mogherini at the IISS Shangri-La Dialogue 2015*. URL: http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/2015/150531_02_en.htm, Accessed: May 14th, 2018.
[75] *Ibidem*
[76] *Ibidem*
[77] *Ibidem*
[78] *Ibidem*
[79] *Press release: ASEAN and the EU hold talks on Maritime Cooperation (18/11/2013)*. URL: http://eeas.europa.eu/archives/delegations/indonesia/press_corner/all_news/news/2013/20131118_01_en.htm, Accessed: May 14th, 2018.
[80] *Ibidem*
[81] *Joint media release: The 2nd ASEAN-EU High Level Dialogue on Maritime Security Cooperation (06/05/2015)*. URL: http://eeas.europa.eu/archives/delegations/indonesia/press_corner/all_news/news/2015/20150506_02_en.htm, Accessed: May 14th, 2018.
[82] *Ibidem*
[83] *Ibidem*
[84] European Union, EU-ASEAN relations, factsheet. *op. cit.*
[85] *Press release: ASEAN-EU Co-Chairs Joint Press Release on the 4th ASEAN-EU High-Level Dialogue on Maritime Security Cooperation*. URL: https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/33406/asean-eu-co-chairs-joint-press-release-4th-asean-eu-high-level-dialogue-maritime-security_en, Accessed: May 14th, 2018.

enforcement and sharing of information and surveillance activities as well as prevention of conflicts[86]. The European Union has also held training courses on preventive diplomacy and mediation in relation to ASEAN Regional Forum[87]. The EU has also organized an ASEAN Regional Forum workshop related to the prevention of extremism in Brussels[88]. In 2016, EU also held a workshop regarding cyber security where several measures were discussed, especially in relation to cyber incidents and the necessity to avoid the escalation of tensions, miscalculations in cyber matters as well as the opportunities for cooperation between public and private sectors in cyber security matters, also practical cooperation in this field between ASEAN Regional Forum participants[89]. In addition, Intersessional Meetings on Counter-Terrorism and Transnational Crime have been held as well as the Defence Officials' Dialogue and Disaster Relief Exercises[90]. EU also plans to continue cooperation in maritime security issues via intersessional meetings and workshops[91].

Viewing the multitude of different instruments that the EU employs in security and defence-related cooperation with ASEAN countries, it is possible to make a few observations. Firstly, the focus of this cooperation appears to rest on the topics of diplomatic means of preventing conflicts, maritime security, terrorism and trade of illicit nature. As Southeast Asian terrorist cells appear to have significant contacts with the cells operationg in Europe, the counter-terrorism cooperation between the EU and ASEAN is in a special focus[92]. EU and ASEAN cooperate especially in the framework of the UN Security Council resolution in the field of terrorism prevention[93]. In addition, there have also been commitments regarding information sharing between law enforcement and cooperation between Europol and ASEAN law enforcement agency ASEANAPOL[94]. The EU has added provisions regarding cooperation in terrorism prevention and weapons of mass destruction into the Partnership and Cooperation Agreements that have been signed with several states that belong to ASEAN[95]. The EU contributes to JCLEC antiterrorism centre in Indonesia that gives expertise to police force and strengthens regional cooperation of law enforcement[96]. The EU has also developed monitoring mechanisms for several problematic regions in the area, together with governments – monitoring programmes for Aceh, Mindanao and Southern Thailand[97]. Aid from the EU in terms of terrorism prevention also has a financial element[98]. EU actively participates in ASEAN Regional Forum where several security and defence-related matters are discussed such as non-proliferation, terrorism prevention, power balances, international crime[99]. In terrorism prevention, the ASEAN Regional Forum deals mainly with capacity building, promoting cooperation between countries and intelligence sharing[100]. Asia-Europe Dialogue has been actively

[86] *Ibidem*
[87] European Union, EU-ASEAN relations, factsheet. *op. cit.*
[88] European Union, EU-ASEAN relations, factsheet. *op. cit.*
[89] *ARF Cybersecurity Workshop*, *Press corner*. URL: http://eeas.europa.eu/archives/delegations/malaysia/press_corner/all_news/news/2016/short_content_en.htm, Accessed: May 18th, 2018.
[90] European Union, EU-ASEAN relations, factsheet. *op. cit.*
[91] European Union, EU-ASEAN relations, factsheet. *op. cit.*
[92] Chevallier-Govers, C., *"Antiterrorism Cooperation between the EU and ASEAN"* European Foreign Affairs Review, Vol. 17, No. 1, 2012, p 135. Accessed at HeinOnline: http://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0017&div=11&start_page=133&collection=kluwer&set_as_cursor=0&men_tab=srchresults, Accessed: May 18th, 2018.
[93] *Ibidem*, p 148.
[94] *Ibidem*, p 148.
[95] *Ibidem*, p 149.
[96] *Ibidem*, p 150.
[97] *Ibidem*, p 151.
[98] *Ibidem*, pp 151-152.
[99] *Ibidem*, p 152.
[100] *Ibidem*, p 153.

organizing conferences on security issues such as exchange of knowledge and experience as well as possible links between organized crime and terrorism[101]. However, it has been noted that these measures have, in effect, no operational cooperation dimension[102]. As can be seen, the cooperation between EU and ASEAN countries occurs on several levels and in more than one security and defence-related topics. More specifically, the cooperation between the EU and ASEAN has been especially interactive in maritime security and terrorism areas. Terrorism-related cooperation appears to be especially fruitful, with some actual progress in the cooperation instrument creation through workshops, training programmes, financing and buildup of capacities. However, it can also be seen that in general, the security-related cooperation offers rather generalized viewpoints and soft commitments through joint ventures rather than hard deals with precisely pinpointed legal basis. Such generalized approach has been rather apparent[103]. This can potentially make the actual cooperation rather illusionary, or at least, inconsistent as the future cooperation would rely on the goodwill of the participators, rather than on fixed legal commitments that could not be ignored without the possibility of sanctions. Nevertheless, it can be difficult to achieve a greater cohesion and legal security in this matter, as the ASEAN is a group of sovereign states that can have different interests in this field and that might not wish to have interference from outside. In addition, the ASEAN is not as integrated as the EU which makes it difficult to negotiate an overall agreement. Therefore, it might not be possible, at least in the present stage of ASEAN integration, that any agreement with more concrete steps in the subject matter will be concluded soon.

In a more general view, also touching upon the EU's main cooperation elements in the region, it can also be argued that the economic cooperation in the area can also serve a security and defence-related objectives. These objectives can be viewed as the general presence and influence of EU in the region. More precisely, it can be viewed as the EU's position in Southeast Asia in relation to the positions of other powers. In this sense, increased presence of EU in the region can potentially serve as a counterbalance to the increasing influence of China and the US[104]. The EU, with increased political influence in the global sphere arising from its economic influence and necessity to become a more relevant economic player in Asia, has decided to increase its economic presence as well as its visibility[105]. In its communication in 2003, the Commission recognized the growing importance of the Asia-Pacific region in world economy and the interests of the EU related to such developments[106]. It has been viewed that as the EU's trading partners are also increasing economic ties with ASEAN member countries, this could have a negative impact on the economic interests of the EU in the region, with the necessity of the EU to use both defensive and offensive economic strategies to increase its presence in Southeast Asia[107].

---

[101] *Ibidem*, p 154.

[102] Heiduk, F., *"In it Together Yet Apart? EU-ASEAN Counter-Terrorism Cooperation After the Bali Bombings"* Journal of European Integration, Vol. 36, No. 7, 2014, pp 703-704. Accessed through Tandfonline: https://doi.org/10.1080/07036337.2014.935361, Accessed: May 21st, 2018.

[103] *Ibidem*, p 702.

[104] Wu, C.-H., *"The Evolution of EU-ASEAN Relations: Legal Framework and Policy Change"* National Taiwan University Law Review, Vol. 8, No. 2, 2013, p 333. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/ntulr8&div=14&start_page=329&collection=journals&set_as_cursor=12&men_tab=srchresults, Accessed: May 19th, 2018.

[105] *Ibidem*, p 355.

[106] *Communication from the Commission: A new partnership with South East Asia*, COM (2003) 399/4, 2003, p 6. URL: http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc_116277.pdf, Accessed: May 19th, 2018.

[107] *Ibidem*, p 8.

It is viewed that the EU wishes to become a major player in Southeast Asia with the help of partnership and cooperation agreements with individual ASEAN member states[108]. An interesting phenomenon is that even though initially, the EU signed the 1980 Cooperation Agreement with ASEAN, with the opportunity for the EU Member States to bilaterally sign agreements with ASEAN members, it has become the EU as a whole that signs agreements with individual ASEAN states[109]. Especially Laos, Vietnam and Cambodia have signed separate agreements with the EU[110]. These agreements tend to have more integration and deeper commitments than the general treaties with ASEAN as a whole[111]. On the basis of the partnership agreement with Vietnam, there is, nevertheless, issues with enforceability, especially in terms of human rights clauses, as no enforcement organs have been put into place[112]. This could also potentially prove relevant in terms of security and defence cooperation. The purpose of any agreement rests on the effect of such agreement, not merely on the declarations made. However, the difference between general ASEAN agreements and partnership agreements with individual members is the existence of legally binding provisions in the partnership agreements, especially in terms of counter-terrorism and also regarding the weapons of mass destruction and in addition, organized crime[113]. More narrowly, the EU has also engaged in bilateral cooperation with ASEAN members such as Vietnam and Indonesia[114]. Through such cooperation, it would be possible for the EU to gain greater role in this region as of now, this area is dominated by influence from the People's Republic of China and the United States[115]. Especially, when looking at the practice of the United States, it is apparent that the US also values and emphasizes bilateral agreements with ASEAN members more than with the organization in its entirety[116,117]. In terms of security and defence, these partnership agreements with individual states can be a useful way of progressing in this policy area. The partnership agreement signed with Indonesia puts a high emphasis on security cooperation[118]. In the sphere of security, the partnership agreement with Indonesia involves itself with issues regarding weapons of mass destruction, combating terrorism, organized crime and cooperation between authorities, among others[119]. In terms of weapons of mass destruction, the agreement obliges the parties to honour the existing agreements and obligations under those agreements as well as implement their commitments in internal level policies, also controlling export on the related products, with the sanctions being a possibility in case of a breach of those provisions[120]. The agreement also concerns cooperation in legal matters, with emphasis on legal effectiveness, extradition and signing of relevant international treaties as well as cooperation in counter-terrorism, featuring increased cooperation, border control and also information exchange[121]. The agreement further puts

[108] Wu, C.-H., *op. cit.*, p 334.
[109] Wu, C.-H., *op. cit.*, p 337.
[110] Wu, C.-H., *op. cit.*, pp 338-339.
[111] Wu, C.-H., *op. cit.*, p 339.
[112] Wu, C.-H., *op. cit.*, p 339.
[113] Wu, C.-H., *op. cit.*, p 344.
[114] Reiterer, M., *"The EU's Comprehensive Approach to Security in Asia"* European Foreign Affairs Review, Vol. 19, No. 1, 2014, pp 18-19. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0019&collection=kluwer&id=5&startid=&endid=26, Accessed: May 22nd, 2018.
[115] Wu, C.-H., *op. cit.*, p 344.
[116] Camroux, D., *"Interregionalism or Merely a Fourth-Level Game? An Examination of the EU-ASEAN Relationship"* East Asia, Vol. 27, 2010, p 60. Accessed through Springer.
[117] Reiterer, M., *op. cit.*, p 5.
[118] Wu, C.-H., *op. cit.*, p 345.
[119] Wu, C.-H., *op. cit.*, p 345.
[120] Wu, C.-H., *op. cit.*, pp 345-346.
[121] Wu, C.-H., *op. cit.*, p 346.

commitments on parties to fight organized crime and corruption as well as money laundering[122]. Even though it may seem that the latter types of crimes are removed from the security and defence sphere, they have a high relevance to these policies. Organized crime can have significant connections to terrorism, both through facilitating trade of weapons as well as smuggling in terrorists and through direct financing. Corruption has a two-way negative influence on EU's objectives. Firstly, it can hamper EU's interests in the region by allowing other powers to gain leverage through endemic corruption in the region. Secondly, corruption at a lower level can lead to lax security standards that can threaten the security of EU territory, especially in relation to terrorism. Money laundering has relevance in terms of terrorism, with the possibility to hide money flows to terror organizations. Therefore, these topics are also highly relevant in the field of security and defence. The ability to counter those issues effectively can potentially allow the EU to safeguard its own security as well as the security of its citizens in Indonesia as well as to gain increased position in the Southeast Asia through combatting covered means of influence through corrutive practices. The inclusion of a large amount of specific fields of cooperation in economy, trade, environment and health matters[123] can also have a role in increasing the EU's relevance in the region, through attaching the health of the Indonesian economy to a large degree to the EU market accessibility. The agreement also emphasizes the diversification of energy supply[124]. This can be an important tool that can potentially decrease the power of energy suppliers in the region and allow the greater presence of other powers such as the EU. The disputes in these areas are solved by a joint committee of the parties[125]. However, there might be issues regarding enforceability and dispute resolution.

Despite the increased cooperation, the enforcement measures in ASEAN can still raise questions[126]. Such consultative approach to dispute resolution can paralyze the organization's operative actions[127]. The differences between "Asian values" and the values of western states can have a large bearing on any increasing efforts to introduce binding and enforceable commitments as the ASEAN states appear to value non-interference to internal matters[128,129]. Insistence on sovereignty within ASEAN is a key characteristic of the organization[130,131,132,133]. Therefore, it

[122] Wu, C.-H., *op. cit.*, pp 346-347.
[123] Wu, C.-H., *op. cit.*, p 348.
[124] Wu, C.-H., *op. cit.*, p 348.
[125] Wu, C.-H., *op. cit.*, p 349.
[126] Brown, R. C., *"ASEAN: Harmonizing Labor Standards for Global Integration"* UCLA Pacific Basin Law Journal, Vol. 33, 2016, p 63. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/uclapblj33&div=6&start_page=27&collection=journals&set_as_cursor=54&men_tab=srchresults#, Accessed: May 23rd, 2018.
[127] Williams, M. R., *"Asean: Do Progress and Effectiveness Require a Judiciary?"* Suffolk Transnational Law Review, Vol. 30, No. 2, 2007, p 441. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/sujtnlr30&collection=journals&id=437&startid=&endid=462, Accessed: May 21st, 2018.
[128] Wu, C.-H., *op. cit.*, pp 358-359.
[129] Tan, S. S., Nasu, H., *"ASEAN and the Development of Counter-Terrorism Law and Policy in Southeast Asia"* UNSW Law Journal, Vol. 39, Iss. 3, 2016, pp 1233-1237. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/swales39&collection=journals&id=1235&startid=&endid=1254, Accessed: May 22nd, 2018.
[130] Cocq, C., *"Development of Regional Legal Frameworks for Intelligence and Information Sharing in the EU and ASEAN"* Tilburg Law Review, Vol. 20, 2015, pp 64-65. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/tiflr20&collection=journals&id=62&startid=&endid=81, Accessed: May 20th, 2018.
[131] Heiduk, F., *op. cit.*, p 698.
[132] Camroux, D., *op. cit.*, p 60.
[133] Ewing-Chow, M., *"Culture Club or Chameleon: Should ASEAN Adopt Legalization for Economic Integration?"* Singapore Year Book of International Law and Contributors, Vol. 12, 2008, p 226. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/singa12&collection=journals&id=235&startid=&endid=248, Accessed: May 21st, 2018.

appears that the enforcement of the provisions could still rely on the parties' wish to cooperate with each other, as the dispute resolution would be dependent on an action of the joint committee. It has been proposed that ASEAN should create its own judiciary to resolve disputes[134,135] and that it should develop more legalistic nature[136,137], measures that have not yet been taken, at least in any extensive way. Although there exists the Vientiane Protocol that allows for a more coherent dispute resolution, it has not been invoked[138]. It has been noted that the ASEAN practice has involved frequent disputes and avoidance of issues due to consensus policies[139]. The drafting of the ASEAN Charter was meant to alleviate this issue, but due to political differences between ASEAN members, it nevertheless does not contain any concrete and binding measures on implementation nor dispute resolution[140,141]. Yet, it is also viewed that with the recent attempts at intellectual property rules harmonization across ASEAN that establish a common goal but allow members to move towards that goal with their own pace, the ASEAN might be able to balance sovereignty issues with regional cooperation[142]. It is unlikely that the viewpoints of the ASEAN countries towards integration will change in the foreseeable future. Therefore, the separate agreements with individual member states of the region might seem to be a more effective solution for achieving EU's policy agendas in Southeast Asia.

Looking at instruments of ASEAN where the EU has not been the major actor, it is necessary to turn to the analysis of the ASEAN Convention on Counter-Terrorism. This Convention was adopted in 2007 as a rules-based approach towards the problem of terrorism[143]. The Convention was rapidly adopted as a way of tightening cooperation threatening the regional stability and perhaps making legal systems more consistent, with a view that cooperation is

---

[134] Williams, M. R., *op. cit.*, pp 456-457.

[135] Koh, P. M. C., *"Foreign Judgments in Asean – A Proposal"* International and Comparative Law Quarterly, Vol. 45, Iss. 4, 1996, pp 854-856. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/incolq45&div=44&start_page=844&collection=journals&set_as_cursor=87&men_tab=srchresults#, Accessed: May 23rd, 2018.

[136] Ewing-Chow, M., *op. cit.*, p 226.

[137] Davidson, P. J., *"The Asean Way and the Role of Law in Asean Economic Cooperation"* Singapore Year Book of International Law and Contributors, Vol. 8, 2004, pp 174-175. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/singa8&div=14&start_page=165&collection=journals&set_as_cursor=102&men_tab=srchresults#, Accessed: May 23rd, 2018.

[138] Woon, W., *"Dispute Settlement in ASEAN"* Korean Journal of International and Comparative Law, Vol. 1, 2013, pp 97-99. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/kjicl1&div =12&start_page=92&collection=journals&set_as_cursor=12&men_tab=srchresults#, Accessed: May 23rd, 2018.

[139] Khoo, N., *"Rhetoric vs. Reality – ASEAN's Clouded Future"* Georgetown Journal of International Affairs, Vol. 5, Iss 2, 2004, pp 52-54. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/geojaf5&div=32&start_page=49&collection=journals&set_as_cursor=65&men_tab=srchresults, Accessed: May 23rd, 2018.

[140] Leviter, L., *"The ASEAN Charter: ASEAN Failure or Member Failure"* New York University Journal of International Law and Politics, Vol. 43, 2010, pp 193-199. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/nyuilp43&div=8&start_page=159&collection=journals&set_as_cursor=24&men_tab=srchresults#, Accessed: May 23rd, 2018.

[141] Phan, H. D., *"Promoting Compliance: An Assessment of Asean Instruments since the Asean Charter"* Syracuse Journal of International Law and Commerce, Vol. 41, Iss. 2, 2014, pp 408-411. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/sjilc41&div=13&start_page=379&collection=journals&set_as_cursor=95&men_tab=srchresults, Accessed: May 23rd, 2018.

[142] Ng, E. S.-K., *"ASEAN IP Harmonization: Striking the Delicate Balance"* Pace International Law Review, Vol. 25, Iss. 1, 2013, p 159. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/pacinlwr25&div=9&start_page=129&collection=journals&set_as_cursor=69&men_tab=srchresults, Accessed: May 23rd, 2018.

[143] Ahmad, A. R., *"The ASEAN Convention on Counter-Terrorism 2007"* Asia-Pacific Journal on Human Rights and the Law (1 & 2), 2013, p 93. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/apjur14&collection=journals&id=97&startid=&endid=152, Accessed: May 20th, 2018.

necessary[144]. However, it has been noted that instead of a community-wide approach, there has been more success in the adoption of bilateral measures individually between different ASEAN members such as a cooperation agreement between Malaysia and Thailand which has expanded from border control issues to military cooperation and agreement between Malaysia and Indonesia where cooperation has also expanded from combatting communist insurgencies to more extended border security cooperation, with both agreements having considerable actual implementation through joint operations and sharing information on intelligence matters, among others[145]. A question has been how such a bilateral approach adapts to the regional essence of a community such as ASEAN, with views that bilateral measures need to complement the general association measures[146]. Extensive attacks in 2001 and 2002 forced the international community and in that light ASEAN to take terrorism into focus and treat it differently from other forms of international crime[147,148]. It is seen that terrorism has significant international dimensions and attacks can potentially be planned and carried out in different countries[149]. However, the provisions regarding preparedness and state-sponsored attacks have been left out of the Convention[150]. As often the case in international conventions, the definitions appear to cause issues between governments. For this reason, the Convention merely claims the offences to be those covered in other international instruments on the matter[151,152], despite the attention brought by some researchers on the necessity of clear definitions and effective cooperation, expressed before the Convention came into effect[153]. However, the Convention does specify some offences that fall under the Convention's effect, due to members of ASEAN agreeing with their terrorist nature[154]. Instruments adopted in ASEAN symbolize in their content the ASEAN's intergovernmental nature[155]. As already mentioned, the Convention appears to focus more on the punishment for offences rather than on preventing them[156]. There appears to be a lack of regulation on offences related to preparing the attacks in the scope of the Convention[157]. In that sense, a significant weakness is seen regarding the international conventions adaptation model of ASEAN's Convention, through the ban of these instruments to prosecute for terror attack planning that has not come to reality which can damage preventive measures and render them ineffective[158]. Recruitment by terror organizations was not added to the Convention[159]. Similarly, incitement for committing terror attacks was not added into the Convention[160]. One reason for the lack of such approach could be seen as the reluctance to affect

[144] *Ibidem*, pp 94-97.
[145] *Ibidem*, pp 97-99.
[146] *Ibidem*, p 99.
[147] *Ibidem*, p 100.
[148] Cocq, C., *op. cit.*, p 70.
[149] Ahmad, A. R., *op. cit.*, p 103.
[150] Ahmad, A. R., *op. cit.*, pp 103-104.
[151] Ahmad, A. R., *op. cit.*, pp 104-105.
[152] Cocq, C., *op. cit.*, p 60.
[153] Rose, G., Nestorovska, D., *"Towards an Asean Counter-Terrorism Treaty"* Singapore Year Book of International Law and Contributors, Vol. 9, 2005, pp 157-189. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/singa9&collection=journals&id=165&startid=&endid=198, Accessed: May 20th, 2018.
[154] Tofangsaz, H., *"Confiscation of Terrorist Funds: Can the EU Be a Useful Model for ASEAN?"* UCLA Pacific Basin Law Journal, Vol. 34, 2017, p 169. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/uclapblj34&collection=journals&id=157&startid=&endid=222, Accessed: May 21st, 2018.
[155] Cocq, C., *op. cit.*, pp 60-61.
[156] Ahmad, A. R., *op. cit.*, p 106.
[157] Ahmad, A. R., *op. cit.*, p 109.
[158] Ahmad, A. R., *op. cit.*, p 111.
[159] Ahmad, A. R., *op. cit.*, p 115.
[160] Ahmad, A. R., *op. cit.*, p 112.

any existing measures taken in ASEAN states in the national level[161]. Indeed, some members have enacted their own specific legislation on terrorism and financing of terrorism[162]. It might be true that if the existing measures at the national level are sufficient and well-established, highly effective then new Convention norms to be introduced could potentially jeopardize the effectiveness of existing measures or introduce new and less effective measures. However, it has been noted that due to the international character of terrorism and related offences, it is important to have an international cooperation framework in place that would enable cooperation between the states to take place[163]. The resulting emphasis on the sovereignty of ASEAN members and their ability to control their own response to terrorism issues can cause considerable difficulties for the operational aspects of the Convention[164]. It has been noted that the application of the Convention can be difficult, demonstrating such difficulties through the example of Singaporean and Indonesian quarrel over antiterrorist measures[165]. However, it has also been noted that the attitude in ASEAN is beginning to change and the insistence of sovereignty and not interfering into national issues is nothing more than rhetoric[166].

Looking at the ASEAN Convention on Counter-Terrorism, it is apparent that the Convention represents a new effort to regulate security-related matters in a community-based approach. However, the generalized nature of the Convention as well as lack of enforcement mechanisms as well as the omission of several key areas from the text of the Convention in an effort to maintain the rigid separation of sovereign powers has had a significant effect on the application of the Convention, both in theory and in practice. The diverse interests of different involved states and the lack of uniform measures could render attempts at achieving success in fight against terrorism rather non-existent. The inability of ASEAN itself to come up with a comprehensive regulation of a binding nature due to the unwillingnes of the parties to commit themselves to such agreements could be one of the leading causes of a cooled down cooperation in security and defence matters between ASEAN and the EU. This characteristic of Southeast Asian states could be the reason why separate agreements with participating countries have been more fruitful for both the EU and countries involved than any cooperation in the regional level. Considering this, it might be a good strategy to continue bilateral relations development which can become highly effective in achieving the intended security-related objectives in reality. Due to the economic power of the EU, it is possible for the Union to exert far greater political and economic pressure on a single willing ASEAN member state than on ASEAN as a whole, which has several members with diverse interests that are not always adaptable with those of the European Union.

CONCLUSION

EU and ASEAN maintain relations within several areas, cooperating on a variety of policies. Through this cooperation, EU is attempting to fulfill it external objectives. External cooperation in security and defence matters is highly relevant for the Union, as it allows to forge alliances as well as increase the safety of European citizens by preventing transnational crime from entering into EU. As EU and ASEAN share some of their main concerns, especially regarding piracy and terrorism, the cooperation between these two entities has a special value.

[161] Ahmad, A. R., *op. cit.,* p 113.
[162] Tofangsaz, H., *op. cit.,* pp 170-180.
[163] Ahmad, A. R., *op. cit.,* p 114.
[164] Tan, S. S., Nasu, H., *op. cit.,* p 1220.
[165] Ahmad, A. R., *op. cit.,* p 117.
[166] Ahmad, A. R., *op. cit.,* pp 118-119.

The analysis of the existing cooperation, however, shows that the cooperation has mainly involved soft measures such as forums and workshops where EU authorities share their experiences with their ASEAN counterparts while any concrete measures in legally binding agreements are scarce, if any.

It appears that both the EU and ASEAN could be blamed for the appearance of such situation. Firstly, it is still not clear which competences does EU have in CFSP area. Secondly, it appears that the EU tends to lack clear foreign policy strategies with concrete objectives, which can perhaps partly be blamed on the conflicting interests of the Member States. Thirdly, it has been seen that the EU tends to favor bilateral, rather than regional, agreements, despite opposite rhetoric.

ASEAN, on the other hand, has issues relative to its essence and operating methods. The ASEAN way that focuses on consensus and dialogue rather than on legal framework prevents any deeper integration of the region as well as hampers the conclusion of more concrete agreements with enforceable measures with ASEAN's partners. This method of operation provides difficulties for the enforcement of any agreements as well as a lack of proper dispute resolution that would produce binding results.

In this context, it becomes clear that perhaps the EU's practice on focusing on bilateral agreements with ASEAN members is the correct path for as long as ASEAN has not become more deeply integrated that would allow concrete, legalized actions to be proceeded with.

REFERENCES

Academic articles:

Ahmad, A. R., "*The ASEAN Convention on Counter-Terrorism 2007*". Asia-Pacific Journal on Human Rights and the Law (1 & 2), pp 93-147, 2013, p 93. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/apjur14&collection=journals&id=97&startid=&endid=152

Bendiek, A., Kramer, H., (2010), "*EU as a Strategic International Actor: Substantial and Analytical Ambiguities*". European Foreign Affairs Review, Vol. 15, pp 453-474, 2010. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0015&collection=kluwer&id=461&startid=&endid=482

Bossuyt, F., Drieghe, L., Orbie, J., (2013), "*Living Apart Together: EU Comprehensive Security from a Trade Perspective*". European Foreign Affairs Review, Vol. 18, Special Issue, pp 63-82, 2013. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0018&collection=kluwer&id=543&startid=&endid=562

Brown, R. C., (2016), "*ASEAN: Harmonizing Labor Standards for Global Integration*". UCLA Pacific Basin Law Journal, Vol. 33, pp 27-72, 2016. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/uclapblj33&div=6&start_page=27&collection=journals&set_as_cursor=54&men_tab=srchresults#

Camroux, D., (2010), "*Interregionalism or Merely a Fourth-Level Game? An Examination of the EU-ASEAN Relationship*". East Asia, Vol. 27, pp 57-77, 2010. Accessed through Springer.

Chevallier-Govers, C., (2012), "*Antiterrorism Cooperation between the EU and ASEAN*". European Foreign Affairs Review, Vol. 17, No. 1, pp 133-156, 2012. Accessed at HeinOnline: http://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0017&div=11&start_page=133&collection=kluwer&set_as_cursor=0&men_tab=srchresults

Cocq, C., (2015), "*Development of Regional Legal Frameworks for Intelligence and Information Sharing in the EU and ASEAN*". Tilburg Law Review, Vol. 20, pp 58-77, 2015. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/tiflr20&collection=journals&id=62&startid=&endid=81

Constantinescu, M., (2016), "*Economic Challenges for European Defence*". Europolity: Continuity and Change in European Governance, Vol. 10, No. 2, pp 75-107, 2016. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/eurpol10&collection=journals&id=223&startid=&endid=256

Davidson, P. J., (2004) "*The Asean Way and the Role of Law in Asean Economic Cooperation*". Singapore Year Book of International Law and Contributors, Vol. 8, pp 165-176, 2004, pp 174-175. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/singa8&div=14&start_page=165&collection=journals&set_as_cursor=102&men_tab=srchresults#

Ewing-Chow, M., (2008), "*Culture Club or Chameleon: Should ASEAN Adopt Legalization for Economic Integration?*" Singapore Year Book of International Law and Contributors, Vol. 12, pp 225-237, 2008. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/singa12&collection=journals&id=235&startid=&endid=248

Fahey, E., (2014), "*The EU's Cybercrime and Cyber-Security Rulemaking: Mapping the Internal and External Dimensions of EU Security*". European Journal of Risk Regulation, Vol. 5, No. 1, pp 46-60, 2014. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/ejrr2014&collection=journals&id=51&startid=&endid=65

Heiduk, F., (2014), "*In it Together Yet Apart? EU-ASEAN Counter-Terrorism Cooperation After the Bali Bombings*". Journal of European Integration, Vol. 36, No. 7, pp 697-713, 2014. Accessed through Tandfonline: https://doi.org/10.1080/07036337.2014.935361

Khoo, N., (2004), "*Rhetoric vs. Reality – ASEAN's Clouded Future*". Georgetown Journal of International Affairs, Vol. 5, Iss 2, pp 49-56, 2004, pp 52-54. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/geojaf5&div=32&start_page=49&collection=journals&set_as_cursor=65&men_tab=srchresults

Koh, P. M. C., (1996), "*Foreign Judgments in Asean – A Proposal*". International and Comparative Law Quarterly, Vol. 45, Iss. 4, pp 844-860, 1996, pp 854-856. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/incolq45&div=44&start_page=844&collection=journals&set_as_cursor=87&men_tab=srchresults#

Koutrakos, P., (2018), "*Judicial Review in the EU's Common Foreign and Security Policy*". International and Comparative Law Quarterly, Vol. 67, pp 1-35, 2018. Accessed through https://www.cambridge.org/core

Leal-Arcas, R., (2006), "*EU Legal Personality in Foreign Policy*". Boston University International Law Journal, Vol. 24, pp 165-212, 2006. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/builj24&collection=journals&id=169&startid=&endid=216

Leviter, L., (2010), "*The ASEAN Charter: ASEAN Failure or Member Failure*". New York University Journal of International Law and Politics, Vol. 43, pp 159-210, 2010, pp 193-199. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/nyuilp43&div=8&start_page=159&collection=journals&set_as_cursor=24&men_tab=srchresults#

Naert, F., (2005), "*European Security and Defence in the EU Constitutional Treaty*". Journal of Conflict & Security Law, Vol. 10, No. 2, pp 187-207, 2005. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/jcsl10&collection=journals&id=191&startid=&endid=212

Ng, E. S.-K., (2013), "*ASEAN IP Harmonization: Striking the Delicate Balance*". Pace International Law Review, Vol. 25, Iss. 1, pp 129-160, 2013, p 159. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/pacinlwr25&div=9&start_page=129&collection=journals&set_as_cursor=69&men_tab=srchresults

Phan, H. D., (2014), "*Promoting Compliance: An Assessment of Asean Instruments since the Asean Charter*". Syracuse Journal of International Law and Commerce, Vol. 41, Iss. 2, pp 379-412, 2014, pp 408-411. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/sjilc41&div=13&start_page=379&collection=journals&set_as_cursor=95&men_tab=srchresults

Reiterer, M., (2014), "*The EU's Comprehensive Approach to Security in Asia*". European Foreign Affairs Review, Vol. 19, No. 1, pp 1-22, 2014. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0019&collection=kluwer&id=5&startid=&endid=26

Rose, G., Nestorovska, D., (2005), "*Towards an Asean Counter-Terrorism Treaty*". Singapore Year Book of International Law and Contributors, Vol. 9, pp 157-189, 2005. Accessed through HeinOnline:

https://heinonline.org/HOL/Page?handle=hein.journals/singa9&collection=journals&id=165&startid=&endid=198

Salmon, T., (2005), "*The European Security and Defence Policy: Built on Rocks or Sand?*" European Foreign Affairs Review, Vol. 10, pp 359-379, 2005. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0010&collection=kluwer&id=367&startid=&endid=388

Staridis, S., Hutchence, J., (2000), "*Mediterranean Challenges to the EU's Foreign Policy*". European Foreign Affairs Review, Vol. 5, pp 35-62, 2000. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.kluwer/eurofa0005&collection=kluwer&id=37&startid=&endid=64

Tan, S. S., Nasu, H., (2016), "*ASEAN and the Development of Counter-Terrorism Law and Policy in Southeast Asia*". UNSW Law Journal, Vol. 39, Iss. 3, pp 1219-1238, 2016. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/swales39&collection=journals&id=1235&startid=&endid=1254

Tofangsaz, H., (2017), "*Confiscation of Terrorist Funds: Can the EU Be a Useful Model for ASEAN?*" UCLA Pacific Basin Law Journal, Vol. 34, pp 149-213, 2017, p 169. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/uclapblj34&collection=journals&id=157&startid=&endid=222

Wessel, R. A., (2011), "*Division of International Responsibility between the EU and Its Member States in the Area of Foreign, Security and Defence Policy*". Amsterdam Law Forum, Vol. 3, No. 3, pp 34-48, 2011. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/amslawf3&collection=journals&id=422&startid=&endid=436

Williams, M. R., (2007), "*Asean: Do Progress and Effectiveness Require a Judiciary?*" Suffolk Transnational Law Review, Vol. 30, No. 2, pp 433-457, 2007. Accessed through HeinOnline: https://heinonline.org/HOL/Page?handle=hein.journals/sujtnlr30&collection=journals&id=437&startid=&endid=462

Woon, W., (2013), "*Dispute Settlement in ASEAN*". Korean Journal of International and Comparative Law, Vol. 1, pp 92-104, 2013, pp 97-99. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/kjicl1&div=12&start_page=92&collection=journals&set_as_cursor=12&men_tab=srchresults#

Wu, C.-H., (2013), "*The Evolution of EU-ASEAN Relations: Legal Framework and Policy Change*". National Taiwan University Law Review, Vol. 8, No. 2, pp 329-372, 2013. Accessed through HeinOnline: http://heinonline.org/HOL/Page?handle=hein.journals/ntulr8&div=14&start_page=329&collection=journals&set_as_cursor=12&men_tab=srchresults

EU legislation:

Consolidated Version of the Treaty on the European Union, in *The Official Journal of the European Union*, C 326/13, 2012, pp 13-45, Art.-s 3(2), 3(5), 4, 21, 22, 26, 27, 28, 31, 34, 36, 37, 38, 41, 42, 43, 45, 46. Accessed at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

Consolidated Version of the Treaty on the Functioning of the European Union, in *The Official Journal of the European Union*, C 326/47, 2012, pp 47-199, Art 2(4), 73, 329, 331, 333, 346. Accessed at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF

EU soft law:

Communication from the Commission: A new partnership with South East Asia, COM (2003) 399/4, 2003, pp 1-52. Accessed at: http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc_116277.pdf

Press releases:

European Commission, (2013), *Press Release: Catherine Ashton travels so Singapore for Asia Security dialogue*, 2013. Accessed at: http://europa.eu/rapid/press-release_IP-13-489_en.htm

European Union, (2013), *Press release: ASEAN and the EU hold talks on Maritime Cooperation (18/11/2013)*, 2013. Accessed at: http://eeas.europa.eu/archives/delegations/indonesia/press_corner/all_news/news/2013/20131118_01_en.htm

European Union, (2015), *Joint media release: The 2nd ASEAN-EU High Level Dialogue on Maritime Security Cooperation (06/05/2015)*, 2015. Accessed at: http://eeas.europa.eu/archives/delegations/indonesia/press_corner/all_news/news/2015/20150506_02_en.htm

European Union, (2015), *Statement: Speech by High Representative/Vice-President Frederica Mogherini at the IISS Shangri-La Dialogue 2015*, 2015. Accessed at: http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/2015/150531_02_en.htm

European Union, (2016), *ARF Cybersecurity Workshop, Press corner*, 2016. Accessed at: http://eeas.europa.eu/archives/delegations/malaysia/press_corner/all_news/news/2016/short_content_en.htm

European Union, (2017), *Press release: ASEAN-EU Co-Chairs Joint Press Release on the 4th ASEAN-EU High-Level Dialogue on Maritime Security Cooperation*, 2017. Accessed at: https://eeas.europa.eu/delegations/association-southeast-asian-nations-asean/33406/asean-eu-co-chairs-joint-press-release-4th-asean-eu-high-level-dialogue-maritime-security_en

Other materials:

European Union. *The Schuman declaration – 9 May 1950*. European Union. Accessed at: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en

European Union, (2017), *EU-ASEAN relations, factsheet*, 2017. Accessed at: https://eeas.europa.eu/headquarters/headquarters-homepage_lv/30722/EU-ASEAN%20relations,%20factsheet

European Union, (2018), *Permanent Structured Cooperation (PESCO) – Factsheet*, 2018. Accessed at: https://eeas.europa.eu/headquarters/headquarters-Homepage/34226/permanent-structured-cooperation-pesco-factsheet_en

EU-Israel Relations: an Analysis of the Most Challenging EU Foreign Relations

FRANCESCA COLOTTA
UNIVERSITY OF SIENA, ITALY

Abstract: *The purpose of this research paper is to identify, through the study of the historical profile, the contemporary reasons which, over the years, have led to the alternation of criticism and support between the European Union and Israel. This analysis is then developed in the economic, political and diplomatic fields in order to clarify the conflictual aspects of this relation, with a focus on the most recent times. All is revised in light of the Neighbourhood Policy, implemented by the European Union, first treated with a general overview and then identified in relations with the Middle East, in which Israel plays an essential role.*
Keywords: *EU's Neighbourhood Policy, Middle East, Kippur War, Six Day War, Normative Power;*

INTRODUCTION

In a scenario of profound change as well as expansion of diplomatic relations, which there fore take on fundamental importance, it is crucial for one of the major political actors such as the European Union to forge closer and closer links with the other interlocutors. And this idea becomes decisively if we refer to relations with nations geographically close to the European Union, linked with it because of historical and cultural roots.[1] In this context the main role is reserved to the European Union's Neighbourhood Policy with the aim of creating a single strategic framework integrated by the ENP action plans agreed with eleven of its partners, in which concrete mutual commitments are made, and by an intensified and constructive dialogue with almost all the partners. However, the set of partners participating in this political program is extremely heterogeneous, composing nations with very different backgrounds, and which determine more problematic and less linear relationships. And this problematicity becomes more acute if we consider countries involved in long-term conflicts, such as Israel that even though owner of a common heritage (compared to the European one), is in a controversial position due to its criticisable action in foreign policy. In this sense, this research paper aims to analyze the historical and contemporary trend of relations between the European Union and Israel in order to investigate the reasons that make, and have made in the past, the definitive association between the two countries hard to reach.

A GENERAL OVERVIEW ON EUROPEAN UNION'S NEIGHBOURHOOD POLICY

The basic premise of relations between European Union and Israel can be found in the European Union's Neighbourhood Policy. It has as main goal to bring EU and its neighbours closer. Indeed "Through its European Neighbourhood Policy (ENP), which has been revised in November 2015, the EU works with its Southern and Eastern Neighbours to foster stabilization, security and prosperity, in line with the Global Strategy for the European Union's Foreign and Security Policy" (European External Action web site: *https://eeas.europa.eu/headquarters/headquarters-homepage/330/european-neighbourhood-policy-enp_en*). The roots of the European neighborhood policy must be identified in the Barcelona process launched in 1995 with regard to the

[1] Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

Mediterranean countries and in all Community policies aimed at the countries of Eastern Europe after the end of the Cold War. The Euro-Mediterranean partnership created in Barcelona in 1995 established a stable framework of political, economic, social and cultural relations between the European Union and all other Mediterranean-facing countries, with the exception of Libya, admitted as an observer in the 1999. The initiative proceeded rather slowly, without very satisfactory results. The European Neighborhood Policy was outlined in 2003, in line with the preparation of the great enlargement of the European Union to the east and to the south in 2004. The objective of the neighborhood policy was to tighten relations with neighboring countries to the Union for which the possibility of joining the Union was not foreseen, at least in a near future. In 2008, the neighborhood policy was strengthened by the creation of the Union for the Mediterranean, which was supposed to relaunch the Barcelona process. However, the political events that have affected North Africa and the Middle East in the first months of 2011 require a profound revision of the European policies addressed to those countries.[2]

The countries to which the neighborhood policy is addressed are largely emerging or develping countries. They receive financial assistance from the European Union, but they are conditioned by compliance with certain requirements for respect for human rights and for the promotion of economic and political reforms. In addition to providing technical or financial assistance, the neighborhood policy often provides commercial agreements. [3]

The neighborhood policy is mainly implemented through bilateral agreements concluded between the European Union and the individual countries of Eastern Europe or the Mediterranean *(Mediterranean countries: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria Syria, Tunisia. Eastern European and Caucasus[4] countries: Armenia, Azerbaijan, Belarus, Georgia,[5] Moldova, Ukraine).* After the conclusion of an association agreement, the European Union prepares the draft for an action plan to be implemented over a period of three to five years, which is then approved together with the government of the country concerned. In addition to the bilateral action plans, the European Neighborhood Policy also takes place in two multilateral frameworks based on a regional basis: the Eastern Partnership and the Union for the Mediterranean.[6] To the partners is guaranteed an easily access to the European internal market, better commercial conditions and financial assistance. European financial assistance is ensured by the "European Neighborhood and Partnership Instrument", which has been operational since 2007. It is a cooperation instrument managed by EuropeAid – Cooperation Office.[7] The European Neighborhood Policy was re-examined in 2015 to respond to new challenges related to the evolution of the situation in the EU's neighboring countries. The new European neighborhood policy has relaunched relations between the European Union and its eastern and southern neighbors, focusing more on stabilization, resilience and security. The long-term crises and geopolitical relevance of EU-neighboring countries underline the importance of having a solid political framework that strengthens political and economic relations with these countries. The review has reoriented the ENP in order to ensure a differentiated approach to the partners that takes note of the

[2] E. Wesselink, R. Boschma – "European Neighbourhood Policy: History, Structure, and Implemented Policy Measures", 15 July 2016;

[3] S. Gstöhl, S. Schunz – "Theorizing the European Neighbourhood Policy", 16 December 2016;

4 For Caucasus, please see Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

5 For Georgia, please see Chochia, A.; Popjanevski, J. (2016). Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (197−210). Springer International Publishing.

6 Communication from the Commission – European Neighbourhood Policy – Strategy paper (COM/2004/0373 final)

7 Evaluation of the European Union's Support to two European Neighbourhood Policy Regions (East and South) – FINAL REPORT, Volume 2: Annexes 1-10, June 2013

different level of aspirations of each country, a joint ownership based on both the needs of the partners and the interests of the European Union and greater flexibility in use of EU instruments. The new approach has been instrumental in relaunching the EU's relations with ENP partner countries, including through the negotiation and adoption of new partnership priorities and the constant updating of association agendas, focusing each time on the reports for coming years on areas of mutual agreement and mutual interest.[8] Looking more closely at relations with Israel under this policy, what immediately emerges is the substantial difference with the other states taking part in it. In fact, it must not engage in political and economic reforms that improve the post-Soviet crisis. And at the same time it is much more developed than the other Mediterranean countries. This determines a very similar economic and social level between the two political actors that could potentially result in a closer relationship. However, it is precisely this parity that causes Israel not to rely on the EU in such a profound manner as the other nations that are part of the ENP. Indeed, Israel is very jealous of its autonomy and therefore does not allow the EU to arbitrarily apply its own conditionality.[9]

HISTORICAL PROFILE OF RELATIONS BETWEEN THE EUROPEAN UNION AND ISRAEL

Within the framework of this broader neighborhood policy, that is the instrument proposing stability and security objectives, as well as prosperity, for the regions adjoining its borders, the European Union has been engaged for some years in a process of collaboration with Lebanon, with Israel and with the Palestinian Authority. With the ambition therefore to contribute – encouraging the processes of democratization and economic growth in countries that were already or have become "our neighbors" – to pacify a conflict that for decades has divided the Middle East. And this ambition is justified by the close historical and cultural relationship between European and Israeli-Palestinian territories. The history of the Jewish people and the history of Europe have indeed been intertwined for many centuries. The Jewish culture has in fact laid the foundations for the establishment of the European identity itself through the important influences that it has had in the theological, philosophical and historical fields but also artistic and literary, in fact constituting the external culture more factually close to the European one.[10] The Arab-Israeli conflict is in fact one of the most important issues addressed through political cooperation (EPC) by the European Union and for about two decades has been one of the fundamental themes for the newborn community. However, the first significant developments came in the late 1980s and early 1990s, when with the end of the Cold War, member states took the decision to deepen their partnership through a political union and a common foreign and security policy (CFSP), and have therefore suggested a more active involvement of Europe in international affairs and Middle Eastern problems. The change was indeed extremely gradual and manifested itself through an increasing spread of awareness of the Palestinian reality, and consequently of the willingness to play a role in the resolution of the conflict through different instruments of intervention. The trend of this evolution was however far from constant and linear: the involvement was for a long time sporadic and occasional, alternated by some avant-garde positions that have paved the way for what is today the state of relations between the two actors.[11] And these positions are taken on the basis of a pluralistic approach through the implementation of democracy, civil society and human rights as

[8] European Commission – Press Release : The revised European neighborhood policy: support stabilization, resilience and security, Brussels 18 May 2017 – Url http://europa.eu/rapid/press-release_IP-17-1334_en.htm ;

[9] T. Schumacher, A. Marchetti, T. Demmelhuber – "The Routledge Handbook on the European Neighbourhood Policy", 2017

[10] F. Terpan – "EU-Israel Relations: in Search of Coherent and Consistent EU Foreign Policy", 22-24 April 2010;

[11] Aoun E. – "European Foreign Policy and the Arab Israeli Dispute: Much Ado about nothing", 2003.

well as pleading the incompatibility between the West and the South.[12] Furthermore from the strict diplomatic point of view, however, this proximity has always been rather controversial. The diplomatic relations between the State of Israel and the European Union in particular – established in 1959 – were characterized by their movement on a wavering path that alternated moments of rapprochement and mutual understanding with moments of more or less intense dissension. Despite the overall trend, indeed, this relation has been oriented towards a constant strengthening of economic and cultural ties between the two actors this has not helped to settle certain divergences on the political level that, indeed, just after the deepening of the relationship, have always become more divisive. The first wide-ranging agreement – after two minors on trade dating back to 1964 and 1970 – signed on 11 May 1975, has been developed around three main objectives: 1) establishment of a free trade area on industrial products; 2) reduction of tariffs on imports of agricultural products from Israel; 3) cooperation between the signatories on the circulation of capital and transmission of technological, scientific and industrial knowledge.[13] The deepening of the relations continued in the following years and led, on 20 November 1995, to the signing of the Association Agreement (in force since 1 June 2000) – at the same time as the start of the Barcelona process aimed at creating a partnership for the Mediterranean. The agreement replaced the previous one (1975) and prepared a strong strengthening of relations between the two actors because – besides having the aim of further expanding the areas of economic exchange and cooperation – it devotes much more space to the need for a active political dialogue aimed at better mutual understanding and stability of the Mediterranean area. The agreement includes, among others, the following objectives: 1) to set up an appropriate framework for political dialogue; 2) to expand the exchange of goods, services and capital by promoting a harmonious development of economic relations between the two countries and by intensifying cooperation in research and development; 3) to encourage regional stability by supporting peaceful coexistence and economic stability; 4) to promote cooperation in the remaining areas of mutual interest.[14]

Subsequently, the reports deepened further with the signing of numerous other agreements, including the one in 2009 for greater liberalization in the agricultural sector and the one that allowed the entry of Jerusalem into Horizon 2020, the largest EU program dedicated to research and innovation.[15]

The inclusion of Israel in the European Neighborhood Policy has allowed the further strengthening of relations between the two actors. Despite the progressive strengthening of bilateral relations, however, the tone of political confrontation between Israel and the European Community / European Union has not followed an equally positive line. On the contrary, frictions have persisted or grown over time. It is possible to try to explain these difficulties by dividing the scenario into three fundamental areas: the economic one, the political one and the one about the perception of the reciprocal operation between Israel and European institutions (as well as member countries that compose them).

ECONOMIC FIELD

The incompatibility that animates the confrontation between Israel and Arab countries has also affected the relations between Israel and the European Union. Europe (especially the southern

[12] S. Panebianco – "A New Euro-Mediterranean Cultural Identity", 2003.

[13] EU Rapid Press Release – Url: http://europa.eu/rapid/press-release_MEMO-93-3_en.htm

[14] Israel-EU Trade Agreement – November 1995 – Url : http://www.mfa.gov.il/mfa/mfa-archive/1990-1995/pages/israel-eu%20trade%20agreement%20-%20november%201995.aspx

[15] Israel and European Union sign agricultural agreement – Url: http://mfa.gov.il/MFA/PressRoom/2009/Pages/Israel_and_European_Union_sign_agricultural_agreement_4-Nov-2009.aspx

part), indeed, is historically closely linked with the countries of the southern shores of the Mediterranean and the Persian Gulf: first of all a substantial part of the energetic sources imported into Europe comes from there; secondly they represent one of the most relevant destinations for European (again mostly Southern) exports. Furthermore in these last years – they are one of the main duct through which migratory flows reaches European shores; The set of these areas and situations has constituted a battleground between Israel and the Arab countries to obtain the favor of European nations while seeing an almost total prevalence of the latter due to the decidedly lower economic weight of Israel (individually considered) and compared to the North African block.[16] [17]

Emblematic to explain the concrete influence of this everlasting conflict on the economic field is the War of the Kippur, happened in 1973. Egyptian President Anwar Sadat, backed by the support of the Arab world and in collaboration with Abu Sulayman Hafez al-Assad, President of Syria, decided to take advantage of the precious moment of religious fasting (for both Jewish and Muslims) to attack and reconquer the territories lost during the previous Arab-Israeli wars. However, the success of the Arab forces did not continue beyond October 11 and the war was officially declared ended by UN resolution 388, advocated by Secretary General Kurt Waldheim, which was followed by two other resolutions of the Security Council.

During the war, the Arab countries associated with OPEC (the "Organization of Petroleum Exporting Countries") decided to support the military effort of Egypt and Syria by increasing the price of oil. They also increased the price of embargo of oil to the countries that had openly supported Israel (United States, Holland, Portugal, South Africa and Rhodesia). In regard to countries that had limited themselves to taking anti-Arab positions, instead, the distribution of oil was recalculated with the effect that states could no longer import the amount of oil they really needed, but a different quantity, decided by the countries Arabs from OPEC and sold at a higher price than before the Yom Kippur war. This measure was applied to all European countries, with the exception of France, due to its pro-Arab alignment maintained during the conflict.[18]
In spite of the fact that the war did not register serious human losses, it had a heavy economic impact on the supply of energy sources that lasted until the end of the seventies. However, despite the economic threat, the attempt by the Arab countries to isolate Israel has failed and int the following years, the relations between Israel and European nations were immediately resold thanks to the signing of innumerable bilateral agreements.[19]

DIFFERENT POLITICAL VIEWS WITHIN THE EU

The second area to be considered is deeply connected to the nature of the European Union itself. As a matter of facts, although not covering a geographically significant extent, the European Union consists of states with extremely heterogeneous backgrounds due to historical, cultural and geographical reasons. Due to the above mentioned reasons, it is determined a variable orientation of foreign strategies and policies already considering two different States. Therefore, although there are similarities and common aims within the European Union, it is impossible to even think to a common political and strategic vision to make agree all the twenty-eight member states until a new single sovereign entity will be created (as it was hoped by some of the founding fathers of the

[16] EU-African Economic Relations: GIGA WP 82/2008;
[17] Embassy of Israel's Trade Affairs Report – Url: http://embassies.gov.il/eu/Departments/Pages/Trade%20affairs.aspx
[18] A. Rabinovich – "The Yom Kippur War: The Epic Encounter That Transformed the Middle East", 4 October 2005.
[19] F. Terpan – "EU-Israel Relations: in Search of Coherent and Consistent EU Foreign Policy", 22-24 April 2010

European community itself). This is reflected – and has been reflected – in the overall position of the EU itself in regards to Israel.[20] [21]

Indeed, the relations of the European states with Israel have followed an irregular trend, alternating moments of support and moments of deep criticism. Until the mid-1960s, Israel enjoyed the support of the main European countries – even if, for example, the United Kingdom did not recognize it de jure until 1950. However, since the Six Day War (1967) onwards, political relations have been animated by greater conflict. The "Six Day War" was a conflict that saw Israel as the protagonists on one side, and Syria, Egypt and Jordan on the other. Called so for its duration, it began on June 5, 1967, and contributed with its implications to define, in many aspects, the Middle East that we know today. In 1964 Palestine was reborn politically thanks to the creation of the PLO and in Damascus came to power the Ba'Th party, a party in favor of the armed Palestinian guerrillas. In late Syria and Jordan entered into an agreement to create a dam on the Jordan River, which would have reduced the water resources of Israel. The air raids implemented by Israel in response to these measures initiated the conflict. [22]

France and The United Kingdom found complex to support Israel due to the strong economic and historical relations between them and countries with a Muslim majority. In particular France, although it had a crucial role of supporting Israel during The Crisis of Suez Canal. As a matter of fact, the previous Suez Crisis of 1956 – which had its reason on the fight for the control of the homonymous canal – had left a strong climate of tension, not helped by the great political and military ambitions of Gamal Abd-El Nasser, the Egyptian president of that time, who after the failed attempt to nationalize the Suez Canal had nevertheless managed to consolidate its position in the Arab world, a position that prevented the friction between Israel and Egypt to subside. In this scenario, as mentioned, France strongly supported the Israeli part. However, in the intervening years between the Crisis of the Suez Canal and the Six Day War, this support gradually waned to concretize then in the position taken by France of strong condemnation of the actions of Israeli troops during the Six Day War.[23]

In addition to those States whose positions with regard to Israel are highly irregular, there are others that historically have shown a very strong support towards this nation.This is the case of Germany, which represents for Israel the main European ally. We must not forget the historical reasons that link these two nations and the obvious sense of guilt that the entire Germany has towards Jewish people. [24] It is also true that, considered the restrictive German policies on immigration, there is no similar bond between this government and the North African block. Bond which we easily find with countries such as France and The United Kingdom.

Other European States were instead able to maintain a goos level of diplomatic and political relations with both the actors of this conflict. In one hand they supported the struggle of Israel on affirming its cultural heritage in a mostly Muslim surrounding but at the same time the advocated the Palestinian cause within the International Community. However, it is also primary to underline how these positions are gradually changing because of the latest political events.

The exit of the United Kingdom from the European Union, therefore, and the assumption by Theresa May of the role of prime minister determined, besides a clear departure from Brussels Institutions, also a considerable rapprochement of the United Kingdom towards the policies

[20] Jewish Telegraphic Agency – Britain Grants De Jure Recognition to Israel, 28 April 1950.
[21] N. Tocci, "Who is a Normative Foreign Policy Actor?", 2008.
[22] R. B. Parker – "The Six-Day War: A Retrospective, University Press of Florida", 1996;
[23] The New York Times – When Israel and France Broke Up, 31 March 2010 – Url: https://www.nytimes.com/2010/04/01/opinion/01bass.html;
[24] Moment – Inside the Germany/Israel Relationship, 10 June 2014 – Url: https://www.momentmag.com/inside-germanyisrael-relationship/;

implemented by the presidency of the United States, historical partner of Israel and a consequent rebirth relations between the two parties.[25] In conclusion, what comes out from this brief analysis is that the different positions are reflected in the absence of a univocal European position and the clear difficulty for the Union to develop effective and non-contradictory policies towards Israel.

MUTUAL PERCEPTION

It is crucial, to deepen the relation between the two actors, to analyze the mutual perception. In this sense we should start this analysis from the base on which the European Union develops its external relations. This base is the concept of "normative power". This concept is chosen, due to the conviction according to which Brussels embodies a new type of international actor, able to deal with the International interlocutors through its objectives of peace, freedom, democracy, respect for human rights and the principle of legality, which can be reached in the absence of coercive force. These values, together with other norms such as social solidarity or the principle of non-discrimination and sustainable development, expressed in the so-called Copenhagen Criteria of 1993, demonstrate the willingness to transpose at the regional level global values and make them become the object fundamental part of European action. The methods of dissemination of such parameters are numerous: from the use of informal means to those of identity, or to more classical methods that alternate the use of rewards or punishments (usually economic) to influence the other parts.[26] With regard to Israel, she has moved exactly following this idea.

Demonstration of this is given by the various pressures made by Brussels in order to reach a resolution of the Arab-Israeli conflict. A concrete and decisive intervention is represented by the Venice Declaration (1980) in which the then EEC began to present itself as a privileged interlocutor in the resolution of the Arab-Israeli conflict. The content of the declaration – recognition of the right of self-determination of the Palestinians and the request of Israel to withdraw from the occupied territories after the 1967 war – has, however, led to deterioration of Israeli positions towards the EU.[27]

In recent years, the issue has become increasingly divisive as the EU's political and economic pressure has not achieved the desired results and rather conflicts on issues such as settlements in the West Bank or Gaza have increased. But the struggle between the two parties manifests itself, once again, especially on an economic and commercial level. As an example we take the recent clash on the labeling of goods from Israeli settlements in disputed territories. The European Union, indeed, has stated that they can not be labeled as Made in Israel. Instead the label is requested with the words "product from West Bank (Israeli Settlement)". While the Union justified the measure as "technical and not political". Israel interpreted the decision as an attempt to boycott Israeli businesses .[28]

However, the difficulties that the European Union encounters in dealing with Israel has a much deeper origin.

First of all, the historical and political environments within which the European Union and Israel move are different. As a matter of fact, at least until the last few years, Europe has been

[25] The Times of Israel – Brexit will bring closer Israel-UK ties: https://www.timesofisrael.com/brexit-will-bring-closer-israel-uk-ties-british-envoy-says/;

[26] H. Larsen – The EU as a Normative Power and the Research on External Perceptions: The Missing Link, 11 December 2013.

[27] A. Persson – The EU and the Israeli–Palestinian Conflict 1971–2013: In Pursuit of a Just Peace, 2015.

[28] BBC News – EU sets guidelines on labelling Israeli settlement goods: http://www.bbc.com/news/world-europe-34786607

immersed in an historical scenario dominated by stability, absence of war and rampant development of economy and law. On the other hand we find instead a State that is the protagonist of one of the few still persistent conflicts of the modern age and therefore considers that impulses of security field can not be set aside in order to obtain economic benefits. The security-economy trade off is easy to solve for Israeli policy makers. Furthermore, Europeans struggle to understand Israeli perception. Indeed, Israel is historically and geographically the only non-Muslim country in the North African area. And this fact has led to an open hostility implemented by all the neighboring states that, as already mentioned above, have tried to isolate it politically and economically. Furthermore it is necessary to consider the permanent danger that such hostilities determine in that area and therefore the consequence consists in the security issue considered as a priority. For these reasons and to avoid becoming a victim of history again, Israel has also developed a vigorous position.

Therefore, while the European Union uses mainly soft power tools as to interact with the international community, Israel is definitely more oriented towards hard power. Moreover, hard power is the only means of survival for a state that, like Israel, has to deal with powerful international players.[29]

This conviction does not facilitate the development of a relationship based on mutual trust that is essential for successful negotiations. The use of "normative power", therefore, not only did not lead to relationship based on mutual trust that is essential for successful negotiations, but on the contrary, seems produce exactly the opposite effect.[30]

CONCLUSIONS

The current relations between Israel and the European Union are well summarized in the speech by Lars Faaborg-Andersen – EU Ambassador in Israel – to the Jerusalem Post Diplomatic Conference: «Let me start by saying that the EU and Israel might have some disagreements on this or that political issue […] But this should not overshadow the deep and close relations we have developed over the decades on economic and trade matters». In the statement are listed important results of cooperation between Israel and the European Union, from economic to technological exchange. It is useful, however, to try to analyze the evolution of relationships in the other way round. Rather than being satisfied with the growth reached in economic-scientific fields in spite of the disagreements in the political sphere, we should start to wonder why this process did not bring the desired results in this last field. The answer could be contained precisely in the analysis of use of "normative power": indeed, it seems to fit adequately in situations of stability and absence of threats but becomes less and less expendable if the conditions that are reversed. It is logical, therefore, to expect that as long as the EU tries to interface with Israel by adopting this framework, the results will continue to be scarce – as the Israelis have a sort of political and historical obligation to place the challenges of their security in a priority position, as it has already said. All the various challenges with which the European Union has had to act in the last years – migration crisis, the Ukrainian crisis and the breakdown of the internal unity – has reported it, however, fully within a frame of historical changes and this could bring the two actors also on the political level to a narrower bond. Moreover, Israel represents an indispensable partner for the European foreign policy that must therefore be kept within the most privileged ones also for its essential role in the relation with today's US Presidency. Therefore if the European Union wants to adapt to the new scenario in which it is now inserted, it will necessarily have to replace, at least partially, the

[29] S. Pardo, J. Peters – "Israel and the European Union: A Documentary History", 2012

[30] Harpaz G., Shamis A., "Normative Power Europe and the State of Israel: An Illegitimate Eutopia", JCMS: Journal of Common Market Studies.

innovative idea of "normative power" with a more classical – and pragmatic – vision of international relations.[31] Likewise, the European Union can not completely overlook the Palestinian question, which has become even more severe in the last few months after the latter's deny to alignment with the recognition provided by the United States. Indeed, this would mean not only disregarding a path of pacification and mediation that lasted decades, and above all, recognize the intrinsic superiority of the US-Israel axis. The most reasonable solution therefore seems to be to concentrate the efforts of both parties in the directions in which the common visions are more solid, just as economic and commercial ones. In order to create bonds that allow a subsequent (and necessary) open dialogue on the most controversial issues.

If this scenario should materialize, Israel and the European Union could find a way to understand themselves on the political level and, consequently, undertake a process of improvement of their relations in this sense similar to that undertaken on the economic, scientific and technological level.

REFERENCES

Aoun, E. (2003) European Foreign Policy and the Arab Israeli Dispute: Much Ado about nothing

Asseburg, M. (2003) The EU and the Middle East Conflict: Tackling the Main Obstacle to Euro-Mediterranean Partnership

Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

Chochia, A.; Popjanevski, J. (2016). Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (197−210). Springer International Publishing.

Gerstenfeld, M. (2006) European-Israeli relations: between confusion and change?

Gstöhl, S., Schunz, S. (2016) Theorizing the European Neighborhood Policy.

Haïm, Y., Newman, D. (2008) The EU in the Israel-Palestine Conflict.

Harpaz, G., Shamis, A. Normative Power Europe and the State of Israel: An Illegitimate Utopia, JCMS: Journal of Common Market Studies.

Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

Larsen, H. (2013) The EU as a Normative Power and the Research on External Perceptions: The Missing Link.

Panebianco, S. (2003) A New Euro-Mediterranean Cultural Identity.

Pardo, S., Peters, J. (2012) Israel and the European Union: A Documentary History.

Persson, A. (2015) The EU and the Israeli–Palestinian Conflict 1971–2013: In Pursuit of a Just Peace

Rabinovich, A. (2005) The Yom Kippur War: The Epic Encounter That Transformed the Middle East"

Schumacher, T., Marchetti, A., Demmelhuber, T. (2017) The Routledge Handbook on the European Neighbourhood Policy.

Terpan, F. (2010) EU-Israel Relations: in Search of Coherent and Consistent EU Foreign Policy, 22-24 April 2010

Tocci, N. (2008) Who is a Normative Foreign Policy Actor?

Wesselink, E., Boschma, R. (2016) European Neighbourhood Policy: History, Structure, and Implemented Policy Measures

[31] M. Gerstenfeld, "European-Israeli relations: between confusion and change?", 2006.

European Union and Japan: Past, Present and Future of External Relations

ALEKSANDR STEMPITSKII
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract:

INTRODUCTION

The next year will mark the sixtieth anniversary of the establishment of external relations between Japan and the European Union. However, despite this anniversary, relations between Japan and Europe have a much bigger age, since they began to take shape over several centuries before the creation of the European Union, and before the two world wars that preceded it.

In this scientific work, the established goal is to study the external relations of Europe and Japan that took place in the history of these two regions since the XVI century, as well as their relations in the modern period. Then, based on this, possible way of developing external relations between the European Union and Japan in the foreseeable future will also be analyzed.

The primary research question of this paper is 'will the future of the Euro-Japanese external relations be positive?' The current research paper will answer this question. The primary research method for this work is analytical research. The research object are academic book articles, which cover relevant topics connected with external relations between Europe and Japan.

The first chapter of this work will focus on the history of the external relations between Europe and Japan, covering almost five hundred years of history (from the XVI century to the end of the XX century), starting with the first contacts between Europeans and Japanese, modernization of Japan, rise of the Japanese imperialism, Japanese defeat in WWII, and the post-war period of external relations between the European Community and Japan. The second chapter will focus on external relations between Japan and the European Union today. It will take into account economic and political challenges of the today's world. Summary of the research paper will give the answer on the research question.

RELATIONS BETWEEN JAPAN AND EUROPE IN THE PAST

First Contacts Between Japanese and Europeans

This chapter will describe the very first contacts that occurred between the inhabitants of the Japanese islands and the Europeans who first visited these territories. Particular attention will be paid to the technical inventions and innovations that the Japanese were able to adopt and adapt to their own needs, making the first steps to modernisation of their country and the emergence of Japan as a global power.

The first Europeans to visit Japan were the Portuguese sailors who landed in 1542 on the island of Tanegashima, lying to the south of Kyushu. This island was the first place where the Japanese were able to get acquainted for the first time with firearms, which played a noticeable, although not decisive, role in future battles for the unification of the country. These guns were the very first technical borrowing from Europe. The Japanese managed to establish their production in a quick way, while calling them "tanegashima," by the name of the island, where the Portuguese landed. In addition, Portuguese sailors paved the way for traders and Catholic missionaries, who

soon began to arrive in Japan. However, as a result of the actions of Europeans, a revolt broke out in Japan in Shimabara, which led to the closure of the country.[1]

For almost a century, until 1636, when the decree of the shogun was proclaimed, which prohibited the Japanese from leaving their homeland under pain of death, and the access of foreigners to the country was practically closed, relations with Europe developed quite intensively. The Japanese fellowship with European civilization had an ambiguous impact on the country, which was exhausted by the continuous internal turmoil. The horizons of geography and cognition moved apart. The Japanese began to quickly learn all the new inventions and ideas that they could get from Europe. One of the first European books, translated into Japanese, which was published in 1593, was the book of fables of Aesop. Prohibited during the period of the isolation of Japan, the fables were preserved by the people in the form of folklore and fairy tales, and many of them are still considered popular now. The Japanese showed great interest in technology and in the exact sciences and, above all, in firearms and the art of navigation. Although, after the closure of the country, the rifles continued to be used in the widest possible way, the art of navigation was soon placed under strict prohibition.[2]

The closure of the country was primarily due to the internal political struggle – the central government looked with suspicion at the rise of southern clans, which became rich because of trade with Europe. As for the lack of religious tolerance, the pragmatic Japanese were concerned not so much with the dogmas of Catholicism that placed Rome above loyalty to the master, but rather the possibility that Christianity could become an instrument of the colonization of the country by European powers. The Japanese knew well that the Spanish soldiers followed the missionaries to the Philippines. In 1565, they turned the country into a colony of King Philip II.[3]

In the Europeans' views about Asia, Japan usually was in the shadow of China. In the XVIII century, European philosophers attracted the ancient history of China, and mention of this country can be found in the works of Voltaire, Montesquieu, and Leibniz. Japan remained an absolutely closed country, information about which was extremely scarce. Only Germanic physicians Philipp Franz von Siebold and Engelbert Kaempfer, who visited the Dutch trading post of Decima in Nagasaki, wrote about the history and nature of Japan. In the first edition of the British Encyclopaedia in 1771, it was only said "Japan is an island lying between 130 degrees and 144 east longitude and 30 and 40 degrees north latitude." At the same time, the Encyclopaedia has given eight pages to China.[4]

The Role of Europeans in Modernisation of Japan

Japan's self-isolation for 300 years has not been able to completely break off contacts with Western countries. After a while, representatives of Western civilization again arrived in Japan, interrupting the policy of isolation and, thus, opening the country for new technologies and ideas.

Priority of the second discovery of Japan in the middle of the XIX century belongs to the Americans, but Europeans immediately took advantage of the opportunity to return to Japan. The system of so-called "unequal treaties", which were imposed on the Japanese by the Americans and Europeans, who actually copied the agreements they concluded with China, did not last too long. The rapid development of Japan in the second half of the nineteenth century not only made Europeans and Americans to abandon their plans for colonization of Japan, but also placed Japan on a par with the leading imperialist powers. Already in 1894, when Japan began a war with China for control of Korea, the British, and after them other countries, including the United States, agreed

[1] Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, pp 8-9
[2] Ibidem, p. 9
[3] Ibidem, pp. 9-10
[4] Ibidem, p. 10

with the Japanese demand to abandon the system of extraterritoriality that they received in the context of "unequal" treaties with Japan.[5]

The ties between Japan and the world's leading countries were becoming very intense. At the shipyards of England and France until the beginning of the 1890s, the Japanese navy was built. British naval officers trained Japanese sailors, and German instructors trained army officers. Americans have helped in the creation of the banking system, the first livestock farms, contributed to the formation of a modern education system, and taught Japanese the arts of engineering. The Japanese first learned the European shipbuilding system in 1854, participating in the construction of the ship in Shimoda, together with the crew of the shipwrecked shipyard Diana from the coast of Japan. All this led to a sharp increase in interest in Japan, relations with which at that time were seen as contacts between a "benevolent teacher" and "diligent student," and the Japanese were seen by the world as a nation of "hardworking people who are very capable of modernization."[6]

The formation of mutual representations about each other was to no small extent facilitated by visits by the Japanese to the United States and Europe. The Japanese government at the end of the XIX century adopted an extensive program of sending students to overseas colleges and universities. Due to a fairly careful selection of the students sent, their diligence and perseverance in obtaining knowledge produced the most positive impression on hospitable hosts. After the "discovery" of the country in the middle of the XIX century, Japan found itself in a difficult situation. To say that all the years of isolation the country remained at the level of the Middle Ages would be unfair. By the beginning of the XVIII century, Kyoto and Osaka were among the largest cities in the world, while Edo, with a population exceeding one million people, was the largest city in the world. Half the population of Japan was literate, which, at that time was the highest level in the world. Handicrafts and trade flourished, and the political system was constantly in the process of modernization. However, the contacts that began with the West clearly convinced the Japanese that in two and a half centuries of isolation from the rest of the world, the country lagged far behind the technical level of Europe and America.[7]

Nevertheless, despite the huge backlog from the colonial powers in almost all economic indicators, Japan quickly entered modern civilization, mastered new technologies and a new ideology. The first silk factory in Japan was opened in 1873 using entirely French equipment. In 1910, Japan came out on top in the world for the export of silk yarn. In 1882, the first cotton spinning mill was built in Japan, and in 40 years Japan became the world's largest seller of cotton goods. The Western way of life entered the country with the first 197 telephone numbers in 1890, the first long-distance telephone connection between Tokyo and Osaka in 1899, with the import of the first car in 1900, and with the construction of a tram line between the Tokyo districts of Shimbashi and Shinagawa in 1903. October 14, 1872 in the presence of the Emperor, the first railway between Tokyo and Yokohama was opened.[8]

Even after the "discovery" of Japan in the middle of the XIX century, Europe paid much less attention to it than to China, which seemed to Europeans an immense market for the sale of goods. Japan was smaller and, which is more important, was building its own industry, which reduced its import potential. The West, who helped the Japanese in modernization, looked at Tokyo as a junior partner, whose development was still much inferior to Europe. Only after its war with China in 1894-1895 and Russia in 1904-1905, West started looking on Japan seriously and with caution. Japan, on the one hand, was perceived as a "yellow danger", on the other – still as an exotic country of geishas, chrysanthemums and samurai. Rapid militarization of the country, its aggressive

[5] Ibid., p 10
[6] Ibid., p 11
[7] Ibid., p 11
[8] Ibid., p 12

policy in China and in Asia strengthened the notion of Japan in Europe as an insidious and unpredictable country that does not fit into the European notions of law and democracy.[9]

As for Japan, its attitude towards Europe after the country's opening also changed. Mistrust and fear of foreigners were superimposed on the desire to borrow from them what determined their strength and power. The Japanese were ready to learn from Europe and America, and that became part of state policy. Between 1868 and 1900, Japan hosted about 2,400 foreign experts, mostly from the UK, who worked as advisers in state institutions. The Japanese not only copied Western manners, clothes, and culinary recipes, but also systematically and persistently studied the Western economy, science, industry, and military affairs. As a result, Japan not only won military victories over China and Russia, but also became one with the world's biggest powers. However, Westernization was accompanied by the growth of Japanese nationalism and chauvinism in the 1930s, which eventually led to the war of Japan with the West.[10]

The principle 'Fukoku Kyōhei' (Enrich the state, strengthen the military) was proclaimed as the official ideology. By creating a powerful military machine, Japan very soon rose to the path of colonial conquests, which was traditional for the Western powers. However, not a long time ago, Japan itself almost became a victim of Western colonialism. In 1874, Japan captured Taiwan. In 1876, Japan sent a naval squadron to Korea, and under the fear of guns, Korean authorities were forced to "open" the country and concluded Ganghwa Treaty with Japan.[11] In 1879, Japan annexed the Ryukyu Islands. In 1894, Japan started a war with China, the continuation of which was the Russian-Japanese war of 1904-1905. In 1910, Korea was turned into a Japanese colony. The aggression, which was launched in 1931 against China eventually led to the Sino-Japanese War of 1937-1945 and resulted in Japan's defeat in World War II.[12]

Japan and Europe after World War II

For Japan, the beginning of the second half of the XX century turned out to be a difficult period. The country experienced a period of occupation, which contributed to the formation of special relations with the United States. This was the time of the first steps in the international arena, and the overcoming of the general malevolence toward the countries that suffered defeat in the war. Thus, despite the application for accession to the GATT in 1952, in 1953, because of stubborn resistance from European countries, especially Great Britain, only temporary membership was granted to Japan. Even a temporary membership for Japan was possible only because of the strong pressure on the organization by the United States. However, already in 1956, Japan received permanent membership in the GATT.[13]

After the end of World War II, Japan did not take too much of the minds of Europeans, who were absorbed in their own problems. Only in the late 1950s the Japanese "economic miracle" made Europe think about the future of its relations with this country. In 1956, Japan built ships more than the Great Britain, which was the world's shipbuilding leader of the past. Next year, Japan came in first place in the world for steel production. Later, in the 1960s, it overtook Italy, Great Britain, France and Germany in terms of GDP. In the late 1970s, Japan became the second largest economy in the world after the United States of America. The chain of these events lead to creation of the

[9] Ibid., p 10
[10] Ibid., pp 10-11
[11] Afonin B.M. (2015). Japan and formerly opposing states upon end of World War II. Russia and Asia-Pacific Region, Vol.3 (89), Larin V.L. (Ed.), Vladivostok. Institute of History, Archaeology and Ethnography of the Peoples of the Far East, p 23
[12] Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, p 12
[13] Karenin D.M. (2009). Modern relations between Japan and Great Britain. Yearbook of Japan, Vol.38, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", p 39

image of Japan in Western countries as an "economic beast", irrepressible and ruthless in its quest to conquer new markets. These ideas were based on the real economic successes of Japan, and still alive memories of the aggressiveness of the Japanese militarists in the 1930s and 40s. At the same time, post-war Japan became the closest ally of the United States and an important part of Western democratic world, which required the strengthening of political relations between Europe and Japan. The growing volume of economic ties and the intensification of trade competition also dictated the need for dialogue.[14]

The active development of economic relations between Western Europe and Japan began in the second half of the 1960s. It was associated, on the one hand, with the Japanese "economic miracle" and the processes of liberalization of its economy and foreign trade, and on the other – the weakening of customs barriers within the established in 1957 of the European Economic Community (EEC). Over the decade from 1966 to 1977, the volume of Japanese-West European trade increased more than six-fold, while the EEC in 1977 accounted for 68% of Japan's export to Western Europe and 75.8% of imports from this region. The main partners of Japan in Western Europe were the Federal Republic of Germany and Great Britain. A characteristic feature of bilateral trade in the 1970s was a significant negative balance of Western Europe in trade and an asymmetric role of partners in the trade turnover between Europe and Japan. If in the 1960s, Europe had a positive balance in trade with Japan, Japan's surplus with the Old World increased from $ 926.5 million in 1970 to $ 21.4 billion in 1980, more than half of which accounted for the Federal Republic of Germany, Great Britain and France. At the same time, despite the fact that from 1970 to 1980 the volume of bilateral trade increased from $ 2.9 billion to $ 21.4 billion, Western Europe accounted for 12-13% of Japan's turnover, while the Japanese share in European trade in the late 1970s remained below 2%. This was explained, first of all, by a high place of interregional trade in the European commodity turnover.[15]

The problem of trade imbalance has become a key point of negotiations between Western Europe and Japan at the level of representatives of business circles and at the highest level. In 1969 negotiations began between Japan and the EEC. The first attempt to reach an agreement was unsuccessful. Japan categorically refused to include in the agreement with the EEC contained in its bilateral agreements with France and the UK items that limit its exports. Starting from 1973, regular consultations started twice in a year, alternately in Brussels and Tokyo. In 1974, the parties exchanged official representations. In November 1977, the Commission of the European Communities issued an ultimatum requirement to Japan in order to make it to reduce its exports to the EEC countries, threatening otherwise to allow member countries to take the protective measures they deem necessary, based on their own interests. Yielding to the pressure, Japan announced some easing of the import legislation and limiting the supply of steel products and cars to the Western European markets. Under pressure from Brussels and Washington, Japan was forced to liberalize the capital market, which resulted in a significant appreciation of the yen. However, all these measures did not lead to a reduction in the West European trade deficit with Japan, which throughout the 1980s was at the level of $ 20 billion.[16]

During the period after the Second World War, Japan paid attention primarily to the United States in its foreign policy, while Europe remained on the periphery of Japanese interests. From 1945 to 1955, Japan's political institutions were rebuilt according to American models, and America before the so-called "Nixon shocks" in 1971 remained at the top of the popularity ratings of opinion polls in Japan. At the same time, cooling in American-Japanese relations was one of the reasons for

[14] Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, pp 13-14
[15] Ibid., pp 12-13
[16] Ibid., p 13

the creation of the Tripartite Commission on the basis of the "New Atlantic Charter", proclaimed in 1973 by the US Secretary of State, G. Kissinger, designed to coordinate the policy of the United States, Western Europe and Japan. In many respects, the increase in the level of relations between Tokyo and Brussels was due to the recognition of Japan as an equal partner.[17]

Until 1992, when the Maastricht Treaty was signed and the European Union was established, Japan did not perceive Western Europe as a single political and economic space, although every year it expanded its exports to European countries. For the countries of Western Europe, Japan's economic role grew with the strengthening of its economic potential, and in terms of politics they were also brought together by the fact that in their foreign policy they were primarily oriented towards the United States.[18]

With the end of the Second World War and the defeat of the Japanese Empire, the Japanese government radically changed the political course of the country. Militarism and nationalism were replaced by institutions created in accordance with the American model. A new, democratic model of society was adopted. At the same time, there was a great need for post-war reconstruction of the country. Thanks to the efforts made, the phenomenon of the "economic miracle" took place, which became one of the reasons for establishing links between the European Economic Community and Japan. On the one hand, of course, there were various disagreements, but on the other hand, this did not prevent the strengthening of relations between the two geopolitical players.

RELATIONS BETWEEN JAPAN AND EUROPE IN THE 21ST CENTURY

The institutional basis for relations between the EU and Japan remains the "Joint Declaration of the EU and Japan", which was adopted in Hague in 1991 and the Ten-Year Plan of Action for 2001 "Shaping Our Common Future."[19] This was the first attempt to establish the goals and scope of the political dialogue between the EU and Japan and build a comprehensive relationship between the two partners, which was for a long time dominated mainly by economic or trade disputes.[20] The regular EU-Japan summits, created in the framework of the 1991 Joint Declaration on the Relationship between the European Community and its Member States and Japan, became more significant after 1996, when the first joint statement for the press was discussed.[21] The Hague Declaration calls for an all-out expansion of relations. The end of the confrontation between the USSR and the US gave rise to a certain euphoria in both Europe and Japan in questions about moving away from the block structure and reducing the binding of the economy and politics to the position of the United States.[22]

As Japanese Foreign Minister Yōhei Kōno said in 2000, "the new decade of the 21st century will be the decade of European-Japanese cooperation." However, the development of international relations after September 11, 2001, confirmed the preservation of American leadership in the context of the fight against terrorism. The leadership, which extended to virtually all spheres of politics and economy. The Hague Declaration was supplemented by the more specific "Joint Plan of Cooperation between the EU and Japan" adopted in December 2001. This vast document

[17] Ibid., p 14
[18] Ibid., p 12
[19] Karenin D.M. (2007). Japan and Germany: cooperation in the format of the European Union. Yearbook of Japan, Vol.36, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", p 103
[20] Reiterer M. (2004). Japan-EU relations after EU enlargement. Asia Europe Journal, Vol.2, Heidelberg. Springer Berlin Heidelberg, p 33
[21] Keck J. (2006). Renewed strength of the Japanese economy and Japan–EU relations. Accessible: https://link.springer.com/content/pdf/10.1007/s10308-006-0080-4.pdf (22.05.2018), Springer-Verlag, p 328
[22] Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, p 22

identified over a hundred areas of possible cooperation from peacekeeping to scientific exchange, which were divided into four sections: maintaining peace and security, strengthening economic and trade partnerships, focusing on global and social change, rapprochement of peoples and cultures. The document, which lacked any specific program of cooperation, was comprehensive and therefore sufficiently declarative.[23]

The parties annually hold high-level meetings in which the Chairman of the Commission of the European Communities, the President of the European Council and the Prime Minister of Japan participate. In addition to the summits, the parties held political meetings twice a year, in which the Japanese Foreign Minister and the EU Three took part at the level of representatives of the Union Ministry of Foreign Affairs. Regular consultations have been also held between senior officials of the European Commission and the Government of Japan at the level of the Deputy Minister for Foreign Affairs, the Monitoring Group for the implementation of arrangements under the Action Plan and various joint commissions and groups with the participation of experts. The parties hold annual parliamentary meetings. In 2004, a strategic dialogue on the problems of Asia was launched, and in 2005 – on the problems of Central Asia.[24]

As for the political relations between the EU and Japan, then, as the 15th EU-Japan summit held in Tokyo in April 2006 demonstrated, their points of view on the problems of international relations practically coincide. They fully agreed on common positions on resolving the situation in Iran, Iraq, Palestine, Afghanistan, North Korea, Sri Lanka, and the Balkans. They demonstrated a common approach to Russia and Belarus. The only thing that they dispersed is the question of the abolition of the EU embargo on the export of arms to China, against which Tokyo sharply objected. When the EU and China began talking about "strategic partnership" in September 2003, Japan began to show serious concern over the development of relations between Brussels and Beijing. This made the EU raise the status of bilateral partnership with Japan. In December of the same year, the European Security Strategy included Japan as one of the "strategic partners of the EU", and in April 2006 Barroso, speaking at the Japanese University of Keio, said that "Japan and the EU are natural strategic partners sharing common values and approaches to the problems of international relations."[25]

Regarding the international security policy, Japan is moving towards the export of security, but relations between Japan and the United States are still connected with the principle of burden sharing and security import, which is dictated by potential threats from North Korea, China and, possibly, Russia.[26] At the same time, officials in Japan constantly emphasize that Japan is not a militaristic state, despite having enormous economic potential. In the 1990s, the term "civilian power" appeared among Japanese foreigners. The authors of the above report, dedicated to the goals of Japan in the 21st century, finally decided to give this term a doctrinal form, which resulted in the emergence of the concept of a "civil power". (In the Japanese press, it is more often referred to as the "Global Civil Power".)[27]

The annual EU-Japan summits, on the one hand, analyze the achievements in the development of bilateral relations, and, on the other, set new tasks for the future. Although the joint communiqué is full of general declarations and the statement of quite obvious considerations – "the need to preserve peace and security," "the continuation of the dialogue in the sphere of development

[23] Ibid., p 22
[24] Ibid., p 22
[25] Ibid., pp 22-23
[26] Zimmermann H. (2008). Trading Security in Alliances: Japanese and German Security Policy in the New Millennium. Current Politics and Economics of Asia, Vol.17(1), Amy Verdun (Ed.), Victoria, The University of Victoria, p 147
[27] Arin O.A. (2014). Japan and the Theory of International Relations. Yearbook of Japan, Vol.43, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", p 64

of cooperation," "the development of cooperation in the sphere of culture," etc., the communiqué to some extent reflects unresolved problems of relations between Brussels and Tokyo.[28]

Despite the fact that relations with the EU take an increasingly important place in Japanese politics on an official level, the perception of the Union is still rather ambiguous. The inertia of giving traditional importance to relations with large countries of Europe, like Great Britain, France, Germany, and Italy, is maintained. In Tokyo, probably until now, there is no complete clarity about the mechanism for making all-European decisions, which is to no small extent facilitated by the complexity of the bureaucratic system of the Union. The shift of Japan's attention to the EU on bilateral relations was stimulated by the failure of the constitutional referendum. Although Japan also speaks of the EU as a "strong partner", relations with Brussels are not a political priority comparable to relations with the US or China. On the one hand, this is determined by the "well-being" of relations with the EU and the absence of serious problems in them, on the other – the preservation of close ties of Japanese policy to the United States and the special attention that Japan pays to relations with neighboring China. To this, one can add that the differences in the policies of the EU countries on the issue of the US invasion of Iraq have largely undermined Japan's willingness to deal with the EU as a representative of a united Europe.[29]

At the end of the 20th and the beginning of the 21st century, relations between Japan and the European Union were developing in a rather difficult economic conditions for Japan. In the period from 1990 to 2002, Japan experienced an economic crisis, later called the "Lost Decade". In 2008, the Japanese economy experienced two strong external impacts: a shock from the dynamics of world prices for raw materials and fuel, and a shock from panic in the world financial markets.[30] In terms of economic growth rates in 2011-2012, Japan was significantly inferior to other developed countries and Asian neighboring countries.[31] However, despite this, relations with Europe continued to develop. Moreover, the period, which started from 1991, could be marked as the most efficient period in the history of relations between Japan and the European Union.

SUMMARY

The primary aim of this research paper was to give the reader an overview of external relations between the European Union and Japan through different historical periods. It started with the first contacts between Japanese and Europeans; it continued with modernization of Japan and its defeat in World War II; the last chapter of this paper was focused on relations between Japan and the European Union in the 21st century. Now, based on the results, which were achieved with this research, it is possible to give an answer on the primary research question:

For more than five hundred years of history, relations between Japan and Europe have gone through many trials. These were wars, trade disagreements and many other political and economic obstacles. The biggest challenge was Japan's participation in the Second World War, which became the result of Japanese militarism and led to numerous casualties and the defeat of Japan. However, since the second half of the 20th century, Japan and the countries of Europe are getting closer and

[28] Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, p 24

[29] Ibid., p 24

[30] Leontyeva E.L. (2009). The economy of Japan in the conditions of the global crisis (2008 – the first quarter of 2009). Yearbook of Japan, Vol.38, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", pp 57-58

[31] Timonina I.L. (2014). The level of Japan's socio-economic development in international comparisons and a new vector of economic strategy. Eastern Analytics, Vol.4, Naumkin V.V. (Ed.), Moscow. Institution of the Russian Academy of Sciences Institute of Oriental Studies of the Russian Academy of Sciences, p 88

closer to each other. New contracts are concluded; joint conferences and summits are held. Despite different challenges of the present, whether economic crises or international security problems, European Union develops ties with its partners in several regions[32] and relations with Japan is one of those that have been successfully developing in political, economic and cultural ways, despite the complicated environment. Moreover, this creates a fertile ground for the development of bilateral relations in the foreseeable future. As a conclusion, it is possible to say that external relations between the European Union and Japan have a future and this future will be positive both for European countries and for Japan.

It means that the answer for the question 'will the future of the Euro-Japanese external relations be positive?' is found and this answer is 'yes'.

REFERENCES

Afonin B.M. (2015). Japan and formerly opposing states upon end of World War II. Russia and Asia-Pacific Region, Vol.3 (89), Larin V.L. (Ed.), Vladivostok. Institute of History, Archaeology and Ethnography of the Peoples of the Far East, pp 21-33

Arin O.A. (2014). Japan and the Theory of International Relations. Yearbook of Japan, Vol.43, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", pp 44-70

Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

Karenin D.M. (2007). Japan and Germany: cooperation in the format of the European Union. Yearbook of Japan, Vol.36, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", pp 102-115

Karenin D.M. (2009). Modern relations between Japan and Great Britain. Yearbook of Japan, Vol.38, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", pp 39-56

Keck J. (2006). Renewed strength of the Japanese economy and Japan–EU relations. Accessible: https://link.springer.com/content/pdf/10.1007/s10308-006-0080-4.pdf (22.05.2018), Springer-Verlag, pp 323-331

Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

Leontyeva E.L. (2009). The economy of Japan in the conditions of the global crisis (2008 – the first quarter of 2009). Yearbook of Japan, Vol.38, Strel'tsov D.V. (Ed.), Moscow. Interregional public organization "Association of Japaneseologists", pp 57-64

Nosov M.G. (2008). EU and Japan: Relations Without Conflicts. Modern Europe, Vol.2 (34), Mironenko V.I. (Ed.), Moscow. Institute of Europe of the Russian Academy of Sciences, pp 8-24

Reiterer M. (2004). Japan-EU relations after EU enlargement. Asia Europe Journal, Vol.2, Heidelberg. Springer Berlin Heidelberg, pp 33–42

Timonina I.L. (2014). The level of Japan's socio-economic development in international comparisons and a new vector of economic strategy. Eastern Analytics, Vol.4, Naumkin V.V. (Ed.), Moscow. Institution of the Russian Academy of Sciences Institute of Oriental Studies of the Russian Academy of Sciences, pp 87-105

Zimmermann H. (2008). Trading Security in Alliances: Japanese and German Security Policy in the New Millennium. Current Politics and Economics of Asia, Vol.17(1), Amy Verdun (Ed.), Victoria, The University of Victoria, pp 127-153

[32] See also Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing; and Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

The Influence of the European Union towards its Eastern Partnership Policy

JULIETTE GUITTARD
FACULTE DE DROIT ET SCIENCE POLITIQUE, UNIVERSITE DE BORDEAUX, FRANCE

Abstract: *With the launch of the European Neighbourhood Policy in 2004, the European Union has aimed for an expansion of its values with a wide range of its neighbouring countries. This paper deals with the European Eastern Partnership, a branch of this neighbourhood policy, which seems to be divided between different influences within the participating countries. Armenia, Azerbaijan and Belarus appear to be strongly linked to Russia, whereas Georgia, the Republic of Moldova and Ukraine tend to a more European ideology. Nevertheless, the EU keeps a major role within the whole area. The goals set during an important Summit in 2017 reveal further actions that undoubtedly will help to achieve the process of a true and effective partnership with the neighbouring countries from the region of South Caucasus. This optimistic vision based itself on the fact that the EU will thrive if such relationships between different regions reach a concrete mutual support.*
Keywords: *Neighbourhood Policy, Eastern Partnership, Association Agreements, Cooperation, Rule of Law*

INTRODUCTION

The first paragraph of the Article 8 of the Treaty on European Union states that "The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation." That is why the European Union (EU) tries to establish through its European Neighbourhood Policy (ENP). In fact, when it comes to the external action of the EU, it can be affirmed that the neighboring countries are part of its main target. In this regard, the EU fixed the ENP in order to ensure its neighbours a privileged relationship, building on a mutual commitment to common values and common interests.[1]

Launched in 2004, based on a Communication entitled "Wider Europe – Neighbourhood" adopted by the European Commission one year earlier, the ENP was set to widen the EU's relations, particularly with sixteen of the EU's Eastern and Southern Neighbours. The main goal through this framework is still today to achieve a close political association and a great degree of economic integration.[2] The European Union was therefore anticipating the new geostrategic reality resulting from its great eastward enlargement. It sought to create a "ring of security and prosperity" around it, although avoiding to promise new memberships beyond the already agreed membership prospects (Western Balkans and Turkey).[3] Such a project of closer cooperation established by the EU includes key priorities based on the values of democracy, rule of law, respect of human rights and social cohesion.[4] Already the EU made several revisions of the ENP. In fact, in 2011, following the Arab uprisings and thus responding to developments in Arab countries, the EU reinforced its focus on promoting deep and sustainable democracy, as well as an inclusive economic development ("Deep and sustainable democracy includes in particular free and fair elections, efforts to combat corruption, judicial independence, democratic control over the armed forces, and the freedoms of expression, assembly and association."). Moreover, the "more for more" principle was

[1] K. B. /. K. Jongberg, «The European Neighbourhood Policy,» European Parliament, January 2018.
[2] S. Communications, «European Neighbourhood Policy (ENP),» European Union External Action, 21 December 2016.
[3] M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016.
[4] Kerikmäe, T.; Nyman-Metcalf, K. (2012). Less is more or more is more? Revisiting universality of human rights. International and Comparative Law Review, 12 (1), 35−51.

introduced in order to underline that the civil society has a dominant role through the process. The principle consists for the Union to develop stronger partnerships with the neighbours that make great progress towards democratic reform. Furthermore, it was in March 2015 that the Commission and the European External Action Service (EEAS) called for a new review of the ENP. Adapting the ENP tools was an important aim, as a result, the European Parliament adopted a resolution on 9 July 2015 stressing the need for a more strategic, focused, flexible and coherent ENP.[5]

It can be added that several of the EU neighbouring countries face social and economic changes due to globalisation and internal pressure form reforms. In that sense, security can be affirmed as a precondition for economic development in the medium to longer term. Another priority for the EU's neighbouring countries facing threats and pressures, including the challenges associated with migration and mobility, is to maintain the state and societal flexibility. As a matter of fact, through the ENP, the EU offers its partner countries an access to the European, as well as standards and internal agencies and programmes. Besides, the EU provides its support to the Neighbourhood region through the European Neighbourhood Instrument (ENI), with over EUR 15 billion for 2014-2020.[6]

The neighbourhood is considered as an ultimate challenge for the European foreign policy. Indeed, if Europe does not show itself able to influence the future of its immediate geographical environment, it cannot claim to be anything more than a mere regional power among others. However, the European neighbourhood cannot be really qualified as homogeneous. Diversity exists to a large extent in the East and South regions. Similarly, the preferences and interests of states towards the two regions are not the same, especially between France and Germany, which leads to frequent rebalancing. In the 1990s, the Euro-Mediterranean Partnership of Barcelona was the French response to Berlin's policy of enlargement. This same equilibrium between East and South was evident in the early 2000s, when the ENP started to appear, which was to be restricted to Eastern Europe, and finally included the South Caucasus, especially the Mediterranean countries. Finally, the creation of the Eastern Partnership (EaP)[7] in May 2009 was a strategic response of the Polish-Swedish initiative to the French Union for the Mediterranean project launched the previous year. In this context, the European institutions clearly had a role of mediator seeking to reconcile the different perspectives existing at Member States' level.[8] The ENP, aiming for stabilisation, political, economic and security terms, is thus related to sixteen countries, they are the closest southern and eastern neighbours and are divided into two groups. First, to the south with the Union for Mediterranean, composed of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. Secondly, to the east with the EaP composed of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

In the East, the EU sought to reconcile the strengthening of ties with the "new neighbours" of the East (Moldova, Ukraine, Belarus, joined in 2005 by the three South Caucasus states)[9] and the consolidation of the partnership with the Russian Federation. Thus, in 2006 the EU decided to launch the negotiation of two new agreements to strengthen its relations with Russia and Ukraine. This policy has however slipped twice, a first time because of the Georgian crisis in 2008[10], a second

[5] K. B. /. K. Jongberg, «The European Neighbourhood Policy,» European Parliament, January 2018.

[6] S. Communications, «European Neighbourhood Policy (ENP),» European Union External Action, 21 December 2016.

[7] Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

[8] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[9] Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

[10] Chochia, A.; Popjanevski, J. (2016). Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (197−210). Springer International Publishing.

time with the Ukrainian crisis in 2014[11]. Concerning the Georgian case, the Russian military intervention responded to a Georgian riot (aimed at recovering secessionist South Ossetia); the EU was a mediating force, obtaining a partial Russian military withdrawal from Georgia, but not avoiding a consolidation of the strategic influence of Russia in the breakaway regions of Abkhazia and South Ossetia. In the Ukrainian case, the starting point of the crisis was the negotiation of the EU-Ukraine Association Agreement and the Russian opposition, causing internal divisions in the country. Indeed, with the evasion of President Yanukovich giving in to the bidding of Vladimir Putin (financial offer, reduction of the price of gas), the Maidan revolt, the fall of Yanukovych and the coming to power of a pro-Western coalition. Russia reacted brutally, annexing Crimea and supporting a military rebellion in Donbass. In this last conflict, the EU adopted sanctions against Russia, largely based on US sanctions, and supported the new Ukrainian regime with which the association agreement was confirmed. The European Commission, however, remained a mediating force in the energy field, a symbol of EU-Russia interdependence, helping to settle Russian-Ukrainian disputes over the price of gas.[12]

The EaP, is define by the EEAS as "a joint initiative of the EU and its Eastern European partners: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. Launched in 2009 at the EU Prague Summit, it brings our Eastern European partners closer to the EU. The Eastern Partnership supports and encourages reforms in the EaP countries for the benefit of their citizens." [13] The EU faced both the internal fragilities of neighbouring countries, corruption, poor governance, economic weakness, democratic and human rights deficiencies, and Russian power willing to reaffirm a sphere of influence.[14] The EU has been able to conclude Association Agreements with deep free-trade commitments, including regulatory alignment on the single market with Georgia and Moldova at the Vilnius Summit (2013), and then with Ukraine (2014), but Armenia, Belarus and Azerbaijan are far from having made the European choice in terms of economics, politics and values. It cannot be said that the stability and security of Eastern Europe has been achieved so far.[15] This paper will thus particularly focus on the framework of the EU in the region of the EaP, analyzing the situation and the evolution in order to understand the influence of the EU within this complex area.

AN AMBITIOUS FRAMEWORK FROM THE EUROPEAN UNION WITHIN ITS EASTERN NEIGHBOURHOOD

Thanks to biannual summits, the EU's policy towards the EaP can be newly reflected and refreshed. After the EaP summit in autumn 2013 for example, that took place in Vilnius, it could be affirmed that the EU has developed a sophisticated framework, within which the EU's bilateral and multilateral relations with its Eastern neighbours were, and still are, conducted.[16] However, achievements have been more modest than innovative. It can be stated that the performance of the

[11] Tsybulenko, E.; Pakhomenko, S. (2016). The Ukrainian Crisis As A Challenge For The Eastern Partnership. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (167−179). Springer International Publishing.

[12] M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016.

[13] European Union External Action, «Eastern Partnership,» European Union External Action, 19 October 2016.

[14] Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237). Routledge, Taylor&Francis Group.

[15] M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016.

[16] E. A. K. R. G. W. Tom Casier, *Building a Stronger Eastern Partnership: Towards an EaP 2.0,* Global Europe Centre University of Kent, 2014.

EaP is set in a difficult context, that is why the EU is considerably invested toward its Eastern partners. Plus, to evaluate the ambitious framework with a strategic vision and implementation practises, the concretisation of such a program for the conduct of an effective and credible policy in the eastern region, has to be studied.

A considerable European implication

"We want to reinforce Eastern Partnership cooperation in a number of specific areas such as small and medium-sized enterprises, digital economy, broadband investments, and investments in transport, energy and infrastructure projects. The list is long. But above all, we want to strengthen links between our citizens and give more support to civil society." claimed the President of the European Council, Donald Tusk, at a press conference of the Eastern Partnership summit in 2017.[17]

It can be compared to the summit of 2015, throughout which he EU observed how it and its eastern partners could built a more effective partnership. In this regard, the EU showed the will to improve the implementation of its neighbourhood policy. This approach of questioning the effectiveness was underlined by the refugee crisis that many European countries were knowing.[18] Moreover, the EaP is first and foremost a European attempt to export its normative and political model in a region considered unstable and as a potential source of destabilization. To fulfil this objective, Europeans are banking on a deeper political relationship through the signing of the Association Agreement, the strengthening of economic integration with the signing of a deep and comprehensive free trade agreement, and greater freedom of movement. Cooperation concerns both the high level with Eastern Partnership Summits, meetings of Foreign Ministers and Ministers, working groups, the European Parliament, or civil society.[19]

For example, the official in Brussels sought to create a framework that would contain the complicated set of relationships within the neighbourhood. Undoubtedly, the EU invested in this regard "a considerable political capital and financial, and bureaucratic resources in the development of relations with neighbouring states and regions".[20]

Furthermore, the countries of the EaP represent for the EU an important issue as they could lead, in the future, to act as major actors in the eastern region. Indeed, far from constituting a homogeneous region, the EaP countries which share a Tsarist and Soviet past, are in fact very diverse, and this diversity is growing stronger. In fact, regarding the geography, the security matters, as well as political and socio-economic transformations, the six states all know different situations. As a consequence, this is in the interest of the EU to become an influent part through the region. Yet, Georgia, Ukraine and Moldova seem to be more advanced than others in terms of democratic pluralism.[21] Besides, these three states have known what have been called "coloured revolutions": the rose revolution in Georgia (2003), the orange revolution in Ukraine (2004) and the Twitter revolution in Moldova (2009).[22] These events may have led today to the situation that they feel closer to the EU and are willing to expand the cooperation within the partnership program.

---

[17] European Council, Council of the European Union, «Eastern Partnership summit, 24/11/2017,» 24 November 2017.

[18] E. Commission, «Review of the European Neighbourhood Policy,» chez *JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS* , Brussels, 2015.

[19] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[20] Vernygora, V.; Troitino, D. R.; Västra, S. (2016). The Eastern Partnership Programme: is pragmatic regional functionalism working for a contemporary political empire? In: T. Kerikmäe and A. Chochia (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (7−22). Germany: Springer International Publishing. p. 7.

[21] Kerikmäe, T; Nyman-Metcalf, K; Gabelaia, D; Chochia, A (2014). Cooperation of Post Soviets with the Aim of not being "Post" and "Soviets". In: N. Šišková (Ed.). From Eastern Partnership to the Association. The Legal and Political Analysis (144−159).. Cambridge Scholars Publishing.

[22] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

In addition, the EU has for now well influenced the region despite lots of critics before 2015. In fact, the creation of the Association Agreements (AAs) was a new generation of bilateral agreement to deepen political and economic relations between the EU and its Eastern partners, covering a wide range of issues including trade liberalization. Besides, in the absence of a guarantee on EU membership, which some Member States are not ready to offer, the signature of an Association Agreement is probably the most effective European political lever in the eastern neighbourhood. Indeed, the EU has only exceptionally resorted to the principle of sanctions, as it did to the Belarusian authorities after the 2010 elections. The signature of an Association Agreement makes possible to introduce a certain differentiation between heterogeneous partners, faithful to the principle of "more for more".[23] The Association Agreements between the EU and Ukraine, Moldova and Georgia are the largest and most ambitious among all the other European association agreements with third countries. Based on Article 217 of the TFEU and Articles 31(1) and 37 of the TEU, they often enabled third countries to implement national laws.[24] This is thus a legal and concrete way to implement the policy of stability that the EU aims for toward the EaP. In this regard, the EU can have a sort of control over its partnership and keeps influencing the states that, in spite of tense political contexts such as Ukraine, tend to go toward a European ideology.

On top of that, the conclusion of a Deep and Comprehensive Free Trade Agreement (CAFTA), a main foundation of the EaP, aims to bring neighbouring states closer to European norms and standards. In other words, European actors seek to export what is a basis through the EU in the political, economic or administrative contexts of the Eastern neighbours. This system, deeply bound to the Association Agreement, was set in order to integrate them into the European geo-economic space. This objective was again more specifically toward Georgia, Moldova and Ukraine. Besides, the establishment of the CAFTA is meant to enable the countries to have better access to the European internal market and to find a place in the European division of labour, mainly in the industrial, agricultural and service sectors. This adaptation effort obviously involves significant adaptation effort and many costs for the EU that softly enforces a dominant influence through its framework.[25]

The long way to a concrete implementation of the Eastern Partnership

Even though it can be argued that the European policy concerning its Eastern Partnership is knowing a consequent influence, politically, economically etc., it can also be affirmed that this is still not a complete framework, especially through the Eastern countries own division. Indeed, some are more toward a European influence, others stay under the Russian one. In terms of geostrategic orientation, Georgia, Ukraine and Moldova have shown signs of rapprochement with the EU, declaring to want membership. Nevertheless, the changes are contrasted over time, depending on political changes and the success of ambitious domestic reforms. Armenia has for instance undertaken a number of negotiated reforms with the EU but has expressed interest in joining the Eurasian Union. Belarus and Azerbaijan are using the European actors mainly to have more autonomy vis-à-vis Moscow.[26]

The bilateral action plans, drawn up between the EU and twelve of its neighbouring partners, are interesting to show the European interests. Indeed, by setting an action plan, the EU aims for establishing political and economic reform agendas, with short and medium-term

[23] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[24] R. Petrov, «Implementation of Association Agreements Between the EU and Ukraine, Moldova and Georgia: Legal and Constitutional Challenges,» chez *Political and Legal Perspectives of the EU Eastern Partnership Policy*, Springer, 2016, p. 154.

[25] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[26] M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016.

priorities, between three and five years. It thus reflects the needs and interests of the EU with each partner country. As a consequence, the policy of the EaP is a process that still needs time to be completely implemented. The countries, in between the EU and their ongoing development, without speaking of the Russia that keeps a major influence on them, are partners that need to enforce such action or programmes in order to cooperate in a politically and economically stable system.

As a matter of fact, the EaP countries are able to be participants to EU programmes, such as Erasmus+ or the Asylum and Migration Fund for example. In this way, it is a mean to promote reform and modernisation in the EU's neighbourhood, as well as strengthen administrative and regulatory convergence of the partner countries.[27] It is thus without doubts that the four priorities set out in the Joint Declaration of the EaP Summit in Riga in May 2015 and reaffirmed after the Summit in 2017 to reinforce stability, are part of a long process. Indeed, the economic development and market opportunities, the strengthening of institutions and good governance, the connectivity, energy efficiency, environment and climate change and finally the mobility and people-to-people contacts, are issues that are part of any action within the EaP. In this sense, time will be needed to set these goals through the region but it is necessary for the long term of the Partnership to take action on those, and even to a universal aspect.[28]

Furthermore, this seems a long process to a concrete implementation of the EaP but some elements are proving that the Eastern Neighbouring countries tend to a large and fast evolution thanks to a major European influence. In fact, the creation of strong legal instruments, the Association Agreements, in the policy toolbox, was a major turning point for the Eastern Partnership. Yet, not a long time after, it is considered that the interests and the initiatives of the Eastern Partnership partners, in particular the Harmonization of Digital Markets initiative, have been an opportunity for the Juncker Commission's political priorities. Indeed, the Digital Single Market (DSM) is one of the top ten priorities on the Commission's agenda. This is mainly because cooperation with third countries is seen as a necessary dimension of the DSM strategy if the EU wishes to keep its influence on the region and more precisely, the first position as an exporter of digital service.[29]

It can be affirmed that the EU has already established a massive work when it comes to the Eastern Partnership Program. In fact, after numerous critics following the Summit of 2015 in Riga, the EU still set many objectives and is trying to improve the implementation of its ENP in general. Moreover, it has to be reminded that the launching of the EaP was not such a long time ago, besides, the situations like revolutions in countries fast-growing did not facilitate the EU's framework in the eastern region. Surely, it is a long process and it requires many actions and programmes because the issues are central. However, since 2017, a new perspective of the EaP is visible, and it can be wondered if the EU could foresee in a near future a better implementation of its Eastern Neighbourhood Policy with an effective implementation of the Rule of Law, the respect for Human Rights, a stable security etc.

TOWARDS A BETTER IMPLEMENTATION OF THE EASTERN PARTNERSHIP PROGRAM

When it comes to such a partnership, with different contexts and diverse ideologies within the countries, the main points that have theoretically to be focused on are politics, democracy and

[27] European Union External Action, «Participation of ENP countries in EU programmes,» 8 January 2016.
[28] K. B. /. K. Jongberg, «The European Neighbourhood Policy,» European Parliament, January 2018.
[29] Evas, T.; Batura, O. (2016). Eastern Partnership and ICT. In: Kerikmae, T and Chochia, A (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (35−57). Springer-Verlag Heidelberg. p. 39.

economy. Yet, from an overall view, if the countries do not take part of the cohesion to facilitate these fields through their system, it is pointless. That is why, the idea of cooperation is necessary through the EaP. To go further, it will also be observed that the Eastern European region is not only influenced by the EU.

The cooperation: a necessary dimension for the European Union

When it comes to cooperation, specific sectors are concerned. Indeed, the ENP in general promotes the respect for the basic principles of dignity and equality, human rights, and social and economic justice. They should be guaranteed in democratic legal systems with the rule of law, by independent courts. In general, an arbitrary justice for all is fundamental. Moreover, to spread efficient cooperation, the ENP links partner countries with the EU's internal market and its social and economic model. The essence of a good implementation of the economy with fair competition, consumer protection etc. is thus based on possibilities for all citizens. Finally, the ENP connects the EU with its neighbours, promoting trade, the building of networks in energy and transport, or fostering tourism. A partnership has to know exchange and mobility of persons, not only economically but also culturally, in order to foster the human capital development and responsible societies. Furthermore, it is understandable that the EU is willing to promote its values and human rights through the partnership. Indeed, the European ideas are often based on cooperation at the end. If those criteria are respected, it is to better increase the cooperation regarding security matters.[30]

To illustrate the engagement of the EU to favorize an efficient cooperation, reference can be made to the EaP Panel on Security, Common Security and Defense Policy and Civil Protection meeting in May 2018. It gathered over sixty representatives from the EU's Eastern neighbours countries, as well as EU Member States representatives, the European institutions and the Civil Society Forum. The main topic of the discussion was the outcomes of the latest EaP Summit, followed by the Panel's work to realise the "20 deliverables for 2020".[31] This latter is a project that has many goals of strengthening cooperation between the EU and the Eastern partners countries. In fact, it is based on four main priorities, a stronger economy with for example the aim of Addressing gaps in access to finance and financial infrastructure, a stronger governance with for example the aim of Strengthening the rule of law and anti-corruption mechanisms, a stronger connectivity with for example the aim of Enhancing energy efficiency and the use of renewable energy, and finally, a stronger society, with for instance the aim of Progressing on Visa Liberalisation Dialogues and Mobility Partnerships. As a matter of fact, the focus on environmental policy was important. Indeed, for a better future, the cooperation has to be based on environmental norms. In this regard, the EU has already the necessary basis to strengthen the issue: Article 191(1) TFEU determines the objectives of the EU environmental policy as "promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change". These objectives cannot thus be complete without a strong cooperation. That is why forming regional agreements between the EU and its partner countries and then following the goal of environmental protection at regional level in the framework of similar initiatives of the Eastern Partnership Program is more and more taken into account. Another major point, and relatively recent, is the harmonisation of digital markets. Nowadays, Internet has become more than a new technology, but a real virtual public space. Indeed, the technologies that helped to launch the social media have a major role since they are now part of the public discourse through which any citizen of the partnership can participate. This led to the development of many e-Participation tools, and

[30] S. Communications, «European Neighbourhood Policy (ENP),» European Union External Action, 21 December 2016.
[31] EU Neighbours East, «Eastern Partnership: Panel on security, defence policy and civil protection meets in Brussels,» 18 May 2018.

going further, it is thinking in a new way the political participation for the people in order to revitalize the democracy.[32]

The whole program for the years to come is thus ambitious because it involves the adoption of a deep and comprehensive free trade agreement, as well as greater mobility for neighbours. In practice, beyond the adoption of an appropriate legal framework, the real key to success lies in the implementation of reforms, by administrations whose interests often reside in the absence of transparency and realities. For example, the adoption and implementation of the third energy, as a matter of fact, climate is causing strong opposition in the countries concerned.[33] Cooperation is essential for the future of the EaP.

Furthermore, it has to be underlined that during the Summit in 2017, the EU and Armenia have signed a comprehensive and strengthened partnership agreement and concluded an air services agreement.[34] This was a big step in the cooperation between the East and the EU as Armenia is still a controversial country regarding the Russian influence. Moreover, as to show examples of a more and more efficient cooperation through communication and relations, Tallinn hosted in 2017 many forums and conferences to discuss issues of the EaP. Indeed, the Eastern Partnership Business Forum, the EU conference on youth, or also the Eastern Partnership civil society conference, were held to bring closer countries of the EaP and the new European vision based on an efficient and future cooperation.[35]

During the EaP Summit Press Conference in 2017, Donald Tusk firmly affirmed that "There should be no doubt that our common future lies in the EU's determination to open up its policies to its partners, and I can confirm once again that we are ready." This confirms the vision of a better implementation of the neighbourhood policy from the EU, particularly when it comes to its Eastern neighbours countries. Yet, the EU is not alone facing the will of cooperate with these.

The impact of major influences within the Eastern Europe Countries

An important focus can be made on Transnistria in order to illustrate the predominance of the Russian influence within the European Eastern neighbours' region. Transnistria is part of Moldova and is actually a non-recognised state, claiming its independence. First of all, Transnistria is a strategic point for Moscow. Indeed, Russian forces in the region enable Russia to counter NATO on the shores of the Black Sea that Russia considers its military space. Moreover, Transnistria allows Russia to counter the EU's progress in Moldova. In May 2018, it was still only three partner countries that have signed the association agreements, Ukraine, Georgia and Moldova. Yet, Moldova sees its action a bit restrained by the region of Transnistria and its way to support the Russian Federation. In addition to that, Belarus and Armenia preferred to join the Russian project of competing economic integration launched in 2015, named after the Eurasian Economic Union, which also includes Kazakhstan and Kyrgyzstan. Other separatist states supported militarily by Russia, located on the borders of the former USSR, also allow to counter the influence of Brussels and NATO, on what Moscow considers its area of influence. In Azerbaijan with Nagorno-Karabakh, which proclaimed itself independent in 1991, in Georgia with South Ossetia and Abkhazia, which proclaimed themselves independent in 2008, but also in Ukraine with the Donbass republics, self-proclaimed in 2014, without forgetting the annexation of Crimea by Russia the same year.

---

[32] Y. Misnikov, «Democratisating the Eastern Partnership in the Digital Age: Challenges and Opportunities of Political Association Beyond the Language of Official Texts,» chez *Political and Legal Perspectives of the EU Eastern Partnership Policy*, Springer, 2016, p. 59.

[33] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[34] European Council, Council of the European Union, «Eastern Partnership summit, 24/11/2017,» 24 November 2017.

[35] European Council, Council of the European Union, «Eastern Partnership summit, 24/11/2017,» 24 November 2017.

Thus, Russia is willing to connect these areas to counter the progress of the EU-NATO bloc in the Black Sea. Yet, the advance of Europe, especially in Moldova, can be seen since 2016. In fact, this latter, one of the poorest countries in Europe has found better access to the European market thanks to the EaP in place and an efficient stabilization of the region as well as cooperation. There is as well a free trade agreement that also extends to Transnistria, which now exports more to the European market than to the Russian market. At the end of 2018, Transnistria will have to confirm its rapprochement with Europe, including its membership of the free-trade zone. It is unknown on this point the position of Moscow and how far it will let this happen.

Transnistria is therefore serving Russia's interests in central Europe. Since the conflict in Ukraine, Transnistria allows Putin to take the Ukrainians in a vise, maintain its dominance in the region and remains a great power in the eyes of the world. Transnistria exists today only by the goodwill of a Russia that has not given up its grip on the former Soviet space, and which saw the enlargement of NATO and the EU as a loss of influence and encirclement of his former empire.[36]

The professor Cyrille Bret described the future of the EaP after the Summit of 2017. He qualifies it as unsure, with many possibilities mainly generated by influences of important powers on the region. First the countries of the central and eastern Europe are tempted by the extreme East, fully knowing a diplomatic diversification. Central and Eastern European countries were under the influence of two of the world's largest economic entities. First, by the EU with the summit of the EaP, and then by China with the China-CEEC Economic and Trade Forum in Budapest in 2017. China observes in the wider set of these Eastern European countries a transit area or ideal outlets for its New One Belt One Road Silk Roads, besides, China has recently offered 3 billion of investment in the region. From Azerbaijan to Hungary, it already built harbor and rail infrastructures. Consequently, countries of the European Eastern neighbourhood emerging from the Soviet orbit but not from geopolitical tensions. Especially among the strongest European growth, now in the heart of three areas of influence, EU, Eurasian Economic Union for Russia, and Chinese Silk Road.

There is a trend towards the EU for some of the EaP countries, but another important influence is towards Russia for the other part. Indeed, since 2009, two groups were formed, one composed of Ukraine, Moldova and Georgia, "the countries of the Association Agreements", which have long called for a membership perspective, and the other with Belarus, Armenia and Azerbaijan, which, because of geography, of military alliances, of inclusion in the Russian economy, are closer to the Russian Federation and more included in the Eurasian Customs Union and then in the Eurasian Economic Union for Armenia and Belarus.

Therefore, the geopolitical and economic competition is between the Russian Federation and the EU. Belarus is between the two rivals and moving away from this confrontation does not seem envisaged yet. During the Forum in China, this latter foresaw an outlet. Traditionally, the Belarussian is between these three influences. For China, Belarus is considered as the ideal outlet to the EU, since it is the way to Poland, and therefore the entire transit of all its road transport, railways, as well as the Internet, etc. This country is an essential device for Chinese. It is also a major challenge for the next few years, until 2020, for the EaP, since it is the furthest from the standards in terms of good governance and the defense of human rights. The EaP regularly expresses concerns about the situation of Human Rights in Belarus. The geopolitical reasons and the values of the EU are coming into tension with regard to this country. For the EU, it is important to take into consideration that soon it will rather be a Chinese governance over the region than a

[36] Le dessous des cartes, «Transnistrie: le pays qui n'existe pas,» Arte, 19 May 2018.

Russian one. This is why member states of the EaP must keep a strong cooperation with precise perspectives of development and prosperity.[37]

As a consequence, in between the game of powers, the countries of the European Eastern Neigbhourhood must facilitate economic and political developments. The EaP is for now what seems to have the strongest influence in the region, especially regarding Ukraine, Georgia and Moldova, with many set goals. In this regard, the access to other countries through the global market is important. The geography of states presents several challenges, more specifically in relation with Georgia. This can be seen through for example the cross-border cooperation which facilitates the development of regional infrastructure networks and thus support trade.[38]

CONCLUSION

Originally, Eastern Partnership set the goal of bringing Eastern Europe and the South Caucasus closer to European standards. Undoubtedly, the economic and financial crisis of the eurozone and a more determined Russian policy have undermined the European capacity to model in the region. For too long, European actors have focused their attention on governments rather than on civil society. In fact, the EU needs to involve civil society actors in the main negotiations, through the exchange of information and consultation.

Furthermore, it is hardly surprising to see Russia in the current debates. Moscow, which can be regarded as a "soft power" toward the ancient soviet region, retains privileged positions in a space that it considers a privileged area of interest, as shown by its diplomatic activism.[39] The conflict with Russia is not yet completely frontal today as the European Union continues to demand the application of the Minsk agreements and maintains pressure through sanctions.

However, with regards to the year 2017, the EaP has made improvements towards the settlement of goals regarding the major issues between the EU and its ENP. The cooperation based on democracy, human rights and security and development stability, is far from the one the EaP used to know back to its beginning. In this regard, the leaders of the EU, even if still reticent to any adhesion of these countries, are aiming for maintaining a strong partnership despite many other influences in the region. In this sense, it is without doubts that a strong European influence is set throughout its Eastern Neighbourhood. Besides, its ambition regarding the partnership program is thus legitimate.

Without considering to what the evolution of the EaP will lead, it is in any case essential that it does not appear as placing the countries to which it is addressed with an obligation to make an exclusive choice between the European Union and Russia. The Eastern Partnership should not lead these countries to exclude any relations with Russia, as the maintenance of links with Russia can not result in the exclusion of the Partnership. Convergence is to be found between the Eastern Partnership and Russia.[40] Besides, the influence of a fast-growing China towards the extreme East is also an important consideration regarding the possible evolution of the EaP. According to the professor and French diplomat Maxime Lefebvre, the EU must not abandon the voluntarism of its neighborhood policy, but the experience of the last fifteen years should encourage it to be modest,

[37] C. Bret, «Du partenariat oriental au rapprochement avec la Chine, l'Europe de l'Est est-elle sur la voie de l'émancipation diplomatique ?,» France Culture, 30 November 2017.

[38] A. B. Tatjana Muravska, «Towards a New European Neighbourhood Policy (ENP): What Benefits of the Deep and Comprehensive Free Trade Agreements (DCFTAs) for Shared Prosperity and Security?», *Political and Legal Perspectives of the EU Eastern Partnership Policy*, Springer, 2016, p. 23.

[39] F. Parmentier, *L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL,* Institut Jacques Delors, 2013.

[40] Sénat, «Le Partenariat oriental : une nécessaire refondation,» 23 May 2018.

realistic and flexible. Nor should the EU restrict its priority horizon to its immediate eastern or Mediterranean neighborhood, as it was written in 2003.[41]

REFERENCES:

Academic articles:

Casier, T. (2014) Building a Stronger Eastern Partnership: Towards an EaP 2.0, Global Europe Centre University of Kent.

Chochia, A. (2012). The European Union and its policy towards the neighbors from South Caucasus. L'Europe unie/United Europe, 6, 27−35.

Chochia, A.; Popjanevski, J. (2016). Change of Power and Its Influence on Country's Europeanization Process. Case Study: Georgia. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (197−210). Springer International Publishing.

Evas, T.; Batura, O. (2016). Eastern Partnership and ICT. In: Kerikmae, T and Chochia, A (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (35−57). Springer-Verlag Heidelberg.

Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237). Routledge, Taylor&Francis Group.

Kerikmäe, T; Nyman-Metcalf, K; Gabelaia, D; Chochia, A (2014). Cooperation of Post Soviets with the Aim of not being "Post" and "Soviets". In: N. Šišková (Ed.). From Eastern Partnership to the Association. The Legal and Political Analysis (144−159).. Cambridge Scholars Publishing.

Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

Kerikmäe, T.; Nyman-Metcalf, K. (2012). Less is more or more is more? Revisiting universality of human rights. International and Comparative Law Review, 12 (1), 35−51.

Misnikov, Y. (2016) Democratisating the Eastern Partnership in the Digital Age: Challenges and Opportunities of Political Association Beyond the Language of Official Texts. In: Kerikmae, T and Chochia, A (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (35−57). Springer-Verlag Heidelberg.

Muravska, T. (2016) «Towards a New European Neighbourhood Policy (ENP): What Benefits of the Deep and Comprehensive Free Trade Agreements (DCFTAs) for Shared Prosperity and Security?», Political and Legal Perspectives of the EU Eastern Partnership Policy, Springer.

Parmentier, F. (2013) L'UE À L'ÉPREUVE DU PARTENARIAT ORIENTAL, Institut Jacques Delors.

Petrov, R. (2016) «Implementation of Association Agreements Between the EU and Ukraine, Moldova and Georgia: Legal and Constitutional Challenges,» Political and Legal Perspectives of the EU Eastern Partnership Policy, Springer, 2016.

Tsybulenko, E.; Pakhomenko, S. (2016). The Ukrainian Crisis As A Challenge For The Eastern Partnership. In: Kerikmäe, T.; Chochia, A. (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (167−179). Springer International Publishing.

Vernygora, V.; Troitino, D. R.; Västra, S. (2016). The Eastern Partnership Programme: is pragmatic regional functionalism working for a contemporary political empire? In: T. Kerikmäe and A. Chochia (Ed.). Political and Legal Perspectives of the EU Eastern Partnership Policy (7−22). Germany: Springer International Publishing.

Official websites:

European Council, Council of the European Union, «Eastern Partnership summit, 24/11/2017,» 24 November 2017. Accessed at: http://www.consilium.europa.eu/en/eapsummit/

[41] M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016.

European Union External Action, «Eastern Partnership,» European Union External Action, 19 October 2016. Accessed at: https://eeas.europa.eu/topics/eastern-partnership/419/eastern-partnership_en

European Union External Action, «Participation of ENP countries in EU programmes,» 8 January 2016. Accessed at: https://eeas.europa.eu/headquarters/headquarters-homepage/11079/participation-enp- countries-eu-programmes_en

K. B. /. K. Jongberg, «The European Neighbourhood Policy,» European Parliament, January 2018. Accessed at: http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.5.4. html

S. Communications, «European Neighbourhood Policy (ENP),» European Union External Action, 21 December 2016. Accessed at: https://eeas.europa.eu/headquarters/headquarters-homepage/330/european- neighbourhood-policy-enp_en

Sénat, «Le Partenariat oriental : une nécessaire refondation,» 23 May 2018. Accessed at: http://www.senat.fr/rap/r15-797/r15-7972.html

Other regulatory documents:

C. Bret, «Du partenariat oriental au rapprochement avec la Chine, l'Europe de l'Est est-elle sur la voie de l'émancipation diplomatique ?,» France Culture, 30 November 2017. Accessed at: https://www.franceculture.fr/emissions/les-enjeux-internationaux/les- enjeux-internationaux-jeudi-30-novembre-2017

E. Commission, «Review of the European Neighbourhood Policy,» chez *JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS* , Brussels, 2015.

EU Neighbours East, «Eastern Partnership: Panel on security, defence policy and civil protection meets in Brussels,» 18 May 2018. Accessed at: https://www.euneighbours.eu/en/east/stay-informed/news/eastern-partnership-panel- security-defence-policy-and-civil-protection.

Le dessous des cartes, «Transnistrie: le pays qui n'existe pas,» Arte, 19 May 2018. Accessed at : https://www.arte.tv/fr/videos/078191-012-A/le-dessous-des-cartes/

M. Lefebvre, «diploweb.com La revue géopolitique,» La politique étrangère européenne : quel bilan ?, 2 June 2016. Accessed at: https://www.diploweb.com/La-politique-etrangere-europeenne.html

The Influence of Creating a Common Defence System to EU's Foreign Policies

TUULI DUNDER
UNIVERSITY OF TURKU, FINLAND

Abstract: *This text aims to highlight the possible outcomes of creating a common defence system for the European Union. The text enlightens the different defence cooperation scenarios and furthermore introduces the pros and cons of having really tight cooperation in the field of defence. By reading this work one should be able to understand that creating a common defence system for EU is problematic because of its original foreign policies. Shortly put, this text deals with the disharmony of EU policies and high level of cooperation in military defence.*
Keywords: *conditionality, defence policy, security dilemma, European Union, peace*

1. INTRODUCTION

1.1 EU's Foreign Policy

Since forming the European Economic Community, its foreign policy was always somewhat economic-orientated. When Maastricht Treaty (TEU) and thus the European Union was established in 1992, EU's foreign policy took a turn: Maastricht Treaty lays down the principles and values according to which European Union is supposed to function – respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.[12] In addition pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men are mentioned in the same article.

These values form the foreign policy of the EU. Article 21 of TEU points out that the Union's actions on the International scene shall be guided by the principles that have inspired its own creation, intending the principles mentioned above. This basically means that alongside of economic goals, EU was now also engaged in promoting these values in question – and still is.

EU wants to see itself as a „peacepromoter" in the world politics. This is in fact why EU is the biggest donor in the world, accounting for 60 % of official development assistance (Member States and European Commission aid taken together) provided to more than 160 countries, territories and organisations worldwide.[3] The EU is also the main trade partner of poorest countries: 40 % of its imports come from developing countries.[4] The financial aid can be linked with EUs values, since EU uses value conditionality as a policytool: EU lays down the rules according to which the state should operate, and if those rules are followed, the financial aid is provided.[5] This is one of the ways Union can promote its principles in foreign relations, and has worked well for example in EU-ASEAN relations.

One of the priority areas and main objectives relating to foreign policy of the EU is conflict prevention.[6] It has for example been part of conflict resolution in Colombia and supported the post-war Colombia by 163 million euros in 2007-2013 in order to create the conditions for the rule of

[1] Treaty on European Union, article 2
[2] Kerikmäe, T.; Nyman-Metcalf, K. (2012). Less is more or more is more? Revisiting universality of human rights. International and Comparative Law Review, 12 (1), 35−51.
[3] D. Castaneda (2012), *The European Union in Colombia: Learning How To Be a Peace Actor,* Paris Papers, IRSEM
[4] D. Castaneda (2012), *The European Union in Colombia: Learning How To Be a Peace Actor,* Paris Papers, IRSEM
[5] E. Fierro (2013), *The EU's Approach to Human Rights Conditionality in Practice,* Martinus Nijhoff Publishers
[6] D. Castaneda (2012), *The European Union in Colombia: Learning How To Be a Peace Actor,* Paris Papers, IRSEM

law, justice, human rights, productivity, competitiveness and trade.[7] EU also freezed the cooperation with ASEAN for three years when Burma/Myanmar joined ASEAN in 1997: the goal was to put pressure on ASEAN countries as one of their main trading partners so that they would force Burma/Myanmar to stop exploiting the citizens and thus preventing the possible conflict.[8] EU has also been a great part in negotiating the famous Iranian nuclear deal. Regarding to this specific field in the next chapter I will introduce the idea of the EU's common defence system and the driving forces behind the idea.

1.2 Common Security and Defence Policy

Common Security and Defence Policy (CSDP) of the European Union is an integral part of the EU's comprehensive approach towards crisis management, and has been on voluntary and soft basis for the whole time of its existance.[9] Attempts to move towards common defence have been part of the European project since its inception, yet it still has not materialised [10] – common defence remains as a policy, not an integral system of European Union. This basically means that defence for EU is a soft power, and in a large scale European Union Member States are not co-operating in a military level.

CSDP enables EU to take some preventative measures, but that's about it. The former president of European Commission, Jean-Claude Juncker, sees it this way: "We need to work on a stronger Europe when it comes to security and defence matters. Yes, Europe is chiefly a soft power. But even the strongest soft powers cannot make do in the long run without at least some integrated defence capabilities."[11] Though article 42 (6) of TEU provides the possibility for a group of like-minded Member States to take European Defence to the next level, the co-operation remains on voluntary basis and almost non-existent.[12]

The Common Defence System has been discussed for a long time, and one of the reasons is the worsening situation of the global politics – also in European Union's neighbourhood, such as in Ukraine.[13] The current High Representative Federica Mogherini and a member of Commission, Jyrki Katainen, have launched a reflection paper on the future of European Defence, where they define the framework and future for EU's common defence.[14] According to the paper, more needs to be done if the Union is to take greater responsibility for European security. I will now introduce three scenarios that the paper suggest for the future cooperation.

First scenario is "security and defence cooperation", which seems to be pretty close to what EU has now. Cooperation would remain voluntary and include small-scale military missions and operations aimed at crisis management. EU would enhance cooperation between its partner countries simultaneously reinforcing its own resilience. The cooperation with NATO would intensify, though the responses to non-conventional threats would remain largely on national basis,

---

[7] European Comission, International Cooperation and Development, Colombia, retrieved from https://ec.europa.eu/europeaid/countries/colombia_en 16.5.2018

[8] N. A. de Flers (2010), *EU-ASEAN Relations: The Importance of Values, Norms and Culture,* EU Centre, Singapore Working Paper No. 1 June 2010

[9] European Union External Action, CSDP, retrieved from https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp_en?page=1 21.5.2018

[10] European Commission, *Defending Europe,* retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[11] European Commission, *Defending Europe,* retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[12] European Union External Action, Permanent Structured Cooperation Factsheet (9.3.2018), *Deepening Defence Cooperation among EU Member States*

[13] Sayapin, S.; Tsybulenko, E. (Eds.) (2018). The Use of Force against Ukraine and International Law. Jus ad bellum, jus in bello, jus post bellum. The Hague: Springer, T.M.C. Asser Press.

[14] F. Mogherini, J. Katainen (June 2017), *Reflection Paper on the Future of European Defence,* European Commission

meaning that the main focus of for example combating terrorism would be on states responsibility – with increased support from the EU. The technological cooperation would increase, but only a little bit: states would still continue to produce and develop the platforms by themselves. So there would be a little increase in everything, but no major changes.

The second scenario, "shared security and defence", is already more serious. EU would engage fully in external crisis management, and the cooperation with NATO would be more military one also on EU's side. There would be greater financial solidarity: there would be aligned defence planning, common development and procurement of complex platforms and shared intelligence. Member States would have coordinated surveillance operations, and the threats falling below the threshold of the Washington Treaty would be taken into account more seriously and actively. In this scenario the defence cooperation would be more of a norm than an exception, and the EU would drastically build up its capacity.

In the last scenario the aim is clear: Unions common army. This so called "common defence and security" would enable EU to exploit the article 42 of TEU fully: the protection of Europe would become a mutually reinforced responsibility of the EU and NATO. The paper further suggests that in this scenario security threats should be systematically monitored and assessed jointly, the strategic planning should happen in EU level and the defence forces of the Member States should be integrated on a higher scale. There would be permanently available forces for rapid deployment on behalf of the Union, and the defence planning in its whole would be fully synchronised. Basically EU would unite and integrate the defence systems of Member States by moving the strategic planning and command on the EU level.

In this paper I will mostly focus on the third scenario, and what would be the consequences of this change for the European Union's foreign policy. I will consider this through EU's current policies, how they would be affected and why. I will look this scenario through economic and international security theory approaches and come into a conclusion: would the change be negative or positive or neither?

2. ECONOMIC APPROACH

Scenario 3 would require some serious flows of money. Examining the effects of uplifting the EU's military expenditures (on the required level of scenario 3) for EU's economy has an important point. The EU's role as a peace promoter in the global politics has grown since the 90's. This global standing has been possible because of the achievements made in the human rights field – and the conditionality policy has been a major tool in these achievements. The conditionality policy, though, does not work if EU doesn't have the money to sustain it: if the money is started being put in military assets, it is away from something else. First things to cut would probably be donations, development programmes abroad and other peace promoting measures EU is known for. Below I will observe the influence of raised military expenditure on EU's economy and its effects on EU's foreign policy.

Comparing the numbers, Union's military expenditure is approximately half of that what US spend on defence: in 2014 EU and its Member States spent 227 billion euros, whereas USA put 545 euros in military assets.[15] Basically this means that USA puts 2 % more of its GDP on military expenditure – in total 3,3 %.[16] The problem doesn't lie in these numbers: the expenditure itself does not guarantee the quality of defence, and the GDPs of these two are hardly comparable. The Union's

[15] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[16] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

problem is inefficiency, which has its roots in the lack of cooperation and integrity in the field of defence.

The point is that while US has about 30 types of weapon systems, EU has 178 of them – US has 1 type of main battle tanks, 4 different ship systems and 6 in aircraft, while the numbers in the Union are 17, 29 and 20.[17] Around 80 % of defence procurement is run on a purely national basis, leading to this costly duplication of military capabilities – the lack of cooperation between Member States in the field of defence and security is estimated to cost annually between 25-100 billion dollars.[18] Duplications decrease the effectiveness and complicate the possible cooperation in defence between states. The problem is that uniting states' technological platforms of warfare would be unbearable burden to many of the states, since it would require much more capital than the costs of duplications. On the other hand, the elimination of duplications would be much more long-sighted than sticking in the current system.

The European Commissions "Defending Europe Factsheet" also claims, that more Europe in defence would have positive spill-over effect on the European economy: at the moment the European defence industry generates a total turnover of 100 billion euros per year and 1,4 highly skilled people are employed directly or indirectly – each euro invested in defence is generating a return of 1.6 in particular in skilled employment, research and technology. Though I don't suspect the validity of this argument, the University of Massachusetts has researched that virtually any other form of government spending, from health care to infrastructure to alternative energy development, produces one and one-half time as many jobs per billion dollars spent as spending on military.[19] This is why to my mind the spending on military assets and justifying it by promoting it as a job creator is an invalid argument.

Also the World Bank and International Monetary Fund (IMF) found in their joint research that for the average country a doubling of military expenditure reduced the growth rate for a period, eventually leading to a reduction in the level of income of 20 percent.[20] The bulk of financial resources for common defence would come from national sources[21], and this is why the movement towards scenario 3 should be really slow, since the states can't financially handle the drastic increase in military expenditure. Too rapid development in the field could seriously harm EU's economy and its political standing as the richest region in the world, and thus also affect negatively on its foreign policy.

A Global Strategy for the European Union's Foreign and Security Policy 2016 has defined a framework for EU's outer relations: "It has long been known that preventing conflicts is more efficient and effective than engaging with crises after they break out. We will therefore redouble our efforts on prevention, monitoring root causes such as human rights violations, inequality, resource stress, and climate change – which is a threat multiplier that catalyses water and food security, pandemics and displacement."[22] The realization of scenario 3 is not planned to focus only on pre-emptive measures: the point is to prepare for the worse and to be able to intervene conflicts. As the former statement highlights, it is not that effective. The money put on military would of

[17] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[18] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[19] W.D. Hartung, C. Lutz (April 2017), *The Military Budget and the Costs of War: The Coming Trump Storm*, Brown University

[20] P. Collier (2006), *War and Military Expenditure in Developing Countries and Their Consequences for Development*, The Economics of Peace and Security Journal, 2006 vol 1 n. 1, ISSN

[21] F. Mogherini, J. Katainen (June 2017), Reflection Paper on the Future of European Defence, European Commission

[22] European Union Global Strategy (June 2016), *Shared Vision, Common Action: A Stronger Europe,* retrieved from http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf 22.5.2018

course also reduce the assets put in pre-emptive measures, and the EU's foreign policy would be reshaped – if EU starts to emphasize the importance of being prepared to war over eliminating the reasons leading to it, to me it sounds like a dramatic change in its foreign policy.

The stronghold of EU has always been the money. As Montesquieu stated, peace is the natural effect of trade; also liberal economic theorists have argued that capitalist economic systems and the free exchange of goods in an international market economy are the best guarantors of peace.[23] As I mentioned in my introduction, EU is the major trade partner of many developing countries and regional coalitions – the amount of money EU has enables it to support states financially and lifting them to stand on their own feet. If this bulk of money is started to direct on defence instead of import, EU starts to create an environment which actually might require cooperation likely to scenario 3.

The duplication in EU's military expenditure is a frustrating wormhole, which should be gotten rid of, and thus it would be good for economy to increase the cooperation. The attempts to reach scenario 3 should be taken really slow: the economy is the power asset of EU, and it enables EU to promote peace and prevent conflicts through trade, aid and different kind of policy tools. Without the most stable regional economy in the world, EU would lose its political stand, which even a strong military could not replace.

3. SECURITY DILEMMA

The main argument for building EU's common defence capacity is the unsafety of the globe: the common idea is that one has to own a strong military in order to be fully safe. Even the European Commissions' factsheet on Defending Europe underlines that the citizens of EU will feel and be safe only by advancing firmly along the path of defence.[24] European Union's role in the global politics have been based on its peacebuilding capacities, which arise from EU's somewhat neutral and soft approach on international conflicts. In the following chapter I will introduce the security dilemma and the probable consequences of EU's militarization according to scenario 3: I will examine the EU's global stand and reputation and how that would change if common defence system would be built.

The point of having a common defence is the fact that great military would serve as a deterrence for other states: it's a statement for being able to act if certain circumstances aren't met, and thus it is also a pre-emptive measure in a sense. The problem is the security dilemma by John Herz which is well summarized by Glenn H. Snyder: "The theory says that even when no state has any desire to attack others, none can be sure that others intentions are peaceful, or will remain so; hence each must accumulate power for defense. – Consequently, each partys power increments are matched by the others, and all wind up with no more security than when the vicious cycle began, along with the costs incurred in having acquires and having to maintain their power." [25] It has been researched that each time one country raises its military expenditure there will be a ripple effect across the region – further, as neighbours respond to the initial increase, the country that increases its military expenditure may itself respond with further increases: the classic process of arms race.[26] This will definitely apply also in regional military cooperation, since for example US and Russia

[23] Jack S. Levy (1998), *The Causes of War and the Conditions of Peace*, Rutgers University

[24] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

[25] G.H. Snyder, 1984, *The Security Dilemma in Alliance Politics*, World Politics vol 36 n. 4 pp. 461-495, Cambridge University Press

[26] P. Collier (2006), War and Military Expenditure in Developing Countries and Their Consequences for Development, The Economics of Peace and Security Journal, 2006 vol 1 n. 1, ISSN

might feel themselves threatened if EU joins the armament race. In the end of the day, something that seems to be pre-emptive measure could actually be the wire for explosives.[27]

The argument is also supported by the dyadic-level "power preponderance" hypothesis, which holds that war is least likely to occur when one state has a preponderance of power over another and is most likely when there is an equality of power.[28] It is also found that regional wars escalate to global wars only under conditions of a deconcentration of naval power and economic wealth at the global level.[29] Though this kind of information may be hard to swallow, I think it should be taken into account: the fact is, the more powerful state has no real interest in attacking the other military coalition if it does not feel threatened. On the other hand if the military assets of the arguing countries/communities are equal, the dispute will be much more likely to escalate since both are feeling threatened and not willing to compromise. Also to my mind the negotiating standings of the "under powered" states are not necessarily worse: the global scene takes care of the fact that the state with stronger military can't blackmail the weaker state, or there will be political consequences.

As not being the most powerful military coalition in the world, it is hard to admit that becoming one wouldn't help either. The US military records have been acknowledged, and to reach that level of defence capability would require too much financial sacrifices at this point. The fact is also that other states are already trying to respond to the defence level of the US: to my mind EU joining the game wouldn't probably have that much of an effect, but EU not joining the game could be a statement to many other actors to not join either. High military expenditures may inadvertently contribute to the risks that it is attempting to reduce,[30] and at this point the non-militarization would probably lead for more security. The problem is, could EU ever become a strong factor in the world politics, if it doesn't join the game?

To my mind – yes. The comment of current lieutenant colonel of North-Korean Army, Hyong Myong-jin, underscores it well: "As long as America reserves the right to keep more nuclear weaponry, the limitation of our nuclear power can't be discussed."[31] When the states are too equal in their military assets, there is usually no space for negotiations. The most powerful state is not necessarily the one who has the most weaponry or soldiers: to me it occurs that it might as well be the one who is most listened in the global platform. European External Action Services' Chief operating officer David O'Sullivan has also said that the absence of a military in the region is an asset to the EU in negotiations,[32] referring to the six party talks on denuclearisation of North Korea. Though it might be hard to acknowledge, the absence of EU's military might actually be its trump.

The scenario 3 aims to build a strong, well organized military between the Member States. In this scenario a lot of money would be put in assets that are used only if the war occurs. The scenario underlines the importance of military for security, and I think this would change EU's foreign policy drastically. These kind of changes would cause other states to wonder whether they should start arms race too. I think first of all states would really start to pick up their enemies and

---

[27] For Russian foreign policy, please see: Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237). Routledge, Taylor&Francis Group.

[28] Jack S. Levy (1998), The Causes of War and the Conditions of Peace, Rutgers University

[29] Jack S. Levy (1998), The Causes of War and the Conditions of Peace, Rutgers University

[30] P. Collier (2006), War and Military Expenditure in Developing Countries and Their Consequences for Development, The Economics of Peace and Security Journal, 2006 vol 1 n. 1, ISSN

[31] K. Pajari (April 2018), *Pohjoiskorealainen sotilas Hyong Myong-jin ei ole koskaan käynyt ulkomailla – "Haluaisin matkustaa Amerikkaan ymmärtääkseni mikä heitä vaivaa",* Helsingin Sanomat retrieved from https://www.hs.fi/ulkomaat/art-2000005656480.html 26.4.2018

[32] A.S. Millard (2017), *The EU's Potential Role in the Six Party Talks and Denuclearisation*, Baltic Journal of European Studies, Tallinn University of Technology vol 7 n. 2

partners: to this day EU has been sending a message that enemies are not necessary, you can actually try to get along with everyone – by creating an army it states the opposite.

This would probably lead to new, stronger partnerships with certain states, and maybe cause friction with some relationships. In this case EU should also take into account for example their energy resources: they should be very well secured, since at the moment EU is dependant on external resources. There should be no way any state could actually blackmail EU, which would be more probable if having a stronger military – the security of the people would be undermined. Thus in order to secure safety of the citizens EU should truly focus on becoming independent also in other levels than military assets, which would probably also reduce the trade rate and in some extent the cooperation with other states.

In addition, the European Neighbourhood Policy (ENP) would probably be enhanced, and the relationships with neighbouring states would be tightened – EU wants to secure its back and neighbouring states want the support of a strong power.[33] The bigger picture is pretty much clear: EU could not stand with straight back with its human rights driven policies, if joining the conflicts violently each time they occur. The scenario 3 states that EU would take more active role in conflicts in the field[34] – if Syrian war has thought us something, it would be that running for "help" in the field does not increase safety or the possibility of the war to end. The important steps towards peace and cooperation are made around the table – probably the main idea of having the scenario 3 would be better negotiating standings in these discussions in question. EU's foreign policy would turn from conflict resolution by human rights promoting to conflict resolution by threatening.

4. CONCLUSION

In 2015 the US invested more than twice as much as the total spending of EU Member States on defence, and China has increased its defence budget by 150% over the past decade.[35] It is no wonder EU feels like it should keep up with the most influential political actors. The rapid changes in EU's policies towards defence are reshaping the whole image and political appearance of the Union – in good and in bad.

There are pros and cons of having the scenario 3 alike defence cooperation. In the current global situation, great military creates credibility: it means that in the end you have the means to put others do what you want, if they don't comply otherwise. This, however, don't go together with EU's current foreign policy strategies – the money flows put in the military would be away from trade and other effective ways on promoting peace and preventing conflicts.

Both aspects are arguable. At the moment EU is a soft power, where human rights conditionality is one of the main policy tools on handling the global situation and guaranteeing EU's status as an effective political actor. The EU's opinion is also widely considered, since it is the richest coalition in the world and has a great effect on global economy. The current situation enables EU to affect through soft means.

The situation though is not enough for EU. The Union wants to be more powerful, and more heard. EU has come to a point where its current policy tools are not powerful enough to make a change in the global politics. EU seems to be going towards a direction, where its foreign policy would be still driven by the principles of Maastricht treaty, but the means for promoting these values would be more forceful. The foreign policy of EU would become more action driven and maybe

[33] Kerikmäe, T.; Chochia, A. (Eds.) (2016). Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

[34] F. Mogherini, J. Katainen (June 2017), Reflection Paper on the Future of European Defence, European Commission

[35] European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

even more effective – by the cost of being labelled as any other meaningful actor in the global politics right now. The problem lies in the deep question of whether through militarization EU gains more negotiating power or actually loses it.

REFERENCES:

Millard, A. S. (2017) The EU's Potential Role in the Six Party Talks and Denuclearisation, Baltic Journal of European Studies, Tallinn University of Technology vol 7 n. 2

Castaneda, D. (2012) The European Union in Colombia: Learning How To Be a Peace Actor, Paris Papers, IRSEM

de Flers, N. A. (2010) EU-ASEAN Relations: The Importance of Values, Norms and Culture, EU Centre, Singapore Working Paper No. 1 June 2010

Collier, P. (2006), War and Military Expenditure in Developing Countries and Their Consequences for Development, The Economics of Peace and Security Journal, 2006 vol 1 n. 1, ISSN

Treaty of European Union

Hartung, W. D., Lutz C. (2017) The Military Budget and the Costs of War: The Coming Trump Storm, Brown University

Hoffmann, T.; Chochia, A. (2018) The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237) Routledge, Taylor&Francis Group.

Kerikmäe, T.; Chochia, A. (Eds.) (2016) Political and Legal Perspectives of the EU Eastern Partnership Policy. Springer International Publishing.

Kerikmäe, T.; Nyman-Metcalf, K. (2012) Less is more or more is more? Revisiting universality of human rights. International and Comparative Law Review, 12 (1), 35−51.

Levy, J. S. (1998) The Causes of War and the Conditions of Peace, Rutgers University

Pajari, K. (2018) Pohjoiskorealainen sotilas Hyong Myong-jin ei ole koskaan käynyt ulkomailla – "Haluaisin matkustaa Amerikkaan ymmärtääkseni mikä heitä vaivaa", Helsingin Sanomat retrieved from https://www.hs.fi/ulkomaat/art-2000005656480.html 26.4.2018

Sayapin, S.; Tsybulenko, E. (Eds.) (2018) The Use of Force against Ukraine and International Law. Jus ad bellum, jus in bello, jus post bellum. The Hague: Springer, T.M.C. Asser Press.

Fierro, E. (2013) The EU's Approach to Human Rights Conditionality in Practice, Martinus Nijhoff Publishers

European Commission, Defending Europe, retrieved from https://ec.europa.eu/commission/sites/beta-political/files/defending-europe-factsheet_en.pdf 16.52018

European Comission, International Cooperation and Development, Colombia, retrieved from https://ec.europa.eu/europeaid/countries/colombia_en 16.5.2018

European Union External Action, CSDP, retrieved from https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp_en?page=1 21.5.2018

European Union External Action, Permanent Structured Cooperation Factsheet (9.3.2018), Deepening Defence Cooperation among EU Member States

European Union Global Strategy (June 2016) Shared Vision, Common Action: A Stronger Europe, retrieved from http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf 22.5.2018

Mogherini, F., Katainen J. (2017) Reflection Paper on the Future of European Defence, European Commission

Snyder, G. H. (1984) The Security Dilemma in Alliance Politics, World Politics vol 36 n. 4 pp. 461-495, Cambridge University Press

Anti-Money Laundering Risks and Challenges at the Time of Crypto Currencies

HELI MEKLIN
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *This paper gives an overview on both the challenges and risks that crypto currencies offer for anti-money laundering (AML) legislation. It also points out the possible directions and developments which need to take place in that field. The paper also briefly introduces the concept and function of crypto currencies, as well as the subsequent development of the AML regime. It points out the challenges related to the anonymity as well as the unclear status of the crypto currencies compared to traditional fiat currencies. Finally, the paper discusses the economic effectiveness and disadvantages of current AML procedures, in addition to taking a look at the disadvantages as well as the effects of money laundering in general.*
Keywords: *Anti-money laundering, crypto currencies, tax evasion, tax haven, EU anti-money laundering directive*

1. INTRODUCTION

Crypto currencies offer intriguing new methods for those interested in tax evasion, money laundering (ML) or terrorist financing, as individuals may remain anonymous while being in control with the movements of their money.

Anti-money laundering (AML) regulations generally occur after the constantly developing laundering methods. However, crypto currencies offer further challenges by the high level of anonymity in their use as regulators are inevitably behind in the current technological developments. Most of the governments also have yet to fully consider the possible acute AML risks related to crypto currencies.[1]

Since the inception of the most well-known crypto currency, Bitcoin, in the autumn of 2008, the significance, use and value of crypto currency has increased enormously.[2] Due to the fact that crypto currencies can be converted to conventional fiat currencies and vice versa, as well as allowing the user to remain anonymous, they are very likely to be misused.[3] The exact amount of contribution of crypto currencies for the money laundering combined with its economical, social and political effects is unknown, but expected to be growing. This creates an urgent need for the development of AML regulations and procedures which also have an effect on crypto currencies.

This paper discusses aspects of the AML risks and challenges related to crypto currencies, aiming to create the further understanding and comprehension needed to find solutions for this complex issue. Firstly, the paper briefly introduces the concept and function of crypto currencies, as well as the subsequent development of the AML regime. Secondly, the paper points out the possible AML risks and introduces suggested AML methods specific for crypto currencies. Finally, the paper discusses disadvantages of money laundering, and the economic effectiveness of the AML procedures.

[1] Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, p. 2

[2] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 169

[3] Virga, J. M. International Criminals and Their Virtual Currencies: The Need for an International Effort in Regulating Virtual Currencies and Combating Cyber Crime. Brazilian Journal of International Law, Volume 12, Number 2, 2015. p. 515.

2. CRYPTO CURRENCIES

2.1 Virtual currencies, crypto currencies, and decentralized currencies

Today, crypto currencies, as well as other virtual currencies, are widely used for paying for a range of goods and services. Another function of crypto currencies is that they can be held as an investment.[4] The most well-known crypto currency, Bitcoin, which also holds the largest market share, came in to existence in October 2008 as the protocol of it was introduced in the Internet by an alias called Satoshi Nakamoto. Crypto currencies are distinguished from other virtual currencies as "the ownership of a particular unit of value is validated using cryptography".[5] The issuance and use of crypto currencies are controlled by mathematical functions as well as cryptography. The other specification is the decentralized administration. Crypto currencies have no central administrating authority and no central monitoring or oversight, as the record of transactions is kept by using a blockchain technology.[6] The actual parties of the transactions remain anonymous, as no personal information is required for the exchange of crypto currencies. [7] Cryptocurrencies are possible due to blockchain technologies. They come in the category of newly developed technologies, which are very often not easy to protect through intellectual property legal systems (including patents) across the world. Maintaining secrecy or lead times can therefore be more crucial than actually patenting them. Such secrecy can, legally speaking, sometimes be problematic.[8]

2.2 Obtaining and trading crypto currencies

Crypto currencies can be obtained by mining. However, they are also traded in exchanges, which offers a way to the market for non-miners. Exchanges can also function as a way to cash out or convert to other virtual currencies.[9] All virtual currencies in existence today total over 100 billion USD.[10] Due to their anonymous nature, crypto currencies make an excellent method for different types of money laundering activities, both nationally and internationally. Any new technology will be very quickly exploited for malicious purposes as Agnes Kasper's historical overview shows[11], but crypto currencies have their own very favourable features for misuse. It is unknown to which extent crypto currencies contribute to the regime of money laundering, as well as what the costs of it are in both national and global economies.[12] Yet, the reality is that the amount is growing.[13] In order to prevent individuals committing crimes which still remain undetected, development of effective AML regulations and procedures for crypto currencies are considered necessary.

---

[4] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 178

[5] Piazza, F. Bitcoin in the Dark Web: A Shadow over Banking Secrecy and a Call for Global Response. Southern California Interdisciplinary Law Journal, Volume 26, Number 3, 2017. p. 528

[6] The FATF Guidance for a Risk-Based Approach; Virtual Currencies.
www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf, p. 27

[7] Piazza, F. (2017), supra nota 5. s. 528

[8] Dutt, P.; Ferraro, S.; Chochia, A.; Muljar, R. (2018). Using Patent Development, Education Policy and Research and Development Expenditure Policy to Understand Differences Between Countries – The Case of Estonia and Finland. Baltic Journal of European Studies, 8 (1), 123−153.at page 124

[9] ACAMS. Cryptocurrency Compliance: An AML Perspective. files.acams.org/pdfs/2017/Cryptocurrency_Compliance_An_AML_Perspective_S.Scott.pdf p. 13

[10] ibid. p. 5

[11] Kasper, A. The Fragmented Securitization of Cyber Threats. p. 159-165. In Kerikmäe, T. ed., Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, 2014

[12] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 176

[13] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 191

3. MONEY, MONEY LAUNDERING AND ANTI-MONEY LAUNDERING

3.1 Money laundering

Money laundering has traditionally referred to the laundering of drug money. This has been extended to theft, fraud and an increasing number of other offences. The definitions may vary, but the common thread is that money laundering makes illegal income appear legal. Currently, money laundering is considered to cover a range of issues from laundering money from criminal sources, to hiding beneficial ownership for tax evasion as well as terrorism financing. From a legal perspective, there has been a large paradigm shift from the early stages of money laundering.[14]

3.2 Anti-money laundering

To fight the disadvantages of money laundering, the policies of anti-money laundering have been developed during the past decades. The EU enacted its First AML Directive in June 1991, introducing main preventative measures such as client identification, record-keeping and central methods of reporting suspicious transactions.[15] However, a change and a success in the AML regime happened when the regulatory framework changed from a rule based to a risk based approach (RBA). This change shifted more responsibility of AML processes to self-interested Financial Institutions. In the EU this change had happened by the 3rd AML Directive in 2005.[16] Due to RBA, Financial Institutions have become liable to collect information on their customers and report them to the authorities.[17] The 5th EU AML Directive, published recently on 19th June 2018, extends the scope of the European Unions regulatory authority to virtual currency platforms. It remains to be seen how the new Directive will affect the use of crypto currencies for the purposes of money laundering both within and outside the EU.

3.3 Money

The concept of money, in relation to money laundering, also has various definitions. "A stock or flow, proceeds, wealth or income" can be considered as money.[18] Crypto currency has generally not yet been considered as 'money' or 'currency' in many jurisdictions, and its legal status varies. The businesses which deal in crypto currencies are therefore not yet considered as money services businesses (MSBs), and therefore do not have the obligations or responsibilities of MSBs. However, for instance Germany has recognized Bitcoin as a form of private money. Also the US treats Bitcoin as "a currency" in certain situations.[19] Conversely, Hong Kong does not consider any virtual currencies as "currency" or "legal tender", nor does it consider dealers providing virtual currency services as falling under the definition of a MSB.[20]

---

[14] The Amounts and Effects of Money Laundering – A Report for the Ministry of Finance February 16, 2006 www.ftm.nl/wp-content/uploads/2014/02/witwassen-in-nederland-onderzoek-naar-criminele-geldstromen.pdf p. 5

[15] European Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

[16] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

[17] Pellegrina, L.D., Masciandro, D. The Risk-Based Approach in the New European Anti-Money Laundering Legislation. Review of Law & Economics, Volume 5, Issue 2, s.932-933

[18] The Amounts and Effects of Money Laundering – A Report for the Ministry of Finance February 16, 2006 www.ftm.nl/wp-content/uploads/2014/02/witwassen-in-nederland-onderzoek-naar-criminele-geldstromen.pdf p. 5

[19] Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, p.6

[20] The FATF Guidance for a Risk-Based Approach; Virtual Currencies. www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf, p.18

4. AML COMPLIANCE CHALLENGES RELATED TO CRYPTO CURRENCY

4.1 Challenges related to the legal status and global reach of crypto currency

Due to the fact that crypto currencies are mainly not yet considered as currency, the AML procedures developed to monitor the movements of conventional fiat currencies may not be strictly adaptable to crypto currencies. Additionally, the fact that crypto currencies do not require Financial Institutions in order to function means that the RBA approach and AML compliances of Financial Institutions, as well as the supervisory power of the authorities monitoring them, do not extend to crypto currencies. However this is to be changed within EU, due to the 5th AML Directive.

The international nature and the global reach of crypto currencies heighten their potential AML risks. The dealers, and other entities involved, with transactions are often located in several different countries, which also makes it difficult to define which authority is responsible for AML compliance. Dealers may frequently be located in the countries that do not have adequate controls.[21] This makes it challenging to investigate and control crypto currencies thus increasing their potential misuse.

5. SOLUTIONS FOR AML PROCEDURES RELATED TO CRYPTO CURRENCIES

5.1 Base on the existing AML practise

Despite the different legal status of crypto currencies related to fiat currencies, the suggested solutions for AML procedures of crypto currencies are mainly about building procedures based on existing AML requirements and practices. Investigation methods of accounts and transactions for fiat currency may vary from country to country, but the main methods are based on tracking down certain types of transactions, following financial activities of certain listed persons or accounts that are considered to have a higher risk of money laundering. These would then be adapted and practiced for accounts or virtual wallets (VW) used for crypto currencies.

5.2 Application on crypto currencies

In order to apply the described kind of existing procedure models, the businesses dealing with crypto or other virtual currencies would firstly need to be considered as MSBs. If this were the case, the obligations such as registration, customer due diligence (CDD), as well as reporting suspicious or certain prescribed actions, would be similar to those of the MSBs dealing with conventional fiat currencies.[22] The difficulty of this approach is, as earlier stated, that not many countries yet consider crypto currencies as "currency". Additionally, the definition of what monitoring activities of anonymous accounts and anonymous transactions would mean in practice still remains unclear. The transactions are anonymous with crypto currencies and besides the blockchain, no other records of transactions are kept. This makes it highly difficult to follow the transactions and the origin of the money. [23]

In order to enable the above-mentioned AML procedures to take place, crypto currencies would need to go through some kind of a legitimatization process. According to Edgar Sanchez in his article "Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens", this would

[21] The FATF Guidance for a Risk-Based Approach; Virtual Currencies. www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf, p. 32

[22] ibid. p.15

[23] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 188

require firstly the recognition of crypto currencies as legal tender as well as that secondly crypto currencies exchanges would be required to maintain some kind of user identification records.[24]

6. A TAX ASPECT TO AML PROCEDURES AND CRYPTO CURRENCY

6.1 Taxation challenges of crypto currency

One possible AML risk related to crypto currencies is the opportunity to use them as a tax haven. From a taxation point of view, the approaches for crypto currency are still developing. The US and Germany tax crypto currency movements in the same manner as capital gains. In the US, crypto currencies are considered as property for purposes of income taxation. Individuals are accountable for gains and losses of investments as well as crypto currency exchanges. These are taxed at capital gains and losses rates.[25] However, if crypto currency is never converted to fiat currency, or if an individual never reports the ownership of crypto currency, then the taxation does not take place. For example, the US tax system requires voluntary reporting, so it is at the own discretion of the individual as to whether the reporting on crypto currency is made or not. [26]

6.2 Crypto currency – a new tax haven?

Mariam Omri, in her article "Are Cryptocurrencies 'Super' Tax Havens?" points to an idea that as governments are finally gaining success in limiting the use of off-shore tax havens, this might increase the use of crypto currencies as a kind of a tax haven. This can be considered as a very major potential risk, as crypto currencies possess many of the very characteristics of tax heavens thus "Earnings are not subject to taxation and taxpayers' anonymity is maintained." [27]

Additionally, using crypto currencies has an advantage on traditional tax havens since, as previously mentioned, they are not dependant on Financial Institutions.[28] Due to the tightening regulations on Financial Institutions AML compliances that have taken place during the past years, it is considered that tax-evaders might opt out of the traditional tax havens and choose crypto currencies instead.[29] It could therefore be suggested that governments, in addition to concentrating on preventing the misuse of financial systems with offshore tax havens, could also develop enforcement mechanisms for tax authorities to discover funds hidden in crypto currency accounts.[30]

6.3 Suggested actions for detecting taxable income

Omri suggests actions for detecting an individual's taxable crypto currency income. According to her, governments may try to detect the owners of crypto currency accounts by detailed and complex statistical analysis. The disadvantages of this method are, that it could be used only in particular cases. Similarly to Sanchez's idea, Omri also suggests that since there are intermediaries or dealers facilitating the exchange of crypto currencies, they must have some information on the account holders or VW owners and therefore it might be possible for supervising authorities to regulate such intermediaries in the same manners as Financial Institutions. However, if the transaction happens only

[24] Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, p. 188
[25] ibid. p.187
[26] ibid. p.187
[27] Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, p. 2
[28] Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, p. 2
[29] ibid. p. 2
[30] ibid. p. 8

in crypto currency and no conversion is made to fiat currencies, the transactions will avoid such regulations.

Omri still suggests disallowing payments and makes the use of crypto currency generally more difficult, thus making it a less interesting option for tax evasion purposes. [31] This would certainly have an effect, but it would obviously make it more difficult to benefit from the positive aspects of crypto currencies for those using them in a legal manner.

7. CONSEQUENCES OF MONEY LAUNDERING VS. ECONOMIC EFFECTIVENESS OF AML PROCEDURES

Money laundering is a growing industry. The International Monetary Fund (IMF) has estimated money laundering as being 1-2% of world GDP.[32] It is clear that not detecting it would not easily considered as an option.

7.1 Disadvantages of money laundering

Money laundering has various direct and indirect, short and long term, national and international, micro and macro economic, as well as social and political effects. These include, inter alia, lower revenues for the public sectors of various states, more burdens on those paying taxes, artificial increase in prices, unfair competition between states, as well as the distortion of investment and savings.[33] ML also poses risks to the stability, integrity and reputation of the financial systems. It also obviously increases the crime rate as well as transferring economic power to criminal individuals and activities. On a larger scale ML has the potential to undermine political institutions, foreign policy goals and the citizens' trust in them.[34]

7.2 The effectiveness and economic effectiveness of AML policies

The disadvantages of money laundering are inevitably great. However, developing adequate regulations as well as performing and supervising AML compliance takes effort and involves large amount of actions ranging from the police, the financial institutions, the regulators, through to the supervisory authorities. ML is obviously hard to detect and the enforcement of AML regulations generally remains constantly challenging. The recent traditional fiat money laundering cases in Baltic states, such as the Latvian ABLV and the Estonian Verso bank[35] as well as the case with Danske Bank's Estonian branch all show, that even when large amounts of money (Danske €200 billion[36], Verso €179 million[37]) during a long period of time are laundered through the banks (that are supposed to be committed to AML compliance), it takes a long time before effective control actions are brought against the Financial Institutions to bring the illegal activity to an end. Additionally, it is most likely

[31] Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, p. 2

[32] The Amounts and Effects of Money Laundering – A Report for the Ministry of Finance February 16, 2006 www.ftm.nl/wp-content/uploads/2014/02/witwassen-in-nederland-onderzoek-naar-criminele-geldstromen.pdf, p. 38

[33] The Amounts and Effects of Money Laundering – A Report for the Ministry of Finance February 16, 2006 www.ftm.nl/wp-content/uploads/2014/02/witwassen-in-nederland-onderzoek-naar-criminele-geldstromen.pdf p. 84-95

[34] ibid. p. 160

[35] ECB revokes licence of Estonian bank amid money laundering probe www.reuters.com/article/banking-estonia/ecb-revokes-licence-of-estonian-bank-amid-money-laundering-probe-idUSL8N1R92LY

[36] Milne, R., Binham, C., Inside Danske's €200bn 'dirty money' scandal www.ft.com/content/712f995e-c57b-11e8-bc21-54264d1c4647

[37] Värk, J., Estonian banks used to launder 1.6 billion dollars. news.postimees.ee/4053513/estonian-banks-used-to-launder-1-6-billion-dollars

that the persons behind the illegal activity manage to benefit and disappear well before any actions are made.

It could therefore be questioned as to whether the AML is worth all of the effort or at least whether the ratio between costs and effectiveness is reasonable.[38] The economic effectiveness of AML could be considered as an achievement of the results of AML policy goals which appear as a reduction of laundering, or prevention of laundering and future crime and the efficiency, when all this is done at the lowest cost possible.[39] Regarding crypto currencies, the actual effectiveness or efficiency of AML procedures is still difficult to measure, as the whole amount of ML with crypto currencies remains unclear, based on the previously mentioned specifics of crypto currencies.

Despite the relatively massive efforts and costs of AML procedures, it is currently considered that the advantages of AML policies are higher than the disadvantages. Currently the effect is considered to based on the deterring effect,[40] as it is often the case in the opaque market of digital assets and services. Taking the example of the recent case of China trying to regulate the national monopolist internet search engine Baidu.com (although here not money-laundering, but antimonopoly law was the focus of protection of public interests), the significance as well as shortcomings of the possibilities of regulating and controlling digital assets was demonstrated very clearly.[41] Means of creating the deterring effects have included increasing the probability of being caught for ML, or increasing the punishment for ML and the transaction costs of ML.[42] In addition to the deterring effect, different kinds of effects that would lead to decreasing ML would need further investigation, as well as the ones specific to crypto currencies.

8. CONCLUSION

Crypto currencies, amongst other virtual currencies as well as new technologies related to payments and investments, offer as yet unknown opportunities in both legal and illegal manners as the variety of payment and investment methods available. These enable a larger variety of business models, customers and services a higher level of anonymity. The bigger structural changes that the wider use of crypto currencies might bring are related to independence from the traditional Financial Institutions. It can be concluded that crypto currencies and new payment technologies pose very high AML risks, including inter alia, the variety of actions such as laundering criminal money, using the anonymity for terrorist financing as well as the very tempting opportunity to use crypto currencies as tax havens. The biggest challenges in relation to developing adequate AML policies for crypto currencies are the unclear and varying legal status of crypto currency and the high level of anonymity provided by decentralized administration of blockchain technology. Legal professionals should train and educate themselves adequately in order to match a rising demand for legal counselling on this matter[43]. Governments and other authorities working against money laundering have yet to fully consider AML in the context of crypto currencies. A further investigation is needed in order to create

[38] Unger, B., Ferwerda, J., Van Den Broek, M., Deleanu, I. The Economic and Legal Effectiveness of the European Union's Anti Money Laundering Policy. UK, Edgar Elgar Publishing Limited, 2014. P. 2

[39] Unger, B., Ferwerda, J., Van Den Broek, M., Deleanu, I. The Economic and Legal Effectiveness of the European Union's Anti Money Laundering Policy. UK, Edgar Elgar Publishing Limited, 2014. p. 5

[40] Ferweida, J. The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime? Review of Law and Economics, Volume 5, Issue 2, 2009. p. 923

[41] Hoffmann, T.; Wang, Z. (2016). Enforcing Chinese Antimonopoly Law in the Internet Industry: An Analysis with Special References to Baidu.com. China and WTO Review, 2 (2), 223−256.

[42] ibid. p. 923

[43] ***For details see Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018). Legal Technology for Law Firms: Determining Roadmaps for Innovation. Croatian International Relations Review, 24 (81), 91−112, 92***

adequate regulations, procedures as well as other decreasing effects of money laundering procedures and policies.

REFERENCES

Books:

Kasper, A. (2016), The Fragmented Securitization of Cyber Threats, IN: Kerikmäe ed. Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, Pages 159-165.

Unger, B., Ferwerda, J., Van Den Broek, M., Deleanu, I. The Economic and Legal Effectiveness of the European Union's Anti Money Laundering Policy. UK, Edgar Elgar Publishing Limited, 2014.

Legal materials:

European Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Journal articles:

Dutt, P.; Ferraro, S.; Chochia, A.; Muljar, R. (2018). Using Patent Development, Education Policy and Research and Development Expenditure Policy to Understand Differences Between Countries – The Case of Estonia and Finland. Baltic Journal of European Studies, 8 (1), 123−153

Ferweida, J. The Economics of Crime and Money Laundering: Does Anti-Money Laundering Policy Reduce Crime? Review of Law and Economics, Volume 5, Issue 2, 2009. Pages 903–928.

Gordon, R.K., On the Use and Abuse of Standards for Law: Global Governance and Offshore Financial Centers. North Carolina Law Review, Volume 88, Number 2, 2010. Pages 501-594.

Hoffmann, T.; Wang, Z. (2016). Enforcing Chinese Antimonopoly Law in the Internet Industry: An Analysis with Special References to Baidu.com. China and WTO Review, 2 (2), 223−256.

Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018). Legal Technology for Law Firms: Determining Roadmaps for Innovation. Croatian International Relations Review, 24 (81), 91−112, 92

Omri, M.Y., Are Cryptocurrencies 'Super' Tax Havens? Michigan Law Review First Impressions, Volume 38, 2013, Pages 1-11.

Pellegrina, L.D., Masciandro, D. The Risk-Based Approach in the New European Anti-Money Laundering Legislation. Review of Law & Economics, Volume 5, Issue 2, Pages 931–952

Piazza, F. Bitcoin in the Dark Web: A Shadow over Banking Secrecy and a Call for Global Response. Southern California Interdisciplinary Law Journal, Volume 26, Number 3, 2017. Pages 521-546.

Sanchez, E. G., Crypto-Currencies: The 21st Century's Money Laundering and Tax Havens. University of Florida Journal of Law and Public Policy, Volume 28, Number 1, 2017, Pages 167-192.

Virga, J. M., International Criminals and Their Virtual Currencies: The Need for an International Effort in Regulating Virtual Currencies and Combating Cyber Crime. Brazilian Journal of International Law, Volume 12, Number 2, 2015. Pages 512-527.

E-materials:

ACAMS. Cryptocurrency Compliance: An AML Perspective.
files.acams.org/pdfs/2017/Cryptocurrency_Compliance_An_AML_Perspective_S.Scott.pdf
(24th April 2018)

The FATF Guidance for a Risk-Based Approach; Virtual Currencies.
www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf
(24th April 2018)

The FATF Report – Virtual Currencies, Key definitions and Potential AML/CFT Risks
www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf (24th April 2018)

The Amounts and Effects of Money Laundering – A Report for the Ministry of Finance February 16, 2006
www.ftm.nl/wp-content/uploads/2014/02/witwassen-in-nederland-onderzoek-naar-criminele-geldstromen.pdf (24th April 2018)
Milne, R., Binham, C., Inside Danske's €200bn 'dirty money' scandal
www.ft.com/content/712f995e-c57b-11e8-bc21-54264d1c4647 (7th Oct 2018)
Värk, J., Estonian banks used to launder 1.6 billion dollars.
news.postimees.ee/4053513/estonian-banks-used-to-launder-1-6-billion-dollars
(24th April 2018)
ECB revokes licence of Estonian bank amid money laundering probe
www.reuters.com/article/banking-estonia/ecb-revokes-licence-of-estonian-bank-amid-money-laundering-probe-idUSL8N1R92LY
(24th April 2018)

Should the United Kingdom discard the Wednesbury Unreasonableness test in the National Court and apply the Proportionality test?

SHAMAISE PETERS
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *Although the judgment in the British case Associated Provincial Picture Houses Ltd.Vs Wednesbury Corp was rendered seven decades ago, the case still lives on through debates on whether its central principle infringes on individual constitutional rights today. The Wednesbury unreasonable test is a standard utilized by the United Kingdom to establish if an administrative action was completely unreasonable. By reviewing verdicts where Wednesbury unreasonableness were enacted, it is argued that the courts did not apply a systematic and impartial approach as the proportionality test demands. This paper will provide a historical background of both the Wednesbury and Proportionality test while discussing the importance of judicial review. Moreover, the paper will compare both principles to prove that there is a necessity to change the test of judicial reform in the United Kingdom. This reform will also take into account the future development of the court systems within the European Union.*
Keywords: *Appeal Cases, Civil Code of Germany, European Court of Human Rights, England and Wales Court of Appeal Civil Division, European Union.*

I. INTRODUCTION

The Judicial Review procedure is a creation of constitutional law which, provides assistance for any act of violation that may have occurred during a legal decision. This court procedure enforces the power of judges to nullify administrative decisions made by other officials of government on the ground that they are prohibited by the Constitution.[1] The procedure of judicial rezview is paramount as it allows individuals with administrative and legal authority to be subjected to the rule of law in the determination whether decisions are proper and within the confines of the law. There are two tests applied in judicial review proceedings within the broader European jurisprudence, they are the Wednesbury and the Proportionality tests. It is important to note for the purpose of this research, The United Kingdom applies the Wednesbury unreasonableness test as oppose to other European countries which adopts the latter. The question then arises as to why the United Kingdom solely resort to this method of testing in judicial review proceedings while those who follow the civil system considers proportionality as an effective method in judicial review. An analysis will made on this theory and examine the propositions and oppositions of both tests and decide if there is a necessity for the United Kingdom to modify the current practice of judicial review.

2. JUSTICE IN JUDICIAL REVIEW

A fundamental requirement of justice is that an aggrieved person should be able to challenge state action before an independent court.[2] The grounds by which such a challenge will be accepted must be clear and appropriate. This type of scrutiny is measured by the Wednesbury unreasonableness or the proportionality test. This article argues that the proportionality and the Wednesbury unreasonableness tests are different formulations of the same criteria, since both

[1] Rappaport M. (2013) The Constitutional Basis for Judicial Review.
[2] Mustafa H. (2014) Wednesbury, Proportionality and Judicial Review.

provide for a context-specific variable intensity review. It also argues which test provides the best analytical framework that will exercise the best adjudication by judges.

1. History of Proportionality

The principle of proportionality was originally demonstrated by the German constitutional courts.[3] This concept can be traced to the principle of necessity developed in the jurisprudence of Prussian administrative courts in the field of police law. It was instrumental in ensuring that the power and authority of the state does not infringe the constitutional rights of members of society. In the codification of Prussian Law Article 10(2) of the Allgemeines Landrecht of 1794 authorized the government to exercise police powers in order to ensure public peace; however, at the same time, it also limited those powers to such measures that were essential for achieving that goal. The article stated that "the police is to take the necessary measures for the maintenance of public peace, security and order. [4] This act showed the structure of proportionality as the Prussian Supreme Administrative Court examined whether the measures adopted by the police went beyond what was considered necessary for attaining a relevant objective.[5] According to Bernard Schlink on 'Proportionality in Constitutional Law' defines and explain the principle of proportionality as:

"If you pursue an end, you must use a means that is helpful, necessary, and appropriate. A means that does not help to reach the end is not a real means—to use it would be out of proportion. It is also out of proportion to use a means that does more than necessary, for example a means which is more harmful or more expensive than necessary. It is equally out of proportion to use a means that is inappropriate because, even though it is necessary, by using it you do more harm than the end is worth or you spend more than you gain."[6]

Consequently, this principle was adopted and became a principle applied by the European Court of Human Rights and is supported by the European Convention for the Protection of Human Rights.[78]

Proportionality has been in the focus of legal discussion recently also very prominently in the field of private law, where a 'proportionality principle' was established on 16 June 2011 by the European Court of Justice (ECJ) on the interpretation of Article 3 of Directive 1999/44 (the Directive)[9] in its joint decisions ECJ C-65/09 and C-87/09 (*Weber/Putz*),[10] According to Thomas Hoffman:

" [The] significance of the 'proportionality principle' for European contract law can hardly be overestimated,, as the ECJ basically established by this judgment, with or without intent, a doctrine of general strict liability in contract law, which so far has not existed in but a few European legal systems beyond common law"[11].

[3] Mathews J. (2016) Proportionality Review in Administrative Law.
[4] Sweet A. (2009) Proportionality Balancing and Global Constitutionalism.
[5] Arai-Takahashi Y. (1999) Proportionality – a German approach.
[6] Schlink B. (2012) Proportionality in Constitutional Law: Why everywhere but here?
[7] Justice Garry Downes, on behalf of Administrative Appeals Tribunal (2008). Reasonableness, Proportionality and Merits Review.
[8] Kerikmäe, T.; Hamulak, O.; Chochia, A. (2016). A Historical Study of Contemporary Human Rights: Deviation or Extinction? Acta Baltica Historiae et Philosophiae Scientiarum, 4 (2), 98−115.
[9] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees [1999] OJ L171/12.
[10] Joined Cases C-65/09 and C-78/09 *Gebr Weber GmbH v Jürgen Wittmer* and *Ingrid Putz v Medianess Electronics GmbH*, Judgment of the Court of Justice (First Chamber) of 16 June 2011.
[11] Hoffmann (2014). The Weber/Putz "Proportionality Principle": Determining Subsequent Performance Anew?, p. 383

The issue of proportionality in EU legal system, can, also be presented in the context of supranational and constitutional dialogue.[12]

1.1 The elements of Proportionality

In order to determine whether a decision was legitimate the proportionality review consists of four steps; 1) Legitmacy 2) Suitability 3) Neccessity 4) Proportionality (*stricto sensu*). This procedure was exemplified in Germany's Federal Court on a travel traffic regulation which has been used as precedent to adjudicate constitutional rights claims since the 18th century.[13]

1.2 Facts of the Regulation

In this case, the Minister of Transports issued regulations banning most heavy goods trucks from highways during day time weekend hours.[14] The elements of proportionality were executed ad follows:

a. Legitimacy – This step ensures the course taken by the Government have a legitimate purpose. For instance, improving road safety and inconveniences of road congestion.
b. Suitability – This is similar to the first but examines whether the decision is appropriate and can provide credibility that the aim will be beneficial.
c. Necessity – This step measured whether the measure is necessary to achieve its stated goal.
d. Proportionality (*stricto sensu*) – The final step weighs if the benefits of the decision exceeds the burden it imposes does the challenged measure survive.

2. The principle of Wednesbury Unreasonableness

Moreover, Wednesbury unreasonableness can be defined as a review that is concerned with the process of reasoning employed in adopting the particular decision in that the focal points are the reasons advanced for a decision.[15] The principle of Wednesbury originated in The United Kingdom in a landmark case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.1948*. The Court of Appeal held that it could not intervene to overturn the decision of the defendant corporation simply because the court disagreed with it. To have the right to intervene, the court would have to form the conclusion that:

1. The corporation, in making that decision, took into account factors that ought not to have been taken into account, or
2. The corporation failed to take account factors that ought to have been taken into account, or
3. The decision was so unreasonable that no reasonable authority would ever consider imposing it.

The court ruled that the complaint did not correlate with any of the three limbs of this test. Therefore, the claim was unsuccessful and the decision of the Wednesbury Corporation was endorsed. The test which constitutes the three categories in this case, is identified as the "Wednesbury test".[16] The term "Wednesbury unreasonableness" is used to describe the third limb, of being "so unreasonable that no reasonable authority could have decided that way."[17]

[12] Kerikmäe, Tanel (2009). Estonia in the European Legal System: Protection of the Rule of Law through Constitutional Dialgue. (Tallinna Ülikool / Tallinn University). Tallinn: Tallinn University
[13] Mathews J. (2016) Proportionality Review in Administrative Law.
[14] 4 Germany's Federal Constitutional Court evaluated such a measure in the Ferienreiseverkehrsordnung [Holiday Travel Traffic Regulation] case. Bundesverfassungsgericht, 26 BVerfGE 259 (1969)
[15] Rappaport M. (2013) The Constitutional Basis for Judicial Review.
[16] Srirangam V. (2016) A difference in Kind- Proportionality and Wednesbury.
[17] Ibidem

As a result, the national courts of and Wales has permitted this test as a resort when deciding if a case was justified. The test of proportionality is adopted in the United Kingdom as a directive from the European Union or applied to cases with a European Union dimension. .18

3. Comparison of the Wednesbury Unreasonableness and Proportionality

The proportionality test may be considered as lengthier and more complicated before applying a decision, but proportionality may be a more lenient test in operation. For example, although the decision in Smith/Lustig-Prean was held not to be unreasonable, it was held to be disproportionate.19 While the court argued reasonable opinions why the claimants were dismissed from their duties due to moral decency. The decision can be viewed as inequality in law as their fundamental rights of expression were grossly affected. Moreover, Wednesbury unreasonableness has been considered a 'safety net' test, whereby the case is deemed so outrageous as to not fall into other categories of review, proportionality is a starting point test to which one would automatically go.20 The result of this is, they would argue, that where a proportionality assessment is engaged, it is presupposed that the alleged act, rule, or decision is presumptively unfair because it infringes a right, so it must be justified by the person doing it. Contrastingly, unreasonableness review presupposes the act is lawful, putting the burden of proof on the affected party to show that it is not. According to Paul DeBurca, the objections fail to realise that proportionality review being applicable to all administrative decisions does not mean that it would be the only head of review, and that it has better normative and practical justifications than rationality review. Furthermore, proportionality requires that the decision-making body justifies its choice in response to a challenge in exactly the same way as rationality: the criteria are what differs and not the direction of the burden of proof.21

4. Proportionality as more reasonable?

The principle of proportionality as a procedure of judicial review can be deemed as a more practical and unbiased instrument for individuals who are seeking to have justice. The Wednesbury unreasonableness approach can be viewed as arbitrary by basing the sole criteria on irrationality. This method is often restricted and has limitations in being applicable to every type of case that arises within the court. For instance, in the case Lustig-Prean and Beckett v United Kingdom (2000) 29 ECHR 548 exemplified that Wednesbury reasonableness is not effective as the proportionality test.

4.1 Facts of the Case

Lustig-Prean and Beckett were British naval personnel who, in separate cases, were dismissed from the Royal Navy after their homosexuality acts were discovered. Lustig-Prean and Beckett suspected that their dismissal, together with the intrusive nature of the investigations conducted by the Military Police into their sexuality, violated their right to privacy under Article 8 ECHR.

4.2 Judgement

The European Court of Human Rights held that the Article 8 rights of Lustig-Prean and Beckett had been breached. The UK government immediately suspended discharging homosexuals and within months had changed the law. The court examined the investigations

[18] Ibidem
[19] Ibidem
[20] De Burca G. (1993) The principle of Proportionality and its Application in EC Law.
[21] Academic D (2015). Proportionality VS Wednesbury.

that were executed and found there was undeniably intrusive and a violation of privacy in accordance to Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Proportionality test in this case exemplified fairness and faith in the law as oppose to the former unreasonable approach.

5. The Benefits of Proportionality

The Wednesbury reasonableness is yet to provide an effective domestic remedy in respect of Convention rights in this case which can be seen as unconstitutional because the threshold set by domestic courts for proof of irrationality had been placed so high and the standard of Wednesbury was so low, it had effectively denied the applicants prospect of remedy. It can be stated that judges will develop a nature of biasness when analysing if a decision was unreasonable by a previous arbiter. To solely rely on reasonableness as a determining factor to administer justice is evidently irrational. The procedure of proportionality allows for a more credible approach by examining reasonableness and other factors such as if the decision was suitable, necessary and proportionate. The claimants appealed to the European Court of Human Rights who applied the proportionality test where claimants received justice that was previously denied. Wednesbury unreasonableness was created before the European Union developed the Human rights acts, and it is apparent the principles are outdated and does not serve the sole purpose in judicial review and ensuring justice is administered. Finally, the upcoming Brexit may have an impact on the relevance of the Wednesbury test as well; for example, just private international law implications may be solved on base of existing pre-EU-treaties[22], the UK would probably recur more strongly to its established standards as the Wednesbury test than aiming at a harmonisation with continental practices.

CONCLUSION

In conclusion, it is stated by adjudicators that both tests serve the same purpose in the area of judicial review and seeks to ensure decisions fall under the spectrum of rule of law. Although, the applications may differ depending on the jurisdiction this may work seamlessly in law. However, the United Kingdom should resort to the test of proportionality as a way of judicial review, as this application will form flexibility in decision making. On the contrary, the act of Wednesbury unreasonableness may be considered as unique as it was adopted within that jurisdiction and has been functioning in its capacity accordance to law, but this act is outdated and not applicable effectively with issues arising from a modern jurisprudence, especially in relation to human rights.

LIST OF REFERENCES

Scientific Articles

De Burca G. (1993) The principle of Proportionality and its Application in EC Law. Available at https://academic.oup.com/yel/article-abstract/13/1/105/1701335. Accessed at April 23rd, 2018.

Hoffmann T. (2018). The Brexit and Private International Law: An Outlook from the Consumer Insolvency Perspective. In: Ramiro Troitino, D.; Kerikmäe, T.; Chochia, A. (Ed.). Brexit: History, Reasoning and Perspectives (237−248). Springer International Publishing AG

[22] For details see Hoffmann(2018). The Brexit and Private International Law: An Outlook from the Consumer Insolvency Perspective.

Hoffmann T (2014). The Weber/Putz "Proportionality Principle": Determining Subsequent Performance Anew? Croatian Yearbook of European Law & Policy, 10, 383−394.

Kerikmäe, T.; Hamulak, O.; Chochia, A. (2016). A Historical Study of Contemporary Human Rights: Deviation or Extinction? Acta Baltica Historiae et Philosophiae Scientiarum, 4 (2), 98−115.

Mustafa H. (2014) Wednesbury, Proportionality and Judicial Review. Available at https://sahsol.lums.edu.pk/law-journal/wednesbury-proportionality-and-judicial-review Accessed April 21st, 2018.

Mathews J. (2016) Proportionality Review in Administrative Law. Available at https://law.yale.edu/system/files/area/conference/compadmin/compadmin16_mathews_proportionality.pdf Accessed at April 20th, 2018

Sweet A. (2009) Proportionality Balancing and Global Constitutionalism. Available at https://elibrary.law.psu.edu/cgi/viewcontent.cgi?referer=https://www.google.ee/&httpsredir=1&article=1225&context=fac_works. Accessed at April 19th, 2018

Schlink B. (2012) Proportionality in Constitutional Law: Why everywhere but here? Available at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1290&context=djcil Accessed at April,03rd,2018

Srirangam V. (2016) A difference in Kind- Proportionality and Wednesbury. Available at https://www.researchgate.net/publication/311852292_A_Difference_in_Kind__Proportionality_and_Wednesbury. Accessed at April 23rd, 2018.

Case Law

Germany's Federal Constitutional Court evaluated such a measure in the Ferienreiseverkehrsordnung [Holiday Travel Traffic Regulation] case. Bundesverfassungsgericht, 26 BVerfGE 259 (1969)

Associated Provincial Picture Houses Ltd vs Wednesbury Corp 1948 1KB 223

Lustig-Prean and Beckett v United Kingdom (2000) 29 ECHR 548

Other Sources

Rappaport M. (2013) The Constitutional Basis for Judicial Review. Available at http://www.libertylawsite.org/2013/01/24/the-constitutional-basis-for-judicial-review/ Accessed April 4th, 2018

Academic D (2015). Proportionality VS Wednesbury. Available at http://thoughtofonesown.blogspot.com.ee/2012/09/proportionality-vs-wednesbury.html. Accessed at April, 03rd 2018

Arai-Takahashi Y. (1999) Proportionality – a German approach. Available at http://sas-space.sas.ac.uk/3907/1/1458-1702-1-SM.pdf Accessed April 4th, 2018

Justice Garry Downes, on behalf of Administrative Appeals Tribunal (2008). Reasonableness, Proportionality and Merits Review. Available at http://www.aat.gov.au/about-the-aat/engagement/speeches-and-papers/the-honourable-justice-garry-downes-am-former-pre/reasonableness-proportionality-and-merits-review. Accessed at April, 03rd, 2018.

Legal Capacity of Artificial Intelligence

JAANA SILD
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *Artificial Intelligence is a rapidly developing field of technology, surrounded by a fair share of excitement and controversies. Current narrow AI systems are not autonomous enough to consider their legal capacity to be an important issue, however as the technological landscape develops, the smaller the gap between human and computer intellect becomes. Moreover, the existence of a robot with a citizenship sets a potential precedent for the future and raises the relevance of the topic.*
Keywords: *Artificial Intelligence; Robot Rights; Robot Legal Capacity*

1. INTRODUCTION

The aim of this paper is to analyse the further development of Artificial Intelligence and the probability of robots gaining legal rights. The topic of Artificial Intelligence (AI) has become remarkably popular and it is reviewed in different news outlets almost daily. The paper gives a brief overview of the AI history and current state and the future development of AI. After that the paper gives an outline of the meaning of the legal capacity and its different forms. The last part of the paper focuses on the legal capacity of AI and talks about the current situation as well as why it might become an issue in the future. Lastly the paper briefly outlines the potential actions that could be taken in the field. Moreover, there is an already existing AI device that holds status of citizenship, this could potentially set a precedent in the future.

2. BACKGROUNDS OF ARTIFICIAL INTELLIGENCE

2.1. General definition of an AI

The study of intelligence is one of the oldest disciplines and started over 2000 years ago when philosophers tried to understand how humans perceive and understand the world around them. Some philosophers believed that the mind is like a machine and operates on internal encoded language. This paved a path to the study of Artificial Intelligence (AI), which in itself is one of the newest disciplines. [1]

The term- AI- was first coined in 1956 in Dartmouth, USA[2], the concept underlying AI can be traced back to ideas expressed by Charles Babbage, Ada Lovelace, and Alan Turing[3]. The definition established in Dartmouth referred to a machines' ability to understand, think and learn in similar ways to human beings, which would indicate the possibility of using computers to simulate human intelligence.[4] One of the founders of AI, M. Minsky, defined AI as: "the science of making machines do things that would require intelligence if done by men." [5]

[1] Russel, S. *et al.* Artificial Intelligence: A Modern Approach. Prentice Hall 1995, pp 3-4, p 27.
[2] Pan, Y. Heading towards Artificial ***Intelligence 2.0. Engineering*** 2, 2016, p 410.
[3] ***Calo, R. Artificial Intelligence Policy: A Primer and Roadmap, vol. 51 U.C.D. L. Rev. 399 2017, p 401.***
[4] ***Pan (2016)*** **supra nota 2, p 410.**
[5] ***Edwina L. Rissland, Artificial Intelligence and Law: Stepping Stones to a Model of Legal Reasoning. Yale Law Journal vol. 99, no. 8, 1990, p 1958.***

Currently there are two approaches to AI technology, that both rely on machine learning- narrow and wide intelligence[6]. A narrow AI system can perform specific single functions, often surpassing human abilities in the same field. However, they will never reach the cognitive depth of humans. AI systems with wide or general intelligence have the ability to "think" and reason similarly to humans, currently general AI systems are completely fictional. [7] In short, a robot can either operate intelligently because of automated or human-controlled directions or can literally be intelligent and operate without any external directions. [8]

2.2. Current and future state of the AI developments

The field of AI dates back to the 1950s, the techniques used today were developed by researchers decades ago, however, the interest, excitement and controversies around AI has been rapidly increasing over the last years. This can be attributed to a vast increase in computational power and access to training data, which has led to breakthroughs in machine learning [9], combined with the new advances made by industry, the potential application of AI has grown substantially. According to CB Insights – Google, Microsoft, Twitter, Intel, Apple and other information technology companies have acquired about 140 entrepreneurial firms in the field of AI from 2011 to 2016 [10].

Narrow AI systems are used to provide users with more accurate data catered specifically to their needs- for example movie, book and restaurant suggestions are composed by AI systems on many popular platforms, among others Facebook and Netflix.

It is clear that with the current state of AI technologies there is no issue of machines themselves having natural and legal rights. The industry can create an AI that matches or even surpasses human intelligence in some specialised fields, but it is at least 60 years away from creating an AI that could match human intelligence generally[11].

Computers and robots are becoming more and more "human-like", they are becoming increasingly self-directed and are able to generate content without direct human control. Scientists are as well working on designing computers with enhanced emotional intelligence, that in the long run may narrow the capacities between humans and computers. [12]

3. GENERAL CONCEPT OF LEGAL CAPACITY

Legal capacity of a natural or a juridical person determines what a person can do within the framework of the legal system. A person with legal capacity has a certain set of rights and obligations, for example they can enter into binding agreements, sue and be sued.

There are copious different approaches to the definition of legal capacity within legal scholars. Some scholars believe that legal capacity is the ability of a person to have or be able to create certain rights and responsibilities and the term "person" itself is not merely limited to a natural person, but

---

[6] ***For a more detailed differentiation of weak and strong AI see Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018). Legal Technology for Law Firms: Determining Roadmaps for Innovation. Croatian International Relations Review, 24 (81), 91−112, 92***

[7] ***Semmler, S. et al. Artificial Intelligence: Application Today and Implications Tomorrow, 16 Duke L. & Tech. Rev. 85 2017-2018, p 86.***

[8] ***Larson, D. Artificial Intelligence: Robots, Avatars, and the Demise of the Human Mediator, 25 Ohio St. J. on Disp. Resol. 105, 2010, p 108.***

[9] ***Calo (2017) supra nota 3, p 402.***

[10] ***Pan (2016)* supra nota 2, p 409.**

[11] ***Pan (2016)* supra nota 2, p 411.**

[12] ***Massaro, M.* et al. *Siri-Ously? Free Speech Rights and Artificial Intelligence, 110 Nw. U. L. Rev. 1169, 2016, p 1172.***

includes all beings capable of having powers and duties and in today's legal systems this also includes juridical persons [13].

3.1. Legal capacity of natural person

The notion of "natural person" and "human being" are usually treated as synonyms[14]. Legal scholar Visa A.J. Kurki states that in Western legal systems natural persons are human beings, who have been born, are currently alive and are sentient[15]. Moreover, to be a legal person the ability to play a social role, currently or in the future, is required. This can be defined as an ability to communicate and express ideas in a way that is understood by the majority of the world.[16]

3.2. Legal capacity of juridical person

Most of the jurisdictions in the world allow certain entities other than natural persons to acquire rights and obligations, for example corporations. Those entities that are not human, but are still granted legal capacity are referred to as juridical persons. A juridical person similarly to natural persons can own property, enter into contract, sue and be sued. However, they do not have rights to vote or enter into marriage, as those are seen as inherent human rights only. [17]

4. LEGAL CAPACITY OF AI

4.1. Current state of AI legal capacity

In my opinion, it is clear that legal capacity can and should only be granted to autonomous AI systems, whose intelligence levels are equivalent to that of a human, therefore this chapter will only focus on general AI systems, because only those are capable of potentially reaching the required level of intelligence. The number of various AI systems keeps expanding and people will be compelled to live side by side with AI devices that realistically mimic human behaviour. Interactions with these kinds of AI devices will introduce new socioeconomic, legal, and ethical issues, especially if the device at hand, is as intelligent or even perhaps even more, than humans themselves. [18]

As it was mentioned in the previous chapter the term "natural person" is seen as being synonymous with "human being". However, in the autumn of 2017, Saudi Arabia granted a citizenship to a human-like robot created by Hansen Robotics, that goes by the name of Sophia[19]. Even though Sophia is very humanlike, its intelligence is very limited and it falls under the category of narrow AI systems and the whole citizenship is most likely a publicity stunt by Saudi Arabia to attract business. As there are common and internationally recognized denominators for granting citizenship[20] which Sophia does not meet, granting citizenship to this robot can probably rather be

[13] Naucius, M. Should Fully Autonomous Artificial Intelligence Systems Be Granted Legal Capacity, 17 Teises Apzvalga Law Review 113, 2018, p 115.
[14] Ibid. p 117.
[15] V. Kurki, Revisiting legal personhood: Paper for Spanish-Finnish Seminar in Legal Theory, 2016, p 18.
[16] Naucius (2018) supra nora 12, p 119.
[17] Ibid. pp 120-121.
[18] Larson (2010) *supra nota 7, p 110.*
[19] Griffin, A. Saudi Arabia grants citizenship to a robot for the first time ever. The Independent, 2017. https://www.independent.co.uk/life-style/gadgets-and-tech/news/saudi-arabia-robot-sophia-citizenship-android-riyadh-citizen-passport-future-a8021601.html(23.04.2018).
[20] See for details e.g. Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction. Routledge, Taylor&Francis, and for a discussion of citizenship criteria in a regional context Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.;

seen as a pageant. Anyhow, it does not change the fact that Sophia is the first robot in human history to be recognised with citizenship and therefore, this could potentially set a precedent for future developments.

4.2. Potential problems and solutions related to AI legal capacity

At present, truly autonomous AI systems remain just a work of science fiction, however, the potential legal controversies involving general as well as narrow AI systems already exist. Any new technology is prone to be misused and exploited for malicious purposes, proven by the fact that there was need for measures to combat computer fraud and misuse as early as mid-1980s[21], while the industry itself was in early development, and AI will surely not be an exception and therefore there is a need for measures to prevent potential maltreatment. As with all unregulated fields, regulation poses peculiar challenges to legislators because implementation of such regulative measures can result in unforeseeable effects which could hamper development in the future.[22]

Intellectual property scholars have been contemplating for at least thirty years, whether a computer system can be considered an author in relation to copyright[23]. Moreover, computer speakers, such as Apple's Siri, are becoming more self-directed and are able to produce content further from direct human control, which raises a question whether AI speakers should be allowed freedom of expression[24]? Another controversy relates to criminal liability of AI subjects. If an autonomous AI device, which is not controlled by human, commits a crime, who should be held liable[25]? Hallevy believes that AI devices should be granted criminal liability, if it can understand, that the actions performed by it are against the law[26].

The increasing automatization of electronic devices lessens the possibility of minor changes of law to accommodate the problems[27] and it is clear that significant legal changes are inevitable[28].

Over twenty years ago Lawrence Solum directly addressed whether AI systems should be granted legal rights to which he concludes, that as long as cognitive science confirms that the processes producing AI behaviour are similar to human mind, there is a very good reason to treat AIs as humans and therefore grant them rights. Moreover, legal personhood already includes non-humans, such as juridical parties, therefore it is possible to conclude that human status is not a necessary condition for a legal personhood.[29] Juridical personhood, by creating new classifications, can be used to potentially grant rights to non-humans. This way AIs could enjoy the rights and responsibilities of a juridical person, without employing rights of natural persons, which are currently seen as being inherent exclusively to human nature. [30]

Yatsyk, A. (Ed.). Borders in the Baltic Sea Region – Suturing the Ruptures (147−173). Basingstoke, UK: Palgrave Macmillan

[21] Kasper, A (2014). The Fragmented Securitization of Cyber Threats, In: Kerikmäe (Ed.) Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, p 158.

[22] Sepp, Paula-Mai; Vedeshin, Anton; Dutt, Pawn (2016). Intellectual property protection of 3D printing using secured streaming. In: Kerikmäe, T.; Rull, A. (Ed.). The Future of Law and eTechnologies (81−109). Cham: Springer at page 87.

[23] Sobel, B. Artificial Intelligence's Fair Use Crisis, 41 Colum. J.L. & Arts 45, 2017, p 48.

[24] Massaro (2016) *supra nota* 11, p 1172.

[25] Naucius (2018) *supra nota* 12, p 127.

26 Vladeck, D. Machines without principals: liability rules and artificial intelligence, Washington law review vol. 89, 2014, pp 122-123.

[27] Teubner, G. Rights of Non-humans? Electronic Agents and Animals as New Actors in Politics and Law, Journal of Law and Society, vol. 33 (4), 2006, p 508.

[28] Ibid, p 20.

[29]Massaro (2016) *supra nota* 11, p 1179-1180.

[30] Naucius (2018) *supra nota* 12, p 121-122.

5. CONCLUSION

It is evident that at this time the AI technology has not yet developed far enough for us to consider legal capacity of AIs a pressing issue. However, AI technology and with that their competences will develop over time- and quickly. Robots are already capable of mimicking human behaviour and emotions, which leads us to believe that the time when they will be able to produce such emotions themselves is not too far away. There are many social and legal issues that could rise with the further development of AIs, starting from copyright going all the way to criminal liability. All of those potential issues, raise a question whether AI systems should be granted legal capacity or not. At this point in time, we cannot predict what is the right solution and whether we will even require it.

REFERENCES

Calo, R. Artificial Intelligence Policy: A Primer and Roadmap, vol. 51 U.C.D. L. Rev. 399, 2017

Edwina L. Rissland, Artificial Intelligence and Law: Stepping Stones to a Model of Legal Reasoning. Yale Law Journal vol. 99, no. 8, 1990

Griffin, A. Saudi Arabia grants citizenship to a robot for the first time ever. The Independent, 2017. https://www.independent.co.uk/life-style/gadgets-and-tech/news/saudi-arabia-robot-sophia-citizenship-android-riyadh-citizen-passport-future-a8021601.html

Grimmelmann, J. There's No Such Thing as a Computer-Authored Work – And It's a Good Thing, Too, 39 Columbia Journal of Law & the Arts, 2016

Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction. Routledge, Taylor&Francis, forthcoming

Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.; Yatsyk, A. (Ed.). Borders in the Baltic Sea Region – Suturing the Ruptures. Basingstoke, UK: Palgrave Macmillan, 147−173

Kasper, A (2014). The Fragmented Securitization of Cyber Threats, In: Kerikmäe (Ed.) Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, p 158

Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018). Legal Technology for Law Firms: Determining Roadmaps for Innovation. Croatian International Relations Review, 24 (81), 91−112

Kurki, V. Revisiting legal personhood: Paper for Spanish-Finnish Seminar in Legal Theory, 2016

Larson, D. Artificial Intelligence: Robots, Avatars, and the Demise of the Human Mediator, 25 Ohio St. J. on Disp. Resol. 105, 2010

Massaro, M., Norton, H. Siri-Ously? Free Speech Rights and Artificial Intelligence, 110 Nw. U. L. Rev. 1169, 2016

Naucius, M. Should Fully Autonomous Artificial Intelligence Systems Be Granted Legal Capacity, 17 Teises Apzvalga L. Rev. 113, 2018

Pan, Y. Heading towards Artificial Intelligence 2.0. Engineering 2, 2016

Russel, S., Norvig, P. Artificial Intelligence: A Modern Approach. Prentice Hall 1995

Semmler, S., Rose, Z. Artificial Intelligence: Application Today and Implications Tomorrow, 16 Duke L. & Tech. Rev. 85 2017-2018

Sepp, Paula-Mai; Vedeshin, Anton; Dutt, Pawn (2016). Intellectual property protection of 3D printing using secured streaming. In: Kerikmäe, T.; Rull, A. (Ed.). The Future of Law and eTechnologies (81−109). Cham: Springer

Sobel, B. Artificial Intelligence's Fair Use Crisis, 41 Colum. J.L. & Arts 45, 2017

Teubner, G. Rights of Non-humans? Electronic Agents and Animals as New Actors in Politics and Law, Journal of Law and Society, vol. 33 (4), 2006

Vladeck, D. Machines without principals: liability rules and artificial intelligence, Washington law review vol. 89, 2014, pp 122-123

Estonian Russian Relations

ELLIOTT J. GRIMM
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *In this paper the author attempts to analyze and interpret relations between Russian and Estonia. Using a historical and cultural lens he tries to identify and dissect problems and their cause so solutions can be mapped out for long lasting peace and stability so both countries can enjoy eudemonia.*
Keywords: *International Relations, War of independence, Ethnic Displacement, Alien Passport, Citizenship laws*

I. INTRODUCTION

In the year 1991 Estonia shed off the Soviet Union's choke hold on the country and regained its independence. With the help of glorious imagery of the of the "golden age"[1] that existed in Estonia from 1918-1940 caused a groundswell of patriotic fervor that had gathered into an unstoppable tidal wave that when slammed against the hull of the already weakened Soviet Union, this proved to turn the USSR back and make it seek higher ground and shelter amongst its own chaotic downfall. Estonia having restored its independence still had many points of contentions with Russia and vice versa, just as the parting of a romantic partnership can leave both sides with many points of disagreement it is best for both parties to be able to solve differences in a civil and cordial manner so each can go about and pursue its of destiny.

This paper intends to explore Russian and Estonian political relations, pre-and post-Soviet era what events led up to so much tensions and hostility between the countries, I will be examining the historical, ethnic and border disputes that have driven a rift between the two countries it seems that the main problem with relations between the two countries is that Estonia and the western world sees the present-day Estonia as a continuation of the original Estonian state from 1918 and Russia we will look at the considerations on how this affects the alliances and other points of relations with all countries in the world.[2]

II. HISTORICAL DEVELOPMENT BEFORE 1918

To correctly interpret the historical aspect of Russian and Estonian relations one must go back much further than the collective memory of the vast majority of the western population. For this paper, I will start with how Russia came to acquire the territory now known as Estonia, (which had previously been under German and Danish rule) which was previously ruled by Sweden[3], life was very good for the common people and they enjoyed many freedoms under that rule. The Russians defeated the Swedish rule in the area in the conflict known as the Great Northern War in 1710 around this time is when the modern idea of Estonia came to be, but even up until 1918.

Estonia had an elite class of Germans that ran most of the affairs of the country and got along well with the Russian rule, this is going to be an ongoing theme for Estonians who were caught between Russian and German influence for quite some time. In the early1800s a great resurgence happened with the Estonian peasants of interest in Estonia folklore and culture. Around

[1] Richard C. Visek. (1977). Creating the Ethnic Electorate through Legal Restorationism: *Citizenship Rights in Estonia*. (pg. 315-320).
[2] *Ibid*
[3] Andres Kasekamp. (2010). *A History of the Baltic States.* United Kingdom: Palgrave Macmillan.

this time is also some of the first noticeable nationalistic ideology that challenged the Russian influence. During this cultural awakening, there was a push to change the national language to Estonian, and the Saga of Kalevipoeg was written, the first song festivals and fire of nationalistic spirit was rampant. In 1889 Russia there was something called Russification[4], a push to wipe away the German and Estonian culture and replace it with Russian culture and language. This is something important to remember because during the Soviet time many Estonians say this is exactly what happened as well. This forced dissolution of Estonian culture by Russians sits well in the mind of Estonians.[5]

III. ESTONIAN WAR OF INDEPENDENCE AND STATEHOOD

With the collapse of the Russian empire in World War I Estonia was granted autonomy by the provisional government at the time, right before the October revolutions in 1917 Estonian Bolsheviks Violently seized power from the fledgling Estonian government. When peace talks between the German and Russian empires crumbled the Bolsheviks retreated to Russia and Estonia was once again being occupied by German forces, in the midst of the chaos, on Feb 23rd Estonia declared its independence. Days later German forces entered Tallinn, the Estonians fought both the Germans and Russian to win its independence in 1918. Adjacently, Latvia, Lithuania and Finland were also fighting wars of independence at that time. It has been said that the only reason for Estonians independence has been because of Russia's "weakness"[6] and certain critics of the Baltic nations identity has been fabricated only to provide grounds in which to have a leg up for independence and is mostly fiction[5,] that the interest in Estonian folklore, and western ideals free of Russia was inspired by a determination to independence. Other opinions have shown that the Bolshevik revolutions was not something that the Baltics admired much and that too could have been an inspiration for independence. On February 2nd 1920, the Estonians and Russians signed the Tartu Peace treaty,[7] where Russia explicitly relinquished all rights and sovereignty of Estonia, the people and territory, see article IV of the Treaty of Tartu: "*During one year from the day of ratification of the present Treaty, persons of non-Estonian origin women, and children, less than eighteen years of age, take the nationality of the husband or the father, unless there exists between man and wife any contrary agreement. The people who have opted for Russian nationality must, within a year from the date of their choice, leave Estonian territory; but they maintain their rights over the property and can take with them their movable property. In the same way persons of Estonian origin living in Russia can opt for Estonian nationality within the same length of time and under the same conditions. Each of the contracting Governments reserves the right to refuse acceptance to its citizenship of such persons. Note. In case of doubt about the origin of persons, all those who could have been personally registered or whose parents would have been registered in a rural or urban community, or in a "class" on the territory now composing the State of Estonia, shall be considered as Estonians."*[8]

This part in the Treaty of Tartu will have a big effect on who shall become Estonian Citizens later. After the Treaty of Tartu was signed Estonia were quickly recognized as a sovereign state and

[4] *Ibid*
[5] *Ibid*
[6] Richard C. Visek. (1977). Creating the Ethnic Electorate through Legal Restorationism: *Citizenship Rights in Estonia*. pp. 315-320.

[7] Andres Kasekamp. (2010). *A History of the Baltic States*. United Kingdom: Palgrave Macmillan
[8] Treaty of Tartu (1940). Accessible: https://truecostmovie.com/img/TSR/pages/section_01/1920_Treaty_of_Tartu.pdf , 20.04.2018.

was accepted into the League of nations in 1921. For 22 years Estonia was an independent free to pursue its own political and cultural aspirations.

IV. ESTONIA IN WORLD WAR II

The Molotov-Ribbentrop was signed between Nazi Germany and the Soviet Union in 1939 which divided Eastern Europe between the two as far as influence was concerned in an effort to avoid conflict between the two nations.[9] Estonia was determined to stay neutral in the conflict but the Estonian government eventually allowed Soviet bases to be built after many threats being issued from the Soviet Union. Once again, the little state of Estonia was being occupied in June 1940 and a full military invasion happened. Soon the USSR put a puppet government that asked to be accepted into the USSR. This is another major point of contentions for experts in Russian-Estonian relations, if this is considered legitimate and if the Treaty of Tartu is still legally binding. During the Soviet occupation, there were many arrests and execution and deportations to Siberia happened most of the figures range around 30,000 in total from 1941-1949. During the Soviet occupation in the 1940s the general consensus of the Estonians was negative towards the occupation.

Germany invaded Russia in Operation Barbarossa in June 1941 and soon reached Estonia and liberated it from the Russians. The initial joy of the Russians leaving soon faded when the Estonians realized that Nazi Germany was not going to be restoring power back to the Estonians. Some Estonians were drafted and fought in the German army and Waffen SS. In late 1944 Germany was being pushed back by the Russian army and they left Estonia which was subsequently taken over by Russia again. Rule of Estonia one more time changed hands, the government of Estonia operated from Sweden until 1992.

Estonia was fully occupied by the USSR from 1944-1991. During the second World War, much of Estonia had been destroyed and much of its population had been killed, forced to flee or deported to Siberia. During the Soviet occupation, there still was resistance from Estonians. There was a group called the Forest Brothers who resisted the occupation this band of guerilla fighters operated until the early 1950s. This period in Estonian history is much like most of the Soviet Bloc countries, a tight-fisted rule, deportations, KGB constantly monitoring what was going on, times of fear and uncertainty, many Russian workers were also brought into Estonia, and changing the demographics of Estonia forever. In the 1970s Estonians became increasingly away of the cultural and demographic change in their society once again Russification was on the forefront of everyone's mind, and in the 1980s many Nationalist groups started to pop up in Estonia.[9] In the late 1980s Soviet power began to wane and there was a loosening of the tight grip the Soviet Union had over Estonia. In this period until 1992, Estonia regained political control over itself. A full withdrawal of Soviet power happened in 1994, and in 1998 Estonia joined the European Union. On 29 March 2004 Estonia joined NATO along with many other countries directly along the Russian border. With the arrival of NATO forces in the Baltic countries, Russia made noise about it but did not have an intense reaction. This reaction was surprising because the Cold War had been over for over a decade and along with the United States backing out of the Ballistic missile treaty should have been a big red flag that Europe, the United States and the powers that be still viewed Russia as the enemy and parking troops right along its border to many people seems like a direct threat to Russian security.

The history of Estonia has been a turbulent one, changing hands so many times with so many countries and the loss of self-determination, loss of demographic homogeneity. One can understand the hesitation Estonians have to trusting outsiders and how wary they can be of foreign

[9] Andres Kasekamp. (2010). *A History of the Baltic States.* United Kingdom: Palgrave Macmillan. (pg. 126)

influence, it had been passed around by so many countries, one can realize that Estonia is extremely wary of losing control of its country in the future.

V. BORDERS

Currently, Russia and Estonia have cleared up some of its border disputes, but tensions are still high. Certain parts of the border require Estonian citizens to pass through Russia to go to other Estonian towns and many security concerns arise from such strange issues. In 1994 the border disputes between Russia and Estonia led to Boris Yeltsin stating that he would not yield "one centimeter of land"[10] during that time Estonia was seeking to reclaim land that it claims to be part of its territory before world war two, since the borders had been drawn by Russians there were many points of dispute and areas that had been purposely and strategically drawn in direct benefit to Russia. The treaty of Tartu very clearly outlined the border of Estonia and Russia but Russia does not recognize the current state of Estonia as a continuation of the 1918 independent state. As we can see here is another example of Problems arising from the legal status of Estonia, has Estonia been an independent country for 100 years or 27? The United States never recognized the Baltics as part of the Soviet Union so the legal status is up for interpretation depending on the vantage point of the subject.

On 29 March 2004 Estonia joined NATO[11] and now many other countries directly along the Russian border now contained NATO forces, Russia made noise about it but did not have an intense reaction, but the cold war had been over for over a decade but United States backed out of the Ballistic missile treaty. So that must have made Russia quite uneasy and signaled that that the United States still viewed Russia as the enemy and parking troops right along its border seems like a direct threat to Russian security.

On 29 March 2004 Estonia Joined NATO Along with Many other countries directly along the Russian Border, with the arrival of NATO forces in the Baltic countries, Russia made noise about it but did not have an intense reaction. This reaction was surprising because the cold war had been over for over a decade and along with the United States backing out of the Ballistic missile treaty Should have been a big red flag that Europe, the United States and the powers that be still viewed Russia as the enemy and parking troops right along its border to many people seems like a direct threat to Russian security.

1. Ethnic aspects

After the reestablishment of independence on August 20th, 1991 Estonia was in a very strange predicament, out of the approximately 1.5 million citizens only about 63% of these were ethnic Estonians. This can be mainly attributed to mass deportations and importations of non-Estonian citizens into Estonia. Russia who had originally supported Estonian independence soon accused Estonia of "constructing a system of social apartheid against ethnic Russians[12] (Estonia has accused Russia of Violating the Treaty of Tartu) Forced or mass deportation has always been used as a tactic of war to subjugate people dating back as early as the Assyrians for example, a way to cut the roots from the land that people have and make them easier to rule. And it is obvious that the Estonians when drafting their citizenship policy were keenly aware of this fact and feared political power from falling into the hands of non-Estonians. As of April, 1st 1990 the Estonian citizenship requirements were passed by the Riigikogu, the basis of Citizenship as per the Estonian constitution

[10] http://old.themoscowtimes.com/news/article/tmt/345760.html (accessed 21.10.18)

[11] Andres Kasekamp. (2010). *A History of the Baltic States*. United Kingdom: Palgrave Macmillan. (pg. 231)

[12] Aleksandra Kuczynska-Zonic. (2017). The securitization of national minorities in the Baltic states. Accessible: https://www.degruyter.com/view/j/bjlp.ahead-of-print/bjlp-2017-0011/bjlp-2017-0011.xml20.04.2018. 20.04.2018

§ 8 was by Jus Sanguine. Russian non-citizens could apply for temporary residence permits and had one year, this was extended to July 12th, 1996 almost all of the 345,000 people who applied for residency were approved, but 70,000 Did not even bother to apply for residency and were thus considered illegal[13]. In 1992 Estonia passed a law of the freedom of movement, except in the case of criminals awaiting trial and other such obvious reason it is obvious that this was meant to state that Non-Estonian Citizens were free to and encouraged to leave Estonia.[14] The 1995 Law on Citizenship made it more difficult to become a citizen, permanent residency was expanded to 5 years instead of 2 and narrows Estonians requirement accessibility for passing the language portion of the citizenship test, have an Estonian loyalty oath and have a permanent income, and have a working knowledge of the way the Estonian government works.[15]

Estonians and Russians are very different culturally and with the language gap being another bridge to cross, most of the Russians were influential people and did not speak Estonian. After the reestablishment of independence on August 20th, 1991 Estonia was in a very strange predicament out of the approximately 1.5 million citizens only about 63% of these were ethnic Estonians.[16] This can be mainly attributed to mass deportations[4] and importations of non-Estonian citizens into Many Russians who had originally supported Estonian independence soon became disillusioned.[17]

Many Estonians are quite concerned with the problems this can cause internal unrest and foreign influence on internal affairs have been heavy on the minds of the native population; just recently a man was found to have been spying on Estonia for years, and giving this information back to Russia, this can only help deepen the mistrust Native Estonians have for Russians.

According to the International Center for Defense and security on April 26, unrest and vandalism broke out in Tallinn. During these events, the city suffered damage, the likes of which has not been seen since the air raid by the Soviet Air Force in 1944, Estonia had planned on moving a statue from the soviet era commemorating the soldiers who died fighting the Nazis during WW2 to a different Location, ethnic Russians Help protests that soon escalated into riots. It was soon apparent that Moscow was heavily involved in the orchestrations of the events, foreign agitators were present in Estonia, and this highlighted the cavernous rifts between Estonians and ethnic Russians living in Estonia, and Russia's intent to grant citizenship to ethnic stateless Russians residing on Estonian territory – as recently still practiced in the Caucasus[18] – did not alleviate relations either. Mass propaganda campaigns from Russia could possibly destabilize the country and leave it open to a physical threat, one that Estonia alone would not be able to handle on its own, even with civilian volunteers and the small NATO force, a strike could be too quick for NATO to react in time before Estonia falls to a foreign power yet again.

---

[13] Richard C. Visek. (1977). Creating the Ethnic Electorate through Legal Restorationism: Citizenship Rights in Estonia. Accessible: http://heinonline.org/HOL/Page?handle=hein.journals%2Fhilj38&div=17&g_sent=1&casa_token=86DwfJS52nQAAAA%3AqOb3klThQOO_GoOXOo3tDTXqV2BAqjMD4DEiTr20he97b5YEXQY3Pxxrha28ZDYF80iu7-GrMwA&collection=journals , 23.04.2018.

[14] For details see Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.; Yatsyk, A. (Ed.). Borders in the Baltic Sea Region – Suturing the Ruptures (147−173). Basingstoke, UK: Palgrave Macmillan.10.1057/978-1-352-00014-6.

[15] Michael E. Brown. (1993). Ethnic Conflict and International Security. United Kingdom: Princeton University Press

[16] Andres Kasekamp. (2010). *A History of the Baltic States*. United Kingdom: Palgrave Macmillan.

[17] Michael E. Brown. (1993). *Ethnic Conflict and International Security*. United Kingdom: Princeton University Press.

[18] On the Georgian case of passportization see Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237). Routledge, Taylor&Francis Group.

VI. CONCLUSIONS

The historical aspect plays a vital role, instilling in the collective memory of Estonians a negative feeling, xenophobia and mistrust towards the Russian population that live in the borders of Estonia, national pride is not a bad thing unless its drives a wedge between people in the country, Estonia has been under occupation and ruled over by many countries, some have been fair and just and some have instituted policies that were heinous and vile at best, self-determination means so much to a people who have had so very little much of it.

Ethnically, it is very hard to have two so distinctly different groups of people living in the same borders, I have seen this many times in countries such as Iraq and Israel, one side must assimilate and feel completely integrated for a strong sense of trust and social cohesion or else one side will consistently feel marginalized and oppressed by the other. There are qualms on both sides of the Russian and Estonian ethnic divide, Estonia not doing enough to reach out and make policy and be more inclusive of Russians within their borders, and on the Russian side there is a sense that they do not want to be Estonian and in some ways feels to many Estonians that they are waiting for Russia to come back, this is an unacceptable view if you want to live within another nations borders and breeds resentment and mistrust which is not a good foundation for a healthy ethnic relationship. Both sides have to do much more to try and bridge this gap and it does seem like many attempts are being made, but only time will tell.

By understanding more easily the contention points, we can identify good leaders who have the right temperament and multifaceted thinking to find peaceful solutions to bridge the cavernous gaps between these two countries and restore as normal relations as possible, and on a diplomatic scale, the European Union should realize that Russia's foreign policy has essential changed during the last decade and respectively adapt their Russia strategies[19]. There are no quick solutions to this conflict and will take many years and much negotiations to build up trust, empathy and respect needed to solve this. Education[20], openness and avoiding emotional reactions seems to be the best way to deescalate, and the teaching of comparative law and legal cultures in central and Eastern Europe has a paramount function here[21]. But only time will tell in which directions the seas of the geopolitical scape will ebb and flow like the rising of the tides hopefully there are no catastrophic storms on the horizon on this journey into the seas of time for the two nations.

REFERENCES

Braghiroli, S.; Hoffmann, T.; Makarychev, A. (2018). How to study and teach Russia and the EU. In: Andrey Makarychev, Thomas Hoffmann (Ed.). Russia and the EU Spaces of Interaction. Routledge.

Brown, M.E. (1993). Ethnic Conflict and International Security. United Kingdom: Princeton University Press.

Hoffmann, T.; Chochia, A. (2018). The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies. In: A. Makarychev, T. Hoffmann (Ed.). Russia and the EU Spaces of Interaction (223−237). Routledge, Taylor&Francis Group.

[19] On the entire issue recently Makarychev, A.; Hoffmann, T. (Ed.) (2018). Russia and the EU – Spaces of Interaction. Routledge, Taylor&Francis Group.books/details/9781138303799/[forthcoming].

[20] On the education aspect see Braghiroli, Stefano; Hoffmann, Thomas; Makarychev, Andrey (2018). How to study and teach Russia and the EU. In: Andrey Makarychev, Thomas Hoffmann (Ed.). Russia and the EU Spaces of Interaction. Routledge.books/details/9781138303799/ [forthcoming].

[21] Hoffmann, Thomas (2014). Reflections on Opportunities for Comparative Private Law in Academia: Central and Eastern Europe. Review of Central and East European Law, 39, 1−17.

Hoffmann, T.; Makarychev, A. (2016). Russian Speakers in Estonia: Legal, (Bio)Political and Security Insights. In: Makarychev, A.; Yatsyk, A. (Ed.). Borders in the Baltic Sea Region – Suturing the Ruptures (147−173). Basingstoke, UK: Palgrave Macmillan

Hoffmann, Thomas (2014). Reflections on Opportunities for Comparative Private Law in Academia: Central and Eastern Europe. Review of Central and East European Law, 39, 1−17.

Jonsson, O.; Seeley, R. (2015). Russian Full-Spectrum Conflict: *An Appraisal After Ukraine*. Accessible: https://www.tandfonline.com/doi/abs/10.1080/13518046.2015.998118 , 20.04.2018.

Kasekamp, A. (2010) A History of the Baltic States. United Kingdom: Palgrave Macmillan.

Kresock, D. M. (1944). Ethnic Cleansing in the Balkans: *The Legal Foundations of Foreign Intervention Note*. Accessible: http://heinonline.org/HOL/Page?handle=hein.journals%2Fcintl27&div=11&g_sent=1&casa_token=&collection=journals , 20.04.2018.

Kuczynska-Zonic, A. (2017). The securitization of national minorities in the Baltic states. Accessible: https://www.degruyter.com/view/j/bjlp.ahead-of-print/bjlp-2017-0011/bjlp-2017-0011.xml, 20.04.2018.

Kukk, K., Raun, T. (2007) Soviet deportations in Estonia: impact and legacy. Estonia: Tartu University Press.

Kuus, M. (2002). European Integration in Identity Narratives in Estonia: A Quest for Security. Accessible: http://journals.sagepub.com/doi/abs/10.1177/0022343302039001005 , 21.04.2018.

Laurence, J. (2009). The Effect of Ethnic Diversity and Community Disadvantage on Social Cohesion: *A Multi-Level Analysis of Social Capital and Interethnic Relations in UK Communities*. Accessible: https://academic.oup.com/esr/article-abstract/27/1/70/448535?redirectedFrom=fulltext , 22.04.2018.

Makarychev, A.; Hoffmann, T. (Ed.) (2018). Russia and the EU – Spaces of Interaction. Routledge, Taylor&Francis Group.

Orttung, R. W.; Overland, I. (2011). A limited toolbox: Explaining the constraints on Russia's foreign energy policy. https://www.sciencedirect.com/science/article/pii/S1879366510000394, accessed 20.04.2018.

Shlapak, D.A.; Johnson, M.W. (2016) Reinforcing Deterrance on NATO's Eastern Flank: Wargaming the Defense of the Baltics https://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1253/RAND_RR1253.pdf

Visek, R.C. (1977). Creating the Ethnic Electorate through Legal Restorationism: *Citizenship Rights in Estonia*. Accessible: http://heinonline.org/HOL/Page?handle=hein.journals%2Fhilj38&div=17&g_sent=1&casa_token=86DwfJS52nQAAAAA%3AqOb3klThQOO_GoOXOo3tDTXqV2BAqjMD4DEiTr20he97b5YEXQY3Pxxrha28ZDYF80iu7-GrMwA&collection=journals , 23.04.2018.

Online sources:

https://news.postimees.ee/4470645/tartu-businessman-served-gru-for-years (accessed 23.04.18)

https://www.icds.ee/publications/article/russias-involvement-in-the-tallinn-disturbances/ (accessed 23.04.18)

http://old.themoscowtimes.com/news/article/tmt/345760.html (accessed 21.04.18)

An Analysis of The Applicatibility of GDPR to Blockchain Technologies

YUSEF WARD
TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

Abstract: *Blockchain technologies have been an emerging sphere, engulfing a plethora of fields by their simplicity and functionality, yet to what extent these features will be applicable is uncertain. This research article will tackle the employability of the basic structural nature of blockchain technologies under the new European Union data protection regime. In particular it will breifly examine the three main points of conflict between blockchain technologies and the newly enacted European Union data protection policy: the right to be forgotten, data minimization and privacy by design.*
Keywords: *GDPR, Blockchain, European Union, Technology.*

I. INTRODUCTION

The exponentially growing and encompassing presence of technological implementation has creeped into nearly every sector and part of human life. At a time when data and its use has transitioned from scarce to overwhelmingly abundant, the control and usage of data has become crucial to internet users and corporations. The rapid integration of technology has ignited a need for legislators to create guidelines and regulations on how the new currency – data – should be utilized and stored to avoid its maluse in the form of manipulation and extreme centralization by major corporations of the technology industry. In light of the current state of data usage, the European Union (EU) replaced Directive 95/46/EC (Data Protection Directive) of 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data with the General Data Protection Regulation (GDPR) that will begin to be enforced on 25th May, 2018. The GDPR could be noted as the first large-scale privacy regulation in the new era of technology and it is set to "harmonize data privacy laws across Europe, to protect and empower all EU citizens' data privacy and to reshape the way organizations across the region approach data privacy". As the GDPR is about to be enforced, there are manifold questions to be addressed on how to apply the regulation and how to coordinate the regulation's application for businesses in the EU.[1] The GDPR was built to focus on centralized d ata controllers. This gives rise to the question of how the emerging Blockchain (BC) technology should be applied and regulated under the General Data Protection Regulation. The maxim of "take control of personal data" are integral parts of the GDPR and blockchain solutions, yet there appears to be contradictions in the applicability of BC to GDPR.

This paper will firstly outline the main functions and features of the GDPR and BC, and consequently transition into an analysis of how the GDPR can be applied to blockchain technologies and what are the challenges and solutions to the implementation.

[1] Dobrin, S.; Chochia, A. (2016). The Concepts of Trademark Exhaustion and Parallel Imports: A Comparative Analysis between the EU and the USA. Baltic Journal of European Studies, 6 (2), 28−57.

II. AN OVERVIEW OF BLOCKCHAIN TECHNOLOGY

Blockchain technology is based on the infrastructure of a distributed ledger technology (DLT)[2]. A DLT creates an ability to share and store data using multiple nodes, independent computers, rather than a centralized source of data. Blockchain technology is, in essence, a form of transfer of data; this creates vast possibilities for its use in spheres such as finance, medicine and contracts. As Vitalik Buterin, the co-founder of one of the largest BC solutions, Ethereum, notes, "A blockchain is a magic computer that anyone can upload programs to and leave the programs to self-execute, where the current and all previous states of every program are always publicly visible".[3]A blockchain is a chronological set of transactions constituted of blocks containing information about each transaction[4]. The blockchain has three identifying elements. Firstly, the BC is continually appended to and is permanently stored, every transaction is added to the chain. Secondly, the BC is stored in a completely decentralized peer to peer form, where every user has a copy of the entire blockchain; with every correctly implemented transaction the BC is updated. Thirdly, the BC is asymmetrically encrypted meaning every user has a private and public key to verify and conclude transactions[5]. The decentralized design makes it almost impossible to tamper or reverse transactions in a blockchain[6], which will prove vital in the discussion of GDPR compatibility to BC.

III. KEY FEATURES OF THE GDPR

Before addressing the applicability of blockchain under the GDPR, the key features that adhere to GDPR's purpose of providing harmonization of data privacy laws across member states of the EU must be outlined.[7] The GDPR encompasses a wide variety of new rights and concepts, the most notable of which for the discussion are right to data portability (RDP), right to be forgotten (RtbF), data minimization and lastly, privacy by design. The regulation applies to any form of 'personal data' related to a 'data subject' (natural person); according to Article 4(1) of the GDPR a data subject is "an identifiable natural person […] who can be identified, directly or indirectly". The 'personal data' regulation has to be complied with by companies that use data controllers or data processors, a data controller "means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data" and a data processor "means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller". The GDPR has set strict guidelines to what is personal data and how and who is able to utilize it in what way, this is in line with the purpose of creating a completely harmonized understanding of data laws within the Union including non-EU based companies that obtain personal data from citizens of the EU, reaching from production, services to logistics and delivery[8].

[2] Swan, Melanie. *Blockchain*. O'reilly.(2015). p. 2.
[3] Buterin, Vitalik.Ethereum Blog. (2015). Visions, Part 1: The Value of Blockchain Technology
[4] Nakamoto, Satoshi. (2009). Bitcoin: A peer-to-peer electronic cash system
[5] Ollers, F.Xavier and Majlinda Zhegu. Research Handbook On Digital Transformations. (2016). p. 226
[6] Notheisen, B., Cholewa, J.B. & Shanmugam, A.P. Bus Inf Syst Eng (2017) 59: 425.
[7] Dutt, P.; Ferraro, S.; Chochia, A.; Muljar, R. (2018). Using Patent Development, Education Policy and Research and Development Expenditure Policy to Understand Differences Between Countries – The Case of Estonia and Finland. Baltic Journal of European Studies, 8 (1), 123−153.
[8] For GDPR compliance e.g of delivery robots see Hoffmann, T and Prause, G (2018), at 5.2.

IV. ARISING CHALLENGES AND PROPOSITIONS FOR BC COMPLIANCE UNDER THE GDPR

Prior to analyzing the possible challenges for blockchain-based solutions with the enforcement of the GDPR, an analysis of what data could be considered "personal data" and who the regulation applies to must be addressed. The conditions set for data not being personal i.e. anonymized under EU regulation entail "processing personal data in order to irreversibly prevent identification"[9]. The constrained definition of anonymous data leaves only a specific data type to be recognized as anonymous, identifying most data as "personal" in the framework of the GDPR. The data utilized in a DLT and specifically personal data and public keys in a blockchain would exhaustively fall under the category of "personal data"[10], thus creating a need to regulate how this information in a BC is handled. As transactional data along with public keys would qualify as personal data, the rights enacted under the new data protection regulation would apply. Since blockchain is a form of decentralized transactions, it is questionable to whom the GDPR's requirements of upholding a standard for personal data usage is addressed. Blockchains and specifically public ones have no central organization to adhere to, each node is contributing to the block equally, this creates a point of uncertainty, as nodes cannot be classified as data controllers or even joint controllers which "jointly determine the purposes and means of processing" according to Art. 26(1) GDPR, yet nodes do not determine the purposes or means of processing of other nodes in the blockchain. It is evident that the GDPR has set a legal framework primarily for centralized collecting of personal data, making it unpredictable how this framework would apply to distributed ledger technologies based on the concept of a completely decentralized environment and especially public blockchains. As an estimated assumption, the GDPR's regulation would apply to a BC software's public key and transactional information. Specifically, the newly created concepts of data minimization, privacy by design, right to access and right to be forgotten will be explored in relation to blockchain.

1) The Right to be Forgotten

Modern day electronic device usage for purposes of online communication, participation and better management of our private time and resources comes with the latent risk of collection and storage by third parties of our personal data.[11]

Under article 17 GDPR sets a right for a data subject to erasure of personal data that is "no longer necessary in relation to the purposes for which they were collected or otherwise processed" and if the data subject withdraws consent for processing data. As earlier mentioned public blockchains function on an "append only" principle, making it close to impossible to delete any data processed on a blockchain. The main data at hand when analyzing blockchains is transactional information and public keys. As stated in the Open Data Institute report, "the irreversibility and transparency of public blockchains mean they are probably unsuitable for personal data"[12]. The usage of transactional information can be avoided in a blockchain environment, by storing the personal data in a database without affecting the blockchain itself and complying with data regulation[13]. In regard to public keys, an argument for a "legal ground for processing" established

[9]Commission Regulation (EC) No 05/2014 of 10 April 2014 anonymisation techniques, WP 216, 10.4.2014, p 3

[10] Matthias Berberich and Malgorzata Steiner. Blockchain Technology and the GDPR – How to Reconcile Privacy and Distributed Ledgers. (2016)

[11] Dutt, P; Kerikmäe, T. (2014). Concepts and Problems Associated with eDemocracy. In: T. Kerikmäe (Ed.). Regulating eTechnologies in the European Union: Normative Realities and Trends (285−323). Springer Verlag at page 288.

[12] Knowledge et al. "Applying Blockchain Technology In Global Data Infrastructure – The ODI". *Theodi.Org*. (2018)

[13] Finck, Michèle. Blockchains and Data Protection in the European Union. (2017)

under Article 17(1)(b) could be expanded. The foundation of blockchains is built upon the usage of public keys, thus this would be taken into account when balancing the power entrusted between data controller and data subject.

2) Data minimization

Data minimization is in contradiction with BC technology in the same way as the right to be forgotten is. The BC is "append only" and practically immutable. The requirement of the GDPR under data minimization is that data must be "collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes". All data pertaining to the blockchain is needed, thus it could be strongly argued that data minimization should not be adhered to for BC software. It is still quite unclear if the European Union would view the storage of BC data as applicable to the requirement of "legitimate purpose", yet it seems probable that an argument towards that point of view would be regarded and assessed by the Union. This argument comes in line with other innovative spheres such as big data and machine learning, which must tackle similar challenges in light of the GDPR. To date there is no practical solution or alternative to storing data on a blockchain, as this is the stamp of certainty that is valued as a major feature of the blockchain.

3) Privacy by Design

Data protection by design and by default under Article 25 GDPR, also known as privacy by design, is also a new addition to data privacy within the EU. The privacy by design clause means that all the regulations of the GDPR must be considered when creating an online solution, some of which have been mentioned previously. The measurement of privacy by design must be analyzed on a case by case basis. The general requirement is to account for regulation changes, yet as analyzed blockchain technologies face several legal issues in the matter. One of the ways one can attempt to comply with privacy by design is to remove transactional information. It is unknown yet to what extent that would soothe the acceptance of BC under the GDPR.

V. CONCLUSION

As discussed in the paper, it is still unclear how blockchain technologies will be viewed under the newly enacted regulation, the GDPR, and legal practitioners just as well as advisors should familiarize themselves intensively with the technology itself just as well with the new business levels emerging from it in order to match an exponentially rising demand for legal services based on blockchain technology.[14] There seem to be certain areas of incompatibility between the regulation and the newly emerging technologies such as privacy by design, the right to be forgotten and data minimization.

If this confliction is seen from a holistic lens; data protection and cybersecurity issues overlap, dealing with legal gaps in data protection may lead to unexpected impacts in other regimes, such as new security concerns, hence a comprehensive review of data regulations is necessary[15].

These are just some of the manifold points of conflict and it will be interesting to see how European Union legislators and data protection officers will balance proportionality in the possible conflict between data protection of users and the promotion of emerging technologies. The

[14] For details see Kerikmäe/Hoffmann/Chochia, Legal Technology for Law Firms: Determining Roadmaps for Innovation.

[15] Kasper, A. (2014) Legal Aspects of Cybersecurity in Emerging Technologies. In: Kerikmäe, T. (ed.) Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, p. 215

European Union's motive of upholding a high standard of data regulation is in a state of uncertainty, just as blockchain technologies are in terms of their structure and usage.

REFERENCES

Arno.uvt.nl. (2017). Blockchain and individuals' control over personal data in European data protection law. [online] Available at: http://arno.uvt.nl/show.cgi?fid=143638 [Accessed 8 Apr. 2018].

Beck, Roman & Müller-Bloch, Christoph. (2017). Blockchain as Radical Innovation:

Framework for Engaging with Distributed Ledgers as Incumbent Organization. 10.24251/HICSS.2017.653.

Dobrin, S.; Chochia, A. (2016). The Concepts of Trademark Exhaustion and Parallel Imports: A Comparative Analysis between the EU and the USA. Baltic Journal of European Studies, 6 (2), 28−57.

Dutt, P; Kerikmäe, T. (2014). Concepts and Problems Associated with eDemocracy. In: T. Kerikmäe (Ed.). Regulating eTechnologies in the European Union: Normative Realities and Trends (285−323). Springer Verlag at page 288.

Dutt, P.; Ferraro, S.; Chochia, A.; Muljar, R. (2018). Using Patent Development, Education Policy and Research and Development Expenditure Policy to Understand Differences Between Countries – The Case of Estonia and Finland. Baltic Journal of European Studies, 8 (1), 123−153.

Ethereum Blog. (2015). Visions, Part 1: The Value of Blockchain Technology – Ethereum Blog. [online] Available at: https://blog.ethereum.org/2015/04/13/visions-part-1-the-value-of-blockchain-technology/ [Accessed 7 Apr. 2018].

EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1.

Finck, Michèle, Blockchains and Data Protection in the European Union (2017). Max Planck Institute for Innovation & Competition Research Paper No. 18-01. Available at SSRN: https://ssrn.com/abstract= 3080322

Hoffmann, T., Prause, Gunnar. On the Regulatory Framework for Last-Mile Delivery Robots. *Machines* 2018, *6*, 33.

Kasper, A. (2014) Legal Aspects of Cybersecurity in Emerging Technologies. In: Kerikmäe, T. (ed.) Regulating eTechnologies in the European Union – Normative Realities and Trends, Springer, p. 215.

Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018). Legal Technology for Law Firms: Determining Roadmaps for Innovation. Croatian International Relations Review, 24 (81), 91−112.10.2478%20/cirr-2018-0005.

Matthias Berberich; Malgorzata Steiner, Blockchain Technology and the GDPR – How to Reconcile Privacy and Distributed Ledgers, 2 Eur. Data Prot. L. Rev. 422 (2016)

Nakamoto, Satoshi. (2009). Bitcoin: A peer-to-peer electronic cash system.

Notheisen, B., Cholewa, J.B. & Shanmugam, A.P. Bus Inf Syst Eng (2017) 59: 425. https://doi.org/10.1007/s12599-017-0499-8

Olleros, F. Xavier, and Majlinda Zhegu. Research Handbook On Digital Transformations. Edward Elgar Publishing. (2016). p. 226

Papers of the Article 29 Working Party.Article 29 Working Party, 'Opinion 05/2014 on Anonymisation Techniques' (WP 216, 10 April 2014)

Pilkington, Marc, Blockchain Technology: Principles and Applications (2015). Research Handbook on Digital Transformations, edited by F. Xavier Olleros and Majlinda Zhegu. Edward Elgar. (2016). Available at SSRN: https://ssrn.com/abstract=2662660

Swan, M. (2015). Blockchain. Sebastopol, CA: O'Reilly, p.2.

Knowledge et al. "Applying Blockchain Technology In Global Data Infrastructure – The ODI".Theodi.org.(2018). https://theodi.org/article/applying-blockchain-technology-in-global-data-infrastructure/. [Accessed 24 Apr. 2018]

A Short Presentation of Romanian Economy, Business Ethics and Economic Growth

NICOLETA VASILCOVSCHI PHD,
SOCIAL STUDIES AND ECONOMICS TEACHER
QiLu Sino-Canadian Program, Shandong, China
nv333@protonmail.com

MIHAELA AFANASOV,
LAWYER
Leaua and Associatii, Bucharest, Romania
mihaela.afanasov@leaua.ro

Abstract: *Economic development is a multidimensional process that involves improvement of social, political, legal and business platform of a nation. Over the last two decades global issues affected the international relations and businesses around the world. Globalization helped many countries to achieve their economic development nowadays, but also brought many challenges for international businesses and societies. The first part of this article presents the Romanian economic structure, the economic growth, its measurement and limitations. Then is given a general description of economic growth process, showing the benefits and costs of economic growth, the structure and impact of modern technologies for the consumers and producers who are interacting in the globalized economic system. In the second part, it is analysed the manner in which business ethics can affect economic development. In fact, in this section are evaluated the connections between technological advancement, economic growth and the enforcement of law in international affairs. This last section gives a general description concerning the role of business ethics for the economic development.*
Key words: *Romanian economy, economic growth, business ethics, international law.*
JEL Codes*: F63, F02*

1. INTRODUCTION

For the last centuries, economic development is one of the main objectives in the agenda of advanced economies and of the countries in development. The globalized economic system was created by the change and interaction of international financial institutions, and the creation of new businesses to answer the modern needs of consumers over the world. Some countries tried to change and adapt their economic systems with international standards in order to achieve a stage of transition from third world to the market economy. But there is not just the economic growth the only factor affecting the countries development. Many other factors including social challenges and ethics in international affairs also can affect the process of economic development of a country.

The historical changes from classical liberalism to modern liberalism and the advancement of socialist doctrines impacted the economic development and the structure of modern economy. In addition to this, international law adapted its strategies to support countries in process of development to achieve their objectives and to achieve a sustainable economic growth process.

The work of different international organizations showed that there is still the need for many countries, including Romania, to have a sustainable economic growth. Therefore an analysis is necessary to show which factors influence the development process, how is the economic growth organized and what is the role of technology to achieve specific economic goals. In addition to this, it's important to find the connections between a sustainable economic growth that promotes

economic development of a country and business incentives, and ethics in international economic affairs. In this paper will firstly be given several economic information, followed by an interdisciplinary law-economics analyse of the main factors affecting economic development process.

2. THE ROMANIAN ECONOMY, THE ECONOMIC GROWTH, AND GLOBALIZATION

Romania' s economy developed from central planned economy to a market economy. Before 1989, Romanian economy was based on a strong industrialization process. After 1989, the economy of the country encountered periods of recession and economic growth, following a business cycle that constantly changed. For instance, the period 1980-1990 was characterized by a centrally planned economy in which the industrial development was implemented and the country encountered periods of drastic reduction in the food supplies; the period 1990-2000 was characterized by transition from central planned economy to market economy, period 2000-2008 had an increase in the consumption of products from European Union, especially after 2007, when Romania became a member of European Union. Romania had a period of increase in consumption with high economic growth rates between 2000 and 2008. The financial crisis of 2007-2008 affected Romania bringing a drop in the country's GDP of 6.7 percent in 2009, followed by a smaller fall of the GDP of 1.6 percent in 2010. [1]

The process of economic development is implemented with slow steps, and even if the country is a member of European Union, because its corruption and undeveloped infrastructure, mixed with an inefficient system of internal production, there are many differences between its economic development and the development of western advanced economies of the EU platform.

Economic growth refers to the capacity of a nation to satisfy over a period different material wants of its population. It includes an increase in national production over the time, meaning that more goods and services are produced, bringing an expansion of national production with the possibility to increase the standards of life.

There are different sources of economic growth. Firstly, supply factors, resources which are used to produce the final output (GDP) determine the growth rate through the quantity of the inputs used and their productivity.

The productivity is the efficiency of using the inputs, where a same amount of resources can produce a larger amount of output. Very important in this context are the human resources, the stock of skills and knowledge that represents the human capital and can be improved through a good education system, and on-going training, and investment in research.

Other supply factor is represented by investment and capital accumulation, which is a long term investment for future production capacity. For instance, the investment in capital goods like building, equipment, inventories.

There are two types of investment: one of them is public or government investment in public facilities, like health, education, communication networks, road infrastructure, and the other type is private or business investment for their buildings, machinery, equipment, or also called the investment in capital factors of production.

Technological progress, new scientific and technical skills can increase the productivity that is represented by the output per worker, per unit of time and can be achieved with more research and development.

[1] Daianu, D, Murgescu, B. (2013). *Which Way goes Romanian Capitalism? Making a Case for Reforms, Inclusive Institutions and a Better Functioning European Union.* Berlin: Friedrich-Ebert-Stiftung, p.6

Secondly, demand factors are represented by population that can increase through net migration, that is the increase from immigration minus the loss from emigration and natural increase, which is represented by the difference between births and deaths.

There are several conditions that a country's population will have to achieve in order to conduce to economic growth. First, it has to be productive and a large amount of it in the work-force, second, it has to be well-educated, healthy and third it has to be motivated by spiritual or material incentives, and by a dynamic leadership.

Economic growth rate is calculated from the changes at the level of Real GDP.

Economic growth rate formula:

Growth rate = [(Real GDP n – Real GDP n-1) / Real GDP n-1] * 100
Where n represents present year and n-1 represents past year.

GDP can be used for the calculation of economic growth, but as a measure of well-being or the quality of life in a society, it is quite limited. This is because the other variables are not included and they have a strong impact on every citizen or community. They are: income distribution, composition of output, quality of environment, education, health, and hours worked, and also other variables like life expectancy or literacy rates.

Economic growth has costs and benefits. An important benefit is the increase in social welfare, this helping people in need with the minimum budget per month. But growth places a greater demand on scarce amount of resources. The costs of businesses are increasing and they are passed on to consumers as higher prices, this process being costs push inflation.

In the table 1 is given a list of benefits and costs of economic growth.

Table 1. Benefits and costs of economic growth

The benefits of growth	The costs of growth
Increased participation in international trade	Structural unemployment
Increased leisure time	Inflation
Increased social welfare	Misallocated resources
Improved social mobility	Exports became more expensive and imports increase
Better life standards	Externalities and social costs

Source: own representations

From a general perspective, economic development includes economic growth, bringing an improvement for social and business conditions of a country. However, the economic development process is more complex during the accelerated globalization process of XXI century because is not including just the economic growth that is relying on the GDP changes, but is also related to other social and political factors.

Todaro and Smith presented a global perspective on development, also showing the classic theories on economic growth and development, followed by contemporary models of development and underdevelopment.[2]

It's difficult to give a unique definition for economic development, a relevant definition will possibly be related with the manner of measuring the process of economic development. Therefore,

[2] Todaro, M., & Smith, S. (2009). Economic development (10th ed.). Boston: Addison Wesley.

generally, it can be argued that economic development represents the ability of a nation to create a sustainable increase in its Gross National Product of over 5 %.

3. BUSINESS ETHICS AND THE GLOBALIZED ECONOMIC SYSTEM

A definition of business ethics will generally refer to finding a balance between economic needs and social, moral issues within the activity of companies. More accurately, ethics tries to determine the moral guidelines of people's actions within economic activities, from managers to employees, with focus on obtaining a correct attitude between companies and their employees, clients, suppliers or other collaborators, companies and communities, companies and state authorities or even states themselves when they put on the role of economic actors.

Within a rapidly developing economy of the last years and on the verge of globalization which becomes more evident every day, business ethics being also globalized will need to find new ways to adapt and offer the best possible solutions in such situation.

This is quite challenging if we are to observe the variety of economic, social, moral, cultural systems which meet and often confront each other in a globalised economic development.

If seen on a smaller, national level, business ethics would generally touch issues such as the security and equitable treatment of employees in all work related aspects, the quality of products and services, honest and correct practice between economic agents, correct publicity, protection of environment. However, when extended to an international economic environment, such issues, on one hand, would take over new dimensions and, on the other hand, would not cover all problems deriving from an international context. Among such challenges, created or potentiated by a globalised economic environment, we may think of aspects related to antitrust, internet and e-commerce policies, automation and artificial intelligence, climate change and environment protection, or global sustainable development.

As historically, moral and not law was the first form of regulating human relations[3], we accept that rules of ethics in general and of business ethics in particular are not equivalent to legal rules and are pre-existent to the latter, nevertheless the role of legislation in the regulation and promoting of business ethics cannot be denied, the more so in the context of a globalised economy, when legal instruments may become the path to finding objective solutions among a wide range of divers elements. Maybe among the best examples of promotion and enforcement of business ethics through legislation would refer to the development of antitrust regulations.

4. CONCLUSIONS

Every social system is influenced by local and international factors allowing the changes to create a platform of economic recession or economic growth. The factors that bring economic growth for different countries are based not just on strictly economic measurements, but also on social aspects and ideologies that can influence consumption and investment. At the end of 1989, beginning of 1990, Romania had to radically change its ideological system that made its economy to slowly be transformed from a command economy to a market economy.

The short description of Romanian economic changes was given in this paper to show that a country with a transitory ideological and economic system needs time to adjust its market and an important aspect in this context is that the country had to get ready to embrace the challenges of capitalism after almost three decades of centralized economy.

[3] Muresan, J-D, Graniceru, A.C. (2013) *Etica in noua economie*, Bucharest: Editura Universitară, pp.7-9.

The factors affecting economic growth are not isolated in laboratories, they are parts of the business cycle and need a mix of productivity and technology under the coordination of an efficient human capital.

The role of international law is to prevent the business failures to affect the market and to offer the best strategies for small businesses to develop.

REFERENCES

Daianu, D, Murgescu, B. (2013). *Which Way goes Romanian Capitalism? Making a Case for Reforms, Inclusive Institutions and a Better Functioning European Union.* Berlin: Friedrich-Ebert-Stiftung.

Muresan, J, D, Graniceru, A-C (2013). *Etica in noua economie.* Bucharest: Editura Universitară.

Todaro, M., Smith, S. (2009). *Economic development* (10th ed.). Boston: Addison Wesley.

The Evolution of the European Legislation in regard to the Transplantation of Organs, Tissues and Cells of Human Origin, and its Implementation by the Romanian State

LECTURER DR. OLIMPIU SABAU-POP
UNIVERSITY OF MEDICINE, PHARMACY, SCIENCES AND TECHNOLOGY OF TIRGU MURES

Abstract: *The results of successful transplant surgery over nearly six decades have made organ and tissue transplantation a world-class medical practice that has brought enormous benefits to patients, making it the only treatment possible. It is clear that the use of organs and tissues for transplantation involves risks, which is why security measures have been taken regarding their donation, collection, processing, preservation, storage, transport and use At the European Union level, it was deemed necessary to create a unitary legal framework to ensure that organs and tissues intended for transplantation have a similar level of quality and safety.*

1. INTRODUCTION

The transplantation of organs, tissues and cells is a topic of major importance in the social life of national and international collectives, it is present in the consciousness of individuals and gives rise to a great interest in the field of medical development.

The concept of donation is for the first time used as an understanding of civil law, corresponding to a free or non-remunerated transfer of a good or an asset between two parties. The effect of donation was understood exclusively as a patrimonial transfer by which the donor's patrimony is reduced and the donee's patrimony is increased, as defined by the 1864 Civil Code. More than 150 years later, the New Civil Code added the definition of organ transplantation/donation under Art. 68, namely: 'The collection and transplantation of organs, tissues and cells of human origin from living donors shall exclusively be done in the cases and under the conditions provided for by law, with their written, free, prior and express consent and only after having been informed. In all cases, the donor has the right to withdraw his consent until the time of collection.'

If initially the concept of donation had an exclusively patrimonial connotation, through the development of medicine social reality gave another meaning to the notion of donation, namely the chance of life and health.

The medical world borrowed the concept from Civil Law giving it another stand-alone meaning, but one that had to be institutionalized. The development of medical science has challenged the world's legislators to regulate this matter of organ, tissue and cell transplantation. What the normative sequence did was only to adapt to the social-human relations in deep development and evolution. At supra-state level and in the interstate relations, the normative acts were those that eventually created the premise of the development of organ, tissues and cells transplantation and the interconnection between the world's transplant centers.

Organ transplantation, one of the most spectacular medical performances of the twentieth century, has become a routine therapeutic method that saves the lives of a large number of people around the world, but unfortunately the progress in medicine is not enough, the number of patients on waiting lists far exceeds the number of donors.

Although the modern history of transplantation is relatively short, the idea of transferring an organ from one human being to another prevails since ancient times. The first description of human organ transplantation appears in texts dating back to the 4th century BC in ancient China, when the mythical Chinese surgeon Tsin Yue-Jin "exchanged the hearts of two soldiers; one endowed with a strong will but a weak spirit and the other conversely afflicted"[4].

The first scientific attempts, however, occur at the end of the 19th century - the beginning of the 20th century, when the first human transplant (skin graft)[5] was successfully performed, followed by the first successful corneal transplant in 1905.

Transplants have experienced remarkable progress after solving the problem of uncontrolled thrombosis and poor blood circulation in the organs transplanted by discovering the end-to-end anastomosis of small vessels.[6]

Another important moment in the history of transplants is the year 1954, when the first human kidney transplant was successfully performed between monozygotic twins[7] and in 1967 the world's first human-to-human heart transplant was performed[8]. At the same time with the development of immunosuppressive therapy, the first liver transplant with the receiver's survival is performed in 1967[9].

The history of Romanian transplantation begins in 1980, with the first successful liver transplant carried out at Fundeni Hospital, followed by the first kidney transplant from a deceased donor performed in Timișoara. A new stage started only after December 1989, the first reference year being 1992, when the first kidney transplant program in Romania was established in the center of Cluj-Napoca.

In 1997, the first multiorgan collections were carried out - at the General Surgery Clinic of Fundeni Hospital a kidney was collected from a brain-dead donor and at the Floreasca Emergency Hospital a liver and kidneys were collected[10]. Two years later, the first cardiac transplant was performed at the Floreasca Emergency Hospital.

In 2004, the first combined kidney-pancreas transplantation and the first stem cell transplantation in cardiology succeed, and one year later the first stem cell transplantation in liver diseases is performed[11].

[4] A. Z. Crawford, D. V Patel, Ch. NJ. McGhee, A Brief History of Corneal Transplantation: From Ancient to Modern. Oman Journal of Ophthalmology, 2013, Sep-Dec; no. 6 (Suppl. 1), pg. 12-S-17;

[5] LA. Fariña-Pérez, J. L. Reverdin (1842-1929): The Surgeon and the Needle. Archivos Espanoles de Urologia, 2010, May, no. 63(4), pg. 269-74;

[6] R. M. Sade. Transplantation at 100 Years: Alexis Carrel, Pioneer Surgeon. The Annals of Thoracic Surgery, Vol. 80, Issue no. 6, 2005, pg. 2415-2418; S. A. Carrel: Father of Vascular Anastomosis and Organ Transplantation, Indian J Vasc Endovasc Surg, 2018, no. 4, pg. 115, the first transplantation was performed by French surgeon Alexis Carrel, who transplanted a dog's kidney by relocating it to the throat, first publishing the results of his organ transplantation research in October 1905, subsequent to his success publishing a series of scientific papers and thus marking the beginning of organ transplantation science.

[7] M. Hatzinger, M. Stastny, P. Grützmacher, M. Sohn, The History of Kidney Transplantation, Der Urologe Ausg., 2016, no. 55(10), pg. 1353-1359;

[8] J. G Brink, J. Hassoulas, The first human heart transplant and further advances in cardiac transplantation at Groote Schuur Hospital and the University of Cape Town. Cardiovascular Journal of Africa, 2009, no. 20(1), pg. 31-35;

[9] A. T. Wan Song, V. L. Avelino-Silva, R. A. Arruda Pecora, V. Pugliese, L. A. C. D`Albuquerque, E. Abdala, Liver Transplantation: Fifty Years of Experience, World Journal of Gastroenterology, 2014, no. 14; 20(18), pg. 5363-5374;

[10] The National Transplant Agency website: https://www.transplant.ro/Istoric.aspx?AspxAutoDetectCookieSupport=1;

[11] R. Deac, The History of Organ Transplantation in Romania. Chirurgia 2010, no. 5, pg. 597-602;

2. THE EUROPEAN AND DOMESTIC LEGISLATION ON THE TRANSPLANTATION OF ORGANS, TISSUES AND CELLS OF HUMAN ORIGIN

The results of successful transplant surgery over nearly six decades have made organ and tissue transplantation a world-class medical practice that has brought enormous benefits to patients, especially where it is the only treatment possible.

It is clear that the use of organs and tissues for transplantation involves risks, which is why security measures have been taken regarding their donation, collection, processing, preservation, storage, transport and use. The new social reality had no legal framework, the organ transplantation pioneers in the medical system have gone ahead of the law, therefore the legal system had to catch up and regulate this matter by introducing ethical and legal rules in order to guarantee the protection of the moral values of society, the autonomy, the fundamental human rights[12].

The operation of national and international transplantation systems and the application of best practices in the field through the use of innovative medical technology and treatments significantly reduces the risks associated with organ and tissue transplantation[13] . Systems have been created by the legislative framework, so organ and tissue transplantation is governed by national and community legislations, international covenants, regulations, correlated with the obligation of transplant participants to observe them.

At EU level, it was deemed necessary to create a unitary legal framework to ensure that organs and tissues intended for transplantation have a similar level of quality and safety. Standards contribute to the public's confidence that the human organs and tissues collected in another Member State have similar guarantees to those originating in their country of residence[14] .

The national legislations of the Member States may have some peculiarities, but overall they all have to follow the same general principles regarding the prohibition of marketing or the consent of the donor.

At the European Union level and in Romania, the activity of organ and tissue transplantation is regulated by the following normative acts:

- Directive 2004/23/EC of the European Parliament and of the Council of March 31, 2004, on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.

Until the enactment of this Directive, the domestic laws of the Member States did not have a unitary vision in this area, so it was necessary to create a supranational, binding legal and recommending legal instrument for the Member States in preparation of the legal harmonization that was to foster a unitary legal treatment of the matter.

This Directive regulates the common standards that ensure both the quality and the safety of the donation, collection, testing of human tissues and cells and of those contained in manufactured products intended for human use in order to reduce the risk of infection and to prevent transmission of diseases.

---

[12] D. A. Luscalov, Legal and Ethical Aspects of Organ Donation and Transplantation, Clujul Medical, 2012; vol. 85, no. 4, pg. 560-565;

[13] Directive 2010/53/EU of the European Parliament and of the Council of July 7, 2010, on standards of quality and safety of human organs intended for transplantation. The Official Journal of the European Union. L 207: 14-29;

[14] Directive 2004/23/EC of the European Parliament and of the Council of March 31, 2004, on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. The Official Journal of the European Union. Chapter 15, vol.11: 129-140;

The Directive also requires the establishment of specific technical requirements for the implementation of the process, from organ procurement to distribution and transplantation, as well as the existence of a national accreditation system for tissue banks.

Directive 2004/23/EC of the European Parliament and of the Council of March 31, 2004, has been harmonized into the Romanian legislation by:

Government Ordinance no. 79/2004 for the establishment of the National Transplant Agency approved with amendments by Law no. 588/2004 and its subsequent amendments and additions;

- Law no. 95/2006, republished, on health reform, and its subsequent amendments and additions;

-Order of the Minister of Public Health no. 1242/2007 for the approval of the Standards for the selection and evaluation of tissue and/or cells of human origin donor, emergency alert systems and procedures, personnel qualification for human tissue and cell banks, quality system, import and export of tissue and/or cells of human origin, relations between human tissue and cells banks and third-parties and of the Procedures to verify equivalent quality and safety standards for imported tissue and/or cells of human origin, and its subsequent amendments and additions;

- Order of the Minister of Public Health no. 1763/2007 laying down technical requirements for the donation, collection, testing, processing, preservation, distribution, coding and traceability of tissues and cells of human origin for therapeutic purposes and notification of serious adverse events and serious adverse reactions during their transplantation, and its subsequent amendments and additions.

- Directive 2006/17/EC of February 8, 2006, implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells.

This Directive brings new regulations with respect to Article 28, items (b), (d), (e), (f), and (i) of Directive 2004/23/EC on: standards on requirements for the procurement of human tissues and cells, selection criteria for the donor of tissues and/or cells, laboratory tests required for donors, cell and/or tissue procurement procedures and reception at the tissue establishment, requirements for the direct distribution to the recipient of specific tissues and cells, notification of adverse reactions, preparation of annual reports by the Member States.

With regard to the donation of reproductive cells by couples, a number of simpler procedures are established for the use of cells by a third party.

Directive 2006/17/EC of February 8, 2006, implementing Directive 2004/23/EC of the European Parliament and of the Council has been harmonized into the Romanian law by:

- Order of the Minister of Public Health no. 1242/2007 for the approval of the Standards for the selection and evaluation of tissue and/or cells of human origin donor, emergency alert systems and procedures, personnel qualification for human tissue and cell banks, quality system, import and export of tissue and/or cells of human origin, relations between human tissue and cells banks and third-parties and of the Procedures to verify equivalent quality and safety standards for imported tissue and/or cells of human origin, and its subsequent amendments and additions;

- Order of the Minister of Public Health no. 1763/2007 laying down technical requirements for the donation, collection, testing, processing, preservation, distribution, coding and traceability of tissues and cells of human origin for therapeutic purposes and notification of serious adverse events and serious adverse reactions during their transplantation, and its subsequent amendments and additions.

➢ Commission Directive 2006/86/EC of October 24, 2006, implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and reactions and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells.

The scope of this Directive concerns the standards of quality and safety of human tissues and cells in their process of coding, processing, storage, preservation and distribution to healthcare centers for human use.

As a novelty, the *Single European Code* is introduced to facilitate cross-border transplantation within the Member States.

Also, the Annexes to this Directive unitary establish the minimum requirements for the accreditation, designation, authorization and licensing of the Tissue Centers, the requirements for authorization of processes in Tissue Centers and the procedure of expedited notification for serious adverse reactions and events suspected in Tissue Centers.

Commission Directive 2006/86/EC of October 24, 2006, implementing Directive 2004/23/EC of the European Parliament and of the Council has been harmonized into the Romanian legislation by:

- Order of the Minister of Public Health no. 1242/2007 for the approval of the Standards for the selection and evaluation of tissue and/or cells of human origin donor, emergency alert systems and procedures, personnel qualification for human tissue and cell banks, quality system, import and export of tissue and/or cells of human origin, relations between human tissue and cells banks and third-parties and of the Procedures to verify equivalent quality and safety standards for imported tissue and/or cells of human origin, and its subsequent amendments and additions;

- Order of the Minister of Public Health no. 1763/2007 laying down technical requirements for the donation, collection, testing, processing, preservation, distribution, coding and traceability of tissues and cells of human origin for therapeutic purposes and notification of serious adverse events and serious adverse reactions during their transplantation, and its subsequent amendments and additions.

➢ Directive 2010/53/EU of the European Parliament and of the Council of July 7, 2010, on standards of quality and safety of human organs intended for transplantation.

This Directive lays down the rules for ensuring the quality and safety standards of human organs intended for transplantation in order to assure a high level of protection of human health.

A set of principles governing organ donation are laid down, namely: donation is voluntary and unpaid, any compensation received by living donors is limited to covering costs and lack of income caused by donation; prohibiting media coverage of the need for or availability of organs when it is aimed at obtaining a financial gain; the procurement of organs is carried out on a non-profit basis.

Conditions are provided for: protection of personal data, confidentiality and security of information processing; the exchange of information between the relevant Member State authorities, the existence of records of procurement organizations and the operation of intra-Community trade as well as exchanges with third countries (non-EU countries).

Directive 2010/53/EU of the European Parliament and of the Council of July 7, 2010 has been harmonized into the Romanian legislation by:

- Law no. 95/2006, republished, on health reform, and its subsequent amendments and additions;

- Emergency Ordinance no. 35/2012 for the modification and completion of some normative acts in the field of health.

- Order no. 613 of May 29, 2014, for approval of the information procedures with respect to the exchange of human organs intended for transplantation between Romania and the other Member States of the European Union

➢ Commission Implementing Directive 2012/25/EU of October 9, 2012, laying down information procedures for the exchange, between Member States, of human organs intended for transplantation.

This Directive complements Directive 2010/53/EU and establishes uniform procedures for the transmission of information between Member States regarding the donor and the donated organ, the traceability of organs, the reporting of incidents and of serious adverse reactions.

The interconnection between Member States is carried out by the European Commission.

This directive has been harmonized into the Romanian legislation by:

- Order of the Minister of Health no. 613 for approval of the information procedures with respect to the exchange of human organs intended for transplantation between Romania and the other Member States of the European Union

➢ Commission Directive 2012/39/EU of November 26, 2012, amending Directive 2006/17/EC as regards certain technical requirements for the testing of human tissues and cells.

Annexes II and III to Directive 2006/17/EC are amended and Member States are required to enact administrative acts for the uniform testing of tissues and cells.

This directive has been harmonized into the Romanian legislation by:

- Order no. 371 of March 15, 2013, amending and supplementing the Technical requirements for the donation, collection, testing, processing, preservation, distribution, coding and traceability of tissues and cells of human origin used for therapeutic purposes and notification of serious adverse events and serious adverse reactions during their transplantation, approved by the Order of the Minister of Public Health no. 1,763/2007.

➢ Commission Directive (EU) 2015/565 of April 8, 2015, amending Directive 2006/86/EC as regards certain technical requirements for the coding of human tissues and cells.

This Directive amends the provisions of Directive 2006/86/EC on the format of the Single European Code, the minimum requirements for the management of the Single European Code, the addressability, accessibility and maintenance of the European coding system.

Commission Directive (EU) 2015/565 of April 8, 2015, amending Directive 2006/86/EC has been harmonized into the Romanian legislation by:

- Order no. 417/2017 of April 06, 2017, amending and supplementing the Technical requirements for the donation, collection, testing, processing, preservation, distribution, coding and traceability of tissues and cells of human origin used for therapeutic purposes and notification of serious adverse events and serious adverse reactions during their transplantation, laid down by the Order of the Minister of Public Health no. 1,763/2007.

➢ Commission Directive (EU) 2015/566 of April 8, 2015, implementing Directive 2004/23/EC as regards procedures for verification of equivalent quality and safety standards for imported tissues and cells.

The Directive amends and supplements the provisions of Directive 2004/23/EC with respect to the imports into the European Union of human tissues and cells as well as of products manufactured or derived from human tissues and cells and intended for human use. Tissue import centers will need to be accredited, authorized and licensed by the authorities and be subject to control by the competent authorities.

Commission Directive (EU) 2015/566 of April 8, 2015, has been harmonized into the Romanian legislation by:

- Order no. 1257/2017 of October 30, 2017, amending and supplementing the Order of the Minister of Public Health no. 1,242/2007 for the approval of tissue and cell donor selection

and evaluation standards, alert systems and emergency procedures, qualification of personnel in tissue and cell banks, quality system, import and export of human tissue and cells, relations between tissue and cells banks and third parties.

The Romanian legislation also includes other legal and administrative acts that complete the general legal framework in the matter:

- Law no. 17/2001 on the ratification of the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, the Convention on Human Rights and Biomedicine[15], and the Additional Protocol to the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings[16].

- Law no. 104/2003, republished, on manipulation of human corpses and collection of organs and tissues from corpses for transplantation, and its subsequent amendments and additions.

- Order no. 183/2005 on the approval of the Organization and Functioning Regulation, the organizational chart, the composition of the Scientific Council of the National Transplant Agency, as well as the attributions of the Deputy Strategy and Management Director of the National Transplant Agency, and its subsequent amendments and additions.

- Order no. 477/2009 on the establishment of the National Transplant Registry, the appointment of persons responsible for managing the data in the National Transplant Registry from accredited health establishments for the purpose of carrying out transplantation of organs, tissues and cells of human origin for therapeutic purposes and determining the data necessary for the registration of a person and assigning the unique registration code of the National Transplant Agency, and its subsequent amendments and additions.

- Order no. 860/2013 for approval of the accreditation criteria for transplantation of organs, tissues and cells of human origin, and its subsequent amendments and additions.

- Order no. 1155/2014 for the approval of the Norms on the national implementation of a rapid alert system in the field of transplantation of organs, tissues and cells of human origin.

- Law no. 9/2016 for the ratification of the Additional Protocol to the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, with respect to the transplantation of organs and tissues of human origin, signed at Strasbourg on February 20, 2015.

- Order no. 855/2017 for the approval of therapeutic protocols for the procurement of organs, tissues and cells of human origin from living and/or deceased donors.

3. THE EUROPEAN UNION ACTION PLAN ON ORGAN DONATION AND TRANSPLANTATION

We can argue that considerable efforts have been made by the European Commission to support organ transplantation through legal measures, as we have shown above, efforts that have been supported through funding of scientific research projects.

In the same context, the European Commission adopted an *Action plan on Organ Donation and Transplantation (2009-2015): Strengthened Cooperation between Member*

[15] Concluded at Ovideo on April 4, 1997;
[16] Signed in Paris on January 12, 1998;

States[17] in 2008, which proposed 3 priority actions: increasing organ availability, enhancing the efficiency and accessibility of transplantation systems, and improving the quality and safety of transplant products.

In 2017, the European Commission assessed the effectiveness *of the Action Plan* through a *Study on the uptake and impact of the EU Action Plan on Organ Donation and Transplantation (2009-2015) in the EU Member States*. Among the findings of the study, we mainly acknowledge that since the enactment of the Plan, the total number of organ donors increased considerably at EU level;[18] there was also an increase in the number of transplants[19].

Most countries shown a steady increase in donations, but fluctuations or even regressions have also been reported, this trend being observed in a few countries that have been more affected by the economic crisis, where the poor results might be a consequence of the financial crisis on the national health systems[20].

We can safely say that the attitude of the Community institutions and of the Member States has led to significant progress in this area, both in terms of legislation and of health.

[17] Action Plan on Organ Donation and Transplantation (2009-2015): Strengthened Cooperation between Member States https://ec.europa.eu/health/ph_threats/human_substance/oc_organs/docs/organs_action_ro.pdf

[18] From 12.3 thousand in 2008 to 14.9 thousand in 2015 (21%), this figure including both the increase of deceased donors of organs (12%) and the living donors of organs (29.5%).

[19] An increase by 4,641, from 28,066 transplants in 2008 to 32,707 in 2015

[20] R. Bouwell, T. Wiegers, S. van Schoten, R. Coppen, R. Friele, Study on the uptake and impact of the EU Action Plan on Organ Donation and Transplantation (2009-2015) in the EU Member States. European Commission, November, 2017. https://ec.europa.eu/health/sites/health/files/blood_tissues_organs/docs/2017_euactionplan_2009-2015_impact_exe_en.pdf;

Editeur/Editor : Prodifmultimedia Paris ISSN: 0248-2851

L'Europe unie/United Europe is an academic international journal edited in Paris (French ISSN) by:

- Université Catholique de Lille (France)
- Faculté Libre de Droit de Toulouse (Institut Catholique, France)
- Mouvement Européen Nord (Lille, France)
- Association «Confrontations» (Paris, France)
- University of Medicine, Pharmacy, Sciences and Technology of Tirgu-Mureş
- University «Babeş-Bolyai» de Cluj-Napoca (Roumanie)
- École de Droit de Tallin, Université de Technologie de Tallin (Estonie)
- University of Beira Interior (Portugal)
- Jean Monnet Project (EU).

Université Catholique de Lille (Faculté Libre de Droit C3RD)
Faculté Libre de Droit, 60 Boulevard Vauban BP 109, 59016 Lille Cedex France
Tel. 0320159688, E-mail: international@icl-lille.fr
www.univ-vatholille.fr

Faculte Libre de Droit Institut Catholique
de Toulouse
31 Rue de la Fonderie BP31068 Toulouse Cedex 7
Tél: 05 61 36 81 22 Fax: 05 61 36 81 37
E-mail: secr.univ2@ict-toulouse.asso.fr

Mouvement Européen Nord
219 bis, bd de la Liberté, BP 1134, 59 012 Lille Cedex, France
Tél. : 03 20 52 72 89, Fax : 03 20 97 73 60, E-mail: mouveuropeen@wanadoo.fr
http://www.mouvement-europeen.org/section/

Association «Confrontations» (Paris, France)
4 Place de Valois 75001 Paris, Tel. 0033142605241,
E-mail: courriel@confrontations.fr
www.confrontations.fr

University of Medicine, Pharmacy, Sciences and Technology of Târgu-Mureș,
Gheorghe Marinescu Street no 38, Târgu Mureș, 540139, România
Tel.: +40 265 215.551, Fax: +40 265 210.407
E-mail: rectorat@umftgm.ro , www.umfst.ro/en/home.html

Babeş-Bolyai University
Faculty of European Studies
1, Mihail Kogalniceanu Street
RO-400084 Cluj-Napoca 0264 40.53.00 0264 59.19.06
www.ubbcluj.ro

Tallinn Law School at Tallinn University of Technology
Akadeemia tee 3, 12618 Tallinn, Estonia
Tel.: 003726202430 Fax: 003726202429
E-mail: tls@ttu.ee, www.ttu.ee/tallinn-law-school

Université de Beira Interior (Portugal)
Convento de Sto. António, 6201-001 Covilha
Tel:+351(275)319700 Fax:+351(275)319057, www.ubi.pt

ISSN: 0248-2851
EAN: 99782749700519

Editeur: Publishing Inc.
European Readings & Prodifmultimedia
www.european-ebook-institute.org