CHAPTER 4

The External Relations of the European Union
Since Lisbon: A Practitioner’s Perspective

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1 Introduction

Having shared with my distinguished friend Ricardo Gosalbo Bono many Council, Committee of Permanent Representatives (COREPER) and Political and Security Committee (PSC) meetings, I will attempt to formulate an answer – coming from the other side of the table1 – to the question of what a Permanent Representative of a Member State to the European Union should broadly know, when he enters the new complex post-Lisbon world of EU external relations and has to act on behalf of his country. This new world is clearly a world of law and politics. It is also a world of permanent tensions. There are tensions following the inclination of Member States to re-create their proper zone of external action, rather than use the full potential of the Treaties for moving towards more common action. Tensions also exist between the different principles that constitute the legal foundations of EU external action. I refer to the tension between the constitutional and existential requirement of conferred powers to the EU and the laudable aspiration for overall vertical/horizontal consistency and effectiveness in the framing and implementation of EU external action.

My answer to the question will therefore be a mix of law and politics, a mix of provisions of the Treaties and implementation of those provisions in practice. This answer therefore captures two dimensions: the legal dimension and the political or diplomatic dimension. The focus on or the confrontation between these two dimensions can hopefully add value to this contribution to the Liber Amicorum.

It seems appropriate in this context, to recall that Ricardo Gosalbo Bono has always tried to find a balanced way through those tensions. Rare were the occasions in the Council, in COREPER or in the PSC, when he was not able to

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1 The Legal Service seat in meetings of the Council and Council preparatory bodies is at the table where the Presidency is seated, whereas (other) Member States are seated at the tables in front and on both sides thereof.
find a practical solution that could be supported by the Member States and the institutions.

My answer and this contribution are structured around ten general and very personal propositions. Each proposition, each thesis or postulate if one prefers these terms, will be briefly developed. It will only focus on some aspects, without being exhaustive. Several EU policy areas, for example, will not be covered or developed for lack of space. This will be the case for the common commercial policy, the external environment policy, humanitarian aid, migration, the enlargement and neighborhood policy, security and defence and the European External Action Service (EEAS).

2 Ten Propositions

2.1 A Reinforced Distinct International Community of Law with Legal Personality and Principles

The European Union remains an important international community of law, with a legal personality, with its own general principles of law that apply to the whole of the activities of the Union and with its own general provisions that apply for the whole of its external action. These general provisions cover both the Common Foreign and Security Policy (CFSP) of the EU and the broader field of EU external relations. The Lisbon Treaty has introduced major innovations in this field.

Only two aspects of this proposition are developed: legal personality and major innovations.

2.1.1 Legal Personality of the Union

Legal personality or, better, ‘international’ legal personality is an important requirement for any international organisation that operates and wants to act on the international scene. For the European Union, the question has often been asked whether this legal personality or international legal personality did or did not exist before the Lisbon Treaty. And if it did exist, what was its scope? Was it limited to the treaty-making powers of the Union or did it cover all domains that fall under the Treaties? What happens if the Union has exercised competence internally but not externally? In other words, what is the legal situation when the Union finds itself in a position where, for formal reasons, it cannot act on the international scene, in a field where it has already enacted internal legislation? Unfortunately, this situation occurs frequently for the EU. This is particularly the case when international agreements do not accept international organisations, like the EU, as parties to those agreements, and when membership of international organisations is restricted to States only.