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EU external relations law and Brexit: ‘When Pluto was a planet’

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Abstract

‘When I was your age, Pluto was a planet’ was a popular joke after the celestial body’s reclassification as a ‘dwarf planet’. In many ways, the story of Pluto is an appropriate metaphor for the United Kingdom after Brexit. Just as textbooks on astronomy had to be updated to reflect Pluto’s changed status, legal scholarship needs to adapt to the fact that the UK is relegating itself into the outer orbits of the European system of integration and cooperation, yet remains unable to break free from the centre’s gravitational pull. Crucially, the UK has become an object of EU external action, rather than a subject that can manipulate the levers from the inside. This change is also of particular significance for the scholarship of EU external relations. Highlighting, organising, and explaining the changes that Brexit causes for the field and with a view to charting its way forward, this article argues that the UK’s withdrawal will contribute to the further normalisation of EU external relations law as a field of scholarship. Following a brief explanation of why EU external relations law is a doubly peculiar area of scholarship and an overview of the origins and development of EU external relations law as a field, the article elaborates on three main consequences of Brexit for EU external relations law research and explains how each contributes to normalisation: disposing of the most ‘awkward member’, boosting reforms for greater effectiveness, and infusing a sense of geopolitical realism.

Keywords: Brexit; normative power; Lisbon Treaty; comparative foreign relations law; United Kingdom

1. Introduction

‘When I was your age, Pluto was a planet’ was a popular joke for a while after the International Astronomical Union had reclassified Pluto as a ‘dwarf planet’ in 2006.¹ More than a decade later, the younger generations have grown up with the idea of Pluto as a relatively small, trans-Neptunian object with a cold and hostile environment trapped in the outer orbit of the Solar System, unable to break free from the centre’s gravitational pull. In many ways, the story of Pluto is an appropriate metaphor for the United Kingdom after Brexit. Just as textbooks on astronomy had to be updated to reflect Pluto’s changed status, legal scholarship has to adapt to the fact that the UK ‘plutoed’² itself in the European system of integration and cooperation. While no longer being an EU Member State, however, the UK of course has not left ‘Europe’ in the geographical sense. Economically, moreover, the European Union will remain its main trading partner for the foreseeable future.³ This is due to interdependence of supply chains and geographic proximity. Hence, in estimating the economic impact of Brexit, economists use so-called ‘gravity models’, according to which ‘the level of commerce between two countries is in proportion to their size and proximity’.⁴

On 1 February 2020, the Withdrawal Agreement entered into force and serves as the framework for EU–UK relations during the transition period.⁵ On this day, the UK’s relationship with its closest neighbours, allies, and trading partners, including its legal relationships, changed fundamentally. Already well before ‘Brexit day’ and soon after the referendum of June 2016, a constant stream of publications on the legal dimension of Brexit started emerging.⁶ This is an ironic twist if we recall Michael Gove’s infamous statement that ‘Britain has had enough of experts’.⁷ Brexit is arguably the greatest thing that has happened to experts on the EU since the Lisbon Treaty. It is nothing less than a giant cornucopia of new, complex legal questions and extensive materials that provide ample opportunities for exposure (or ‘valorisation’ or ‘impact’ as it is called in different academic assessment frameworks) to the wider public. As in many a crisis or divorce, lawyers stand to benefit, including the academic kind. Brexit is no exception to this.⁸

Crucially, the UK has become an object of EU external action rather than a subject that can manipulate the levers from the inside. Hence, this change is particularly significant in the field of EU external relations scholarship, which unsurprisingly has already started to respond to this development as well.⁹ By highlighting, organising, and explaining these changes, and with a view to charting the future of this field of scholarship, this article argues that Brexit will contribute to the further normalisation

¹International Astronomical Union, Resolution B6, ‘Pluto’, 24 August 2006.

²‘Pluto’s revenge: “Word of the Year” award’ (CNN, 7 January 2007) <<http://edition.cnn.com/2007/US/01/07/word.of.the.year/>> accessed 27 December 2019.

³Matthew Ward, Statistics on UK-EU trade, House of Commons Library Briefing Paper Number 7851 (11 January 2019) 3, found that ‘[t]aken as a bloc, the EU is the UK’s largest trading partner’, accounting for ‘44% of UK exports and 53% imports’ in 2017.

⁴David Goodman, ‘Brexiters Bet the U.K. Can Defy Gravity in Post-Divorce Trade’ (Bloomberg, 16 November 2018) <<https://www.bloomberg.com/news/articles/2018-11-16/brexiters-bet-the-u-k-can-defy-gravity-in-post-divorce-trade>> accessed 27 December 2019; see further Graham Gudgin, Ken Coutts, Neil Gibson and Jordan Buchanan, ‘The Role of Gravity Models in Estimating the Economic Impact of Brexit’, Working Papers wp490, Centre for Business Research, University of Cambridge (2017).

⁵Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C 384I/1 [hereinafter: Withdrawal Agreement].

⁶See, among others, Federico Fabbrini (ed), *The Law & Politics of Brexit* (OUP 2017); Michael Dougan (ed), *The UK after Brexit: Legal and Policy Challenges* (Intersentia 2017); Kenneth Armstrong, *Brexit Time: Leaving the EU – Why, How and When?* (CUP 2017); Jennifer A. Hillman and Gary Horlick (eds), *Getting to Brexit: Legal Aspects of the Process of the UK’s Withdrawal from the EU* (Institute of International Economic Law 2017).

⁷Henry Mance, ‘Britain has had enough of experts, says Gove’ (*Financial Times*, 3 June 2016) <<https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c>> accessed 27 December 2019.

⁸See also David Segal, ‘Brexit Is Messy. London’s Lawyers Are Cashing In’ (*New York Times*, 31 March 2019) <<https://www.nytimes.com/2019/03/31/business/law-firms-brexit.html>> accessed 27 December 2019.

⁹Adam Lazowski and Ramses A. Wessel, ‘The External Dimension of Withdrawal from the European Union’ [April 2016] *Revue des Affaires Européennes* 623; Jed Odermatt, ‘Brexit and International Law: Disentangling Legal Orders’ (2017) 31 *Emory International Law Review* 1051; Ramses A. Wessel, ‘Consequences of Brexit for International Agreements Concluded by the EU and Its Member States’ (2018) 55 *Common Market Law Review* 101.

of the study of EU external relations law. To elaborate on this point, the article starts with a brief explanation of why EU external relations law started out as – and still largely is – a doubly peculiar area of scholarship, followed by an overview of the origins and development of EU external relations law as a field of research. Subsequently, the article highlights three main consequences of Brexit for EU external relations scholarship and explains how each contributes to the normalisation of EU external relations law as a field. Normalisation is understood here as giving the EU a stronger semblance of a federal-style actor, rather than a hard-to-grasp *sui generis* entity in the eyes of both its own citizens and the world at large. A conclusion sums up the argument and provides an outlook for the future.

2. EU external relations law: A doubly peculiar field of scholarship

Starting out as a niche area within a niche area, the study of the law of the external relations of the EU has attracted significant scholarly attention in the course of the past decades.¹⁰ Unlike many other fields of legal scholarship, it is peculiar in two ways. First, it is part of EU law, which has been termed a ‘new legal order’¹¹ that is to be distinguished from international law. Second, it focuses on the EU as an international actor, which has been called a ‘strange animal’,¹² denoting that the EU is different from other international organisations, yet not a state. At its outset, therefore, it was about studying the *sui generis* law of a *sui generis* entity.

Pointing out that EU law is a case apart from international law has been a recurring topic in the rulings of the Court of Justice of the EU (CJEU). Launched by the seminal *van Gend en Loos* and *Costa v ENEL* judgments, this line of case law prompted and buttressed generations of scholarship on the ‘constitutionalisation’ of EU law.¹³ This distinctiveness was neatly explained again in high-profile cases about Brexit. In the *Miller* case, none other than the UK Supreme Court emphasised that the UK’s accession to the EU (then the European Economic Community, EEC) by virtue of the 1972 European Communities Act started ‘a dynamic process by which, without further primary legislation (and, in some cases, even without any domestic legislation), EU law not only becomes a source of UK law, but actually takes precedence over all domestic sources of UK law, including statutes’.¹⁴ Later, in the *Wightman* case, the CJEU summarised its case law on the special nature of EU law in the following way:

According to settled case-law of the Court, that autonomy of EU law with respect both to the law of the Member States and to international law is justified by the essential characteristics of the European Union and its law, relating in particular to the constitutional structure of the European Union and the very nature of that law. EU law is characterised by the fact that it stems from an independent source of law, namely the Treaties, by its primacy over the laws of the Member States, and by the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves. Those characteristics have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the European Union and its Member States reciprocally as well as binding its Member States to each other¹⁵

As summed up by Barnard, the EU is ‘more than an international organization (as reflected by the judicially recognised doctrines of supremacy, direct effect etc.) but less than a federal state (no welfare state, insufficient resources, no army etc.)’.¹⁶ Hence, EU external relations law is in the first place a

¹⁰This section draws on and expands ideas from Joris Larik, ‘EU Foreign Relations Law as a Field of Scholarship’ (2017) 111 AJIL Unbound 321 <<https://doi.org/10.1017/aju.2017.88>> accessed 27 December 2019.

¹¹Case 26/62 *van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECLI:EU:C:1963:1, para 10.

¹²Fraser Cameron, *An Introduction to European Foreign Policy* (Routledge 2007) 24.

¹³Kaarlo Tuori, *European Constitutionalism* (CUP 2015); see also earlier Armin von Bogdandy and Jürgen Bast, ‘The Constitutional Approach to EU Law’ in Armin von Bogdandy and Jürgen Bast (eds), *Principles of European Constitutional Law* (2nd edn, Hart Publishing/C.H. Beck 2011); Joseph Weiler, *The Constitution of Europe: Do the New Clothes Have an Emperor? and other essays on European integration* (CUP 1999); and Eric Stein, ‘Lawyers, Judges, and the Making of a Transnational Constitution’ (1981) 75 *American Journal of International Law* 1.

¹⁴*R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5, para 60.

¹⁵Case C-621/18 *Wightman* [2018] ECLI:EU:C:2018:999, para 45.

¹⁶Catherine Barnard, ‘Introduction: The Constitutional Treaty, the Constitutional Debate and the Constitutional Process’ in Catherine Barnard (ed), *The Fundamentals of EU Law Revisited: Assessing the Impact of the Constitutional Debate* (OUP 2007) 3.

sub-field of scholarship of a peculiar type of law in the sense that it is largely ‘constitutionalised’ without being a form of state law.

For the same reason, EU external relations law is about an entity that is peculiar as an international actor. The EU has acquired extensive powers in the fields of external relations and has accordingly become increasingly active on the international scene. To date, it has concluded more than a thousand international agreements.¹⁷ It is one of the most active litigants in World Trade Organization (WTO) dispute settlement, having been either complainant or respondent in 190 cases.¹⁸ Moreover, it is engaged in, or has completed, more than 30 civilian and/or military operations in the framework of its Common Security and Defence Policy.¹⁹

At the same time, this does not mean that the Member States have disappeared from the international scene. To the contrary, the Member States remain present and active internationally; at times instead of the EU, at other times alongside it. Both EU and Member States are restrained, and bound together, by EU law. While the EU is limited by the principle of conferral, that is, it can only act to the extent that the Member States have given it powers explicitly or implicitly,²⁰ the Member States have to respect those EU powers and act in a spirit of ‘sincere cooperation’.²¹ In that sense, not only the EU, but also its Member States, have become ‘strange subjects’ in international law and politics.²²

From a third-country perspective, the EU and its Member States must indeed appear as showing some odd behaviour at times. For instance, Canada’s negotiators were astonished to find out that Wallonia, one of the constituent states of Belgium, could block the signature of the Comprehensive Economic and Trade Agreement (CETA) and hence threaten to derail the entire process.²³ At other times, the EU, not being a state, is prevented from joining international organisations, even though it possesses the power to act within the scope of activities of that organisation.²⁴ In such a situation, the Member States find themselves bound to act as ‘trustees of the Union interest’²⁵ rather than in their own right. A particularly confusing episode unfurled in early 2019 when the members of the United Nations Security Council had to listen to a statement presented on behalf of the 27 Member States, but not Hungary, which had voted against a common EU position on this matter. The Finnish Foreign Minister was chosen to read out the statement since his country was going to take up the EU Council’s rotating presidency, rather than Romania, which was the incumbent at that time.²⁶

Why would the outside world put up with such oddness? And why would scholars spend considerable time commenting on it, let alone try to make a living off it? Each sovereign state has its own national legal order, each of which has a body of laws and other rules that ‘governs how that nation interacts with the rest of the world’.²⁷ However, EU external relations law, which is not part of a national legal

¹⁷Number based on European External Action Service, *EU Treaties Office Database* <<http://ec.europa.eu/world/agreements/AdvancedSearch.do>> accessed 27 December 2019, taking into account all treaties that have entered into force for the EU.

¹⁸Number based on WTO, *Find dispute cases* <https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm> accessed 27 December 2019. Only the US is more active with more than 270 cases as complainant or respondent.

¹⁹European External Action Service, *Military and civilian missions and operations* <https://eeas.europa.eu/headquarters/headquarters-homepage/430/military-and-civilian-missions-and-operations_en> accessed 27 December 2019.

²⁰Art 5(2) Treaty on European Union (TEU).

²¹Art 4(3) TEU.

²²Bruno De Witte, ‘The Emergence of a European System of Public International Law: The EU and Its Member States as Strange Subjects’ in Jan Wouters, André Nollkaemper and Erika de Wet (eds), *The Europeanisation of International Law: The Status of International Law in the EU and Its Member States* (T.M.C. Asser Press 2008) 39.

²³See ‘David vs Goliath? Small Belgium region leaves EU-Canada trade deal in crisis’ (*France24*, 22 October 2016) <www.france24.com/en/20161021-eu-canada-trade-deal-ceta-collapses-belgian-region-wallonia-refuses-sign> accessed 27 December 2019.

²⁴See Jan Wouters, Jed Odermatt and Thomas Ramopoulos, ‘The EU in the World of International Organizations: Diplomatic Aspirations, Legal Hurdles and Political Realities’ in Stephan Keukeleire, Michael Smith and Sophie Vanhoonacker (eds), *The Diplomatic System of the European Union: Evolution, Change and Challenges* (Routledge 2015).

²⁵Marise Cremona, ‘Member States as Trustees of the Union Interest: Participating in International Agreements on Behalf of the European Union’ in Anthony Arnall, Catherine Barnard, Michael Dougan and Eleanor Spaventa (eds), *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* (Hart Publishing 2011).

²⁶Andrew Rettman, ‘EU ignores Hungary veto on Israel, posing wider questions’ (*EUobserver*, 1 May 2019) <<https://euobserver.com/foreign/144768>> accessed 27 December 2019.

²⁷Curtis A. Bradley, ‘Foreign Relations as a Field of Study’ (2017) 111 *AJIL Unbound* 316, 316.

order, appears to be one of the most vibrant cases of scholarship of this specific topic, second only to US foreign relations law. As argued in an earlier piece,²⁸ there are arguably three factors that apply together in both the United States and EU which explain the heightened scholarly interest in this field: multilevel governance, normative zeal, and superpower capabilities.

First, both US foreign relations and EU external relations scholarship feed on the legal complexities and conflicts caused by the multilevel governance structures of both entities. In particular, this concerns the need to reconcile internal diversity with unity in external representation.²⁹ The main difference between the two is that the US maintains a ‘closed’³⁰ federal system where the country is externally represented by the federal executive as a ‘sole organ’³¹ and where the states are virtually absent from the international stage. Federalism is a crucial principle of US constitutional law, which entails that states’ rights need to be protected from encroachment from the federal government, even when the latter is acting in order to comply with international commitments, as prominently exemplified by the *Medellín* case.³² For the EU, the ‘openness’ of its system of external relations is the principal cause of need for coordination given that both the EU and its Member States are prominent international actors that often act in parallel. In addition, multilevel democratic accountability in treaty making, as shown in the example concerning CETA’s signature, is another complicating factor. By contrast, in non-federal, unitary polities these tensions do not exist, which results in fewer constitutional questions and less litigation on which scholars can ponder and publish.

Second, both the US and the EU have a tradition of policies to promote their own values and models of governance in other parts of the world. This has been called ‘American exceptionalism’ and European ‘normative power’,³³ respectively. While there are many different interpretations of the former term, it is used here in the sense of ‘American exceptionalism [that] looked outward, professing a sense of America’s duty to wield its growing power responsibly, bring democracy to the world and build strong, enduring alliances and institutions that could calm potential flashpoints and end conflicts’.³⁴ These factors make the two polities interesting to both scholars of international relations and legal academics. This idea has now found explicit expression in the Treaty on European Union, which commits the EU to conduct its external relations based on ‘the principles which have inspired its own creation, development and enlargement’.³⁵ Legal scholars, moreover, may be seen as particularly attracted by the fact that law is seen as both a major driver of internal integration – the well-known ‘integration-through-law’ thesis – as well as the EU’s ‘weapon of choice’³⁶ in its external action.

Third, both the US and the EU are entities of considerable capabilities. There is an increasing tendency in constitutional design to include grandiose statements about foreign policy objectives,³⁷ even if it is clear that many countries have only little influence in shaping global governance.³⁸ Both the US and EU, however, have such capacities. The role of the US as a ‘benign hegemon’ in the wake of the Second World War, being the main architect of the liberal world order as we know it today, is well documented, peaking in what became known as the ‘unipolar moment’ after the collapse of the Soviet Union.³⁹ As for the EU, if only for its considerable economic weight, it too is a force to be reckoned with. Pre-Brexit, it

²⁸Larik (n 10) 324–5.

²⁹Robert Schütze, *Foreign Affairs and the EU Constitution: Selected Essays* (CUP 2014) 175–208.

³⁰*ibid.*

³¹*United States v Curtiss-Wright Export Corp.*, 299 US 304 (1936) 320; see further Louis Henkin, *Foreign Affairs and the US Constitution* (2nd edn, Clarendon Press 1996) 41–5.

³²*José Ernesto Medellín v Texas*, 552 US 491 (2008).

³³Originally coined by Ian Manners, ‘Normative Power Europe: A Contradiction in Terms?’ (2002) 40 *Journal of Common Market Studies* 235.

³⁴Robert R. Tomes, ‘American Exceptionalism in the Twenty-First Century’ (2014) 56 *Survival* 27, 38; for more inward-looking interpretations of the term, see Harold Hongju Koh, ‘On American Exceptionalism’ (2003) 55 *Stanford Law Review* 1479.

³⁵Art 21(1)(1) TEU.

³⁶Mark Leonard, *Why Europe Will Run the 21st Century* (Fourth Estate 2005) 36.

³⁷Joris Larik, *Foreign Policy Objectives in European Constitutional Law* (OUP 2016) 68–72.

³⁸See, e.g., art 43 of the Transitional Constitution of South Sudan, which states that ‘[f]oreign policy of the Republic of South Sudan ... shall be conducted independently and transparently with the view to achieving’, *inter alia*, the ‘promotion of dialogue among civilizations and establishment of international order based on justice and common human destiny’.

³⁹Charles Krauthammer, ‘The Unipolar Moment’ (1990) 70 *Foreign Affairs* 23.

amassed a combined GDP similar to that of the US and China.⁴⁰ But also the combined defence budgets of the EU Member States are still higher than of any individual country with the exception of the US and China.⁴¹ In addition to market power and military spending, another important factor is ‘soft power’. This applies also to the fields of legal (and international relations) scholarship, where both the US and EU can boast top universities,⁴² research institutes, and funding opportunities, all of which facilitate research and writing on foreign relations law issues as well as their worldwide dissemination.

In sum, both in the US and the EU, the combination of multilevel governance, a tradition of normative zeal in foreign policy, and considerable hard and soft capabilities makes for fertile ground for foreign relations law scholarship to flourish.

3. Four eras of EU external relations scholarship

The way EU external relations scholarship developed as a field of research can be roughly divided into four eras.⁴³ In each, scholarship follows behind seminal case law or political milestones, in particular treaty revisions. These four eras can be termed emergence, growth, consolidation, and a future of normalisation.

First, EU external relations law started to ‘emerge’ as a field of research as soon as it became evident that the EU (then still the EEC) was equipped with important powers not only internally but also with regard to its external relations. Three seminal CJEU rulings from the 1970s brought this message home. First, in the 1971 *ERTA* judgment, the Court ruled that the EEC acquired implied powers to act internationally whenever common rules had been adopted internally.⁴⁴ As a consequence, Member States would be pre-empted from ‘affecting’ such common rules by virtue of their own international engagements.⁴⁵ Second, four years later, in Opinion 1/75, the CJEU found that some of the EEC’s external powers could also be exclusive from the start, not requiring the adoption of internal rules first. The prime example of such an area of a priori exclusivity is the Common Commercial Policy (CCP).⁴⁶ Third, in 1977, the Court clarified in Opinion 1/76 that the EU has the power – though not necessarily an exclusive power – to enter into international commitments when this is necessary for the attainment of Union objectives, including internal objectives and situations where the internal power has not yet been exercised.⁴⁷ These rulings can be seen as the point where legal academics started to devote serious attention to the EEC as an international actor and to the internal rules and procedures that framed its external relations.⁴⁸

A topic that stirred up early scholarly interest is the practice of mixed agreements, that is, agreements which are concluded between the EU and (some) of its Member States on the one hand, and one or several third parties, on the other.⁴⁹ Such treaties marked by ‘mixity’ have become a hallmark of EU external relations. Mixity may be required, or at least politically desirable, in cases where neither the Union nor the Member States have the power to conclude the agreement on their own given the degree of

⁴⁰Based on data from the World Bank <<https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?locations=EU-US-CN>> accessed 27 December 2019.

⁴¹Andrew Moravcsik, ‘Europe Is Still a Superpower’ (*Foreign Policy*, 13 April 2017) <<http://foreignpolicy.com/2017/04/13/europe-is-still-a-superpower/>> accessed 27 December 2019.

⁴²According to *Times Higher Education*, out of 50 top universities in the field of law, 15 are based in the US and 21 are based in the EU (of which 10 are based in the UK), ‘World University Rankings 2019 by subject: law’ (*Times Higher Education*, 2019) <https://www.timeshighereducation.com/world-university-rankings/2019/subject-ranking/law#!page/0/length/50/sort_by/rank/sort_order/asc/cols/stats> accessed 27 December 2019.

⁴³These were first outlined in Larik (n 10) 322–4.

⁴⁴ERTA stands for the ‘European Road Transport Agreement’, which was at issue in the case, Case 22/70 *Commission v Council (ERTA)* [1971] ECLI:EU:C:1971:32.

⁴⁵*ibid.*, para 17.

⁴⁶Opinion 1/75 (Local Cost Standard) [1975] ECLI:EU:C:1975:145.

⁴⁷Opinion 1/76 (European laying-up fund for inland waterway vessels) [1977] ECLI:EU:C:1977:63.

⁴⁸See KR Simmonds, ‘The Evolution of the External Relations Law of the European Economic Community’ (1979) 28 ICLQ 644; and Eric Stein, ‘Towards a European Foreign Policy? The European Foreign Affairs System from the Perspective of the United States Constitution’ in Mauro Cappelletti, Monica Seccombe and JHH Weiler (eds), *Integration Through Law: Europe and the American Federal Experience* (vol. I, book 3, de Gruyter 1986).

⁴⁹David O’Keefe and Henry G. Schermers (eds), *Mixed Agreements* (Kluwer 1983); Christophe Hillion and Panos Koutrakos (eds), *Mixed Agreements Revisited: The EU and Its Member States in the World* (Hart Publishing 2010).

sovereignty that has been pooled and the number of (sensitive) issues for which Member States and the Union share competences.⁵⁰ Examples of mixed agreements include the WTO agreements, the United Nations Convention on the Law of the Sea (UNCLOS), the Constitution of the Food and Agricultural Organization (FAO), and the EU's newer generation of trade agreements, such as CETA.

Second, the period of 'emergence' was followed by one of 'growth'. It was propelled in particular by the Maastricht Treaty, which created the European Union and established the system of three pillars, that is, the European Community, the Common Foreign and Security Policy (CFSP), and Justice and Home Affairs, which was later renamed Police and Judicial Co-operation in Criminal Matters. The Amsterdam and Nice Treaties followed, with each of them giving legal scholars new legal materials and conundrums to analyse.⁵¹ Two main strands of research can be distinguished during the period of the pillars. On the one hand, there was a continued focus on the external relations of the European Community,⁵² with a special emphasis on the CCP. The CCP's development was closely related to that of the internal market and of the expanding trade agenda, especially in light of the conclusion of the Uruguay Round Agreements and the establishment of the WTO. The CCP arguably has been the most well-studied external policy area of the EU. Therefore, it is not surprising that the first treatises devoted to EU external relations law led off with extensive analyses of the CCP.⁵³ On the other hand, research was being conducted to study the new legal creation called the European Union. Fundamental questions needed to be addressed here first, such as whether it was a legal person in its own right and its relationship with the Community,⁵⁴ as well as the intergovernmental set-up of the CFSP, which stood in stark contrast to the supranational Community model and hence raised questions as to what extent it could be considered part of the aforementioned 'new legal order'.⁵⁵

Third, following 'growth', we find ourselves currently in an era of 'consolidation'. The main events promoting this new period were the 2008 *Kadi* judgment and the Lisbon Treaty, which entered into force in 2009. The *Kadi* case was an obsession of both EU and international lawyers for many years.⁵⁶ This rightly so, as the CJEU had to rule on the relationship between EU (primary) law and the UN Charter, framed by some as a global constitution.⁵⁷ The CJEU ruled that, within the EU's legal order and regarding the implementation of international legal commitments, not even the UN Charter could have 'the effect of prejudicing the constitutional principles of the [then] EC Treaty, which include the principle that all Community acts must respect fundamental rights'.⁵⁸ In essence, the primacy of EU law not only over the

⁵⁰As confirmed by the CJEU in Opinion 1/94 (WTO) [1994] ECLI:EU:C:1994:384.

⁵¹See, e.g., Christoph Herrmann, 'Common Commercial Policy After Nice: Sisyphus Would Have Done a Better Job' (2002) 39 *Common Market Law Review* 7; and Alan Dashwood, 'External Relations Provisions of the Amsterdam Treaty' in David O'Keefe and Patrick Twomey (eds), *Legal Issues of the Amsterdam Treaty* (Hart Publishing 1999).

⁵²Iain MacLeod, Ian D. Hendry and Stephen Hyett (eds), *The External Relations of the European Communities: A Manual of Law and Practice* (Clarendon Press 1996); Alan Dashwood and Christophe Hillion (eds), *The General Law of E.C. External Relations* (Sweet & Maxwell 2000).

⁵³Piet Eeckhout, *EU External Relations Law* (2nd edn, OUP 2011) 11–69, of which the first edition was published in 2005; Panos Koutrakos, *EU International Relations Law* (2nd edn, Hart Publishing 2015) 17–72, of which the first edition was published in 2006.

⁵⁴Jan Klabbers, 'Presumptive Personality: The European Union in International Law' in Martti Koskeniemi (ed), *International Law Aspects of the European Union* (Martinus Nijhoff 1998); and Marise Cremona, 'European Union as an International Actor: The Issues of Flexibility and Linkage' (1998) 3 *European Foreign Affairs Review* 67.

⁵⁵For an overview see Jan Wouters and Hanne Cuyckens, 'Festina Lente: CFSP from Maastricht to Lisbon and Beyond' in Maartje De Visser and Anne Pieter Van Der Mei (eds), *The Treaty on European Union 1993–2013: Reflections from Maastricht* (Intersentia 2013); and extensively, Ramses A. Wessel, *The European Union's Foreign and Security Policy: A Legal Institutional Perspective* (Martinus Nijhoff 1999).

⁵⁶See, e.g., Sara Poli and Maria Tzanou, 'The *Kadi* Rulings: A Survey of the Literature' (2009) 28 *Yearbook of European Law* 533; and Matej Avbelj, Filippo Fontanelli and Giuseppe Martinico (eds), *Kadi on Trial: A Multifaceted Analysis of the Kadi Judgment* (Routledge 2014).

⁵⁷See on this debate, e.g., Julian Arato, 'Constitutionality and Constitutionalism Beyond the State: Two Perspectives on the Material Constitution of the United Nations' (2012) 10 *International Journal of Constitutional Law* 627; Bardo Fassbender, 'Rediscovering a Forgotten Constitution: Notes on the Place of the UN Charter in the International Legal Order' in Jeffrey Dunoff and Joel Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (CUP 2009).

⁵⁸Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat v Council and Commission* [2008] ECLI:EU:C:2008:461. For a critique likening the CJEU's approach in *Kadi* to the US Supreme Court's in *Medellin*, see Gráinne de Búrca, 'The European Court of Justice and the International Legal Order After *Kadi*' (2010) 51 *Harvard International Law Journal* 1.

law of its Member States, but also over international law, including the UN Charter, was now asserted. The Lisbon Treaty brought important innovations to the EU's system of external relations,⁵⁹ including the creation of the 'double-hatted' High Representative of the Union for Foreign Affairs and Security Policy (meaning that the incumbent is both vice-president of the European Commission and chair of the Foreign Affairs Council) and the European External Action Service.⁶⁰ Its main contribution to the consolidation of the field can be seen in its remoulding of the EU into one single legal person and formally abolishing the pillar structure. Overall, both the Lisbon Treaty and the *Kadi* judgment contributed to understanding the EU and the law of its external relations increasingly in 'constitutional' terms,⁶¹ the previous failure of the Treaty Establishing a Constitution for Europe notwithstanding.

There are a number of indications for the consolidation of the field of EU external relations scholarship. These include the founding of the specialised Centre for the Law of EU External Relations (CLEER) at the TMC Asser Institute in The Hague in 2010, the establishment of a journal dedicated to EU external relations law,⁶² and the fact that student-oriented textbooks on 'texts, cases and materials' on this subject have been published since 2014.⁶³

However, consolidation should not be equated with decreasing interest or a reduced need for academic analysis. In particular, the CFSP's 'specific rules and procedures',⁶⁴ while being part of the overall framework of EU law, continue to be a source of scholarly attention.⁶⁵ Related to this is the question of how to delimit the scope of the CFSP from that of other policy areas.⁶⁶ Another legal question of unabating salience in this domain concerns ensuring the overall 'coherence' of EU external action in spite of the multiplicity of different actors and procedures.⁶⁷ Moreover, the domestic effects of international law, the Union's international responsibility, its engagement in international institutions and dispute settlement, as well as other common topics of foreign relations law will doubtless remain on the agenda as well.⁶⁸

Fourth, we may be witnessing the entry into a new era which could best be described as the 'normalisation' of EU external relations law. To some extent, employing a 'constitutional' approach

⁵⁹See Paul James Cardwell (ed), *EU External Relations Law and Policy in the Post-Lisbon Era* (T.M.C. Asser Press 2012).

⁶⁰Bart Van Vooren, 'A Legal-institutional Perspective on the European External Action Service' (2011) 48 *Common Market Law Review* 475.

⁶¹Marise Cremona and Bruno de Witte (eds), *EU Foreign Relations Law: Constitutional Fundamentals* (Hart Publishing 2008); and Geert De Baere, *Constitutional Principles of EU External Relations* (OUP 2008).

⁶²*Europe and the World: A Law Review* was launched by UCL Press in 2017. It should also be noted that the *European Foreign Affairs Review* serves as a forum specifically on EU external relations since 1996, featuring articles from both law and international relations.

⁶³Bart van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (CUP 2014); and Pieter Jan Kuijper, Jan Wouters, Frank Hoffmeister, Geert De Baere, and Thomas Ramopoulos, *The Law of EU External Relations: Cases, Materials, and Commentary on the EU as an International Legal Actor* (2nd edn, OUP 2015). See also Eleftheria Neframi, *L'action extérieure de l'Union européenne: Fondements, moyens, principes* (LGDJ 2010) and Andreas von Arnault (ed), *Europäische Außenbeziehungen* (Nomos 2014), which also depart from the previous practice of starting with a detailed exposition of the CCP.

⁶⁴Art 24(1)(1) TEU.

⁶⁵See, e.g., Peter van Elsuwege, 'EU External Action After the Collapse of the Pillar Structure: In Search of a New Balance Between Delimitation and Consistency' (2010) 47 *Common Market Law Review* 987; Ramses A. Wessel, 'Resisting Legal Facts: Are CFSP Norms as Soft as They Seem?' (2015) 20 *European Foreign Affairs Review* 12; and Graham Butler, *Constitutional Law of the EU's Common Foreign and Security Policy: Competence and Institutions in External Relations* (Hart Publishing 2019).

⁶⁶Geert De Baere and Tina Van den Sanden, 'Interinstitutional Gravity and Pirates of the Parliament on Stranger Tides: The Continued Constitutional Significance of the Choice of Legal Basis in Post-Lisbon External Action' (2016) 12 *European Constitutional Law Review* 85.

⁶⁷See, e.g., S. Dennis Engbrink, 'The European Union's External Action: Coherence in European Union Foreign Policy Despite Separate Legal Orders?' (2017) 44 *Legal Issues of Economic Integration* 5; and Frank Hoffmeister, 'Of Presidents, High Representatives and European Commissioners – The External Representation of the European Union Seven Years After Lisbon' (2017) 1 *Europe and the World: A Law Review* 1.

⁶⁸See, e.g., Enzo Cannizzaro, Paolo Palchetti and Ramses A. Wessel (eds), *International Law as Law of the European Union* (Martinus Nijhoff 2012); and Andrés Delgado Casteleiro, *The International Responsibility of the European Union: From Competence to Normative Control* (CUP 2016); Emanuel Castellarin, *La participation de l'Union européenne aux institutions économiques internationales* (Pedone 2017); Ramses A. Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019); and Luca Pantaleo, *The Participation of the EU in International Dispute Settlement: Lessons from EU Investment Agreements* (Springer 2018).

already normalises the EU by indicating that *although* it is not a state, its legal order, including its external relations law, shares many characteristics of domestic legal systems. Expanding powers of the EU, often driven by external pressures,⁶⁹ and a receding presence of the Member States from the international arena, combined with a loss of Member State veto powers within Union decision-making procedures, give the EU an even closer semblance of a federal system with increasingly ‘state-like features’.⁷⁰ Deeper integration is one important driver of normalisation, but not the only one. Another is the way the EU is being perceived and treated by the outside world. For example, an additional driver towards normalisation is the advent of the field of comparative foreign relations law. As noted by Curtis Bradley, a pre-eminent US foreign relations law scholar, in the introduction to the 2019 *Oxford Handbook of Comparative Foreign Relations Law*, ‘the European Union, as a supranational institution that in some ways resembles a nation, also has a developed body of foreign relations law’.⁷¹ EU external relations law, it seems, has joined the circle of entities with foreign relations laws that are amenable to comparison. Further comparative research is likely to contribute to making the EU’s external relations law appear even less exotic and *sui generis*. Similarly, the EU is being treated not as, but akin to, a state in the diplomatic practice of other states. An example of this is the fact that the US State Department recognises ‘the European Union’s representation in Washington as equivalent to that of a bilateral mission in the Diplomatic Corps Order of Precedence’.⁷² As argued here, Brexit will not dent but boost normalisation further, given that it will not only facilitate (and necessitate) closer integration, but also simplify the EU in the eyes of both scholars and practitioners in Europe and beyond.

4. Brexit and the future of EU external relations law scholarship

The withdrawal of the UK from the EU is an unprecedented development with wide-ranging consequences, including for the way scholars will study the legal framework that governs the EU’s external action. Brexit has three principal, interrelated consequences in this context. First is the change in the UK’s status from a subject to an object of EU external relations; second are changes in the EU’s approach to external relations prompted by Brexit; third is the need for a wider reflection on the EU as an international actor. Intuitively, one may consider this unprecedented rupture as being at odds with the turn towards normalisation of the field posited earlier. However, it is argued here that Brexit will have the opposite effect. Each of these consequences will be a boost to further normalisation of EU external relations law.

4.1. The UK after Brexit: From subject to object

One of the arguments used by Brexiteers in the lead-up to the referendum was that ‘[t]he day after we vote to leave, we hold all the cards and we can choose the path we want’.⁷³ However, as the Brexit negotiations revealed the trade-offs between the different options for the UK, it was pointed out, not least by those favouring remaining in the EU, that the UK would become a ‘rule-taker’⁷⁴ – at any rate if it wanted to retain privileged access to the EU’s internal market. This shift from a Member State that can play an active part in making – and blocking – EU law and steering its external action to one that is an

⁶⁹Christina Eckes, *EU Powers Under External Pressure* (OUP 2019).

⁷⁰Allan Rosas and Lorna Armati, *EU Constitutional Law: An Introduction* (3rd edn, Hart Publishing 2018) 14–17. The EU retains an ‘open’ form of foreign affairs federalism where the Member States remain present on the international scene, but this can also be observed in certain national systems, see Schütze (n 29) 175–208.

⁷¹Curtis Bradley, ‘What Is Foreign Relations Law?’ in Curtis Bradley (ed), *Oxford Handbook of Comparative Foreign Relations Law* (OUP 2019) 3 (footnote 1).

⁷²US Mission to the European Union, *Immediate Change to the EU Delegation to the United States’ Protocol Status*, Press release, 4 March 2019 <<https://useu.usmission.gov/immediate-change-to-the-eu-delegation-to-the-united-states-protocol-status-2/>> accessed 27 December 2019.

⁷³Originally a tweet from Michael Gove from April 2016, reproduced in Samantha King, ‘Michael Gove targeted with Brexit-themed billboard’ (*talkRADIO*, 15 January 2019) <<https://talkradio.co.uk/news/michael-gove-targeted-brexith-themed-billboard-19011529507>> accessed 27 December 2019.

⁷⁴Philip Stephens, ‘After Brexit, Britain will be a rule-taker’ (*Financial Times*, 7 March 2019) <<https://www.ft.com/content/67701b76-4007-11e9-9bee-efab61506f44>> accessed 27 December 2019.

addressee of EU external action is the most obvious and immediate consequence of how the UK will be approached in EU external relations scholarship post Brexit.

As an EU Member State, the UK wielded a significant degree of control over the direction of the EU, its laws, and its external action. The UK government had a seat at the European Council and the Council of the EU. Moreover, the UK had one of the largest contingents of seats in the European Parliament, among other things. Across all of the EU's policy fields, the UK government had the right to vote. Admittedly, where unanimity was not required, it could be outvoted. However, research has shown that the expansion of qualified majority voting notwithstanding, most of the time the Council decides by consensus without taking a formal vote.⁷⁵ It is true that where qualified majority voting was applied, according to a report by Hix, Hagemann and Fratescu, the UK was 'the most outvoted Member State in the EU Council'.⁷⁶ Nevertheless, according to that same report from 2016, the UK 'has supported more than 97% of the EU laws adopted in the last 12 years'.⁷⁷

On certain sensitive questions, the Treaties retain a requirement for unanimity, giving the UK a much larger degree of control. This applies, for instance, to the accession of new members and the conclusion of association agreements.⁷⁸ Any Member State, including the UK, thus has the power to block the accession of Turkey, the prospect of which was an important factor in the campaign to leave the EU,⁷⁹ or even an association agreement such as the one with Ukraine. Even in the distinctly supranational domain of the CCP, the Council decides by unanimity if trade agreements touch on fields that are sensitive for the Member States. This is the case for 'trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity'⁸⁰ and for 'trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them'.⁸¹

In addition, the EU's CFSP, of which the Common Security and Defence Policy (CSDP) is an integral part, retains a more intergovernmental character, which entails even more control by Member State governments. A characteristic element of the 'specific rules and procedures' pertaining to the CFSP/CSDP is that unanimity voting in the Council is not the exception but the rule.⁸² Hence, from inside the EU, the British government always had a veto to block any particular CSDP operation, further integration in the field of defence, or establishment of a 'European army', the latter being another prominent claim of the campaign to leave.⁸³

With Brexit, the UK has become a 'third country' from the point of view of the EU. The UK's voting rights and representation within the EU's institutions vanished in the night between 31 January and 1 February 2020.⁸⁴ Instead, it now finds itself outside the system of internal EU decision making, the 'autonomy' of which the EU strongly protects when collaborating with third countries. For example, while the EU welcomes contributions from third countries to CSDP operations, it has stressed consistently to third countries that this is 'without prejudice to the decision-making autonomy of the European Union'.⁸⁵ In addition, there is the 'autonomy of EU law', which is jealously guarded by the CJEU from outside (adjudicative) bodies that may be set up as part of the EU's relations with third countries and that may

⁷⁵See Fiona Hayes-Renshaw, Wim van Aken and Helen Wallace, 'When and Why the EU Council of Ministers Votes Explicitly' (2006) 44 *Journal of Common Market Studies* 161; and Stéphanie Novak, 'The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union' (2013) 51 *Journal of Common Market Studies* 1091.

⁷⁶Simon, Hix, Sara Hagemann and Doru Fratescu, *Would Brexit matter? The UK's voting record in the Council and the European Parliament*, VoteWatch Europe, Special Report (2016) 3.

⁷⁷*ibid.*

⁷⁸Art 218(8)(2) Treaty on the Functioning of the European Union (TFEU).

⁷⁹James Ker-Lindsay, 'Turkey's EU Accession as a Factor in the 2016 Brexit Referendum' (2017) 19 *Turkish Studies* 1, 7–11.

⁸⁰Art 207(4)(3)(a) TFEU.

⁸¹*ibid.*

⁸²Art 24(1)(2) TEU.

⁸³Jonathan Lis, 'Brexiters' scaremongering about a European army is just another of their lies' (*Guardian*, 25 January 2019) <<https://www.theguardian.com/commentisfree/2019/jan/25/brexiters-european-army-myths-franco-german>> accessed 27 December 2019.

⁸⁴Withdrawal Agreement, art 7(1).

⁸⁵See, e.g., Agreement between EU and Norway establishing a Framework for the Participation of Norway in the EU Crisis Management Operations [2005] OJ L 67/8, art 1(2). This is a standard phrase included in all such framework agreements.

pronounce binding interpretation of EU law. Bodies whose powers were found to be incompatible with the autonomy of EU law by the CJEU include a planned ‘European Economic Area (EEA) Court’⁸⁶ and the European Court of Human Rights – at least under the parameters set out in the accession agreements.⁸⁷ These two faces of ‘autonomy’ will make it difficult for the UK (if it wanted to do so) to set up common institutions with the EU that would in any way inhibit EU decision making or furnish authoritative interpretations of EU law.

With the UK as a third country, another important consequence is that it is now on the other side of what has become part of the external border of the EU. The UK shares a land border with EU Member States Ireland, Spain and Cyprus. Each of these has intricate and politically sensitive legal arrangements, which are put under pressure by Brexit. In particular concerning the effects of Brexit on the peace process in Northern Ireland, the Good Friday Agreement and the avoidance of a hard border, a rich body of scholarship is emerging.⁸⁸ As the aftermath of Brexit unfolds, scholars will have to grapple with the way legal arrangements can reconcile the tension between, on the one hand, minimising the effects of Brexit on economies, people and the peace while, on the other, protecting the EU’s external borders and the integrity of the internal market. The impact on the latter depends on the degree to which the UK diverges from EU regulations, for instance by agreeing to lower its food and environmental regulations as part of a trade agreement with the US. The more divergence from the EU, the more likely the border on the island of Ireland will become harder, and the more pressure this will put on the peace process.

These sensitive issues notwithstanding, with the withdrawal of the UK from the EU, the Union’s most ‘awkward’⁸⁹ and ‘reluctant partner’⁹⁰ has vacated the Union’s institutional framework. British demands for rebates, opt-outs and other special privileges have been factors in complicating EU governance and served as a continuous source of tension within the Union.⁹¹ These have been stumbling blocks to the EU’s normalisation also as an international actor. The UK’s recalcitrance concerns not only internal policy fields such as the common currency and the Schengen zone – though these of course have external dimensions as well – but also the external domain. For example, the UK has a history of opposing the expansion of EU exclusive competences in the area of trade and of vetoing efforts to establish a permanent headquarters for CSDP missions.⁹² At the same time, it should not be forgotten that the UK has played, at certain times, a constructive role in the process of European integration. For instance, it was a key driver in developing the internal market and pursuing a liberal external trade policy.⁹³ Moreover, it played a defining role in launching the European Security and Defence Policy (now known as the CSDP) with the

⁸⁶Opinions 1/91 (EEA) [1991] ECLI:EU:C:1991:490. The amended EEA Agreement with an EFTA Court, which would not have jurisdiction over the EU or its Member States was deemed compatible with EU law by the CJEU, Opinion 1/92 (EEA II) [1992] ECLI:EU:C:1992:189.

⁸⁷Opinions 2/94 (ECHR) [1996] ECLI:EU:C:1996:140 and Opinion 2/13 (ECHR II) [2014] ECLI:EU:C:2014:2454. See further Jed Odermatt, ‘The Principle of Autonomy: An Adolescent Disease of EU External Relations Law?’ in Marise Cremona (ed), *Structural Principles in EU External Relations Law* (Hart Publishing 2018); and Luca Pantaleo, *The Participation of the EU in International Dispute Settlement* (Asser Press 2019) 43–66.

⁸⁸See, e.g., Nikos Skoutaris, ‘Territorial Differentiation in EU Law: Can Scotland and Northern Ireland Remain in the EU and/or the Single Market?’ (2017) 19 Cambridge Yearbook of European Legal Studies 287; Michael Dougan, ‘The “Brexit” Threat to the Northern Irish Border: Clarifying the Constitutional Framework’ in Michael Dougan (ed), *The UK after Brexit: Legal and Policy Challenges* (Intersentia 2017); and Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick, *Bordering Two Unions: Northern Ireland and Brexit* (Policy Press 2018).

⁸⁹Stephen George, *An Awkward Partner: Britain and the European Community* (3rd edn, OUP 1998).

⁹⁰Finn Laursen, Hans Mouritzen and Anders Wivel, ‘The Institutional Dynamics of Euro-Atlantic Integration’ in Anders Wivel and Hans Mouritzen (eds), *The Geopolitics of Euro-Atlantic Integration* (Routledge 2005) 43.

⁹¹See David Gowland, *Britain and the European Union* (Routledge 2017) 219–30 (on the UK’s rebate) and 133–4 (on its opt-out from the euro); Steve Peers, *EU Justice and Home Affairs Law, Volume II: EU Criminal Law, Policing, and Civil Law* (4th edn, OUP 2016) 41–2 (on the opt-out and subsequent specific opt-ins into justice and home affairs policies).

⁹²See, respectively, Andrew Moravcsik and Kalypso Nicolaïdis, ‘Explaining the Treaty of Amsterdam: Interests, Influence, Institutions’ (1999) 37 *Journal of Common Market Studies* 59, 65; and ‘UK blocks bid for permanent EU security headquarters’ (*Euractiv*, 19 July 2011) <<https://www.euractiv.com/section/justice-home-affairs/news/uk-blocks-bid-for-permanent-eu-security-headquarters/>> accessed 27 December 2019.

⁹³Catherine Barnard, ‘Brexit and the EU Internal Market’ in Federico Fabbrini (ed), *The Law & Politics of Brexit* (OUP 2017) 201; and the Dutch Advisory Council on International Affairs, *Forming Coalitions in the EU after Brexit: Alliances for a European Union that Modernises and Protects* (July 2018) 25.

St. Malo Declaration of 1998.⁹⁴ In any event, not having to accommodate the UK and its extraordinary position anymore opens up space and capacities for reforms of the EU.⁹⁵ By losing its most awkward member, the EU itself has an opportunity to become less awkward, more easily understandable, and thus more ‘normal’ both to its own citizens and to the outside world. Whether this opportunity will be used depends on the political will within the EU. But as the next section shows, Brexit already serves as a prompt in that regard.

4.2. Changes in the EU’s approach to external relations

That the UK is now on the outside also affects the way the EU operates in its external action. Here, immediate and indirect effects can be distinguished. In terms of immediate effects, Brexit necessitates certain amendments to the EU Treaties, where references to the UK need to be removed. Voting procedures need to take into account that there is one less member in the European Council and Council and no more British representatives in the European Parliament,⁹⁶ among other things. Seeing the UK’s past support for, and opposition to, particular issues such as free trade and defence will change the landscape of coalition building within the EU. Studies are already being undertaken as to the effects of Brexit in these considerations.⁹⁷

Moreover, the EU’s legal relations with the rest of the world are affected by Brexit. While the UK is faced with replacing (‘rolling over’) hundreds of agreements that the EU concluded with external parties,⁹⁸ there is also work to do for the EU. For instance, at the WTO, Brexit entails the splitting up of tariff-rate quotas. Trade partners such as New Zealand have already demanded larger overall shares.⁹⁹ Furthermore, in the WTO and other organisations where there is mixed EU representation or where its Member States act as ‘trustees’, the EU loses a vote and a voice.¹⁰⁰

In terms of indirect effects, which are arguably even more important, Brexit can be seen to increase the pressure on the EU to deliver at home and abroad. Already the pre-existing financial and migration crises have contributed to a surge in Eurosceptic parties in many EU Member States.¹⁰¹ The Brexit referendum was another blow to the EU’s self-confidence. It is a historical irony that the EU’s new Global Strategy on Foreign and Security Policy was presented to the European Council a mere five days after the referendum in the UK. High Representative Federica Mogherini, in her foreword to the document, could not avoid addressing this:

The purpose, even existence, of our Union is being questioned. Yet, our citizens and the world need a strong European Union like never before. . . . The crises within and beyond our borders are affecting

⁹⁴Alistair J.K. Shepherd, ‘Blair, Brown and Brussels: The European Turn in British Defence Policy’ in David Brown (ed), *The Development of British Defence Policy: Blair, Brown and Beyond* (Routledge 2010) 43.

⁹⁵See Federico Fabbrini, ‘Brexit and EU Treaty Reform: A Window of Opportunity for Constitutional Change?’ in Federico Fabbrini (ed), *The Law & Politics of Brexit* (OUP 2017).

⁹⁶See, to this effect, European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament [2018] OJ L 165I/1.

⁹⁷See for the Netherlands, Advisory Council on International Affairs (n 93) in particular 24–6 on the CCP and 34–40 on foreign policy and defence.

⁹⁸Paul McClean, ‘After Brexit: the UK will need to renegotiate at least 759 treaties’ (*Financial Times*, 30 May 2017) <<https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e>> accessed 27 December 2019; see on the legal aspects Ramses A. Wessel, ‘Consequences of Brexit for International Agreements Concluded by the EU and its Member States’ (2018) 55 *Common Market Law Review* 101. According to the Withdrawal Agreement, art 129(4), ‘during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union’.

⁹⁹Jim Brunsten, ‘Trade partners attack EU plan for post-Brexit import quotas’ (*Financial Times*, 12 November 2018) <<https://www.ft.com/content/d2af748e-e690-11e8-8a85-04b8afea6ea3>> accessed 27 December 2019.

¹⁰⁰In the case of the WTO, for instance, the EU ‘shall have a number of votes equal to the number of [its] member States which are Members of the WTO’, art IX(1) Marrakesh Agreement Establishing the World Trade Organization (internal footnote omitted); see also, art II(1) FAO Constitution.

¹⁰¹Carmen Aguilar Garcia and Philip Whiteside, ‘European elections: Surge of support means a third of MEPs could be populist’ (*Sky News*, 30 March 2019) <<https://news.sky.com/story/european-elections-a-third-of-meps-could-be-populist-sky-analysis-11671895>> accessed 27 December 2019.

directly our citizens' lives. In challenging times, a strong Union is one that thinks strategically, shares a vision and acts together. This is even more true after the British referendum.¹⁰²

In this challenging environment, it can be argued that the EU needs to prove even more than before what its added value is for the Member States. It will have to refute the criticisms launched against it from Brexiteers and other Eurosceptics, including in the field of external economic relations. For instance, David Davis stated that 'trade agreements negotiated by the EU take a very long time to conclude', that British 'interests are not well represented in trade negotiations' and, hence, 'that these trade deals are not tailored to [the UK's] requirements'.¹⁰³ This was also echoed by Conservative politician Rishi Sunak, who stressed in the lead-up to the referendum that 'the agility of independent, mid-sized nations has proven more effective at tapping into the global economy than the sluggish, horse trading between 28 different EU nations, each protecting their own special interests'.¹⁰⁴ The widely publicised example of CETA is not helpful in efforts to refute this criticism. Negotiations for this agreement were launched in 2009 but its conclusion has been slowed down in particular by the Wallonia crisis of late 2016, after which the EU had to wait until April 2019 for the CJEU to confirm its compatibility with EU law.¹⁰⁵

Looking to the future, the EU is prone to finding itself in a state of global competition with the UK, at least in the economic sphere. Following the logic and arguments of the Brexiteers, being 'unshackled'¹⁰⁶ from the moribund EU, 'Global Britain' is set to face a bright future, not least through the negotiation of lucrative trade agreements around the world. However, initially limited success in 'rolling over' existing agreements also puts pressure on the UK government to deliver.¹⁰⁷ Threats of 'strategic competition'¹⁰⁸ or turning the UK into a 'Singapore upon Thames'¹⁰⁹ have already been made.

The EU, for its part, has redoubled its effort to make its trade policy more effective. The need to shake off its image as a sluggish and ineffective negotiator of trade agreements can be seen as even more acute in the context of Brexit. One way to increase the EU's effectiveness in this area is the move away from 'deep and comprehensive' trade agreements such as CETA, which are 'mixed' and hence require ratification by all the Member States (and in the case of Belgium, also approval from the sub-federal entities). Next to political incentives, this development was prompted in particular by the CJEU's Opinion 2/15 on the EU-Singapore trade agreement, where the Court found that the agreement could not 'be approved by the European Union alone' as it also covered the protection of non-direct investments, which exceeds the EU's exclusive competence in the area of trade.¹¹⁰

¹⁰²European Union, *Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign and Security Policy* (June 2016) 3.

¹⁰³David Davis, 'Britain would be better off out of the EU – And here's why' (*ConservativeHome*, 4 February 2016) <<https://www.conservativehome.com/platform/2016/02/david-davis-britain-would-be-better-off-out-of-the-eu-and-heres-why.html>> accessed 27 December 2019.

¹⁰⁴Rishi Sunak, 'One glance at the EU's dismal trade policy simply destroys the economic argument for Remain' (*The Telegraph*, 1 June 2016) <<https://www.telegraph.co.uk/news/2016/06/01/one-glance-at-the-eus-dismal-trade-policy-simply-destroys-the-ec/>> accessed 26 January 2020.

¹⁰⁵Opinion 1/17 (CETA) [2017] ECLI:EU:C:2019:341.

¹⁰⁶Rowena Mason, 'Britain "shackled to corpse" of EU, says Douglas Carswell' (*Telegraph*, 26 October 2012) <<https://www.telegraph.co.uk/news/politics/9636417/Britain-shackled-to-corpse-of-EU-says-Douglas-Carswell.html>> accessed 27 December 2019.

¹⁰⁷Richard Partington, 'Brexit: UK has rolled over just £16bn out of £117bn trade deals' (*Guardian*, 13 February 2019) <<https://www.theguardian.com/business/2019/feb/13/brexit-uk-trade-deals-eu>> accessed 27 December 2019; and Tom Edgington, 'Brexit: What trade deals has the UK done so far?' (*BBC News*, 18 June 2019) <<https://www.bbc.com/news/uk-47213842>> accessed 27 December 2019.

¹⁰⁸Nicholas Cecil and Joe Murphy, 'Do a deal on Brexit or risk Britain as strategic rival to EU, Hunt warns Macron' (*Evening Standard*, 5 March 2019) <<https://www.standard.co.uk/news/politics/do-a-deal-on-brexit-or-risk-britain-as-strategic-rival-to-eu-hunt-warns-macron-a4083041.html>> accessed 27 December 2019.

¹⁰⁹Martin Wolf, 'The Brexit delusion of creating "Singapore upon Thames"' (*Financial Times*, 7 February 2019) <<https://www.ft.com/content/a70274ea-2ab9-11e9-88a4-c32129756dd8>> accessed 27 December 2019.

¹¹⁰Opinion 2/15 (EU-Singapore FTA) [2017] ECLI:EU:C:2017:376. In that Opinion, however, there was ambiguity about whether the agreement could have been concluded as an EU-only one by political choice in the Council. As the Court clarified in Case C-600/14 *Germany v Council (COTIF)* [2017] ECLI:EU:C:2017:935, paras 67–8, mixity can be avoided in cases of shared competence if the Council so decides.

As first practised in the case of the Economic Partnership Agreement (EPA) with Japan, the EU has turned to ‘splitting’ the erstwhile comprehensive agreements into two separate agreements: one which can be concluded by the EU itself and another with mixed elements such as investment. A separate, third part of these treaty relations existed already in the form of the Strategic Partnership Agreements (SPA).¹¹¹ The boost in effectiveness is noticeable: while the negotiations on the EU-Japan investment agreement continue and CETA still faces a long road towards full ratification, even after the CJEU gave its green light in April 2019, the EPA with Japan entered into force on 1 February 2019.¹¹² Instead of appearing too unwieldy to deliver, this serves as a tangible success story not only of EU trade policy in general, but also as an example of what the UK will be losing out on by leaving the EU.¹¹³ According to Han Dorussen:

It is rather ironic that . . . the UK will exclude itself from agreements that in many ways reflect the ambitions of key Brexiteers. After all, the agreements not only provide a free trade area ‘beyond Europe’, they also provide the EU with greater ‘global influence’. The EPA and SPA are not only closely aligned with the UK’s economic and political interests, British diplomats also played an important role in negotiating them.¹¹⁴

For scholars of EU trade policy and possibly other areas, the UK’s post-EU treaty negotiations with the rest of the world will provide ample materials to compare, contrast, and analyse with both the EU and UK serving as moving targets. Whereas CETA was still advertised to Europe and Canada alike as the ‘gold standard’¹¹⁵ of trade agreements, the EU has moved to a different approach with the ‘split’ in the EPA with Japan and elsewhere. An important area of analysis will henceforth be the EU’s and UK’s performance in such negotiations. For the UK in particular, it will be interesting to investigate the trade-off between reduced market power but increased flexibility. For the EU, a trade-off to be watched will be between the gains in effectiveness in negotiating and agreeing to trade agreements where mixity is avoided, on the one hand, and loss of coherence, a treasured principle in EU law and scholarship,¹¹⁶ as well as the loss of democratic oversight and involvement at the Member State level, on the other.

In the meantime, internal market regulations continue to evolve, their extraterritorial effects becoming an increasingly important field of study under the banner of the ‘Brussels effect’.¹¹⁷ This strand of research studies the phenomenon that EU regulations and standards are often followed outside the EU due to economic rationality even when there is no strict legal obligation to do so. Questions are then raised for the post-Brexit UK–EU relationship as well, since economic interdependence exerts its own influence on the UK, which applies to some extent *regardless* of the shape of the legal framework for trade between the two – something legal scholars should remain well aware of.

Moreover, the EU has taken further steps in the area of security and defence, thanks, at least in part, to Brexit. Most notably, it has launched Permanent Structured Cooperation (PESCO) – the Lisbon Treaty’s ‘sleeping beauty’¹¹⁸ according to former European Commission President Juncker – and established a

¹¹¹See, e.g., Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part [2018] OJ L 216/4 (in force).

¹¹²Agreement between the European Union and Japan for an Economic Partnership [2018] OJ L 330/3 (in force). The agreement on investment protection is still being negotiated at the time of writing.

¹¹³Lord Bilimoria, ‘The EU-Japan trade deals shows just what we’re about to lose after Brexit’ (*politics.co.uk*, 14 December 2018) <<https://www.politics.co.uk/comment-analysis/2018/12/14/the-eu-japan-trade-deals-shows-just-what-we-re-about-to-lose>> accessed 12 February 2020.

¹¹⁴Han Dorussen, ‘Why the EU-Japan trade deal matters for Brexit’ (*LSE EUROPP Blog*, 16 February 2019) <<https://blogs.lse.ac.uk/europpblog/2019/02/16/why-the-eu-japan-trade-deal-matters-for-brexit/>> accessed 27 January 2019.

¹¹⁵European Commission, *Joint statement: Canada-EU Comprehensive Economic and Trade Agreement (CETA)*, STATEMENT/16/446, Brussels, 29 February 2016 <http://europa.eu/rapid/press-release_STATEMENT-16-446_en.htm> accessed 27 December 2019.

¹¹⁶Christophe Hillion, ‘*Tous pour un, un pour tous!* Coherence in the External Relations of the European Union’ in Marise Cremona (ed), *Developments in EU External Relations Law* (OUP 2008); Marise Cremona, ‘Coherence in European Union Foreign Relations Law’ in Panos Koutrakos (ed), *European Foreign Policy: Legal and Political Perspectives* (Edward Elgar 2011).

¹¹⁷Anu Bradford, ‘The Brussels Effect’ (2012) 107 *Northwestern University Law Review* 1; see also Elaine Fahey, *The Global Reach of EU Law* (Routledge 2016).

¹¹⁸European Commission, *European Commission welcomes first operational steps towards a European Defence Union*, Press release, 11 December 2017 <http://europa.eu/rapid/press-release_IP-17-5205_en.htm> accessed 27 December 2019.

European Defence Fund (EDF) and Military Planning and Conduct Capability (MPCC). These initiatives were launched with the UK still being a member but in anticipation of its departure.¹¹⁹ The UK also could have vetoed the new defence package, but it let it pass on its way out.

For scholarship on EU external relations law, these advances open up new areas of study within the field of the CFSP/CSDP.¹²⁰ They serve to illustrate the further integration of security and defence in the overall legal and institutional framework of the EU – a ‘semi-normalisation’ of the CFSP/CSDP within the EU’s constitutional framework. To some extent, this can even be seen as an attempt at the ‘communitarisation’ of EU defence policy, seeing that the EDF makes use of the regular EU budget.¹²¹ The European Commission would go even further and is officially promoting the use of more qualified majority voting in the CFSP instead of unanimity.¹²² In addition, the leaders of France and Germany, the EU’s two most powerful countries post Brexit, are calling for ‘a real, true European army’.¹²³ This has to be seen in conjunction with the continued scrutiny of the case law of the CJEU in this area, where scholars observe an increasing integration and normalisation of the CFSP/CSDP as well.¹²⁴

For the future, with the EU being both pushed into further integration, in part to make up for the UK’s departure, and at the same time liberated to do more with one of the most reluctant members having left (though Denmark retains its CSDP opt-out for the time being), legal scholars will have to grapple with a major area of tension. The EU’s efforts, especially those of politicians who are ready to go further in this area, will have to be reconciled with the fact that the EU Treaties continue to stress the special rules and procedures of the CFSP/CSDP while Eurosceptics warn against a ‘European army’ as a sign of the erosion of national sovereignty. At the same time, the taking shape, in one form or another, of the future relationship between the EU and UK will also provide an area of research involving many EU external relations law aspects. At least according to a UK government policy paper of 2017, this future relationship should be ‘deeper than any current third country partnership’ currently entertained by the EU.¹²⁵

4.3. Reflecting on the EU’s place in the world

Having to approach the UK as a third country and considering the changes to the EU’s approach to external relations, prompt a wider reflection on the EU’s place in the world and the role of law within its external action. Such a reflection links up to a long-standing debate on the special characteristics of the EU as an international actor. Albeit not a state with its own military forces, it has long been argued that it wields global influence due its ‘civilian’,¹²⁶ ‘normative’¹²⁷ or ‘ethical power’¹²⁸ with law serving as the

¹¹⁹The UK itself opted out of taking part in PESCO, together with Malta and Denmark, Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States [2017] OJ L 331/57, art 2.

¹²⁰See Steven Blockmans, ‘The EU’s Modular Approach to Defence Integration: An Inclusive, Ambitious and Legally Binding PESCO?’ (2018) 55 Common Market Law Review 1785.

¹²¹European Commission, *EU budget for 2021–2027: Commission welcomes provisional agreement on the future European Defence Fund*, Press release, 20 February 2019 <http://europa.eu/rapid/press-release_IP-19-1269_en.htm> accessed 27 December 2019.

¹²²European Commission, *State of the Union 2018: Making the EU a stronger global actor – European Commission proposes more efficient decision-making in Common Foreign and Security Policy*, Press release, 12 September 2018 <http://europa.eu/rapid/press-release_IP-18-5683_en.htm> accessed 27 December 2019.

¹²³Jennifer Rankin, ‘Merkel joins Macron in calling for a “real, true European army”’ (*Guardian*, 13 November 2018) <<https://www.theguardian.com/world/2018/nov/13/merkel-joins-macron-in-calling-for-a-real-true-european-army>> accessed 27 December 2019.

¹²⁴Graham Butler, ‘Implementing a Complete System of Legal Remedies in EU Foreign Affairs Law’ (2018) 25 Columbia Journal of European Law 637.

¹²⁵HM Government, *Foreign Policy, Defence and Development: A Future Partnership Paper* (September 2017) 18; see further Benjamin Martill and Monika Sus, ‘Post-Brexit EU/UK Security Cooperation: NATO, CSDP+, or “French Connection”?’ (2018) 20 British Journal of Politics and International Relations 846.

¹²⁶François Duchêne, ‘Europe’s Role in World Peace’ in Richard Mayne (ed), *Europe Tomorrow: Sixteen Europeans Look Ahead* (Fontana 1972).

¹²⁷Manners (n 33).

¹²⁸Lisbeth Aggestam, ‘Introduction: Ethical Power Europe’ (2008) 84 International Affairs 1.

EU's 'weapon of choice'.¹²⁹ The counter-position was that these were mere, maybe poor, substitutes for a lack of real hard power.¹³⁰

Brexit surely cannot be without consequence for this wider debate on the EU's place in the world. As noted previously, the UK's withdrawal removes a particularly recalcitrant Member State and thus contributes to 'normalisation', including in external policy areas such as trade and security and defence. However, this comes at a high price as the UK's withdrawal means a considerable diminishment of the EU's capacities.

Most importantly, due to the withdrawal of the UK, the EU has lost about one-sixth of its combined GDP. This matters because the EU's internal market, rivalled only by the US and China pre Brexit, operates as a great force of attraction to third countries. It is the 'carrot' through which the EU exercises its conditionality policies in accession, association and trade agreements, as well as in its development and sanctions policy.¹³¹ After Brexit, the EU's market has been relegated to third place both in terms of nominal and purchasing power parity after the 'G2'¹³² consisting of the US and China – still large, but significantly dented.

In addition, the CFSP/CSDP suffers from the loss of one of Europe's foremost global players in terms of hard and soft power. It is losing one of the largest diplomatic networks in the world,¹³³ as well as a country with nuclear weapons and a permanent seat at the UN Security Council and which is responsible for about a quarter of all defence expenditure in the EU.¹³⁴

What will this loss in economic, diplomatic and military power entail for the scholarship of EU external relations law? In terms of normative ambition, the EU Treaties stay the same. For the time being, the EU will continue to be mandated to 'preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter'¹³⁵ and to 'promote an international system based on stronger multilateral cooperation and good global governance',¹³⁶ among other things. In view of these lofty ambitions and given the importance of the UK for the EU's clout and capacities on the world stage, Brexit certainly widens Christopher Hill's famous 'capabilities—expectations gap'.¹³⁷ Whereas these expectations remain constitutionally entrenched, the EU's capacities have experienced a major setback. No longer being an exceptionally powerful entity, but one among many in an increasingly multipolar world, is perhaps a form of 'normalisation' too.

Translated into current policy, the 2016 EU Global Strategy confirms its global outlook and scope of action but provides three important caveats that reveal an increased sense of geopolitical realism: first, the Global Strategy puts an emphasis on 'Europe and its surrounding regions';¹³⁸ second, it introduces the notion of 'principled pragmatism';¹³⁹ third, it acknowledges that regional integration can take different forms.¹⁴⁰ These nuances, combined with the EU's above-mentioned efforts to streamline its trade policy

¹²⁹Leonard (n 36) 36.

¹³⁰See, e.g., Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (Alfred A. Knopf 2003); and Adrian Hyde-Price, 'A Neurotic "Centaur": The Limitations of the EU as a Strategic Actor' in Kjell Engelbrekt and Jan Hallenberg (eds), *The European Union and Strategy: An Emerging Actor* (Routledge 2008).

¹³¹See, e.g., Lachlan Mckenzie and Katharina L. Meissner, 'Human Rights Conditionality in European Union Trade Negotiations: The Case of the EU–Singapore FTA' (2017) 55 *Journal of Common Market Studies* 832; Gergana Noutcheva, *European Foreign Policy and the Challenges of Balkan Accession Conditionality, Legitimacy and Compliance* (Routledge 2012).

¹³²See Ramon Pacheco Pardo, 'The EU and the G2: Is a G3 Possible?' in Jing Men and Wei Shen (eds), *The EU, the US and China – Towards a New International Order?* (Edward Elgar Publishing 2014) 66–7.

¹³³Nicole Koenig, *EU External Action and Brexit: Relaunch and Reconnect*, Jacques Delors Institut – Berlin, Policy Paper 178 (22 November 2016) 4–7.

¹³⁴Eurostat, 'How much is spent on defence in the EU?' (18 May 2019) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20180518-1?inheritRedirect=true>> accessed 27 December 2019.

¹³⁵Art 21(2)(c) TEU.

¹³⁶ibid.

¹³⁷Christopher Hill, 'The Capability—Expectations Gap, or Conceptualising Europe's International Role' (1993) 31 *Journal of Common Market Studies* 305.

¹³⁸European Union (n 102) 18.

¹³⁹ibid., 16.

¹⁴⁰ibid., 32: 'We will not strive to export our model, but rather seek reciprocal inspiration from different regional experiences.'

and cooperate more in the area of security and defence, need to be understood as efforts to close this gap by lowering expectations while boosting the EU's ability to deliver in particular, tangible areas.

However, Brexit is not the only factor that is a threat to the EU's standing in the world. Seeing the fixation of politicians, the media, and scholars over the past years with the UK's withdrawal may have served as a distraction from other challenges. For instance, the 'rule of law' backsliding crisis in Poland and Hungary is not merely an internal challenge for the EU as a legal community.¹⁴¹ It also threatens to undermine its credibility as an actor promoting the rule of law abroad, as it is mandated to do by the Treaties. Moreover, migration and economic fragility are still on the agenda and will be used by populist parties in casting doubt on the usefulness of the EU.

These continuing challenges and the ability to compare the UK's performance with the EU27 post Brexit provide fertile ground for contestation of the EU's place in the world. It will essentially be a debate about the added value of the EU in the contemporary world, including its 'integration-through-law' approach and its standing as a 'normative power'. A scenario in which the EU will struggle to uphold the rule of law and provide economic prosperity for its Member States and citizens, while the UK will manage to curb migration and mitigate the economic downsides of Brexit, will seriously question the EU's *raison d'être*. It will be less appealing to its own Member States and their citizens, which may question the need to act jointly on the international stage. Moreover, it will be less appealing and credible to its external partners. Lastly, it will be less appealing as a model to emulate, which in turn will also be detrimental to the process of normalisation. Therefore, a dithering EU and a (moderately) successful 'Global Britain' question the standing of the EU and the value of regionalism altogether for many countries in the world, not least those led by populist strongmen appealing to nativist instincts and sovereignty defined as closedness and unwillingness to cooperate.

5. Conclusion and looking ahead

Having as its object of study both a novel legal order and an unusual international actor, EU external relations law has evolved into a vibrant field of scholarship in the course of the past half-century. This is still comparatively little compared to the more than two centuries on which scholarship of US foreign relations law can rely. Nevertheless, following its initial emergence in the 1970s and going through periods of rapid growth and consolidation, it has turned from a niche area within a niche area to one of the most dense and relevant case studies within the new field of comparative foreign relations law. EU external relations law matters both to those within the EU and those around the world that are affected by it. This is due to a combination of three characteristics it shares with the US, that is, multilevel governance, normative zeal and considerable capacities to have a wide-ranging impact far beyond its borders.

This article argued that the next era of EU external relations scholarship will be one of normalisation. Short of turning into a federal state anytime soon, the EU and the law of its external action will appear decreasingly exotic and *sui generis*. Brexit, the article contended furthermore, has caused a significant loss to the EU's capacities, but at the same time will spur on the process of normalisation. First, the UK, by having turned itself from a subject into an object of EU external action, has liberated the EU from one of its most awkward and obstructionist Member States. By having given up its privileged position, the UK contributes to simplifying the EU's governance structures, while having lost its ability to block further integration. Second, Brexit increases the pressure on the EU to refute the Brexiteers' and Eurosceptics' claims about its sluggishness and ineffectiveness vis-à-vis its own citizens and the rest of the world. To this end, first steps in different policy areas have already been taken to make the EU more agile and effective. Third, the loss of the UK and its considerable capacities and clout in the world prompt a wider reflection on the EU's place in the world. The EU will remain constitutionally mandated to promote the international rule of law. However, in part to counteract the dramatic widening of the 'capabilities-expectations gap' due the UK's withdrawal, a new sense of realism seems to be taking hold, perhaps abandoning the hubris of the past for good. All these factors combined make the EU a smaller power – but one less mired in the intricacies of placating the UK and more attuned to geopolitical realities. The rules governing its external

¹⁴¹Laurent Pech and Kim Lane Scheppele, 'Illiberalism Within: Rule of Law Backsliding in the EU' (2017) 19 Cambridge Yearbook of European Legal Studies 3.

relations will increasingly reflect this. And so they should, because if they do not, the EU risks being 'plutoed' itself in a multipolar world.

Declarations and conflict of interests

The author declares no conflicts of interest with this work.