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Geopolitics for EU lawyers

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LUIGI LONARDO, JAN 10 2023

Most people who are interested in EU external action would recognise that the foreign policy machinery of the EU – the organisation’s institutional and legal set up – has a problem: it does not reflect the geopolitical reality of the continent. This is the starting point of my book *EU Common Foreign and Security Policy after Lisbon: Between Law and Geopolitics* (Springer 2023). The interaction between geopolitics and the law of EU foreign policy, that is, between the physical/political geography of Europe and the EU’s institutional and legal structure, is one that matters.

Geopolitics matters in so far as it provides a context for EU foreign policy, influencing (but in no way determining) the preferences and political priorities of Member States; and legal-institutional arrangements matter in so far as they are meant to provide a structure for EU external action by ensuring its coherence, accountability, and effectiveness. In other words, if geopolitics concerns the box (the physical boundaries and features of the continent), EU law shapes the content of that box (via the tools and instruments available to EU policy-makers for carrying out an EU foreign policy). The metaphor of the box is suggestive, but it is too crude because it falsely implies that we know well the relationship between container and content (or that the relationship is that in the first place): instead, geopolitics “shapes” EU law – and the other way round – in complex and dynamic fashions.

Yet, there is a problem in ascertaining how geopolitics and EU law influence each other. This is because the two are academic disciplines that hardly speak to each other. As a result, we do not know how to conceptualise the interaction ‘between law and geopolitics’, which is a key theme of my book. The nearly total absence of dialogue is due to reasons of intellectual history, one could say. Academia is organised and financed in a way that promotes research that entrenches into a self-contained and self-referential niche. The niche of “(EU) law and geopolitics” has not yet generated sufficient critical mass, in other words, it is not yet a thing.

There is no need for “EU law and geopolitics” to become a self-referential niche but it is important for legal scholars to delve deeper into the interaction to seek to improve the legal framework, and even more so for those who study the EU legal order. Why? The answers are both practical, relating to policy-making; and intellectual, relating to explanation of law as a social phenomenon. Beginning from the practical one: an engagement with (classical) geopolitics might improve (our understanding of) EU foreign policy. The need for incorporating geopolitics into EU action is the important challenge from which my book commences, and the book shows that geopolitics can in fact add a further layer to our understanding of the legal aspects of Common Foreign and Security Policy.

So what is the added value, for EU lawyers, of considering geopolitics? The first step is to state that the geography of Europe entails a sensitive space in Central and Eastern Europe, because it is made up of vast plains facilitating movement (even in ancient times, by horse or by foot) and without a clear “natural” border. This is an important contribution of classical geopolitics: the work of authors such as Mackinder and Spykman, who invented and perfected the “heartland theory” which had a recent comeback also in mainstream communication, outside of academic circles.

The second step of the argument is to consider that the EU tried to appropriate that political space, through enlargement and the European Neighbourhood Policy (this is an important contribution of the literature on EU geopolitics and border studies) and later through sanctions, missions, and association agreements.

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The third step of the argument is to note that only a very small fraction of this foreign policy was done through the Common Foreign and Security Policy. Common Foreign and Security Policy – a ‘special’ competence of the EU – is a sanctuary of Member States’ sovereignty that, in its hard core, resists integration into the otherwise unitary EU legal order. In sum, the argument shows that normatively, considering the geopolitical environment in which the EU needs to act, the law of the Common Foreign and Security Policy is not desirable because it is not functional.

In fact, the EU’s legal structure is dysfunctional in foreign affairs: the geographic location, system of alliances, and political priorities of the Member States are so heterogeneous that the requirement of unanimity in foreign policy decision-making simply does not reflect political reality. Yet, unanimity is still the rule when the EU acts pursuant to its Common Foreign and Security Policy. The EU constitutional structure also imposes a capricious distinction between ‘high’ and ‘low’ foreign policy, that is between security and defence on the one hand and trade, development cooperation, and other aspects of foreign policy on the other.

This dualism in EU external relations law affects the coherence and smooth function of EU foreign policy. There are also shortcomings in judicial review: acts adopted pursuant to that policy, such as civilian missions or military operations, are in principle excluded from the jurisdiction of the Court of Justice of the EU. While the Court’s case law has significantly evolved in the past decade, it has not fully remedied the shortcomings in this area.

The (mildly interesting) intellectual reasons for studying geopolitics in relations to law are related to the quest for the “foundations” of law. What explains the current formulation of EU law? Is the choice due to the beliefs of the drafters of the Treaties, to their short-term preference, or are there “structural” factors such as, indeed, the physical geographical environment in which they are placed by destiny? On the assumption that it is possible to make sense of law as a social object by looking at it ‘from the outside’ (that is, from the perspective of another academic discipline), scholars of EU law and of EU foreign policy should take an interest in these questions, which is what I do in the book.

About the author:

Luigi Lonardo is a lecturer in EU law at University College Cork and visiting lecturer at Sciences Po Paris. He is the author of *EU Common Foreign and Security Policy after Lisbon: Between Law and Geopolitics* and of *Russia’s 2022 War Against Ukraine and the Foreign Policy Reaction of the EU: Context, Diplomacy, and Law*.