

The Brussels Effect of the European Union's External Action: Promoting Rule of Law Abroad Through Sanctions and Conditionality

Matteo Di Donato*

Abstract

This paper provides an analysis on the promotion of European law through the external action of the European Union. Starting from Arts 3(5) and 21 Treaty of the European Union (TEU), the research focuses on the instruments and techniques used by the Union to enact its policies. In particular, it tries to demonstrate how different means can provide extraterritorial effects and spread European principles to third countries all over the world. The article focuses on the specific fields of human rights and Rule of Law and takes into account restrictive sanctions – adopted under Art 215 Treaty on the Functioning of the European Union (TFEU) – and trade, cooperation and association agreements – based on Arts 216, 217 and 218 TFUE – highlighting how this kind of instruments can influence the promotion of Rule of Law abroad.

I. Introduction

Nowadays the European Union (EU) faces numerous challenges: the rise of new economic powers around the globe, the effects of the Euro crisis, the relations with its neighbours, the growth of European scepticism and populism, the refugee crisis, the exit of the United Kingdom and the lingering question of terrorism. However it still represents a global actor and a big regulatory power in the international community.¹ The force of its external action cannot be denied; it still displays its ability to influence other national legal orders and to spread its values worldwide. There is no decline of the European Union as many authors have suggested. This paper will demonstrate how the organization is able to implement Rule of Law through its foreign policy. The first part of the article will provide a general framework of the external action of the EU, giving a legal background in accordance with the Treaties provisions. The second part of the paper will examine a particular instrument of this sector: the restrictive sanctions adopted under TEU and TFEU provisions. In different cases the technique has proved its effectiveness and obtained successful goals. The third part of the

* LLM Sant'Anna School of Advanced Studies; PhD Candidate, University of Sannio.

¹ References are to the Introduction of A. Bradford, *The Brussels effect. How the European Union rules the World* (Oxford: Oxford University Press, 2020).

article will focus upon the trade, cooperation and association agreements. The international influence of the Union through its pacts is another way to illustrate what has been called *the Brussels effect*. With the consolidation of conditionality clauses the EU has managed to influence its neighbours and become a global regulatory power. A detailed overview on the phenomenon will be provided, considering the new tendencies of the conditionality mechanism. In the last part the article will analyse the influence of the EU external action under the conception of territorial extension. The EU rarely enacts extraterritorial regulation but usually tries to gain traction over activities that take place abroad; restrictive sanctions and human rights conditionality clauses are an example of this projection. In conclusion the article will assess if this behaviour could represent a new form of imperialism or a way to increase universal standards of life from an international oriented perspective.

II. The External Action of the European Union

Since the first treaties applying to the EU were enacted, the external action of the EU has represented an important tool to affirm its presence as a global player in the international community.² The origin of the external action of the Union occurred in the late 1960s, when the six founding members of the European Economic Community (EEC) decided to start a political cooperation (European Political Cooperation - EPC) in relation to foreign affairs matters.³ Then the Davignon Report⁴ and the foundation of the European Council⁵ led to the first integration of the sector. The new institution of the European Council

² The process of the European integration is well known in literature. This is not the place for a deep analysis. For a historical background see T. Hartley, *The Foundations of European Union Law* (Oxford: Oxford University Press, 2014); M. Doni, *Droit de l'Union Européenne* (Bruxelles: ULB Editions, 2016); R. Schütze, *European Union Law* (Cambridge: Cambridge University Press, 2018); R. Adam and A. Tizzano, *Manuale di diritto dell'Unione Europea* (Torino: Giappichelli, 2020); C. Barnard and S. Peers, *European Union Law* (Oxford: Oxford University Press, 2020); A.M. Calamia, M. Di Filippo and S. Marinai, *Manuale breve di diritto dell'Unione Europea* (Milano: Giuffrè, 2020); U. Villani, *Istituzioni di diritto dell'Unione Europea* (Bari: Cacucci editore, 2020).

³ In 1969 the six members and founders of the European Economic Community (France, Italy, West Germany, Belgium, Luxembourg and Netherlands) held an Aja summit to discuss the future of the Conference and decided to start a political cooperation in foreign affairs. See P. Koutrakos, 'Common Foreign and Security Policy: Looking back, Thinking Forward', in M. Dougan and S. Currie eds, *Fifty years of the European Treaties* (Oxford: Oxford University press, 2009), 159-179.

⁴ Report by the Foreign Ministers of the European Community. To deepen: Davignon Report, *Bulletin of the European Communities*, XI, 1970, 9. Another step forward the integration was the ERTA Judgment (Case C-22/70 *Commission v Council of the European Communities*, [1971] ECR, 263) in which the Court recognized new powers with reference to the treaties provisions. This was a clear attempt to strengthen the external projection of the EU into the international community.

⁵ The creation of the European Council followed the Paris Summit (which was held in December 1974 and hosted by the President of France Valéry Giscard d'Estaing). The new institution was supposed to be an informal forum for discussion between heads of State and Government. For an official chronology see www.consilium.europa.eu.

was considered a ‘purely intergovernmental forum for the member States to discuss international issues of concern in a pragmatic and flexible way and aimed to promote and ensure solidarity and a harmonization of views’.⁶ In 1987 the Single European Act created the first legal framework of the external action but it is only with the following treaties that it started to have a clear and precise background (EPCS).⁷ Finally the Lisbon treaty put an end to the pillars structure and introduced a new system. It supported the role of the High Representative for Foreign Affairs and Security Policy and created the European Service for the external action (ESEA). Today the external action of the European Union is based on a detailed legal framework, finding regulation in Arts 21-46 (TEU) and in Arts 205-222 (TFEU) and other specific provisions.⁸ In this legal structure we can find the principles and values governing the foreign projection of the Union and the instruments and techniques able to enact its policies. It cannot be denied that the evolution of human rights has affected this sector.⁹ Art 3 TEU expressly states that

‘The Union’s aim is to promote peace, its values and the well-being of its people (...). In its relations with the wider world, the Union shall uphold

⁶ P.J. Cardwell, ‘The legalisation of European Union foreign policy and the use of sanctions’, in *The Cambridge Yearbook of European Legal Studies* (Cambridge: Cambridge University Press, 2015) XXVII, 287-310.

⁷ Since the Treaty of Maastricht (1992), the external action of the European Union has improved its legal framework and enriched its executive tools. It was based on an intergovernmental system. The intergovernmental method was opposed to the community method: it was a more political approach, characterized by intergovernmental decisions. The Treaties of Amsterdam (1997) and Nice (2001) introduced important changes with the creation of the High Representative for Foreign Affairs and Security Policy. However it was the Lisbon Treaty that modified the pillars structure in 2009. Then the external action of the Union experimented a sort of ‘legalisation’. For an overview, C. Risi, *L’azione esterna dell’Unione Europea dopo Lisbona* (Napoli: Editoriale Scientifica, 2010); F. Munari, ‘La politica estera e di sicurezza comune (PESC) e il sistema delle fonti ad essa relative’ *Rivista di diritto dell’Unione Europea*, IV, 941-970 (2011); M.E. Bartoloni, *Politica estera e azione esterna dell’Unione europea* (Napoli: Editoriale scientifica, 2012); A. Lang and P. Mariani, *La politica estera dell’Unione Europea: inquadramento giuridico e prassi applicative* (Torino: Giappichelli, 2014); E. Sciso, R. Baratta and C. Morviducci eds, *I valori dell’Unione Europea e l’azione esterna* (Torino: Giappichelli, 2016).

⁸ TEU norms describe the general framework of the external action of the Union and provide rules for the foreign policy and the common security policy. TFEU provisions take into account specific tools and procedures. For a deep analysis see A. Padurariu, ‘Note sintetiche dell’Unione Europea’, available at www.europarl.europa.eu, with particular reference to the role of the European Parliament in the external action of the Union; P. Van Elsuwege, ‘Eu external action after the collapse of the pillar structure: in search of a new balance between delimitation and consistency’ *Common Market Law Review*, 987-1019 (2010); A. Missiroli, ‘The new EU foreign policy System after Lisbon. A Work in progress’ *European Foreign Affairs Review*, 427-452 (2010); P. Perlingieri and F. Casucci, *I trattati dell’integrazione europea* (Napoli: Edizioni scientifiche italiane, 2010); F. Pocar and M.C. Baruffi, *Commentario breve ai trattati dell’Unione europea* (Padova: CEDAM, 2014).

⁹ In the opinion of P.J. Cardwell this process of extension and application of human rights and Rule of Law to the external action of the European Union has influenced its ‘legalisation’, promoting the judicial control of the Court of Justice. See P.J. Cardwell, *The legalisation of European Union foreign policy* n 6 above, 287-310. The point will be analysed further.

and promote its values and interests and contribute to the protection of its citizens. 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',¹⁰

respecting the norms of international law, the Charter and the resolutions of the United Nations.¹¹ However, the main core of the European external action is now represented by Art 21 (TEU) that 'establishes a framework of guiding principles and objectives and externalizes the EU's internal constitutional values'.¹² The norm defines the values that the Union has to reflect in the wider world: democracy, Rule of Law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, those expressed in the United Nations Charter and in other international Conventions.¹³ The provision plays an important role for different

¹⁰ That is the literal version of Art 3(1) and Art 3(5) (TEU). The proposition affirms the willingness of the organization to play a leading role as global actor in the international community. It underlines its engagement in the promotion of peace, human rights and Rule of Law worldwide. The same Court of Justice has confirmed this proposal in the recent Case C-72/15 *Rosneft Oil Company*, Judgment of 28 March 2017, available at www.eur-lex.europa.eu. See B. Nascimbene and M. Codinanzi, *Giurisprudenza di diritto dell'Unione europea. Casi scelti* (Milano: Università degli Studi di Milano, 2020).

¹¹ At the beginning the Union merely implemented the sanctions fulfilling the United Nations resolutions. Then (from 1980) it tried to become more independent, elaborating a freestanding approach. This raised many different problems that will be analysed in para 2. For an example see: M. Savino, 'Kadi II, ultimo atto: un modello globale per la prevenzione amministrativa?' *Giornale di diritto amministrativo*, XI, 1052-1059 (2013).

¹² T.P. Holterhus, 'The Legal dimensions of Rule of Law promotion in Eu foreign policy: Eu treaty imperatives and Rule of Law conditionality in the foreign trade and Development Nexus' *Goettingen Journal of International Law*, IX, 71-108 (2018). On this topic see also: M. Bungenberg and C. Herrmann, *European Yearbook of International Economic Law, Special Issue on Common Commercial Policy after Lisbon* (New York: Springer Eds, 2013), 115; M. Cremona, *Structural Principles in EU external relations law* (Oxford: Hart publishing Ltd, 2018).

¹³ Art 21 sets off: '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. The Union shall seek to develop relations and build partnerships with third countries, and International, regional or global organisations, 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. 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: [...] (b) consolidate and support democracy, the Rule of Law, human rights and the principles of International law; [...] The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies'. The framework is legally binding; there is no doubts that the European Court of Justice can now control the correct application of these principles. The point will be discussed later. For an initial overview about the judicial review on this sector see M.C. Lipari, 'La PESC, le misure restrittive e l'evoluzione dell'approccio del giudice europeo' *Contratto e Impresa Europa*, II, 832-845 (2014).

reasons: it seems to apply not only to EU external policies but also to the external aspects of EU internal policies.¹⁴ Although Art 21 contains a general binding rule, there is no doubt that its role has gained much importance, as a legal criterion to found the judicial review of the European Court of Justice on the acts adopted in this sector.¹⁵ Other norms define the external action of the Union, the strategic and leading role of the European Council, the functions of the Commission and of the High Representative for Foreign Affairs and Security Policy and express great attention to the decisions adopted by the Council.¹⁶ They remark that all the acts adopted in this sector cannot assume a legislative form.¹⁷ TEU and TFEU provisions regulate the specific instruments and techniques of the external actions such as the economical, cooperation and association agreements with third countries and the adoption of restrictive sanctions. References are from Art 205 to Art 222 (TFEU).¹⁸ This is not the place for a

¹⁴ In these terms see L. Bartels, 'The EU's human rights obligations in relation to policies with extraterritorial effects' *The European Journal of International Law*, IV, 1071-1091 (2015).

¹⁵ Generally, the judicial review of the European Court is extremely limited or excluded in the external action of the Union. However, we have already analysed the process of legalisation of the sector. There is now a specific provision of the Treaty that sums up this orientation; it is Art 40 (TEU) that reads: 'The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union. Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter'. The European Court of Justice can exercise its judicial review on all the acts adopted in this sector.

¹⁶ References are to Art 22: 'On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union. Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the member States. The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. Decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council'. See also Arts from 25 to 31 (TEU) defining the related procedures. This is not the place to deepen the accurate role of the institutions in the execution of the external action of the Union. We can postpone to S. Gstöhl and S. Schunz, *The external action of the European Union, concepts, approaches, theories* (London: Red Globe Press, 2021); L. Daniele, *Diritto dell'Unione Europea* (Milano: Giuffrè, 2020).

¹⁷ This is what Art 24 underlines. It expressly says that '(...) The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded'. In spite of this statement, it is without a doubt that the decisions of the European Council and of the Council have a binding force; they have to be implemented and executed by member States in their legal order.

¹⁸ In particular, Art 206, regarding the common commercial policy, defines the principles and the aims of this action: 'By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the

detailed analysis of all the policies of the external action of the European Union; for our purpose it is enough to offer a general assessment on its principles and its legal framework.¹⁹ It is undeniable that the EPCS has developed over the years and changed its influence and its force. The Treaties provisions and the strong authority of the European jurisprudence have completely changed a sector that was once dominated by political decisions and intergovernmental methods.²⁰ The promotion of EU law and values, thanks to the new legal framework, has gained the trust of many actors who do not consider it interference in domestic sovereignty anymore.²¹ In the next paragraphs we will focus upon two foreign

progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers'. Also Art 208 clearly expresses the values of the economical, financial and technical cooperation, stating that 'Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the member States complement and reinforce each other. Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries. The Union and the member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent International Organisations'. The regulation of humanitarian aids, restrictive sanctions and international agreements is provided in Arts 214, 215 and 216 (TFEU). This is not the place for a detailed analysis of these norms. We can postpone to C. Morviducci, 'I valori dell'azione esterna nella prassi Pesc', in E. Sciso, R. Baratta and C. Morviducci eds, *I valori dell'Unione Europea e l'azione esterna* (Torino: Giappichelli, 2016), 53-85; F. Cherubini, 'I valori dell'Unione Europea nella politica di cooperazione allo sviluppo', in E. Sciso, R. Baratta and C. Morviducci eds, *I valori dell'Unione Europea e l'azione esterna* (Torino: Giappichelli, 2016), 120-141; D. Gallo, 'I valori negli accordi di associazione dell'Unione Europea', in E. Sciso, R. Baratta and C. Morviducci eds, *I valori dell'Unione Europea e l'azione esterna* (Torino: Giappichelli, 2016), 142-166; M. Cremona, 'A quiet revolution: the changing nature of the EU's common commercial policy', in *The European Yearbook of International Economic Law* (New York: Springer, 2017), VIII, 3-34.

¹⁹ For a detailed analysis on the matter see L. Daniele, *Diritto dell'Unione Europea* (Milano: Giuffrè, 2020). Traditional classifications divide the commercial policies, the cooperation and development policies, the association agreements and the EU neighbourhood policy. For a first overview see B.V. Vooren, *EU external relations law and the European Neighbourhood Policy, a paradigm for coherence* (London: Routledge, 2012).

²⁰ There are different cases that focus upon the 'legalisation' of the external action of the Union. For an example, we can recall the decision Case C-130/10 *Parliament v Council*, Judgment of 19 July 2012, available at www.eur-lex.europa.eu, where the Court of Justice made a general statement on the topic, saying that 'The duty to respect fundamental rights is imposed, in accordance with Art 51 of the Charter of Fundamental Rights of the European Union, on all institutions and bodies of the Union'. The same opinion can be found in Case C-581/11 *Muhamad Mugraby v Council of the European Union and European Commission*, Order of 12 July 2012, available at www.eur-lex.europa.eu, where the Court does not question the assumption that the organization could be accountable for human rights violations when it is giving execution to association agreements. On this matter, C. Hillion, 'A powerless Court? The European Court of Justice and the Common Foreign Security Policy' *The European Court of Justice and external relations law* (Oxford: Hart publishing, 2014), 65-90; see also L. Bartels, 'The EU's human rights obligations in relation to policies with extraterritorial effects' *The European Journal of International Law*, IV, 1071-1091 (2015).

²¹ These effects demonstrate the growing influence of the external action of the Union. Many third countries decide to align their foreign policies to those of the Union. See www.consilium.europa.eu.

policy tools: restrictive measures and international trade, cooperation and association agreements. Then we will analyse how these instruments can uphold and enforce the respect for human rights and Rule of Law worldwide.

III. The Promotion of Rule of Law Through Restrictive Sanctions

Restrictive sanctions are significant measures of the EU foreign policy. Their legal framework is based on Art 215 (TFUE) that define the process of adoption of such sanctions.²² The provision sets up that when the European Council defines a position, the EU Council, acting by a qualified majority on a joint proposal from the High Representative and the Commission, shall adopt all necessary means to implement the position. Then national member States have to comply with them and empower their effectiveness.²³ The role and the functions of EU sanctions have widened over the years and become more independent from the United Nations authority.²⁴ As a tool to react to gross and systematic violations of international law, restrictive sanctions now reflect a different way to defend and promote EU law and values.²⁵ It might be held that that they are not a simple retaliation against third States (or individuals) but a

²² Art 215 reads: 'Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities. The acts referred to in this Article shall include necessary provisions on legal safeguards'. See C. Portela, *European Union Sanctions and Foreign Policy: When and why do they work?* (London: Routledge, 2010); M. Russell, 'EU sanctions: a key foreign and security policy instrument', in *European Parliamentary Research Service* (europarl.europa.eu), Strasbourg (2018).

²³ Different analyses concern the meaning of the word 'shall'. The real meaning of the term is not clear. In reality, when the European Council takes a decision under Art 26 (TEU), the Council have to adopt all the measures to implement that position. See E. Neframi, 'The duty of loyalty: rethinking its scope through its application in the field of EU external relations' *Common Market Law Review*, II, 323-359 (2010). The role of the Parliament in this process is instead limited.

²⁴ The use of sanctions on the behalf of the United Nations started during the 1960s, against Rhodesia and South Africa. Before the constitution of the European Union, the States of the international community had to implement the measures by themselves. This caused a lot of problems in terms of coherence. For these reasons the EU decided to get the competence and created a legal framework of reference. EU Independent sanctions started in 1980 against the Soviet Union for its invasion of Afghanistan. See P. Koutrakos, *European foreign policy: legal and political perspectives* (Cheltenham: Edward Elgar editions, 2011) and N. Ronzitti, *Coercive diplomacy, sanctions and International law* (Leiden: Brill Nijhoff, 2016).

²⁵ This is confirmed by the analysis of D. Kochenov and F. Amtenbrink, *The European Union's shaping of the International Legal Order* (Cambridge: Cambridge University Press, 2014) and C. Eckes, 'EU restrictive measures against natural and legal persons: from counterterrorism to third country sanctions' *Common Law Market Review*, IV, 869-905 (2014).

new way to promote the respect of EU values abroad.²⁶ Owing to their potentially significant effects, restrictive measures need to be submitted to an intense judicial review of the Court of Justice.²⁷ Over the years EU Institutions have adopted many kinds of sanctions: including limitations on imports and exports of goods or services, embargoes of arms and any related materials on third countries and smart sanctions against individuals concerning freezes of funds and travel bans. The European Union has become the world's second most-active user of restrictive measures, after the United States of America.²⁸ Smart sanctions are the most common; they are able to target specific groups or individuals and to avoid humanitarian costs for the general population. Until today, the European Union has decided sanctions against or in relation to the Soviet Union (1980), Argentina (1982), China (1989), Myanmar (1990), Iraq (1990), Somalia (1992), Montenegro (1992), Serbia (1992), Haiti (1993), the Democratic Republic of the Congo (1993), Sudan (1994), the United States of America (1996), Afghanistan (1999), terrorism (2001), Zimbabwe (2002), Moldova (2003), Belarus (2004), Iran (2006), North Korea (2006), Lebanon (2006), Guinea (2009), Eritrea (2009), Libya (2011), Bosnia and Herzegovina (2011), Tunisia (2011), Egypt (2011), groups and individuals related to Al-Qaida and ISIL (2011), Guinea-Bissau (2012), the Central African Republic (2013) Syria (2013), South Sudan (2014), Ukraine (2014), Yemen (2014), Russia (2014), Burundi (2015), the non-proliferation of weapons of mass destruction (2016), Venezuela (2017), Mali (2017), the non-proliferation of chemical weapons (2018), cyber-attacks (2019), Nicaragua (2019), Turkey (2019), Russia (2022) and delineated a new global human rights sanctions regime (2020).²⁹ EU independent

²⁶ Some examples will be provided later.

²⁷ To safeguard the correct and homogeneous application of the measures, the decision of the Council is followed by specific regulations. The Council defines the guidelines for the implementation of restrictive sanctions. Then a Working Group reports the Best Practices to the COREPER every year. See R. Wessel, 'Resisting legal facts: are CFSP norms as soft as they seem?' *European Foreign Affairs review*, III, 123-146 (2015). In the opinion of P.J. Cardwell, *The legalisation of European Union foreign policy and the use of sanctions* n 6 above, 17, 'Best practices, which involve multiple actors, non-binding guidelines and continuous dialogue between stakeholders could be considered as an example new governance which has become prevalent in other areas of European integration and cooperation. (...) The institutionalised use of best practices is further evidence of a sophisticated level of engagement between actors which goes far deeper than periodic meetings between foreign ministers in a formal Council setting restricted to discussion of high politics only'.

²⁸ These data easily explain why sanctions are considered a central element of the external action of the European Union. Their role is increasing: UE measures influence foreign governments to respect human rights and Rule of Law. On the matter see again M. Russell, 'EU sanctions' n 22 above, 1, where he says: 'The declared purpose of EU sanctions is to uphold the International security order as well as defending human rights and democracy standards, by encouraging targeted countries to change their behaviour'.

²⁹ The measures involve limitations on imports and exports of goods and services, embargoes on arms, smart sanction such as travel bans and assets freeze. The aims are different: they react to gross violations of international law, human rights, Rule of Law, war and humanity crimes, cyber-attacks and terrorism. The list is continuously changing; for an instant update see sanctionsmap.eu. The execution of embargoes on arms is not a competence of the European Union; member States preserve

sanctions have managed to play an important role when the United Nations were unable or unwilling to take appropriate decisions or to defend human rights worldwide;³⁰ they often have reached successful goals, forcing foreign governments to modify their positions.³¹ The alignment of non-member States to the application and execution of EU-imposed sanctions represents further proof of their influence. Many neighbour countries, in fact, tend to implement EU political decisions without being bound by them and this explain the EU leading role to sponsor human rights and Rule of Law. Third States have the possibility to align their position case-by-case, by accepting and listing their name at the end of a Council declaration. More than fourteen States usually agree to foster EU sanctions; it has been noted that

‘a declaration issued in the name of the EU and its member States with fourteen additional countries in addition to the EU’s twenty-eight brings the total to forty two States. This is over a fifth of the total number of States in the United Nations and can be presented beyond Europe as a truly continent-wide view’.³²

The effectiveness of EU restrictive decisions is so strengthened by the alignment of other States. However in some cases, the Council has adopted a soft approach, avoiding damaging the EU commercial and economical relations with its biggest and strongest partners. Many authors have therefore condemned the Union for its ‘double standards, leading to different treatments of countries with similar human rights and democratic records’.³³ Other forms of criticism have regarded their effects on human rights.³⁴ EU sanctions, instead of US sanctions, do not have extraterritorial effects: they can react to unlawful conducts abroad but they

their prerogatives in this sector (under article 346 TFEU). For this aspect see A. Pietrobon, ‘L’efficacia delle misure di embargo sulle armi: luci e ombre dopo Lisbona’ *Rivista di diritto commerciale internazionale*, III, 783-807 (2014).

³⁰ Due to the positions of Russia and China in the Security Council, the United Nations are often unable to adopt restrictive sanctions. See S. Poli, *Le misure restrittive autonome dell’Unione Europea* (Napoli: Editoriale scientifica, 2019).

³¹ One of the most successful applications of EU sanctions was that against Iran. It forced the country to sign the nuclear deal in 2015. Although the withdrawal of the United States has changed the effectiveness of the Treaty, UN and EU restrictive measures were able to influence the Iranian engagement.

³² P.J. Cardwell, *The legalisation* n 6 above, 307. With the withdrawal of the UK from the European Union the number of member States has lowered to 27.

³³ M. Russell, ‘EU sanctions’ n 22 above, 10. In the same report the author underlines how the European Union (who is participating in sanctions against Iran and North Korea) had a much weaker response to Indian and Pakistan nuclear tests; Iran was targeted more than Saudi Arabia, Tibet, or Russia (after its attack on Georgia) for human rights violations. See also Camera dei Deputati, Ufficio rapporti con l’Unione Europea, *Relazione sullo stato di diritto 2020. La situazione dello stato di diritto nell’Unione Europea e in Italia*, dossier no 44, Roma (2020).

³⁴ Sanctions inevitably harm the general population of the targeted States and impair the respect of human rights. On the topic see N. Ronzitti, *Coercive diplomacy, sanctions and International law* (Leiden: Brill Nijhoff, 2016).

apply only within the member States territory.³⁵ To mitigate their effects on human rights, the judicial control of the European Court has improved over the years, becoming more effective under Art 275 (TFUE).³⁶ Many cases have been reviewed by the ECJ, especially when EU sanctions have been executed on the basis of United Nations resolutions.³⁷ In different situations, in fact, the Court changed its first approach that considered the implementation of UN measures as a binding activity and claimed for more independence, declaring that the Union has to respect human rights, Rule of Law (as the due process of law), especially when it is fulfilling an international obligation on the basis of the United Nations Charter. The CJEU has increasingly realized a deeper review of sanctions, requiring the respect of individuals' rights of self-defense, access to documents and opposition. This has led to the promotion of a new European

³⁵ Such as limitations to the exportation and importation of products, assets freeze or travel bans. The European Union has always condemned the United States sanctions for their unilateralism. It reacts in different ways to neutralize them. For a detailed analysis See A.Z. Marossi and M.R. Bassett, *Economic sanctions under International law*, (Berlin: Springer, 2015). L. Lionello, 'La reazione europea alle sanzioni secondarie degli Stati Uniti. Cosa non ha funzionato nel caso iraniano?' *Rivista di diritto del commercio internazionale*, III, 483-514 (2019); C. Beaucillon, *Research Handbook on Unilateral and Extraterritorial Sanctions* (Cheltenham: Ed. Elgar Publishing, 2021). What the European Union complains the most is their unilateral decisions.

³⁶ The provision of the Treaty reads: 'The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions. However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union'. The judicial review is allowed to control the respect of the treaties norms and to monitor the protection of human rights and Rule of Law.

³⁷ The jurisprudence on restrictive sanctions is rich: we can recall the *Jusuf and Kadi* joined cases (Case C-402/05 P and Case C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council and Commission*, Judgment of 3 September 2008, available at www.eur-lex.europa.eu); the *Kadi* (II) (Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *Kadi v Council, Commission and UK*, Judgment of 18 July 2013, available at www.eur-lex.europa.eu) and the *Selmani and Minin* (Case T-299/04 *Selmani v Council and Commission*, Judgment of 18 November 2005; and Case T-362/04 *Minin v Council and Commission*, Judgment of 31 January 2007, available at www.eur-lex.europa.eu). On the matter and for a deep analysis of case-law see E. Cannizzaro, 'Sugli effetti delle risoluzioni del Consiglio di Sicurezza nell'ordinamento comunitario: la sentenza della Corte di Giustizia nel caso Kadi' *Rivista di diritto internazionale*, 1075-1078 (2008); L. Paladini, 'Le misure restrittive adottate nell'ambito della PESC: prassi e giurisprudenza' *Rivista di diritto dell'Unione Europea*, II, 341-377 (2009); M.E. Bartoloni, 'Articolazione delle competenze e tutela dei diritti fondamentali nelle misure UE contro il terrorismo' *Rivista di diritto dell'Unione Europea*, I, 47-75 (2009); B. Nascimbene and I. Anrò, 'La tutela dei diritti fondamentali nella giurisprudenza della Corte di Giustizia' *Rivista italiana di diritto pubblico comparato*, II, 323-362 (2017). On the phenomenon of international constitutionalism see instead: A. Balsamo and G. De Amicis, 'Terrorismo internazionale, congelamento dei beni e tutela dei diritti fondamentali nell'interpretazione della Corte di Giustizia' *Cassazione Penale*, I, 401- 425 (2009); J. Klabbers, 'International Constitutionalism', in R. Schütze and R. Masterman eds, *The Cambridge companion to comparative constitutional law* (Cambridge: Cambridge University Press, 2019), 498.

constitutional identity that cannot be violated.³⁸ For these reasons, EU institutions have to comply with different needs: on the one hand they have to react against human rights violations and on the other hand they have to respect EU fundamental principles. On this path, the organization has worked on a new global human rights sanctions model similar to the US Magnitsky act.³⁹ The new regime is linked to the strong legalisation of the sector and classifies the different violations on the basis of their intensity.⁴⁰ It has been described as a new way of ‘supranationalism’.⁴¹ Although the new reform confirms the key role of restrictive sanctions (as a tool to promote EU values), their mechanism has not really changed and new steps to achieve effective transnational governance should be implemented.

IV. The Promotion of Rule of Law Through Trade, Cooperation and Association Agreements: The Human Rights Conditionality Clauses

³⁸ The European constitutional theory developed with the Kadi decisions. See M. Savino, ‘Kadi II, ultimo atto: un modello globale per la prevenzione amministrativa?’ n 11 above).

³⁹ It is the ‘Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act’ of 2012, Public Law, 112-208. The new legal framework was adopted on December 7, 2020, and defines the new EU Human Rights Sanctions Regime (EU GHRSR). See the resolution of the European Parliament on the matter 2563/2021 (available at www.europarl.europa.eu). The Parliament ‘Welcomes the adoption of the EU Global Human Rights Sanctions Regime (EU GHRSR) as an essential addition to the EU’s human rights and foreign policy toolbox, which strengthens the EU’s role as a global human rights actor by allowing it to take restrictive measures against legal and natural persons involved in serious human rights violations everywhere in the world; stresses that the new regime must form part of a broader, coherent and clearly defined strategy that takes account of the EU’s foreign policy objectives; underlines that the strategy should also seek to identify specific benchmarks that are connected to the objectives, and detail how sanctions can help meet those benchmarks; regrets, however, that the Council has decided to apply unanimity instead of qualified majority voting when adopting the new regime, and reiterates its call for the introduction of qualified majority voting for the adoption of sanctions under the scope of the EU GHRSR. Welcomes the definition of the regime’s scope with a list of specific serious human rights abuses, including those related to sexual and gender-based violence, and calls on the Commission to come forward with a legislative proposal to amend the current EU GHRSR legislation by extending its scope to include acts of corruption; urges the European External Action Service (EEAS) and the member States to employ flexibility in adapting it to emerging challenges and threats to human rights or abuse of state or emergency powers, including those related to COVID-19 restrictions or violence against human rights defenders; highlights that the EU’s sanctions are targeted at persons violating human rights and are not intended to impact the enjoyment of human rights by the population’.

⁴⁰ For an overview, see the Guidelines published by the European Commission, available at www.ec.europa.eu or www.consilium.europa.eu.

⁴¹ See H.V.D. Nienke, ‘The proposed EU human rights sanctions regime, a first appreciation’ *Security and Human Rights Review*, XXX, 56-71 (2019); C. Eckes, ‘EU global human rights sanctions regime: is the genie out of the bottle?’ *Journal of contemporary European studies*, 255-269 (2021); C. Portela, ‘The EU human rights sanctions regime: unfinished business?’ *Revista General de Derecho Europeo*, 54-71 (2021); T. Ruys, ‘The European Union global human rights sanctions regime’, in American Society of Comparative Law eds, *International legal materials*, II (Cambridge: Cambridge University Press, 2021), 298.

Since the Lisbon Treaty, the European Union has been fully considered an actor of the international community.⁴² It has the power to sign agreements and respond to its own obligations; in some cases the organization is also accountable for the damages caused by its own conduct.⁴³ The legal personality of the Union has given it the possibility to promote its relations with third States through international agreements. Their process of adoption refers to Art 218 TFEU: the Council authorizes the opening of the negotiations, defines directives and decides the signature of the agreements; the Commission or the High Representative of the Union for Foreign Affairs and Security Policy (which depends on the subjects) have the role to lead the negotiations. Generally, the European Parliament gives only an opinion but there are specific cases in which its consent is required.⁴⁴ Member States do not participate to the negotiations but when the content of the Treaty interfere with their national competences they can sign the agreements with the European Union Institutions.⁴⁵ Over the years international agreements have represented an important tool for the external action of the Union; as a matter of fact two types of pacts have been tied the most: the trade and the association agreements.⁴⁶ These instruments of foreign policy have promoted the reduction of poverty and the respect of human rights and Rule of Law.⁴⁷ Until today the European Union has in force

⁴² Art 47 TEU reads that 'The Union Shall have legal personality'. Before the Lisbon Treaty, the European Court of Justice had already recognized the nature of the organization. For a historical background see L.J. Smith, 'The legal personality of the European Union and its effects on the development of space activities in Europe', in *Yearbook on Space Policy* (Vienna: ESPI, 2010), 199 and U. Villani, *Istituzioni di diritto dell'Unione Europea* (Bari: Cacucci editore, 2020).

⁴³ EU treaties have provided for the extra-contractual liability of EU Institutions. See Art 340 (TFEU). They refer to the general principles of the member States. For a deep analysis on the matter see R. Manko, 'Actions for damages against the EU' *European Parliamentary Service Research* (2018).

⁴⁴ Art 218 (TFEU) lists different situations. The consent of the European Parliament is required in case of: 1) association agreements; 2) agreements on the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms; 3) agreements establishing a specific institutional framework; 4) agreements with important expenses; 5) agreements regarding the ordinary legislative procedure. Usually the Council decides with a qualified majority, but in some cases it adopts the unanimity rule. Commercial and cooperation policies can be implemented not only through international agreements but also through legislative acts, in accordance with the principles and the aims of the external action. See Arts 207, 209 and 212 (TFEU).

⁴⁵ On this topic see N. Zipperle, *EU International Agreements. An analysis of direct effect and judicial review pre and post Lisbon* (Switzerland: Springer Nature, 2017).

⁴⁶ Trade agreements are a classical tool of the external action. Association agreements tend to implement the cooperation with neighbourhood States. They support their adhesions to the Union.

⁴⁷ For a historical review see A. Lucchini, *Cooperazione e diritto allo sviluppo nella politica esterna dell'Unione Europea* (Milano: Giuffrè, 1999); F. Bonaglia, A. Goldstein and F. Petito, 'Values in EU development cooperation policy', in S. Lucarelli and I. Manners eds, *Values and principles in European Union foreign policy* (London: Routledge, 2007); A. Sari, 'The conclusion of International Agreements by the European Union in the context of the ESDP' *International and Comparative Law Quarterly*, 53-86 (2018); S. Angioi, *La tutela dei diritti umani e dei principi democratici nell'azione esterna dell'Unione Europea* (Napoli: Edizioni scientifiche italiane, 2012); T.P. Holterhus, 'The Legal dimensions of Rule of Law promotion in Eu foreign policy: Eu treaty imperatives and Rule of Law

more than ninety international agreements with third countries; they have been signed under the Common Foreign and Security Policy framework.⁴⁸ Among the association agreements we can report those with Tunisia (1998), Israel (2000), Jordan (2002), Chile (2003), Egypt (2004), Algeria (2005), Lebanon (2006), Albania (2009), Iraq (2012), Costa Rica (2013), El Salvador (2013), Honduras (2013), Guatemala (2013), Nicaragua (2013), Serbia (2013), Bosnia and Herzegovina (2015), Kosovo (2016), Georgia (2016), Moldova (2016) and ACP (2021).⁴⁹ Many of these Conventions contain the human rights conditionality clauses. The conditionality mechanism was firstly introduced with the IV Lomé Convention in the late 1990s, after a period of deep discussion between the parties involved.⁵⁰ Art 5 of the Pact considered the respect of human rights and Rule of Law as a fundamental element of its execution and used the Covenant as a tool to promote those rights.⁵¹ Some years later EU Institutions confirmed this conception.⁵² The conditionality mechanism can be seen in a positive or negative perspective: the first

‘involves promising benefits if the recipient country meet the conditions (such as grants, loans, technical or financial aids), the second concerns the withdrawal and the suspension of the agreement if the recipient country does not’.⁵³

Nowadays conditionality clauses contain complementary provisions that clearly define the mechanism and the measures that can be adopted.⁵⁴ Over the years the organization has promoted two kinds of conditionality clauses: the Baltic

conditionality in the foreign trade and Development Nexus’ *Goettingen Journal of International Law*, IX, 71-108 (2018).

⁴⁸ The list can be found at www.eur-lex.europa.eu and www.ec.europa.eu.

⁴⁹ The catalogue is continuously changing. For a complete update see ec.europa.eu. The historical Cotonu Agreement was signed in Benin in 2000. The new Convention focuses upon the respect of democracy, human rights, Rule of Law, peace and security and contains a specific procedure of reconciliation (art 96). On the point see www.consilium.europa.eu.

⁵⁰ The first Lomé Convention was signed in 1975. Due to the continuous violations of human rights in Uganda, the Organization started to imagine a way to punish these events. The conditionality mechanism was discussed and new clauses were created. On this issue see A. Lucchini, *Cooperazione e diritto allo sviluppo nella politica estera dell'Unione Europea* (Milano: Giuffrè, 1999).

⁵¹ For a deep analysis see U. Villani, *Studi sulla protezione internazionale dei diritti umani* (Roma: Luiss University Press, 2005).

⁵² See A. Moberg, ‘The condition of conditionality – closing in on 20 Years of Conditionality Clauses in ACP-EU relations’, in P. Wahlgren ed, *Law and Development, Scandinavian Studies in Law* (Gothenburg: Gothenburg University Publications, 2015), 60.

⁵³ The European Union adopts these measures against third States but it always tries to help the local population. See E. Fierro, ‘The EU’s approach to human rights conditionality in practice’, in *International studies in human rights* (Leiden: Brill Nijhoff, 2003), 100.

⁵⁴ The EU Charter of Fundamental Rights expresses the respect for human rights and Rule of Law; sometimes there are references to other International Conventions. Conditionality clauses are now considered essential; this allows the parts to invoke and apply the sanctions.

and the Bulgarian one.⁵⁵ The first mechanically implies the suspension or the withdrawal from the agreement in the case of gross and systematic violations of human rights and Rule of Law; the second instead provides different techniques of dialogue and reconciliation. It is the Bulgarian model that has developed the most.⁵⁶ The European Union has adopted conditionality mechanisms in the IV Lomé Convention, the Baltic and Bulgarian trade agreements, the Cotonu and ACP association agreements, the cooperation agreements with Pakistan, Tajikistan, Chile, Vietnam, Indonesia, Syria, Israel, Albania, Serbia, Bosnia and Herzegovina, Lebanon, Ukraine, Colombia, Canada, Japan and Singapore.⁵⁷ The norms support the respect of democracy, human rights, Rule of Law and impose the non-proliferation of chemicals and weapons of mass destruction.⁵⁸

⁵⁵ Baltic clauses were created during the trade agreements with Estonia, Latvia and Lithuania in 1992; the Bulgarian clauses during the cooperation agreements with Bulgaria in 1994. See P. Di Franco, 'Il rispetto dei diritti dell'uomo e le condizionalità democratiche nella cooperazione comunitaria allo sviluppo' *Rivista di diritto europeo*, III, Istituto Poligrafico e Zecca dello Stato, 549 (1995); K.E. Smith, 'The use of political conditionality in the EU's relations with third countries: how effective?' *European foreign affairs review*, 253-274 (1998); S. Angioi, 'Genesi ed evoluzione del principio di condizionalità nella politica commerciale e nella politica di cooperazione allo sviluppo della Comunità Europea' *Rivista internazionale dei diritti dell'uomo*, 458-492 (1999); F. Cherubini, 'I valori dell'Unione Europea nella politica di cooperazione allo sviluppo', in E. Sciso, R. Baratta and C. Morviducci eds, *I valori comuni dell'Unione europea e l'azione esterna* (Torino: Giappichelli, 2016), 120-141; M. Ventura, 'Condizionalità e realizzazione progressiva degli obblighi internazionali nelle relazioni esterne dell'Unione Europea' *Rivista di diritto internazionale*, I, 45-78 (2019).

⁵⁶ See E. Cannizzaro, 'The scope of EU foreign powers. Is the EC competent to concluded Agreements to third States including human rights clauses?', in E. Cannizzaro ed, *The European Union as an actor in International relations* (London: Kluwer Law, 2002), 297; P.A. Pillitu, 'Le sanzioni dell'Unione e della comunità europea nei confronti dello Zimbabwe e di esponenti del suo governo per gravi violazioni di diritti umani e dei principi democratici' *Rivista di diritto internazionale*, 55-110 (2003); C. Pinelli, 'Conditionality and enlargement in light of EU constitutional development' *European Law Journal*, 354-362 (2004); L. Bartels, *Human rights conditionality in the EU's International Agreements* (Oxford: Oxford University Press, 2005); A. Di Marco, 'Le clausole di condizionalità politica alla luce degli accordi di associazione. Il recente caso siriano' *Quaderni Europei*, 1 (2011); D. Gallo, 'I valori negli accordi di associazione dell'Unione Europea', in *I valori dell'Unione Europea e l'azione esterna* (Torino: Giappichelli, 2016), 142-166.

⁵⁷ About the conditionality mechanism in neighbourhood policies see S. Poli, 'The principle of conditionality in the EU's relations with neighbours: its evolution and reconciliation with the principle of consistency' *Rivista di diritto dell'Unione Europea*, III, 525-550 (2018); M. Ventura, 'Condizionalità e realizzazione progressiva degli obblighi internazionali nelle relazioni esterne dell'Unione Europea' *Rivista di diritto internazionale*, I, 45-78 (2019). The list is not exhaustive. Here some references V. Dimier, 'Constructing conditionality: the bureaucratization of EC development aid' *European Foreign Affairs Review*, 263- 280 (2006); R. Petrov, 'Constitutional challenges for the implementation of association Agreements between the EU and Ukraine, Moldova and Georgia' *The European public law*, 241-254 (2015); L. Mckenzie and K. L. Meissner, 'Human rights conditionality in European Union trade negotiations: the case of the EU – Singapore FTA' *Journal of Common Market Studies*, IV, University Association for contemporary European Studies, 832-849 (2017); L. Mckenzie and K.L. Meissner, 'The paradox of human rights conditionality in EU trade policy: when strategic interests drive policy outcomes' *Journal of European public policy*, IX, 1273- 1291 (2018); S. Velluti, *The EU as a global actor in an "inter-polar" World. The role of the EU in the promotion of human rights and International labours standards in its external trade relations* (Netherlands: Springer, 2020).

⁵⁸ The Syrian association agreement displays many innovations. For a detailed analysis see A. Di

The most famous conditionality clause is Art 96 of the ACP Agreements; it is a Bulgarian provision that defines different procedures of reconciliation. The European Union exploited the conditionality mechanism many times with ACP States, influencing their respect for human rights and avoiding prejudicial effects on the local population.⁵⁹ Nowadays the conditionality mechanism reflects the importance that EU Institutions confer on this tool to promote EU values and Rule of Law abroad. However rarely the Council has activated the mechanism, reacting to undemocratic regime changes or human rights violations.⁶⁰ The unanimity rule and the economical and financial interests lead the European Union to prefer other measures, like the targeted sanctions or the unilateral General Systems of Preference that easily provide more flexible solutions.⁶¹ It cannot be denied that the consolidation of this tool has increased the influence of the external action of the Union.⁶² The conditionality mechanism has been adopted also between member States and this can explain its strong political success.⁶³

V. The Influence of EU External Action: Some Brief Reflections

The external action of the Union promotes human rights and Rule of Law in its relations with third countries. The values that the organization spreads abroad are referred to the fundamental rights of the Nice Charter and to the thick or substantial conception of Rule of Law.⁶⁴ They are part of the EU

Marco, 'Le clausole di condizionalità' n 56 above, 1.

⁵⁹ For a deep analysis on the topic see: A. Lucchini, *Cooperazione e diritto allo sviluppo nella politica esterna dell'Unione Europea* (Milano: Giuffrè, 1999); and L. Bartels, *Human rights conditionality in the EU's International Agreements* (Oxford: Oxford University Press, 2005).

⁶⁰ The European Union does not have an obligation. On this point see A. Moberg, 'The condition' n 52 above; D. Donno and M. Neureiter, 'Can human rights conditionality reduce repression? Examining the European Union's economic Agreements' *The review of International Organizations*, XXIII, 335-357 (2018); I. Zamfir, 'Human rights in EU Trade Agreements. The human rights clause and its application' *European Parliamentary Research Service* (2019).

⁶¹ The European Union spends a lot to promote new agreements. For these reasons, the organization is usually reluctant to adopt sanctions. The GSPs are instead more convenient: they involve unilateral decisions and have more flexible mechanisms. However the international community does not consider GSPs in a good perspective. This is not the place for a deep analysis of the tool. For a detailed study see I. Borchert, P. Conconi, M. Di Ubaldo and C. Herghelegiu, *The pursuit of non-trade policy objectives in EU trade policy* (Firenze: European University Institute Research, 2020) and www.ec.europa.eu.

⁶² For a general analysis see S. Lütz, T. Leeg, D. Otto and V.W. Dreher, *The European Union as a global actor. Springer texts in Political Science and International Relations* (Switzerland: Springer, 2021).

⁶³ EU Regulation 2092/2020 related to a general regime of conditionality for the protection of the financial statements of the Union. See M. Blauburger and V. Van Hüllen, 'Conditionality of EU funds: an instrument to enforce EU fundamental values?' *Journal of European integration*, I, 1-16 (2021).

⁶⁴ As is well known, many authors suggest that what should actually be promoted is a thick, rather than a thin, conception of the Rule of Law. This is not the place for a detailed analysis on the

competences⁶⁵ and tend to have extraterritorial effects.⁶⁶ This result can explain the rise of the European Union as a global regulatory power; the organization has frequent recourse to its external action in terms of territorial extension, not to export its norms but in order to gain regulatory traction over activities that take place abroad.⁶⁷ What makes EU territorial extension more suitable than the US foreign policy is that it is internationally oriented; it refuses to apply unilateralism and pursues objectives that have been universally agreed upon. Human rights conditionality clauses and restrictive sanctions display extraterritorial effects without developing extraterritorial regulation. This is what has been called the *Brussels Effect*.⁶⁸ European Institutions influence many countries and regional organizations that finish to adopt EU regulations in different ways 'by engaging in legislative borrowing, replicating EU Institutions, citing legal concepts and principles developed by European Courts'.⁶⁹ For these reasons the European Union has been described not only as a power in trade but also as a power through trade, emphasizing the EU ability to promote democracy, Rule of Law, human rights and other international standards.⁷⁰ The Brussels effect vests the EU with ideational power.⁷¹ Having worked well for Europe, the EU principles and values

conception of Rule of Law but we can postpone to P. Holterhus, 'The Legal dimensions of Rule of Law promotion in EU foreign policy: EU treaty imperatives and Rule of Law conditionality in the foreign trade and Development Nexus' *Goettingen Journal of International Law*, 71-108 (2018); I. Vianello, 'The Rule of Law as a relational principle structuring the Union's action towards its external partners', in *Structural Principles in EU external relations law* (Oxford: Hart pub Ltd, 2018), 225; M. Carta, *Unione Europea e tutela dello Stato di diritto negli Stati membri* (Bari: Cacucci editore, 2020); A. Sandulli, 'The double face of the Rule of Law in the European legal order: an administrative law perspective' *European papers – a journal on law and integration*, available at www.europeanpaeprs.eu, 237- 253 (2020).

⁶⁵ The duty to respect fundamental rights is imposed (in accordance with Art 51 of the Charter) on all institutions and bodies of the Union, especially when they are applying the EU legislation. See L. Bartels, 'The EU's human rights obligations in relation to policies with extraterritorial effects' *The European Journal of International Law*, 1071- 1091 (2015). With an opposite view see E. Cannizzaro, 'The EU's human rights obligations in relation to policies with extraterritorial effects: a reply to Lorand Bartels' *The European Journal of International Law*, IV, 1093-1099 (2015). See also E. Kassoti, 'The extraterritorial applicability of the EU Charter of fundamental rights: some reflections in the aftermath of the Front Polisario saga' *European Journal of legal studies*, II, 117-141 (2020).

⁶⁶ When enacting its policies, the European Union has to make human rights impact assessments. For an analysis of the risks of EU policies see C. Ryngaert, 'EU Trade Agreements and human rights: from extraterritorial to territorial obligations' *International Community Law review*, XX, 374-393 (2018). It is discussed if the EU external action can produce extraterritorial effects. It could be more appropriate consider the phenomenon under the concept of territorial extension.

⁶⁷ For an analysis on EU extraterritoriality effects see J. Scott, 'Extraterritoriality and territorial extension in EU law' *American Journal of Comparative Law*, 87-126 (2013).

⁶⁸ The regulatory power of the EU Institutions and its ability to influence other national legal orders has been called 'the Brussels effect'. See A. Bradford, *The Brussels effect. How the European Union rules the World* (Oxford: Oxford University Press, 2020). Here the author uses a restrictive definition, considering only the effects of market regulations.

⁶⁹ *ibid* 67.

⁷⁰ S. Meunier and K. Nicolaidis, 'The European Union as a conflicted trade power' *Journal of European Public Policy*, 906-925 (2006).

⁷¹ This is the opinion of I. Manners, 'Normative power Europe: a contradiction in terms?'

represent a model to follow for other States that wish a similar level of integration and wellness.⁷² Some authors criticize this behaviour and consider the EU practice as a new form of imperialism that tries to expand its normative identity abroad.⁷³ However it cannot be denied that the external action of the Union is internationally oriented to spread universal values and to serve global welfare (according to rules and objectives of worldwide Conventions). For these reasons, it has been said that ‘the EU’s comparative advantage lies in the power of its values and that the European experience has a great deal to offer’⁷⁴ and that ‘the EU soft power of ideas and example should become one of the central pillars of the world’.⁷⁵

VI. Conclusion

In spite of numerous issues, the European Union is still alive. This paper demonstrates the reached role of the organization into the international community and its ability to safeguard and promote human rights and Rule of Law worldwide. Restrictive sanctions and conditionality clauses have obtained successful results and their unceasing adoption is a proof of their persuasive influence. Although some improvements need to be made, ‘the Brussel effect’ is still exercising its normative power throughout the world and cannot be considered a simple form of a new imperialism. The international orientation of the EU foreign policy explains the willingness of the Union to increase awareness and human rights standards within third countries. The main purpose of the European Union is not to rule the world but to serve global welfare. The organization will continue to exercise its guidance not transplanting its own norms but through the influence of its action and through the participation in international institutions, transnational bodies and intergovernmental networks. The same European Court of Luxembourg will contribute to promote the thick conception of Rule of Law with judgements that will be a form of inspiration for foreign Courts. All the tools discussed in the paper can widely confirm this tendency and arise the hope for a better future. Restrictive sanctions and

Common Market Law Review, 235-258 (2002).

⁷² This is the opinion of A. Arena, *Primacy: three (not so) unshakable certainties about a foundational principle of EU law* (New York: Conference at Columbia University, 2017).

⁷³ R.A. Del Sarto, ‘Normative empire Europe: the EU, its borderlands and the Arab Spring’ *Journal of Common Market Studies*, IV, 215-232 (2016). Against the EU’s use of sanctions and conditionality see M. Bussani, *Il diritto dell’Occidente. Geopolitica delle regole globali* (Torino: Einaudi, 2010), 94-112; N.K. Dutta, ‘Tradeoffs in Accountability: Conditionality Processes in the European Union and Millennium Challenge Corporation’, in S.E. Merry, K. E. Davis and B. Kingsbury, *The Quiet Power of Indicators. Measuring Governance, Corruption, and Rule of Law* (Cambridge: Cambridge University Press, 2015), 156-196, and M. Bussani, ‘Deglobalizing Rule of Law and Democracy: Hunting Down Rhetoric Through Comparative Law’ *American Journal of Comparative Law*, 701-744 (2019).

⁷⁴ J.M. Barroso, ‘Europe’s rising global role’, available at www.theguardian.com (2007).

⁷⁵ J. Stiglitz, ‘Opinion on the EU’s global role’, available at www.theguardian.com (2007).

conditionality clauses should be implemented but their effectiveness is already trying to change the world. We do not know what will happen in the years ahead or whether the European Union will manage to face its external and internal conflicts and maintain its role into the international community but 'the Brussels effect' has already improved the life of millions of people, inspiring everyday policies for the protection of Rule of Law and fundamental human rights.⁷⁶ We hope it will foster the challenges of tomorrow and promote regulations that will transform global commerce, climate and the environment and consumers' health, improving international standards of life all over the world. Will God save 'the Brussels effect'?

⁷⁶ Agreeing with this view is A. Bradford, n 68 above. The EU extraterritorial effects on activities that take place abroad have improved many consumers' rights in areas such as competition law, data regulations, products liability and environmental protection.