

THE ROLE OF EUROPEAN UNION ON THE WORLD STAGE

Please note that this is a rough draft, my only scope is to pour into these pages some of the reflections that I am engaged with at this moment. My research is aimed at writing a book on this topic. I am afraid that at this stage am not able to draw other than sketchy conclusions. Of course, needless to say all comments and suggestions will be extremely welcome.

Introduction

What is the position of the European Union (EU) on the Global stage? How is the European Union (EU¹) perceived by other international actors? The European Union is certainly an illustration of the evolution of international society, but to what extent can it influence the evolution of international law? All these questions come to one's mind when analyzing particular areas within the realm of external action of European Union. These questions suggest the need to grasp the essence of the EU so as to define somewhat its identity, because the escalating relevance conferred on the external action is linked to the search for self-identity. In this regard, external action may prove to be a perfect field for European Union to strengthen and even shape its identity as well as to gain legitimacy. By projecting itself on the world stage, the EU reinforces its position *vis-à-vis* both Member States and other international actors.

In the first section of this article we posit some reflections about possible reasons explaining the increasing relevance of external action. In section II, we engage in an attempt to find a definition for the EU. Dynamism and uniqueness are both features characterizing the European Union. By mentioning these particular features our intention is to stress how difficult is the task of defining the European Union, a creature which is intrinsically dynamic, in a continuous evolution. Its uniqueness can be illustrated by a reference to its actorness (a *sui generis* international organization, a unique exponent of regionalism) and to its supranational legal order. The dimension of its uniqueness is perhaps better captured through the analysis of the peculiar features of its legal order. From this analysis the image arises of the European Union as a self-contained regime with a high degree of autonomy. Our contention is that EU has the (potential) power to influence the evolution of international law and that it could do it according to a pattern differing from that traditionally applied by the individual States (the European Union is seen as a framework in which the individual States' interests could be more easily overcome.)

Finally, in section III, we address the objectives of the external action of the European Union. A look at these objectives: promotion of regional integration, human rights, development, democracy, rule of law, suggests the idea that the external action of European Union is based on values and not merely on self-interest. And this, taking into account the potential of the EU to influence the evolution of international legal order, should be good. By implementing this value-based external action the EU could contribute to reinforcing particular areas of International Law. That is not to say that self-interest has been banished from external action. Of course, it is still present, giving rise to some incoherencies. But beyond that, the most important thing is that these

¹ We will use the expression European Union (EU) to refer, on the one hand, to the European integration process and on the other hand, to one of the international organizations which integrating such a process. We will use the expression European Communities (EC) to refer to the supranational organizations.

values are components of the identity of the EU (have been internalized) to the extent that when EU's acts collide with the proclaimed values the claim could arise that European Union is betraying its own identity (itself), resulting in a loss of legitimacy.

I) The relevance of the external action of the European Union.

In this section the paramount importance of European Union's external action will be analyzed². Arguably the "actorness" of the European Union is being strengthened by its external action³, which in this vein could be considered as a means through which European Union fashions its identity⁴. How the European Union appears on the world stage and how it is perceived by other international actors is a key issue in the shaping of Europe's identity⁵.

In this context what appears to be more striking is how an entity, such as the European Union, tries not merely to consolidate but also to shape at least some dimensions of its self-identity by projecting itself on the world stage. This is not a common phenomenon in international relations, where what seems to occur more frequently is that only well established actors, with a well-defined identity, are capable of exerting influence. The EU's approach to external action could be partly explained by the fact that in the case of European Union a need arises to reinforce its self-identity vis-a-vis its Member States and their citizens. In other words, its external action might make it appear stronger vis-à-vis its Constituents.

Grainne de Burca has accurately pointed out that the main result of the Treaty establishing a Constitution for Europe has been the reinforcement of the external side of the European Union's action⁶, whereas allegedly the original intention of the drafters was to strengthen internal legitimacy. It's undeniable that external dimension of the European integration process has been steadily gaining relevance over the years in an apparently unstoppable process culminating with the so-called Constitutional Treaty. From the contemplation of this process the idea arises that it is no longer possible to sustain that the legitimacy crisis from which European Union is suffering "is likely to undermine the credibility of the EU and hence impede its capacity to act externally"⁷; on the contrary what seems to be occurring is that EU is using its external action as a means to reinforce its legitimacy.

What are the ultimate reasons explaining the mounting relevance of the external face of the EU? Various factors may explain the attractiveness of EU's external action, depending on who is looking at the field. Indeed, the way in which European Union itself sees its external side differs from the way in which it is seen by the world or even by the Member States. In the following paragraphs we go in more detail into the analysis of these different approaches to EU's external action.

²European Union has already left well behind those times where it could be said: "Europe is not an actor in international affairs, and does not seem likely to become one": BULL, Hedley. "Civilian Power Europe: a contradiction in terms". In: *Journal of Common Market Studies*, n. 1-2, p. 149-164, at p. 151.

³ HILL, C. (Ed.). "The Actors in Europe's Foreign Policy". London: Routledge, 1996, p. 9

⁴ DILLON, Sara. "Looking for the progressive empire: Where is the European Union's Foreign Policy?" In: *Connecticut Journal of International law*, 19, 2004, p. 275.

⁵ On Europe's identity, see: Von Bogdandy: *The European Constitution and European identity: text and subtext of the Treaty establishing a Constitution for Europe*". In: *3 Int'l J Const. Law*, 295.

⁶ DE BURCA, Grainne. "The drafting of a Constitution for the European Union: Europe's madisonian moment or a moment of madness?" *61 Wash. & Lee L. Rev.* 555, spring, 2004.

⁷ BRETHERTON, Charlotte; VOGLER, John. "The European Union as a Global Actor". London; NY: Routledge, 1999, p. 42.

a) Reasons for the Union (or the external action seen through the Union's lens): From the perspective of the European Union, as has been already said, there is a need to reinforce its identity not only in front of the world but also and maybe primarily, *vis-à-vis* its own constituents. This is not a common situation and it arises from the fact that European Union is a sui generis international organization. We will go into more depth in discussing the European Union's definition, but it is worth noting from the outset that, as we all know, it is a highly peculiar international organization with unprecedented features, which have allowed it to gradually gain autonomy. In this context, the external action is probably the most significant battlefield where the struggle for the definition of European Union's identity is taking place nowadays. The external action of the European Union is a field where two important conditions for the reinforcement of EU's actorness get connected: recognition and autonomy⁸. By gaining acceptance from other international actors, EU achieves also a higher degree of autonomy, namely independence from other actors (including its Member States). As a result, its autonomy is strengthened not only externally but also internally. Related to this point is the fact that in order to be able to project itself as something different from its constituents it is very important to conceive of European Union as a framework where the short-sighted interests of the individual states could be more easily surmounted.

Therefore, the EU's yearning for the reinforcement of its external face could be considered as a response to the need to firm up its autonomy as well as to gain recognition.

b) Reasons for the world (or the external action seen through the world's lens): When addressing the relevance of the external face of the European Union, it is also central to point to the need, voiced by several scholars, to counterbalance the power of United States⁹. This point is somewhat connected to the last part of the paragraph above. Indeed, some reflections arise at this point with regard to the suitability of the European Union for advocating certain values as the basis for international relations. Values which could be deemed to be different from the values traditionally espoused by the individual states¹⁰ (and ultimately "imposed on" by the strongest among them). From this perspective the European Union's external action, by enshrining these values, could arguably bring about a change in the international relations landscape and ultimately in the international legal order as such¹¹. The contention that the EU's external action rests upon values, and not only on self-interest is crucial

⁸ GINSBERG, R. H. "Conceptualizing the EU as an international actor: narrowing the theoretical capability-expectations gap". In: *Journal of Common Market Studies*, Vol. 37, n. 3, 1999, p. 429-454, at p. 447 posits an interesting reflection on the EU actorness, by underlining that "for purposes of evaluating EU actorness, the EU needs recognition; authority (the legal competence to act); autonomy; and cohesion".

⁹ See Jürgen Habermas & Jacques Derrida, February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe, 10 *CONSTELLATIONS* 291, 293 (2003)

¹⁰ This is what some scholars call "Lock-in effect": BREGSTEN, C. F. "Open regionalism", 20, issue 5, 1997, *World Economy*, at p. 548; FRANKEL, J.A. "Regional trading blocs in the world economic system", 1997, p. 216. From an opposite point of view OHMAE sustains that it is dubious whether States (national governments) are willing as well as capable of accepting themselves as components of the global economy and resisting the pressure from interest groups claiming for more national protection and increased subsidization. OHMAE, Kenichi. "The End of the Nation State. The rise of regional economies". London. HarperCollins, 1995.

Ohmae, Kenichi. "The rise of the region state". *Foreign Affairs*. New York: Spring 1993. Vol. 72, Iss. 2; p. 78

¹¹ This has been contended among others by BRETHERTON AND VOGLER: "it is our contention that the EC/EU has developed, over the years, a distinctive presence, and distinctive roles, which have enabled it to contribute to the development of the international system". In: "The European Union as a global actor". London; NY: Routledge, 1999, at p. 34.

if we want to see the European Union tasked with counterbalancing the power of other leading international actors. Nonetheless, the fact that we have value-based external action in the case of European Union does not override self-interest. European Union's action is also guided by self-interest. And of course, this mixture of values and self-interest gives often rise to incoherence¹².

In this article it is assumed that an alternative global discourse within the realm of international relations is needed and that it is possible. Furthermore, to be honest we have to admit that this research is grounded on our wish to see European Union firmly articulating and implementing such an alternative discourse (and consequent action), which would hopefully lead to the reinforcement of certain areas of international legal order: these include, in particular, those related to protection of human rights, development cooperation, the spread of democracy, regional solidarity, etc. One of our primary contentions is that certain types of international organization could be considered as frameworks where the elaboration of this alternative discourse is facilitated, with the European Union being the most advanced model of this kind of organization. Should the European Union prove to be capable of playing this role, it would certainly gain further recognition on the world scene, so that not only its international actorness but also its legitimacy would be strengthened (it could be also said that by gaining legitimacy European Union gets to reinforce its international actorness).

The idea of external action anchored on shared values rather than simply on self-interest is highly attractive. One of the risks we encounter when speaking of values is ending up elaborating an excessively idealistic discourse completely detached from both reality and norms. Some degree of naivete is practically unavoidable when dealing with values. Nonetheless, and in order to keep a tight rein on naivete our intention is to take the rules and the action as point of departure. We are not going to turn to Morality to identify the values which should be enshrined in the norms and implemented by the action¹³; on the contrary we will analyze the existing rules and the implementing action of European Union¹⁴.

c) Reasons for the Member States (or the external action seen through the Member States' lens):

The reluctance on the part of the States to accept the broadening of the EC's competences is not new¹⁵. The struggle for the competences has taken place over many years within the field of EC's external relations¹⁶.

¹² Indeed, sometimes it is difficult to reconcile trade interest with the scope of promoting development. Other controversial area to this regard is immigration policy. Recently, WARD has underlined the contradiction between on the one hand the proclaimed European Union's pledge to fostering development cooperation and alleviating poverty whereas on the other hand it keeps on deploying a broad array of tools to prevent immigrants and refugees to cross the European borders. WARD, Ian "The Challenges of European Union Foreign and Security Policy: retrospective and prospective" 13 Tul. L. Int'l & Comp. L. 5, Spring, 2005.

¹³ It is worth recalling here this contention of the ICJ declaring that it could "take account of moral principles only in so far as these are given a sufficient expression in legal form". ICJ Reports (1996) 34. Read: KINGSBURY, Benedict. "Legal positivism as normative politics: international society, balance of power and Lassa Oppenheim's Positive International Law". ??? (ILSEMINAR MATERIALS)

¹⁴ This conception should not be viewed as anchored in Natural Law. Because from our point of view, justice is not a parameter of law. Justice and values are goals of the law, but these are important only as they are reflected in the law. "The perceptions of justice must be shaped through existing legal norms". The basic distinction between legality and legitimacy is pertinent to be recalled in this regard.

¹⁵ BRETHERTON, Charlotte; VOGLER, John. "The European Union as a Global Actor". London; NY: Routledge, 1999, p. 17.

¹⁶ AETR, Kramer, Demirel, Opinion 1/94, etc. (ECJ Case Law).

Nevertheless, so far the States' resistance had not prevented the European Community from gaining relevance as an international actor. Our contention here is that the States are moving from the struggle for the competences within the supranational pillar of the European Union to a more subtle strategy, basically consisting of regaining some control over the external action by reinforcing the intergovernmental pillar through remarkable progress on European security and defence policy. To put it another way: the States might be trying to shift the focus from external relations of European Community (supranational area) to security and defence (intergovernmental area).

We are more interested in this recent trend than in the analysis of the traditional reason explaining the relevance given by the Member States to the external action of the European Union, which is basically their will to gain leverage on the global scene by acting collectively under the umbrella either of the European Community or the European Union.

II A Definition for the European Union

We caution from the onset that it is impossible to offer a definitive *substantial* definition of the European Union. We can try to describe it in an attempt to catch as many as of its particular features as possible. Nevertheless, in doing so we must keep in mind that one of these features is precisely its dynamism. In this vein, the European Union can be conceptualized as an evolving process. Thereby, a definitive static definition is simply not possible¹⁷.

When trying to describe what the European Union is, two lenses may be applied. To put it another way: there is at least two perspectives from which we could approach the European Union in our attempt to find a definition thereof.

a) From the perspective of international actorness, the European Union could be conceptualized as an illustration of the emergence of new, powerful actors within the international stage. From this point of view it is our intention to offer some insights so as to determine into which category of international actors European Union best fit. It does not suffice to demonstrate that it is a sui generis international organization, because the need arises to further specify that within the universe of international organizations EU occupies a privileged position as the most advanced example of supranational regional integration organization. And, of course, further clarification will be required as to the definition of the model of integration personified by European Union, with a view to identifying the features rendering European Union such a peculiar creature.

b) The European Union derives its high degree of autonomy from its supranational dimension. The EU has gone the furthest in the development of supranational formulas (including a reinforced supranational legal order), consequently reaching unprecedented levels of autonomy as regards to the international legal order, on the one hand, and to the domestic legal orders, on the other. In this regard, the analysis of the EU as a self-contained regime appears to be particularly attractive.

From this two-tiered analysis of the nature of European Union some evidence will arise with regard to EU's capability to influence the evolution of international legal order by operating on the world stage as a dynamic, unique and autonomous actor.

a) The actorness of the European Union

¹⁷ "The EU is a multi-faceted actor; indeed it can appear to be several different actors, sometime simultaneously. It has, moreover, a confusing propensity to change its character, or the persona it presents to third parties...". BRETHERTON, Charlotte; VOGLER, John. "The European Union as... op. cit., p. 31.

We have just sustained that EU is a sui generis international organization. And we have also said that it can be further specified that it is an unprecedented supranational regional integration organization. In fact, when trying to apply the existent taxonomy of international actors to the European Union, the idea that none of the existent categories fits it well immediately appears. On which features is the uniqueness of European Union based?

i) The European Union is a set of international organizations.

Some extremely general remarks must suffice at this point. First of all the uniqueness of the European Union is partly a result of its complex structure. As we all know in a broad sense the European Union could be considered as a process where three, different although deeply interconnected, international organizations operate. The European Union, in a more restricted sense, is one of these three international organizations. The Treaty establishing a Constitution for Europe aimed at replacing the existent three organizations with a single one, but as we all know this Treaty is sleeping in the limbo of non-ratified treaties.

We all also know that the most outstanding peculiarities of the European Process are traced within the supranational pillar (European Communities). External action is being developed by both the European Community and the European Union. The actorness of the former is not put into question¹⁸, but nowadays it is clear that also the latter is an international actor capable of celebrating international agreements¹⁹. Nevertheless, the added value of European Union's external action is mainly found within the framework of the supranational pillar, even though – as has been expressed above – the action within the second pillar, particularly within the realm of defense and security policy is becoming increasingly relevant.

As an international organization the European Union (and the EC as well) is created by an International Treaty. It has been provided with a set of institutions through which it is capable of expressing its own will differentiated from the will of the Member States. The strength of the institutional structure is one of the most important features of the EU (EC). These institutions create two different legal orders: EC's legal order and EU's legal order, which are “integrated but separate”²⁰, being the primary difference that EC's legal order is supranational.

ii) The European Union is a regional integration process.

The regionalization phenomenon is taken shape through the inception of regional organizations with different levels of complexity. In this regard, the European Union is to be considered as the organization with the highest level of complexity²¹ so far. In fact within the European Union we

¹⁸ 1971, ATR Case ECJ

¹⁹ Both, European Union and EC enjoy the power to enter international agreements, although according to different legal basis. In the case of the EC the general legal basis is article 300 ECT, whereas in the case of EU the basis is article 24 EUT. EC agreements differ from EU agreements in the celebration process, in the way in which they are inserted into the national legal orders, and in the effects that once inserted they produce within these domestic legal orders. Only EC agreements are inserted automatically into both the EC legal order and the national legal orders (according to a monist formula); are granted preference over both EC secondary rules and national rules; and are binding to EC institutions and Member States.

²⁰ Judgment Court of First Instance, 21 September 2005, Case T-315/01, at paragraph 120.

²¹ “is the regional initiative that probably went the furthest in exploring the frontiers of regionalism. Moreover, the question whether further progress requires a constitutional model is now the key issue in the debate of its future”. FOQUÉ, René; STEENBERGEN, Jacques. “Regionalism: a constitutional framework for Global Challenges”. In: FARRELL (ET AL) Global Politics of... op. Cit., at p. 54

can trace: cooperation and solidarity, convergence of values, actorness²² and autonomy²³. As an additional illustration of its complexity it may be emphasized again that European Union emerges as the clearest example of supranationalism: centralized institutions enacting binding rules benefiting from the application of the primacy principle; direct effect; ECJ²⁴. We will go in more detail into the analysis of this supranational dimension when analyzing the European Union as an autonomous regime within the international legal order, in the following section of this Article. Nevertheless it is worthwhile to point out that supranationalism is basic for the construction of a communal identity within the region. The supranational institutional structure acts according to supranational principles (values, benchmarks), which are gradually internalized by the different actors within the region. It is controversial whether this sense of being part of a community already exists in the context of European Union. Probably not, nonetheless, when it comes to the categorization of the regional structures through the application of different political, the so-called constructivism approach is useful when describing the European. Other regional schemes may be better described by a functionalist approach (Asia) whilst others could be better approached from a realist perspective, which underlines power relations among Members (it could be the case with Free Trade Area of Americas: FTAA)²⁵.

There are some nuclear features characterizing the model of regionalism embodied in the European Union: openness; multidimensionality; multilateralism-oriented; solidarity-oriented. These features are relevant not only to understand the European Union's nature but also to understand how it projects itself on the international arena.

i) Openness

The European Union adheres to "open regionalism"²⁶. Here the essential point is to examine how European Union treats non-member States. BREGSTEN²⁷ posits five definitions of openness:

²² On the link between regionness and actorness: "Increasing regionness implies that a geographical area is transformed from a passive object to an active subject – an actor – increasingly capable of articulating the transnational interests of the emerging region". HETTNE, Björn. "Regionalism and World Order". In: FARRELL; HETTNE; LANGENHOVE. *Global Politics of regionalism: theory and practice*. London: Pluto Press, 2005, at p. 270.

²³HETTNE, Bjerne. "The UN and conflict management: the role of the new regionalism". In: 4 *Transnat'l L & Contemp. Probs* 643, 1994. By contrast Asia might be considered as the area with the lowest level of regionness, even though this level is being increased lately. It is worth noting that some free trade agreements give rise to a minimum level of integration focused primarily on the liberalization of trade, without setting up any centralized supranational institutions. This kind of process is inherently weak owing to its slight or even non-existent institutionalization and thus it is not able to acquire autonomy at all. And we could here make reference to NAFTA. See: BRUNNER, C.M. *Hemispheric "Integration and the Politics of regionalism: the free trade area of Americas"*. In: 33 *U. Miami Inter-Am. L. Rev.* 1, 2002.

²⁴ GRIGERA NAON, Horacio. "Free Trade Areas: the challenge and promise of fair vs. free trade. Panel V: Regionalism and the Transfer of Sovereignty". 27 *Law & Pol'y Int'l Bus.* 1073. ". HETTNE, Björn. "Regionalism and World... op. Cit., at p. 278, where EU is considered, "in terms of regionness, so far the only example of an institutionalised regional polity".

²⁵ For a more detailed analysis of the different political perspectives applied to trade regionalism, see: CHO, SUNGJOON. "Breaking the barrier between regionalism and multilateralism: a new perspective on Trade Regionalism". 42 *Harv. Int'l L.J.* 419, 2001. He makes a caveat about the risk of applying just one of these approaches: "In the context of the effort to develop a new paradigm, it is important to keep in mind that particular theoretical optics are appropriate to particular circumstances, and familiarity with a number of approaches is almost always preferable to the reflexive application of any one".

²⁶ For a critical view on "open regionalism", see: SHIFF; WINTERS. "Regional Integration and... op. Cit. at p. 242 concluding at p. 244 that "open regionalism is a slogan rather than an analytical term".

²⁷ BREGSTEN, C. F. "Open regionalism" In: *World Economy*, 20, issue 5, 1997, p. 545-565.

open membership, unconditional most favored nation treatment (MFN), conditional MFN, global liberalization, trade facilitation. Openness is not a definitive answer to the question of the compatibility between regionalism and multilateralism but it certainly guarantees a more smooth relationship between them. We are not going to address here the question whether regionalization is trade diverting or trade creating²⁸. This is still an open question, which is being addressed within the WTO where with regard to regional trade agreements a “note of caution” is underlined: “by their very nature Regional Trade Agreements (RTAs) are discriminatory”²⁹.

Here we are to focus on one of the possible approaches to openness: inclusiveness. In order to do so, we deem it necessary to analyze not only the geographical expansion of the European Union itself (open membership), but also the privileged relations established with several non-member countries. These privileged relations are an expression of the need to reconcile the recognition of the existence of limits for geographical expansion, with the need to offer to some countries the chance to benefit from an enhanced level of cooperation with the European Union through formulas usually embedded in international treaties, which ultimately lead to a certain degree of integration among the partners³⁰. Therefore, the openness is primarily implemented by the conclusion of RTAs with third countries. We are going to define an RTA as it is defined within the WTO, where in general terms the definition embraces agreements concluded between countries not necessarily belonging to the same geographical regions. When the agreements are concluded with non-neighboring countries they could be conceived of as illustrations of interregionalism as well, especially if they are region-to-region agreements.

In this vein the openness of the European Union is undoubtedly illustrated by there being (the existence of) an impressive and broad network of agreements negotiated with numerous states all over the globe. These agreements encompass many different areas of cooperation besides trade, so that it can be said that openness is put into practice with a multidimensional approach. Whereas it is true that at the very outset the external relations were inspired primarily by trade interests, it is no less true that this trade-oriented approach was gradually changing as trade yielded to other objectives, giving rise to multidimensional external relations. This evolution is related to the idea of an external action based on values, going beyond self-interest. If we frame this evolution within the multilateral context, we see that also within the multilateral system, trade as an isolated objective has been gradually losing legitimacy, nurturing the claims for the openness of the multilateral trade system to other objectives³¹. This transformation has occurred in such a way that trade could perfectly be described nowadays not as a primary objective but

²⁸ Recently, see: SCHIFF; WINTERS. “Regional Integration and Development”, the World Bank, 2003, where it is contended that regional integration is more likely to divert than to create trade, at p. 23, and p. 31. BHAGWATI; DAVID GANTZ???

²⁹ http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm. Within the WTO negotiations aimed at improving WTO procedures and rules applying to regional trade agreements are underway within the framework of the Negotiating Group on Rules: http://www.wto.org/english/tratop_e/region_e/region_negoti_e.htm. One of the points under negotiation is precisely the interaction between RTAs and the multilateral trading system.

Over 170 RTAs are currently in force.

³⁰ “The EC responds to outside pressures related to the impact of the internal market and its policies by expanding membership to applicants; offering association and preferential trade accords, development assistance, partnerships and dialogues with other regional blocs”. GINSBERG, R. H. “Conceptualizing the EU as an international actor: narrowing the theoretical capability-expectations gap”. In: *Journal of Common Market Studies*, Vol. 37, n. 3, 1999, p. 429-454, at p. 437

³¹ KUMM, Mattias. “The Legitimacy of International Law. A Constitutionalist framework for analysis”, Vol. 15, n. 5, *EJIL*, 2004, at p. 913.

rather as a means to attain other purposes (development is a clear example³²; but we can also mention the intention of applying trade tools to promote the use of environmental protection-oriented technologies: environmental goods³³; or the protection of health, etc). Therefore, the multidimensionality connected to trade has emerged simultaneously at a regional and at a multilateral level and it may ultimately be linked to the quest for legitimacy (in the sense of recognition, acceptance).

The openness is also illustrated by the fact that European Union has been gradually expanding its size through five enlargement processes which have ended up with an European Union composed of 25 States (and it's highly likely that this figure will be increased again very soon with the accession of Bulgaria and Rumania³⁴). Nevertheless the ability of European Union to geographically spread seems to have reached its zenith. Even though so far the doubts about the wisdom of undertaking new enlargements have not prevented the negotiations with Turkey and Croatia to be launched, it is also clear that European Union is being more cautious as to the results, underscoring the fact that the negotiating processes currently underway are not necessarily bound to the accession of these countries (being this particularly notorious with regard to Turkey³⁵). It is undeniable that there is a profound concern within the European Union

³² Pascal Lamy has recently declared that trade “is the missing piece of the development puzzle – an essential third pillar. (...) the goal is not freer trade for trade’s sake. It’s about better living Standards for all countries – developing and developed alike”. And in the recent Hong Kong Ministerial Declaration the development dimension of the trade multilateral system has been stressed once again (see paragraph 2). http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm

³³ This theme has generated a noticeable interest during the WTO Hong Kong Meeting. Many States have delivered their proposals: Doc. TN/TE/W/47, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Acceso a los mercados para los bienes ambientales - Comunicación de las Comunidades Europeas - Párrafo 31 iii*), 17 de febrero de 2005; Doc. TN/TE/W/48, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Propuesta de Lista Inicial de Bienes Ambientales - Comunicación de la República de Corea - Apartado iii) del párrafo 31*, 18 de febrero de 2005; Doc. TN/TE/W/49, Comité de Comercio y Medio Ambiente en Sesión Extraordinaria - *Bienes ambientales - Comunicación de Nueva Zelandia - Párrafo 31 (iii)*, 26 de mayo de 2005 y Doc. TN/TE/W/49/Rev.1, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Lista provisional revisada de bienes ambientales de Nueva Zelandia - Comunicación de Nueva Zelandia - Párrafo 31 iii) – Revisión*, 12 de octubre de 2005; Doc. TN/TE/W/51, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Un enfoque alternativo para las negociaciones previstas en el apartado III) del párrafo 31 - Comunicación de la India*, 3 de junio de 2005; TN/TE/W/54, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Aspectos estructurales del enfoque basado en proyectos ambientales - Comunicación de la India - Apartado iii) del párrafo 31*, 4 de julio de 2005; Doc. TN/TE/W/60, Comité de Comercio y Medio Ambiente - Sesión Extraordinaria - *Aspectos técnicos y de procedimiento del enfoque basado en proyectos ambientales - Comunicación de la India - Apartado iii) del párrafo 31*, 19 de septiembre de 2005;

³⁴ Perhaps the accession of these two countries (2007) is finally postponed by one year: http://www.europa.eu.int/comm/enlargement/report_2005/pdf/SEC1354_CMR_MASTER_RO_COLEGE.pdf
http://www.europa.eu.int/comm/enlargement/report_2005/pdf/SEC1352_CMR_MASTER_BG%20COLLEGE.pdf

³⁵ Negotiating framework for Turkey
http://www.europa.eu.int/comm/enlargement/docs/pdf/st20002_en05_TR_framedoc.pdf
Negotiating framework for Croatia:
http://www.europa.eu.int/comm/enlargement/docs/pdf/st20004_en05_HR_framedoc.pdf

In the case of Turkey it is stressed from the very onset that the results of the negotiation are not only linked to Turkey’s progress in meeting the requirements for accession but also to the absorption capacity of European Union. And it is suggested that Turkey could be anchored to the European Union through means other than accession: “the strongest possible bond”.

about this subject insofar as it is not easy to keep the promises already made (to Turkey but also to the Balkan countries, which have been considered as prospective candidate countries in the association and stabilization agreements), when simultaneously trying to preserve the necessary level of internal cohesion³⁶. It has been abundantly demonstrated that to a large extent the rejection of the Treaty establishing a Constitution for Europe in France and Holland could have been due to the lack of understanding of the recent large-scale enlargement. Be that as it may, it is becoming gradually clear that an alternative to accession has to be offered to our neighbors. It's in this context that the "new neighborhood policy" was launched and is now operating. There is not a clear idea yet of the effects that this new Policy will have on other policies long underway, but some consequences have already emerged (e.g. recent claims from Morocco³⁷) and need to be further analyzed. In any case, the new policy will bring about deeper integration with the States qualifying as neighbors and benefiting from that Policy, which is another illustration of the openness.

ii) Multidimensionality (new regionalism)

We have already mentioned the multidimensionality when analyzing EU's approach to third states. From an internal point of view multidimensionality is a general feature of the so-called "new regionalism". It basically means that regionalism cannot be contemplated only from a "trade" perspective, but that regionalism goes beyond trade³⁸. Indeed, within the regional schemes the quest for freer trade intertwines with other overriding objectives, such as cooperation-solidarity, promotion of development, human rights, democracy and rule of law³⁹. In fact, it could be said that these objectives (reflective of values) gain in relevance (they become more visible) insofar as they are integrated into the definition of the regional structure⁴⁰. And at

³⁶ TELÓ contends that in order to determine the optimal size, questions as regard to social cohesion within the region have to be considered. TELÓ, M. "Globalization, new regionalism and the role of the European Union". In: TELÓ (Ed.) "European Union and new regionalism. Regional actors and global governance in a post-hegemonic era". Ashgate, 2001, p. 21-37

³⁷ Morocco has recently asked for the negotiation of a new agreement with the European Union, more advanced than the current Euro-Mediterranean agreement. The new agreement might be negotiated within the framework of the Neighborhood policy, which, in contrast to the Mediterranean partnership, is based on a bilateral rather than a regional approach. Considering the daunting outcomes of the recent Barcelona Euromediterranean Summit held in Barcelona (November, 2005), some doubts arise as regard to the future of the Barcelona process. And even though it has been made clear by the European Institutions that the Neighborhood policy is not meant to substitute but only to support (as a complementary tool) the regional strategy embodied by the Barcelona Process, it seems that there is a real risk for the latter to be swallowed by the Neighborhood Policy approach. In this vein, it may be taken into consideration that the bilateral approach might suit better for the heterogeneity characterizing the Mediterranean region.

³⁸ JACKSON, J.H. "Perspectives on regionalism in trade relations" 27 *Law & Pol'y Int'l Bus.* 873. The multidimensionality is also labeled as "new regionalism". See. FARRELL, Mary. "The Global Politics of Regionalism: an introduction". In: FARRELL, M; HETTNE, B; LANGENHOVE, Luk. "Global Politics of Regionalism". Pluto Press: London, 2005, at p. 8

³⁹ Some scholars point out that regional cooperation does not require trade preferences. SCHIFF; WINTERS. "Regional Integration and... op. Cit, at p. 25. As regard to European Community and its external relations it is completely true that there is evidence of interregional cooperation which is articulated in non-preferential agreements: agreements with countries in Asia, partnership agreements with the Eastern European countries.

⁴⁰ It is worth noting how even very basic trade agreements, which lack any degree of institutionalization, adhere to this multidimensional approach. If we take, for example, the US-Jordan trade agreement we can see that it includes labor and environmental provisions. This is remarkable even though the lack of enforceability mechanisms raises some doubts about the effectiveness of the commitments embedded in those rules.

the same time, the entrenchment of the actorship of regional groups is linked to the recognition of these objectives⁴¹. As a result, the regional actor is bound to pursue these objectives and it is bound not only as a result of the application of certain areas of international law embedding these purposes, but as result of a self-commitment, which integrates its identity.⁴² In other words, the entrenchment of the identity of the EU as a multidimensional regional group is in a way connected to the commitment to abide by particular areas of international law. This results in a reinforcement of both the legitimacy of the European Union and those particular areas of international law. At the same time, as suggested earlier, the valid creation of any international organization requires the acceptance of *ius cogens*; whereas the commitment on the part of the states to abide by such basic international rules is not a condition for their existence as international actors.

iii) Multilateralism-oriented

The European Union could also be characterized as a multilateralism supporter⁴³. In this vein it might be suggested that European Union is intrinsically bound to advocate multilateralism⁴⁴. It is worth mentioning that the European commitment to multilateralism embraces also the non-institutionalized forms of multilateralism, such as G8. We will make further reference to this

⁴¹ Last but not least it should be said that this multidimensionality can be traced in every regional scheme. Even in projects as FTAA, primarily oriented towards trade, other dimensions are also being considered. Adelle BLACKETT, for example, pleads for the reinforcement of social dimension within the framework of regional integration schemes in America. "Toward social regionalism in the Americas". In: 23 *Comp. Lab L & Pol'y J.* 901, 2002.

⁴² With regard to the multidimensionality characterizing this new regionalism Bjorn HETTNE wrote: "whereas the old regionalism was specific with regard to objectives, whether security or economically oriented, the new is a more comprehensive, multidimensional process that includes not only trade and economic integration, but also environment, social policy, security, and democracy" "The UN and conflict management: the role of the new regionalism". In: 4 *Transnat'l L & Contemp. Probs* 643, 1994.

⁴³ article III-292 of the Constitutional Treaty is very clear to this regard: (1) The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

(2) The Union shall seek to develop relations and build partnerships with third countries and international, regional or global organizations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

(3) The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

[...]

(h) promote an international system based on stronger multilateral cooperation and good global governance.

⁴⁴ RICHARDSON, John. "The European Union in the world... op. cit.

commitment to multilateralism on the part of European Union when analyzing the objectives of EU's external action.

iv) Solidarity-oriented

The solidarity is expressed both internally (and here we are referring to regional solidarity) and externally. One of the most salient features of the regional model which the European Union incarnates is the existence of regional and cohesion policies. There is no other example of a regional process which has gone so far in the implementation of these policies. In fact solidarity is definitely not easy to implement even in Europe we have recently witnessed how difficult it has been for the Member States to reach an agreement on the European budget. Solidarity produces cohesion but when more solidarity is requested from the States the result could be the opposite: that internal cohesion is put at risk⁴⁵. And it is clear that the recent enlargement has forced the Member States to explore the limits of solidarity.

As regard to the external dimension of solidarity, we will mention that now the European Union is trying to export the idea of regional cohesion as an essential condition for development. This is clear for instance in the relations with Latin-American countries. But we will address this question in more detail when analyzing the objectives of the external action of the European Union.

b)The European Union and its supranational legal order: a self-contained regime.

The need to give a response to global problems leads to the creation of transnational or even supranational legal mechanisms⁴⁶. Some international organizations illustrate this phenomenon. They embody inter-state co-operation and may constitute proper frameworks within which the states are incentivated to go beyond mere cooperation so as to get closer to interaction inspired by solidarity.

The European Union as has been referred to repeatedly is an advanced laboratory where new experimental legal formulas are being successfully tried⁴⁷, formulas which differ from both traditional national and international solutions⁴⁸. Here we subscribe to the positions defended by

⁴⁵ From this "cohesion" perspective, PADOAN acknowledges the existence of limits: "Consensus to the regional agreement, and ultimately its size, will then depend on the degree of cohesion among its members. Cohesion problems will be greater the larger the asymmetric distribution effects, and therefore the larger the impact of scale effects generated by integration. These effects, in turn, will be greater the larger the diversity among members of the integration region. Once the costs for cohesion management (i.e. the costs that must be borne to offset the asymmetry effects) exceed the benefits from integration, the widening process will come to an end. A number will have been determined". PADOAN, Pier Carlo. Political Economy of New Regionalism and World Governance. In: Telo, Mario. European Union and new regionalism. Regional actors and global governance in a post-hegemonic era. Ashgate, 2001, at. P. 43

⁴⁶ HABERMAS. "La inclusión del otro....?" p. 82. HETTNE, Bjorn. "The United Nations and conflict management: the role of the "new regionalism" 4 Transnat'l L. & Contemp. Probs. 643.

⁴⁷ It is contended by some scholars that these test laboratories benefit the multilateral trading system. See: CHO, SUNGJOON. "Breaking the barrier between regionalism... op. Cit.

⁴⁸ RICHARDSON, John. "The European Union in the world – a Community of values". 26 Fordham Int'l Law Journal, November, 2002. He conceptualizes European Union as a form of world governance.

the so-called “sui generists”⁴⁹ as they consider the EU (EC)’s legal order as something in between international law and domestic law. This organization has been provided with the means which allow it to proceed according to its own dynamics. The greater the autonomy it achieves, the stronger is its leverage within the international legal system.

As has been suggested above, the escalating relevance of the EU may be framed within a broader phenomenon, which is the emergence of new international actors on the world scene. We are particularly interested in the consequences with regard to the erosion of the monopoly of states in the creation and application of international law. Among the new actors, the international organizations may be characterized – *inter alia* – by the fact that they are firmly anchored in international law, for an international treaty is necessarily the basis upon which its own legal order is built up. In this vein, the constitutional (founding) treaty of every international organization, including the European Union, is governed by the 1969 (1986) Vienna Convention on the Law of Treaties (including article 53 thereof, recognizing the existence of peremptory norms).

As indicated above, the European Union is worth being analyzed not only for its uniqueness as an international actor but also for the uniqueness of one of the two legal orders coexisting within the EU realm: the EC legal order. The EC’s legal order is comprised of both primary and secondary rules⁵⁰. It constitutes a self-contained regime⁵¹ and the need arises to elucidate how the European legal order interacts with international as well as domestic legal orders⁵². Likewise it seems necessary to shed some light about the way in which these autonomous legal orders interact among themselves⁵³.

Concerning the relations between EC Law and international law, the starting point is that the former is rooted in the latter. Nonetheless, the greater the autonomy achieved by the EU Law – as a self-contained regime⁵⁴ – the more tenuous become its relations with the matrix⁵⁵.

⁴⁹ This term is used for example by Mattias Kumm. “The jurisprudence of Constitutional Conflict: Constitutional Supremacy on Europe before and after the Constitutional Treaty”. In: *European Law Journal*, Vol. 11, issue 3, 2005, at p. 266. See: WEILER J.H.H; HALTERN, Ulrich. R. “The Autonomy of the Community Legal Order – Through the Looking Glass”. In: 37 *Harv. Int’l L. J.* 1996, 411.

⁵⁰ HART, H. L. A. “El concepto de Derecho”, 1995

⁵¹ SIMMA, B. “Self-contained regimes”. *Netherland Yearbook of International Law*, Vol. 16, 1985, p. 111-136; SORENSEN, M., “Autonomous Legal Orders: Some considerations relating to the Analysis of international organisations in the world legal order”. *International and Comparative Law Quarterly*, vol. 32, 1983, p. 559-576.

⁵² See: KUMM, M. “The jurisprudence of Constitutional conflict... op. cit.,

⁵³ On this topic see: ZAPATERO, Pablo. “Derecho del Comercio Global”, Thomson Civitas, 2003,

⁵⁴ According to Weiler and Haltern the autonomy of the EC legal order with respect to International Law is illustrated by these features: “the different hermeneutics of the European order, its system of compliance, which renders European Law in effect a transnational form of higher law supported by enforceable judicial review, as well as the removal of traditional forms of state responsibility from the system”. In: “The Autonomy of... op. cit. at. p. 420.

⁵⁵ The autonomy of the EC legal order with regard to international legal order has been clearly established by the ECJ (Van Gend en Loss, C 26/62). It is illustrated by the existence of EC norms regulating the mechanisms whereby international norms are integrated and accorded a certain hierarchy within the EC legal order (FERNÁNDEZ LIESA, Carlos. *Sobre la unidad del Derecho internacional*”. In: MARIÑO MENÉNDEZ, F. (Ed.). *El Derecho Internacional en los albores del siglo XXI. Homenaje a J.M. Castro Rial Canosa*. Madrid: Trotta, 2002, p. 287-290; See also: DIEZ-HOCHLEITNER, J. *La posición del Derecho internacional en el ordenamiento comunitario*, Madrid:Mc GrawHill, 1998, p. 1-41).

Using the terminology coined by the Working Group on Fragmentation (currently working within the International Law Commission – ILC -) we can go further into the analysis of the “challenges” posed by the irruption of these autonomous systems for the so-called “unity” of international legal order⁵⁶. Here, we adhere to DUPUY and SIMMA’s optimism about these challenges, being their main contention that the unity of International Legal Order is not at risk⁵⁷. From our point of view it could be argued that the existence of autonomous regimes – such as the EC – could lead to both reinforcement and improvement of the international legal order. European Law is a reinforced form of international law. It is perhaps what proponents of the latter would dream of. No other self-contained regime has gone so far. Its effectiveness is backed up by the existence of a broad body of secondary rules, which basically bring about an improvement in the field of decision making mechanisms (nomogenesis) and, more importantly, an undeniable improvement with regard to accountability. The commitment of national judges to the application of EU Law has been essential in this regard. As is well known national judges apply EC law according to the conditions established by EC legal order itself; namely, according to the parameters established not by domestic legal order (regulating the insertion of international rules into the national legal system) but by the EC’s legal order itself. As a result, the relations between European legal order and domestic legal orders are developed according to a monist model embedded in the EC Treaty as has been interpreted by ECJ (primacy, direct effect). This is not to say that there is a single legal order in Europe. Even though the national and European legal orders are deeply interconnected they continue to be autonomous and separate from each other. The difficulties of reconciling the primacy principle applied to EC law with the supremacy recognized to national Constitutions within the States so demonstrate⁵⁸. Even though a conflict between state constitutional law and EC law is becoming increasingly unlikely, due to the fact that states’ Constitutions have been gradually integrated into the EC’s “Constitutional block”, it holds also true that the ghost of the conflict has not been frightened away once and for all⁵⁹.

Returning to the conception of European Union as a self-contained regime⁶⁰, and digging deeper into the challenges it poses to the international legal order, we can try to elucidate whether a sort of common language exists among the existing self-contained regimes, a common language which would help to preserve the unity of the international legal system. Among the scholars TEUBNER has taken the lead in demonstrating that as far as such a common language does not

⁵⁶ DUPUY puts into question the alleged unity of a legal order within which the ultimate interpreters of the obligations arising from the rules are the States themselves. .P.M. DUPUY. In: NYU Int’l Journal of L & P, 1998-1999. Even though it is true that auto-interpretation is not tantamount to auto-decision, it holds true that this distinction is blurred within a legal order suffering from the lack of centralized institutions. See: GROSS, Leo. “States as Organs of International Law and the Problem of Autointerpretation” In: Essays on International Law and Organization, 367, 1993, p. 382.

⁵⁷ SIMMA. Fragmentation in a Positive Light. 25 Mich. J. Int’l Law, 845, p. 2

⁵⁸ KUMM, M. “The jurisprudence of Constitutional Conflict... op. cit.

⁵⁹ See the recent Decision of the Spanish Constitutional Court on this matter (December, 2004)

⁶⁰ Even within the framework of the codification of the Law on International Responsibility of International Organizations, currently underway within the International Law Commission, we might find some echoes of the relevance accorded to the consideration of some international organizations as self-containing regimes⁶⁰. In this vein, reference might be made to Article 8, paragraph 2 of the Project of Articles on the Responsibility of International Organizations (A/CN.4/L.666/Rev. 1, 1 June 2005): “Paragraph 1 also applies to the breach of an obligation under international law established by a rule of the international organization”. This provision has provoked a vibrant discussion about its meaning. From our point of view the fact that this provision has been posited indicates that the drafters are aware of the need to take into consideration the particular case of institutionalized self-contained regimes. In this vein, it may be sustained that this provision is purported to make clear that the fact that an international organization has its own secondary rules does not rule out the application of international secondary rules when the international organization incurs international responsibility.

exist, there is no relief for the fragmentation disease. Even though Teubner introduces some nuances in his recent works (accepting that the autonomous regime are somehow interconnected as far as they operate according to a network logic), he firmly rejects the idea of having article 53 of the Vienna Convention on the Law of Treaties (VCLT) as the basis for a potential unity among the different sub-regimes⁶¹. From our point of view, on the contrary, art. 53 VCLT becomes a key provision when trying to explain the relations between the self-contained regimes (EC) and international legal order. According to article 53 CVLT international peremptory rules enter these autonomous legal orders, as part of the Founding Treaty. In this way, peremptory rules (*ius cogens*) are conceived of as components of the Constitutional norm of the self-contained regime.

From these considerations it may be inferred that an absolute self-contained regime is simply not possible, because even in the case of the European Community when it comes to the identification of the secondary rules governing the creation of its Supreme Norm (the Constitutional Treaty) we have to turn to the international law of treaties. From this perspective, at least formal unity of international legal order is allegedly guaranteed⁶².

Nevertheless, we wonder if it is possible to go a step further by demonstrating not only that European Community as a self-contained regime⁶³ should not be considered as a threat to the international system but also that it might contribute to improving and reinforcing it⁶⁴. In our view, the European Union and prospective actors alike might indeed represent an opportunity to entrench the substantial unity of the International legal order by contributing to both the shaping and enforcement of *Ius Cogens*⁶⁵. At this point it should be recalled that European Union is a

⁶¹ FISCHER-LESCANO, A; TEUBNER, G. "Regime-Collisions: the vain search for legal unity in the fragmentation of global law". In *Michigan Journal of International Law*, Vol. 25, 1999, p. 999-1046, p. 1033

⁶² Formal unity is linked to substantial unity, see: Fernando MARIÑO: "... cualquiera que sea el modelo de unidad formal del orden jurídico internacional que se adopte, éste debe (se trata de un deber jurídico positivo y no sólo ético) estar construido sobre la unidad material constituida por los concretos valores y principios que históricamente han venido a expresar las exigencias de convivencia humana universal, más constringentes y elevadas que las derivadas del respeto a los principios de un orden de simple coexistencia y cooperación interestatales". MARIÑO MENÉNDEZ, F. "En torno a la Prohibición Internacional de la Tortura". En: *Pacis Artis. Obra homenaje al Profesor Julio D. González Campos. Tomo I. Derecho Internacional Público y Derecho Comunitario y de la Unión Europea*. Madrid, 2005, p. 402

⁶³ MARIÑO MENÉNDEZ, F "La reciente reforma del sistema judicial de la Unión Europea por el Tratado de Niza". In: STAHRINGER, O; MONSANTO, A; SESELOVSKY, E. (Coord.) "Integración y Cooperación Atlántico-Pacífico, Volumen II. Rosario, 2004, at p. 166-167

⁶⁴ KUMM, Mattias. "The legitimacy.... op. Cit., p. 915, we could say using the terminology coined by KUM that in the self-contained regimes the international law becomes "international law as governance".

⁶⁵ We want to stress that to our understanding, the process of constitutionalization, including all the dimensions pointed out by KUMM (EJIL) (including connection not only to the outcomes, but also to accountability), is taking place not only within the realm of self-contained regimes, but also, although perhaps in a more slight (subtle) way, within the realm of general international law. As the Secretary General has recently pointed out in the report addressed to the General Assembly, accountability is still the main flaw of international law. But it is clear that improvements in this field are emerging. In this vein, a reference to the role played by NGOs in supervising the application of international law, acting as institutions exercising a monitoring function within the realm of international legal order, could be illuminating. As an expression of the institutionalization of civil society, the escalating relevance of NGOs proves that the existence and the content of international law is being internalized by the civil society, whose members (individuals) put pressure on the governments to abide by International Law. It could be said that external action is acquiring more importance as regards to the assessment that individuals make of their Government's behavior. To put it another way, it could be the case that external action is increasingly

framework where it may be easier to advocate certain values, which find far more difficulties in being articulated within the individual national frameworks. On the other hand, the fact that, within the EC, particular secondary rules concerning responsibility exist⁶⁶ could be deemed positive for the reinforcement of *ius cogens* itself.

One of the objections to this contention could well be: ok, but the EC as an international organization is composed of states. At the end of the day it is a state actor, so why should it make such a difference? How could it implement this important role to which we are tasking it? It is true that the European Community could be formally conceived of as no other than a State actor, but we have to keep in mind that it has a broad array of means allowing it to operate autonomously, detaching itself from the Member States' will. One of these means is the existence of the European Court of Justice. Indeed it could be said that international organizations within which a jurisdictional mechanism for dispute resolution is established, which could be labeled as a comparative advantage, have a clearer chance to reach higher levels of autonomy⁶⁷. And this is one of the great strengths of the European Union⁶⁸.

By considering the European Union as a self-contained regime we are stressing its autonomy⁶⁹, which is one of the relevant aspects of its actorness⁷⁰. It has been sustained above, that the autonomous legal order of the European Community has to be differentiated from national and from international legal order. It could be considered the domestic law of a region (considered as a small international community). EU's law is clearly anchored in the substantial Constitution of international legal order. In developing its autonomy it is the EC law that sets up the formulas through which international rules are integrated and applied into the EC legal order. All these reflections about the autonomy of EU legal order raise once more the question whether it is good for the international legal order that the EC as a self-contained regime exists. And our contention is that it should be good primarily because it is bound to embrace peremptory rules as components of its constitutional rule. Moreover, the fact that the EC legal order is a reinforced set of rules could bring about a reinforcement of these peremptory rules as well. Perhaps this very general contention should be somewhat nuanced. In this vein we should keep in sight that there are cases in which the influence of Europe in the shaping of the constitutional basis of

influencing the democratic choice of the individuals within the State. And here we have a way through which a Government is made accountable.

⁶⁶ "removal of traditional forms of state responsibility" in Weiler's words. "The autonomy of the Community legal... op. cit.

⁶⁷ KUMM, Mattias. "The legitimacy... op. Cit., p. 914 points out: "Within their circumscribed subject-matter jurisdiction, these bodies are authorized under the treaty to develop and determine the specific content of the obligations that states are under. This means that, though states have consented to the treaty as a framework for dealing with a specified range of issues, once they have signed on, the specific rights and obligations are determined without their consent by these treaty-based bodies".

⁶⁸ And here, again, although the proliferation of international tribunals (on the concept of international tribunal see: ROMANO, Cesare. "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle". 31 NYU J Int'l L & P, 1998-1999, p. 711) has been presented as a risk for the unity of the international legal order, we join Koskeniemmi and Dupuy in dwarfing such a risk. Dupuy contends that the proliferation of international tribunals contribute to erode the State's monopoly in the interpretation of international rules (NYU J. Int'l L & P, 1998-1999)

⁶⁹ The degree of autonomy reached by the European Union could serve as a basis to contend that it is moving from regionalism – conceived of as a State project – to regionalization – related to a process of evolution within international society. See: GAMBLE, Andrew. Regional Blocs, World Order and the new medievalism. In: Telo, Mario. European Union and new regionalism. Regional actors and global governance in a post-hegemonic era. Ashgate, 2001, p. 27.

⁷⁰ HETTNE, Bjorn. Cited above

international legal order could not be deemed as a positive influence⁷¹. Secondly, to say that Europe has the means to influence in a positive way the evolution of international law is not sufficient to legitimize its action⁷². The mere fact that our point of departure is the existence of *ius cogens* means that we assume that common interests have been identified and are being protected by these rules. Being that true, it holds equally true that we see *ius cogens* as a dynamic construction whose precise content remains largely indeterminate^{73,74}. And here, following the communication theory approach⁷⁵ (law creation cannot be easily differentiated from law application) which is particularly appropriate when talking about international law; our contention is that within the contemporary international society communication no longer involves only States. There are other powerful actors engaged in it. And it is through this communication process that the content of the rules is to be determined. Not so long ago it was possible to contend that the international community tasked with the definition of *ius cogens* was composed only of States “to the exclusion even of international organizations”⁷⁶. As is well known the recognition of *ius cogens* is to be accomplished “not only by some particular group of States (...) but by all the essential components of the international community⁷⁷”. There is no doubt nowadays that at least some international organizations have to be considered as “essential components of the international community”. In this vein and taking into account the differences among the different international actors – in terms of power -, we should add that powerful states in practice happen to be in themselves “essential components” in regard to the influence that they can exert when it comes to the definition of the constitutional basis of the international legal system⁷⁸.

⁷¹ Fisheries agreement with Morocco allegedly in violation of the saharais’ right to self-determination, signed July, 28th 2005. See: SOROETA, Juan. “El Plan de Paz del Sahara Occidental” viaje a ninguna parte?. In: Revista Electronica de Estudios Internacionales, n. 10, 2005: [http://www.reei.org/reei%2010/J.Soroeta\(reei10\).pdf](http://www.reei.org/reei%2010/J.Soroeta(reei10).pdf)

⁷² When talking about legitimacy the effectiveness of the action implemented by the international organization becomes important (Functionalism as formulated by HAAS, E: “Beyond de nation-state: functionalism and international organizations. Stanford: Stanford University Press, 1964. But as much as important is the identification of the values inspiring that action. STEFFEK, Jens. Sources of legitimacy beyond the State: a view from international relations. JOERGES; SAND; TEUBNER (Eds). Transnational governance... op. Cit., P. 81.

The legitimacy recognized by individuals to United Nations is an example of the relevance of objectives, values and goals whereas the WTO would be an example of legitimacy based on effectiveness. The legitimacy of WTO has been put into question and this has fuelled the need to introduce new values in the system so as to gain legitimacy. European Union could be considered as an entity whose legitimacy has been built upon the basis of a mixture between effectiveness and values.

In the search for legitimacy mention has to be made also to transparency (communication – analyzed thoroughly by Habermas: “Legitimation Crisis”. Oxford: Polity Press, 1988; “Communication and the evolution of society”. Londres: Heinemann Educational B., 1979; Theory of Communicative Actions”, 1984; Manin: “On legitimacy and political deliberation”, Political Theory, 19, p. 339.

⁷³ About the problems surrounding the *ius cogens* theory, see the classical article by Prosper WEIL. “Towards relative normativity in International Law? 77 Am. J. Int’l L. 413, 1983. especially at p. 426.

⁷⁵ Habermas. Fastenrath. “Relative normativity in International Law” 4 EJIL, 1993, p. 305. Even as regard to *ius cogens* it could be said what Fastenrath says in general about law and international law “the content of a legal proposition – *rechtssatz* – is never finite” at p. 315. And as regard to the formulation of customary law: “practice not only differs with time and space but also in relation to the actors involved. In addition, the circumstances surrounding the practice may vary to a greater or lesser degree”, at p. 317.

⁷⁶ WEIL, Prosper. “Towards relative... op. cit. supra. p. 426.

⁷⁷ ILC 1976 Report, A/ CN.4/SER.a/1976/Add.1 (pt.2). AT 119

⁷⁸ US as regard to the death penalty on minors (persistent objection or violation of a *ius cogens* rule?) Some reflections about the possibility of persistent objection with regard to *ius cogens* can be found in:

It might be said that none of the European States taken individually, can be considered powerful enough as to be capable to exert that kind of influence. On the contrary, when acting altogether under the umbrella of the European Union the recognition of that influential position becomes sound. When the new actor is a supranational regional integration organization such as European Union which intrinsically runs across national borders, which promotes regional solidarity, which integrates into its own definition (essence) objectives such as: protection of human rights, sustainable development, rule of law, promotion of regional integration, regional solidarity and defense of multilateralism, the reasons to be optimistic exist. Another fundamental difference that is worth mentioning has to do with the way in which the EU approaches international law, which differs clearly from the State's approach: the fact that EU itself is a result of a particular evolution of international law prevents the EU from considering international law as a straitjacket, this image being more appropriate to describe the way in which international law is perceived by powerful States⁷⁹.

Once certain guidelines regarding the nature of the European Union have been provided, an attempt to complete this vision with an overview of its external action will follow. Even though it is suffering from an endemic identity crisis, the European Union needs to project itself. The objective should be to cast itself in a way that allows it to be at ease with its role by reinforcing its legitimacy and providing it with some relief for its identity crisis. In the following section we identify the objectives guiding the external action of the European Union so as to depict the external face of the *creature*. On the other hand, from the reflections on its definition, the idea that European Union has at least the potential ability to achieve its objectives is important to measure the solidness of its position.

III HOW DOES THE EUROPEAN UNION PROJECT ITSELF ON TO THE WORLD STAGE?

In order to find a response to this question, the identification of the goals pursued by the European Union's external action is required. What does that the European Union wish to achieve through its external action? If we identify on the one hand the objectives and on the other hand the degree to which such objectives are being transposed into real action, we will hopefully obtain a clearer idea of which type of creature European Union really is.

When we were seeking to define the objectives of the external action of the European Union on the basis of both the provisions of the Founding Treaties⁸⁰ as well as the real action implemented

DANILENKO, Gennady M. "International Ius Cogens: Issues of Law-Making". 2 EJIL (1991) 42, at p. 54-57.

⁷⁹ The approach of weak States is better portrayed by the so-called democratic paradox of globalization. DE BURCA, Gráinne; SCOTT, Joanne. "The impact of the WTO on EU Decision Making, in: "The Eu and the WTO: legal and constitutional issues", p. 27; HELD, David. "Democracy and the Global Order", 1995, p. 16. GERHART, Peter M. "The Two Constitutional Visions of the World Trade Organization". U. Pa. J. Int'l Econ. Law, 2003, Vol. 24, n. 1, p. 21.

⁸⁰ For the legal basis see: article 11 EUT, article 131 ECT, Article 177 ECT, (SODERBAUM, P. 250) . To these it would be possible to add others, for example RICHARDSON mentions: cultural diversity; promotion of sustainable development. RICHARDSON, John. "The European Union in the world... op. cit. We should also mention Article I-3 (4) of the Treaty establishing a Constitution for Europe: "the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to

by it on the world, it happened that the European Commission issued new Thematic Programmes in an attempt to “rationalize” the external action as well as to make clear that the geographical approach had to be complemented with this new thematic approach⁸¹. And of course the overview of these Programmes turned out to be very useful to identifying the main dimensions of the external action. The European Commission has issued seven Thematic Programmes: Investing in People⁸², Promotion of human rights and democracy⁸³, Non-State Actors and Local Authorities in Development⁸⁴, Environment⁸⁵, Food Security⁸⁶, Cooperation with Industrialized and High Income Countries⁸⁷, Cooperation with third countries in the Areas of migration and asylum⁸⁸.

From the analysis of these programs one conclusion arises with regard to the primary importance conferred on development cooperation, which is contemplated in all its dimensions. Most of these seven Programmes address particular dimensions of development cooperation: decentralized cooperation, trade, social development, food security and migration are related to the promotion of development. Therefore we could safely say that development cooperation is the overarching and primary scope of the external action of European Community. Besides this overarching scope we find the promotion of human rights and democracy as other main purpose. If we read the Programme specifically dedicated to describe this theme we find that even though this objective is connected to cooperation, it is considered more clearly as an autonomous purpose. Finally, we find the Programme describing cooperation with developed countries. In sum, three primary courses of action could be identified from the reading of these seven documents: development cooperation action; action targeted to developed or high-income actors⁸⁹; and promotion of human rights, democracy and rule of law.

It has to be highlighted that the thematic programmes are conceived of as means to “promote the Union’s internal policies abroad. The intention is to put the experience acquired in implementing internal policies as an input into the external action: “value added” is the expression used by the European Commission.

The mere fact that the thematic approach has been further formalized and clarified reinforces the identity of EU because it gives a clearer idea of what EU is (or what it perceives itself as being), by capturing and showcasing part of its substance. Thereby, even if the strategy driving the relations with third countries will continue to be designed primarily by paying account to the particular circumstances of these countries, the existence of the thematic approach could be deemed as a formal acknowledgement of the fact that there will be certain permanent guidelines on the part of the EC operating in any case. To put it another way: even though the geographical

the strict observance and the development of international law, including respect for the principles of the United Nations Charter”.

⁸¹ The European Commission had suggested before the convenience of streamlining external action through the introduction of further clarification on thematic approach: COM (2004) 487 final.

⁸² COM (2006) 18 final, 25/01/06.

⁸³ COM (2006) 23 final

⁸⁴ COM (2006) 19 final, 25/01/06

⁸⁵ COM (2006) 20 final, 25/01/06

⁸⁶ COM (2006) 21 final

⁸⁷ COM (2006) 25 final

⁸⁸ COM (2006) 26 final

⁸⁹ These countries are: United States, Japan, Canada, Republic of Korea, Australia, New Zealand, Singapore, Hong Kong, Macao, Brunei, Taiwan, Kuwait, Qatar, United Arab Emirates, Bahrain and Saudi Arabia.

approach persists and it is even granted precedence over the thematic approach⁹⁰, the formal emergence of the latter is noteworthy. We could say also that it is a sort of formal and public rationalization of what the European Union is and what intends to be. Furthermore, we consider particularly notable the EU's awareness of the fact that its identity has been taking shape as a result of the implementation of internal policies, so that it is somewhat recognized that the "internal" success of the European Union has to serve as a basis for its external entrenchment, and we have to recall here that when we talk about internal policies we are talking mainly about the action undertaken under the umbrella of the European Community. This is connected directly with the idea that the comparative advantage (added value) of the European Union on the international stage has to be traced within the supranational pillar (European Community).

But as is well known it is not only the supranational pillar that exists within the external field. That is why in addition to the objectives referred to above, another main objective has to be considered: crisis management (where the three pillars converge). In addition to all these goals we would also mention the clear EU commitment to the promotion of regionalism, which is particularly interesting for this research in the sense that it reflects a peculiar way for the EU to strengthen its role by spreading its own model (at least some of the features of the model that it incarnates).

a) Civilian and Military Crisis Management.

The European Union has been commonly conceptualized as a civilian power, lacking military strength. As of the 1990s Europe has spent a great deal of energy in an attempt to reverse this situation. In this line, the progress accomplished within the framework of the European Security and Defense Policy is certainly remarkable. The recent emphasis on Security issues on the international stage⁹¹ has fuelled the willingness of European Union to reinforce its military capabilities as well as to render its civilian capabilities available for crisis management. This move illustrates how focus is being shifted from traditional goals in European Community's external relations to a more comprehensive scope: crisis management, an area where European Community's external relations and European Union's external actions are called to intersect. As a means to illustrate this move we can make reference to some of these advances: a European Security Strategy was approved⁹², new Headline Goal for 2010 (replacing the Headline Goal 2005) including the creation of 13 battlegroups⁹³, creation of the European Defense Agency (July, 2004⁹⁴). New operations (civilian and military) have been settled up: Mission for supporting the reform of the security sector in Congo (Common Action 355/2005); Mission to support AMIS-II, Darfur (July, 2005), Rule-of-Law Mission for Iraq (EUJUST LEX, February 2005). The most

⁹⁰ "in some circumstances geographical programmes are not the best instrument for action in a particular domain: some EU policy objectives cannot be achieved through country and regional programmes and/or some the action under the country and regional programmes can be effectively supplemented by thematic action. The thematic programme adds value to geographical program"

⁹¹ "The paranoia on security". WARD, Ian "The Challenges of European Union Foreign and Security Policy: retrospective and prospective" 13 Tul. L. Int'l & Comp. L. 5, Spring, 2005.

⁹² December 2003: <http://ue.eu.int/uedocs/cmsUpload/78367.pdf>

⁹³ <http://ue.eu.int/uedocs/cmsUpload/Battlegroups.pdf>

⁹⁴ Within the framework of this Agency it has been recently (November, 2005) decided to open the European defense equipment market to competition <http://www.eda.eu.int/reference/sbd/sbd-2005-11-0.htm>. Each State should decide on a voluntary basis whether or not join this market. Spain has showed a deep reluctance. <http://www.eda.eu.int/iandm/iandm.htm>

recent Missions are: EU Border Assistance Mission Bahm Rafah (November, 2005⁹⁵); EU Police Mission in the Palestinian Territories EUPOL COPPS (November, 2005⁹⁶); EU Monitoring Mission Aceh- Indonesia (August, 2005⁹⁷) and Moldova and Ukraine border mission (November, 2005⁹⁸).

It has become usual, when talking about EU's external action, to make continuous reference to crisis management, which seems to have become the ultimate reason behind any external action⁹⁹. The appeal to crisis management within the discourse on the external action of the European Union, may, on the one hand, help to vertebrate the European action. But on the other hand, we should keep in mind that, as mentioned above, the relevance accorded to crisis management is a direct consequence of the increasing concern about security (and we are still evaluating the damages caused by the escalating prominence conferred on security within the international legal order). The equation is very simple: International crisis put global security at risk; and international cooperation – in any way – helps to avoid, alleviate or settle a crisis. Therefore, it serves security. Actions which have been implemented by the European Community over years are bestowed with a new special vividness as far as they are now contemplated as actions meant to set on the structural causes of the conflicts (long term prevention actions). And obviously the contemplation of this new landscape raises some doubts. Did the European Community external relations need this new security-oriented approach? What is there behind this move? This move becomes still more intriguing if we pay regard to the fact – underlined above - that is precisely the external activity implemented by the EC that provides legitimacy to the European Union in the world¹⁰⁰. Put in other words, so far the added value of European Union external action can be traced primarily (perhaps only) in the first pillar¹⁰¹.

Be that as it may, one of the basic implications of the new situation is that at this moment, external action seems to be more valuable when connected to crisis management, ultimately with security. It seems no longer to be enough to link that action to the traditional values inspiring the external relations of EC: promotion of development, alleviation of poverty, human rights protection. This is not to say that these values have been banished from the external action, it is just to point out that these other values are being arguably subordinated to security¹⁰² (to the fact that security is being granted precedence over these other values). This new-fangled hierarchy of objectives could be put into question. Furthermore we should be aware that this new approach to external action implies that when measuring the effectiveness of the external action what matters is the results attained within the field of security; and ultimately this could end up casting some doubts about the legitimacy (based on the effectiveness) of the EU's external action.

⁹⁵ http://ue.eu.int/cms3_fo/showPage.asp?id=979&lang=EN

⁹⁶ http://ue.eu.int/cms3_fo/showPage.asp?id=974&lang=EN&mode=g

⁹⁷ http://ue.eu.int/cms3_fo/showPage.asp?id=957&lang=en&mode=g

⁹⁸ http://ue.eu.int/cms3_fo/showPage.asp?id=986&lang=EN&mode=g

⁹⁹ The underlying idea is that any external action should be conceived of as a means to contribute, either in the long or in the short term, to the settlement or alleviation of international crisis wherever they emerge.

¹⁰⁰ GINSBERG, R. H. "Conceptualizing the European Union... op. cit., at p. 437.

¹⁰¹ The importance of the first pillar leads to the categorization of the European Union as a civilian power. This image was used first by Duchene in reference to the EC. Duchene, F. "Europe's role in the international system" In: Hager; Kohnstamm (Eds.) *A nation writ larger*" London: Macmillan, 1973.

¹⁰² RICHARDSON, John. "The European Union in the world... op. cit: "It's this author's conviction that the concentration of attention on the crisis management aspects of EU external relations, driven both, by the need to respond to crises and by media and public interest in conflict, has distracted attention from the way in which the Union has over years built up a remarkably coherent approach to its long-term goals in the external relations field, an approach based largely on the external pursuit of the same basic principles which guide its own development"

In our opinion behind this emphasis on security stands the intention on the part of the states to regain some control over the external action of European Union. This would be their response to the escalating presence of the EU on the world stage. We have already briefly analyzed the growing relevance attained by some international organizations, particularly by those which have evolved into self-contained regimes within the international legal order, and how the emergence of these new powerful actors is eroding the power of the States. It is undeniable that the European Union is in a privileged position to put into question the state's monopoly with regard to the creation and application of international rules. Within this context, it may be asserted that Member States are trying to regain some control by linking the European Community's external relation to the management of crisis, with the intention of putting the former closer to the intergovernmental pillar.

This new approach to international actions of European Union could hurt its legitimacy, not only as has been already said from the perspective of the effectiveness of this action, but also from the perspective of the relevance of the values pursued by this action (ultimately hindering recognition). At the same time this approach leads to confusion by hiding the most brilliant and consolidated features of the external face of the EU, features that contribute to shape its uniqueness.

Two possible positive consequences could be, nonetheless, derived from the preeminence conferred to security. The concern about security, on the one hand, might help to bind all the actions undertaken within the external field together (resulting in an improved coherence?) and, on the other hand, might contribute to shape the perception that to cooperate with the others might serve self-interest. In this way, cooperation with third states might no longer be considered just an expression of solidarity but it could also be conceived as an action purported to satisfy our yearning for security (plea for security). In other words, the benefits generated by the cooperation are not granted only to the third countries. The donor (European Union) also benefits from the cooperation, by obtaining more security.

The strong commitment of European Union to security could be linked to the escalating relevance accorded to the regions in the area of peace keeping¹⁰³. There is a tendency to conceive of regional organizations as second best in this area. In this vein we could mention the debate on humanitarian intervention where it has been contended that intervention of regional organizations could be seen as an alternative to the authorization of the Security Council when the latter is deadlock by the veto of one or more of its Permanent Members¹⁰⁴.

b) The Promotion of regionalism

As has been already said, the European Union has developed a close-woven network of international agreements with several countries throughout the world. Some of these agreements shelter clauses promoting regional integration among the third State and its neighbors¹⁰⁵. In broad terms even the agreements with non-neighboring countries can be conceived of as an example of

¹⁰³ For an optimistic view about the role of regions in conflict management see: HETTNE, Bjorn. "The United Nations and Conflict Management... op. cit., SEE ALSO: STADMULLER, Elzbieta. "Regional Dimensions of Security". In: FARRELL (et al). Global Politics... op. cit., p. 104-119

¹⁰⁴ "The responsibility to protect" Report of the International Commission on intervention and State sovereignty. December, 2001.

¹⁰⁵ Association and Stabilization Agreements with Balkan countries. See below.

regionalism¹⁰⁶. They are certainly an expression of interregionalism¹⁰⁷. This is particularly clear in the case of the prospective inter-regions agreements, currently under negotiation, with MERCOSUR and the Gulf Cooperation Council (GCC). The European Union, and the European Community before, has been a pioneer in the promotion of regionalism. It is striking that whereas the European Community had been advocating regionalism throughout the world over many years, up to 2002 United States had entered only three of the more than a hundred existing free trade agreements¹⁰⁸.

The EU'S effort in promoting regionalism could certainly be deciphered as an attempt to exporting the European regional model to other regions in the world (inspiring effect – assimilation effect). That is not to say that the exported product has to be exactly alike the European model. The European Union is perfectly aware that the European model cannot be simply transplanted into other regions of the globe¹⁰⁹; nevertheless what holds true is that there are certain basic features of the European model, which the European Union advocates when supporting other regional integration process over the world.

In this vein we can make reference to the strategy implemented by the European Union towards Balkan countries as probably the clearest expression to date of this purpose¹¹⁰. Up to now the European Union has signed so-called Stabilization and Association Agreements with two countries in that region: Croatia and FRY Macedonia, and negotiations with Albania are underway. In these agreements the Balkan countries commit to conclude integration agreements with their neighbors, being that integration in the region is considered a precondition to making progress in the process of being integrated into the European Union as Members. In these agreements even a deadline is established for the Balkan countries to conclude the required agreements. In this case the EU is stimulating the inception of regional integration agreements. In other regions the EU offers support to existing intraregional integration initiatives: we can mention of course the support to the Agadir Process in the Mediterranean¹¹¹, to MERCOSUR and

¹⁰⁶ JOFFE, George Howard. *European Union and the Mediterranean*. In: Telo, Mario. *European Union and new regionalism. Regional actors and global governance in a post-hegemonic era*. Ashgate, 2001, p. 208. As regard to the lack of definition of regionalism: “A major problem, however, is to establish precisely what the term regionalism means. Neither a geographical nor a systemic definition alone provides a comprehensive mechanism for the conceptualization of the term. Geographical contiguity is clearly an essential component, but does not, of itself, provide any insights as to what regionalism actually is, although it does imply that a plurality of states is involved. Indeed, other than of the purposes of geographical or economic analysis, the term regionalism is meaningless unless defined in social or political terms as well. In short, the concept essentially relates to a process of political, cultural or social interaction between entities within its geographical bounds, and it is that process of interaction that gives it meaning”. See also: HUNG LING, Chun. “Regionalism or globalism? The process of telecommunication cooperation within the OAS and NAFTA. *International Trade Law Journal*, winter 2002.

¹⁰⁷ At least of “hybrid interregionalism”: AGGARWAL; FOGARTY. “Between regionalism and globalism: European Union Interregional Trade Strategies”. In: AGGARWAL, V.K; FOGARTY, E.A (Ed.) “EU Trade Strategies between regionalism and globalism”. Palgrave Macmillan, 2004, at p. 5.

¹⁰⁸ BRUNER, C.M. *Hemispheric Integration and the Politics of regionalism: the free trade area of the Americas*” 33 *Miami Inter-Am. L. Rev.* 1.

¹⁰⁹ On the various models of regionalism, see: HURRELL, Andrew. “The regional dimension in International Relations Theory”. In: FARRELL, M; HETTNE, Björn; Langenhove, Luk. *Global Politics of regionalism. Theory and Practice*, Pluto Press: London, p. 38-53.

¹¹⁰ QUOTE ARTICLE OKEEFFE ON THE INTEGRATION IN THE BALKANS:REGIONALIMPEACE.

¹¹¹ Nevertheless Telós underlines that up to now the promotion of regional integration in the Mediterranean area has been pretty unsuccessful. “The EU’s strategy to encourage partner to cooperate regionally seems to be particularly unsuccessful in the Mediterranean. The main question is as follows. Is the desired sub-regional cooperation community a matter of voluntary association or rather of a mere external coercion?”

other integration processes in Latin America, to ASEAN and SAARC in Asia, to Gulf Cooperation Council (GCC) in the Middle West¹¹², to the various integration processes in Africa¹¹³, and so on.

In addition the European Union gets itself involved in integration processes with other states through different kinds of agreements. We have already mentioned the Association and Stabilization agreements with the Balkan Countries where the partners are contemplated as potential candidates to join the European Union as members. We have also the Euro-Mediterranean Agreements within the framework of the Euro-Mediterranean Partnership¹¹⁴. In all these agreements a remarkable degree of institutionalization is achieved¹¹⁵. We can also mention the strategy implemented with regard to Russia, consisting of the establishment of four common spaces: common economic space, common space of freedom, security and justice, common space on external security and common space on research, education and culture. The road map that should lead to setting up these common spaces was delivered in May last year¹¹⁶. This strategy is by far more ambitious than the strategy enshrined in the current non-preferential agreement (partnership and cooperation agreement) in force as from December 1997¹¹⁷.

As noted earlier some of these agreements are examples of different levels of integration between the European Union and non-neighboring countries all over the world. As has been said these agreements can be considered also as an expression of regionalism in a broad sense¹¹⁸. The agreements with non-neighboring countries and those concluded with neighboring countries can be substantially alike. It is no longer possible to assert that the agreements with countries sharing borders with European Union are always more ambitious than other agreements. We can derive this conclusion from a comparison between Mediterranean agreements and the agreements upon which the relations with Chile or with Mexico, for instance, are articulated. Nevertheless, the concept of preferential areas (pyramid of preferences) within the external action of the European Union has not been completely banished. It holds true that the amount of the financial support granted to the neighbors clearly exceeds the amounts granted to other countries. In addition, there are agreements with non-neighboring countries which do not set up an association between the parties but only a cooperation relationship. Cooperation agreements link the European Community to several Asian countries.

TELÓS, M. "The European Union and the challenges of the Near Abroad". In: Telo, Mario. European Union and new regionalism. Regional actors and global governance in a post-hegemonic era. Ashgate, 2001, p. 183.

¹¹² http://europa.eu.int/comm/external_relations/gulf_cooperation/intro/index.htm

¹¹³ As a matter of fact, the promotion of regional integration is one of the main purposes of the prospective Economic Partnership Agreements currently under negotiations with ACP countries. To this regard, see the explanatory memorandum that sets out the strategy underpinning the negotiating mandate for the European Commission: http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/nepa_en.htm

¹¹⁴ EC has entered agreements with: Argelia, Egypt, Israel, Jordania, Morroccos, Palestine Authority. The agreements with Lebanon, Syria and Tunes are in the process of being ratified.

¹¹⁵ For example in all of them we find a binding arbitral mechanism for dispute settlement. The agreements set up a Council empowered to enact binding resolutions.

¹¹⁶ http://europa.eu.int/comm/external_relations/russia/summit_05_05/index.htm

¹¹⁷ http://europa.eu.int/comm/external_relations/ceeca/pca/pca_russia.pdf

¹¹⁸ We take a broad definition of "region", as posited by FAWCETT, Louise: "In regard to regions, we find that a simple territorial definition may not take us very far –we need to refine regions to incorporate commonality, interaction and hence the possibility of cooperation. One perspective could be to see regions as units or zones based on groups, states or territories, whose members share some identifiable traits: the Organization for Economic Cooperation and Development or the Islamic countries (...) for example. A central character of such zones is that they are smaller than the international system of states, but larger than any individual state or non-state unit; they may be permanent or temporary, institutionalized or not".

All these agreements suggest that the European Union is an expression of what PADOAM defines as “cooperative regionalism” in contrast with other forms of regionalism that could be described as “conflict oriented”¹¹⁹. On the other hand, the fact that the European Union is pushing other countries to cluster themselves and consequently to operate according to a regional logic may lead to the surge of a sense of being part of a community in those regions¹²⁰. With its regional approach the EU somewhat obliges these countries to agree in the definition of needs so as to benefit from funds coming from Europe. The needs have to be defined on a regional basis.

We cannot close this section without mentioning that accession of new members may be seen as another way to spread and reinforce regionalism. The geographical extension of the European Union itself raises questions about the optimal size of a particular regional integration process. As Telós contends¹²¹, for the determination of such an optimal size questions regarding social cohesion within the region have to be considered. As has been said, European Union is at this moment negotiating with Turkey and Croatia with a view to their acceding to the European Union. And we know that some concerns emerge with regard to the opportunity for the European Union to engage in new accession negotiations without having digested completely the last one.

c) Development Cooperation: different dimensions

Development cooperation is undoubtedly one of the most important courses of action of the European Union within the external fields. Development cooperation is contemplated by the European Union from many different perspectives. To put it another way there are several other goals which are conferred more legitimacy as far as they are conceived also as means to promoting development. Freer trade is a clear example.

- Trade as a means to promote development

In this field is probably where the contradiction between the proclaimed objectives and the self-interest behind EU’s action is most clearly expressed¹²².

¹¹⁹ p 40.

¹²⁰ AGGARWAL; FOGARTY. “Between regionalism and globalism... op. cit., at p. 19: “... the EU may see interregionalism as a means to promote counterpart coherence and institutional mimesis among potential and actual regional blocs, with its own model of regional integration being the exemplar. This too could feed back into the European identity, promoting the view that the EU is at the vanguard of a movement toward a new form of political, economic, and social organization that renders old national identities obsolete (or at least less important)”.

¹²¹ TELO: “Introduction...” In: Telo, Mario. European Union and new regionalism. Regional actors and global governance in a post-hegemonic era. Ashgate, 2001, p. 21- 37

¹²² AS Gamble says: “The strategic traders have argued that maintaining and improving international competitiveness needs to be the central goal of economic policy. Instead of insulating the economy from foreign competition, the aim is to expose it to competition while at the same time ensuring that it is able to meet it. Strategic trade arguments deny free trade arguments that an optimum specialization of labour dictated by comparative advantage will arise spontaneously. Rather, states must act strategically to protect key sectors and ensure that they become international leaders in those areas. All the current regionalist projects have been driven to some extent by a strategic trade view”. GAMBLE, Andrew. Regional Blocs, World Order and the new medievalism. In: Telo, Mario. European Union and new regionalism. Regional actors and global governance in a post-hegemonic era. Ashgate, 2001, at p. 28

In pursuing freer trade European Union proceeds through two different paths: multilateral and bilateral. From any of these perspectives, the link between trade and promotion of development is underscored.

Within the bilateral path reference has to be made to the preferential agreements concluded with many countries throughout the world. Preferential agreements link the EC to Mediterranean countries, some Latin-American countries, some African countries and many other countries of other geographical areas are also being contemplated as partners for prospective preferential agreements. The EC's yearning for concluding preferential agreements with other regional blocs is particularly notable. In this vein negotiations with MERCOSUR and GCC¹²³ are currently underway. They would be the first inter-regional preferential trade agreements. Why has the EC chosen some countries as partners for this kind of agreements, whilst discarding others? The first reason has to do with the fact that a relationship articulated by a preferential agreement is built on the basis of the reciprocity principle. Therefore, a country qualifies as a possible partner if it has something-to-offer. As a result preferential agreements are usually negotiated with higher incomes developing countries¹²⁴. These agreements embody a considerable degree of integration among partners, which go well beyond trade (multidimensionality) and achieve remarkable results with regard to institutionalization.

Within the multilateral framework, the EC advocates freer trade as a means to promote development and to help developing countries to insert themselves into the world economy. Besides the agreements, there are other trade tools that are put at disposal of the development objective. Perhaps the clearest example of that is the Generalized System of Preferences, which has been recently reformed so as to make it compatible with WTO rules on non-discrimination.

- Beyond trade:

As mentioned before, there are other dimensions of development cooperation that are of primary importance: eradication of poverty, sustainable development with a firm commitment to protect the environment, decentralized cooperation, human development... All these dimensions of development cooperation are thoroughly described in Thematic Programmes that the European Commission has just issued.

d) The Promotion of Human Rights, Democracy, Rule of Law

It's worth referring again to the adoption of the Thematic Programme on Human Rights and Democracy, where it can be found an overview of the different activities carried out by the European Community within this field¹²⁵.

¹²³ CHECK OUT WHETHER ALL GCC'S COUNTRIES QUALIFY AS DEVELOPED COUNTRIES.

¹²⁴ This could be changing if we consider that Cotonu Agreement foresees the celebration of new trade agreements with these countries. Through these agreements the relation with them would shift from assistance to reciprocity. See article 37 of the Agreement. Currently EU is conducting parallel negotiations with the 6 ACP (African, Caribbean and Pacific) regions to sign the so-called Economic Partnership Agreements. The main purpose of these agreements is to promoting development cooperation and to guaranteeing preferential trading terms while at the same time complying with WTO obligations. http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/nepa_en.htm

¹²⁵ http://www.europa.eu.int/comm/development/body/communications/docs/communication_thematic_programme_democracy_and_hr_25_01_2006_en.pdf#zoom=125

Here the application of conditionality clauses included in the international agreements deserves further analysis. It's striking that so far these clauses only have been applied with regard to "weak" countries¹²⁶, raising questions about the existence of a double standard.

In addition to this conditionality policy, the European Union financially supports actions in favor of human rights, democracy and rule of law¹²⁷.

Some points are worth further analysis: Is the European Union contributing to shaping a universal idea of democracy based on human rights? Are these parameters or conditions components of a particular cultural pattern¹²⁸? And here we might refer to the connection between regionalism and culture¹²⁹. As TELÓS points out¹³⁰, identity matters when it comes to establishing the basis for regionalism. The commitment to protection and promotion of human rights, democracy and the rule of law is an important component of European identity. It is conceived of as a requirement for entering the European "club" and it is also relevant for the external projection of the European Union. We have heard recently several European voices criticizing the accommodating European reaction with regard to the issue of the use of secret prisons in Europe by US. It seems to be assumed in these claims that with this kind of reaction the European Union is betraying itself (its own identity)¹³¹.

¹²⁶ Togo (1998, art. 366 bis Lome); Ivory Coast (2000, 1rt. 366 bis Lome); Haiti (2001, art. 96.2.c Cotonu Agreement); Fiji (2001, art. 96.2.c Cotonu Agreement); Liberia (2004, art. 96.2.c Cotonu); Republic of Guinea (2005, art. 96.2.c Cotonu); Zimbabwe (2002 and 2006, art. 96.2.c Cotonu).

¹²⁷ For example: in 2002 European Union financed 7 projects supporting the abolition of the death penalty (worth EUR 4 897 328); 3 projects supporting the fight against impunity and the promotion of international justice (worth EUR 3 518 169); 32 projects devoted to combating racism, xenophobia, discrimination against ethnic minorities and indigenous people (worth EUR 21 066 323); or 24 projects on the prevention of torture and the provision of support for the rehabilitation of torture (worth EUR 17782 774). For further information, see 2003 Report on Human rights: http://www.europa.eu.int/comm/external_relations/human_rights/doc/report03_en.pdf

¹²⁸ Huntington raises the question about the real degree of universalism of these values: "Differences in culture and religion create differences over policy issues, ranging from human rights to immigration to trade and commerce to the environment. Geographical propinquity gives rise to conflicting territorial claims from Bosnia to Mindanao. Most important, the efforts of the West to promote its values of democracy and liberalism as universal values, to maintain its military predominance and to advance its economic interests engender countering responses from other civilizations" And he comes back to this point: "Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state, often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures. Western efforts to propagate such ideas produce instead a reaction against "human rights imperialism" and a reaffirmation of indigenous values, as can be seen in the support for religious fundamentalism by the younger generation in non-Western cultures. The very notion that there could be a "universal civilization" is a Western idea, directly at odds with the particularism of most Asian societies and their emphasis on what distinguishes one people from another"

¹²⁹ Huntington points out that regional blocks contribute to reinforce the "civilization self-consciousness" See also, VON BOGDANDY, A. "The European Constitution and European Identity. Text and subtext of the Treaty establishing a Constitution for Europe". *International Journal of Constitutional Law*, May, 3, 2005, p. 295.

¹³⁰ TELO, M. Introduction: globalization, new regionalism and the role of the European Union". In: TELO, M. (Ed.) *European Union and new regionalism. Regional actors and global governance in a post-hegemonic era*, Ashgate, 2001, at p. 15.

¹³¹ Therefore, it becomes possible to contend that to a certain extent there is "interpenetration between political power and law". Habermas used this expression to contend that according to the traditional notion of international law this interpenetration is absent at an international level. *Materials International Law seminar*, p. 10.

e) The Solidarity Principle within the External Action of European Union.

a) Solidarity as a essential component of regionalism: We have already mentioned the relevance of the tools implementing regional solidarity within the European Union.

European Union is also committed to promote solidarity in other regions. This commitment is clearly present within the relationship with Latin-American countries. Social cohesion has become one of the most repeated concepts in that framework¹³².

We are conceiving regional solidarity as a means to get higher levels of distributive justice. Obviously the development of regional solidarity tools is far from being easy. In this sense, we have to take into account that for instance in the Latin-American region there are no such tools, not even within the individual countries. Nevertheless, it is worth noting that in a way European Union is trying to promote a concept of regional integration within which this solidarity dimension is an essential component.

In a broader sense, solidarity may be conceived as a positive-open attitude on the part of the European Union, consisting of recognizing the difficulties encountered by third countries in the implementation and realization of the essential objectives and values advocated by the European Union. Here we can also mention the way in which European Union approach other countries, conferring a primary role to the political dialogue. Even when the attitude of the other states with regard to the values advocated by the Europeans is not acceptable the European Union often prefers to maintain the dialogue rather than to break relations (Byelorussia is an example, but also China¹³³.) Sometimes this attitude by the part of European Union raises some doubts about the depth of the European commitment to the proclaimed values. We could make reference to a recent report of Human Rights Watch which complains about this too accommodating (complacent) European attitude. Apart from the fact that sometimes a more firm reaction by the European side would be preferable, it's true that the maintenance of the dialogue makes it possible to gather information, exchange points of view and solutions and keeps the other country more open to possible European "suggestions" or advice¹³⁴.

¹³² Within the last EU/Latin-American Caribbean Summit (held in Guadalajara, May 2004) the partners acknowledged that one of the main needs within the Latin-American and Caribbean region was to increase the level of social cohesion. More recently, within the framework of the Ministerial Meeting EU/Rio Group (Luxembourg, May 2005), Benita Ferrero-Waldner emphasized again this need: "solamente un enfoque económico y social integrado que considere la economía, el empleo y la cohesión social como elementos interdependientes será eficaz para combatir la pobreza. En unos casos se pondrá el acento en las políticas sociales y fiscales para promover equidad y suprimir desigualdades. En otros, se subrayará la necesidad de promover la inversión productiva que genere empleo. Pero en realidad ambas cosas son esenciales y deben ir de la mano". There is a EuroSocial Program financing actions addressed to the promotion of social cohesion within this region (EUR 30 million).

Adelle BLACKETT sustains the need of regional distributive justice. "Toward social regionalism... op. Cit.

¹³³ About the tenuous dialogue with China when it comes to human right see: HUAQUN, Zeng. "Promoting a New Bilateral Legal Framework for China-EU Economic Relations" 3 Chinese J. Int'l L 189, 2004. He refers to the market power of China to support its contention that appealing China to improve its mechanisms for human rights protection could proved not to be a good idea for Europe.

¹³⁴ This situation echoes the application of the so-called Open Method of Coordination when, in De BURCA's words: "the intention to develop common policies lack". As she says, the Open Method of Coordination is a good means to implement or reinforce solidarity". DE BURCA'S ARTICLE: Fordham International Law Journal, Vol. 27.

IV TENTATIVE CONCLUSIONS

Is it possible to draw some conclusion from the analysis of external action of the European Union with regard to the role of European Union on the world stage?

The entrenchment of regional groups is propelling (fueling) a change of paradigm in international relations. This is important from the perspective of international actorness, because this phenomenon puts into question the so far uncontested relevance of the States as “stars” on the world scene. Among these regional schemes European Union is the most advanced as it has made unprecedented progress toward the entrenchment of its actorness. The particular features characterizing the model personified by European Union are: openness, multidimensionality, multilateral-oriented, solidarity-oriented. The internal and external multidimensionality prove that when it comes to explain the relation between regionalism and multilateral trading system, the approach rule-exception has become inadequately confining¹³⁵. We should better link the emergence of multidimensional regionalism to the transformation of the multilateral system itself; a transformation based on the integration of general objectives, other than freer trade, into the system, dwarfing the relevance of the original purpose (freer trade)

When approaching the European Union from the perspective of relations among legal orders, the existence of a supranational legal order has to be underlined. The supranational nature of European Union allows it to evolve according to its own dynamics and consequently to gain autonomy not only with respect to the international legal order, but also to domestic legal orders. In this vein, the European Union emerges as a self-contained regime which possesses a special ability to inspire the shaping of the legal order, by reinforcing international rules enshrining certain values advocated by European Union internally and externally. Therefore the European Union is in position to contribute to the establishment of a better substantial Constitution for international legal order. From our point of view it is not longer possible to contend that “the international scene is made up of the juxtaposition of equally sovereign states seeking, irrespective of their differences, to ensure their peaceful coexistence and cooperation”¹³⁶.

The values promoted by the European Union are present internally and embedded in its own model of regionalism (the model of regionalism it adheres). Its self-definition is founded on these values for as has been said the international peremptory rules protecting these values integrate automatically in the Founding Treaties. Also, these values are expressed externally, because they are present in the external action of the European Union. Their presence can be traced in the norms proclaiming the objectives of such an action, but also in the action itself (even though there is some incoherence of course). The European Union is trying to entrench its identity also on the world scene, and this is an important movement, which partly responds to the necessity of reinforcing its identity in front of its constituent states.

Nonetheless, the recognition of the European Union by other international actors, leading ultimately to the reinforcement of its autonomy, is not sufficient in terms of legitimacy. To this regard European Union is urged to lay out new paths through which direct communication between the European Institutions and the people can take place.

¹³⁵ CHO, SUNGJOON. “Breaking the barrier between regionalism... op. cit: “... the structural bias against trade regionalism embedded in GATT Article XXIV’s treatment of RTAs as exceptions is not appropriate to the current trade situation”.

¹³⁶ WEIL, Prosper, at. p. 441.

