



COMILLAS
UNIVERSIDAD PONTIFICIA

ICAI

ICADE

CIHS

FACULTAD DE DERECHO

**THE EUROPEAN UNION AS AN
INTERNATIONAL LEGAL ACTOR:
THE DUTY OF COOPERATION IN THE
CONTEXT OF ITS PARTICIPATION IN
OTHER INTERNATIONAL
ORGANIZATIONS**

Author: M^a Milagros Martín Jiménez

5º, Derecho y Relaciones Internacionales

Derecho

Tutor: Paula García Andrade

Madrid

May, 2022

Abstract

The positive development of the EU's status as a subject of international law, which has strengthened its position in the international scene, is sometimes diminished by the autonomous action of its Member States. Failures to uphold a common position and inconsistencies between both parties open the door to undesirable situations that severely damage the Union's legitimacy and coherence in the international arena. On these grounds, the duty of cooperation, inferred from Article 4.3 TEU by the CJEU, plays a vital role in ensuring the effectiveness, unity and consistency of the EU's international action. The objective of this dissertation is to better understand this duty in the particular context of the EU's engagement with other international organizations, considered one of the main manifestations of its external action. The first chapter addresses the duty from a theoretical perspective so as to analyse its legal foundations, normative and reciprocal nature and the specific obligations that derive from it and that bind EU Member States. The second chapter, with a rather practical approach, examines whether the duty is respected in practice, explores the legal and political implications that derive from its compliance and breach, points out the main deficiencies that have been identified with regards to the recent case law of the duty and concludes by suggesting some recommendations that might contribute to increasing its practical impact.

Key words: Duty of cooperation, Principle of loyal cooperation, Unity, participation in international organizations, EU institutions, Member States, external relations

Resumen

La evolución positiva del estatus de la UE como sujeto de Derecho Internacional, que ha fortalecido su posición en la escena internacional, se ve, en ocasiones, erosionado por la acción individual de los Estados Miembro. La imposibilidad de defender una posición común y las incoherencias que surgen entre ambas partes, abren la puerta a situaciones indeseables que dañan gravemente la legitimidad y coherencia de la Unión en el panorama internacional.

Por ello, el deber de cooperación, deducido del artículo 4.3 del TUE por el TJUE, desempeña un papel fundamental para garantizar la eficacia, unidad y coherencia de la actuación exterior de la UE. El objetivo de este TFG gira en torno a una mejor comprensión de este deber en el contexto de la participación de la Unión en otras organizaciones internacionales, considerada como una de las principales manifestaciones de su acción exterior. Con este propósito, el primer capítulo aborda el deber desde una perspectiva teórica para analizar sus fundamentos jurídicos, su naturaleza normativa y recíproca y las obligaciones específicas que se derivan de él y que vinculan a los Estados miembros de la UE. El segundo capítulo, con un enfoque más práctico, examina si el deber es respetado en la práctica, explora las implicaciones jurídicas y políticas que se derivan de su cumplimiento e incumplimiento, señala las principales deficiencias que se han identificado en relación con su reciente jurisprudencia y concluye con la recomendación de algunas soluciones que podrían contribuir a incrementar su impacto práctico.

Palabras clave: Deber de cooperación, Principio de cooperación leal, Unidad, participación en organizaciones internacionales, instituciones de la UE, Estados Miembro, relaciones exteriores

INDEX

INDEX ABBREVIATIONS	6
INTRODUCTION.....	7
CHAPTER I. THE DUTY OF COOPERATION: THEORETICAL BASIS	10
1. GENERAL LEGAL OVERVIEW OF THE DUTY OF COOPERATION	10
1.1. Constitutional Foundations	10
1.2. Obligations that derive from the duty of cooperation	13
1.2.1. The duty as a legal obligation	13
1.2.2. Obligations conferred by the duty of cooperation.....	14
1.2.3. The Reciprocal nature of the duty	17
2. THE DUTY OF COOPERATION IN THE CONTEXT OF THE PARTICIPATION OF THE EU IN OTHER INTERNATIONAL ORGANIZATIONS	18
2.1. The engagement of the EU with other International Organizations.....	19
2.1.1. Legal and Political foundations.....	19
2.1.2. The Status of the EU in International Organizations	21
2.2. International Organizations and the Duty of Cooperation	23
2.2.1. Organizations in which the EU has been granted full membership	24
2.2.2. Organizations in which the EU has been granted observer status.....	26
2.2.3. Obligations that bind EU institutions in IOs	28
CHAPTER II. THE DUTY OF COOPERATION IN INTERNATIONAL ORGANIZATIONS: FROM PAPER TO REALITY	29
1. PRACTICAL IMPACT OF THE DUTY IN IOs	29
1.1. The successful participation of the EU in IOs.....	29
1.2. The duty of cooperation in practice.....	31
1.2.1. Organizations in which the EU has been granted full membership	31
1.2.2. Organizations in which the EU has been granted observer status: the EU's duty of cooperation in the UN.....	34
a. The General Assembly	34

b. The Security Council.....	36
2. TOWARDS A STRENGTHENED DUTY OF COOPERATION GUIDING THE ENGAGEMENT OF THE EU WITH OTHER IOs	37
2.1. Losses and Benefits associated with compliance with the duty.....	38
2.2. In search of a strengthened duty of cooperation	40
2.2.1. Shortcomings of the current legal configuration of the duty of cooperation	41
2.2.2 . Solving the deficiencies: towards a reinforced duty of cooperation	43
CONCLUSIONS	47
BIBLIOGRAPHY	50

INDEX ABBREVIATIONS

AG	Advocate General
AMP <i>Antarctique</i>	Antarctic Marine Protected Areas
CJEU	Court of Justice of the European Union
COREPER	Committee of Permanent Representatives in the European Union
EAEC	European Atomic Energy Community
EBRD	European Bank for Reconstruction and Development
ECSC	European Coal and Steel Community
EEC	European Economic Community
ERTA	European Agreement concerning the work of crews of vehicles engaged in international road transport
EU	European Union
FAO	Food and Agriculture Organization
GATS	General Agreement on Trade in Services
ILO	International Labour Organization
IMO	International Maritime Organization
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
NPT	Non-Proliferation of nuclear weapons
OIV	International Organization of Vine and Wine
OTIF	Intergovernmental Organization for International Carriage by Rail
PFOS	Perfluorooctane sulfonic acid
SOLAS	Safety of Life at Sea
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNGA	United Nations General Assembly
UNSC	United nations Security Council
WTO	World Trade Organization

INTRODUCTION

The configuration of the Union as a subject of international law by the Treaties opened the door to higher opportunities to progressively become a key player in the international order and to the increasing complexities that always accompany greater powers. In this context, EU external relations law is of vital importance to successfully attain the Union's objectives in the international arena. However, the challenges that appeared as consequence of the practical exercise of the external competences of the Union and its interaction with Member States, gave rise to the configuration of the duty of cooperation by the CJEU. Flowing from the principle of loyal cooperation enshrined in Article 4.3 TEU, the CJEU has gradually clarified and expanded the scope of the duty and the obligations that flow from it and that equally bind EU institutions and Member States, turning it into an essential mechanism to safeguard the Union's unity, coherence and legitimacy in the international scene.

Initially associated with the negotiation and conclusion of mixed agreements, the CJEU's case law on the duty of cooperation has expanded its application to the participation of the Union in international fora (Van Elsuwege, 2019, p. 284). Over the past decade, the Union's engagement with other international organizations has further developed. Apart from obtaining a formal position in new organizations, the EU has become more active and visible in these institutions (Wessel & Odermatt, 2019). For instance, in 2011 it was granted with an enhanced observer status in the UN General Assembly, a prerogative that no other organization enjoys (Wessel, 2011, p. 3). These improvements positively contribute to fulfilling its ambitious international multilateral agenda (Jørgensen & Wessel, 2013, p. 261). Accordingly, to succeed as an exporter of the values and principles enshrined in the Treaties, the Union must continue the path of institutionalization of its role in international institutions (Jørgensen & Wessel, 2013, p. 261).

Therefore, by focusing on the duty of cooperation in the context of the participation of the Union in other international organizations, this contribution combines two major topics of EU external relations law with the goal of contributing to the literature that aims to further develop the international role of the Union so as to guarantee its international influence and authority. On the one hand, in the international arena, where the, sometimes antagonistic,

interests of States, international organizations and the EU coexist and clash, the duty of cooperation is considered a useful mechanism to achieve the EU Treaties' requirements of unity, coherence and consistency in the Union's external action. On the other hand, the engagement of the Union with other organizations is considered "as one of the most outstanding manifestations of the EU's external action" (Pérez Bernárdez, 2020, p. 964).

The ultimate aim of this analysis is to verify if its hypothesis, which suggests that the adoption of a secondary law act which specifies the substantive and temporary scope of the duty, as well as the specific obligations that bind the EU institutions and the Member States, would improve their interaction in other international organizations, is validated by the EU and Member States' practical involvement in those international institutions. On these grounds, the argumentation of this paper pursues four other objectives. Firstly, to better understand the foundations and legal implications of the duty of cooperation, this contribution aims to concisely analyse its evolution through the Court's case law and to point out the specific obligations that derive from it and that bind the EU and Member States' external action in international fora. Secondly, addressing a rather practical dimension of the duty, it aims to examine whether the duty of cooperation is respected in practice by Member States, as well as to understand the legal and political implications that derive from its compliance and infringement. Finally, this dissertation intends to point out the main deficiencies of the current articulation of the duty with the purpose of reaching a conclusion as to which concrete recommendations can be implemented to enhance its practical impact.

So as to achieve the above-mentioned objectives and to clearly articulate the arguments developed throughout this contribution, it has been structured in two main chapters. The first one, devoted to a theoretical analysis of the duty of cooperation, will cover, in a first subsection, a general overview of the legal foundations of the duty and the Court's case law. The second subsection will then proceed to extract from the CJEU's case law the concrete obligations that flow from the duty, particularly in the context of the engagement of the EU with other international organizations as an observer and as a full member. In contrast with the first chapter, the second has a rather practical nature. Likewise, divided in two subsections, the first one will be devoted to the analysis of the real degree of observance of

the duty in in those organizations in which the EU has been granted full membership and an observer status. Finally, the last subsection of this contribution will briefly condense the main criticism pointed out by legal scholarship with regards to the Court's configuration of the duty, with the aim of suggesting solutions that could prove successful in lessening the negative impact of its flaws.

With respect to the research method, this dissertation follows the legal dogmatic approach, understood as the research which aims to “give a systematic exposition of the principles, rules and concepts governing a particular legal field and analyse the relationship between them with a view to solving unclarities and gaps” (Smits, 2017, p. 211). Its main conclusions have been derived from the dogmas emanating from the existing legal system through different abstraction processes. Additionally, to serve the purposes of this contribution, the legal dogmatic method has been particularly shaped by the implications that derive from the combination of the European and International legal orders. Ergo, the legal research has mainly covered the positive law as laid down in both European and international legal documents, principles and statues, among others (Vranken, 2012, p. 43). Nevertheless, in light of the configuration of the duty as a construction of the CJEU, the methodology of jurisprudence has also been used in the analysis carried out in the second chapter which, as has been stated, has a rather practical approach. Pertaining to the bibliographic sources, this contribution is mainly based on the analysis of the CJEU's case law. The arguments and conclusions inferred from the Court's rulings are complemented, of course, with the opinions of its Advocates General. Additionally, this dissertation includes an analysis of the main contributions and debates of experts on the matter. In this regard, references are not limited to legal scholarship, as it also includes political references, regardless of the distinct and necessary prominence of the former.

CHAPTER I. THE DUTY OF COOPERATION: THEORETICAL BASIS

1. GENERAL LEGAL OVERVIEW OF THE DUTY OF COOPERATION

1.1. Constitutional Foundations

The principle of loyal cooperation, deemed as a constitutional principle of EU law (Klamert, 2014; Hillion, 2009, p. 6; Van Elsuwege, 2019, p. 285), exhorts EU institutions and Member States “to orchestrate their joint performance on the international scene” (Hillion, 2009, p. 3) and has proven to be of remarkable significance for the European Union’s external relations in a scenario in which “Member States have to a greater or lesser degree, a prominent role in the formation and execution of international action” (Wessel, 2020, p. 8). With the revision of the Treaties and the broadening case law of the European Court of Justice, the implications and context of the principle of loyal cooperation have consistently developed (Klamert, 2014, pp. 9-11). The principle, set up in Article 4.3 TEU, has been strengthened and currently occupies “a central position at the inception of the Treaty on European Union, immediately after the articles on the EU’s values and objectives” (Van Elsuwege, 2019, p. 285). Despite an initial uncertainty, the duty of cooperation, considered “one of the significant contributions of the ECJ to the external relations of the EU” (García Andrade, 2019, p. 301), has its foundation in the general principle of loyal cooperation, as concluded from the CJEU’s case law (Hillion, 2009, p. 6). In fact, the *MOX Plant* and the *Inland Waterways* cases explicitly mention article 10 TEC as the obligation of close cooperation’s constitutional foundation¹.

Irrespective of the arguments pointed out in the previous paragraph, legal scholarship still puts the duty of cooperation in connection with other EU principles. The existing academic debate is mainly focused on three other foundations: unity in the international representation of the Union, the principle of loyalty and, with less consensus, solidarity between Member States.

¹ Case C-459/03, *Commission v Ireland (MOX Plant)*, EU:C:2006:345, para. 182; C-266/03, *Commission v Luxembourg*, para 57; C-433/03, *Commission v Germany*, para. 63

The requirement of unity in the international representation of the Union imposes on Member States an obligation to fully engage in reaching a common position with the Union in an effort to avoid contradictions, ambiguities and ineffectiveness of their joint action. Its association with the duty of cooperation dates back to the context of the EEC, when the Court stated that “the obligation to cooperate flows from the requirement of unity in the international representation of the Community”². Similarly, Opinions 1/94 and 2/00 depict the duty as an “obligation to cooperate that flows from the requirement of unity in the international representation of the Community”³.

This line of reasoning has also been followed by the Court’s most recent case law⁴. As an example, the *OTIF* case is worthy of mention. It concerned the Federal Republic of Germany’s failure to observe its obligations under Article 4.3 TEU as a consequence of voting in opposition to the stance laid down in Council Decision 2014/699, at the 25th session of the Intergovernmental Organization for International Carriage by Rail (OTIF). Throughout the judgment, the linkage between the duty of cooperation and the principle of unity was reinforced by the Court when claiming that the duty of Member States to comply with a decision adopted by the Council, according to Article 218.9 TFEU, was a precise articulation of the requirement of unity in the representation of the European Union⁵. However, as explained by Klamert, the principle is not absolute and, while the Union interest in the unity of representation might “determine the force of the duty of cooperation, it cannot fundamentally change its nature, which would be the case if Member States were always required to adopt a common position” (2014, p. 201).

Concerning the principle of loyalty, there is a general consensus among scholars with respect to the duty of cooperation being rooted in it (Hillion, 2009, p. 8; Klamert, 2014, p. 31). This loyalty, already included in the Treaty establishing the European Coal and Steel Community

² Case C-246/07 *PFOS* [2005] ECR I-6985, para. 73. Identical wording in Opinion 1/94 *WTO* [1994] ECR I-5267, para. 108; Case 25/94 *FAO* [1996] ECR I-1469, para. 48. Similar wording in Opinion 1/08 *Accession to GATS* [2009] ECR I-11129, para 136; Opinion 2/00 *Cartagena Protocol on Biosafety* [2001]. Ruling 1/78 [1978] ECR 2151, paras. 34-36. Opinion 2/91 [1993] ECR I-1061, para. 36 and Opinion 1/94 [1994] ECR I-5267, para. 108.

³ Opinion 1/94, para. 108 and Opinion 2/00, EU:C:2001:664, para. 18

⁴ Case C-246/07, *Commission v Sweden (PFOS)*, EU:C:2012:203, para. 73 and Case C-600/14, *Germany v Council*, EU:C:2017:935, para.105

⁵ Case C-620/19 (*OTIF*), EU:C:2019,256, para.94

(ECSC), has, since then, been positioned at the basis of principles as important to the EU legal order as primacy and direct effect. It can oblige Member States “not to exercise powers that they retain under the EU Treaties and that they formally possess under international law” (Eckes, 2020, p. 86). Furthermore, it can be “linked to both the public international law principle of *pacta sunt servanda* and the concept of federal loyalty (or *Bundestreue*) of the German constitutional system” (Van Elsuwege, 2019, p. 285). Accordingly, all subjects are expected to respect mutual loyalty so as to achieve their mutual goals and elude hampering their action (2019, p. 285). In addition, experts have affirmed that loyalty equally binds Member States when they act within their own domain of sovereignty or outside of the Treaties (Klamert, 2014, p. 24); however, it is more relevant with regards to the relationship between Member States and the Union and its compliance is more rigorously and strictly safeguarded by the Court when it comes to the sphere of external relations than amidst the internal context (Eckes, 2020, p. 91).

Last but not least, as stated by many scholars, the duty ultimately flows from the general requirement of solidarity, all the same embodied in the principle of loyalty (Klamert, 2014, p. 32), which, *inter alia*, implies a duty not to act unilaterally. This principle finds its legal basis in the EU treaties “as both a general principle to achieve the overall goal of the Union and as a specific provision in strategic policy areas” (Di Napoli & Russo, 2018, p. 204). For illustrative purposes, Article 3 TEU includes solidarity as one of the EU objectives. Accordingly, Article 24 TFEU underlines how this principle must govern the Union’s external action and Article 80 TFEU establishes that solidarity should govern EU policies on immigration, asylum and border checks (Chapter V TFEU). Similar references can be found in Articles 122 and 194 TFEU (concerning energy policy) or Article 222 TFEU (concerning security cooperation under cases of terrorist attacks and natural disasters). With regards to the duty of cooperation, the principle of solidarity that the Court inferred from Article 5 TEC, has positioned it “at the core of the proper functioning of the system of governance as a whole” (Casolari, 2012, p. 13).

1.2. Obligations that derive from the duty of cooperation

1.2.1. *The duty as a legal obligation*

The question regarding whether the duty of cooperation entails enforceable and prescriptive obligations was first approached by the Court in the *FAO* judgment⁶. It concerned who, of the Member States or the Community, should exercise responsibilities at the United Nations Food and Agriculture Organization meetings. In its pronouncement, the Court annulled the Council's decision of the Fisheries that gave Member States the right to vote on an issue whose main thrust lied in an area of exclusive competence of the Community (conservation of the biological resources of the sea), breaching Section 2.3 of the Arrangement. This Section stipulated that, when the organization's agenda concerned matters of Community and national competence, a common position had to be reached. Moreover, it specified that, in those cases in which the thrust of the issue covered an area of exclusive Community competence, the Commission was the one entitled to express the common position and vote⁷. The Court stressed that Section 2.3 "represent(ed) fulfilment of the duty of cooperation" and that from the terms of the Agreement it was clear that "the two institutions intended to enter into a binding commitment towards each other"⁸. With this choice of words, the Court not only recognised that the duty could entail legal obligations that could be enforced and invoked, but also resolved that an arrangement not negotiated by Member States could bind them (Hillion, 2009, p. 9; Klamert, 2014, p. 287).

The idea that the duty of cooperation entails legal obligations in cases where there is an absence of a specific arrangement among EU institutions was supported by the *Dior* judgment. This case involved the interpretation of Article 50 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), included in a WTO agreement concluded under joint competence by Member States and the Community. For the purposes of this discussion, suffice to recall that the court held that it had jurisdiction to interpret TRIPS and thereby define the Community's obligations. This ruling is particularly meaningful for this

⁶ Case C-25/94, *Commission v Council (FAO)*, EU:C:1996:114

⁷ *Ibid.*, para. 7

⁸ *Ibid.*, para. 49

dissertation for several reasons. First, as mentioned before, it strengthens and reaffirms the normative character of the duty of cooperation, even in a context in which an inter-institutional agreement has not been formalised. In second place, it elucidates that political and judicial authorities of the Member States, as well as the Union, are bound by the duty. Last but not least, it suggests that “the obligation of close cooperation requires the judicial bodies of the Member States and the Community, for practical and legal reasons, to give (...) a uniform interpretation”⁹ (Hillion, 2009, pp. 11-12).

Furthermore, other important rulings that have determined the evolution of the duty of cooperation have been the *Inland Waterway* cases¹⁰. The Court concluded that there was a lack of compliance with the obligations derived from Article 10 TEC (now Article 4.3 TEU) by Germany and Luxembourg. The violation was a consequence of the countries’ ratification and implementation of bilateral agreements related to the transport of goods and passengers by inland waterway with third countries without cooperating or consulting with the Commission, although some of those agreements had been signed before the adoption of the Council Decision on the matter. In conducting their bilateral external action, Member States failed to inform and consult with the Commission when the latter had already received a negotiating mandate from the Council¹¹. Ergo, through these judgments, the Court clarified that the duty of cooperation “is of general application and does not depend either on whether the Community competence concerned is exclusive or on any right of the Member States to enter into obligations towards non-member countries”¹².

1.2.2. Obligations conferred by the duty of cooperation

Defined by Neframi as “the legal basis for both procedural duties and substantive principles” (2010, p. 359), the duty has been framed by the CJEU in a way that facilitates the articulation of the Member States and EU’s individual and joined external action. The Court’s drafting

⁹ Cases C-300/98 and C-392/98 (*DIOR*), *Parfums Christian Dior SA v TUK Consultancy BV and Asco Gerüse GmbH and Rob van Dijk v Wilhelm Layher GmbH & Co. KG and Layher BV*, EU:C:2000:688

¹⁰ Case C-266/03, *Commission v Luxembourg*, EU:C:2005:341 and Case C-433/03, *Commission v Germany*, EU:C:2005:462.

¹¹ As stipulated by the Mandate Theory

¹² *Ibid.*, para. 64

of the duty defines “the scope of Member State’s constraints and obligations in the interest of empowering the EU as a global actor as well as the unity of EU representation” (Wessel, 2020, p. 39). However, the duty of cooperation is not absolute and finds its limits when affecting other EU constitutional principles, such as proportionality, subsidiarity or conferral (Van Elsuwege, 2019, p. 284).

Apropos of the obligations that derive from the duty of cooperation and that bind Member States, the thriving case law of the Court of Justice has confirmed that they are both positive and negative.

As explained in legal scholarship, the positive obligations call for Member States to “take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union” (Van Elsuwege, 2019, p. 284). Applied to the field of the EU external relations, this command implies, as specified by Cremona, a duty to behave as “trustees of the Union interest” (Cremona, 2011). This commitment is of particular necessity with respect to those areas in which the Union is internationally unable to exercise its competences, such as, for example, in those international organizations in which it cannot be granted full membership status because of the internal statutes only recognising States as participating members (Cremona, 2011).

This argument was reaffirmed by the Court of Justice in Opinion 2/91. It dealt with a Commission’s request regarding the Community’s competence to conclude a convention that could only be ratified by Member States, in the context of the ILO, an international organisation whose charter does not allow the EU to be a full member. Throughout its opinion, the Court unambiguously concluded that, due to the EU’s impossibility to conclude an ILO convention, its external competence had to be “exercised through the medium of the Member States acting jointly in the Community’s interest”¹³. Likewise, in a most recent Proposal for a Council Decision, also concerning an ILO Convention, targeting violence and

¹³ Opinion 2/91 (*ILO Convention*), 2/91, EU:C:1993:106, para. 5

harassment, the requirement for Member States and EU institutions to adopt the appropriate measures to cooperate in interest of the Union was reiterated¹⁴.

As can be concluded from the case law referenced in the previous paragraph, the positive obligations that derive from the duty of cooperation and compel Member States are of a very general nature. They can go from consulting the Commission when negotiating an agreement with respect to a field in which the Council has delivered a negotiating mandate or ratifying international Conventions in the interest of the Union, to merely coordinating with the Union's institutions (Klamert, 2014, p. 188).

As regards to the negative obligations that flow from the duty of cooperation, often depicted as duties "to remain silent" (Delgado Casteleiro & Larik, 2011), they were comprehensibly delineated by the opinion delivered by Advocate General Mengozzi with regards to the *US Air Transport Agreement* case. The opinion under consideration addressed the Conclusions that the Council adopted on the 2015 World Radiocommunication Conference of the International Telecommunication Union (ITU). It argues that Member States are under an obligation to refrain from interfering in the EU's external relations and jeopardise the achievement of its objectives. Advocate General Mengozzi concluded that the non-interference obligation is an expression of the principle provided for in Article 4.3 TEU¹⁵. This implies that "Member States are restricted in expressing their own position when this could jeopardise the unity of the EU's representation" (Delgado Casteleiro & Larik, 2011).

Other authors have defended a different classification of the varying obligations that flow from the duty of cooperation. As an example, Kahl divides the requirements into (1) those that flow from the EU institutions to the Member States, (2) reciprocal obligations between the Member States and the EU institutions, (3) the ones that require action concerning the implementation of EU law and (4) those compelling abstention. However, regardless of the distinct categorizations that exist, what needs to be considered is that "the more advanced the

¹⁴ Proposal for a Council Decision authorising Member States to ratify, in the interest of the European Union, the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization, COM/2020/24

¹⁵ AG Mengozzi Opinion of 29 January 2015, *Commission v Council*, C-28/12, EU:C:2015:43, para. 60-63

process of establishing a [Union] position, the more specific and constraining the obligations flowing from the duty of cooperation” (Hillion, 2009, p. 18).

1.2.3. *The Reciprocal nature of the duty*

Compared to its predecessor, Article 10 TEC, Article 4.3 TEU explicitly sets forth the reciprocal nature of the duty and brings an end to the dichotomy created by, on the one side, the literality of Article 10 TEC, which seemed to provide for a one-duty that was only meant for Member States and, on the other side, the opposing case law of the Court¹⁶.

Moreover, the reference to the duty made by Article 13 TEU, which categorically requires institutions to comply with mutual cooperation duties, suggests “the equal application of the principle of sincere cooperation to inter-institutional relations” (Van Elsuwege, 2019, pp. 285-286). This shed light to prior rulings in which the Court had stated that “inter-institutional dialogue is subject to the same mutual duties of sincere cooperation as those which govern relations between Member States and the Community Institutions”¹⁷ and pieced it together with the principle of institutional balance (Koutrakos, 2019, p. 5).

This argument has been upheld by the Court of Justice in the *ITLOS* case. In this ruling, it is stated that, in accordance with Article 13.2 TEU, the EU institutions are required to practice mutual sincere cooperation¹⁸. Additionally, the judgment clarifies that the duty requires “the Commission to consult the Council beforehand if it intends to express positions on behalf of the European Union before an international court”¹⁹. Thus, besides from confirming the importance of the reciprocal nature of the duty, post-Lisbon jurisprudence has clarified inter-institutional obligations that derive from the duty (Van Elsuwege, 2019, p. 286).

¹⁶ Case C-230/81, *Luxembourg v Parliament*, EU:C:1983:32, para. 37. In this judgment, the CJEU explicitly mentions the mutual nature of the duties of sincere cooperation under Article 5 of the EEC Treaty.

¹⁷ Case C- 204/86, *Greece v Council*, 204/86, EU:C:1988:450, para. 16; Case C- 65/93, *Parliament v Council*, EU:C:1995:91, para 23

¹⁸ Case C-73/14 (*ITLOS*), *Council v Commission (ITLOS)*, EU:C:2015:663, para. 84

¹⁹ *Ibid.*, para. 86

An important question that arises when dealing with the duty of sincere cooperation is related with how to achieve a balance between the action and interests of Member States and those of the Union. In this regard, as noted by Robert Shütze, even though a broader understanding of the duty “better protects the unity of external representation of the Union and its Member States, there is a danger for the autonomous exercise of the latter’s international powers” (2014, p. 339). Otherwise stated, there is uneasiness with respect to the duty becoming a “vehicle for competence creep” to the extent that the range of Member States’ autonomous action can be restricted (Van Elsuwege, 2019, p. 284).

The following pages of this research will be devoted to clarifying the configuration of the duty in the specific context of the participation of the Union in other international organizations.

2. THE DUTY OF COOPERATION IN THE CONTEXT OF THE PARTICIPATION OF THE EU IN OTHER INTERNATIONAL ORGANIZATIONS

In numerous rulings, the CJEU has emphasised the noteworthy role that the duty of cooperation plays in multiple contexts, especially with regards to mixed agreements. Even though most of the case law pertains to mixity, in the *IMO* case, the Court straightened out that the duty “not only applies with respect to the conclusion of international agreements, but also regarding the adoption of positions within international organizations”²⁰ (Van Elsuwege, 2019, p. 288). In this case, which concerned Greece’s autonomous decision to bring an issue of compliance with the SOLAS Convention and the ISPS Code (on port and ship facility security) directly to the International Maritime Organisation, the Court reiterated that:

“The mere fact that the Community is not a member of an international organisation in no way authorises a Member State, acting individually in the context of its participation in an

²⁰ Case C-45/07 (*IMO*), *Commission v Greece*, EU:C:2009:81

international organization to assume obligations likely to affect Community rules promulgated for the attainment of the objectives of the Treaty”²¹.

This chapter will be devoted to the analysis of the legal and political foundations of the participation of the Union in international fora and to the discussion of the specific obligations that derive from the duty, in those international organizations in which the Union has an observer status and in those in which the Union has been granted full membership.

2.1. The engagement of the EU with other International Organizations

2.1.1. Legal and Political foundations

The engagement of the European Union with other international organizations dates back to the 1970s, when the European Court of Justice had already recognised that the EC, as a consequence of its legal personality, had the capacity to “enter into contractual relations (...) and set up a public international institution”²². Likewise, in Opinion 1/94²³, the Court recognised the competence of the European Community to conclude the GATS and TRIPS Agreements, through which the WTO was established, in accordance with the doctrine of implied powers.

From a legal perspective, pursuant to the nature of Union law and the Treaties, the EU’s participation in other international institutions is deemed by many experts as a consequence of three factors. First, the Union’s autonomous international legal status; second, its key objective of becoming a more effective and visible global actor, as stipulated in Articles 3.5 and 21 TEU, and last, the division of competences that exists between Member States and the Union (Wessel & Odermatt, 2019). In relation with this latest idea, as stated by Wessel and Jørgensen, the need for the presence of the EU in other organizations “holds true in

²¹ Case C-45/07 (*IMO*), *Commission v Greece*, EU:C:2009:81

²² Opinion 1/76, EU:C:1977:63, para. 5

²³ Opinion 1/94, EU:C:1994:384

particular for areas in which the EU enjoys an exclusive competence but seems equally valid when the competence is shared with the Member States” (2013, p. 265).

When analysing EU law, many authors have concluded that the rules of representation and the competences pertaining to the participation of the EU in other organisations are fragmented and spread across the different Treaties. Some provisions call for the Union to “establish all appropriate forms of cooperation” with specific international organizations (Article 220 TFEU). Others, impose on Member States the obligation to “coordinate their action (...) and uphold the Union’s position” in international fora (Article 34 TEU). Similarly, Article 216.1 TFEU “seems to give a broad mandate to the EU to also conclude international agreements in order to become a member of an international organization or to join a treaty-regime in a specific area” (Wessel & Odermatt, 2019). Beyond the general commitments, the EU Treaties also provide for the Union’s engagement with organizations concerning specific policy areas²⁴.

Notwithstanding these articles, defined by many scholars as the closest thing to competence-conferring provisions, the Treaties lack a clear and explicit competence. Hence, the membership and participation of the Union in international organizations relies solely on implied powers whose source can be found in the general competences that the EU has been granted with respect to the different policy fields (Jørgensen & Wessel, 2013, p. 265 & Gstöhl, 2008: 5). Bearing in mind the 1971 *ERTA* case, which recognised the Community’s “treaty-making powers” with regards to cases which the Treaties did not provide for explicitly (implied powers doctrine). In fact, as specified in the judgment, the “authority” of the Union to exercise specific powers not only flows from substantive provisions of the Treaties, but also from the “whole scheme of the Treaty”²⁵. Hence, international agreements through which the EU becomes a member of an international organization “may also be based on the external dimension of an internal competence” (Wessel, 2010, p. 10).

²⁴ This includes cooperation with international institutions in the fields of education (Article 165.3 TFEU); vocational training (166.3 TFEU); culture (Article 167.3 TFEU); public health (Article 168.3 TFEU); technological research and development (Article 180(b) TFEU); the environment (Article 191.4 TFEU), among others.

²⁵ Case C-22/70, *Commission of the European Communities v Council of the European Communities (ERTA)*, EU:C:1971:32 para. 15-16

From a political approach, the engagement of the EU with other international organizations is primarily founded on its purpose of genuinely embracing multilateralism, broadly deemed as one of the Union's most distinctive features as a global legal actor. This commitment to multilateralism is reflected both by its internal processes, based on consensus-building and cooperation (Kirchner, 2011, p. 16), and by its external performance. The latter being characterised by a sincere adherence to multilateral principles, to normativism and to a values-based order (Blavoukos & Bourantonis, 2011, p. 1). On this account, the aforementioned Articles 3.5 and 21 TEU, in addition to commanding the EU to achieve specific requirements that shall guide its external policies, demand that the Union pursues its international action in accordance with a "multilateral approach based on the rule of law" (Wessel, 2020, p. 11). Hence, as a global legal actor that embraces international stability through multilateralism and that is increasingly affected by the processes that take place in international fora, the EU must take the necessary steps to secure its legitimacy and representativeness in other international organizations to achieve its goal of building a stronger international order (Wessel & Odermatt, 2019 & Kirchner, 2011, p. 16).

2.1.2. The Status of the EU in International Organizations

On the basis of its capacity to participate in and cooperate with other international organizations, over the past years and specifically since the accession of the Community to the FAO in 1991, the EU has further developed its relationships with other international organizations. Additionally, it has sought to acquire a more visible and active position in bodies whose normative outputs have a major effect on the development of EU law and to become part "of what may be called a global normative web" (Wessel & Odermatt, 2019).

The EU's position in international organizations varies and, in each case, is determined by different factors, such as the division of competences with Member States, the formula provided for in the accession agreement and the constituent treaty of the respective organization, among others (Wessel & Jørgensen, 2013, p. 265).

When it comes to defining the membership status of the Union, many authors differentiate five categories: “absent”, “attendant”, “observer”, “participant” and “member”. For the purpose of this research, we will place the spotlight in the engagement of the EU with other international organizations either as a full member or as an observer, as for many experts there is not an “accepted conceptual framework that goes beyond (those) legal categories” (De Ville, Orbie, Saenen & Verschaeve, 2015, p. 724). The rights that are associated with these two statuses will be explained later in this chapter, in the sections that cover the particular obligations that derive from the duty in each case. Concerning the other categorizations, suffice to mention that the EU is considered a participant (or a de facto member) when it has the right to vote or, in forums when voting hardly ever happens, it has an equal say compared to the rest of the members, but without being formally recognised as a formal member (Debaere, De Ville, Orbie, Saenen & Verschaeve, 2014, p. 36). The main feature that differentiates the “absent” and “attendant” status relies on the presence of the Union at the different meetings that take place in the context of a specific international organization, excluding occasional invitations. Likewise, as an attendant, the EU is not allowed to table amendments or proposals, a prerogative that is linked with the observer status (Debaere, De Ville, Orbie, Saenen & Verschaeve, 2014, pp. 35-37).

The engagement of the Union with other international institutions has been described by many scholars as “one of the most outstanding manifestations of (its) external action” (Pérez Bernárdez, 2020, p. 964). The constraints that the membership rules of several international organizations impose on the EU’s potential to become a full member, with all the rights that it implies and that will be thoroughly explained, lead “to a plethora of different arrangements, ranging from full membership of the EU to having to rely on its member states to be represented” (Wessel & Odermatt, 2019). For instance, the founding charters of several organizations “do not foresee the participation of non-state entities” (Ott, 2008, p. 523). Ergo, even in matters in which the EU has extensive or exclusive competence, it might be barred from full participation in decision-making processes that directly affect its interests. Likewise, in areas in which the EU shares the competence with Member States it sometimes faces the same membership obstacles (Wessel & Odermatt, 2019).

The interactions that take place in international fora are not only multilateral but also include “minilateral and even unilateral courses of action, from the EU as a whole but also from constituent member states that may function complementary but also antagonistically to the EU” (Blavoukos & Bourantonis, 2010, p. 1). Subsequently, Member States might have an inclination to remain independently visible in international organizations, even in areas of EU exclusivity. This has opened the door to legal complications that affect the participation of the Union in other institutions, specially referring to issues of representation (Wessel & Odermatt, 2019).

The need for a coordinated action by Member States and the EU’s institutions explains the inclusion of different provisions in the Treaties. For illustrative purposes, Art. 34 TEU, incorporates the duty of member states to support the EU’s positions in international conferences and organizations. Additionally, Art. 4.3 TEU enshrines the principle of sincere cooperation, from which the CJEU implied the duty of cooperation. In this regard, with the aim of attaining the objectives mentioned in the introduction of this dissertation, the next section will be devoted to the analysis of the concrete obligations that derive from the duty of cooperation in the context of the participation of the EU in other international organizations.

2.2. International Organizations and the Duty of Cooperation

Many authors have underlined the wider scope of the duty of cooperation that recent case law has conceived (Delgado Casteleiro & Larik, 2011, p. 538). Hence, from a material perspective, the duty applies to both exclusive and shared competences in the context of the participation of the Union in other international organizations, regardless of its status²⁶. From a temporal perspective, the duty is triggered even before the Union has decided to act externally on a certain matter and can apply from the moment it is discussed internally at an EU institutional level. For many scholars, the extensiveness of this temporal scope has subsequently broadened the understanding of the concept of “Union position”. In its initial

²⁶ Case C-433/03 (*Inland Waterways*), *Commission of the European Communities v Germany*, EU:C:2005:462

case law, the CJEU had linked the existence of a Union position with that of a positive legal act, such as a mandate or a Commission proposal to the Council²⁷, irrespective of its acceptance²⁸. However, in later cases the Court has upheld that there was a Union position in situations in which there were only “Council conclusions and minutes of meetings” without the need for a common decision or agreement from the institutions (Delgado Casteleiro & Larik, 2011, pp. 536-538). In fact, in *PFOS* ruling, the Court stated that it was not imperative that a common position “takes a specific form for it to exist and to be taken into consideration in an action for failure to fulfil the obligation of cooperation”²⁹.

In this context, the purpose of the Court’s wide framing of the duty of cooperation is to safeguard the EU’s ability to act credibly and effectively in the international stage as well as to avoid the detrimental effects that disloyal external practices, such as the adoption of legal commitments in international fora, can have on the Union’s reputation in the long term (Eckes, 2020, pp. 97-99).

2.2.1. Organizations in which the EU has been granted full membership

Contrarily to what happens with observers, full members of international organizations can exercise all the rights provided for in the statutes of the international institution, such as attending meetings, exercising voting, being elected for the different functions in the organization’s organs or exerting speaking rights (Wessel, 2011).

With regards to the EU status, many scholars argue that, mainly, it has been granted full membership in those organizations whose objectives are related with areas in which the EU has extended competencies (e.g., fisheries, trade or the internal market) (Hoffmeister, 2007, p. 57). Additionally, the participation of the Union in other international organizations as a full member gives rise to two different scenarios: one in which the EU’s membership substitutes that of its Member States and one in which both jointly participate in the international forum. As will be analysed in this contribution, the latter scenario can result in

²⁷ Case C-433/03, *Commission v Germany*, EU:C:2005:462

²⁸ Case C-266/03, *Commission v Luxembourg*, EU:C:2005:341

²⁹ Case C-246/07 (*PFOS*), *Commission v Kingdom of Sweden*, EU:C:2010:203, para. 77

additional controversies concerning the entitlement of the right to vote or disagreements concerning the Union position and Member States' individual proposals. Currently, the EU is a full member of a slight number of international organizations that include the World Trade Organization (WTO), the Food and Agricultural Organization (FAO), the European Bank for Reconstruction and Development (EBRD), the Codex Alimentarius Commission, the Energy Commission and the Hague Conference on Private International Law (Wessel, 2011).

The specific obligations that arise from the duty of cooperation in the context of the engagement of the EU with other international organizations include, among others, a Member States' requirement to refrain from "voicing opposition to the EU's position" (Eckes, 2020, p. 87) and to avoid future conflict. Additionally, in its *FAO* ruling, the CJEU highlighted the crucialness of guaranteeing the implementation of a close cooperation between the EU institutions and the Member States in "the process of negotiation and conclusion and in the fulfilment of the commitments entered into"³⁰ in the context of international institutions.

Moreover, in his opinion on the *OTIF* case, Advocate General Szpunar argued that the duty "specially applies as regards the exercise of voting rights in an area of shared competence"³¹. Accordingly, as the Court has declared in the *FAO* ruling, an arrangement between the Commission and the Council concerning the voting in an international organization constitutes the implementation of the duty of cooperation within that organization³². As a result, failure to comply with these type of arrangements exposes external disagreements between the EU and its Member States, and "gives the impression of the EU not acting sufficiently effectively as a unit to prepare for a meeting at an international organization"³³ which can damage the Union's reputation externally.

³⁰ Case C-25/94 (*FAO*), *Commission of the European Communities v Council of the European Union*, EU:C:1996:114, para. 48

³¹ AG Szpunar Opinion of 24 April 2017, Case C-600/14, *Germany v Council*, EU:C:2017:296, para. 95

³² Case C-25/94, *Commission v Council*, EU:C:1996:114, para. 49;

³³ AG Szpunar, *ibid.*, para. 97

2.2.2. Organizations in which the EU has been granted observer status

As a result of being granted observer status in an international organization, the EU has the right to attend its meetings and, despite not being able to vote (prerogative only reserved to full membership), it is allowed to table amendments or proposals (Blavoukos & Bourantonis, 2010, p. 1). However, the EU's intervention can be circumscribed to the moment in which all formal participants have intervened, possibly affecting the political weight of the Union (Hoffmeister, 2007).

As a consequence, the presence of the EU as an observer, in those organizations whose statutes do not allow for its full membership, can lead to complex situations, especially regarding matters in which the EU has formal competences. However, as affirmed by the Court in the *IMO* ruling, the lack of membership by the Union “does not prevent its external competence from being in fact exercised, in particular, through the Member States acting jointly in the Community’s interest”³⁴. Moreover, the lack of presence of the EU in no way entitles Member States to act individually, assuming obligations that might, in any way, affect the accomplishment of the Treaties’ objectives³⁵. Likewise, in Opinion 2/91 the CJEU declared that in such situations, where the EU is not a member of an international organization that covers an area within its external competence, the duty of cooperation “is all the more necessary”³⁶. However, as many experts have criticised, the Court did not explicitly explain how to fulfil that duty of cooperation in practice (Delgado Casteleiro & Larik, 2011, p. 526).

In addition, concerning EU exclusive competences, the association of the Union’s exclusive competence and the lack of membership in an international organization results in a context in which Member States must act as the “trustees” of the Union in the international organization (Cremona, 2011). As happened in Opinion 2/91, in the *IMO* ruling, the duty of cooperation is depicted by the Court as the structuring principle in charge of mitigating the negative consequences that derive from the EU’s lack of membership in certain international

³⁴ Case C-45/07, *Commission v Hellenic Republic*, EU:C:2009:81, para. 31

³⁵ *Ibid*, para. 30

³⁶ Opinion 2/91 (*ILO Convention*), EU:C:1993:106, para. 5

bodies and of ensuring that its interests are considered and that it is heard regardless of its *de facto* absence (Delgado Casteleiro & Larik, 2011, p. 531).

Moreover, bearing in mind the *OIV* case, it can be argued that the Court has recognised that from the duty of cooperation arises an entitlement for the EU to “establish a position to be adopted on its behalf”³⁷ when the matters decided in an international organization in which the EU is an observer can affect European law. Ergo, as explained by Larik, this gives rise to situations in which Member States, regardless of being full members of an organization due to a treaty concluded in their own behalf, might be restrained from submitting their own proposals and be forced to defend the Union position even if they had opposed it within the Council, in the interest of the EU (2018, p. 190). This argument had been previously asserted in the *IMO* ruling³⁸. According to Delgado Casteleiro and Larik, in this case, the Court affirmed that, in order to fulfil the duty of cooperation, concerning areas of exclusive EU competence, “unequivocal abstention” (2011, p. 531) was required from Member States.

Likewise, on the basis of the *Inland Waterways* cases, from the duty of cooperation flows an obligation for Member States to consult, inform and obtain an express authorisation from the Union’s institutions prior to acting on the international stage (Delgado Casteleiro & Larik, 2011, pp. 531-533). This obligation to inform and consult enters into force once the Union has adopted a position concerning a specific matter in which the Commission has received from the Council a negotiating mandate³⁹. As explained by the Court in different rulings⁴⁰, the Union positions can take multiple forms, ranging from those that require a proper and identified legal basis, such as formalised Council decisions, to “looser kinds of concerted common strategies” (Larik, 2018, p. 186). Going back to the *Inland Waterways* cases, the practical obligations for Member States that result from the CJEU’s conclusions are the cease of possible bilateral negotiations that had been initiated, the undoing of the commitments

³⁷ Case C-399/12 (*OIV*), *Germany v Council*, EU:C:2014:2258, para. 63

³⁸ Case C-45/07, *Commission v Hellenic Republic*, EU:C:2009:81

³⁹ Case C-266/03, *Commission v Luxembourg*, EU:C:2005:341 and Case C-433/03, *Commission v Germany*, EU:C:2005:462.

⁴⁰ Case C-370/07 (*CITES*), *Commission v Council*, EU:C:2009:590 and Case C-246/07 (*PFOS*), *Commission v Sweden*, EU:C:2010:203, para. 91

already entered into and the abstention from subscribing new ones⁴¹ (Delgado Casteleiro & Larik, 2011, p. 531). Therefore, the duty could give rise to “a mandate theory (...) according to which, a deprivation of Member States’ powers can be anticipated to the moment in which the Council mandate for a union agreement is adopted” (García Andrade, 2019, p. 304).

2.2.3. *Obligations that bind EU institutions in IOs*

As has been explained in the previous chapter of this dissertation, the duty of cooperation operates both ways and, in addition to having an impact on the international action of Member States, it also binds EU institutions (Hillion, 2009, p. 113).

The limited case law of the CJEU that has directly and explicitly addressed the duty of cooperation as regards the performance of EU institutions makes it difficult to circumscribe the specific obligations that bind the institutions as a consequence of the application of the duty in the context of the participation of the EU in other international organizations. As noted by Delgado Casteleiro and Larik, the Court has usually described the duty through statements promoting inter-institutional cooperation but without delineating the concrete outcome that needs to be achieved (2011, p. 526).

For the purpose of this analysis, suffice to examine two conclusions that can be reached when reading the Court’s *IMO* ruling. Firstly, the Court claimed that the Commission, in chairing the Maritime Safety Committee, should have attempted to submit Greece’s proposal to the Committee and allowed a discussion on the matter. Consequently, by preventing such debate “on the sole ground that a proposal is of a national nature”⁴² the Commission might have breached its obligations under the duty of cooperation. Secondly, the CJEU underlined that the Commission’s infringement does not authorise any Member State to breach it as well and undergo initiatives that could affect the objectives of the Treaties⁴³.

⁴¹ Case C-266/03, *Commission v Luxembourg*, EU:C:2005:341 and Case C-433/03, *Commission v Germany*, EU:C:2005:462.

⁴² Case C-45/07, *Commission v Hellenic Republic*, EU:C:2009:81, para. 25

⁴³ *Ibid*, para. 26

CHAPTER II. THE DUTY OF COOPERATION IN INTERNATIONAL ORGANIZATIONS: FROM PAPER TO REALITY

1. PRACTICAL IMPACT OF THE DUTY IN IOs

In international institutions, where the interests of a wide variety of stakeholders are constantly clashing, cooperation is deemed as a synergistic force that boosts effectiveness (Curseu & Schalk, 2010, p. 453). In order to adjust to the challenging scenarios that might arise in international fora, the EU has aimed to become a rather state-like actor and less of an international organization itself (Jørgensen & Wessel, 2013, p. 282). Moreover, as time has gone by, the engagement between international organizations and the EU has also shifted primarily due to the latter's mastering of international affairs and relations (Blockmans & Wessel, 2016, p. 7).

The purpose of the present section of this contribution is to examine the practical impact of the duty of cooperation concerning the engagement of the EU with other international organizations. To do so, following the structure of the previous chapter, this section will be devoted to the analysis of whether the duty of cooperation is respected in practice.

1.1. The successful participation of the EU in IOs

As stated by Advocate General Mengozzi in his opinion to case “*US Air Transport Agreement*”, on numerous occasions, pertaining to the Union's performance in international organizations, the Court has highlighted “the need for the EU to be represented internationally in a unified way, as well as the need to ensure the coherence and consistency of (its) action”⁴⁴.

First, the demand for coherence in the EU's foreign policy towards international institutions has been pointed out not only by the CJEU, but also by the Treaty on European Union, which contains the legal basis for coherence in its Article 26. Thus, coherence is presented as an

⁴⁴ AG Mengozzi Opinion of 29 January 2015, *Commission v Council*, C-28/12, EU:C:2015:43, para. 62

obligation that binds all subjects involved in European foreign policy and in the international representation of the Union (Portela & Raube, 2012, p. 5). To adequately fulfil the requirement for coherence, the Union needs to ensure both vertical and horizontal coherence. The former involves complementarity between the policies and actions of the EU and Member States, agreements on the priorities and goals that need to be achieved through the participation of the Union in other organizations and a strong partnership between the EU institutions. Horizontal coherence requires intra-institutional coordination (such as the one that exists among the different Directorates of the Commission) (Portela & Raube, 2012, p. 5). This coordination arises from the obligation of Member States and the Union to cooperate as a mean to ensure that the Union can aim at formulating and implementing a common approach on the international scene (Jørgensen & Wessel, 2013, p. 267). In fact, coordination plays an important role when analysing the Union's performance in other international organizations (Jørgensen, Oberthür & Shahin, 2011, p. 610).

Secondly, pertaining to the requirement for unity, some scholars describe it as the need for the EU to adopt a common international policy that allows it to increase its effectiveness and efficiency by acting unitarily and with a shared purpose in other international institutions (Portela & Raube, 2009, p. 4). Authors such as Jørgensen, Oberthür and Shahin describe the provision for unity as the EU's ability to speak with one voice in international fora (2011, p. 608). It entails that, at times, the trade-off between the potential benefits and costs is worth the balance of heterogeneous preferences and the rejection of choices of the liking of some of the parties involved (Frieden, 2004, p. 4). This unity appears particularly meaningful in those organizations that cover matters of mixed competence whose rules of representation are not as clear as those of exclusive competence (Jørgensen, Oberthür & Shahin, 2011, p. 608). Thus, when acting in international fora Member States back down from a decision made at EU-level, the Union's performance is flooded with contradictions and inconsistencies that negatively impact its external legitimacy and reputation (Portela & Raube, 2009, p. 15).

Therefore, as pointed out in the first chapter with regards to the duty of cooperation in general, when specifically applied to the engagement of the EU with other international organizations, compliance with the duty of cooperation positively contributes to the

attainment of unity and coherence in the international action of the Union in these fora. In fact, as concluded by Advocate General Mengozzi in his opinion to case “*US Air Transport Agreement*”, there is a close interconnection between the provision for unity in the international representation of the Union and the duty of cooperation that binds the EU and its Member States⁴⁵. Additionally, Larik has also pointed out the important role that the duty of cooperation plays in safeguarding the requirement for coherence of the Union’s external action⁴⁶. By structuring the interaction between the EU and the Member States, the duty contributes to guiding the former’s individual foreign policies into a common agreed direction in the Union’s interest. Subsequently, regardless of the area of EU competence and of its acting alone or together with the Member States internationally, the latter “are to operate as parts of the coherent whole of EU external relations- as a *pars pro toto*” (Larik, 2018, p. 176).

1.2. The duty of cooperation in practice

The Court has reiterated that the Member States and EU institutions must take the necessary steps to advance the EU’s interests by complying with the duty of cooperation⁴⁷. As explained in the previous chapter, the fulfilment of these objectives can involve obligations to inform and cooperate, to abstain from acting according to individual interests, to renounce to voting rights or to act in a specific manner so as to promote the Union’s position and reinforce its capacity to act in the international sphere (Larik, 2018, p. 186 & Gött, 2021, p. 267). This section will be devoted to examining whether the duty of cooperation is respected in practice by Member States.

1.2.1. Organizations in which the EU has been granted full membership

As stated by Advocate General Kokott in her opinion to joint cases “*AMP Antartique*”, the scale of independency that the Union can enjoy and its interactions with Member States with

⁴⁵ AG Mengozzi Opinion of 29 January 2015, *Commission v Council*, C-28/12, EU:C:2015:43, para. 62

⁴⁶ AG Szpunar Opinion of 9 January 2019, Case C-620/16, *Commission v Germany*, EU:C:2019:3, para. 5

⁴⁷ AG Mengozzi Opinion of 29 January 2015, *Commission v Council*, C-28/12, EU:C:2015:43, para. 63

relation to the participation in debates, voting and decision-making processes that take place in international bodies, regularly gives rise to disputes at EU level⁴⁸. In her opinion, she explains that a higher degree of cooperation between the Union and its Member States is required in those organizations that cover shared competences. Following this line of reasoning, the present passage will analyse if the duty of cooperation is obeyed in practice.

Many authors have concluded that the organization where the Union has the most active and well-established role is the WTO (O' Sullivan, 2021, p. 3), where the EU membership is equal to that of other States (Jørgensen & Wessel, 2013, p. 272). Despite initial hindrances regarding negotiations between the Commission and the Council that led to agreements on the lowest common denominator (Krüger, 2013, p. 186), the current division of competences in that organization “allows the EU to truly speak with one voice and to ensure a strong and coherent representation of the European interests” (O' Sullivan, 2021, p. 3). These conditions positively contribute to a successful performance of the Union in the WTO, where, according to other actors, the EU is more influential as long as it speaks with a single voice (Jørgensen, Oberthür & Shahin, 2011, p. 608).

Nevertheless, the Union and its Member States' international interactions are not always as coherent as they ought to be. For instance, in the FAO, of which the EU is member since 1991, the handling of the division of competences tends to be a hazardous issue (Hoffmeister, 2007, p. 42). In this sense, the constant requirement of statements of competences poses an obstacle to the functioning of the Union (Jørgensen & Wessel, 2013, p. 271) and is a source of disagreements with respect to questions of the right to vote, as happened in the *FAO* case⁴⁹.

Transgressions of the duty of cooperation have taken place within the Stockholm Convention on Persistent Organic Pollutants. In the *PFOS* ruling, the Court concluded that by unilaterally proposing to add PFOS to Annex A to the Stockholm Convention, Sweden partitioned the

⁴⁸ AG Kokott, Opinion of 31 May 2018, *Commission v Council*, joined cases C-626/15 & C659/16, para. 1

⁴⁹ Case C-25/94 (*FAO*), *Commission of the European Communities v Council of the European Union*, EU:C:1996:114. In this case, the CJEU ruled that there had not been an infringement of the duty of cooperation because the Commission complied with its obligation of consulting the Council prior to expressing its position on behalf of the Union.

external representation of the Community⁵⁰, violating the duty. Similarly, Jørgensen and Wessel have alleged that France (and the United Kingdom, when it was still a member of the EU) tend to disregard common Union positions that have been coordinated ahead of meetings in the ILO and NPT (2013, p. 284).

Another case of infringement of the duty of cooperation occurred in June 2014, during the 25th session of the OTIF Revision Committee, an organization to which the EU is a member since 2011. In the session in question, Germany breached the duty by aiming to exert its right to vote when it had been conferred on the Union, by publicly voicing its disapproval and by voting against the position that the EU had adopted through a Council decision prior to the meeting (Campo, 2019). Germany's conduct gave rise to the *OTIF* case⁵¹ before the CJEU. As argued by Advocate General Szpunar in his opinion to this case, "an arrangement between the Council and the Commission on voting within an international organization represents fulfilment of the duty of cooperation"⁵² and no Member State can act against it. Regardless of Germany's behaviour not having any effect on the outcome of the meeting, it damaged the reputation and credibility of the EU while creating unnecessary confusion⁵³.

Last but not least, several ideas have to be pointed out with regards to the IMO. Although the Union remains an *ad-hoc* observer, irrespective of having argued in favour of being granted full member status, the fact that the Commission has an accredited representation within this organization and that the Union can vote under certain conditions, makes it worthy of a brief analysis (Earsom & Delreux, 2021, p. 403). Besides, the Commission submitted to the Council a recommendation in favour of a Union's membership that replaces that of EU Member States (Schaar, 2007, pp. 28-29). In this forum, as highlighted by many authors, Member States are used to prioritising national positions over the Union's, which are expressed by the Presidency and the Commission. In this regard, additional cases of non-cooperation arise due to Member States' tendency to deliberately decrease the Union's voting

⁵⁰ Case C-246/07 (*PFOS*), *Commission v Sweden*, EU:C:2010:203, para. 55

⁵¹ Case C-600/14 (*OTIF*), *Germany v Council*, EU:C:2017:935

⁵² AG Szpunar Opinion of 9 January 2019, Case C-620/16, *Commission v Germany*, EU:C:2019:3, para. 94

⁵³ AG Szpunar Opinion of 9 January 2019, Case C-620/16, *Commission v Germany*, EU:C:2019:3, para. 85, 95

power. As stipulated in the *Codex Alimentarius*, in the IMO, the EU's voting is dependent on the presence of Member States. In line with this idea, in 2004, two EU Member States that had opposed the COREPER decision that determined the European Community's position left the room right before the Community's voting turn (Hoffmeister, 2007, p. 66). Little after this incident, the CJEU ruled that the Hellenic Republic had failed to fulfil its obligations under the duty of cooperation as a result of submitting a national proposal to the IMO Maritime Safety Committee in 2007⁵⁴. Favourably, the discipline of Member States has improved since then (Hoffmeister, 2007, p. 66).

1.2.2. Organizations in which the EU has been granted observer status: the EU's duty of cooperation in the UN

Despite the initial reluctance of individual States to share the prerogatives they enjoy in the UN with other international organizations, the EU has progressively secured a stronger role in this forum (Fardel & Zamfir, 2020, p. 13). Thereby, the current analysis on the practical fulfilment of the duty of cooperation cannot be concluded without analysing the relation between the Union and its Member States in the UN.

a. The General Assembly

UNGA Resolution 65/276 marked the beginning of a new era for EU representation in the UN General Assembly. From May 2011 onwards, the Union was granted with an enhanced observer status that no other organization enjoys. This new status was accompanied by new rights that have, since then, reinforced the Union's political status and collective representation (Blavoukos, Bourantonis & Galariotis, 2017, pp. 452, 461). Furthermore, they have mitigated the debilitated standing that comes with its observer's inability to vote, to put forward candidates and to draft decisions or resolutions. Among these additional rights, experts highlight the prerogative to make interventions and present the EU positions in the GA's general debate, to orally present amendments and proposals, to reply to EU positions and to circulate documents with respect to different sessions or meetings (UNGA, 2011).

⁵⁴ Case C-45/07, *Commission v Hellenic Republic*, EU:C:2009:81

Regardless of this improved context, the EU's lack of voting rights makes it reliant on the voice of its Member States. Hence, their support over the common positions established at EU level are indispensable for increasing the Union's coherence in the UN (Fardel & Zamfir, 2020, p. 13). In this regard, scholars have argued that the implementation of the Common Foreign and Security Policy has prompted higher levels of cohesion and cooperation between the EU and its Member States. As a matter of fact, many experts have stated that the EU is, presumably, one of the most unified groups within the UNGA (Burmester & Jankowski, 2018, p. 653).

With the intent of speaking with a single voice in this forum, hundreds of coordination meetings hosted by the Union delegation are held annually in New York. As an exemplification, in 2014, Member States depicted a joint position on 92% of the resolutions adopted by the UNGA. In the same manner, in 2015, the EU delivered more than 220 joint statements at the UN fora and 31 at the Security Council (European Union Delegation to the United Nations, 2016). Most recently, in 2022 and up to date, the Union has delivered 35 joined statements at the GA and 16 at the Security Council (European Union Delegation to the United Nations, 2022).

Recent scenarios of a growing voting cohesion between EU Member States portray their growing willingness to uphold a common EU position by reconciling their national priorities with those of the Union (Sánchez, 2020, p. 44). Notwithstanding these favourable developments, lack of cooperation still occurs. In fact, as stated by Burmester and Jankowski "the EU's foreign policy is one of a divide between Member States' interests and the struggle to find a common stance" (2018, p. 654). The divisions originated from diverging national and Union interests and policy preferences are one of the greatest disincentives to full cooperation. Particularly, in the specific context of the General Assembly, where the slightest untechnical topics are coloured by politics, the aforementioned divisions arise with higher frequency (2018, p. 669).

Regardless of the voting behaviour of Member States' inability to thoroughly capture all factors of actor cohesion, its potential to reveal the level of coordination and unity between the EU and its Member States (Jin & Hosli, 2013, p. 1275), serves the aspirations of the current analysis and make it worthy of mention. Legal scholarship has concluded that voting cohesion differs between policy areas (2013, p. 1280). In view of this, on the one hand, Member States are more likely to reach agreements regarding resolutions in relation to human rights and democracy (Birnberg, 2009, p. 133). On the other hand, resolutions concerning decolonisation and security yield the lowest cohesion levels (Birnberg, 2009, p. 134; Jin & Hosli, 2013, p. 1280). Further, in an analysis carried out by Burmester and Jankowski, they concluded that pertaining to decolonisation and arms, France (and the United Kingdom prior to its exit) is the most recurrent deviator. Moreover, on resolutions concerning the Middle East conflict and nuclear proliferation Malta, Ireland, Cyprus and Greece display above-average deviation rates (2018, pp. 661-663).

b. The Security Council

Despite the EU's largest contributions to the UN's budget, agencies and peace-keeping missions, its performance in the Security Council is still highly dependable on its Member States (Sánchez, 2020, p. 44). Given the lack of a formal status in the UN Security Council, the EU solely relies on them to disclose its positions in that forum (Fardel & Zamfir, 2020, p. 15).

On paper, adding to the general obligations derived from the duty of cooperation, Article 34 TEU requires EU Member States with representation in the Security Council to coordinate their standpoints, inform the other Member States and defend the EU's interests and positions. In reality, however, these requirements of cooperation and coordination are not as observed as they ought to. EU Member States present in the Security Council (whether as permanent or as elected members) "see themselves primarily as States which represent their national interests" (Luif, 2003, p. 17). Despite former denials of cooperation coming from France (and the United Kingdom prior to its exit) being overcome as years have gone by, the logic of relative gains is still present and gives rise to ambivalent engagements (Luif, 2003, p. 18; Jørgensen, 2008, pp. 13-15).

As a case in point, authors call attention over the Union's failure to speak with one voice with respect to the UN Security Council reform (Ortega, 2005). In this case, far from presenting a unified front, the parties involved brought back the old undesirable European polyphony, leading to contradictory outcomes (Jørgensen, 2008, p. 5). As stated by Ortega, ineffectiveness in reaching agreements such this one significantly damage the EU's credibility in the international arena (Ortega, 2005).

2. TOWARDS A STRENGTHENED DUTY OF COOPERATION GUIDING THE ENGAGEMENT OF THE EU WITH OTHER IOs

The EU currently faces a rather hazardous international environment. On the one hand, it has to endure the ambiguous behaviour of different international organizations and subjects of international law that, at the same time, aim to integrate it as a political and economic power and relegate its role to a secondary position (O' Sullivan, 2021, p. 1). On the other hand, the Union has to overcome the "insurmountable obstacle" of having its Member States pursue their national interests over the Union's (Burmester & Jankowski, 2018, p. 654).

Under these circumstances, the duty of cooperation appears as an advantageous mechanism to attain the much-needed external unity, coherence and cohesion mentioned in the previous chapters. If adequately developed, it can positively contribute to the successful performance of the Union in the international arena. The analysis carried out in the previous section has shed light on the concrete infringements of the duty that take place in practice. Following the arguments pointed out throughout this contribution, the paramount objective of this chapter is to reach conclusions as to what can be legally done to enhance the practical impact of the duty of cooperation with respect to the participation of the Union in other organizations. Bearing this goal in mind, to support the argument in favour of an enhanced duty of cooperation, the first subsection of the present chapter will examine the positive consequences that derive from its compliance and the detrimental effects that result from its infringement. To better understand the steps that need to be undertaken by the EU to improve the legal basis for the duty, the second section will be devoted to the assessment of the main

criticism that currently obscures its practical implementation. Finally, the chapter will conclude with an assessment of the alternatives that might lead to the reinforcement of the impact of the duty of cooperation.

2.1. Losses and Benefits associated with compliance with the duty

Through the fulfilment of the obligations to inform and consult the EU institutions (*Inland Waterways* cases⁵⁵), to establish a common position (*OIV* case⁵⁶), and to refrain from voicing opposition (*FAO* case⁵⁷) in international fora, as required by the duty of cooperation, the Union can improve its engagement with other international organizations. The successful cooperation between the Union and its Member States can intensify their influence and boost their common strategy in the international scene (Smith, 2006, p. 116). Likewise, as stated by Birnberg, by acting together, they carry more weight and can speak with more authority and legitimacy externally (2009, pp. 71-77). Moreover, the portrayal of a united stand has proven to be an important asset that benefits the EU's position in international negotiations, as it avoids the exploitation of internal dissensions. In other words, mutual cooperation between the Union and its Member States makes them “emerge as a cohesive, authoritative and autonomous player in the international arena” (Blavoukos, Bourantonis & Galariotis, 2017, p. 453).

Nevertheless, the positive repercussions that are associated with the observance of the duty of cooperation are indubitably obscured by the infringements that, as has been illustrated in the previous section, still take place. In fact, calls for a greater cooperation in international organizations “have produced very limited results” (O’ Sullivan, 2021, p. 3). Additionally, “the increased clarity, effectiveness and efficiency that the Lisbon Treaty was supposed to bring to the field of EU external relations law have, so far, apparently, not materialised with respect to international institutions” (Jørgensen, Oberthür, Shahin, 2011, p. 612).

⁵⁵ Case C-433/03 (*Inland Waterways*), *Commission of the European Communities v Germany*, EU:C:2005:462

⁵⁶ Case C-399/12 (*OIV*), *Germany v Council*, EU:C:2014:2258.

⁵⁷ Case C-25/94 (*FAO*), *Commission of the European Communities v Council of the European Union*, EU:C:1996:114

Unfortunately, as pointed out by Advocate General Szpunar in his opinion to the *OTIF* case, infringements of the duty of cooperation, damage the Union's international credibility and reputation, protected by Article 4.3 TEU⁵⁸. In line with this idea, in his opinion to the *US Air Transport Agreement*, Advocate General Mengozzi has argued that failures to comply with the duty send the message that "the EU is not entitled to make a decision on its own"⁵⁹. Moreover, they risk prioritising the individual interests of Member States over EU objectives, giving rise to internal inconsistencies and weakening the Union's position by depicting lack of unity⁶⁰. Finally, in agreement with the prior line of reasoning, in his opinion to *PFOS* case, Advocate General Maduro expressed his concern with regards to the possibility that, at some point, Member States could threaten to use external competences to influence internal decision making⁶¹.

Regardless of the benefits associated with complying with the duty of cooperation and the costs that derive from its breach, when acting in international organizations, Member States are confronted with difficult choices that might, in some occasions, help to understand, but not justify, those infringements. In the first place, with the Union's institutions becoming major external relations players and with the duty imposing cooperation obligations on Member States, they end up having to give up the promotion of their national agendas (Duke, 2006, p. 32). Hence, Member States are left with the difficult task of balancing the Union's and their own policy priorities, while having to coordinate their own bureaucracies at a national level (Duke, 2006, p. 18). What is more, when Member States participate in other international fora, "there is an overlap between the responsibility associated with a country's EU membership and the rights and obligations" linked with their membership in those organizations (Birnberg, 2009, p. 58).

On this account, some controversies might arise in practice. As a case in point, experts have highlighted the *Kadi* and *Al Barakaat Foundation* ruling. Member States were placed in the difficult position of having to opt between ensuring the observance of EU law, which could

⁵⁸ AG Szpunar Opinion of 24 April 2017, Case C-600/14, *Germany v Council*, EU:C:2017:296, para. 96, 97

⁵⁹ AG Mengozzi Opinion of 29 January 2015, *Commission v Council*, C-28/12, EU:C:2015:43, para 35

⁶⁰ *Ibid.*, para. 36

⁶¹ AG Maduro Opinion of 1 October 2009, *Commission v Kingdom of Sweden*, C-246/07, EU:C:2009:589, para. 56

probably lead to international responsibility in the UN legal order, or ensuring the implementation of the adopted UN sanctions and face the possibility of being brought “before the CJEU for failure to comply with EU law” (Casolari, 2012, p. 28). As an intermediate stance that can solve these dilemmas, Advocate General Maduro’s position is worth mentioning. According to him, in these situations, under the duty of cooperation, Member States are required to “exercise their powers and responsibilities (...) in a manner that is compatible with the general principles of Community law (...) and minimise the risk of conflict between the Community legal order and international law”⁶².

2.2. In search of a strengthened duty of cooperation

Beyond the general legal framework of the duty, summarily analysed in the first and second sections of this dissertation and developed throughout the CJEU’s case law, some experts have criticised these rulings for dealing with the operation of the duty in a vague manner, for establishing a rather abstract idea of it and for not determining the concrete obligations of result that derive from it, among other deficiencies (Delgado Casteleiro & Larik, 2011, p. 527). In the same way, this obscurity can lead to situations in which the Member States might be restrained from acting in other international organizations “irrespective of the unclear practical implications” of the duty (Wessel, 2011, p. 9).

Thus, with the aim of upholding the hypothesis of the present analysis, this last section will be devoted to shedding light as to what can be done to enhance the role of the duty of cooperation that binds the participation of the Union and its Member States in other international organizations. The assessment performed in the former section has revealed the infringements of the duty that take place in practice. Driven by the ultimate objective of suggesting alternatives that can strengthen the impact of the duty, the next section will

⁶² AG Maduro Opinion of 16 January 2008, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, joined cases C-402/05 and C-415/05, EU:C:2008:11

thoroughly examine the criticism that has been pointed out by scholars with regards to the configuration of the duty so as to determine how to counteract them.

2.2.1. *Shortcomings of the current legal configuration of the duty of cooperation*

With regards to the wide scope of the duty, some authors have criticised its “rather drastic evolution” (Delgado Casteleiro & Larik, 2011, p. 528), outlined in the latest case law of the CJEU. These authors have been rather critical with the wideness of the scope of the duty, discussed in the second part of this paper. From a temporal perspective, they have regretted how the *Inland Waterways*⁶³, *IMO*⁶⁴ and *PFOS*⁶⁵ cases have advanced the moment from which the duty of cooperation is triggered. Subsequently, the duty applies even before the Union has decided whether it will act on a certain matter or from the moment a topic is merely discussed internally (2011, p. 536). This extension in the scope of abstention duties has also been noted by Casolari, who has affirmed that the *PFOS* ruling concludes that “an informal decision of EU institutions may prevent Member States from unilaterally acting” internationally (2012, p. 19), even in those situations in which the Union temporarily delays its determination to act (2012, p. 34).

Additionally, Casolari has warned that the expansion of the scope of the duty, witnessed in the aforementioned rulings, might give rise to “some problematic issues” (2012, p. 20). The author has argued that the legal picture that flows from the latest CJEU’s case law, is moving away from the notion of loyalty stipulated in the Union’s primary law. While this concept implies a requirement of full mutual respect between the Union institutions and its Member States, the current judicial trend suggests that the duty requires the position of the Member States to fully depend on that of the Union institutions so that “the language spoken by the different EU actors shall, in any case, correspond to that of the EU institutions” (2012, p. 20). Following this line of reasoning, the requirement of always embracing a common position within the Union is not even comprised by the principle of unity of the international

⁶³ Case C-433/03 (*Inland Waterways*), *Commission of the European Communities v Germany*, EU:C:2005:462

⁶⁴ Case C-45/07 (*IMO*), *Commission of the European Communities v Hellenic Republic*, EU:C:2009:81

⁶⁵ Case C-246/07 (*PFOS*), *Commission v Sweden*, EU:C:2010:203

representation of the EU. In fact, such a commitment would constitute a fundamental change of the nature of the principle of unity (Klamert, 2014, p. 201).

Analogously, Reuter has raised awareness on the increasing impact of the duty of cooperation on the Member States' powers (2013, p. 32). In her thesis "Competence Creep via the Duty of Loyalty?", she argues that, owing to the latest position of the Court, the duty, growingly interpreted in a stringent fashion, restricts the Member States' freedom to act as in those matters in which Member States do not have competence (Reuter, 2013, p. 33). As a matter of fact, she questions whether the duty "is slowly turning into an instrument for the Union institutions to promote a loss of competence at national level" (Reuter, 2013, p. 43). Similarly, Schütze has questioned whether the broad interpretation of the duty compromises the autonomous action of the Member States in international fora (2014, p. 339).

Changing the spotlight to another weakness attributed to the duty of cooperation, scholars have placed the focus on the unsatisfactory current manifestation of its reciprocal nature. For Casolari, the codification of the mutual character of the duty has not been accompanied by an enriching CJEU's case law (2012, p. 29). Whilst the Court was presented with a great opportunity to clarify the obligations that bind the EU institutions under the duty of cooperation at the *IMO* case⁶⁶, referenced in the second section of this dissertation, the CJEU swiftly dismissed the point and missed its opportunity (Casolari, 2012, p. 40). With this position, the Court risks giving rise to unequal positions between the Union institutions and its Member States (Cremona, 2009, pp. 765-766). Accordingly, as García Andrade rightly asserts, these inequalities are in opposition with the "explicit mutual character of the loyal cooperation principle in the Treaties" (2019, p. 305). Therefore, when compared with the duties of the Member States, the obligations that bind the Union institutions seem to be less imperative (Van Elsuwege & Merket, 2012, p. 52). Moreover, the Court's reluctance to clarify the EU institutions' obligations might hamper a fair balance between the EU and its Member States, leading to political frictions and the undermining of the mutual trust enshrined in the Lisbon Treaty (Casolari, 2012, p. 34).

⁶⁶ Case C-45/07 (*IMO*), *Commission of the European Communities v Hellenic Republic*, EU:C:2009:81

Adding up to the different nature of the commitments that bind the behaviour of the EU institutions and its Member States on the foundations of the duty of cooperation, authors have concluded that the duty does not equally constrain the EU institutions in terms of “judicial review” (Van Elsuwege & Merket, 2012, p. 52). The existing configuration of the duty with regards to the EU institution’s obligations can result in unjust inequalities with respect to the ability to seek remedies in cases of breach of the duty of cooperation (Delgado Casteleiro & Larik, 2011, p. 533). The case law analysed throughout this paper proves the wide range of Member State behaviours that have been satisfactorily challenged by the Commission before the Court. However, in *IMO*, even though the CJEU recognised that the Commission might have breached its obligations under the duty of cooperation⁶⁷, “it is unlikely that Greece could have enforced the Commission’s part of the duty before the Courts” (Delgado Casteleiro & Larik, 2011, p. 533).

In this regard, Van Elsuwege and Merket have explained that, for Member States, bringing a prosperous case for failure to comply with the duty of cooperation against the Union institutions, is more difficult (2012, p. 52). Following the *IMO* ruling, in which the admission of compensation measures was refused by the Court, Member States could only bring to the Court proceedings for failure to act under Article 265 TFEU. As stipulated by this article, actions against EU institutions will only be admissible if they have been “called upon to act” (Article 265 TFEU) and if four months have passed since that call. As concluded by authors, it appears that the duty mainly constrains the extent of Member States’ unilateral action (Van Elsuwege & Merket, 2012, p. 52).

2.2.2. Solving the deficiencies: towards a reinforced duty of cooperation

In the search of remedies that can neutralise the flaws identified in the previous paragraphs and enhance the impact of the duty to avoid infringements such as those identified in preceding sections, interinstitutional agreements present themselves as an alternative,

⁶⁷ As happens with Member States, there are cases of infringements of the duty of cooperation by the EU institutions. As an example, in the context of the *IMO*, the Commission did not allow for a discussion with regards to Greece’s proposal, breaching the duty. For further information see section 2.2. of this contribution.

although it might not be the best one. Resorting to this instrument has been constant and dates back to the foundation of the EEC (Moskalenko, 2014, p. 15). The conclusion of these type of agreements between EU institutions prior to acting in a specific international organization could positively contribute to the prevention of the criticised wideness of the duty. The agreement could clarify the specific obligations that bind the EU institutions, whether the Union has decided to act on a specific matter and if there is a common Union position (which can be explicitly included in the interinstitutional agreement). In fact, authors have suggested that they have contributed to the coverage of legal loopholes and have evolved into a useful mechanism to solve conflicts between the Union institutions (Van de Velde, 2018, p. 104). Besides, these agreements are directed at facilitating cooperation between the EU institutions and at preventing conflicts between them (Kietz, Maurer & Volkel, 2005). Hence, while ensuring the fulfilment of the duty by the Union institutions, they would fail to guarantee its compliance by Member States⁶⁸. Additionally, interinstitutional agreements have an unclear legal status that has placed them in “a grey area of the EU legal system balancing on the edge of legal and political instruments of para-constitutional nature” (Moskalenko, 2014, p. 15).

Another solution to current deficiencies of the duty of cooperation could be the conclusion of declarations of competence in those cases in which there is a joint participation of the EU and its Member States in an international institution. The idea is to specify which actor, between the Member States and the Union, has competence (or how the division is articulated in cases of shared competence) and which will exercise the right to vote. However, this alternative only covers the shortcomings that arise with regards to the distribution of competences. Thus, it does not elucidate whether there is a Union position that must be followed⁶⁹. As a case in point, the *FAO* case confirms that, even though this organization requests the Union and its Member States to submit a declaration of competence before any of its meetings, infringements still arise due to disagreements between the parties involved. In this case, while both parties agreed that there was a shared competence, contested whether

⁶⁸ An analysis of the main fields in which interinstitutional agreements have been adopted, which mainly concern procedural and financial aspects, confirms that they are not the best option to ensure the duty's compliance by Member States.

⁶⁹ As has been explained, the Court's case law has progressively anticipated the moment from which the duty is triggered. Hence, while originally the CJEU had concluded that a Union position only existed when there was a positive legal act, ulterior case law concluded that a Union position could be determined from Council conclusions or even from minutes of a meeting, without the need of a specific form.

the FAO Agreement concerned “an issue whose main thrust lies in an area within the exclusive competence of the Community”⁷⁰. The Court concluded that section 2.3 of the Arrangement represented fulfilment of the duty but that, by giving the right to vote to Member States, the Council had breached that section⁷¹. Therefore, declarations of competence fail in those situations in which the division of competences is not clear even at an internal level. In fact, as Wessel rightly states, it sometimes seems as if EU external relations law had turned into “a story about internal competence battles” (2020, p. 8). Similarly, they have also proven to be inadequate in addressing the dynamic character of EU competences. In this regard, the doctrine of implied powers (ERTA doctrine) is the perfect example of how the Union’s division of competences has an evolutionary nature that exceeds express conferment by the Treaties (Delgado Casteleiro, 2012, pp. 499-502). Irrespective of the introduction of provisions requiring Member States and the EU to notify changes concerning the distribution of competences and to keep their declarations updated, in practice, these obligations are not observed (Lijnzaad, 2014, p. 191). In fact, as pointed out by Delgado Casteleiro, “declarations have never been updated” (2012, p. 502). This situation gives rise to uncertainties with regards to the possibility that the norms cited in past declarations might not be in force, resulting in incomplete and misleading declarations⁷² (2012, p. 503). Furthermore, in some declarations of competence, the EU’s competence has been established through policy documents⁷³, which lack legal nature and might result in misleading guidance to third parties (Delgado Casteleiro, 2012, p. 501). Additionally, the recurrent use by the Court of these instruments to deal with the vertical division of competences at an EU level could give rise to “diverging (and conflicting) interpretations internally and externally” (Delgado Casteleiro, 2012, p. 503)⁷⁴.

⁷⁰ Case C-25/94 (*FAO*), *Commission of the European Communities v Council of the European Union*, EU:C:1996:114, para. 40

⁷¹ *Ibid.*, para. 49-50

⁷² As an example, among the eleven norms that are cited in the Convention on Climate Change, only one remains in force. Similarly, none of the legal norms cited in the UN Convention to combat desertification remain in force. For further information see Delgado Casteleiro, A. (2012). *EU Declarations of Competence to Multilateral Agreements: a useful reference base?*. *European Foreign Affairs Review*, 17 (4), 491-509.

⁷³ In the declaration to the UN Convention to combat desertification, EU competence is based on EU legislation but also on a Communication on development cooperation, which lacks a legal nature.

⁷⁴ For further information on the different approaches that the CJEU has taken on these declarations see Delgado Casteleiro, 2012 p. 503 to 507, where he gives the example of the *MOX Plant* and *LZ* cases to prove his arguments.

Nevertheless, regardless of the positive contributions that these two alternatives (inter-institutional agreements and declarations of competence) might have in the enhancement of the practical impact of the duty, the limitations that they present support the choice of a better solution. According to the hypothesis of this contribution, the demands for a clarification of the scope and specific content of the duty of cooperation could be successfully answered through the adoption of a secondary law act. In fact, as Eeckhout noted, the Court's case law and the Union's experience in international organizations have proven that the impact of the duty "is limited if it is not fleshed out" (2005, p. 214-215). Similarly, Jørgensen and Wessel have stated that there is "an obvious case for creating some EU treaty language (...) and for basic legal texts" on how to carry out the cooperation obligations that flow from the duty in the framework of the engagement of the Union with other international institutions (2013, p. 269). Ergo, this dissertation suggests the adoption of a new act of secondary law which specifies "the duties of cooperation that emerge from art. 4.3 TEU" (García Andrade, 2019, p. 314).

For this new act of secondary law to be considered a legislative and binding legal act⁷⁵, it ought to be adopted following the legislative procedure provided for in Article 289 TFEU (EUR-Lex, 2021 & Tussupbekova, 2014). In accordance with the principle of conferral enshrined in Article 5 TEU, the legal basis of the new act of secondary law can be found in Articles 205 to 222 TFEU, specifically Articles 220 to 221 TFEU.

To thrivingly enhance the practical impact of the duty of cooperation, the new act of secondary law should reflect on all the possible scenarios that might originate as consequence of the Union and its Member States' interactions in international fora. Ergo, it should cover all the obligations that flow from the duty in the context of the Union's engagement with the international organizations in which it is a full member and an observer. Further, for each of those scenarios, in an attempt to strive for consistency and coherence of the Union's external action, it should determine the concrete obligations that bind Member States and EU

⁷⁵ The recommendation of this contribution is that the new act of secondary law adopts the form of a Regulation or a Decision. Concerning the latter, reference must be made to Decision 2017/684, a precedent in the field of energy, which establishes a mechanism for the exchange of information. For further information see García Andrade, P. (2019). The Duty of cooperation in the external dimension of the EU migration policy. In S. Carrera, L. den Hertog, M. Panizzon, D. Kostakopoulou (Eds.), *EU External Migration Policies in an era of global mobilities: Intersecting policy universes*, p. 314.

institutions in those cases in which the organization covers matters of exclusive competence (provided for in Article 3 TFEU) and shared competence (provided for in Article 4 TFEU).

With regards to the specification of the obligations that derive from the duty, it should be done from two main perspectives. From a temporal approach, the act of secondary law should detail from which moment on the application of the duty is triggered. Accordingly, it should elucidate the notion of a “Union position” by clarifying if its existence is associated with that of a positive legal act (as concluded by the CJEU’s original case law⁷⁶) or with Council conclusions and other informal decisions of the EU institutions. From a material approach, given the potential of the duty to prevent Member States from exercising powers that they would have otherwise been able to exercise domestically (Larik, 2018, p. 177 & Delgado Casteleiro & Larik, 2011, p. 531), the obligations that derive from it must be precisely detailed. As was analysed in the first chapter of this dissertation, the duty includes positive and negative obligations. The act of secondary law should explicitly state the obligations that bind Member States and EU institutions and that, as has been pointed out, range from requirements to consult, inform and adopt positions on the Union’s behalf, to obligations to abstain from acting in the international scene. Finally, the new act must build on the reciprocal nature of the duty by determining the obligations that it entails for the EU institutions and the remedies that Member States could seek in case of its transgression. As has been explained in the initial sections of this contribution, the duty of cooperation is a construction of the Court, inferred from Article 4.3 TEU. Hence, the limited case law that exists with respect to the infringements of the duty by EU institutions results in ambiguity as to the concrete obligations that bind them. If all these recommendations are accomplished, this new act of EU law could possibly bring an end to the, much criticised, wideness of the latest case law.

CONCLUSIONS

Over the past decade, the EU has increased its potential to influence the present and future of the international community. To fulfil the objectives required by the Treaties, the duty of

⁷⁶ Case C-433/03, *Commission v Germany*, EU:C:2005:462

cooperation, inferred from Article 4.3 TEU, is of remarkable importance for the Union's external action. Through its evolving case law, the CJEU has progressively configured the duty of cooperation as entailing binding obligations that can be enforced and that bind Member States and EU institutions.

Given the EU's "legal uniqueness" (Starski, 2014), its complex mix of shared and exclusive competences, the limitations to which it is subject in certain international fora and the conflictual interests that exist between the EU and its Member States, compliance with the duty is essential in the context of the participation of the EU in other international organizations. On the one hand, among the main obligations that bind Member States' action in those international organizations in which the EU has been granted full membership, this contribution has pointed out duties to refrain from voicing opposition to the Union position delivered by EU representatives, to act as a unit and to reach agreements concerning the exercise of voting rights. On the other hand, in those organizations in which the Union is an observer, it is more reliant on the voice of its Member States pertaining to matters in which it has competences. In this context, the requirements that flow from the duty of cooperation focus on Member States' obligations to inform and consult the EU institutions ahead of acting internationally, to adopt a position on behalf of the Union and to withhold from voicing opposition and submitting their own proposals.

One of the main objectives of this dissertation concerned the assessment of whether the duty of cooperation was respected in practice. In this regard, this contribution has proven that, irrespective of the significant role that the duty plays in ensuring the unity and coherence of the external representation of the EU, the international action of Member States reveals how infringements of the duty have occurred in practice. Despite the advancements that have taken place since the entry into force of the Treaty of Lisbon and that have led to the successful cooperation and coordination between Member States and the EU, the enhancement of the duty of cooperation is imperative. Violations of the duty in the form of conflicts with respect to questions of the right to vote, disregard for common EU positions, the submission of unilateral proposals, the public assertion of disapprovals and the lack of

voting cohesion and coordination increasingly hamper the international legitimacy and reputation of the Union in international organizations.

In addition to these violations, the legal shortcomings identified with regards to the evolution of the duty carried out by the latest Court's case law, also jeopardises its real impact in international fora. The afore-mentioned deficiencies can be structured into two main perspectives. Firstly, legal scholarship has shed light on the wider scope that recent case law has attributed to the duty, both, from a material and temporal approaches. From a substantive point of view, this has led to a growing restriction of Member States' individual action in the international sphere. From a temporal standpoint, it has resulted in the anticipation of the moment from which the duty is triggered. Secondly, the existing case law of the Court has been deemed to unsatisfactorily develop the reciprocal nature of the duty. As has been explained, the duty has its origin in the CJEU's case law, as it was inferred by the Court from Article 4.3 TEU. Thus, the lack of case law that clarifies the obligations that bind EU institutions results in ambiguities that ought to be solved. Ergo, the lack of certainty that arises from these situations might risk further infringements of the duty and negatively influence the attainment of the Union's international objectives.

With the goal of positively improving the impact of the duty, the last section of this analysis mentions three different legal solutions: inter institutional agreements, declarations of competence and a new act of secondary law. Nonetheless, given the limitations of the first two options, this contribution, as stated in the hypothesis, opts for the act of secondary law as the best alternative. Through the determination of the moment from which the application of the duty is triggered, of the notion of a "Union position" and of the concrete negative and positive obligations that derive from it and that bind Member States and EU institutions, this new act might bring an end to the ambiguities that, on some occasions, result from the jurisprudential construction of the duty. By having the obligations detailed in a binding legal act, compliance with the duty and the search of remedies in case of infringement will be facilitated. Subsequently, this will increase the impact of the duty in practice and achieve the required unity in the international representation of the Union.

BIBLIOGRAPHY

1. LAW

EU primary law 2012/C 326/01. *Consolidated version of the Treaty on the Functioning of the European Union.* European Union. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

EU primary law 2012/C 326/01. *Consolidated version of the Treaty on European Union.* European Union. https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

2. CASE LAW

Judgment of 31 March 1971, *ERTA*, C-22/70, EU:C:1971:32

Judgment of 10 February 1983, Case C-30/81, EU:C:1983:32

Judgment of 27 September 1988, C- 204/86, EU:C:1988:450

Judgment of 2 August 1993, *ILO*, C-158/91, EU:C:1993:332

Judgment of 39 March 1995, C- 65/93, EU:C:1995:91

Judgment of 19 March 1996, *FAO*, C-25/94, EU:C:1996:114

Judgment of 14 December 2000, *DIOR*, C-300/98 & C-392/98 (*DIOR*), EU:C:2000:688

Judgment of 2 June 2005, *Inland Waterways*, C-266/03, EU:C:2005:341

Judgment of 14 July 2005, *Inland Waterways*, C-433/03, EU:C:2005:462

Judgment of 30 May 2006, *MOX Plant*, C-459/03, EU:C:2006:345

Judgment of 12 February 2009, *IMO*, C-45/07, EU:C:2009:81

Judgment of 1 October 2009, *CITES*, C-370/07, EU:C:2009:590

Judgment of 20 April 2010, *PFOS*, C-246/07, EU:C:2010:203

Judgment of 7 October 2014, *OIV*, C-399/12, *OIV*, EU:C:2014:2258

Judgment of 16 July 2015, *Greenhouse gas emissions scheme*, C-425/13, EU:C:2015:483

Judgment of 6 October 2015, *ITLOS*, C-73/14, EU:C:2015:663

Judgment of 5 December 2017, *COTIF*, C-600/14, EU:C:2017:935

Judgment of 27 March 2019, *OTIF*, C-620/16, EU:C:2019:256,

Opinion of 26 April 1977, Opinion 1/76, EU:C:1977:63,

Opinion of 19 March 1993, Opinion 2/91, EU:C:1993:106

Opinion of 15 November 1994, Opinion 1/94, EU:C:1994:384

Opinion of 6 December 2001, Opinion 2/00, EU:C:2001:664

- Opinions of Advocates General

Opinion Advocate General Maduro of 16 January 2008, *Kadi and Al Barakaat*, C-402/05 & C-415/05, EU:C:2008:11

Opinion Advocate General Maduro of 1 October 2009, *PFOS*, C-246/07, EU:C:2009:589

Opinion Advocate General Mengozzi of 29 January 2015, *US Air Transport Agreement*, C-28/12, EU:C:2015:43

Opinion Advocate General Szpunar of 24 April 2017, *COTIF*, C-600/14, EU:C:2017:296

Opinion Advocate General Kokott of 31 May 2018, *AMP Antarctique*, C-626/15 & C659/16,
ECLI:EU:C:2018:362

Opinion Advocate General Szpunar of 9 January 2019, *OTIF*, C-620/16, EU:C:2019:3

3. DOCTRINE

Birnberg, G. (2009). *The voting behaviour of the European Union Member States in the United Nations General Assembly* (Doctoral Thesis, The London School of Economics and Political Science). <https://core.ac.uk/download/pdf/40020834.pdf>

Blavoukos, S., Bourantonis, D. & Galariotis, I. (2017). In quest of a single European Union voice in the United Nations General Assembly: The politics of Resolution 65/276. *SAGE Journals: Cooperation and Conflict*, 52(4), 451- 468. <https://doi.org/10.1177/0010836716684879>

Blavoukos, S. & Bourantonis, D. (2011). Introduction: The Eu presence in international organizations. In S. Blavoukos & D. Bourantonis (Eds.), *The EU presence in international organizations* (pp. 1-15). Routledge.

Blockmans, S. & Wessel, R. (2012). Introduction: Principles and practices of EU external representation. In S. Blockmans & R.A. Wessel (Eds.), *Principles and Practices of EU external representation* (pp. 7-10). <https://ssrn.com/abstract=2612792>

Burmester, N. & Jankowski, M. (2018). One voice or different choice? Vote defection of European Union Member States in the United Nations General Assembly. *The British Journal of Politics and International Relations*, 20(3), 652- 673. <https://doi.org/10.177/1369148118768184>

Casolari, F. (2012). The principle of loyal cooperation: A ‘master key’ for EU external representation? *Centre for the Law of EU External Relations Working Papers*, 2012/5, pp. 1-50.

- Casolari, F. (2012). The principle of loyal co-operation: A “master key” for EU external representation? In S. Blockmans & R.A. Wessel (Eds.), *Principles and Practices of EU external representation* (pp. 11-36). <https://ssrn.com/abstract=2612792>
- Cremona, M. (2009). Extending the reach of the AETR Principle: Comment on Commission v Greece (C-45/07). *European Law Review*, 34(5), 754-768. <https://cadmus.eui.eu/handle/1814/14824>
- Cremona, M. (2011). Member States as trustees of the Union interest: Participating in international agreements on behalf of the European Union. In A. Arnulf, C. Barnard, M. Dougan & E. Spaventa (Eds.), *Constitutional order of States?: Essays in EU law in honour of Alan Dashwood* (pp. 435–457). London: Hart Publishing. <https://doi.org/10.5040/9781472565402.ch-001>
- Curseu, P. & Schalk, R. (2010). Cooperation in Organizations. *Journal of Managerial Psychology*, 25(5), 453-459. <https://doi.org/10.1108/02683941011048364>
- Debaere, P., De Ville, F., Orbie, J., Saenen, B. & Verschaeve, J. (2014). Membership: the evolution of EU membership in major international organisations. In A. Orsini (Ed.), *The European Union with(in) international organisations: commitment, consistency and effects across time* (pp. 35-55).
- Delgado Casteleiro, A., & Larik, J. (2011). The duty to remain silent: Limitless loyalty in EU external relations?. *European Law Review*, 36 (4), 524–541.
- Delgado Casteleiro, A. (2012). EU Declarations of Competence to Multilateral Agreements: a useful reference base? *European Foreign Affairs Review*, 17 (4), 491-509.
- Di Napoli, E. & Russo, D. (2018). Solidarity in the European Union in times of crisis: Towards “European solidarity”? In V. Federico & C. Lahusen (Eds.), *Solidarity as a Public Virtue?: Law and Public Policies in the European Union* (pp. 195-248). Nomos Verlagsgesellschaft mbH.

- Duke, S. (2006). Consistency as an issue in EU external activities. *European Institute of Public Administration*, 1-38. <http://aei.pitt.edu/542/1/99w06.pdf>
- Earson, J. & Delreux, T. (2021). A nice tailwind: The EU's goal achievement at the IMO initial strategy. *Politics and Governance*, 9(3), 401-411. <https://doi.org/10.17645/pag.v9i3.4296>
- Eckes, C. (2020). Disciplining Member States: EU Loyalty in External Relations. *Cambridge Yearbook of European Legal Studies*, 22, 85-105. <https://doi.org/10.1017/cel.2020.2>
- Fardel, T. & Zamfir, I. (2020). European Union involvement in the United Nations system: broad partnership base don shared commitment to multilateralism. *European Parliamentary Research Service (EPRS)*, 1-36.
- Frieden, J. (2004). One Europe, one vote? The political economy of European Union representation in international organizations. *European Union Politics*, 5(2), 261-276. <https://doi.org/10.1177/1465116504042442>
- García Andrade, P. (2019). The Duty of cooperation in the external dimension of the EU migration policy. In S. Carrera, L. den Hertog, M. Panizzon, D. Kostakopoulou (Eds.), *EU External Migration Policies in an era of global mobilities: Intersecting policy universes* (pp. 299-325). <http://hdl.handle.net/11531/42610>.
- Gött, H. (2021). *The Law of interaction between international organizations: A framework for multi-institutional labour governance*. Springer Nature.
- Gstöhl, S. (2008). "Patchwork Power" Europe? The EU's Representation in International Institutions. *European Foreign Affairs Review*, 14 (3). <https://doi.org/10.54648/EERR2009028>
- Hillion, C. (2009). Mixity and coherence in EU external relations: The significance of the duty of cooperation. *Centre for the Law of EU External Relations Working Papers*, 2009/2, pp. 1-37.

- Hoffmeister, F. (2007). Outsider or frontrunner? Recent developments under International and European Law on the status of the European Union in international organizations and treaty bodies. *Common Market Law Review*, 44, 41-68. <https://doi.org/10.54648/cola2007004>
- Jin, X. & Hosli, M. (2013). Pre- and Post- Lisbon: European Union voting in the United Nations General Assembly, *West European Politics*, 36(6), 1274- 1291. <http://dx.doi.org/10.1080/01402382.2013.826032>
- Jørgensen, E. (2008). The European Union and international organizations: a framework for analysis. In E. Jørgensen (Ed.), *The European Union and International Organizations*. Routledge.
- Jørgensen, E., Oberthür, S. & Shahin, J. (2011). Introduction: Assessing the EU's performance in international institutions- conceptual framework and core findings. *Journal of European Integration*, 33(6), 599-620. <https://doi.org/10.1080/07036337.2011.606681>
- Jørgensen, E. & Wessel, R. (2013). The position of the European Union in (other) international organizations: confronting legal and political approaches. In P. Koutrakos (Ed.), *European Foreign Policy: Legal and Political Perspectives* (pp. 261- 286). Elgar. <https://doi.org/10.4337/9781849808613>
- Kietz, D., Maurer, A. & Volkel, C. (2005). Interinstitutional Agreements in the CFSP: Parliamentarisation through the Backdoor? *Archive of European Integration (AEI)*.
- Kirchner, E. (2011). EU contribution to and cooperation with multilateral organizations. In S. Blavoukos & D. Bourantonis (Eds), *The EU Presence in International Organizations* (pp. 16- 33). Routledge.
- Klamert, M. (2014). *The principle of loyalty in EU law*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199683123.0010001>

- Koutrakos, P. (2019). Institutional balance and the duty of cooperation in treaty-making under EU law. *International and Comparative Law Quarterly*, 68(1), 1-33. <https://doi.org/10.1017/S0020589318000350>
- Krüger, T. (2013). Shaping the WTO's institutional evolution: the EU as a strategic litigant in the WTO. In D. Kochenov & F. Amtenbrink (eds.), *The European Union's shaping of the international legal order* (pp. 169- 190). Cambridge University Press.
- Larik, J. (2018). Pars Pro Toto: The Member States' obligations of sincere cooperation, solidarity and unity. In M. Cremona (ed.), *Structural Principles in EU external Relations law* (pp. 175- 199). Hart publishing.
- Lijnzaad, L. (2014). Declarations of competence in the law of the sea, a very European affair. In L. Lijnzaad (Ed.), *Peaceful order in the world's oceans* (pp. 186-207). https://doi.org/10.1163/9789004274976_018
- Luif, P. (2003). EU Cohesion in the UN General Assembly. *European Union Institute for Security Studies*, 1-75. <https://www.iss.europa.eu/sites/default/files/EUISSFiles/occ49.pdf>
- Moskalenko, O. (2014). The role of the Inter-institutional Agreements in the development of the European Parliament's external competences. *Studia Diplomatica: The EU in International Affairs*, 67(1), 15-28. <https://www.jstor.org/stable/26531604>
- Neframi, E. (2010). The duty of loyalty: Rethinking its scope through its application in the field of EU external relations. *Common Market Law Review*, 47(2), 323–359. <https://doi.org/10.54648/COLA2010017>
- Orbie, J., Saenen, B., Verschaeve, J. & De Ville, F. (2015). The EU's relations with multilateral institutions. In K.E. Jørgensen, A. Kalland, E. Drieskens, K. Laatikainen & B. Tonra (Eds.), *The SAGE Handbook of European Foreign Policy* (pp. 721- 735). <https://doi.org/10.4135/9781473915190.n50>
- Ortega, M. (2005). Troubled Waters. *European Union Institute for Security Studies*.

- O' Sullivan, D. (2021). The European Union and the multilateral system: lessons from past experience and future challenges. *European Parliamentary Research Service (EPRS)*, 1-8.
- Ott, A. (2008). EU regulatory agencies in EU external relations: Trapped in a legal minifield between European and international Law. *European Foreign Affairs Review*, 13(4), 515- 540. <https://doi.org/10.54648/EERR2008038>
- Pérez Bernárdez, C. (2020). La participación de la Unión Europea en organizaciones internacionales en tiempos de Brexit. *Revista de Derecho Comunitario Europeo*, 67, 963-1005. <https://doi.org/10.18042/cepc/rdce.67.06>
- Portela, C. & Raube, K. (2009, April). *(In-)Coherence in EU Foreign Policy: Exploring Sources and Remedies* (Paper presented at a conference). European Studies Association Bi-annual Convention, Los Angeles, United States. [https://aei.pitt.edu/33122/1/portela._clara_\(2\).pdf](https://aei.pitt.edu/33122/1/portela._clara_(2).pdf)
- Portela, C. & Raube, K. (2012). The EU polity and Foreign policy coherence. *Journal of Contemporary European Research*, 8(1), 3- 20. <https://doi.org/10.30950/jcer.v8i1.340>
- Reuter, K. (2013). *Competence Creep via the Duty of Loyalty? Article 4(3) TEU and its changing role in EU external relations* (Doctoral Thesis, European University Institute). <https://cadmus.eui.eu/handle/1814/28050>
- Sánchez, H. (2020). The European Union and the United Nations: Two organisations, one fate. *Barcelona Centre for International Affairs (CIDOB)*, 43-52. https://www.cidob.org/en/articulos/cidob_report/n1_6/the_european_union_and_the_united_nations_two_organisations_one_fate
- Schaar, D. (2007). *The effect of EC membership of the IMO in “internationalising” EU maritime transport law and policy* (Master Thesis, University of Oslo).

https://www.duo.uio.no/bitstream/handle/10852/21336/Master_Schaar.pdf?sequence=1&isAllowed=y

Schütze, R. (2014). External Union powers: Competences and procedures. In *Foreign Affairs and the EU Constitution: Selected essays*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139794756.013>

Smith, K. (2006). Speaking with one voice? European Union Co-ordination on Human Rights Issues at the United Nations. *Journal of Common Market Studies*, 44(1), 113-37. <https://doi.org/10.1111/j.1468-5965.2006.00616.x>

Smits, J. (2017). What is Legal Doctrine? On the aims and methods of legal-dogmatic research. In R. van Gestel, H. Micklitz & E. Rubin (Eds.), *Rethinking legal scholarship: A transatlantic Dialogue*, (pp. 207-228). Cambridge University Press. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2644088

Starski, P. (2014). Foreign Affairs and the EU Constitution: Selected essays by Robert Schütze. *Yearbook of European Law*, 34(1), 392-398. <https://doi.org/10.1093/yel/yev015>

Van Elsuwege, P. & Merket, H. (2012). The role of the Court of Justice in ensuring the unity of the EU's external representation. In S. Blockmans & R.A. Wessel (Eds.), *Principles and Practices of EU external representation* (pp. 37-58). <https://ssrn.com/abstract=2612792>

Van Elsuwege, P. (2019). The duty of sincere cooperation and its implications for Autonomous Member State Action in the Field of External Relations: Member State Interests and European Union Law. In M. Varju (ed.), *Between Compliance and Particularism* (pp. 285-298). https://doi.org/10.1007/978-3-030-05782-4_13

Van de Velde, P. (2018). *The principle of conferral and the principle of sincere cooperation in the light of recent case-law of the CJEU: Are the Member States (post-Lisbon) "masters of the EU treaties" in the external relations of the EU?* (Master Thesis,

Ghent University). https://libstore.ugent.be/fulltxt/RUG01/002/479/241/RUG01-002479241_2018_0001_AC.pdf

Vranken, J. (2012). Exciting times for legal scholarship. *Law and Method* 2(2), 42-62. https://www.lawandmethod.nl/tijdschrift/lawandmethod/2012/2/ReM_2212-2508_2012_002_002_004.pdf

Wessel, R.A. & Odermatt, J. (2019). The European Union's engagement with other international institutions. In R.A. Wessel & J. Odermatt (Eds.), *Research Handbook on the European Union and International Organizations*. Edward Elgar Publishing. <https://doi.org/10.4337/9781786438935.00006>

Wessel, R.A. (2020). The European Union as a Global Legal Actor. In R. Wessel & J. Larik 2020 (eds.), *EU External Relations Law*, 1-28.

4. INTERNET RESOURCES

Campo, L. (2019). *Case C-620/16 (OTIF)- Why EU-external relation debates should remain EU-internal?* European Law Blog: news and comments on EU Law. <https://europeanlawblog.eu/2019/05/15/case-c-620-16-otif-why-eu-external-relation-debates-should-remain-eu-internal/>

European Commission. (2017). *Analytical Report 2017 on mutual assistance and sincere cooperation: an inquiry into the cooperation to enforce the coordination Regulations and to combat fraud and error*.

EUR-Lex. (2020). *Summaries of EU Legislation*. <https://eur-lex.europa.eu/summary/EN/legisum:ai0032>

European Union Delegation to the United Nations. (2016). *Joint Statements*. About the EU at the UN in New York. <http://eu-un.europa.eu/about-the-eu-at-the-un/>

European Union Delegation to the United Nations. (2022) *Joint Statements*. About the EU at the UN in New York. https://www.eeas.europa.eu/eeas/press-material_en?f%5B0%5D=pm_category%3AStatement/Declaration&f%5B1%5D=pm_category%3AStatement/Declaration&f%5B2%5D=press_site%3AUN%20New%20York&fulltext=&created_from=&created_to=&f%5B0%5D=pm_category%3AStatement/Declaration&f%5B1%5D=pm_category%3AStatement/Declaration&f%5B2%5D=press_site%3AUN%20New%20York&page=0

Tussupbekova, A. (2014). *Specific features of EU external relations law*. KazNU Bulletin. <https://articlekz.com/en/article/17437>