
By Markus Rau

Within the ongoing debate on the constitutionalization at the EU level, European foreign policy has gained more and more attention. This is due to the Union’s growing relevance and importance as “an actor in the international relations,” which has also increasingly found its expression at the normative level of the founding documents of the EU. To what extent does the Constitutional Treaty (CT) bring about improvement in the legal regime governing the EU’s external activities, thus strengthening the Union’s capabilities to, as current Article 2(1) TEU puts it, “assert its identity on the international scene”?

While Pawel Karolewski presented a rather skeptical view of the further constitutionalization of European foreign policy, I will try to shed a more positive light on the provisions of the CT relating to the Union’s

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1 On the various contexts in which the notion of constitutionalization is currently used, see Rainer Wahl, Konstitutionalisierung – Leitbegriff oder Allerweltsbegriff?, in: Der Wandel des Staates vor den Herausforderungen der Gegenwart – Festschrift für Winfried Brohm zum 70. Geburtstag 191 (Carl-Eugen Eberle ed., 2002).


3 On the issue of European identity at the international level, see Thomas Bruha & Markus Rau, Europäische Identitätsbildung: die internationale Dimension, in: Europäische Öffentlichkeit 289 (Claudio Franzius and Ulrich K. Preuß eds., 2004).
external action. In doing so, I would like to begin by taking a short glance at the current state of affairs. For I believe that the perception one has of the present situation necessarily determines what one expects from the changes to be achieved by the CT. And here my first thesis is that: The current regime governing European foreign policy is better than its reputation.

It is important to remember in that respect that European foreign policy is not confined to the CFSP but also comprises the external activities of the EC. It is not necessary to go into detail here. Suffice it to mention the pertinent rules relating to the Common Commercial Policy; 4 environmental policy; 5 or development cooperation and humanitarian aid, 6 which are widely seen as operating more or less successfully. As regards the CFSP, we should not be blinded by the EU’s political split during the war in Iraq in 2003, which, to be sure, was certainly unfortunate, to say the least. 7 Rather, my impression is that, leaving aside the Iraq crisis, considerable progress has been achieved over the last years. If you take, for instance, the EU’s efforts within the framework of the CFSP to promote respect for democracy and human rights or acceptance of the International Criminal Court (ICC), 8 one has to acknowledge that the Union as an international player has come quite a long way. To make it more concrete: Just think of the amicus curiae brief filed by the EU in the McCarver case 9 before the U.S. Supreme Court, 10 concerning the execution of the death penalty against mentally

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5 Article 174(4) TEC.
6 Articles 181 and 181a TEC.
7 See Bruha & Rau, supra note 3, at 310-311.
8 For a detailed analysis of the legal foundations and current activities of the EU in the field of international human rights policy, see Thomas Bruha & Markus Rau, Bedeutung der Grundrechte der EU für Drittstaaten, in: Handbuch der Europäischen Grundrechte (Sebastian Heselhaus and Carsten Nowak eds., forthcoming).