



Institute for International  
Law and Justice

**IILJ International Legal Theory Colloquium Spring 2010**  
***The Turn to Governance:***  
***The Exercise of Power in the International Public Space***

Professors Benedict Kingsbury and Joseph Weiler

NYU Law School

Straus Institute for the Advanced Study of Law and Justice

Wednesdays 2pm-3.50pm on dates shown

Pollack Colloquium Room, Furman Hall 9th Floor, 245 Sullivan Street  
(unless otherwise noted)

(additional seminar for students et al is Thursdays 4pm-5.50pm, on GAL)

Topics are indicative and are subject to change.

- January 20 Andrew Hurrell, Oxford University  
Topic: Emerging Powers, Global Order and Global Justice
- January 27 Richard Stewart, NYU Law School  
Topic: The World Trade Organization: Multiple Dimensions Of  
Global Administrative Law
- February 3 Robert Keohane, Princeton University  
Topic: The Regime Complex for Climate Change (paper with David Victor,  
UC San Diego)
- February 10 No Colloquium - Postponed due to weather conditions
- February 17 No Colloquium
- February 24 Gianluigi Palombella, University of Parma, Law Faculty  
Topic: Rule of Law in Extra-National Governance
- March 3 Joseph Weiler, NYU Law School  
Topic: On the Distinction between Values and Virtues in the Process of  
European Integration
- March 10 David Kretzmer, Hebrew University/Ulster  
Topic: The UN Human Rights Committee and International Human Rights Monitoring  
(SPECIAL SESSION, 4pm-5.50pm, Pollack Colloquium Room, Furman Hall 900)
- March 11 Jan Klabbers, University of Helsinki  
Topic: Controlling International Bureaucracies
- March 17 No Colloquium – Spring Break
- March 24 Marta Cartabia, University of Milan  
Topic: Are Rights Always the Right Answers?
- March 31 No Colloquium
- April 7 Grainne de Burca, Fordham Law School**  
**Topic: EU International Relations: The Governance Mode of Foreign Policy**
- April 14 Beth Simmons, Harvard Government Department  
Topic: Effects of Investor-State Treaty Regimes and Arbitral Processes
- April 21 Benedict Kingsbury, NYU Law School  
Topic: Techniques of Global Governance

## **EU International Relations: The Governance Mode of Foreign Policy**

### **Gráinne de Búrca**

*[Note: The work I am presenting here is very much work-in-progress. It is part of a project on the EU as an international actor, focusing on the distinctive ways in which the EU acts in the world, and on how it has extended some of the governance modes which it has developed internally into its external domain. The intuition is that the EU has developed a mode of conducting international relations which is quite different from that of nation states, but which is nonetheless a foreign policy of kinds. Eventually, the aim is to conceptualize this governance mode of conducting foreign policy more clearly and to consider its implications for international relations more generally. But for now the argument is focused on the EU rather than the global sphere, and the main argument I want to make is that the EU has developed a distinctive governance mode of conducting international relations which differs from the conventional foreign-policy mode of states. This argument is sketched out in the paper below, and exemplified in part by drawing on a recent foreign policy strategy of the EU, the European Neighbourhood Policy, and on the EU strategy of Inter-regionalism. ]*

### **1. Introduction**

There is an extensive existing literature on the foreign policy of the EU, interrogating its character and generally distinguishing it from the foreign policy of states— often with the US as an implicit or explicit comparator. A range of different terms has been used in recent years to define the distinctive nature of the EU's international identity and the particular character of its external role, with commentators variously claiming that the EU is or exercises a soft power,<sup>1</sup> normative power,<sup>2</sup> civilian power,<sup>3</sup> civilising power,<sup>4</sup>

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<sup>1</sup> J. Nye, *Soft Power: The Means to Success in World Politics* (Public Affairs, 2004), R. Kagan, *Of Paradise and Power, America and Europe in the New World Order* (Knopf, 2003)

structural power,<sup>5</sup> global power,<sup>6</sup> or that the EU constitutes a security regime,<sup>7</sup> or even an empire.<sup>8</sup> While my argument shares some of the premises and insights of parts of this literature, my sense is that there is a different and significant dimension of the EU's international relations character which is not captured by the existing accounts and to which I want to draw attention. In particular, I am not arguing that the distinctiveness lies in the fact that the EU pursues a broadly 'liberal' foreign policy, since many other states (Canada, Sweden, at times the US etc) do so or have done so at different times, nor that it lies in non-reliance on military power, since the foreign policy of other states can also be described in this way.<sup>9</sup> Nor do I want to focus on whether or not the EU is a more 'virtuous' international actor than others. Zäidi puts it well when he argues that we need to consider Europe "as a living, complex and contradictory actor and not as an idealized actor whose preference for norms is seen as a guarantee of its good faith and disinterestedness".<sup>10</sup> My argument is that the different character of EU foreign policy lies in a combination of features that I will outline and illustrate below, which I describe as a governance mode of international relations. There are two aspects of the argument which I particularly want to emphasize at the outset. The first is that too much reliance on Hoffman's classic distinction between high and low politics in analyzing EU foreign affairs<sup>11</sup> misses out on an important evolution which has been taking place in the

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<sup>2</sup> I. Manners, "Normative power Europe: a contradiction in terms?" (2002) 40 *JCMS* 235–58. H. Sjørnsen, "The EU as a normative power: How can this be?" (2006) 13 *JEPP* 235-251 and for a critical reflection see T. Diez "Constructing the Self and Changing Others: Reconsidering Normative Power Europe" (2005) 33 *Millennium: Journal of International Studies* pp 613-36

<sup>3</sup> F. Duchêne, "The European Community and the uncertainties of interdependence" in M. Kohnstamm and W.Hager (eds) *A Nation Write Large? Foreign Policy Problems before the European Community* (Basingstoke, Macmillan, 1973), M. Tèlo, *Europe: A Civilian Power?* (Palgrave, Macmillan, 2006). For a critical commentary on the 'civilian' and 'normative' Europe debates, see J. Orbie "'Civilian Power Europe: review of the Original and Current Debates" (2006) 40 *Cooperation and Conflict* 123

<sup>4</sup> A. Linklater "A European Civilizing Process" in C. Hill and M. Smith, *International Relations and the European Union* (OUP, 2005)

<sup>5</sup> S. Keukeleire and J. MacNaughtan, *The Foreign Policy of the European Union* (Palgrave, Macmillan

<sup>6</sup> C. Bretherton and J. Vogler, *The European Union as a Global Actor* (Routledge, 2<sup>nd</sup> ed, 2006) and J. Rogers, "From Civilian Power to Global Power: Explicating the EU's Grand Strategy through the use of Discourse Theory" (2009) 47 *JCMS* 831-862. For an interesting approach which focuses on the distinctive political ethics of the EU, see R.Howse and K. Nicolaidis "This is my EUtopia" (2002) 40 *JCMS* 767-92.

<sup>7</sup> F. Charillon "The EU as a Security Regime" (2005) 10 *European Foreign Affairs Review* 517-533

<sup>8</sup> J. Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (OUP, 2006)

<sup>9</sup> See e.g. H. Maull "Germany and Japan: The New Civilian Powers" *Foreign Affairs* (Winter 1990/91)

<sup>10</sup> Z. Lăidi "European Preferences and their Reception" in Z. Lăidi (ed) *European Foreign Policy in a Globalized World* (Routledge, 2009) at p. 18.

<sup>11</sup> S Hoffmann "The European Process at Atlantic Cross Purposes" (1965) 3 *JCMS* pp. 85-101.

international relations of the EU.<sup>12</sup> The second is that a better understanding of the specific international relations mode of the EU can be gained if we focus on how it has extended various aspects of the novel governance modes and processes which have been developed in its internal domain into its international relations.

To highlight the distinctiveness of the EU mode of conducting international relations, I will begin by outlining two ideal-types: the foreign policy mode and the governance mode. I will go on to outline briefly the evolution of EU international relations, and then to exemplify aspects of the EU's governance mode by introducing the European Neighbourhood Policy and EU inter-regional policy respectively.

## 2 Why are EU international relations distinctive?

Much of the distinctiveness of the EU in international relations has previously been attributed to the legally circumscribed external competences of the European Economic Community which were mainly in the fields of trade and aid, and hence to the EEC's limited engagement in international relations. The result of this circumscribed engagement was that the main emphasis of European Community external relations was on issues which were conventionally categorized as matters of 'low' politics, rather than the matters of 'high' politics which are perceived to be the real meat of foreign policy. My argument however is that the EU has developed a specific governance mode of international relations which characterizes its external actions and policies, even as it has begun to develop and broaden the scope of its international relations to include matters of 'higher' politics as classically conceived. This governance mode of international relations is not attributable only to the EC's historically limited legal competences, or to its lack of real military capacity, but to a more complex range of features – including its

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<sup>12</sup> On the waning significance of the distinction in the EU context, see J.V. Louis "The European Union: From External Relations to Foreign Policy?" College of Europe, EU Diplomacy Papers 2/2007. For an early challenge to narrow definitions of 'politics' in understanding international relations, see R. Keohane and J. Nye "Transnational Relations and World Politics" (1971) 23 *International Organization* 329-349

institutional characteristics, the instruments and processes it relies on, and the nature of the goals it pursues - specific to the EU as a novel transnational entity.

This claim at one level may be said merely to describe something which is self-evident even if not altogether easy to conceptualize. After all, it is clear that the EU is not a state but a novel political organization composed of states, that it does not have the centralized authority and autonomy of a state in international relations, and that it has limited external powers and a highly complex set of institutions and policy instruments. All of these and other features specific to the EU necessarily add up to a way of engaging in international relations that is different from the way most states do so. But it is important to identify clearly what the particular characteristics are that distinguish the way the EU functions as an international actor in order to gain a sharper understanding of what it is that is genuinely different about the EU in this respect. My argument is not that the EU lacks a 'true' foreign policy or has only a partial foreign policy, but rather that it has – weaknesses and strengths aside - a comprehensive but distinctive governance mode of foreign policy, which is not best understood or evaluated by inquiring whether it matches the foreign policy mode of states.

There is a longstanding literature on the way in which the foreign policy of states is shaped by their domestic structures,<sup>13</sup> or by domestic politics.<sup>14</sup> I want to make a slightly different argument that the EU's governance mode of international relations reflects an extension of its internal ways of operating, which can be explained by two kinds of reasons. The first is identity-driven. In other words, the EU has come to understand itself as a particular kind of actor in relation to the way it has evolved and how it operates in its internal realm, and – unsurprisingly - it projects that identity and mode of operating also into its external relations. This takes the form both of projecting particular goals, norms, and objectives in its external relations, and of extending particular modes and processes

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<sup>13</sup> See e.g. H. Kissinger, "Domestic Structure and Foreign Policy", the first of the three essays in *American Foreign Policy: Three Essays* (NY, 1969) and P. Katzenstein "International Relations and Domestic Structures: Foreign Economic Policies of Advanced Industrial States" (1976) *International Organization* 1-45

<sup>14</sup> For a review see J. Fearon "Domestic Politics, Foreign Policy and Theories of International relations" (1998) *Annual Review of Political Science* 289-313

of trans-national cooperation and policy-making, into the external realm.<sup>15</sup> The second kind of reason is instrumental. In other words, the EU has enjoyed significant success as a regional political and economic system, and has found ways of governing in its internal domain that reconcile a significant degree of state sovereignty with the pursuit of common goals, and that manage the processes of interdependence well. Further, the endeavour to extend both its norms and ways of governing into international relations is likely to advantage the EU in those settings, or at least to prevent it from being disadvantaged vis-à-vis other actors and entities.<sup>16</sup> Instrumentally speaking therefore, it is hardly surprising that the EU would seek to extend its norms, policy processes and ways of governing into its external relations.

### 3. The 'Foreign Policy' and the 'Governance' Modes of International Relations

Below I outline briefly the two ideal-types, to help in sharpening the argument about the ways in which the EU acts differently from states in international relations.

#### *A. The foreign policy mode of international relations*

Foreign policy is a term which has traditionally been used to describe the way in which states conduct their relations with other states within the international system. In other words, it originated as a fundamentally state-centric concept, even if is increasingly used to include relations between states and other relevant actors such as international organizations. Broadly defined it is 'a policy governing international relations'<sup>17</sup> but it is sometimes more narrowly understood as 'the policy of a sovereign state in its interaction

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<sup>15</sup> M. Cremona in "The Union as a Global Actor: Roles, Models and Identity" (2004) 41 CMLRev 553 draws attention to the EU's 'exportation of regulatory norms'.

<sup>16</sup> A humorous anecdotal example of this appears in a commentary by Gideon Rachman "Europe's Plot to Take Over the World", Financial Times, October 5, 2009 on the proposal within the G20 summit for a form of economic peer review akin to the EU's 'open method of coordination'.

<sup>17</sup> [http://wordnet/princeton.edu](http://wordnet.princeton.edu)

with other sovereign states’<sup>18</sup> or ‘approaches and goals pursued by a nation in its interactions with other nation states, in furtherance of national interests’.<sup>19</sup>

(a) Framework: The institutional framework of the foreign policy mode conceives of the state as a unitary actor. Control over the shaping and conduct of international relations is entrusted to the executive branch of the state. The main foreign policy actors include the head of state/president, foreign minister/secretary of state and defense minister/secretary, supported by a department of foreign affairs, a diplomatic service, and other key actors such as national security advisers. Courts are not generally accorded a central role in the foreign-policy constitutional framework.<sup>20</sup>

(b) Goals: The specific substance or goals of the foreign policy mode of international relations obviously vary from state to state and from time to time, but a major concern of the state foreign policy mode has been with what Arnold Wolfers called possession goals,<sup>21</sup> i.e. those which focus on the protection or strengthening of national possessions and resources, including territory, sovereignty, and values. The goals of the foreign policy mode are linked to the preservation and furtherance of national interests and the strengthening of national power and influence.

(c) Instruments and processes: A range of instruments is traditionally used for the pursuit of foreign policy, although the precise nature and strength of these depends on the power, resources and capabilities of the state in question. The instruments of the foreign policy mode range from the tools of diplomacy at one end, through the use of economic and political incentives and sanctions of various kinds, to the use of military power and force at the other end. In terms of process, foreign policy is understood as being

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<sup>18</sup> Merriam-Webster Dictionary

<sup>19</sup> [www.laits.utexas.edu](http://www.laits.utexas.edu)

<sup>20</sup> There has been a lively debate in the US on the question whether the courts have been (or should be) engaged with foreign policy questions or not, and whether they traditionally have been deferential to the executive branch or not. See T.M. Franck “Courts and Foreign Policy” (1991) *Foreign Policy* 66-86 and *Political Questions/Judicial Answers: Does the Rule of Law Apply to Foreign Affairs?* (Princeton, 1992) and A. Lavinbuk “Rethinking Early Judicial Involvement in Foreign Affairs: An Empirical Study of the Supreme Court’s Docket” (2005) 114 *Yale Law Journal* 855-903

<sup>21</sup> Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* ( Johns Hopkins University Press, 1965) Chap 5, in particular pp 73-76.

autonomously formulated and developed by state actors in pursuit of national interests, and implemented by them in the external affairs of the state. Even if the structural constraints imposed by the international system on the domestic processes of foreign policy-making are taken into consideration, the vantage point of the foreign policy decision-making mode is that of national authority, actors and interests. The foreign policy mode rests mainly on specific rather than diffuse forms of reciprocity.<sup>22</sup>

The foreign policy mode of international relations tends to be relatively pragmatic, often short-term, and reactive to international events and crises rather adopting than a long-term perspective.

### *B. The governance mode of international relations*

The term governance is a relatively more recent one which is still only loosely defined within political science and international relations scholarship. The broadest definitions refer to “the act of governing, exercising authority” or “the way a country is governed or an organization is managed”<sup>23</sup> Unlike foreign policy, governance is not a term which is specific to the conduct of international relations, but a more general term which refers to ways of governing which take place outside of a conventional governmental framework (either because they take place trans-nationally where there are no centralized, authoritative governmental institutions, or because although they take place within the state they involve private or non-state actors as well as or instead of governmental actors) and which often entail a shift away from traditionally hierarchical forms of political rule.<sup>24</sup>

(a) Framework : As applied to the sphere of international relations, the governance mode describes the collective conduct of international relations by a network of different

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<sup>22</sup> R. Keohane “Reciprocity in International Relations” (1986) 40 *International Organisation* pp 1-27 defines specific reciprocity as “situations in which specified partners exchange items of equivalent value in a strictly delimited sequence. If any obligations exist they are clearly specified in terms of rights and duties of particular actors”.

<sup>23</sup> Dictionary.reverso.net

<sup>24</sup> For an early analysis see J.N. Rosenau and E-O. Czempiel, eds *Governance without Government: Order and Change in world Politics* (Cambridge University Press, 1992)

actors, where policy is conducted through multiple channels involving a range of actors who are not all under the centralized control of a single executive branch. In the EU context, different parts of the Commission were responsible for many years for the conduct of different aspects of the EEC's external relations – development, trade, fisheries, enlargement, environment – while the heads of states or ministers for foreign affairs and later the Council or European Council were responsible more for the 'higher' political issues arising in international relations. In the absence of a central executive structure for the conduct of foreign policy, governance mode of international relations operates in a complex and decentralized way.

(b) Goals: The governance mode of international relations is associated with the pursuit of what Wolfers loosely defined as milieu goals rather than possession goals.<sup>25</sup> In other words, the focus of the goals of the governance mode are on shaping and stabilizing the surrounding and international environment. Milieu goals emphasize the promotion of long-term security, stability, sustainability, cooperation and peaceful international relations. While these goals may also be identified as involving 'the pursuit of the national interest' just as in the case of possession goals (and indeed while the distinction between Wolfers' two types of goal is obviously a matter of degree rather than a sharp difference in kind) milieu goals are generally goals which require the collaboration of other actors and cannot by their nature be unilaterally pursued or autonomously achieved.

(c) Instruments and Processes: The instruments of the governance mode entail significant use of regulatory mechanisms, agreements and legal norms. While some of the familiar tools of the foreign policy mode – including dialogue, diplomacy, political and economic incentives – fit comfortably within the governance approach, the emphasis of the governance mode is on the establishment of networks of stable, institutionalized and iterative relationships with other states, entities and regions, which often entail the creation of other policy-making, norm-generating, coordinating and monitoring

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<sup>25</sup> N.21 above.

institutions.<sup>26</sup> The governance mode of international relations is associated with the establishment of diffuse rather than specific forms of reciprocity.<sup>27</sup>

The governance mode tends to involve the pursuit of longer-term rather than short-term goals, and to be stronger in proactive or preventative terms (see e.g. the EU's development of its crisis-management and conflict-prevention capacity and policies). The governance mode emphasizes the intensification of interdependence, cooperation and institution-building rather than the pursuit of defined domestic interests.

To reiterate the point made at the outset: on this analysis, the significance of the differences between the ideal-type foreign policy mode and the governance mode of international relations is not that, for example, the governance mode necessarily entails a greater commitment to liberal goals such as human rights and democracy promotion than the foreign policy mode, nor that the foreign policy mode is premised on the existence of and willingness to use hard power while the governance mode is not. On the contrary, goals such as human rights and democracy promotion are compatible with the foreign policy mode to the extent that they are understood to promote the national interest and devised and implemented to that end, and the existence of military capacity is compatible with adopting a governance approach to international relations. The difference between the two modes lies in a combination of the characteristics and features identified above, but central amongst them is the emphasis on the creation of a network of stable, institutionalized and relatively participatory relationships with other international actors and regimes, in furtherance of milieu goals, establishing diffuse reciprocity, and pursuing a collective or coordinated approach rather than the unilateral formulation and imposition of policies.

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<sup>26</sup> M. Cremona has suggested that “there is a bias, inherent perhaps in the EU system, towards institutionalizing relationships and policy-making to a degree with which we are familiar in the regulatory state but less so in the sphere of foreign policy” *Recent Developments in EU External Relations Law* (2009)

<sup>27</sup> R. Keohane, n.22 above, p 4 explains diffuse reciprocity as entailing less a precise definition of equivalence, where “one’s partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded. Obligations are important. Diffuse reciprocity involves conforming to generally accepted standards of behaviour”.

In the next part I will outline briefly how the international relations of the EU have evolved over time, and will go on to argue that, even if the EU at times has borrowed the discourse and other features of the foreign affairs mode in an effort to present itself as a state-like unitary actor in international affairs, the EU's general way of behaving in global affairs hews much more closely to the governance mode than the foreign affairs mode.

#### 4. The evolution of EU international relations

Over the last decade and a half, the EU has placed increasing emphasis on its role as a global actor and in so doing has given prominence to the international relations of the EU to a much greater extent than before. Writing in 1982, it was plausible and even convincing for Hedley Bull to write that “there is no supranational Community in western Europe but only a group of nation states” and more specifically that “ ‘Europe’ is not an actor in international affairs nor does it seem likely to become one. The Europe with which I am concerned is the actual one of state governments in which a minor role is played, chiefly as instruments of cooperation between governments, by various committees, assemblies and secretariats bearing the designation European, including those of the European Community amongst others”.<sup>28</sup>

There is indeed still a certain debate today, although in less insistent tones than those of Hedley Bull almost thirty years ago, over whether an EU ‘foreign policy’ really does exist.<sup>29</sup> At one end of the spectrum are those who view the EU as little more than a transmission belt – or a megaphone - for the domestic foreign policies of the strong

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<sup>28</sup> H. Bull “Civilian power Europe: A Contradiction in Terms” 1982 JCMS 149 at 151.

<sup>29</sup> John Peterson in “Trade Policy as Foreign Policy”, paper presented at the European Union Studies Association (EUSA) Montreal, May 2007, footnote 24 and text, refers to the fact that Javier Solana as recently as 2007 was forced to deny the claims put to him by members of the European Parliament in that the EU has no common foreign policy. See also the discussion in B.White, *Understanding EU Foreign Policy* (Palgrave, 2001) pp 36-37

member states,<sup>30</sup> while at the other end are those who view the EU in itself as an emerging global superpower.<sup>31</sup> In between, many different views about the nature and character of the EU as a global actor, and its conduct of international relations are held.<sup>32</sup> As the EU's attention, following the preoccupation of the first four decades of its existence with developing the success and strength of its internal domain, has shifted to external affairs and as its interest in exercising a global role has grown, scholars have similarly turned their attention to the task of understanding, characterizing, conceptualizing and critiquing this role.<sup>33</sup>

Ever since the creation of the European Union with its 'common foreign and security policy' pillar by the Maastricht Treaty in 1992, foreshadowed in some of the earlier provisions of the Single European Act in 1986, it is clear that the EU and its member states have consciously undertaken a series of steps to formalize and institutionalize the shaping of European Union international relations and activities. The most recent and perhaps most striking of these so far have been the steps taken in the Lisbon Treaty to create a set of foreign policy institutions with a view to strengthening the visibility and coherence of EU international relations. The EU, in other words, and the member states when revising the rules of the EU Treaties, has moved deliberately in recent times to raise the international profile of the EU and to strengthen the framework for it to engage as a global actor.

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<sup>30</sup> José Ignacio Torreblanca "Sarkozy's Foreign Policy: Where do European Interests and Values Stand?" European Council on Foreign Relations, February 2008, available online at [www.ecfr.eu/page/-/documents/Torreblanca-Sarkozy-Foreign-Policy.pdf](http://www.ecfr.eu/page/-/documents/Torreblanca-Sarkozy-Foreign-Policy.pdf)

<sup>31</sup> John McCormick, *The European Superpower*, (Palgrave, Macmillan 2006) and A. Moravcsik "Europe: Quietly Rising Superpower in a Bipolar World" unpublished paper, 2009

<sup>32</sup> For a useful synthesis of the difficulties of characterizing and evaluating European Union foreign policy, see B. White "Foreign Policy Analysis and European Foreign Policy" in B. Tonra and T. Christiansen (eds) *Rethinking European Union Foreign Policy* (Manchester University Press, 2004). For some earlier analyses see J. Zielonka (ed), *Paradoxes of European Foreign Policy* (Kluwer, 1998)

<sup>33</sup> For a selection of the many books on EU foreign policy, apart from those already cited, see F. Bindi (ed) *The Foreign Policy of the European Union* (Brookings, 2010), K. Smith, *European Union Foreign Policy in a Changing World* (2<sup>nd</sup> Edn, 2008), Z. Laidi (ed) *EU Foreign Policy in a Globalized World* (Routledge, 2009), S. Keukeleire and J. Macnaughtan, *The Foreign Policy of the European Union* (Palgrave, Macmillan 2008), C.Hill and M.Smith (eds) *International Relations and the European Union* (OUP, 2005), M.Smith, *Europe's Foreign and Security Policy* (Cambridge University Press, 2004).

Yet the external activities of the EU are not a recent phenomenon. The conscious constitutional emphasis on the international role of the EU over the past decade risks obscuring the significant external activity of the EU and the EC for many decades before that. As has been extensively documented in the literature, the EU has been engaged in international relations from the time of its inception in the 1950s,<sup>34</sup> although the main focus of these relations for much of that time was on trade and development assistance respectively. International trade - the common commercial policy, as it was labelled in EC parlance - was one of the few areas of explicit external competence granted to the new European Economic Community in the 1950s. EC development policy on the other hand emerged through the 'cooperation' and 'association' agreements made with a range of countries,<sup>35</sup> principally the former colonies of EEC member states, most prominently in the Yaoundé, Lomé and Cotonou Agreements with the African, Caribbean and Pacific (ACP) states. The external relations of the EEC also involved other specific fields such as transport,<sup>36</sup> fisheries, and environmental policy.<sup>37</sup>

In fact, the term 'external relations' came to have a very specific meaning in the European Union context as a result. It was used to depict the fields of trade, aid and a

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<sup>34</sup> For a small selection of the legal and other literature on EC external relations including early commentaries, see J.F. Deniau "The External Policy of the European Economic Community" (1961) 26 *Law and Contemporary Problems* 364-380. K. Simmonds "The Evolution of the External Relations Law of the European Economic Community" (1979) 28 *ICLQ* 644, C.W.A. Timmermans and E.L.M. Volker, Editors, *Division of Powers between the European Communities and their Member States in the Field of External Relations*, Kluwer, Deventer (1981), J.J. Costonis "The treaty-making power of the European Economic Community: the perspectives of a decade" [1967/68] 5 *CMLRev* 421-457, J. Steenbergen "The Common Commercial policy" [1980] 17 *CMLRev* 229-249, E. Wellenstein, "Twenty-five years of Community external relations" [1979] 16 *CMLRev* 407-423, D. O'Keefe and H.G. Schermers, Eds, *Mixed Agreements*, (Kluwer, Deventer, 1981), S. Konstantinidis and M. Evans, *The Legal Regulation of the European Community's External Relations after the Completion of the Internal Market*, P. Eeckhout, *The European Internal Market and International Trade: A Legal Analysis* (OUP, 1994) and more recently A. Dashwood and C. Hillion, *The General Law of EC External Relations* (Sweet & Maxwell, 2000).

<sup>35</sup> See e.g. W. Feld "The Association Agreements of the European Communities" (1965) 19 *International Organization* 223-249, A.J. Kondonassis "Some Major Trade and Development Programs of the European Economic Community with the LDCs: Towards a Common Development Policy?" (1984) 18 *Journal of Economic Issues* 651-662. Also Mary Sutton, *The Institutions of the EEC: How Development Cooperation Policy is Formulated*, Trocaire Ireland, 1976, Enzo Grilli, *The European Community and the Developing Countries*, (CUP 1993) and more recently M. Lister, *New Perspectives on European Union Development Cooperation*, Boulder 1999.

<sup>36</sup> See I. Macleod, I.D. Hendry, S. Hyett, *The External Relations of the European Communities: A Manual of Law and Practice* (OUP, 1996), Chap 11, and A. Mencik von Zebinsky, *European Union External Competence and External Relations in Air Transport* (Kluwer, 1996)

<sup>37</sup> See e.g. C. Mastellone "The External Relations of the EEC in the Field of Environmental Protection" (1981) 30 *ICLQ* 104-117

number of other discrete, sectoral areas of Community international activity, as contrasted with what were understood to be the more specifically political dimensions of foreign policy. The term external relations was seen as describing the areas of so-called low politics in which the new European Community was properly engaged, while matters of high politics were dealt with initially on an informal intergovernmental basis by the heads of state meeting within the context of European Political Cooperation (EPC) from 1970 onwards. The framework for EPC was formalized in Article 30 of the Single European Act, and later strengthened considerably and christened as the Common Foreign and Security Policy (CFSP) in the Maastricht Treaty in 1992, when the European Union was established. From the time of the Maastricht Treaty onwards, there was a significant further push towards strengthening this formal framework for EU international relations, culminating most recently in the provisions of the Lisbon Treaty. The Lisbon Treaty has now created a range of new institutions with a view to further bolstering the framework for and the conduct of EU international relations. Amongst the aspirations underlying these provisions was the idea of integrating the two fields which had developed separately – EC external relations on the one hand, and the more recently named common foreign and security policy on the other– by establishing a Foreign Minister (renamed the High Representative for Foreign and Security Policy after the failure of the Constitutional Treaty) and a diplomatic service (the European External Action Service). The aim of these and other recent changes seems to be the wish to move towards a more coherent and unified EU international relations policy framework which is neither substantively nor institutionally fragmented, and which emulates or draws on some of the traditional foreign policy institutions of states.

However, even before these latest formal institutional changes, various moves had been made to try to bring greater coherence to the conduct of EU international relations. The framework for EU international relations has been extremely complex and fragmented in a range of different ways, not only in the de facto separation of supposedly high and low political matters as outlined above, but also as a result of the separation of spheres of EU

policy into ‘pillars’<sup>38</sup> by the Maastricht Treaty, and the sharing of competence between the EU and the Member States across many fields which resulted, amongst other things, in the notion of mixity.<sup>39</sup> But the EU had begun to develop and use a range of strategies, instruments and policies which on the one hand avoided some of the legal and institutional complexities of its fragmented international relations framework, and which on the other hand addressed issues that could not readily be differentiated into the classic categories of high and low politics, in a more integrated way. Three significant examples of such strategies, instruments and policies are (1) the enlargement and pre-accession strategy which the EU developed from the early 1990s onward, after it was decided that a significant bloc of central and Eastern European states would be admitted as members<sup>40</sup> (2) the European Neighbourhood Policy (ENP) which was launched in 2003<sup>41</sup> and which was inspired by but adapted some of the practices and strategies of the preceding enlargement process and (3) the policy of inter-regionalism pursued by the EU in its relations with other regional groupings.<sup>42</sup>

In sum, while moves towards a more formally integrated and strengthened EU international relations framework for both the common foreign, security and defence policies on the one hand, and the other existing fields of external relations on the other,

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<sup>38</sup> The boundaries between three pillars, which began as the first European Community pillar, the second Common Foreign and Security Policy (CFSP) pillar in Title V of the Treaty on European Union, and the third Justice and Home Affairs pillar in Title VI of the Treaty on European Union, were formally dissolved by the Lisbon treaty but the actual institutional and normative separation between the foreign, security and defence policy on the one hand, and other fields of EU policy on the other remains clear. Following the Lisbon Treaty amendments, the CFSP and ESDP are dealt with in Articles 23-46 of the Treaty on European Union, while the former Community first pillar is integrated with the former third pillar in the Treaty on the Functioning of the European Union. The provisions on what were formerly EC ‘external relations’ are set out in Part Five of the Treaty on the Functioning of the European Union.

<sup>39</sup> For analysis of the idea of mixity and mixed agreements see D. O’Keeffe and H.G. Schermers, Eds, *Mixed Agreements*, Kluwer, Deventer (1981) and more recently P. Koutrakos

<sup>40</sup> 1993 European Council Conclusions, the 1997 launch of Agenda 2000,

<sup>41</sup> COM(2003)104 and COM(2004)373

<sup>42</sup> For some overviews, see the essays in the special issue of the *Journal of European Integration* (2005), *The EU as a Global Actor and The Role of Interregionalism*, Volume 27, also M. Telo edited volume, Also N. Alecu de Flers and E Regelsberger “The EU and Inter-regional Cooperation” in C. Hill and M. Smith *International Relations and the EU* (OUP, 2005) pp 317-342, B. Hettne and F. Söderbaum, “Civilian Power or Soft Imperialism? The EU as a Global Actor and the Role of Interregionalism” (2005) 10 *European Foreign Affairs Review* 535-552, and A. Hardacre and M. Smith “The EU and the Diplomacy of Complex Interregionalism” (2009) 4 *Hague Journal of Diplomacy* 197, V. Aggarwal “Explaining Trends in EU Interregionalism” in V. Aggarwal and E. Fogarty, eds., *European Union Trade Strategies: Between Globalism and Regionalism* (London: Palgrave, 2004)

were recently taken in the Lisbon Treaty, the EU had already been developing what I have described as a governance approach to international relations, pursuing particular kinds of goals and using specific processes to advance these, with a view to establishing an international presence of a particular kind. This governance approach builds on many of the ways in which the institutions of the EEC had carried on externally-oriented activities over many years. But it also entails the external extension of a range of governance methods – including so-called new and experimentalist modes of governance<sup>43</sup> - increasingly used by the EU in its internal domain to address complex policy problems, coordinating different interests and bringing a range of actors together into non-hierarchical, iterative processes for advancing common goals. The relationship between the modes of governing developed by the EU internally and its emerging foreign policy identity has attracted little attention so far, although a number of scholars have recently begun to look at questions of governance in the external relations of the EU.<sup>44</sup>

In the next section I will argue that the governance mode of international relations can be seen clearly in some of the strategies adopted in recent years for engaging with its neighbouring and other regions. These are strategies which exemplify key aspects of the EU's governance mode in their pursuit of milieu-type goals, their establishment of new institutions with the aim of creating stable, iterative relations of cooperation, and their reliance on a network of actors and diffuse forms of reciprocity. They are strategies which to different degrees suggest the extension by the EU of its own norms and methods of operation into its international relations. It is rather different in these ways from the

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<sup>43</sup> See C. Sabel and J. Zeitlin "Learning from Difference: The New Architecture of Experimentalist Governance in the European Union" (2008) 14 *European Law Journal* 271, and *Experimentalist Governance in the European Union: Towards a New Architecture* (OUP, 2010).

<sup>44</sup> M. Farrell "EU External Relations: Exporting the EU Model of Governance?" (2005) 10 *EFAR* 451-462, F. Schimmelpfennig and W. Wagner "External governance in the European Union" (2004) 11 *Journal of European Public Policy* 657-660, S. Lavenex, "EU External Governance in Wider Europe" (2004) 11 *JEPP* 680-700, B. Rosamund "The EU model of governance in world politics" (2005) 10 *EFAR* 463-478, Alex Warleigh "Learning from Europe: EU Studies and the Rethinking of International Relations" (2006) 21 *European Journal of International Relations* 31-51, A. Myrjord "Governance Beyond the Union: EU Boundaries in the Barents Euro-Arctic Region" (2003) 8 *EFAR* 239. (2003) 8 *EFAR* 239-257, Mette Sicard Filtenborg, Stefan Gänzle and Elizabeth Johannsen "An Alternative Theoretical Approach to EU Foreign Policy: 'Networked Governance' and the Case of the Northern Dimension Initiative" (2002) 37 *Cooperation and Conflict* 387 and T. Diaz "The Imposition of Governance: Transforming Foreign Policy Through EU Enlargement" Copenhagen Peace Research Institute Working Paper, (2000) <http://www.ciaonet.org/wps/dit04/>,

classical foreign policy approach, but it is arguably just as much a way of seeking to influence and engage with the outside world as is the conventional foreign policy mode.

## 5. Illustrations of the EU's Governance Mode of international Relations

While elements of the governance mode could be seen in the policies and practices of EC external relations over the years, some of the EU's strategies in recent years bring together and exemplify many of its key features in striking ways. This section uses the EU's European Neighbourhood Policy (ENP) and its policy of Inter-regionalism to illustrate central aspects of the governance mode in action. While these approaches, and indeed the prior process which inspired the ENP, the accession strategy, have been criticised from a range of perspectives<sup>45</sup>, and some are currently being revised, my interest for the purposes of this paper is not so much in addressing these critiques. Rather I want to use these approaches to illustrate what I am describing as the EU's governance mode of international relations, particularly because they exemplify the two key points which I emphasized at the outset: ie (1) the integration of what were classically considered to be matters of low and high politics respectively, covering e.g. trade, environment, security, political as well as economic cooperation and (2) the extension of some of the EU's distinctive internal modes of governance into the external domain. Below I will outline the relevant aspects of the European Neighbourhood Policy and the EU's inter-regionalism policy respectively with a view to elaborating the argument.

### *(i) The European Neighbourhood Policy*

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<sup>45</sup> E.g. the nature and operation of conditionality in the case of accession/enlargement; soft imperialism or 'the shadow of hierarchy' (Gänzle), and the absence of the membership incentive in the case of the ENP; the undeveloped nature of most regional partners in the case of inter-regionalism, and exploitation of asymmetrical relations in the case of the renegotiated ACP agreements

In its background paper of 2003<sup>46</sup> and a follow-up strategy paper in 2004,<sup>47</sup> the European Commission introduced the idea of a European Neighbourhood Policy with countries neighbouring the EU, which would be distinct from the process of accession for candidate countries. Although inspired by the success of the previous enlargement strategy and building on several of its methodologies, the ENP was also deliberately designed as a somewhat different kind of process and strategy. According to the Commission, the neighbourhood strategy would go “beyond existing relationships to offer a deeper political relationship and economic integration”, and it “remains distinct from the process of enlargement although it does not prejudge, for European neighbours, how their relationship with the EU may develop in future”.<sup>48</sup> The idea was to create a ‘ring of friends’, of ‘well-governed countries’ bordering the EU, which were not already the subject of integration arrangements with the EU (such as the European Economic Area) and which were not candidate states, but with whom there would be close cooperative relationships. There are 16 countries currently covered by the neighbourhood strategy,<sup>49</sup> which does not include Russia.<sup>50</sup> The ENP is a framework for a more complex structure, and encompasses or overlaps with a range of other bilateral and regional or sub-regional relations, including the previous Barcelona Process,<sup>51</sup> the more recently created Union for the Mediterranean,<sup>52</sup> the Northern Dimension Initiative,<sup>53</sup> the Eastern Partnership<sup>54</sup> and the Black Sea Synergy.<sup>55</sup>

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<sup>46</sup> COM(2003)104 “Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours”

<sup>47</sup> COM(2004)373 European Neighbourhood Policy Strategy Paper

<sup>48</sup> [http://ec.europa.eu/world/enp/policy\\_en.htm](http://ec.europa.eu/world/enp/policy_en.htm)

<sup>49</sup> These are the EU's ‘immediate neighbours’ by land or sea – Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Occupied Palestinian Territory, Syria, Tunisia and Ukraine.

<sup>50</sup> Russia had signed a Partnership and Cooperation Agreement in 1994, but rejected participation in the ENP. Instead a separate ‘strategic partnership’ based on four ‘common spaces’ was established with the EU in 2003. These four spaces are a common economic space, a space of freedom security and justice, cooperation in the field of external security, and research education and culture. The partnership has been criticized on the basis that these spaces cover mainly the areas in which the two share a common approach, and do not deal with the problematic issues such as the frozen conflicts in Georgia, the revolutions in Georgia and Ukraine

<sup>51</sup> [http://ec.europa.eu/external\\_relations/euromed/index\\_en.htm](http://ec.europa.eu/external_relations/euromed/index_en.htm)

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[http://www.ue2008.fr/webdav/site/PFUE/shared/import/07/0713\\_declaration\\_de\\_paris/Joint\\_declaration\\_of\\_the\\_Paris\\_summit\\_for\\_the\\_Mediterranean-EN.pdf](http://www.ue2008.fr/webdav/site/PFUE/shared/import/07/0713_declaration_de_paris/Joint_declaration_of_the_Paris_summit_for_the_Mediterranean-EN.pdf)

<sup>53</sup> [http://ec.europa.eu/external\\_relations/north\\_dim/index\\_en.htm](http://ec.europa.eu/external_relations/north_dim/index_en.htm)

<sup>54</sup> [http://ec.europa.eu/external\\_relations/eastern/index\\_en.htm](http://ec.europa.eu/external_relations/eastern/index_en.htm)

At the outset of the ENP process, the Commission prepared Country Reports assessing the possibility of relations with each country and submitted these to the Council, which decided whether or not to proceed with each. The ENP is based on a ‘single framework’ for integration covering all aspects of bilateral relations. Bilateral ENP ‘Action Plans’ are agreed between the EU and each partner state, which set out an agenda of political and economic reforms with short and medium-term priorities. The action plans are wide-ranging, covering political dialogue and reform, economic and social cooperation and development, trade-related issues and market and regulatory reform, cooperation in justice and home affairs, and sectors such as transport, energy, information society, environment, research and development. Amongst the incentives which are offered by the EU in return for progress on reforms include ‘greater integration into European programmes and networks, increased assistance, enhanced market access’<sup>56</sup> and access to specific forms of cooperation such as ‘twinning’.<sup>57</sup>

Financial support for the process and for the reforms identified is provided by the European Neighbourhood and Partnership Instrument (ENPI), established in 2007 to replace the various prior thematic and geographic programmes such as TACIS,<sup>58</sup> MEDA<sup>59</sup> and EIDHR.<sup>60</sup> According to the Commission the ENPI is designed to target sustainable development as well as approximation to EU policies and standards, to

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<sup>55</sup> [http://ec.europa.eu/external\\_relations/blacksea/index\\_en.htm](http://ec.europa.eu/external_relations/blacksea/index_en.htm)

<sup>56</sup> [http://ec.europa.eu/world/enp/howitworks\\_en.htm](http://ec.europa.eu/world/enp/howitworks_en.htm)

<sup>57</sup> Twinning is described by the European Commission as “a cooperation tool between a Public Administration in a Partner/Beneficiary Country and the equivalent institution in an EU Member State (which) aims at upgrading/modernising the institution in a Beneficiary Country through training, reorganisation as well as drafting of laws and regulations modelled after the EU... One of its key features is the concept of mandatory results : both the Beneficiary and the EU partners commit themselves to work towards a commonly agreed result, which should be measurable and precise”.

[http://ec.europa.eu/europeaid/where/neighbourhood/overview/documents/twinning\\_en.pdf](http://ec.europa.eu/europeaid/where/neighbourhood/overview/documents/twinning_en.pdf)

<sup>58</sup> The TACIS (Technical Aid to the Commonwealth of Independent States) program was first established in 1991 to provide assistance to the former Soviet states.

<sup>59</sup> The MEDA programme was first established in 1996 to provide financial and technical assistance to support the economic and other transition reforms of Mediterranean states in the framework of the Euro-Mediterranean partnership between the EU and countries of the southern Mediterranean which were not member states.

<sup>60</sup> The EIDHR (European Instrument for Democracy and Human Rights) came into force in 2007 to provide thematic funding for external aid to support projects promoting democracy and human rights internationally.

support cross-border cooperation along land and maritime borders, and to strengthen cooperation between local and regional actors and civil society. 7-year ‘Country strategy papers’ and 3-year ‘National Indicative Programs’ are drawn up, based on guidance from the Action programs.

The institutional structures for the ENP depend in part on the institutional framework under the existing Association Agreement or Partnership Agreement with each partner country. These generally establish a Cooperation Council or an Association Council, as well as a Committee and a range of subcommittees set up under the Agreements. The working committees bring together relevant officials and experts in the corresponding fields from the partner countries and the Commission, and some of the committees have significant monitoring functions.

Although the macro-institutional dimension of the ENP has been described as weak and insufficiently developed and the elements of hierarchy as evident,<sup>61</sup> there is some empirical evidence to suggest that the networked forms of governance it establishes allows for more heterarchical relations and genuine co-ownership at least in certain sectors. Based on three case studies covering the sectors of air transport, transboundary water management, and immigration control respectively, Lavenex argues that there is in fact less shadow-hierarchy and more co-ownership at the micro level than some of the bleaker assessments of the ENP have suggested.<sup>62</sup> More specifically she argues that “commitments anchored in the so-called Action Plans are jointly agreed rather than unilaterally imposed, reflecting the ENP countries’ different degrees of interest in deeper association” and she argues that “the ambiguous relationship to hierarchy and conditionality is complemented by the perspective for organizational participation in sectoral governance structures, including Community Programmes and Agencies. While it is true that such participation is part of the conditional incentives offered in the ENP Action Plans, prerequisites for participating in activities of Community agencies need not necessarily be ‘approximation with the Community’ but instead ‘the establishment of

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<sup>61</sup> M. Cremona and C. Hillion

<sup>62</sup> S Lavenex, “A Governance Perspective on the European Neighbourhood Policy: Integration Beyond Conditionality” (2008) 15 *Journal of European Public Policy* pp 938 – 955

relevant national institutions with sufficient capacities”<sup>63</sup>. She concludes that “discussions within ENP subcommittees document a gradual approach towards co-operation with EU agencies and bodies which start with individual projects and later lead to more formal co-operation agreements” and that “as a macro-policy, the ENP is in principle more open to more horizontal, co-owned governance structures”, that extended network governance represents a “hitherto neglected structural dimension of the ENP” and finally that “these emerging webs of institutionalization... [point to] the advent of flexible integration beyond formal EU membership.”<sup>64</sup> In a larger study of functioning of the ENP with particular emphasis on ascertaining its effectiveness or otherwise in relation to democracy-promotion, Schimmelfennig and Scholtz, despite their major finding that the prospects of success in the absence of full accession-conditionality are weak, also found, using geographical proxies to control for transnational exchange as an alternative mechanism for democratization, that “transnational exchange prove(s) robustly significant and positively correlated with the level of democracy in neighbouring countries” leading them to conclude that the “general and diffuse cross-border exchanges do indeed matter.”<sup>65</sup>

It should be emphasized that the argument that the European Neighbourhood Policy usefully illustrates the governance mode of international relations does not entail a claim that this is the most successful of the EU’s external policies, or that it does not need reform. On the contrary it is widely acknowledged – including by the Commission<sup>66</sup> - that the European Neighbourhood Policy in its current form is flawed.<sup>67</sup> However, the nature of its weaknesses and the recommendations which have been made for its reform – including greater clarity as to its aims, greater differentiation between countries and

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<sup>63</sup> Ibid at

<sup>64</sup> At

<sup>65</sup> F. Schimmelfennig and H. Scholtz, “EU Democracy Promotion in the European Neighbourhood Policy: Political Conditionality, Economic Development and Transnational Exchange” (2008) 9 *European Union Politics* 187 at 202

<sup>66</sup> For a previous reform attempt see *Strengthening the European Neighbourhood Policy* COM (2006)726

<sup>67</sup> See e.g. “The Reform of the European Neighbourhood Policy: Tools, Institutions and a Regional Dimension” Research Center of the Slovak Foreign Policy Association, Bratislava 2008 <http://www.pasos.org/www-pasosmembers-org/publications/the-reform-of-the-european-neighbourhood-policy-tools-institutions-and-a-regional-dimension>

regions rather than a one-size-fits-all-approach,<sup>68</sup> a more realistic incentive structure in the absence of accession-conditionality,<sup>69</sup> a stronger institutional dimension, greater involvement of civil society, the need to strengthen the conflict-resolution and crisis-management dimensions<sup>70</sup> – nonetheless support a continuation of the governance approach. In the view of two prominent critics “the ENP remains a valuable model of an integrated approach to EU external action, particularly from a policy making point of view” and should be reformed and improved rather abandoned.<sup>71</sup> Significant blame for the weaknesses of the ENP has been laid on the lack of political consensus amongst the Member States on the underlying ENP vision,<sup>72</sup> and its being insufficiently linked to the Council for the purposes of better defining its strategic objectives.<sup>73</sup> But it has also been argued that the ENP is better understood less in conventional foreign policy terms with a clear hierarchy of goals and strategies and rather as “the emergence of more horizontal, process-oriented modes of network governance allows for hitherto under-investigated forms of flexible integration for non-member states”<sup>74</sup>

(ii) *EU Inter-regional Policy*

By comparison with the European Neighbourhood Policy, EU inter-regional policy is less a well-defined and delimited strategy than a broad agenda which has characterized the

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<sup>68</sup> D Kochenov, also M. Cremona and C. Hillion

<sup>69</sup> G. Sasse, ‘Conditionality-lite: The European Neighbourhood Policy and the EU’s Eastern Neighbours’, in: Costanza Musu and Nicola Casarini (eds), *The Road to Convergence: European Foreign Policy in an Evolving International System*, Basingstoke: Palgrave, 2006, pp 163-180

<sup>70</sup> G. Sasse, *The European Neighbourhood Policy and Conflict Management: A Comparison of Moldova and the Caucasus*, *Ethnopolitics*, Volume 8, 2009, pages 369 – 386 and D. Helly *EU’s Influence in Its Eastern Neighbourhood: The Case of Crisis Management in the Southern Caucasus* (2007) 7 *European Political Economy Review* 102-117

<sup>71</sup> M. Cremona and C.Hillion “L’Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy”, *EUI Working Paper in Law No. 2006/39*. See also M Cremona, “The European Neighbourhood Policy: More than a Partnership” (in M. Cremona and B. de Witte (eds) *Developments in EU External Relations*)

<sup>72</sup> D. Kochenov, “The Eastern Partnership, the Union for the Mediterranean and The Remaining Need To Do Something With The ENP” [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1459560](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1459560)

<sup>73</sup> B.Lippert “Beefing up the ENP: Towards a Modernisation and stability partnership” (2006) 41 *The International Spectator* pp 85-100

<sup>74</sup> S Lavenex, n. 62 above.

international relations of the EU to varying degrees for many years. Karen Smith describes the fostering of regional integration and the oldest of the EU's five key foreign policy objectives.<sup>75</sup> She identifies two different practices in this respect, the first being the practice of classifying neighbouring countries together under regional strategies and the second being support and encouragement for regional groupings. From this perspective, the European Neighbourhood Policy itself can be considered as a part of the EU's broader 'regional cooperation' strategy.<sup>76</sup> However, the aspect of the EU's practice and strategy that I want to focus on here is specifically that of promoting and fostering inter-regional cooperation between the EU and other world regions, in part by encouraging robust forms of integration in other regions and also by seeking to develop close and institutionalized relationships with them.

Interregional cooperation has been described as one of the most attractive frameworks for both the EU and for other countries to meet their respective foreign policy interests, as it corresponds to "the EU's own wish to pool national resources and to resolve conflicts through dialogue and negotiation with all parties having an equal standing"<sup>77</sup>. Since regional 'actorness' has to be created by voluntary processes, it depends more on dialogue and consensus-building than on coercion, and hence corresponds to the model Europe holds out as the preferred world order, given that this is the way the EU itself developed.<sup>78</sup>

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<sup>75</sup> K. Smith, *European Union Foreign Policy in a Changing World* (Polity, 2<sup>nd</sup> ed, 2008), chapters 1 and 4 in particular.

<sup>76</sup> The term interregionalism is also sometimes used to describe cooperation between regions and regional authorities *within* the EU, e.g. in the context of the structural funds, but this is not the kind of inter-regionalism I am interested in for the purposes of the current paper.

<sup>77</sup> N. Alecu de Flers and E Regelsberger "The EU and Inter-regional Cooperation" in C. Hill and M. Smith *International Relations and the EU* 342 (OUP, 2005) p 317

<sup>78</sup> Björn Hettne and Fredrik Söderbaum, "Civilian Power or Soft Imperialism? The EU as a Global Actor and the Role of Interregionalism" (2005) 10 JEPP 535-552

Three different types of inter-regionalism have been identified.<sup>79</sup> The first is trans-regionalism, which refers to connections between or amongst transnational networks,<sup>80</sup> including private or public actors. across regions and not just intergovernmental connections.<sup>81</sup> The second is hybrid interregionalism, involving negotiation or cooperation between one organized region and with a group of countries from another non-organized or dispersed region and the third is pure interregionalism involving cooperation and ties between two organized and integrated regional systems.<sup>82</sup>

Although it has been a longstanding policy of the EU, the last decade or two has seen increasing emphasis on inter-regionalism as a key aspect of EU foreign policy. The Commission regularly adopts strategy papers on regional or sub-regional cooperation, most recently for the period 2007-2013 or 2008-2013 with regions including the Andean Community,<sup>83</sup> Asia,<sup>84</sup> Central America,<sup>85</sup> the Euro-Med region,<sup>86</sup> the Balkans, Latin America,<sup>87</sup> Mercosur,<sup>88</sup> Central Asia,<sup>89</sup> the ACP and West Africa<sup>90</sup> amongst others.

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<sup>79</sup> A. Hardacre and M. Smith “The EU and the Diplomacy of Complex Interregionalism” (2009) 4 Hague Journal of Diplomacy 197 list some of the relevant EU relationships according to this tripartite classification:

**Transregional:** Asia–Europe Meeting (1994); Europe–Latin America Summit (1999); EU–Africa Summit (2000)

**Hybrid Interregional:** EU–Association of South East Asian Nations (ASEAN) (1980); EU–Gulf Cooperation Council (GCC) (1989); EU–South Asian Association for Regional Cooperation (SAARC) (1994); EU–South African Development Community (SADC) (1994); EU–Mediterranean (MED) (1995) EU–Rio Group (1999)

**Pure Interregional:** EU–Central American Common Market (CACM) (1993); EU–Common Market of the South (Mercosur) (1995); EU–Community of Andean Nations (AC) (1996)

<sup>80</sup> See C. Dent “From Interregionalism to Transregionalism: Future Challenges for ASEM” (2003) Asia Europe Journal 223-235

<sup>81</sup> V. Aggarwal and E. Fogarty “Between Regionalism and Globalization: European Union Interregional Trade Strategies” in V Aggarwal and E Fogarty, *EU Trade Strategies: Between Regionalism and Globalism* (Palgrave, Macmillan, 2004) pp. 1-40.

<sup>82</sup> F. Söderbaum and P. Stålgren, (eds) *The European Union and the Global South* (Lynne Rienner, 2010), 5-6.

<sup>83</sup> [http://ec.europa.eu/external\\_relations/andean/rsp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/andean/rsp/07_13_en.pdf)

<sup>84</sup> The Regional Strategy Paper for EU-Asia Cooperation 2007-2013, [http://ec.europa.eu/external\\_relations/asia/rsp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/asia/rsp/07_13_en.pdf)

<sup>85</sup> [http://ec.europa.eu/external\\_relations/ca/index\\_en.htm](http://ec.europa.eu/external_relations/ca/index_en.htm)

<sup>86</sup> [http://ec.europa.eu/world/enp/pdf/country/enpi\\_euromed\\_rsp\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/enpi_euromed_rsp_en.pdf)

<sup>87</sup> [http://ec.europa.eu/external\\_relations/la/rsp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/la/rsp/07_13_en.pdf)

<sup>88</sup> [http://ec.europa.eu/external\\_relations/mercosur/index\\_en.htm](http://ec.europa.eu/external_relations/mercosur/index_en.htm)

<sup>89</sup> [http://ec.europa.eu/external\\_relations/central\\_asia/rsp/07\\_13\\_en.pdf](http://ec.europa.eu/external_relations/central_asia/rsp/07_13_en.pdf)

<sup>90</sup> <http://www.delnga.ec.europa.eu/projects/EC-West%20Africa%20Regional%20Strategy%20Paper.pdf>

The most developed of the EU's regional relationships in Latin America is EU-Mercosur (Mercado Común del Sur), with an Interregional Framework Cooperation Agreement in place since 1995 and negotiations for an Association Agreement underway at present. In Asia, the EU has a framework for inter-regional cooperation with ASEAN,<sup>91</sup> (the Association of South-East Asian Nations) its main channel being the biennial ASEM (Asia-Europe Meeting),<sup>92</sup> and with SAARC (South Asian Association for Regional Cooperation), in which the EU has observer status since 2006.<sup>93</sup> A similar emphasis on the importance of regional integration was clear in the EU's restructuring of its previous relationship with the African Caribbean and Pacific countries (ACP, mostly former colonies of EU member states) in the Cotonou Agreement and the following Economic and Partnership Agreements,<sup>94</sup> and in its more recent relations with the African Union.

Hardacre and Smith argue that the EU has systematically attempted to create a distinctive focus in its external relations through the pursuit of pure interregionalism within the framework of what they call complex interregionalism. They suggest that despite the constant reviewing, restructuring and reiterating of the EU's dealings with third parties, the aims and objectives of EU external relations, including its inter-regionalism strategy, have remained fairly constant with a commitment to multilateralism at the center.<sup>95</sup> They argue that the EU tries to create a model of international relations based on its own regional identity, with an "equal partner association model" contrasting with the more direct US "commercial/military model". They describe an evolution in EU interregional strategy from early agreements based mostly on economic issues to much more comprehensive agreements which encompass political cooperation and dialogue on strategic issues as well as a wide range of other issues including sustainable development, poverty alleviation, democracy-consolidation and respect for human rights. They suggest that as interregionalism develops, it generates a need for improved structures, defined forums and overarching aims and objectives, "and thus in the broadest sense a need for a

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<sup>91</sup> [http://ec.europa.eu/external\\_relations/asem/index\\_en.htm](http://ec.europa.eu/external_relations/asem/index_en.htm)

<sup>92</sup> which established subsidiary institutions and networks such as the Trans-EurAsia Information Network

<sup>93</sup> [http://ec.europa.eu/external\\_relations/saarc/index\\_en.htm](http://ec.europa.eu/external_relations/saarc/index_en.htm)

<sup>94</sup> M. Farrell "From Lomé to Economic Partnerships in Africa" in *The EU and the Global South*

<sup>95</sup> A. Hardacre and M. Smith "The EU and the Diplomacy of Complex Interregionalism" (2009) 4 Hague Journal of Diplomacy 197

diplomacy that is focused on institution-building and the generation of stable expectations”.<sup>96</sup>

The institutional structures of EU inter-regional cooperation vary, but are broadly consistent across regions, resembling the structures described above in the European Neighbourhood Strategy, in creating a ministerial-level Cooperation Council, Committee and sub-committees, as well as generating networks of other actors. The promotion by the EU of regional integration itself of course leads to the creation of new institutions and actors, as for example within the framework of robust regional arrangements such as Mercosur, ASEAN and the African Union. One of the main obstacles to stronger and more effective EU-interregional relations, however, is the relative strength and degree of integration of the EU’s partner region,<sup>97</sup> which explains why promotion of regional integration remains a key objective in all of the EU’s interregional relations.

Just as the claim that the European Neighbourhood Policy exemplifies the governance mode of international relations does not imply that many aspects of the ENP are not flawed or problematic in various respects, neither does the claim that the EU pursues inter-regionalism as part of its governance mode of international relations strategy make a claim about the virtues or substance of any particular instance of inter-regionalism. For example, the EU’s renegotiation of ACP relationship – previously framed by the Lomé and Yaoundé Conventions – has been criticized from a developmental perspective and for exploiting the asymmetrical relations between the parties, undermining the aspiration of reciprocal accountability and collective governance in practice.<sup>98</sup> And it has been argued that elements of soft imperialism are creeping into other parts of the EU’s inter-regional relationships.<sup>99</sup> More generally, it has been suggested that the nature of the EU’s strategies are linked to the relative strength of the counterpart.<sup>100</sup>

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<sup>96</sup> At p

<sup>97</sup> V. Aggerwal, Explaining Trends in EU Interregionalism

<sup>98</sup> M. Farrell “A Triumph of Realism over Idealism: Cooperation between the European Union and Africa” (2005) 27 *Journal of European Integration* 263-283

<sup>99</sup> B Hettne and F Söderbaum , “Civilian Power or Soft Imperialism? The EU as a Global Actor and the Role of Interregionalism” (2005) 10 *JEPP* 535-552 argue in relation to the Euro-med that “although considerable dialogue and institution-building have taken place in order to go beyond the colonial legacy of

My argument that the EU interregionalism strategy illustrates well some of the main aspects of the governance mode of international relations is based on the features which were identified above. In the first place, the strategy represents a kind of extension of aspects of the EU's identity into its external relations. It is broad in its aims, integrating matters of high and low politics; it pursues mainly milieu-type goals; it creates or triggers a range of new institutions and actors, and seeks to establish a horizontal network of close, stable relations, based (ideally) on the notion of partnership and the collective pursuit of common goals.

[(iii) A third example of the EU's governance mode, which I have not for now included in the paper, will be drawn from a study of the EU in a multilateral negotiation setting, namely the EU's behaviour in the drafting of the UN Disability Convention.<sup>101</sup> The main relevant findings of that study are twofold: first, that the EU sought to promote and extend its own internal model of anti-discrimination on the international level; and secondly that the EU supported (though did not spearhead) the creation of an international anti-discrimination regime which is notably 'experimentalist' in its structure, resembling some of the distinctive governance processes which the EU has developed in its internal domain.<sup>102</sup> The findings about the different external strategies of the EU in this context support what Ben Rosamund has argued, namely that "there is no single EU mode of governance and, therefore, that the external projection of the EU's governance identity is far from straightforward. Moreover, in terms of governance models, the EU does not simply practice a weird, internally-generated, path dependent mode, but rather its governance practice is part of a broader global exchange of governance methodologies"<sup>103</sup>]

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inequality and dependence between the EU and its Mediterranean counterparts, little concrete progress has been achieved in transforming the underlying economic and political relationships"

<sup>100</sup> F Söderbaum in "African Regionalism and EU –African Regionalism" in M Telo (ed), *European Union and New Regionalism* (Ashgate, 2<sup>nd</sup> ed, 2007)

<sup>101</sup> G. de Búrca, "The EU in the negotiation of the UN Disability Convention" (2010) 34 *European Law Review*, 175-196

<sup>102</sup> See C.Sabel and J. Zeitlin, n.43 above.

<sup>103</sup> B. Rosamund, "The EU model of governance in world politics" (2005) 10 *EFAR* 463-478

## 6. Conclusions (to be written)

I have argued above that the EU acts differently from states in world affairs, and that the difference does not lie in the fact that the EU is somehow more virtuous or altruistic than states, nor does it lie in the liberal nature of its foreign policy, nor in its lack of significant military capacity. Instead, I have argued that the difference lies in the fact that the EU primarily adheres to what I have described as a governance mode of international relations which differs in key respects from the conventional foreign policy mode, and I have suggested that the European Neighbourhood Policy and the EU's interregionalism strategy exemplify well key aspects of the governance mode.

A major weakness of EU foreign policy, which was evident in many of the critiques of the ENP, is the lack of institutional or other means to build political consensus on specific goals and positions, such that the EU could then act effectively on them. The changes introduced by the Lisbon Treaty, whether or not they succeed, are intended to help in addressing that political deficit. But despite the borrowing by the Lisbon Treaty of some of the language, rhetoric and symbolism of the state foreign-policy mode (with a 'foreign minister' of kinds, a diplomatic service, legal personality etc), the strengthening of the means for developing political consensus on specific goals is unlikely to lead to a replacement of or significant change in the EU's governance mode of international relations, and it could conceivably enhance it.

Finally, the argument of the paper does not entail any claim that the governance mode of international relations necessarily guarantees fairer or better outcomes than the conventional foreign policy mode. The claim so far is primarily a descriptive one, although if it is correct, the practice of a distinctive governance mode of foreign affairs by the EU is likely to have implications for international relations.