

Europe and the World: A law review

Editorial

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Editorial

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We are proud to launch this new journal, focused on Europe's role in world affairs, and how law contributes to shaping that role. As a journal we aim to break new ground, in various ways, described below. What is not new is the ever greater global impact which 'Europe' has. It is not generally *bon ton* to speak about Europe in those terms, and the mass media in particular prefer to look at our continent as crisis-ridden, somewhat sclerotic, and definitely waning compared to Asian and other powerhouses. But those with a sharper and more independent eye cannot but notice that 'Europe is still a superpower'.¹ Any reader who reads this with a frown is highly recommended to pore over Moravcsik's compelling analysis, which we embrace as an outstanding articulation of the reality of Europe's role in the world. Political scientists and international relations scholars, particularly those of the constructivist bend, have long recognized the power that Europe projects. Much of their debate has centred on Europe as a normative power,² which provides a near seamless transition to the particular and special role that law plays in shaping a global Europe. That role also puts the European Union into focus, as the preponderant European actor when it comes to Europe's normative power.

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1 Andrew Moravcsik, 'Europe is Still a Superpower', *Foreign Policy*, 13 April 2017 <http://foreignpolicy.com/2017/04/13/europe-is-still-a-superpower/>.

2 Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *JCMS* 235–258.

The evidence for this special role for law and its institutions is overwhelming. To start, the Lisbon Treaty put great emphasis on building stronger constitutional and institutional foundations for the EU as a global actor. It framed an extensive normative agenda, aiming to project, in the world, the values which characterize Europe and the EU (see Articles 3(5) and 21 TEU). Most of those values are deeply constitutional: democracy, the rule of law, and human rights. The Lisbon Treaty also equipped the EU for taking a new and more active role in diplomatic and international relations by establishing the European External Action Service and expanding the role of the EU High Representative.

Such normative ambition and institutional potential in no way guarantees actual impact. But here too there is incontrovertible evidence. The EU is as busy a treaty negotiator as any other world power, something the Brexit process puts irrefutably and even painfully in the spotlight.³ Its participation in international lawmaking has long transcended trade and economic affairs, important as they are, and includes the environment, defence and political cooperation, conflict of laws, migration, criminal justice cooperation, as well as human rights. And it is not just as a treaty-maker that the EU has global effect. The clout of its huge internal market turns it into a world regulator, not shy to push for what Joanne Scott calls the territorial extension of its laws, be they on climate change, maritime transport, finance, or data protection.⁴ EU competition policy has an unavoidable global reach. The European Court of Justice does its fair bit as well: scrutinizing the equivalence of US data protection (*Facebook*),⁵ establishing a right to be forgotten on the internet (*Google Spain*),⁶ holding the UN to account as regards its counterterrorism policies (*Kadi*),⁷ and confirming the extension of EU emissions trading to international air traffic.⁸

This journal supports the global projection of Europe's values, and the EU's role as a global actor. We think that that role is often a progressive one, inspired by the EU's genetic code of effective

3 'After Brexit: UK will need to renegotiate at least 759 treaties', *Financial Times* (30 May 2017).

4 Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 *American Journal of Comparative Law* 87–125. See also Anu Bradford, 'The Brussels Effect' (2012) 107 *Northwestern University Law Review* 1–67.

5 Case C-362/14 *Schrems* EU:C:2015:650.

6 Case C-131/12 *Google Spain* EU:C:2014:317.

7 Joined Case C-402/05 and C-415/05 *Kadi and Al Barakaat* EU:C:2008:461

8 Case C-366/10 *Air Transport Association of America* EU:C:2011:864.

international cooperation transcending the nation state. But with great power comes great responsibility, and the scrutiny of law and legal process. This journal hence equally aims at holding Europe and the EU to account. As a forum for scholarly debate about the way in which the law shapes Europe's global role, we intend to be critical in the best possible academic tradition.

As mentioned, our journal also intends to break new ground. We live in a world replete with academic literature, where a new journal always needs to justify its existence and objectives. But we have our reasons for launching it. In our field, collections of essays are the main outlet for high-level papers. They play a vital role, but are not always easily accessible. Our journal, by contrast, will be fully open access, and as such at the vanguard of new directions in academic publishing – whilst employing the established tools for achieving academic excellence, such as blind peer review. We are most grateful to UCL Press for enabling and funding this.

We also intend to be irreverent of intra- and inter-disciplinary boundaries. Our journal is not just about EU law, but will equally focus on international and domestic law. We intend to include the work of political scientists, or any other social scientists for that matter, with an interest in law and legal phenomena. There is room for doctrine, theory, law in context, and cross-disciplinary work. Europe's role in the world manifests itself in countless legal ways, and our journal aims to embrace this diverse landscape, pluralist in more ways than one.

The first issue of *Europe and the World* addresses pressing issues raised by the EU's active participation in current international affairs: regulatory cooperation under the Transatlantic Trade and Investment Partnership (TTIP); the EU's and Member States' external representation; their participation in international dispute settlement (IDS) mechanisms, including investor-to-state dispute settlement (ISDS); and the consequences of Brexit for individual rights. As is the intention of this journal these pressing current issues are all given meaning through the lens of deeper institutional and contextual analysis.

It has become increasingly unlikely that TTIP will come into being as it had been envisaged for a long time – by some as *By-Pass to Happiness* by others as *Rosemary's Baby*. However, even without TTIP ever entering into force the phenomenon of international 'regulatory cooperation' as a means of exchanging and reaching agreement between regulators that are bound by EU rules and those who are not came as close to reality as anything that is seriously considered in international negotiations. Marija Bartl traces the influence of this cooperation on

the internal EU regulatory culture by placing it against an innovative analytical framework for international institutional structures. She argues that the project of regulatory cooperation cannot be explained by external influences on the EU but should rather be seen as a logical emergence of internal structures and power struggles.

The CJEU's Opinion 2/13 on the EU's accession to the ECHR has attracted much scholarly and political criticism. Yet the EU's position on IDS mechanisms is very contextual. On the one hand it promotes such IDS mechanism, and on the other the case law of the European Court of Justice has highlighted particular institutional tensions arising from the EU's participation in IDS. Alan Rosas offers a comprehensive and insightful analysis of IDS mechanisms included in multilateral and bilateral EU agreements and of ISDS agreed between Member States. His article explains in which way IDS mechanisms pose challenges to the EU legal order and hence why any analysis of them must in fact be contextual.

The Lisbon Treaty has significantly strengthened the EU's external representation. As a result it has shaken up the division of roles and tasks of the Council and Commission and reinvigorated the discussion on the division between CFSP and non-CFSP. Frank Hoffmeister analyses the post-Lisbon rules, explains the relevance of the division between CFSP and non-CFSP and of EU diplomacy in this context. His reasoning is based on the emerging body of case law of the CJEU concerning external representation and an in-depth study of the EU's external relations practices in trade and environmental negotiations, as well as in security governance in the context of Iran and Ukraine. Hoffmeister argues that the external representation of the EU and its Member States remains a multi-layered construction with both supra-national and intergovernmental elements that leans on the Commission but reserves a definite role for the Council through its President and the High Representative.

Finally, the most acute political and legal development of 2017 is the start of the Brexit negotiations. Annette Schrauven focuses in her article on the personal and individual consequences of high politics. She comprehensively maps and explains the rights of EU citizens living in the UK and UK citizens living in the EU as they would stand without a withdrawal agreement. She then offers an analysis of the possibilities and problems of securing residence and social security rights post Brexit based on current EU, international and national law. The article finally considers where and how non-state actors could protect rights in and despite the negotiation process.

Our choice of starting this journal was fundamentally motivated by the need we see for an open and inclusive, as well as informed and thoughtful exchange on Europe's role and influence in the world. This is what we hope to achieve by offering an open access forum for high-quality academic analysis in the articles, and for critical observations on current developments in our blog. We are happy and proud that this is the moment that the conversations begin.