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PLOTTING (R)EVOLUTION? ON CRITICAL EU INTERNATIONAL RELATIONS LAW

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Introduction

This chapter has as its objective the re-reading of EU International Relations (IR) law by revealing insights from revolution as developed by Leonid Pitamic some time ago and the more recent emergence of EU critical studies. EU IR is a field where the EU's engagement with the world, international organisations and current and future third countries has become a highly prominent symbol of the EU's capacity to survive and endure in the global legal order, however weakened internally crisis by crisis. International relations appears increasingly to operate as a most insightful lens to analyse EU integration like no other subject. There have also been dramatic advances in international relations where global activity of the Union is coherent, unified and active. It contrasts sharply with internal rule of law, Eurozone and migration crises perplexing the bloc.[1] As a legal field, EU IR law (or foreign affairs or external relations law) has long been a highly doctrinal and competence-oriented subject, dominated by court-centric views on EU integration. It is not a particularly stable time in IR, where the rules-based and multilateral legal order increasingly comes under attack which the EU still nonetheless centrally supports, as part of the core business of its IR- unlike so many others.[2] Most significantly, the EU has just lost one of its most global members because of Brexit.

Western Legal Tradition is arguably limited in its contribution to revolution and perhaps intellectually dominated by the work of Berman as to Revolution, at least prior to the Arab Spring and the rising era of exit from international organisations.[3] It is an interesting fact of legal discourse that revolution has an extremely limited scholarship, not least in the realm of EU law. Revolution is often concerned with understanding 'straw figures' and distinguishing temporal shifts and gaps between order and continuity.[4] Revolution is frequently viewed as sharp breaks with the old or where law and courts provide continuity.[5] Pitamic aligns well with such literature. Moving forward to the present day in Europe, revolution in the context of EU law has mainly related to the role of the CJEU in its landmark *Van Gend en Loos* decision developing direct effect and changing fundamentally our understanding of subjects and objects as to public international law. Nowadays, the CJEU holds birthday parties to celebrate its most activist decision and invites hundreds of academics to such an

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[1] See James Caporaso, 'Europe's Triple Crisis and the Uneven Role of Institutions: the Euro, Refugees and Brexit' (2018) 56 Journal of Common Market Studies 1345.

[2] See Elaine Fahey (ed), *Institutionalisation beyond the Nation State* (Springer 2018); G John Ikenberry, 'The end of liberal international order?' (2018) 94 International Affairs 7; Rachel Brewster, 'The Trump Administration and the future of the WTO' (2018) Yale Journal of International Law Online 1.

[3] See Harold J Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press 2009); Harold Joseph Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Harvard University Press 2009); Harold L. Korn, 'The Choice-of-Law Revolution: A Critique' (1983) 83 *Columbia Law Review* 772-973; Owen Taylor, *International Law and Revolution* (Routledge, Abingdon, 2019); Massimo Tita, 'Law as Revolution: Historiographical and Literary Traces' (2020) 17 *Historia et Ius* 1; Victoria Sentas and Jessica Whyte, 'Law, crisis, revolution' (2009) 31 *Australian Feminist Law Journal* 3-14; Andrey N. Medushevsky, 'Law and Revolution: The Impact of Soviet Legitimacy on Post-Soviet Constitutional Transformation' (2019) 189 *Telos* 121-135; Amalia Amaya, 'The Explanationist Revolution in Evidence Law' (2019) 23 *The International Journal of Evidence & Proof* 60-67. Anne Peters, 'Introduction. A Century after the Russian Revolution: Its Legacy in International Law' (2017) 19 *Journal of the History of International Law* 133-146.

[4] Cf Nimer Sultany, *Law and Revolution. Legitimacy and Constitutionalism after the Arab Spring* (Oxford University Press 2017).

[5] See Nathan Brown, 'Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring' (2019), 17 International Journal of Constitutional Law 357.

event.[6] Arguably, the values of Pitamic have become more distant than ever in the Western legal tradition to some degree despite their salience.

The success of the EU in the world are subject to little internal critical EU law studies. One of the most significant features of contemporary EU law today is that it is not a subject that attracts much attention from those working on critical legal studies and most critical work historically and to the present day centres on the Court.[7] Sectoral policies and actions of EU institutions form the object of study for most students of EU law, yet it is difficult to describe the sum total thereof to be anything close to critical EU law studies. Latest debates about the methods and methodology of EU and PIL are largely data driven[8] or advocate deeper law-in-context methods or historical studies, [9] but are often heavily 'court-centric'.[10]

A new era of IR appears very successful but also less oriented towards the individual- specifically as to the place of direct effect and enforcement of trade agreements. It necessitates careful reflection on how to study the field of EU IR. These issues invite further reflection at this critical juncture. What could be labelled here to be critical EU IR law? How can revolution and critical reflection assist? What is revolution and evolution in EU IR law? What are the subjects and objects of critical EU IR law going forward?

The chapter considers: I. The EU as Globalist?; II. EU International Relations (IR) law: the EU as a victim of its success; III. The Court-centric module of EU IR law: is revolution ever possible?; IV. How would we revolutionise EU IR law, followed by Conclusions.

I. The EU the Globalist?

The EU is explicitly committed in its treaties to being a distinctive 'globalist' as a matter of law and to pursuing multilateral solutions.[11] Significant entities in the world currently wish to leave or threaten to leave or defund several international organisations (e.g. African Union from the International Criminal Court (ICC), UK from the Council of Europe and EU, US from the WTO, NATO or UN, amongst others) and the WTO has been plunged into existential crisis.[12] The EU, by contrast, has and continues to support the development of both existing and new international organisations through institutionalisation. For example, the EU has a recent history of promoting and 'nudging' institutional multilateral innovations in a range of trade and security fields, from the International Criminal Court,[13] a UN Ombudsman[14] to a Multilateral Investment Court,[15] promoting a distinctive global vision accountability, legitimacy and the rule of law. The EU's vision of the 'global' in its policies is also ostensibly distinctive. Many leading EU policy documents across a range of policies have an explicitly global dimension and span ranges of EU international relations, in the pre- and post-Lisbon

[6] Court of Justice of the European Union, '50 year Celebrations in 2013' <https://curia.europa.eu/jcms/jcms/P_95693/en/> accessed 16 July 2020.
[7] See e.g. Andrew Williams, *EU Human Rights Policies: A Study in Irony* (OUP 2004) and E. Fahey, 'Critical EU International Relations law: A Research Agenda' in P.J. Cardwell & M.-P. Granger (eds) *Research Handbook on the Politics of EU law* (Edward Elgar, 2020).
[8] Eg Wolfgand Alschner, Joost Pauwelyn, Sergio Puig, 'The Data-Driven Future of International Economic Law' (2017) 20 Journal of International Economic Law 217.
[9] See Rob van Gestel, Hans-Wolfgang Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20 European Law Journal 292, 313-316.
[10] Cf Michelle Egan, 'Toward a New History in European Law: New Wine in Old Bottles?' (2013) 28 American University International Law Review 1223.
[11] Cf Article 21 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/1 (TFEU).
[12] Ikenberry (n 2); Karen E Smith, 'The European Union in an illiberal world' (2017) 116 Current History 83.
[13] See: International Criminal Court: see The Rome Statute of the International Criminal Court (1998).
[14] See: UN Ombudsman: see United Nations Security Council Resolution 2083 (2012).
[15] See: Multilateral Investment Court: see Council of the European Union, 'Negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes' (2017) 12981/17.

period: e.g. European Security Strategy,[16] European Agenda on Security,[17] Action Plan on Human Rights and Democracy,[18] Trade and Investment Strategy-the Trade for All Strategy[19] or the Joint Framework on countering hybrid threats.[20] The EU's Global Strategy for EU Foreign and Security Policy launched in 2016 is the most explicit invocation of the term 'global' in the EU's policy making to date.[21] The EU's vision of the global has been argued to be one of the most transparent and open or participatory EU strategies ever produced because it was constructed or conceived through a process of input from a range of EU think-tanks and 50 gatherings in the EU and beyond.[22] It is an important change in action given that EU foreign policies have generally been conceived within an iterative process between the EU, national and international legal orders- and is also distinctive internationally.[23] The EU's vision of the global is understood to tread a difficult line between 'realist' and 'normative' approaches to foreign policy, hovering between shared and common action with European values, albeit a rules-based global order with multilateralism as its key principle, thereby contrasting sharply with emergent administrations.[24] However, since parts of the Strategy appear to have lost their salience since its publication, either expressly or by implication through short-term views of the global, its attempt to fashion itself as an overarching vision is perhaps disputable.[25] As a result, the EU's vision of the global can be argued to promotes certain ambiguity as to the question as to the essence of the EU's global, despite its highly distinctive character.[26]

The EU's efforts to lead multilateralism e.g. at the WTO at a time of its worst crisis yet shows its liberal vision of the global in an area of key EU strength yet such efforts appear visionless in the absence of the US and appear heavily dependent upon shoring up support of leading developed nations to the exclusion of the global others. The EU's efforts to engage with inter alia the US as foe, the complexity of China, climate change, human rights in trade agreements all appear as significant uphill battles in a world moving away from globalism. It poses new questions as to what a globalist is in this era.

Brexit initiates a series of institutional unknowns as to international organisations for EU IR (e.g. UN, WTO, CoE), places where the EU's gains to act like a quasi-state have been most successful. It invites a debate about critical understandings of EU International Relations law in this era. EU IR law will have to make the shift from friend to frenemy when it comes to Britain in the post-Brexit era. in international relations, the UK has been an immense asset to the emerging global identity of the EU.[27] It has in particular has acted as a lead channel of diplomatic information in the EEAS network emerging, drawing upon its significant Commonwealth heritage and immense civil service expertise in foreign affairs. The UK remains a seat holder at the UN Security Council and has acted as a vibrant

[16] Council of the European Union, 'A secure Europe in a better world - European security strategy' (2009) <https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf> accessed 16 July 2020.
[17] See Commission, 'Communication from the Commission: The European Agenda on Security' COM (2015) 185 final.
[18] Council of the European Union, 'Action Plan on Human Rights and Democracy 2015 -19' (2015) 10897/15.
[19] See Commission, 'Trade for All: Towards a More Responsible Trade and Investment Policy' (2015) <http://ec.europa.eu/trade/policy/in-focus/new-trade-strategy/> accessed 16 July 2020.
[20] See European Parliament and the Council, 'Joint Framework on Countering Hybrid Threats: A European Union Response' (Joined Communication) JOIN (2016) 18 final.
[21] The growing prominent of foreign policy is evident within EU law from the new Strategy, which is 60 pages long and reflects the enhanced foreign affairs competences of the EU post-Lisbon, multiples of its predecessors in length. See Giovanni Grevi, 'A Global Strategy for a Soul-searching European Union' (2016) European Policy Centre 1.
[22] i.e. in Turkey, Tunisia, Norway, Japan and Australia and gatherings of the Foreign Affairs Council Development Council, Defence, COREPER, Secretary divisions and Departments of Foreign Affairs.
[23] See Marise Cremona, 'Values in EU Foreign Policy' in Malcolm Evans and Panos Koutrakos (eds), *Beyond the Established Legal Order: Policy Interconnections between the EU and the Rest of the World* (Hart Publishing 2011).
[24] See Ikenberry (n 2); Smith (n 12); See EU Global Strategy, 3.5.
[25] It was published 48 hours after the Brexit vote in June 2016, to convey 'business as usual'. See Editorial comments, 'We Perfectly Know What to Work For: The EU's Global Strategy for Foreign and Security Policy' (2016) 53 Common Market Law Review 1199. For example, its omission of Brexit or its inclusion of the now seemingly ill-fated TTIP.
[26] CMLR Editorial Comments, ibid 1203.
[27] 'Global Britain Influence after Brexit' (*UK in a Changing EU,* 15 February 2019) <https://ukandeu.ac.uk/global-britain-influence-after-brexit/> accessed 16 July 2020.

contester of the loss of sovereignty of Member States at the UN in particular in the wake of the EU gaining special UN observer status there, which generated significant disputes as to speaking rights at the assembly.[28] It is an extraordinarily complicated shift from friend to frenemy for the EU to deal with post-Brexit. How EU will engage with its former member at a variety of international fora is of much significance, probably most concretely at the WTO. There, the EU and US have acted as to two most dominant litigants in most WTO litigation and China now acts the third most frequent litigator/ defendant.[29] Thinking forward, however, a question remains for EU international relations law of the impact of its former member upon its 'place' to side in international disputes, e.g. before the WTO dispute settlement body. Will the UK side with Europe or the US? Before the UN and ICJ in recent Chagos Islands dispute, a level of ostracisation in UK-EU relations was apparent.[30] How this was continue in other future fora, where a decision as to voting blocs for example, fosters such concerns remains to be seen. It will certainly create tension as to the place and significance of Europe within international organisations and its meaning where significant new tensions look likely.

II. EU International Relations (IR) law: the EU as victim of its success?

EU IR law is arguably a field where the EU's engagement with the world, has become a highly prominent symbol of the EU's capacity to survive and endure in the global legal order perhaps in contrast to internal strife.[31] While the Single Market is one of the oldest features of EU integration and the core hub of its extensive jurisprudence economic law, international relations integration is perhaps a more recent phenomena, enjoying a less extensive jurisprudence.[32] The externalisation of the EU's Single Market is increasingly studied across disciplines.[33] The post-Lisbon era of EU IR law is objectively viewable a vibrant one, where considerable and far-reaching agreements have been negotiated by the EU with some of the leading economies of the developed world.[34] Many post-Lisbon agreements in the area of trade are reputed to be deeper and wider and to constitute a deeper form of international economic law aiming of more progressive partnerships e.g. through increasing forms of regulatory cooperation with global intent, negotiating 'deeper' partnerships, beyond mere trade free agreements. The Treaty of Lisbon was intended to be a landmark phase in international relations after the introduction of legal personality, coherence and unity in EU international relations. This period has correspondingly seen significant democratic enhancements in order to bolster the credentials of International relations, including a significant role for the EP.[35] There have been important developments as to transparency and openness in this period and a more meaningful engagement with inter alia civil society, the Ombudsman, enhancing its democratised credentials. It is, in short, a significant evolution which has taken place.[36]

As the author and others have sought to demonstrate recently, there is a proliferation of the EU's subjects and objects as a matter of EU IR law, where more actors are subject to the scope of EU law, its reach, its territory, its procedures and its conditionality.[37] As a result, the EU constantly appears

[28] Smith (n 12).

[29] Joost Pauwelyn, 'The WTO 20 Years On: 'Global Governance by Judiciary' or, Rather, Member-driven Settlement of (Some) Trade Disputes between (Some) WTO Members?' (2016) 27 European Journal of International law 1119.

[30] Marco Milanovic, 'ICJ Delivers Chagos Advisory Opinion UK Loses badly' (*EJIL: Talk!*, 25 February 2019) <https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/> accessed 16 July 2020.

[31] See Smith (n 12).

[32] Marise Cremona, Anne Thies (eds), *The European Court of Justice and EU external relations law: constitutional challenges. Modern studies in European Law* (Hart Publishing 2014) 298.

[33] Anu Bradford, 'The Brussels Effect' (2012) 107 Northwestern University Law Review 1.

[34] Aliki Semertzi, 'The preclusion of direct effect in the recently concluded EU free trade agreements' (2014) 51 Common Market Law Review, 1125; Christina Eckes, 'How the European Parliament's participation in international relations affects the deep tissue of the EU's power structures' (2014) 12 International Journal of Constitutional Law 904.

[36] See Sophie Meunier and Milada Anna Vachudova, 'Liberal Intergovernmentalism, Illiberalism and the Potential Superpower of the European Union' (2018) 56 Journal of Common Market Studies 1631.

[37] See Samo Bardutzky, Elaine Fahey (eds) *Framing the Subjects and Objects of EU Law: Exploring a Research Platform* (Edward Elgar Publishing 2017).

as a victim of its own increasing success in the world. In turn, the EU has developed a whole swathe of administrative and procedural provisions to enable better participation, consultation, involvement and notice of its laws and their impacts. For example, there are broader civil society and participation requirements for third countries to engage with EU IR law.[38] EU Administrative decisions are increasingly addressed to individuals or legal persons in third countries e.g. sanctions regimes, which both deepen and widen.[39] The EU increasingly also acts with significant territorial reach.[40]

The rising number of subjects and objects of EU law have entailed that the EU frequently appears more of a victim of its own success. However, from EU animal welfare law, financial and banking legislation, EU Competition law, EU Environmental law to data protection, there is an asserted rise in the adoption of EU law beyond its borders, known as 'The Brussels Effects'.[41] There is also a perceived rise in 'EU extra-territoriality,' in a variety of forms.[42] The reach of EU law is not merely unidirectional from an economic perspective but also administrative and procedural, spanning rights and obligations for the EU and its subjects and objects as others. It has created a significant challenge for the EU: how to deal with its expansive global reach and how to process the massive of public interest in its global effects, both inside and outside the EU.[43] As EU law increasingly has a broader global reach, there is arguably a broader definition of the 'global' which is less transparent and more far-reaching.[44] Similar to the expanding subjects and objects of EU law, global reach also increasingly includes similar administrative hurdles for the EU.[45]

There are an increasingly broad number of cases where the EU's subjects and objects litigate this global reach- for, against, seeking or denying its protections or claims to assist. The EU WTO Seals litigation or Western Sahara CJEU litigation provide ample evidence thereof. [46] Can the EU continue such global reach? Increasingly international courts and tribunals adjudication these subjects and objects and the growing territorial reach of EU law. Arguably, the EU's global span is becoming unsustainable. Yet is Brexit the revolution or is qua Pitamic, an onslaught of anarchism the likely outcome? Can the EU resist the charges that its reach or 'Brussels Effect' is imperial? Arguably the EU's public interest ideals have never been more important e.g. as to climate change.[47]

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[38] See Emilia Korkeo-aho, 'Evolution of the Role of Third Countries in EU Law - Towards Full Legal Subjectivity?' in Samo Bardutzky, Elaine Fahey (eds) *Framing the Subjects and Objects of EU Law: Exploring a Research Platform* (Edward Elgar Publishing 2017) 227.

[39] For example, Article 11(3) of Consolidated Version of the Treaty on European Union [2008] OJ C115/13 (TEU) provides that the Commission is obliged to consult in its rule-making with 'the parties concerned', largely understood to encompass stakeholders irrespective of their country of origin.

[40] See Joanne Scott, 'The new EU "extraterritoriality"' (2014) 51 Common Market Law Review 1343.

[41] See Joanne Scott, 'From Brussels with Love: The Transatlantic Travels of European Law and the Chemistry of Regulatory Attraction' (2009) 57 American Journal of Comparative Law 897; Suzanne Kingston, 'Territoriality in EU (Taxation) Law: A Sacred Principle, or Dépassé?' in Joachim Englisch (ed), *International Tax Law and New Challenges from Constitutional and Legal Pluralism* (IBFD 2015).

[42] See Elaine Fahey, *The Global Reach of EU Law* (Routledge 2016) ch 2.

[43] Eg overwhelmed by several hundred thousand responses to its proposals on a Multilateral Investment Court.

[44] Elaine Fahey 'The Global Dimension of the EU's AFSJ: External Transparency versus Internal Practice' (2018) NYU Law Jean Monnet Working Paper Series 4/2018 <https://jeanmonnetprogram.org/wp-content/uploads/JMWP-04-Elaine-Fahey.pdf> accessed 16 July 2020.

[45] Eg extra-territorial dimensions of Council Directive (EU) 2015/637 of 20 June 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC [2015] OJ L 106/1.

[46] Case C-266/16 *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs Western Sahara Campaign* ECLI:EU:C:2018:118; WTO - Appellate Body Decision 14/3051 of 22 May 2014; Case C-398/13 P *Inuit Tapiriit Kanatami and Others v Commission* ECLI:EU:C:2015:535 Eva Kassoti, 'The ECJ and the art of treaty interpretation: *Western Sahara Campaign UK'* (2019) 56 Common Market Law Review 209; Jed Odermatt, 'Fishing in Troubled Waters ECJ 27 February 2018, Case C-266/16, R (on the application of Western Sahara Campaign UK) v Commissioners for Her Majesty's Revenue and Customs, Secretary of State for Environment, Food and Rural Affairs' (2018) 14 European Constitutional Law Review 751; Paola Concini and Tania Voon, 'EC–Seal Products: The Tension between Public Morals and International Trade Agreements (2016) 15 World Trade Review 211–234; Rike U Kramer-Hoppe and Tilman Kruger, 'International Adjudication as a Mode of EU External Governance: The WTO Seal Case' (2017) 55 Journal Common Market Studies 535; Robert Howse and Joanna Langille and Katie Sykes, 'Pluralism in Practice: Moral Legislation and the Law of the WTO after Seal Products' (2015) 48 George Washington International Law Review 81; PJ Cardwell & Ramses Wessels' EU External Relations and International Law: Divergence on Questions of 'Territory'?' in Fahey (ed): Convergence with the Global Legal Order: the EU and the World (Hart, 2020), ch. 8.

[47] See Anu Bradford, *The Brussels Effect: how the European Union rules the world* (OUP 2020) ch 8; Jan Zielonka, 'Europe as a global actor: empire by example?' (2008) 84 International Affairs 471.

III. The individual citizen and future of EU IR law: Revolution or Evolution?

Despite the growing legalisation of EU international relations, a significant shift is taking place in EU International Relations where all new post-Lisbon trade agreements lack direct effect.[48] Since new post-Lisbon trade agreements explicitly and unambiguously lack direct effect they put into sharper question the role of individual enforcement of EU international trade law going forward and the effectiveness of remedies.[49] For example, concern increases about the regulatory cooperation provisions in new generation trade agreements- in particular, about their quasi-legislative effects.[50] Such developments suggest that the subjects and objects of EU International relations law look likely to alter significantly going forward. It will become increasingly complex for litigants to assert an entitlement to litigate arguably. It may conversely generate more opportunities also for parties to litigate the effects of international agreements. The greatest politicisation of EU IR law has arguably only recently begun to take place e.g. millions protesting against TTIP or the recognition by the General Court that democratic principles apply to the negotiation of the EU's international relations.[51] The role of the individual in EU IR law, passively or actively, is only likely to increase. It is worth noting that there is an evolving literature on sub-national structures in global societies which posits an increased voice in all areas of policy making.[52] Across the global legal order in a range of contexts, the development of the megaregional trade agreements had also spurred a new interest in transparency and participation of civil society, which is evolving across regimes.[53] This view of an enlarged voice and participation needs to be carefully engaged with as regards understanding the future place of the individual in international relations and its construction. Arguably this evolution taking place buffers the individual in EU law.

However, there is an increasingly patchy role for individual fundamental rights in the implementation of the next generation of trade agreements.[54] Civil society has a diverse role across many new generation trade agreements and the European Parliament in particular has an inconsistent engagement with fundamental rights and free trade agreements. Is the need for revolution is growing?

IV. The Court-Centric Model of EU IR law: Is revolution ever possible?

Contrary to Pitamic's earlier views on Europe, Parliament is no longer the only authoritative voice on European Law. The CJEU has significant powers in EU IR law e.g. ex ante Opinion review is not possible in many national systems as to foreign affairs.[55] The Court has also not been willing to grant individuals significant powers in IR.[56] The Court has also mostly been antipathetic to transfers of powers to non-EU bodies. The question of how powerful the Court is and should be- which seems like an eternal research question of EU law.[57] The CJEU does increasingly more international

[48] Opinion 1/17 of the Court of Justice of the European Union, ECLI:EU:C:2019:72.
[49] Aliki Semertzi (n 34).
[50] Ernst-Ulrich Petersmann, 'Transformative Transatlantic Free Trade Agreements without Rights and Remedies of Citizens?' (2015) 18 Journal of International Economic Law 579.
[51] Eg 'Stop TTIP/CETA case' in Case T-754/14 *Efler v European Commission*, ECLI:EU:T:2017:323.
[52] J. van Zeben, 'Local Governments as Subjects and Objects of EU Law' in E. Fahey & S. Bardutzky (eds.), *Framing the Subjects and Objects of EU Law* (Edward Elgar 2017).
[53] See Elaine Fahey, *Introducing to Law & Global Governance* (Edward Elgar 2019) ch 1.
[54] Isabella Mancini, 'Fundamental Rights in the EU's External Trade Relations: From Promotion 'Through' Trade Agreements to Protection 'in' Trade Agreements' in Eva Kassoti, Ramses Wessel (eds) 'EU Trade Agreements and the Duty to Respect Human Rights Abroad', CLEER Paper 1/2020, 61 <https://www.asser.nl/media/679745/cleer020-01_web_final.pdf> accessed 16 July 2020.
[55] See Mario Mendez, *The Legal Effects of EU Agreements* (OUP 2013).
[56] *Western Sahara Campaign UK* (n 46).
[57] Rachel Chichowski, *The European Court and Civil Society: Litigation, Mobilization and Governance* (CUP 2007).

relations and more advocacy of its IR related caselaw outside of the Courtroom.[58] As a legal field, EU IR law has long been a doctrinal and competence-oriented subject, dominated by court-centric views on EU integration, dominating its methodology, standard textbook expositions and scholarly debates thereon. There are arguably a handful of truly 'constitutional' moments in external relations and mostly at a time predating broader constitutional moments in other fields of EU law.[59] Court-centric analyses nevertheless still lead the research agenda and methodology in this field one of the most striking features of EU law today is that it is a wholly Court-centric subject derived from the creation of its independent legal system, beyond the original source of the EU treaties agreed between the Member States in the Treaty of Rome, as an act of public international law and a treaty registered under ordinary international law procedures.

Much ink has been spilled on the interpretation by the Court of Justice of the nature of the EU legal system in its foundational decision in *Van Gend en Loos* where the Court radically altered the understanding of the individual and subjects and objects of the EU treaties. This decision has caused the Court to hold a celebration in 2013 of 50 years of its landmark decision celebrating its activism and unique interpretation of the EU treaties that would result in an extraordinary supranational system evolving therefrom.[60] The birthday celebration of this decision and its understanding have arguably radically moved from 'activism' to mainstream. However, the Court's activism would arguably result in particular in a landmark series of decisions such as Opinion 2/13 where the Court, itself becoming a party to ECHR accession in negotiations with the Council of Europe would strike down the agreement mandated for accession in the treaties by the Member States, contrary to the text of the treaties.[61] The decision is a landmark ruling on the concept of the autonomy of EU law, which the Court held would be infringed by accession. It is a neat example of the significant shift in the Court's actorness and its own evolving autonomy.

Although the Union had no single set of objectives for the Union's external policy prior to the Treaty of Lisbon, contemporary external policy objectives are 'non-teleological, non-prioritised, open-ended ended and concerned more with policy orientation than goal setting'[62] and that the contribution of the Court in theory has been considerably constrained in contrast with its function in the internal market. However, its extraordinary Opinion 2/13[63] in defiance of the spirit of the treaties, may cause one to reflect on what is meant by external objectives post-Lisbon. These developments matter for other domains of EU IR, such as external migration where increasingly 'delegalisation' takes place in high-profile CJEU caselaw, leaving litigants without redress.[64] For example, the nature of jurisprudence which will likely develop on individuals' rights in international relations looks certainly likely to diminish to a degree in trade, at least in terms of direct enforcement. It is of significance that EU IR law is particularly difficult to litigate in this new era. The inappropriateness of the place of a court-centric subject in this new era is thus of much significance.

[58] See Koen Lenaerts, 'ECJ President On EU Integration, Public Opinion, Safe Harbor, Antitrust' *Wall Street Journal* (14 October 2015) <https://blogs.wsj.com/brussels/2015/10/14/ecj-president-on-eu-integration-public-opinion-safe-harbor-antitrust/> accessed 16 July 2020.

[59] Bruno De Witte 'Too Much Constitutional Law in the European Union's Foreign Relations?' in Marise Cremona and Bruno De Witte (eds), *EU Foreign Relations Law – Constitutional Fundamentals* (Hart Publishing 2008) 3.

[60] Court of Justice of the European Union, Celebrations of the 50th anniversary of the judgment in Van Gend en Loos (13 May 2013) <https://curia.europa.eu/jcms/jcms/P_95693/en/> accessed 16 July 2020.

[61] Opinion 2/13 of the Court of Justice of the European Union, *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms,* ECLI:EU:C:2014:2454.

[62] Marise Cremona, 'A reticent court? Policy objectives and the Court of Justice', in Marise Cremona, & Ane Thies (eds), *The European Court of Justice and External Relations Law* (Hart Publishing 2014) 31.

[63] Opinion 2/13 (n 61).

[64] Elaine Fahey, 'Between Delegalisation and hyperlegalisation: on laws, norms and principles in the external management of migration' In Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered*' (Cheltenham: Edward Elgar forthcoming).

V. How would we revolutionalise EU IR law?

Historians, sociologists and political scientists examining the foundations of the EU legal system have developed a significant literature showing how a committed group of legal entrepreneurs worked to support the legitimacy of the CJEU's jurisprudence and establish European law as a distinct field.[65] However, it is work founded upon a body of caselaw that is studied principally relating to the internal market and its evolution rather than EU external relations. It is also a highly distinctive form of understanding integration through law. In more recent times, of rising Euroscepticism, there is an emerging literature in political science/ international relations (thus apart from legal scholarship) on critical EU studies, which has sought to target the place of practice and methodology to overturn key assumptions as to EU integration.[66] There are now a range of scholars seeker to advocate more critical approaches to EU foreign policy through decentring of EU actorness in their attempts to capture and reframe perceived 'Eurocentrism' in a variety of areas of foreign policy.[67] This accords well with pluralistic and participatory understandings of EU foreign policy yet such an approach may not be legally sufficient. Critical studies affords us insights here to deconstruct and frame the evolving nature of EU IR law as its most successful domain. It is one where the EU risks becoming victim of its own success internally and externally becoming victim to significant backlashes against Eurocentrism and the complexity of decolonialisation.[68] Critical studies may provide insights which capture the dynamic nature of EU IR law.

It is arguably a useful genre of analytical and normative theorisation to apply to the study of the EU at a moment of significant disintegration and to apply legal developments an assumptions. Here, the actors and subjects of objects of a subject are subjected to intense scrutiny and analytical observation. Some advocate the turn to 'everyday' practice as a result, to engage better with the nature of the elites and the everyday of the EU. Such a genre, for example, seeks to bring EU studies scholars closer to the social phenomenon that they want to study and argues for the use of approaches which bring scholars closer to the people who construct, perform and resist the EU on a daily basis.[69] In doing so, it looks to disorder and order EU studies. It thus increasingly reflects critically upon the subjects and objects of the EU law-making and integration processes. As a result, it seeks to challenge the orthodoxy of integration narratives but without adopting Euroscepticism as its end goals. This is argued here to be of much significant for legal scholars at this temporal juncture, analysing EU law and its many sub-fields, which range from trade, to security, to migration to international relations law.

Critical legal theory or Critical EU Studies as a methodology or genre of approach might be understood generally to exist independently without focussing upon law or EU law therein. Most standard textbooks on European Union law written in the English language medium do not have at the time of writing a chapter on Critical EU law. Nor in specialist textbooks on EU IR law does such a topic exist. The era of Brexit poses a considerable challenge to EU IR law at least in theory as to its models of integration, its views on EU engagement in the world and the relationship between one of the largest Member States exiting from the bloc at a time of the evolution of its international

[65] Morten Rasmussen, 'The Origins of a legal Revolution- the Early History of the European Court of Justice' (2008) 14 Journal of European Integration History 77; Antoine Vauchez, *Brokering Europe* (CUP 2015); Daniel Kelemen, ' The Court of Justice of the European Community: Changing Authority in the Twenty-First Century' in Karen Alter, Laurence Helfer and Mikael Madsen (eds) *International Court Authority* (OUP 2018) ch 10.

[66] See Rebecca Adler-Nissen, 'Towards a Practice Turn in EU Studies: The Everyday of European Integration' (2016) 54 Journal of Common Market Studies 87; Emanuel Adler and Vincent Pouliot, 'International practices' (2011) 3 International Theory 1; Richard Whitman, 'Another Theory is Possible: Dissident Voices in Theorising Europe' (2016) 54 Journal of Common Market Studies 3.

[67] Stephan Keukeleire and Sharon Lecocq, 'Operationalising the decentring agenda: Analysing European foreign policy in a non-European and post-western world' (2018) 53 Cooperation and Conflict 277; Ian Manners, 'Another Europe is Possible: Critical Perspectives on European Union Politics' in Knud Erik Jørgensen, Mark A Pollack and Ben Rosamond (eds), *Handbook of European Union Politics* (Sage Publications 2006).

[68] Nora Fisher Onar and Kalypso Nicolaïdis, 'The Decentring Agenda: Europe as a post-colonial power' (2013) 48 Cooperation and Conflict 283.

[69] Adler-Nissen (n 66) 87-89.

relations powers. Arguably, the greatest controversies of EU IR law in recent times how the EU having achieved levels of development and integration in legal terms far beyond the political momentum for those powers and competences. It could be hypothesised that recent debacles in the Walloon or Dutch Parliament as to the EU-Canada Comprehensive and Economic Trade Agreement (CETA) and its ratification demonstrate how Member States and their parliaments are not politically ready for the advances of the EU in international relations. Alternatively, it is significant that the democraticisation of EU IR remains embryonic. Revolution may yet be the next most likely outcome.

Conclusions

This piece has examined the concept of Critical EU IR law as a subject worthy of revolution and subject to significant evolution. EU law is increasingly burdened by a spiralling number of subjects and objects and its own increasingly global reach, with many advantages and also disadvantages posited therein. Yet as a legal field, EU IR law has long been a highly doctrinal subject, dominated by highly court-centric views on EU integration and in need of further analytical insights to grapple with the post-Brexit era. EU IR yet appears increasingly as a highly deserving focus of the deeper and better study of EU integration. Since new post-Lisbon trade agreements explicitly and unambiguously lack direct effect, they further put into sharper focus the role of individual enforcement of EU international trade law going forward and the effectiveness of remedies. It is of major significance that EU IR law will become increasingly difficult to litigate in this new era and render the conventional court-centric narrative of EU integration somewhat difficult to place. This new era of arguably even more subjects and objects of EU IR law puts such a successful subject as EU IR into a new spotlight. Framing critical EU IR law as a research agenda thus enables forward reflections across a range of subjects and themes. Revolution as a genre is a rich one and here appears apt to reflect upon the significant moments of change in EU IR law and in the sprit Pitamic advances.