

**The EU's Normative Power Dimension in Light of the
EUJUST Themis Mission to Georgia**

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Abstract

On 16 July 2004 the EU launched EUJUST Themis, a rule of law mission to Georgia, mandated to assist the Georgian authorities in drafting a reform agenda on the criminal justice system. This paper examines the motivational background on why the EU decided to launch EUJUST Themis. Apart from the security aspect, explained by the rationalist logic; the EU's dictum of value promotion, based on the constructivist perspective account for the Council's decision for a rule of law mission to Georgia. In discussing the EU's foreign policy approach, the notions of normative and civilian power Europe are consulted to shed light on the nature of the EU's foreign policy approach. In doing so, the role of values and the EU's ideological power are emphasised as constitutive building-blocks of her international identity.

Key words: rationalism, constructivism, EUJUST Themis, value promotion, rule of law, criminal justice reform, normative power.

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List of Abbreviations

CFSP – Common Foreign and Security Policy

CIVCOM – Committee for the Civilian Aspects of Crisis Management

CPE – Civilian Power Europe

ENP – European Neighbourhood Policy

ESDP – European Security and Defence Policy

ESS – European Security Strategy

EU – European Union

EUSR – European Union Special Representative

FFM – Fact Finding Mission

NPE – Normative Power Europe

OPLAN – Operation Plan

PSC – Political and Security Committee

Introduction

In the academic world, assessments of the European Union's Common Foreign and Security Policy (CFSP) tend to emphasize the elusiveness of this policy field. Although the CFSP has been established as a separate pillar of the EU in the Maastricht Treaty and despite a further extension towards the European Security and Defence Policy (ESDP) in the Amsterdam Treaty, which was thought to provide the Union a capability-component to its foreign policy instruments, this policy field remains the most dynamic but least definable one. Since its advent, the CFSP has been described as being either in constant flux or lacking resources as well as aims (Petersen and Sjursen 1998, 18). Thus, different from a nation-state actor, it is much more difficult to define a pattern in the EU's external policy.

However, in all its ontological uncertainty, some clearly distinguishable values and principles of EU foreign policy can be detected, making the EU a unique actor. Democracy, human rights and the rule of law constitute the basic founding principles of the Union and are perceived as universal values (Lucarelli and Manners 2006, 204). As such democracy, human rights and the rule of law are also among the dominant values determining the EU's foreign policy action. In this context, the EU has come to be described as a 'civilian', 'soft' or 'normative' power. On the one hand, these connotations highlight the EU's lack of military resources and capabilities the ESDP is suffering from, on the other hand, they also disclose a soft power approach which is rather untypical for an (emerging) global player.

This paper aims to provide a current perspective on the discussion of the EU as a 'normative power'. In doing so, special focus is laid on a single-case study elucidating the civilian aspect of the ESDP. The EUJUST Themis Mission to Georgia in 2004 was the first rule of law mission under the framework of the ESDP. The EU delegated a team of judges mandated to provide advice in a reform of the criminal justice system aimed at the

improvement of legal enforcement procedures and the independence of the judiciary. The EUJUST Themis Mission is used in order to substantiate the premise of the EU being a law-based system established on fundamental values which are concurrently main point of reference in her foreign policy-making. In effect, any action, most notably those having an external perspective follow the pattern of law-abiding and value promotion as prime dictum of the EU's action.

The research question of this paper elucidates the motivational basis for an ESDP rule of law mission to Georgia in 2004. Moreover, the EUJUST Themis Mission is used as an exemplary case for the study of the design and pattern of the EU's external value promotion. This paper aims at bringing clarity to the analysis of the normative power dimension which the EU exhibits in her foreign policy and increasingly refines her image in the world as an emerging global power.

The paper is divided into three sections. The first part sets out a theoretical framework of rationalism and constructivism as explanatory theories for the launch of EUJUST Themis. The second part discusses the current debate on the normative and civilian power dimension of the EU which is used to describe her actorness in the foreign policy realm. The third part examines the pattern and underlying motives in the planning and design of the EUJUST Themis Mission, including an evaluation of the mission's impact on the criminal justice reform in Georgia. Lastly, the findings of the three preceding sections are integrated in the conclusion.

This research makes use of primary sources by the Council and its administrative units, involved in the planning and preparation of EUJUST Themis. Additionally, secondary sources for the theoretical conceptualisation and analysis of decision-making processes are consulted. Finally, three interviews with officials familiar with the details of EUJUST Themis are integrated for the overall qualitative study presented of this paper.

Chapter 1: Conceptual Framework

A conceptualisation of the EU's normative or civilian power approach in its foreign policy requires a theoretical foundation equipped with a thread capable of explaining the EU's strategic, but also more altruistic interests in the stabilisation of a geographically proximate country like Georgia by endorsing a rule of law reform. As such, rationalism but also constructivism can serve as theoretical foundations to explain the intra-institutional dynamics as well as wider motives of an ESDP rule of law mission to Georgia. Whereas rationalism serves well to comprehend the EU as a self-interested and utility oriented actor interested in a stable periphery, constructivism points towards the EU's actions being embedded in a social environment, thus, action being based on a common system of norms and values. While both theoretical perspectives on their own can not explain why the EU decided to launch EUJUST Themis, combined they provide the necessary explanatory value for the intra-institutional compromise as well as the net-beneficial security gain of a rule of law mission to Georgia.

Importantly, rationalism and constructivism can neither be seen as elaborated nor competing theories. Instead, Schimmelfennig and Sedelmeier denominate them as “social meta-theories defined by a set of mainly ontological assumptions about the social world rather than by specific hypotheses” (Schimmelfennig and Sedelmeier 2002, 508). In this sense, rationalism and constructivism can both be regarded as two sides of the same coin.

Rationalism is founded on an individualist and materialist ontology. Hence, the basic unit of inquiry is the individual's action, implying the logic of consequentiality as a defining characteristic (Jupille, Caporaso and Checkel 2003, 13). Accordingly, actors behave strategically, pursuing a maximisation in their utility based on a personal cost-benefit calculation. In simple terms, actors are primarily egoistic. Bearing in mind the rationalist perspective, the EU's engagement in Georgia reflects the function of a CFSP which is build

on the premise of protecting the EU Member States from external dangers and thus serves as an explanatory variable for the mechanism of securing the EU's periphery outside her own territory. Likewise, does rationalism elucidate Member States' interest in a European rather than individual rule of law mission as costs and risks are shared among each other, thereby minimising personal losses.

Henceforth, rationalist-institutionalism explains the restorative strength of an institutional setting, like the EU which can provide additional material benefits to an actor capable of observing the rules of the game. In effect, institutions themselves are of instrumental value enabling interested actors the pursuance of their respective interests. Against this background, institutions like the EU are understood as 'clubs', which actors join to maximise their net benefit (Schimmelfennig and Sedelmeier 2002, 509-512). This assumption is especially powerful in elucidating the initiative to launch a rule of law mission which was introduced to the Council by Lithuania and received particularly strong support by the new Member States from Central and Eastern Europe.

As outlined above, the constructivist perspective considers a different set of social ontologies and logics of action. It is built on a social and ideational ontology and the logic of appropriateness (March & Olsen 1989, 160). Accordingly, actors' identities and interests are shaped by institutions, thus, it is the social environment determining the preferences and behaviour of actors. In other words, actors' preferences and behaviour become a product of their social environment (DiMaggio 1998, 700). Contrasted with the rationalist perspective, constructivism considers actors' interests not to be shaped by perceived benefits but a distinctive context (Nugent 2004). Hence, the individual tends to reconsider its personal interests in light of the collective's interests. Whereas rationalism emphasises the utilitarian and efficiency-enhancing function of institutions, constructivism considers them as

autonomous actors with a legitimacy-providing function (Schimmelfennig and Sedelmeier 2002, 509).

Applying the constructivist perspective to the EU's external action as in the case of EUJUST Themis, much of the EU's behaviour is determined by its characteristic and constitutive norms and values which also play a major role in its foreign policy. From this approach, the EU made an altruistic decision for launching a rule of law mission to Georgia in the immediate post-Rose Revolution momentum led by Europe's maxim of value promotion in her foreign policy (Lucarelli and Manners 2006, 43). Additionally, the agreement to launch EUJUST Themis, especially under the unanimity principle, can be determined by the logic of appropriateness. According to this, Member States sceptical of a rule of law mission could overcome their reservations and agree on a compromise by clear reference to the EU's role as a force for good and promoter of its constitutive values.

All in all, rationalism and constructivism provide two theoretical underpinnings for the Council's decision to launch a rule of law Mission to Georgia. In the course of this paper the question of how a situation in which both sets of ontological assumptions could converge is answered. The EU's action in launching an ESDP mission to Georgia seems to conform to both constructivist and rationalist explanations. On the one hand, value promotion is part of the EU's foreign policy, and on the other hand, her engagement in the Southern Caucasus Republic is explained by a material cost-benefit analysis trying to stabilise a geographically close neighbour whose security situation is also of considerable interest to the EU.

Rationalism provides an explanation for assistance aimed at securing the EU's periphery, by preventing a deterioration of the situation within the country and eventual negative spill-over effects or repercussions on the EU. This perspective accounts for the decision to offer assistance in a rule of law reform, yet, it fails to explain why the EU's engagement was fairly modest, having a mandate of twelve months and deploying only nine

legal experts to the region. This deficit is compensated by the constructivist perspective which on the one hand perceives the EU as a community of states sharing and exporting liberal principles to the outside world, but on the other hand requires a foregoing compromise between Member States' interests. With the Rose Revolution and an opening towards Western-style democracy, Georgia made an active reference towards willingness for change led by a rapprochement to a similar value system as represented by the EU.

Thus, the EU's motives and design of EUJUST Themis stem from an internal as well as an external dynamic. Rationalism and constructivism are well suited to explicate both perspectives. Firstly, it was a purposeful use of rationalist methods of some Member States, notably the new ones, which started off a discussion on a rule of law mission to Georgia. Next, the constructivist perspective created a compromising effect, resulting in the support of EUJUST Themis by all Member States of the Union. On the external perspective, constructivism serves to justify the EU's action on grounds of her value promotion and role as a 'force for good'. Having said that, rationalism can be used as an explanatory variable for the EU's self-interested actorness which is concerned about her security environment at the south-eastern end of her territory. In the end, the bargaining and decision-making processes demonstrate the effective interplay of the two social ontologies.

The next chapter returns to a deeper discussion of the constructivist perspective, shedding some light on the role and motivational basis the EU's inherent value system constitutes and which appeals on her normative power dimension in foreign policy actions and accounts for the outcome of EUJUST Themis.

Chapter 2: The EU as a normative power

Different from other actors in the world arena, the EU is much more difficult to comprehend academically and practically. It can neither be classified as a single state, nor as an international organisation. Due to the increasing degree of coordination, but also due to the sovereign status of Member State foreign policies and the at times very visible struggles for competences, EU foreign policy acquired a very specific character which is markedly different than that of state actors. In this regard, the EU's foreign policy has been mainly focussing on technical and humanitarian support abroad, thus, disclosing characteristics of a classical 'soft power'. Different from a 'hard power' which is associated with a state's aims and objectives being pursued primarily by military means, a 'soft power' relies on "persuasion and attraction, not on coercion" (Smith 2004, 4).

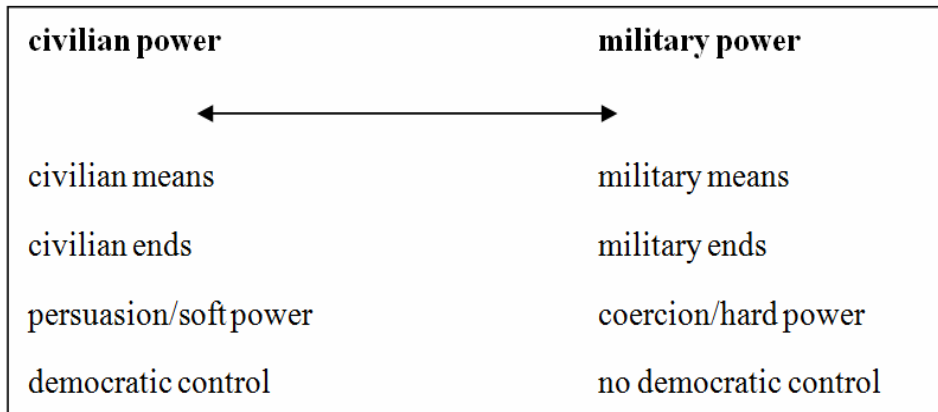
In a comparative perspective, Kagan extends the soft and hard power concepts by terming the EU a 'Kantian paradise', whereas according to him the USA is rather a 'Hobbesian power' (Sjursen 2006, 237). Thereby he stresses the understanding of the EU to be a 'different' international actor. The aim of this chapter is to put the EU's engagement in the form of a rule of law mission to Georgia in perspective of what is commonly denoted as the normative power Europe (NPE) or civilian power Europe (CPE) argument. To be able to evaluate the EU's motives to launch the EUJUST Themis Mission dealt with in Chapter 3, a theoretical underpinning of the EU's normative foundation and its origin is of vital importance.

2.1 Civilian or normative power Europe?

In analysing the EU's support in an ESDP rule of law mission to Georgia as well as its further engagement in the country in the framework of the European Neighbourhood Policy (ENP) and the recently instituted Eastern Partnership, it is of considerable help to take up the conceptualisation of the EU as a 'normative power'. Fundamentally, this hotly debated notion typifies the wider motives on which the EU as an international actor interferes in other countries' affairs and/or tries to establish itself as a global actor. Furthermore NPE describes the EU as an international actor which is mainly interested in the strict compliance and promotion of normative values like democracy, human rights and the rule of law. The academic debate on the question of existence of the EU being a normative power stems back to the 1970s and has sparked renewed interest since the creation of the CFSP after the Maastricht Treaty and later its military component, the ESDP.

It was François Duchêne who first introduced his famous concept of the EU being a "civilian power" (Manners 2002, 236), thus, an actor first and foremost characterised by economic instead of traditional military prowess, which until then had been the dominant factor deciding on a country's international influence and political dominance in the International Relations discourse. In a later elaboration, Twitchett and Maull enumerate three criteria of a civilian power, these being "the centrality of economic power to achieve national goals; the primacy of diplomatic co-operation to solve international problems; and the willingness to use legally-binding supranational institutions to achieve international progress" (Manners 2002, 236-237). A summary of the contrasted view of the two notions is presented in Figure 1 below.

Figure 1: Characteristics of an ideal civilian and military power



(source: Smith 2004, 6)

With the advancement of the European integration process and the creation of a CFSP and later ESDP component, the designation of the EU being as a civilian power became more and more contested. Critics, especially from the realist school of thought like Hyde-Price, dismissed the notion of the EU being a civilian power, referring to the increased role of the military and a shift in the EU's foreign policy making from soft towards hard power instruments (Hyde-Price 2006, 227). Hyde-Price's critique in particular addresses Ian Manners, who diverted the discussion from the EU being described as a civilian towards his newly (re-)discovered notion of a normative power. So, whereas the EU's international nature was formerly described as a civilian power – grounded on the assumption of the EU lacking a military component – the creation of a common security and defence policy instated a diversion in the academic world towards a normative perspective of the EU's foreign policy.

In principle, both notions comprise similar understandings of how an international actor pursues its foreign policy aims. The subtle but decisive distinction which caused the civilian-normative debate is the institutionalisation of a common security policy, which now allows the EU to resort to military means to impose its foreign policy agenda. This idea is contrasted to what has been previously called the CPE, whose instruments were of different –

civilian – nature. Unfortunately, the distinctive features of ‘civilian’, ‘civilising’ and ‘normative’ power Europe remain latent. This problem has not been solved by the academic world which has produced numerous voices with varying understandings of either the ‘civilian’ or ‘normative’ identity in the foreign policy of the EU.

Based on the theoretical split into advocates of a civilian understanding on the one hand and a normative on the other, the rather vague criteria of both concepts disclose the underlying problem of the debate. So does for instance Orbie, countering the dispute of a CFSP/ESDP plutoing the EU’s stance as a civilian power by referring to Larsen, state that “a defence capacity transforms the EU from a civilian power *by default* (making a virtue out of necessity) to a civilian power *by design*” (Orbie 2006, 125). Interestingly, whereas Hyde-Price argues that the development of military capabilities transforms the EU from a civilian to a normative power, Orbie and Larsen rather reassess the original notion of CPE than endorsing a new concept. This resembles very much the underlying dilemma of the academic debate which is narrowly focused on the two terms and less so on their connotation which are subject of at times very diverse readings.

Due to the contested nature of the two notions, an indispensably important element for the comprehension of EU foreign policy making is impeded. Reducing a ‘civil’ versus ‘normative’ power debate to a single factor like the military component distorts both concepts. In the end, events like the increased engagement of the EU worldwide, especially in the form of civilian missions, underscores the necessity of a clear theoretical conceptualisation of the EU’s foreign policy attitudes. A preliminary assumption may be that civilian ESDP missions are also concordant with the normative power argument, but different from Duchêne’s original thesis, describe the EU as an actor possessing military capabilities which may also result in the ultimate usage of force. So does Sjursen note that “we cannot from the outset say that the ability to threaten to use military force would be contrary to a

‘civilizing’ or ‘normative’ power” (Sjursen 2006, 238). Accordingly, the NPE argument is not incompatible with the current status a CFSP with noteworthy military capabilities.

Likewise, the debate indicates an increased international engagement of the EU and the necessity of an explanatory theory. First and foremost, most ESDP missions are of civilian nature. Nonetheless, due to the higher risk and the general sensitivity of military operations, resources on staff as well as planning divisions outweigh on the military than the civilian branches of the Council’s bureaucracy in Brussels (Björkdahl and Strömvik 2008, 13-19). Hence, military structures and frameworks are embedded in a much higher degree of institutional prioritisation, despite them statistically constituting only one out of six ESDP missions (Manners 2006, 189). An explanation of why the civilian-normative debate of EU foreign policy is so predominant might lie exactly in this assessment.

Figure 2 gives an overview of EU missions worldwide for the past decade, highlighting the majority of the missions being civilian or joint civilian-military missions. EUJUST Themis was the first stand-alone rule of law mission adopted under the ESDP umbrella (Grevi, Helly and Keohane 2009, 203). Compared to other missions, Themis can be seen as a rather modest, as fairly small (9 EU legal experts) and temporary short mission (12 months). Nonetheless, as shown later, it represents an important evolutionary step in the sequence of ESDP missions.

Figure 2: EU Missions worldwide, as of May 2010



(source: Council of the European Union, 2010)

As a critic of Manners, Karen Smith considers the availability of military force to be contradictory to what is understood by a 'normative' or 'civilian' power (Smith 2000). Contrary to her position, Manners' NPE argument does not concentrate on military capabilities, but on the EU's "ability to shape conceptions of 'normal' in international relations" (Manners 2002, 238). Taking a closer look at what is understood under NPE, Sjursen ascertains that "most authors argue that the 'normative', 'ideational' or 'civilizing' power of the EU is linked to the core characteristics of the organization – which predisposes it to act in a normative way" (Sjursen 2006, 242).

These constitutive factors are:

- a) the EU's historical context,
- b) its characteristics as a hybrid polity,
- c) its political-legal constitution,
- d) a combination of supranationalism and international forms of governance,
- e) and its constitutional norms, which embody the principles of democracy, rule of law, social justice and respect for human rights (Sjursen 2006, 242).

Henceforth, the EU's foreign policy actions originate in a set of values, which are concomitantly her constructive basis. As expressed by Manners, "the most important factor shaping the international role of the EU is not what it does or what it says, but what it is" (Manners 2006, 184).

Furthermore, the close conceptual proximity of the civilian and normative notion alludes to the drastic political evolution of the EU and its institutions since the 1970s. As expressed by King, "[t]he EU has evolved into a hybrid of supranational and international forms of governance which transcends Westphalian norms" (Manners 2002, 240). Representing a new and formerly unknown political entity, the originally constitutive values of the EU like democracy, human rights, liberty and the rule of law became increasingly important in the EU's outward projection. Having itself experienced the beneficial effects of the EU's founding principles, the EU has become a fierce promoter of these to the outside World.

As such, Article 6 (1) of the Treaty on the European Union states that "[t]he Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States" (TEU, Article 6(1)). These constitutive values of the Union are reiterated in Article 11(1) in the provisions for a CFSP saying that

The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of

which shall be: [...] to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms (TEU, Article 11 (1)).

Thus, the EU's normative appearance in its foreign policy results from a deep-rooted and inherent building block constitutive and descriptive of her own origin. As expressed by Merlingen, Clapham and Smith,

This combination of historical context, hybrid polity and legal constitution has, in the post-cold war period, accelerated a commitment to placing universal norms and principles at the centre of its relations with its Member States and the world (Manners 2002, 241).

In sum, the decision to launch EUJUST Themis can be justified on the EU's dictum to create an area of peace and security which goes beyond the EU Member States borders, but includes the periphery as well. Milieu shaping, i.e. the EU's objective of shaping the environment in which it operates (Smith 2008, 8) is pursued via the promotion of the EU's core values of sustainable peace, social liberty, human rights, rule of law, inclusive equality and consensual democracy (Manners and Lucarelli 2006, 33) which have become a major guiding principle in the EU's foreign policy.

2.2 Normative power Europe as a point of self-reference

The civil-normative power debate can be summarised in what Galtung calls the "ideological power" of the EU (Manners 2002, 239). Taking up Duchêne's original notion and expanding it further, he says that "Duchêne was also interested in the normative power of the EC as an *idée force*, starting with the beliefs of the 'founding fathers' [...]" (Manners 2002, 239). According to Galtung, power used as means of foreign policy is distributed through three channels – remunerative, punitive and ideological – whereby thanks to her structural advantage the EU is especially strong on its ideological one (Manners 2002, 239). In a similar

vein, the EU's self-representation is often interpreted to be "a force for the good in international affairs" (Merlingen and Ostrauskaite 2006, 15). This very idealistic picture of the EU is used to underpin her "narrative of norm projection" (Merlingen and Ostrauskaite 2006, 15), which is justified by the inseparability of "values and principles on the one side, and EU identity on the other" (Lucarelli and Manners 2006, 211). Scheipers and Sicurelli further elaborate on the idea, saying that "Europe's ideological power and the construction of a specific European identity should be considered as linked processes that together form the core of the normative power concept (Scheipers and Sicurelli 2007, 437).

Figure 3 compiles the main features of the civilian-normative debate on the nature of the EU's foreign policy as discussed above, with a clear focus on the ideological dominance as defining characteristic for the NPE argument.

Figure 3: Civilian and normative powers

	Civilian	Normative
Carr	economic	opinion
Galtung	remunerative	ideological
Manners	Ability to use civilian instruments	Ability to shape conceptions of 'normal'

(source: Manners 2002, 240)

The way the EU's constitutive norms are interpreted is essential not only for academics, but even more so for policy makers who are finally the ones to decide on how values translate into policy action and what role they take in the decision-making. The presented dichotomy of the normative versus civilian power Europe raises critical questions

of the EU's role and her content structure in an emerging foreign policy. Referring to the "diverse readings of the civilian power Europe concept" and the "discursive struggle, e.g. about the desirability of European defence and of normative foreign policy goals", Orbie not only demonstrates "the unsystematic manner in which it [the CPE concept] was advanced, but also shows that [t]he enduring resonance of the CPE role is thus *because of*, rather than in spite of, his [François Duchêne's] rather imprecise description" (Orbie 2006, 123-124).

Revisiting the civilian and normative power concept is of particular importance as either of the two perspectives is indicative on which grounds and by what justification identity formation and identity shaping is constructed. This is stressed by Diez who "suggests that the 'normative' power argument should be understood as a practice of constructing a European identity" (Sjursen 2006, 247). This is yet another stumbling block on which the academic community has found little agreement on, in particular as regards the impact and extent on which values predetermine a certain path of action. Yet, the EU being essentially a community based on fundamental norms and values which at the same time constitute its basis as well as justification for action, it is important to be able to comprehend the role of values in the foreign policy making of the EU. After all, "the power of the EU lies in its ability to project core values beyond its borders" (Scheipers and Sicurelli 2007, 435). Much of this understanding not only determines the EU's self- but also outside identification.

Recognising this necessity, a new form of research in the international relations scholarship has been stimulated. So, Jepperson, Wendt and Katzenstein point to the sociological fashion of research on norms which is flourishing especially since the end of the Cold War (Merlingen 2007, 439) coinciding with the development of the CFSP and later ESDP. Closely connected with the motives of CFSP action is what is called the 'value export of the EU', thus action being justified on ethical grounds, whereby the "EU has a moral obligation to respect and defend in world politics" the normative qualities of the EU

(Merlingen 2007, 439). As originally argued by Duchêne “Europe must be a force for the international diffusion of civilian and democratic standards’ and promote values that belong to its inner characteristics” (Orbie 2006, 126).

Furthermore, as assessed by the advocates of a normative perspective on EU foreign policy, “[t]here is a general sense that the EU’s external policies are not solely derived from a desire to promote its own interests, but must be seen as moved also by a certain understanding of what ‘ought’ to be done” (Sjursen 2006, 239). In this sense, the EU is regarded as an “alternative power” (Scheipers and Sicurelli 2006, 451), contrasted primarily with the USA. What is stressed in particular is that, although the EU and the USA both share a similar understanding on norms like democracy and rule of law, they interpret them differently (Scheipers and Sicurelli 2006, 451), in consequence also employing different means as their respective foreign policy tools.

Much of the understanding of the EU being regarded as a ‘normative’, ‘civilian’, or ‘civilizing’ power is inevitably linked with its (emerging) identity. As assessed by Scheipers and Sicurelli and demonstrated by the case-study of EUJUST Themis, “[t]he EU’s normative power lies in its ability to contribute to norm-spreading and institution-building. Its credibility lies in the decision to constrain its action through international law” (Scheipers and Sicurelli 2006, 452). As criticised by Giddens, the lack of reflexivity of a NPE concept by the EU, i.e. the actual degree of awareness of her constructed ‘normative’ identity is what triggers his doubt on the EU’s stance as a ‘normative’ power. At the heart of this criticism lies the sheer impossibility of creating a common European identity, which as said above is a point of reference and constitutive force of the EU’s external action. Despite this sociological difficulty, the EU has managed to create an authentic set of values which allow her to act as a ‘normative’ power. At the centre of the EU’s focus in her foreign policy action lies the promotion of sustainable peace, social liberty, human rights, rule of law, inclusive equality

and consensual democracy. These objectives have been recognised as fundamental in the attempt to prevent conflict and develop an integral security dimension.

In sum, the EU's security dimension and increased commitment to conflict prevention are a consequential development following a rationale which is founded on her historic evolution including the fairly recent incorporation of the CFSP and ESDP. Consequentially, the EU's constitutive values find a direct way of promotion through the CFSP being transcended beyond the EU's own borders. As a larger unit of analysis of this paper, EUJUST Themis represents an ideal case disclosing an apparently altruistic support mission which simultaneously pursues the self-interested aim of value promotion and conflict prevention. Lastly, linking the role of values, objectives and the EU's identity, Karen Smith notes on the ideational dimension of a CFSP, saying that "the goal of preventing conflict has become a valued facet of the EU's international identity" (Smith 2008, 178).

The next chapter analyses the decision-making process and the political considerations involved in the preparation of the EUJUST Themis Mission. The constantly adapting European identity and in this regards the impact of Eastern Enlargement also played a vital role in the design of the mission, directly referring to the issues raised in this chapter.

Chapter 3: Why the EU decided to launch EUJUST Themis

to Georgia in 2004

To elucidate the motives which persuaded the EU to undertake a rule of law mission to Georgia in 2004, but also to better comprehend the EU's position as a foreign policy actor interested in the safeguard of stability in the so-called 'Wider Europe'¹, a closer look at the circumstances of the mission and Georgia's internal situation in 2004 are of considerable importance. In this respect the evolution of the civilian crisis management capabilities of the ESDP, the Eastern Enlargement of 2004 and the consequential geographic approximation of formerly distant and still security-wise viable countries, put Georgia more on the EU's foreign policy radar. It is these three main foci on which Chapter 1 provided a theoretical framework and whose practical aspects in the form of the EUJUST Themis Mission are discussed here. Equally, these motives form the very heart of the EU's foreign policy thinking as regards Georgia in 2004 and which led to the launch of an ESDP rule of law mission. This chapter aims to provide a dense set of arguments and considerations which played a role in the EU's initiation and design of her first rule of law mission under the umbrella of the ESDP directed at a criminal justice reform in Georgia.

¹ A term introduced by the European Commission in 2003 to refer to the EU's Eastern and Southern neighbours. The aim is to create a more coherent policy towards the EU's neighbours by advancing their stability, economic prosperity, and thereby also ensure a friendly neighbourhood and a secure external environment.

3.1 The Mission's preparatory work

On 6 April 2004 in a meeting with the High Representative Javier Solana, the freshly elected Georgian President Mikheil Saakashvili made a request to the EU asking “for rapid support in the field of Rule of Law” (Council 2004a). This appeal was followed by a formal invitation by the Georgian Prime Minister Zurab Zhvania two months later. Only three weeks after Prime Minister Zhvania's invitation, the Council adopted Joint Action 2004/523/CFSP on EUJUST Themis, an ESDP Rule of Law Mission in Georgia (Council 2004, Factsheet EUJUST Themis). The mission commenced on 15 July 2004 and had a mandate for twelve months (Council 2004b).

In the meantime after Saakashvili made the first request, the Political and Security Committee (PSC) of the Council General Secretariat, which is in charge of the political control and strategic orientation of the ESDP, assigned the Committee for the Civilian Aspects of Crisis Management (CIVCOM) to prepare a strategy paper on a possible rule of law mission to Georgia. In a series of communications between CIVCOM and the PSC, an advisory note stressed the “window of opportunity for the EU to act rapidly to improve the Rule of Law situation in the country” (Council 2004c). Congruently, CIVCOM first advocated a Fact Finding Mission (FFM) to be undertaken before a final decision on a mission was to be made (Council 2004c).

By the end of May, a two-week long FFM headed by the French judge and later head of EUJUST Themis Sylvie Pantz had been accomplished, presenting a report dealing with issues such as planning, security, financing, operational capabilities, internal and external complementarity and added value of a rule of law mission (Council 2004c). The report also evaluated the prevalent rule of law situation in Georgia and possibilities for a field of activity of an ESDP mission and the various legal aspects of it (Council 2004d). The report of the FFM, like the Operation Plan (OPLAN) of the mission, being for the most part restricted, only

the essentials of the mission can be followed up. In this regard, a Draft Council Conclusion is helpful, highlighting the mission's aims to assist meeting the "urgent challenges in the judicial system, in particular the criminal justice system" which the EU pursues to address by assisting in "a co-ordinated overall Georgian approach to the legal reform process in full complementarity with current EU assistance" (Council 2004e).

Going beyond the technical and detailed terms and conditions of the OPLAN and the conclusions of the FFM, the Draft Council Conclusion allows a valuable insight into the political dimension of the mission and the aims it was set to achieve. Interestingly, despite of the apparent willingness of the EU for a rule of law mission to Georgia, the patronage under the ESDP was of more disputed nature. Parallel to the preparations of, and preceding an ESDP Mission, the Commission already supported a rule of law reform of the Georgian penitentiary system through the TACIS programme (European Commission 2004). This commitment the Commission already devoted to Georgia before EUJUST Themis became subject of discussion, implicated legal and financial tensions for a possible ESDP mission in the same realm. As such, it was important that an ESDP mission ensured complementarity to the existing Community instruments, so that neither legal, financial nor administrative discrepancies would arise causing an inter-institutional struggle which could menace the mission's success. In the end, by focusing on a reform of the criminal justice system, EUJUST Themis had a markedly different scope than the Commission's activity. Helly notes that "[a]lthough EUJUST Themis was an ESDP mission it supposedly prolonged or complemented, to a certain degree, what the EU had already been doing with first pillar instruments in the rule-of-law sector" (Nowak 2006, 89).

On 28 June 2004, the Council adopted Joint Action 2004/523/CFSP. The mission was to be divided into three phases, a planning, an operational and an implementation phase. The focus of EUJUST Themis was to assist the Georgian authorities in the drafting of a new and

in particular home-grown legislation for the reform of the criminal justice system with assistance from EU legal experts. The mission's aims which were to:

- (a) Provide urgent guidance for the new criminal justice reform strategy;
 - (b) Support the overall coordinating role of the relevant Georgian authorities in the field of judicial reform and anti-corruption;
 - (c) Support the planning for new legislation as necessary, e.g. Criminal Procedure Code;
- secondarily:
- (d) Support the development of international as well as regional cooperation in the area of criminal justice (Council 2004b).

As a fairly small mission – in time as well as duration – EUJUST Themis was composed by nine legal experts, who were seconded by their individual Member States coming from Lithuania, Latvia, Denmark, Sweden, the Netherlands, Poland, Italy, Germany, France, Estonia (Grevi, Helly and Keohane 2009, 201). It was the first of only two ESDP rule of law missions, with only EUJUST Lex in Iraq to follow (Sari 2008, 71). As such, it is often described as a test case for the ESDP civilian crisis management capabilities (Nowak 2006, 91).

The OPLAN of the mission divided it into three phases: “an Assessment Phase (2 to 4 months), a Drafting Phase (4 to 6 months) and an Implementation-Planning Phase (2 to 4 months) (Nowak 2006, 92). Another essential provision in the Joint Action was the co-location of the EU experts in different ministries and legal authorities of the Georgian administration who worked with:

- the Prime Minister's Office
- the Ministry of Justice,
- the National Security Council,
- the Council of Justice,
- the Prosecutor General's Office and
- the Public Defender's Office (Council 2004b).

Thereby, the Council wanted to ensure that a “horizontal governmental strategy guiding the reform process for all relevant stakeholders within the criminal justice sector, including the

establishment of a mechanism for coordination and priority setting for the criminal justice reform” could be guaranteed and the reform process would be done uniformly (Council 2004b). Also, the multiple co-location of EU experts in the different state organs was to ensure the local ownership character of the targeted reform, with the EU performing only an assisting and advising function.

3.2 The EU’s stake in Georgia

As mentioned earlier, the mission had an important internal but also external dimension. As expressed in the Council’s policy paper, “the EU should take a stronger and more active interest in the problems of the South Caucasus” (Council 2004b). This aim coincides with the geographic approximation of the EU on the one hand and the necessary strategic re-orientation on the other. So, the Commission notes in the EU-Georgia Action Plan that

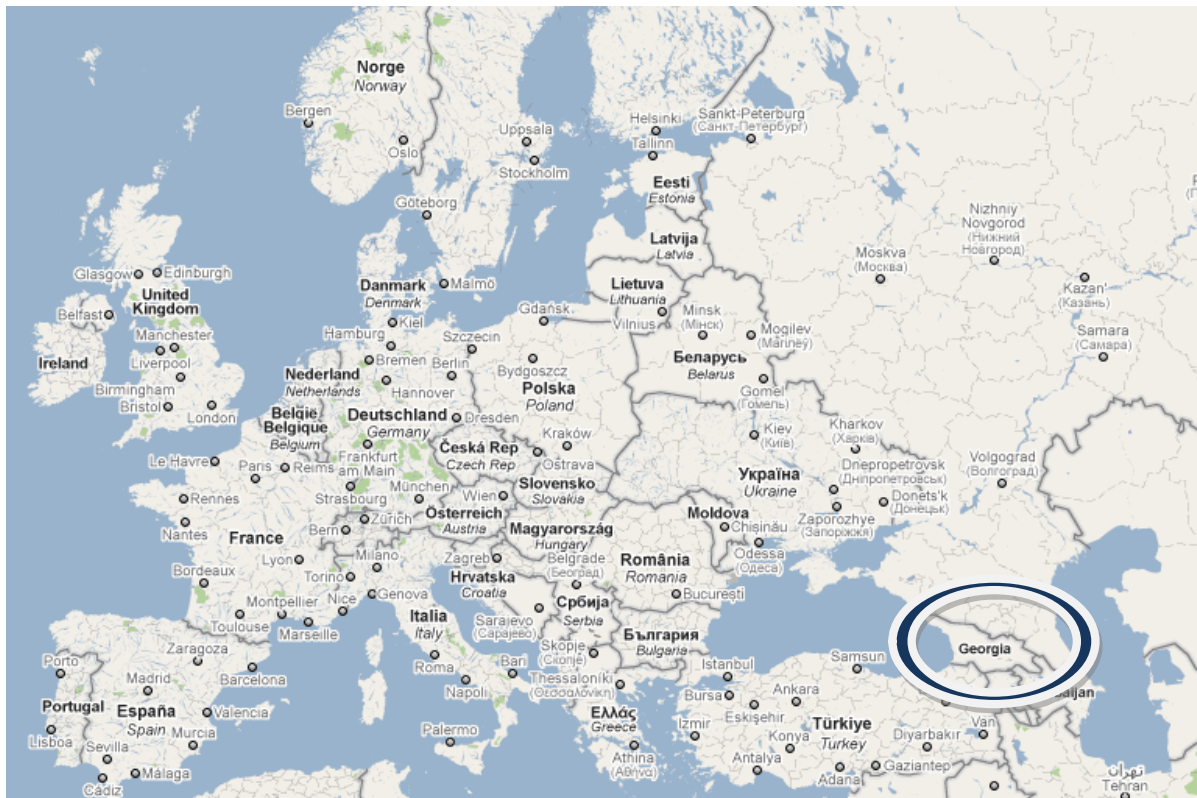
[t]he enlargement of the European Union on 1 May 2004 has brought a historical shift for the Union in political, geographic and economic terms, further reinforcing the political and economic interdependence between the EU and Georgia. It offers the opportunity for the EU and Georgia to develop an increasingly close relationship, going beyond co-operation, to involve a significant measure of economic integration and a deepening of political cooperation. The European Union and Georgia are determined to make use of this occasion to enhance their relations and to promote stability, security and welfare (European Commission, ENP Action Plan – Georgia).

Furthermore, the Action Plan acknowledges the “strengthen[ing] of rule of law through reform of the judicial system, including the penitentiary system, and through rebuilding state institutions” (European Commission, ENP Action Plan – Georgia) as a first priority area of cooperation before deeper integration between the EU and Georgia can occur.

Figure 4 displays a map of Europe with Georgia at her South-western periphery. Whereas an EU-15 had a buffer of the Central and Eastern European countries between her

and Georgia, the Eastern Enlargement moved Georgia much closer to the then EU-25, thereby increasing security threats or even violent conflict in the EU's neighbourhood – a deep-seated trauma like the Balkan wars of the 1990s the EU is eager to prevent (Council 2003).

Figure 4: Map of Europe with Georgia



(source: googlemaps)

Similar to the ENP, the European Security Strategy (ESS) from December 2003 is a means to protect the EU's security by assuring that of its neighbours. The ESS outlines the promotion of the EU's values and the defence of its security to be strategic objectives (Council 2003, 6). Recognising the interdependence between the EU Member States and its neighbours, the ESS adverts to the safeguard of the EU by means of building security in its neighbourhood. Accordingly, stabilising the countries at the EU's periphery decreases the risk of negative consequences or conflict spill-over on the EU. Among its priority areas are the promotion of good governance, conflict prevention, fight against organised crime and the

maintenance of a rule-based international order, hence, affirming the EU's interest in building a secure neighbourhood. The ESS states that "[o]ur task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations" (Council 2003, 6).

Additionally, the ESS explicitly specifies state failure, organised crime and regional conflicts as three of five key threats endangering the EU's security (Council 2003, 4). Since Georgia's independence in the early 1990s, these threats were an ever persistent feature of her political and security landscape, thus presenting a reasonable basis for concern. Although Georgia could not be considered a failed state in 2004, it was certainly a very fragile one. Disregarding the territorial conflicts in Abkhazia, South Ossetia and Adjara, corruption within the institutions and a low level of state capacity weakened the central authority of the government. Little progress was achieved under the precedent presidency of Eduard Shevardnadze who had done little to institute the necessary reforms to overcome the Soviet legacy. The change advanced by Saakashvili and the momentum of the Rose Revolution sparked hopes for overdue reforms. Writing on the importance of Georgia for the EU, Lynch writes,

[i]n 2004, the new government inherited a failing state that hardly existed in the Weberian sense as a unified unit with control over its territory and a monopoly on the use of force, able to extract resources from society and redistribute them for the public good (Lynch 2006, 17).

A report prepared for USAID came to a similar assessment, saying that

[w]eak and corrupt state institutions have lead to a lack of confidence in the political system, cynicism about the rule of law and a tendency to resolve conflict in extra-legal ways [...] public administration is, in fact, so saturated by venality in Georgia that it cannot respond to direction (Lynch 2006, 21-22).

Sierra pinpoints the EU's interest in the stability of Georgia even more bluntly by referring to the importance of Georgia as an energy transport route to the EU. "The EU is interested in the stability of Georgia given the strategic position of the country as a transit

corridor – both in transport and energy – and the risks of escalation of internal and regional conflicts” (Sierra 2009, 481).

Despite the comparably small size of the mission, with a strength of only nine EU legal experts and a duration of twelve months, EUJUST Themis was nonetheless a balanced compromise between the Council on the one hand and the Commission on the other (Interview Official B). As outlined, initially the Commission was very sceptical about an ESDP rule of law mission and would have preferred to revert to first pillar instruments like the ENP. However, a rule of law mission under the umbrella of the ESDP and as an official crisis management operation, allowed for much better supervisory and report mechanisms to keep track of the progress achieved on the ground, than would have been possible under the first pillar. Besides the more advanced monitoring mechanism, the political signalling of an ESDP mission as compared to a more technical level of cooperation through the ENP, was yet another convincing argument which finally accommodated the Commission’s concerns. After all, EUJUST Themis was also a chance of the EU to present itself as a committed security actor in the region and thus could not fall short of the expectations raised by the Georgian side.

Likewise, Merlingen and Ostrauskaite point out that the wished for effect of EUJUST Themis would also entail a positive contribution to the territorial question over the two separatist regions of Abkhazia and South Ossetia.

While the rule of law mission EUJUST THEMIS had no official peace building role, a generous reading of its mandate may conclude that it assisted in creating the preconditions for the peaceful reintegration of the break-away republics. By promoting the rule of law, it sought to create an environment in which Abkhaz and South Ossetians could enjoy effective self-determination within Georgia’s internationally recognized borders (Merlingen and Ostrauskaite 2009, 19-20).

Besides the strategic interest in Georgia, the EU's fierce support of the democratic transformation of Georgia presents a main feature of the EU's foreign policy approach justified by the EU's dictum of value promotion, in particular as regards democracy, human rights and the rule of law. After the successful Eastern Enlargement and recalling Chapter 2 on the EU's normative foreign policy stance, Georgia became of increased interest and henceforth a new target for the EU's value promotion on the Eastern perspective. According to Sierra's reasoning and supported by the EUJUST Themis Mission as well as the Commission's ENP engagement in Georgia, "the EU mainly provides security through the promotion of norms and values" (Sierra 2009, 481). Establishing the rule of law has been identified as a priority in the EU-Georgia Action Plan (European Commission, ENP Action Plan – Georgia) and due to a driving momentum of Saakashvili's election and his efforts to bring Georgia closer to the EU, an ESDP mission was seen as an ideal supplement.

The Rose Revolution and EU-friendly disposition created an additional incentive the EU could not ignore. A strong presence in the country and advisory role in the reform process allowed the EU a pro-active and influential say in what Lynch called "a democracy in the making" (Lynch 2006, 9). Thereby, the EU could ensure "stability, security and prosperity of the EU and its neighbours" (Council 2004, Factsheet EUJUST Themis). As assessed by Helly, "the Rose Revolution created a new momentum for democratisation and westernisation" (Nowak 2006, 87), a fact precisely recognised by the Council, calling the mission a "window of opportunity" (Council 2004b).

3.3 The impact of the mission

Considering the gains an ESDP rule of law mission implied, the EU had fairly little to lose, but could benefit from a number of positive results in terms of reputation, experience, but also security improvement – for Georgia and for the EU. After all, compared to other international actors like the USA, NATO, UN and the OSCE, the EU enjoyed a very favourable position pursuing a holistic approach (Sierra 2009, 485), including Community instruments, Member State contributions and with EUJUST Themis an intergovernmental and highly political method with ample resources to support the Georgian reform agenda. Furthermore, the areas of security, development, justice and democracy (Sierra 2009, 481) being clearly interlinked, an engagement in a rule of law reform would have had a beneficial effect beyond solely the country's criminal justice system, but would also have contributed to the improvement and promotion of the principles of good governance and accountability in the country. Both were essential in the pursuit of democratic governing.

In this context, the EU had recognised rule of law as a priority in the stabilisation of the country and necessary for the consolidation of democratic structures. The relatively low profile of the EU engagement until 2004 experienced a markedly uplifted status in a highly sensitive area like criminal justice reform, which typically states are very protective of. Not only did the mission provide an opportunity for an effective reform of the Georgian criminal law system, but it also allowed the EU to make its mark as a reliable partner and eager promoter of the 'new' Georgian way as well as to test its qualities as a security provider.

EUJUST Themis was an initiative first informally introduced by an Estonian diplomat in December 2003 (Nowak 2006, 92). It gained positive support by Lithuania who after obtaining the consent of the Irish Presidency formally introduced it to CIVCOM (Kurowska 2006, 9). In line with the early phase of discussion of a rule of law initiative to

Georgia and against the backdrop of the upcoming Eastern Enlargement, the Irish Presidency paid specific attention to the needs and risks the EU's new direct neighbours would bring. It expressed the "will [to] continue [to] work on the Wider Europe/New Neighbours Initiative to enhance relations with the Union's neighbours [...] on the basis of shared values of democracy, respect for human rights and the rule of law", with the aim "to achieve an extended zone of stability to the east and south" (Programme of the Irish Presidency 2003). Equally, the Presidency Paper outlined the development of civilian crisis capabilities as a priority area, in particular as regards "assistance with policing, re-establishing the rule of law and building civilian administration" (Programme of the Irish Presidency 2003).

All in all, the pro-European leadership in Georgia, the already ongoing discussion of a rule of law mission and the overall well-disposed attitude of the EU Member States created a window of opportunity for a rapid deployment of an ESDP rule of law mission. Whereas the new Member States advocated a mission on grounds of similar politico-historical experience during their transition and the desire to support Georgia on her way of democratisation, the Nordic countries finally wanted to test the civilian crisis management capabilities of the ESDP (Interview Official A). These were incorporated into the ESDP concept at the Feira European Council in 2000 to appease the Nordic Member States' demands of a civilian component in the ESDP toolbox (Keukeleire and MacNaughton, 182). However, out of the four civilian ESDP assets no rule of law mission had come to being until the EUJUST Themis Mission.

It was also the civilian character of the mission which assured the support of Member States having had traditionally good relations with Russia and who feared political repercussions of an eventual ESDP deployment. After all, as stressed by Kurowska it was not only the first ESDP rule of law mission, but also the first one in the post-Soviet space (Grevi, Helly and Keohane 2009, 202). Hence, a more cautious approach was necessary. With its

ambitions as a peace-builder and the necessary mechanisms for it, the EU's engagement in the form of the EUJUST Themis Mission underscored her soft power approach as a foreign policy actor. Equally, this normative basis secured a more neutral standing towards Russia.

Moreover, the mission had an important confidence-creating effect. Firstly, the mission was a clear political signal to the new Georgian government that the EU is committed to support the Georgian reform efforts after the Rose Revolution and as such "provided a strong political gesture of support" (Kurowska 2006, 9). Secondly, after the deployment of the mission the initial concerns of some Member States voiced over possible irritations with Russia became less visible. Arguably, having had a clear and de-facto apolitical – as more technical – mandate, the EU even strengthened its position as a credible foreign actor. In the end, the pronounced pro-Western policy of the new Georgian government and the EU's support was a major success in getting Georgia out of a "grey zone" (Kurowska 2008, 2) in which she was stuck for the time since independence and until the Rose Revolution.

Concerning the mission's achievements, logistical problems in the beginning of the mission as well as the nitty-gritty details of day-to-day functioning impeded the successful conclusion of the third phase of the mission – the implementation-planning phase as originally foreseen in the OPLAN (Kurowska 2006, 10). Consequently, two Themis experts remained and were placed with the office of the EU Special Representative (EUSR) to the South Caucasus. "They worked in Tbilisi until the end of February 2006 in close cooperation with the EC Delegation in order to assist in drafting the criminal law reform implementation plan to be included into the Georgian Action Plan for the ENP" (Kurowska 2006, 10). Although some Member States supported an extension of the mission in time, it was nonetheless completed according to its original mandate. The integration of two members within the EUSR secured a necessary follow-up of the mission, with competences being located within the Commission as the traditional body occupying the rule of law realm. Considering the

ambitious aims of a sweeping criminal justice reform encompassing the different players in the criminal justice system, the mission's progress was nonetheless immense. Despite these shortcomings, the "Georgian criminal law [was brought] closer in line with European practices" (Kurowska 2006, 10).

On the basis of the reform strategy a set of amendments has been introduced. In February 2010 a Criminal Procedure Code which was previously pending for four years and directly linked with the reform strategy of 2005 has been adopted. This included changes to the jury trial system, adversarial proceedings and also a new imprisonment code (Interview Official C). Likewise, the mission has been successful as regards the Georgian ownership of the reforms. The initial request by the Georgian President and Prime Minister for an EU rule of law mission displayed a strong political will. The delays in the set-up of working groups and inter-institutional work were of more technical nature, emphasising the difficulty in the horizontal cooperation between the different bodies of enforcement like the police, judiciary and prosecutors. The co-location of EU experts in the different institutions also tried to tackle this problem effectively. Furthermore, the reform process necessitated a sophisticated effort beyond just the actors involved in the criminal justice system. So did the Ministry of Finance of Georgia have a significant say in the reform agenda as it was responsible for the financial programme of the process (Interview Official C).

EUJUST Themis was a novelty in the multiplicity of past civilian crisis management missions of the EU. As such it provided a valuable experience further a expansion in the EU's expertise as a foreign actor concerned with the assistance of democratising states which adhere to the rule of law. The mission created a strong basis for further co-operation and support of Georgia, but needs to be seen as more than just an engagement in the country but rather as the EU's overall interest in the stability of the region.

Conclusion

Despite the frequently quoted elusiveness of the EU's foreign policy, this paper has nonetheless shown that the CFSP/ESDP dimension is constituted on a solid set of principles. The EU's adherence to her constitutive values and the promotion of these vis-à-vis other actors in the world have led to the prominent connotation of the EU being described as a normative power. The debate historically originating in François Duchêne's treatise on the European Community being primarily identified as a civilian power, i.e. an international actor using means of persuasion as well as economic instruments as forces of attraction, has gone a long way since then. The creation of a CFSP and later ESDP component challenged Duchêne's assessment, as the EU had acquired substantive military capabilities following the institutionalisation of a common foreign policy and its military capability component.

The reignited debate on the nature of the EU's foreign policy has since then focussed on the two notions of civilian or normative power Europe, assuming the EU's status of a soft power. Notwithstanding their close conceptual relationship, both notions are factually discerned on their ability to use power as a tool of foreign policy. Whereas the civilian power concept identifies an actor by his ability to use persuasion and remunerative instruments, the nowadays more ample notion of normative power Europe refers to the EU's ability as an ideological authority. This ideological role the EU takes up is fundamentally build on the EU's inherent values and principles, amongst them democracy, human rights and the rule of law as the defining fundament.

Based on this ascertainment, the research question on the EU's motives to launch an ESDP rule of law mission to Georgia was answered by the EU's foreign policy dictum of value promotion and her self-identification as a force for good which is interested in projecting her own constitutive values on the countries at her periphery. In the case of

Georgia, the EUJUST Themis Mission has disclosed the EU's active commitment to establish itself as a credible security actor interested in milieu shaping. At the same time the EU's conviction of its engagement in Georgia serves the self-fulfilling purpose of securing one's own security by ensuring that of its neighbours.

Regarding the two theoretical underpinnings discussed in the first Chapter, both bear explanatory value for specific aprons of the mission's background. Constructivism serves well as an explanatory dimension for the EU acting on grounds of an altruistic predisposition, hence EUJUST Themis being essentially a decision accommodating the Georgian request for a rule of law mission and the EU's goal of value promotion. Likewise constructivism is of considerable help in explaining the intra-institutional agreement to launch the first ESDP rule of law mission to the post-Soviet space which was not without controversy among the EU Member States. Nonetheless, the internal dynamic and overarching understanding of a common European identity combined with the apparent need for a quick response to support the new Georgian government in the drafting of a strategy on a rule of law reform achieved to accommodate all Member States' interests.

Rationalism as a second theoretical foundation evaluates the decision to launch EUJUST Themis based on the EU's interest of securing and stabilising a geographically proximate country and thereby prevent negative spill-over effects on the EU proper. According to this view, EUJUST Themis was a self-interested action which aimed to minimise costs of an eventual conflict by raising government capacity as well as allow the re-establishment of a rule of law order in the fragile state of affairs Georgia was in after the Rose Revolution.

Furthermore, the EU's Eastern Enlargement in 2004 and the consequential geographic approximation raised the interest towards the region which was prior to that less of a priority in the EU's foreign policy. An additional thrust putting Georgia on the EU's radar was the

specific politico-historic context of the new Member States which felt an obligation to support Georgia on its 'European' path. As such, the initiative for EUJUST Themis was introduced by Lithuania and in particular enjoyed the backing of the new Member States. A second group of distinctive countries interested in an ESDP rule of law mission were the Nordic countries which finally wanted to test the rule of law component of the civilian crisis management capabilities which were added to the toolbox of the ESDP at the Feira European Council but had not come to use until then.

Before the Council Joint Action on the EUJUST Themis could be adopted, though, the Commission as well as the Council had to overcome their quarrels on the design of the mission which had to ensure that no overlap as regarded an already existing first pillar rule of law support of the penitentiary system in Georgia was created. Finally, Themis was provided with a mandate to assist the Georgian authorities in the drafting of a reform of the criminal justice system.

Ten legal experts were co-located within different ministries and authorities for a period of twelve months. Due to logistical problems in the beginning, the mission could not fulfil its final Implementation-Planning Phase. As a result, two members of EUJUST Themis remained in Georgia after the completion of the mission and were added to the EUSR's office in Tbilisi to ensure a successful follow-up. Nonetheless, Themis had a noticeable positive as well as stabilising effect going beyond its mere mandate. The mission was successful in ensuring Georgian ownership of the reform agenda and its subsequent implementation. The EU proved to be a reliable guarantor of technical assistance as well as security in the region, having achieved an ambitious reform of the Georgian criminal justice system. It was also a clear sign that the EU supported Georgia on her chosen route of democratisation and Westernisation.

Moreover, EUJUST Themis was an important test case for the EU's civilian crisis management capabilities, but also forms an essential component in the continued development of her security dimension. The EU managed to establish itself as a credible actor which in view of the region's unsolved conflicts might allude to future engagements, in particular in the areas of democracy, human rights and rule of law as well as the strengthening of local state structures.

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