Title of the Entry: Global Governance and European Union Integration

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A. Introduction

1 The term Global Governance combined academic theory and practical policy formulation dating from the 1990s and became entwined with the meta-phenomenon of the last two decades—globalization. It seeks to explain the structure of global authority and investigate the ways that power is exercised and account for changes in and of the system (Weiss and Wilkinson; Fahey, 2018a). The European Union (EU) is a distinctive project to assess these phenomena, given its many unusual characteristics. It is not a nation state but acts in state-like manner in many multilateral contexts and increasingly seeks to be treated as a *sui generis* entity. As a regulatory superpower of global governance, its laws, practices and actions are of much significance.

2 This entry will consider the key overarching phenomena of Global Governance and EU international relations from a legal perspective (Fahey, 2018a). It thus considers: (1) General principles, (2) Actors/Institutions, and (3) Powers/Competences. This accords with how EU international relations law relates to the organizing principles for understanding global authority. It considers as to (1) General principles: (i) EU participation in multilateralism, (ii) the reach of EU law globally, (iii) democratization and EU international relations, and (iv) openness to international law of the EU legal order. Secondly, as to (2) Actors/Institutions: (i) EU actorness and EU integration, (ii) the Court of Justice of the European Union (CJEU) and international relations, and (iii) EU multilateralism through EU institutional actors. And finally, as to (3) Powers/Competences: (i) the internal/ external regulatory dynamic of EU law and (ii) the autonomy of EU law.

B. General principles

1. EU participation in multilateralism

3 The EU has won a Nobel Peace Prize, has its own diplomatic service, and most of its EU executive actors and agencies have external relations powers (Curtin). Yet the EU does not function as a unitary actor in the world (Wouters, 2018; Fahey, 2020; Wessel and Odermatt). The EU has a broad range of ‘statuses’ in international organizations (Wouters, 2018; Eeckhout, 2011). Some ‘statuses’ where privileged relate to the competences of the EU, such as at the World Trade Organization, relating to the area of trade where the EU has significant external powers, capacities, and authority to act. International organizations have complex treaty frameworks that are not easily altered. For example, the EU cannot become an International Maritime Organization (IMO) member because, according to the IMO Convention, membership is open to states only. The EU in its treaties has limited specific arrangements for the Food and Administration Organization (FAO), the European Bank for

Reconstruction and Development (EBRD), the World Trade Organization (WTO), *Codex Alimentarious*, and the Hague Conference of Private International law (Wessel and Odermatt). The EU is not a member of the United Nations (UN), International Labour Organization (ILO), World Bank, International Monetary Fund (IMF), or Council of Europe for reasons of sovereignty of the Member States, as much as the rules of the organizations themselves (Hoffmeister; Odermatt and Wouters). Only the Member States and not the EU have full membership in most international organizations (Wessel and Odermatt; Hoffmeister; Kaddous). Usually, if the EU cannot exercise its external competence because the international organization does not allow it to become a member or an observer, the Member States exercise the EU competence acting jointly in the EU interest. The EU has frequently intervened through the European Commission ('Commission') in arguments before the United States (US) Supreme Court against the death penalty so as to promote its values (Fahey, 2014). It is a vivid example of the reach of its values, prior to the development of single legal personality in the Treaty of Lisbon. In reality, there are few international organizations or global sites that the EU does not want to join or influence and as a result, even in complex competence fields it continues to maintain a 'healthy' presence in international organizations. The EU is often referred to as a 'global actor'. Such a view of its 'actorness' is not always shared across disciplines, vexed by the structure of the EU and its practices (Wunderlich). While the EU is under an obligation to respect international law in its Treaties pursuant to Article 3(5) Treaty on European Union (TEU), EU law itself is not particularly explicit about the relationship between international law and EU law and leaves much of the question of incorporation and effects for further development. Yet all of these challenges have not inhibited the EU from becoming a highly significant global governance actor.

2. The reach of EU law globally

4 The global reach of EU law nowadays denotes a variety of situations where the EU acts as a 'rule-exporter' to many countries, organizations, and associations and gives its rules or compels others to take them, setting high standards or cohesive standards for a block of half a billion consumers, traders and enterprises and so on (Scott; Fahey, 2016a; Bradford).

5 The global reach of EU law denotes how the EU has adopted rules and standards governing half a billion citizens, traders, business, companies, and markets, across a range of subject areas, that other polities, markets, and businesses have in turn adopted voluntarily or have been compelled to do so out of sheer necessity. It encompasses the perceived 'spillover' effect of EU regulatory standards on US rules in the realm of, inter alia, genetically modified foods, data privacy standards and chemical safety rules (the so-called 'Brussels Effect'). It also relates to the extent to which EU legal rules are actually transplanted in the US: the transposition of EU environmental standards in California, Boston, and Maine), the incorporation of General Data Protection Regulation (GDPR) into Chinese law, or adoption of EU makeup standards in Malaysia (Scott; Fahey, 2016a; Bradford). From areas as diverse as the internal market (Eeckhout, 1994; Cremona, 2004), EU refugee law (Lambert, McAdam, and Fullerton), data protection (Ryngaert), EU environmental law, EU banking and financial services and taxation law (Kingston), fundamental rights, to EU competition

law (Wagner-von Papp), it is now perceived as a commonplace occurrence of EU law that it has global reach through novel forms of extra-territoriality (Scott; Ryngaert). Similarly, the impact upon the regulatory policy of the external dimension of EU law are more difficult to say where the EU itself has broad global ambitions for many of its laws (eg global data) but less of a practical concrete policy on the reach of EU law.

6 While the Brussels Effect is an iconic term of art developed by Bradford relating to the external effects of the EU's internal market, the notion of an internal market is a largely unspecified idea in international economic law and political science (Gstohl, 1997, 4; Eeckhout, 1991; Eeckhout, 1994). Official EU policy provides that the external dimension to the internal market is an explicit and unambiguous element thereof. In this regard, the leading policy documents of the EU, past and present- from the Lisbon Strategy, the Europe 2020 Strategy, to Global Europe- have all harboured both internal and external objectives with much transparency (eg European Commission 2010, 7). In a world of globalization, many internal market policies have an 'international dimension'—indeed it is a key rationale for membership of the EU.

3. Democratization and EU international relations

7 The principle of institutional balance has entailed that increasingly the powers of actors such as the Parliament in international relations are enforced as part of the democratized character of the EU's constitutional fabric (Chamon). In *Parliament v Council*, the CJEU held that the European Parliament ('EP') had to be immediately and fully informed at all stages of the procedure of treaty negotiations as per Article 218(10) Treaty on the Functioning of the European Union (TFEU), including that preceding the conclusion of the agreement, otherwise it will not be 'in a position to exercise the right of scrutiny which the Treaties have conferred on it in relation to the CFSP or, where appropriate, to make known its views as regards, in particular, the correct legal basis for the act concerned' (*Parliament v Council*, para. 86). The new era of the EU's deeper trade or 'trade and…', has seen it develop significant commitments to good governance internally *and* externally, beyond trade agreements, expanding ordinary EU governance to external relations negotiations, ex ante and ex post facto in agreements with third partners. Internally, impact assessments, consultation, information procedures and transparency practices ex ante are increasingly practices of external relations, mirroring the internal context. Externally, the institutional architecture of trade agreements now includes as of ordinary practice Domestic Advisory Groups and civil society dialogues in the form of joint forums, intended to enhance the participatory dimension of external trade. These bodies however remain consultative in nature and have limited influence upon the decision-making processes at the bilateral level. For example, the EP is not part of the institutional landscape of free trade agreements as regards their implementation (Mancini). In the vast architecture of Joint Committees, Trade Committees, Domestic Advisory Bodies, and civil society forums that is found within all post-Lisbon EU trade agreements, the EP has little involvement ex post facto and generally few if any decision-making powers, aside from the formal consent to the conclusion of the agreements (Fahey and Mancini).

4. Openness to international law of the EU legal order

8 The EU is arguably one of the ultimate multilateralists or internationalists of the global legal order. It is arguably driving convergence with international standards and rules in its law-making consistently. It is arguably a significant driving force behind contemporary multilateralism and a rules-based international order (Fahey, 2020). However, the EU increasingly has more third countries and parties asserting standing rights before EU courts, eg standing for Venezuela or the consent of the Sahrawi people in the Western Sahara (*Venezuela v Council*; *Front Polisario*).The support for multilateralism and international law are crucial values and objectives for the EU's external action, which lead to reflect upon the broader question on how 'open' the EU is to international law and the extent to which this is a metric of EU action. EU openness to international law is particularly evident when it seeks to incorporate international law developments that are not binding upon it in its efforts to be a 'good global actor'. Some distinguish between instruments binding on all or some EU Member States, and instruments that are non-binding in nature but have been agreed upon in multilateral fora where the EU or its Member States (or both) are represented (Wouters, Odermatt, and Chané). The EU often helps shape, either directly or indirectly, developments at the international level and therefore has an interest in accepting international norms it had a hand in developing (Wessel and Odermatt). Yet it can also be stated that much high profile CJEU case law (*Kadi*; Opinion 2/13), indicates a Court jealously seeking to preserve its own influence and become less open to international law.

C. Actors / Institutions

1. EU actorness and EU integration

9 There is no agreed definition of an actor under EU law (Fahey, 2016b, 8; Ruffert). A distinction is drawn there between the masters of the treaties and those amenable to judicial review or those with legal personality (Ruffert). The grant of legal personality under EU law has been accorded on a pragmatic rather than conceptual basis (Ruffert). Personality in the EU legal order often appears to be granted less on a conceptually reflected basis and rather for pragmatic reasons, thereby enabling entities to perform legal activities (Cremona; Wessel). Some agencies have explicit clauses granting powers of legal supervision to the Commission, others not, but such distinctions are not necessarily perceived to have any significance. And although there may be a 'notion' of personality under public international law or national private law, there is no concept of a legal person under EU law (Wessel). The redundancy of legal personality as a functional tool might be emphasized by contemporary EU law. Many new actors created in recent times even in external relations were not technical actors for example, the European External Action Service (EEAS). Yet this follows other similar developments in the internal context, eg the European Cybercrime Centre (EC3) or the European Public Prosecutors Office (EPPO). Instead, they are carved up in other ways, for example, in the case of the EC3 as 'desks' of other institutions, ie of the evolving entity, Europol. However, even in external relations, there is significant evidence that the EEAS has evolved significantly its capacity to act and represent.

10 Many EU institutions have external relations powers and institutions such as the European Parliament increasingly global actorness (Weiß). The concept of further courts and institutional structures in EU external relations is increasingly complex and controversial but also reflects its deepening and widening as a field (Bardutzky and Fahey).

2. The CJEU and international relations

11 Although precluded in many legal orders on the basis of the political question doctrine, whereby courts are precluded from reviewing international politics and diplomacy developments relating to domestic law, EU law differs considerably. One important area where the CJEU considers international relations is its Opinion power in the treaties in Article 218(11) TFEU. The purpose of the opinion power provided for the treaties in Article 218(11) TFEU for the CJEU enables it to give an opinion on an international agreement. In the words of the CJEU, the purpose of Article 218(11) TFEU is intended:

> to forestall complications which would result from legal disputes concerning the compatibility with the Treaty of international agreements binding upon the Community. In fact, a possible decision of the Court to the effect that such an agreement is, either by reason of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty could not fail to provoke, not only in a Community context but also in that of international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third countries. For the purpose of avoiding such complications the Treaty had recourse to the exceptional procedure of a prior reference to the Court of Justice for the purpose of elucidating, before the conclusion of the agreement, whether the latter is compatible with the Treaty (Opinion 1/75, 1360).

The Opinion procedure has existed since the foundational EU treaties and was first used in 1975, with only 22 Opinions delivered in total. However, its use is becoming more common: of the 22 existing Opinions, half date from 2000 and about a third have been delivered in the last decade (Cremona, 2020; Mendez). Opinions have proved important in developing not only the fundamental principles of EU external relations law, including the principle of autonomy and its application in particular to international dispute settlement, but also the general constitutional law of the EU (Cremona, 2020). These ex ante Opinions have delivered some key constitutional jurisprudence for the EU, including a range of jurisprudence on the characterization of the Treaty establishing the European Economic Community ('EEC Treaty') as 'the constitutional charter of a Community based on the rule of law'; the role of national courts in the Union legal order and their relationship to the Court of Justice; and the identification of the 'specific characteristics' of the EU's 'constitutional structure' (Cremona, 2020). In this way, they have had a considerable impact upon integration and showed a significant synergy between external or international relations and integration. Its ex ante character has been designed with the idea of providing legal certainty but in certain instances its use has prolonged legal uncertainty with third country partners (such as with post-Lisbon trade partners). In several instances, the opinion power request was made after the signature of the agreement but before its formal conclusion, eg Opinion 1/94 (WTO) (1994); Opinion 1/08 (GATS schedules) (2009); Opinion 1/15 (Passenger Name Records (PNR) Canada) (2017).

3. EU multilateralism through institutional actors

12 From an Artificial Intelligence Board (AI Board) to a Multilateral Investment Court to the International Criminal Court and a Unified Patent Court, the EU has shown its capacity to evolve and to institutionally innovate at a regional and multilateral level (Fahey, 2018b, 5). While the outcomes are not optimal on any level, the capacity of the EU to generate, support and evolve institutionalization as a solution to many complex themes on internal EU competences as much as in its external relations is of much importance. Significant entities in the world have threatened to leave or defund several international organizations in recent times (eg African Union from the International Criminal Court, the United Kingdom from the Council of Europe and the EU, the US from the WTO or United Nations (UN), amongst others). The EU, by contrast, has and continues to support the development of both existing and new international organizations through institutionalization (Fahey, 2018b, 4–8). It also continues to support institutional reforms and institutional solutions at multilateral level, eg at the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) which it instigated.

13 The EU regularly champions multilateral innovations involving institutions from the International Criminal Court, a UN Ombudsman to a Multilateral Investment Court- in its efforts to promote the rule of law as a broad global agenda (Fahey, 2022). Internally, the EU struggles with partial institutionalization as a solution to many complex policy fields, eg migration and the Eurozone (Caporaso). The EU's approach to AI policy development is to establish a European AI Board and its approach to cyber law-making is to establish EC3 as a desk of Europol. Its approach to a new generation of trade agreements is to establish a broad architecture of bodies within trade agreements, from eg Joint Committees, specialized committees, civil society, and Domestic Advisory Group entities. The EU proposes parliamentarization of trade agreements, eg EU–Ukraine and EU–UK Trade and Cooperation Agreement (TCA). Yet legitimacy concerns surround certain institutional arrangements, eg EU regulatory cooperation in all major trade agreements post-Lisbon (Weiß).

14 It is important to state that the CJEU has expressed concerns that Member State or EU participation in international institutions could threaten the autonomy of EU law, explored in more detail in D(2) below on the autonomy of EU law.

D. Powers / Competences:

1. The internal–external regulatory dynamic of EU law

15 Apart from Article 21(3) TEU requiring consistency between internal and external practices, and passing references to consistency in policies, actions, and activities (eg Article 7 TFEU or 13(1) TEU), there is no formal structured conceptualization of the interrelationship between internal and external competence in the treaties. EU external action may 'lead' or even eclipse internal policy development 'outwards in', which is not necessarily obvious as a matter of EU law (Cremona, 2014). For example, certain international agreements entered into by the EU have acted as the spur for internal EU legislation. The EU–US Passenger Name Records Agreements and EU–US Transatlantic Financial Tracking Programme (TFTP)

(Swift) Agreement have triggered the development of comparable internal EU legislative proposals.

16 The internal-external regulatory dynamic is also significant given its impact upon the EU's ability to contribute to global governance. The EU did not transpose the Anti-Counterfeiting Trade Agreement (ACTA), the plurilateral treaty, which aimed to improve the domestic enforcement of intellectual property (IP) rights (Eckes, Fahey, and Kanetake). ACTA was ultimately rejected by the EP for reasons of inadequate information pursuant to its new information powers in Article 218(10) TFEU, as to the regulatory dynamic between the treaty and the acquis and its consistency with EU law. In this regard, the rise in status of the EP in international relations post-Lisbon has also altered the internal-external regulatory dynamic. This phenomenon is mirrored many times as to other agreements, where internal agreements have been interpreted to thwart fundamental rights, particularly data rights, eg Opinion 1/15 on EU–Canada PNR (2017). The EU–US Privacy Shield and Safe Harbour Agreements have conversely witnessed the CJEU striking them down as a result of a very robust internal agenda on internal data rights (*Schrems I*; *Schrems II*). These developments internally and externally have arguably both helped to propel the success of the GDPR globally and in turn support the EU as a global digital actor.

17 There is no formal description of the mechanics for the externalization of the internal market in the Treaties. Article 21(3) TEU makes an explicit link between internal and external policies in the pursuit of the EU's global rule-making goals. However, the same formula is not reciprocated in comparable internal market provisions, eg Article 26 TFEU or even Article 114 TFEU, also setting out regulatory objectives. The Common Commercial Policy has sometimes been disregarded post-Lisbon and superseded by efforts to externalize the internal market (Cremona, 2014). The rise of the success of the EU's internal market globally is well documented, eg in the phenomenon of the Brussels Effect (Bradford). High EU standards and the ease of regulation for multinationals are some of the many reasons for the adoption of EU laws and standards globally. Yet it is complex to state that the EU has sought to externalize the internal market (Cremona, 2013). Certain post-Lisbon CJEU case law suggested an end to the externalization of the internal market generally in favour of broader exclusive external competence, eg Opinion 2/15 (2017) regarding the EU-Singapore Free Trade Agreement.

2. The autonomy of EU law

18 The autonomy of EU law is a legal concept increasingly found in CJEU post-Lisbon case law and a key legal principle for understanding EU law and global governance. It increasingly complicates how the EU engages with international law, international organizations, and third countries. It has been labelled the single most far-reaching, and probably most disputed, principle of the European Union (Odermatt; Cremona, 2020). In Opinion 2/13, the Court of Justice concluded that the draft agreement on the EU's accession to the European Convention on Human Rights (ECHR) was not in accordance with the Treaties and Protocol despite Article 6 TEU mandating EU ECHR accession. Autonomy is increasingly mentioned in external relations case law when the CJEU has sought to preserve its exclusive jurisdiction to interpret and apply European Union law, eg further in *MOX Plant*, and in *Achmea*;

Wightman; *Komstroy*, etc. It has not operated as a barrier to the EU developing further dispute settlement systems, eg EU-Canada Comprehensive Economic and Trade Agreement (CETA) tribunals (Opinion 1/17). Opinion 2/17 may even indicate a step back from this position (Cremona, 2020; Opinion 2/13). It has also been increasingly problematic for international partners, eg US negotiations with the EU as to e-evidence issues and international organizations, eg the Council of Europe. Yet conversely, it may be said to protect and insulate the EU's legal order, as both a shield and a sword (Odermatt).

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