

Redefining the European Union’s Position in the Emerging Multipolar World: Strong Global Leadership Potential, Restrained by Asymmetry of Power and Dissonant Voices

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I. INTRODUCTION

A. *Post-West and Post-Lisbon:*¹ *The European Union in Motion and Necessarily Redefining Itself in Today's Multipolar World—What Will the Experimentalist EU Become?*

The unprecedented pace of change unfolding in today's multipolar world is producing a new global order in which all participants are forced to redefine their economic and political positions.² As many emerging economies promote growing nationalism across the globe, traditional Western powers—including both the United States and the European Union—must face the reality of a world in which the West is no longer solely ascendant.³ As the Treaty on European Union (TEU) twenty years ago marked a bold redefinition of the European integration project, so the recent Treaty of Lisbon has reformed institutions, streamlined processes, and elevated the European Union (EU) on the global stage⁴ as it again faces existential opportunities and internal and external conflict.

The EU itself is in motion within a global order that is also in motion. This atomic relationship is more radically multipolar than is readily apparent: “Few in the West have grasped the full implications of the two most salient features of our historical epoch. First, we have reached the end of the era of Western domination of world history

1. Timothy Garton Ash uses the term “post-West” to characterize the present era in which the West is no longer solely ascendant. See TIMOTHY GARTON ASH, *FREE WORLD: AMERICA, EUROPE, AND THE SURPRISING FUTURE OF THE WEST* 177 (2004); Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 6, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon] (entered into force Dec. 1, 2009, thus the “Post-Lisbon” reference).

2. Esther van Bochove, *Europe Facing the Challenge of a Rising Multipolar World*, UNIV. AMSTERDAM (Nov. 11, 2010), <http://www.fmg.uva.nl/politicalscience/news.cfm/33940856-0D35-4A46-90B211ADB4DD96EB>; Luk Van Langenhove, *The EU as a Global Actor in a Multipolar World and Multilateral 2.0 Environment*, in EGMONT—THE ROYAL INSTITUTE FOR INTERNATIONAL RELATIONS 21 (2010) (“There is overwhelming evidence that the world is going through a process of change that is unprecedented and that results in an acceleration of all kinds of uncertainties.”).

3. Dilip Hiro describes the evolution of today's “international order with multiple poles, cooperating and competing with one another, with no single pole being allowed to act as the hegemonic power.” DILIP HIRO, *AFTER EMPIRE: THE BIRTH OF A MULTIPOLAR WORLD* 6 (2010).

4. Hans Vedder, *The Treaty of Lisbon and European Environmental Law and Policy*, 22 J. ENVTL. L. 285, 285 (2010) (“Together with the Treaty of Maastricht, this treaty stands out from all other amending treaties in that it results in a complete overhaul of the legal framework of the Treaties and the structure of the European Union.”) (footnote omitted); see also *Treaty of Lisbon*, N.Y. TIMES, Feb. 25, 2010, http://topics.nytimes.com/topics/reference/timestopics/organizations/e/european_union/treaty_of_lisbon/index.html (including global innovations such as a new full-time presidency and a new foreign policy chief); Giorgio Maganza, *The Lisbon Treaty: A Brief Outline*, 31 FORDHAM INT'L L.J. 1603, 1603, 1609 (2008) (explaining concisely the Treaty of Lisbon).

Second, we will see an enormous renaissance of Asian societies.”⁵ The media are replete with references to the emerging BRIC (Brazil, Russia, India, and China)⁶ economies and their international influence. Industry analysts proffer, “[I]n less than forty years, the BRICs economies together could be larger than the G6 in US dollar terms.”⁷ Other experts observe the significant economic growth of additional countries—such as Indonesia, South Africa, South Korea, Turkey, and others—as dynamic centers of economic growth.⁸

But the coming power structure is broader than merely emerging economies:

Imagine a world with a strong China reshaping Asia; India confidently extending its reach from Africa to Indonesia; Islam spreading its influence; a Europe replete with crises of legitimacy; sovereign city-states holding wealth and driving innovation; and private mercenary armies, religious radicals and humanitarian bodies playing by their own rules as they compete for hearts, minds and wallets. It sounds familiar today. But it was just as true slightly less than a millennium ago at the height of the *Middle Ages*.⁹

Further motion is seen in the Middle East as the “Arab Spring” uproots many long-standing autocratic governments.¹⁰ Likewise, uncertain energy supplies worldwide distort power, depending on the markets and the climate.¹¹ Currency manipulation by numerous governments

5. KISHORE MAHBUBANI, *THE NEW ASIAN HEMISPHERE: THE IRRESISTIBLE SHIFT OF GLOBAL POWER TO THE EAST* 9 (2008).

6. “Goldman Sach’s invention of the term ‘BRIC’ to describe the Brazilian, Russian, Indian and Chinese economies turned out to be a brilliant marketing ploy. The acronym, invented in 2001, remains widely used, and BRIC funds are an important part of the emerging-markets universe.” *Another BRIC in the Wall: The Perils of Overestimating Emerging Markets*, *ECONOMIST*, Apr. 21, 2008, <http://www.economist/node/11075147>.

7. DOMINIC WILSON & ROOPA PURUSHOTHAMAN, GOLDMAN SACHS GLOBAL INVESTMENT RESEARCH, *DREAMING WITH BRICS: THE PATH TO 2050*, at 1 (2003).

8. William Pesek, *Goldman’s Picks Can’t Beat ‘7% Club’ on Sexiness*, *BLOOMBERG NEWS* (Feb. 16, 2011), <http://www.bloomberg.com/news/2011-02-16/goldman-s-picks-can-t-beat-7-club-on-sexiness-william-pesek.html>.

9. Parag Khanna, *Future Shock? Welcome to the New Middle Ages*, *FIN. TIMES*, Dec. 29, 2010, (London ed.) at 7.

10. World Bank President Robert Zoellick led efforts to provide international support to speed progress, “but only if coupled with real reform.” See Mario Ritter, *Investing in the Arab Spring*, *VOICE OF AM.* (May 26, 2011), <http://www.voanews.com/learningenglish/home/business/Investing-in-the-Arab-Spring-122690424.html> (internal quotation marks omitted).

11. *Geopolitics of EU Energy Supply*, EURACTIV.COM, <http://www.euractiv.com/energy/energy/geopolitics-eu-energy-supply/article-142665> (last updated Jan. 10, 2007) (“[T]he Ukraine-Russia gas dispute in January 2006 she [sic] a crude light over Europe’s dependency on imports and on the shortcomings of keeping 25 separate policies with external energy suppliers.”). The Polish Prime Minister recently encouraged the EU to implement the Third Energy Package as a way to promote European energy security. Christian Caryl, *Interview with Polish Foreign*

contributes to instability as governments react to economic and political pressures.¹²

Also, many countries in the EU are in political and economic turmoil as national budgets—in response to fiscal woes—are reducing resources available for jobs and services to citizens, which has altered the generous social contract of the previous fifty years in Europe.¹³ Due to the extreme financial positions in Greece, Ireland, Portugal, and Spain, governments are pressured to enact hugely unpopular legislation, further destabilizing their ability to govern.¹⁴ With national elections on the horizon in some Member States, the political rhetoric becomes acerbic.¹⁵

Massive “irregular” immigration from the Arab world rouses populist nationalism as well.¹⁶ For example, in the traditionally tolerant Netherlands, a law banning religious slaughter was recently proposed, causing alarm in Muslim and Jewish communities.¹⁷

Many Jews and Muslims see the ban as part of a growing European hostility to immigration and diversity. Geert Wilders, the far-right Dutch politician, has called for the Netherlands to ban the burka after France curbed the public wearing of the Islamic face veil; politicians including Britain's David Cameron have proclaimed the failure of multiculturalism; and anti-immigration parties such as Finland's True Finns have been increasingly successful at the polls.¹⁸

With the French presidential election nearing in 2012, President Sarkozy is likely to continue a discourse focused on immigration, fear, and xenophobia.¹⁹ Such negative, insensitive rhetoric does not promote stability in the EU or promote acceptance in the Islamic world.

Finally, change can be found in the fundamental ethos of the EU itself. The original reasons justifying incremental pooling of aspects of

Minister Radoslaw Sikorski, SPERO NEWS (June 6, 2011), <http://www.speroforum.com/a/55023/Full-Transcript-Interview-With-Polish-Foreign-Minister-Radoslaw-Sikorski>.

12. *Tensions over Currency Manipulation Lead to a Rise in Protectionism*, ECONOMIST INTELLIGENCE UNIT (Apr. 11, 2011), <http://gfs.eiu.com/Article.aspx?articleType=gr&articleid=480#>.

13. Eleanor Beardsley, *Can the European Welfare State Survive?*, NPR.ORG (July 14, 2010), <http://www.npr.org/templates/story/story.php?storyId=128485416>.

14. Wolfgang Münchau, *Politics Will Bedevil Resolving the Euro Crisis*, FIN. TIMES, Apr. 4, 2011, (Asia ed.) at 11; Charlemagne, *The Handicapped Union*, ECONOMIST, Apr. 2, 2011, at 52.

15. See Charlemagne, *supra* note 14, at 52.

16. Tony Barber, *A Line To Hold*, FIN. TIMES, June 15, 2011, (Asia ed.) at 9 (“[A] theme exploited by populist, ultra-right political parties [to make] substantial gains in elections.”).

17. Matt Steinglass, *Dutch Law Set To Axe Religious Slaughter*, FIN. TIMES, June 14, 2011, (USA ed.) at 8.

18. *Id.*

19. *France Unbowed After Sending Trains Back to Italy*, EXPATICA.COM (Apr. 18, 2011), <http://www.expatica.com/fr/news/French-news/france-unbowed-after-sending-migrant-trains-back-to-italy-143386.html>.

sovereignty for the original supranational Communities—the need for internal peace and economic rebuilding mixed with fear of external military aggression²⁰—are now mainly obsolescent. A unitary core motivation is less apparent in today’s European citizen and politician.

B. What Form of Polity Will the EU Assume in the Next Twenty Years? What Relative Position in the World? What Leadership Will It Exercise?

The EU’s famous common market will continue, and the Union—especially if it can further deepen its integration—could grow to much more. The single market remains the EU’s “biggest competitive advantage”:²¹ Five hundred million relatively prosperous inhabitants make any such trading bloc significant.²² Every Member State’s “commercial interests are force-multiplied by 27 member states’ weight.”²³ The EU and the United States have the largest bilateral trading and investment relationships, and their transactions together account for nearly forty percent of world trade.²⁴

Significant to political and legal science, the EU will continue to present the most distinctly advanced model of peaceful cross-border cooperation of any type,²⁵ the elements of which include: supranational authority,²⁶ post-Lisbon “legal personality,”²⁷ reasonably effective democratic institutions, high standards of human rights, and rule-of-law

20. SEBASTIAN ROSATO, *EUROPE UNITED: POWER POLITICS AND THE MAKING OF THE EUROPEAN COMMUNITY 5* (2011).

21. Charlemagne, *The Divisiveness Pact*, *ECONOMIST*, Mar. 12, 2011, at 64.

22. EUROSTAT, EUR. COMM’N, <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home> (from home page, select “Total population” hyperlink) (last visited Oct. 10, 2011).

23. Ben Judah, *UK-Russia Relationship—How Should the Coalition Government Proceed?*, *EGOVMONITOR* (Feb. 15, 2011, 9:29 PM), <http://www.egovmonitor.com/node/40756>.

24. The EU and the United States account together for thirty percent of global merchandise and forty percent of world trade services. *EU-US Facts & Figures*, DELEGATION OF THE EUR. UNION TO THE U.S. OF AM., <http://www.eurunion.org/eu/EU-US-Relations/EU-US-Facts-Figures.html> (last updated Aug. 3, 2011).

25. ROSATO, *supra* note 20, at 1 (“Once distinct and competing nation-states are now members of a supranational community that has no parallel in modern times.”).

26. For a detailed discussion of post-Lisbon supranationalism and EU voting, see Stephen C. Sieberson, *Inching Toward EU Supranationalism? Qualified Majority Voting and Unanimity Under the Treaty of Lisbon*, 50 *VA. J. INT’L L.* 919, 925 (2010) (“[N]o other international governance regime can even plausibly present itself as a governing ‘polity.’” (internal quotation marks omitted)). For assessment of Lisbon improvements especially addressing the democratic deficit, see Stephen C. Sieberson, *The Treaty of Lisbon and Its Impact on the European Union’s Democratic Deficit*, 14 *COLUM. J. EUR. L.* 445, 464-65 (2008).

27. Consolidated Version of the Treaty on European Union art. 47, May 9, 2008, 2008 O.J. (C 115) 41 [hereinafter Post-Lisbon TEU] (granting the EU legal personality).

enforcement.²⁸ Moreover, as discussed *infra*, recent events and EU decision making have further advanced the depth of European integration, yielding a more complex, flexible, and integrated quasi-federal polity.

Further, the EU is especially well-situated for future regional and international leadership in multiple sectors of international relations and policy, thereby fostering more enlightened policies and improved practices across the world, despite its inherent difficulties in speaking with “one voice.” As a leader on the world stage, this quasi-federation is generally unencumbered by the past half-century of international interventions or domestic suppressions that have so pointedly discredited, in many minds, the United States, China, and Russia. Thus, the EU stands in perhaps the most advantageous position of all nations or regional/international organizations for principled leadership today.

Viewed from another perspective, EU leadership is essential to preventing this new multipolar world from degenerating into another contentious bipolar world, possibly with the Western democracies opposing the autocracies of Russia and China, or perhaps with the traditionally Western cultures opposing Islam.²⁹ The EU may be the most important player in determining this future character of the world’s power structure because China, Russia, and the United States all are “capable of both multilateral and unilateral behaviour.”³⁰

The specific areas in which the EU enjoys advantageous leadership potential are several and could yield hugely significant results if the EU is able to exercise that leadership—for example, Europe’s unique position as the world’s foremost advocate of human rights protection, especially following the Treaty of Lisbon’s amendments to the TEU’s article 6. This article authorizes the EU to give legal effect to the EU’s Charter of Fundamental Rights and more significantly mandates that the Union accede to the Council of Europe’s monolithic Convention for the Protection of Human Rights and Fundamental Freedoms.³¹ The EU’s windward tacking toward authentic human rights protection at last nears its destination.³²

28. See Maganza, *supra* note 4, at 1606.

29. CHARLES GRANT & TOMAS VALASEK, CTR. FOR EUROPEAN REFORM, PREPARING FOR THE MULTIPOLAR WORLD: EUROPEAN FOREIGN AND SECURITY POLICY IN 2020, at 2-4 (2007).

30. *Id.* at 3.

31. Post-Lisbon TEU art. 6 (articulating the Charter and Convention provisions).

32. For the sanguine story of the European Economic Community’s path to human rights protection, see Hon. John L. Murray, Chief Justice of Ireland, Fundamental Rights in the European Community Legal Order, Speech at the Fordham Center on European Union Law and the Fordham International Law Journal Conference: Fifty Years of European Community Law

In 1992, the TEU substantiated the principle developed by the European Court of Justice by confirming in article F that the “Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms . . . and as they result from the constitutional traditions common to the Member States as general principles of Community law.”³³ The European Council decision at Cologne in 1999 authorized the “expansive, innovative provisions”³⁴ of the Charter of Fundamental Rights.³⁵ The EU required the Charter to broaden overall protection because the European Convention on Human Rights spoke mainly to civil and political rights and did not address social and economic rights.³⁶

In spite of many criticisms that the Charter was unenforceable, it became enforceable with the Treaty of Lisbon.³⁷ That treaty crowned the long procession by commanding the EU to accede to the European Convention on Human Rights,³⁸ with enforcement authorized by two prestigious organizations, the EU and the Council of Europe.³⁹ Europe today stands in the most prestigious pulpit of global human rights leadership.

Moreover, the EU’s accomplishments in promoting environmental protection, including its 20-20-20 energy and climate package,⁴⁰ give the EU special standing to campaign for international cooperation. The EU has the opportunity to advance both international climate change cooperation and greener, more secure energy policies.⁴¹ A collateral benefit of these initiatives would potentially encourage further integration of energy-rich Russia into mainstream Europe in areas ranging from economic and energy markets to improved cooperation in

(Feb. 20-Mar. 1, 2008), *reprinted in* 32 *FORDHAM INT’L L.J.* 531, 533 (2008) (examining the role of the Court of Justice of the European Communities, the Charter, and the Convention in this development).

33. Treaty on European Union art. F, July 29, 1992, 1992 O.J. (C 191) 47 [hereinafter TEU]; *see also* ANDREW WILLIAMS, *EU HUMAN RIGHTS POLICIES: A STUDY IN IRONY* 1-2 (2004).

34. Elizabeth F. Defeis, *Treaty of Lisbon and Human Rights*, 16 *ILSA J. INT’L & COMP. L.* 413, 414 (2010).

35. WILLIAMS, *supra* note 33, at 2.

36. Defeis, *supra* note 34, at 416.

37. Treaty of Lisbon art. 1(8).

38. *See id.*

39. The legal relationship of the two organizations is unclear as of yet. *See* Tony Joris & Jon Vandenberghe, *The Council of Europe and the European Union: Natural Partners or Uneasy Bedfellows?*, 15 *COLUM. J. EUR. L.* 1, 1-4 (2008).

40. *EU Parliament Approves Climate Change Package*, ENVTL. NEWS NETWORK (Dec. 18, 2008, 1:17 PM), http://www.enn.com/top_stories/article/38894.

41. Bertil Kilian & Ole Elgström, *Still a Green Leader? The European Union’s Role in International Climate Negotiations*, 45 *COOPERATION AND CONFLICT* 255, 255 (2010), <http://cac.sagepub.com/content/45/3/255.short?rss=1&ssource=mfr>.

human rights.⁴² The EU's Third Energy Package will also help reduce Russia's current leverage over EU energy supplies by making it harder for a company, such as the Russian Gazprom, to be both a supplier and transit provider.⁴³

Due to its geography, history, and present urgent circumstances, the EU could forge a breakthrough with improved migration and immigration policies, as well as the advancement of development and humanitarian aid, but only if it can reach consensus on its approach.⁴⁴ In spite of diverging national perspectives, the EU (and other countries and international and regional organizations) should rush to aid and stabilize exploding North African and Middle Eastern countries with an expanded Mediterranean policy.⁴⁵ Italy's Foreign Affairs Minister, Franco Frattini, called for a new level of EU cooperation and "an ambitious new development and stability pact" that includes: more money for the Mediterranean project, development to build jobs and strengthen the ineffective Union for the Mediterranean, and the creation of a Marshall Plan for the Mediterranean.⁴⁶ "What if the Arab spring turns to winter?"⁴⁷

Likewise, the EU's development policy, focused on these and other parts of Africa, contributes to stability of the regions and addresses dire human needs while advancing the EU's existing commitment to the United Nations' Millennium Development Goals.⁴⁸ "Europe has vast

42. Polish Foreign Minister, Radoslaw Sikorski, whose country assumed the Council Presidency July 1, 2011, recently advocated "Europeanizing Russia" to be in the interest of both the EU and Russia. Caryl, *supra* note 11.

43. Russian Prime Minister Vladimir Putin is campaigning to avoid the unbundling required by this new energy law. See, e.g., Česlovas Iškauskas, *Third Energy Package: Dispute between Russia and EU*, EUR. DIALOGUE (June 4, 2011), <http://eurodialogue.org/Third-Energy-Package-dispute-between-Russia-and-the-EU>.

44. Former Italian Prime Minister Massimo D'Alema recently challenged EU leaders to rise to the occasion of supporting the Arab Spring revolutions and adopting responsible migration policies. *Don't Waste Arab Spring's Historic Chances, D'Alema Warns*, EURACTIV.COM, <http://www.euractiv.com/en/print/global-europe/dont-waste-arab-spring-historic-chance-dalema-warns-news-505577> (last updated June 23, 2011).

45. Franco Frattini, *A European Plan for Mediterranean Stability*, FIN. TIMES, Feb 18, 2011, (Asia ed.) at 8.

46. *Id.* See generally *Euro-Mediterranean Partnership (EUROMED)*, EUR. COMM'N, http://ec.europa.eu/euromed/index_en.htm (last visited Aug. 27, 2011). For comments criticizing the irrelevance of this foreign initiative failure, see Tony Barber, *EU's Union for the Mediterranean Drifts into Irrelevance*, FIN. TIMES, June 1, 2010, <http://blogs.ft.com/brusselsblog/2010/06/eus-union-for-the-mediterranean-drifts-into-irrelevance>.

47. Charlemagne, *Europe's Foreign Policy: Must Try Harder*, ECONOMIST BLOG (Mar. 31, 2011, 11:18 PM), http://www.economist.com/blogs/Charlemagne/2011/03/europes_foreign_policy.

48. In 2010, the European Commission "adopted an ambitious action plan for EU action to speed up progress towards the Millennium Development Goals (MDGs)." *Achieving the MDGs*, EUR. COMM'N, http://ec.europa.eu/europeaid/what/millennium-development-goals/achieving_

experience, having developed aid programmes at EU and national level[s], and having created institutions such as the European Bank for Reconstruction and Development to put central and eastern Europe on the path to democracy and a market economy.⁴⁹ The EU remains the largest aid donor in the world.⁵⁰

In another key external direction, the EU assuredly will lead in further peacemaking and peacekeeping in several less stable areas of international conflict.⁵¹ Parts of the contiguous Balkans present a historical opportunity to facilitate that ever-so-difficult coexistence of diverse peoples, cultures, and religions.⁵² The magnetic power of Union enlargement should be pressed in this region, improving the prospects for effective democracy in fledgling countries such as Serbia, Kosovo, Bosnia-Herzegovina, the former Yugoslav Republic of Macedonia, and Albania.⁵³ For example, Serbia, motivated by a desire to gain candidate status for EU accession, is presently cooperating with the EU-sponsored talks with Kosovo in Brussels.⁵⁴ Croatia just concluded its long path of reform with the June 2011 EU Enlargement Commissioner's announcement that accession negotiations were complete. He suggested that the accession process could begin in the near future with the Former Yugoslav Republic of Macedonia and Serbia.⁵⁵

Further, in its Common Foreign and Security Policy, the EU and the United States should encourage reform of international institutions, increasing the representation and influence of developing countries in such organizations as the U.N. Security Council, the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO). On a parallel track, the EU could modify its

mdg_en.htm (last visited Aug. 27, 2011). For additional information regarding the UN's Millennium Development goals, see UN MILLENNIUM DEV. GOALS, <http://www.un.org/millenniumgoals/> (last visited Aug. 27, 2011).

49. *A European Date with Arab History; EU Can Help Supply the Building Blocks of Freedom*, FIN. TIMES, Feb. 7, 2011, (Asia ed.) at 8.

50. *Achieving the MDGs*, *supra* note 48.

51. *See, e.g., Foreign and Security Policy*, EUR. COMM'N, http://europa.eu/pol/cfsp/index_en.htm (last visited Aug. 27, 2011).

52. For exploration of the EU's efforts at promoting the rule of law in the Western Balkans, see Lara Appicciafuoco, *The Promotion of the Rule of Law in the Western Balkans: The European Union's Role*, 11 GERMAN L.J. 741, 744 (2010).

53. Charlemagne, *Arrest and Revival: The Capture of Ratko Mladic May Revive European Enlargement*, ECONOMIST, June 2, 2011, <http://www.economist.com/node/18774412> (“[T]he European Union . . . has shown its potential to transform even intractable Balkan disputes . . . through the power of its unique tool, enlargement.”).

54. *Serbia and Kosovo: Dreams of Brussels*, ECONOMIST, Mar. 26, 2011, at 63.

55. *EU's Clout Lies East, Not South*, WALL ST. J., June 10, 2011, <http://blogs.wsj.com/brussels/2011/06/10/eus-clout-lies-east-not-south>.

position, along with the United States, to find some retrievable solution to the WTO's failing Doha Development Round multilateral trade negotiations.⁵⁶ Post-West means facing the rest of the world in good faith. These opportunities and serious challenges facing the EU call for leadership and action.

II. EUROPEAN INTEGRATION IS ADVANCING, IN SOME WAYS BY CHOICE, IN OTHERS BY EMERGENCY REACTION TO PERCEIVED CRISES

Carefully planned innovations and thoughtful decisions in the Treaty of Lisbon have led to deeper European integration. For example, the EU's first adoption of legislation via the post-Lisbon TEU article 48 simplified the treaty revision process. Similarly, the first voluntary use of "enhanced cooperation," found in post-Lisbon TEU article 20, marked an important milestone in the legislative processes.⁵⁷ On the other hand, deeper coordination of EU policy and actions has resulted from necessary reactions to the eurozone crisis. Specifically, the March 2011 Summit decision to create the newest eurozone financial stability mechanism was taken by necessity.⁵⁸

Regardless, all of these actions constitute a cumulative deepening of European integration. This continued slow, but certain, advancement of integration further defines today's EU polity as a legitimate supranational organism—a rarity in the emerging order.

A. *Voluntary, Deeper Integration Has Succeeded in Some Areas of Governance*

The future of this polity may proceed in unforeseen ways as a result of the twenty-seven Member States agreeing in the past year to the first use of enhanced cooperation, a process authorizing legal measures to be taken by fewer Member States than required in the EU's normal

56. Jagdish Bhagwati, *Cooking Up a Compromise in the Doha Round Not Yet a Lost Cause*, NATIONAL (June 14, 2011), <http://www.thenational.ae/thenationalconversation/industry-insights/economics/cooking-up-a-compromise-in-the-doha-round-not-yet-a-lost-cause>.

57. Leo Cendrowica, *E.U. Moves To Make Cross-Border Divorce Easier*, TIME (June 26, 2010), <http://www.time.com/time/world/article/0,8599,1998992.00.html>.

58. See Stephen Castle, *Dispute on Euro Rescue Risks Marring Summit*, N.Y. TIMES, Mar. 23, 2011, <http://www.nytimes.com/2011/03/24/business/global/24euro.html>; *The 24/25 March EU Summit*, EUROINTELLIGENCE (Mar. 23, 2011), <http://www.euointelligence.com/euro-intelligence-march-eu-summit>; *Eurozone Sets Bail-Out Terms as Portugal Fears Increase*, BBC NEWS (Mar. 25, 2011), <http://www.bbc.co.uk/news/business-12858207>.

legislative processes.⁵⁹ The potential for advanced cross border cooperation could be substantial, though the true strength of the legislative ability is currently unclear. Viviane Reding, EU Commissioner for Justice, assessed this potential after the first Enhanced Cooperation enactment: “Some have expressed fears that the use of enhanced cooperation could be the end of European integration as we know it. But I have no doubt that this precedent will deepen European integration.”⁶⁰ Both views may prove to be accurate. This new, less onerous form of lawmaking may indeed alter the old forms of European integration, while simultaneously deepening it.

The Treaty of Lisbon included amendments to previous treaty provisions on this unique legislative device, designed to make common action possible in the face of a few resistant Member States. “The initial aim was to circumvent blockages due to unanimity voting in the Council in order to pass single acts. A second motivation was to acquire the capacity to create new sub-groups like the Eurozone, [and] the Schengen area. . . .”⁶¹ The effectiveness of the mechanism was demonstrated recently when efforts by Spain and Italy to block adoption of an EU-wide patent regime succeeded in the normal voting process requiring unanimity, but the two countries were—in the end—simply left out, as the other twenty-five Member States moved forward under the enhanced cooperation mechanism.⁶²

The procedure must be used to promote the “objectives of the Union, protect its interests and reinforce its integration process,” as well as be open at any time for other Member State participation and be used as a last resort when the cooperation cannot be achieved through regular legislative processes within a reasonable time (provided that a minimum of nine Member States participate).⁶³ The Council must authorize enhanced cooperation, with all members welcome to attend deliberations, but only Member States participating and voting in the

59. CTR. FOR EUROPEAN POLICY STUDIES, *THE TREATY OF LISBON: IMPLEMENTING THE INSTITUTIONAL INNOVATIONS 99* (2007) [hereinafter *INNOVATIONS*] (“In view of the enlargement of the Union, it was conceived as a tool, to manage the growing heterogeneity of Member States. The Franco-German axis, supported at times by the Benelux countries and the European Commission, played a major role in promoting the concept. . . .”).

60. Press Release, Eur. Comm’n, *A First in EU History: Enhanced Cooperation To Help International Couples Is in Force* (Aug. 5, 2010), <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1035> (internal quotation marks omitted).

61. *INNOVATIONS*, *supra* note 59, at 113.

62. *EU Plans Cheaper European Patents Regime*, BBC NEWS (Feb. 15, 2011, 9:24 PM), <http://www.bbc.co.uk/news/world-europe-12467399>.

63. Post-Lisbon TEU art. 20.

cooperation voting would be bound by the laws adopted in the framework of enhanced cooperation.⁶⁴

The Treaty of Amsterdam invented this experimentalist enhanced cooperation mechanism in 1997 to introduce variable speed integration under the title “Closer Cooperation.”⁶⁵ The name was changed in the subsequent Treaty of Nice in 2001 to its present form, and the requirements were amended to facilitate the process.⁶⁶ “[I]t was conceived as a tool, to manage the growing heterogeneity of the Member States”⁶⁷ after the massive 2005 enlargement. However, the process was never used.⁶⁸

The Treaty of Lisbon amended the new TEU article 20, relaxing the requirements for enhanced cooperation.⁶⁹ A year after the Treaty of Lisbon became effective, in a groundbreaking step in 2010, fourteen Member States engaged in the first successful enhanced cooperation process, enacting a regulation to enter into a common regime to facilitate binational divorces.⁷⁰ The next year in 2011, a second, more extensive use of enhanced cooperation was agreed to (and is presently in development) for twenty-five Member States to enter a common patent administration.⁷¹

The divorce regulation is intended to assist the thousands of couples whose partners come from different Member States and matriculate divorce proceedings with a set of standardized rules for selecting the preferred jurisdiction, as well as make standardized rules for a court to

64. *Id.*

65. It had become “clear that there were deep-seated differences between the Member States about both the pace and extent of integration.” DAMIAN CHALMERS ET AL., EUROPEAN UNION LAW: TEXT AND MATERIALS 155 (2006); see also *Closer Cooperation*, EUR. COMM’N, http://europa.eu/legislation_summaries/institutional_affairs/treaties/Amsterdam_treaty/a28000_en.htm (last visited Oct. 10, 2011).

66. *Enhanced Cooperation*, EUR. COMM’N, http://europa.eu/legislation_summaries/institutional_affairs/treaties/nice_treaty/nice_treaty_cooperations_en.htm (last visited Oct. 10, 2011) (“[T]he European Council considered it necessary to revise them with a view to making them less restrictive in the context of the enlargement of the Union to 27 Member States.”).

67. INNOVATIONS, *supra* note 59, at 99.

68. *Id.*

69. For scholarly analysis of the potential utility of enhanced cooperation, see Massimo Bordignon & Sandro Brusco, *On Enhanced Cooperation*, 90 J. OF PUB. ECON. 2063 (2006).

70. Council Regulation 1259/2010, 2010 O.J. (L 343) 10 (EU) (implementing enhanced cooperation in the area of the law applicable to divorce and legal separation).

71. See *generally* Press Release, Council of the Eur. Union, Competitiveness (Internal Market, Industry, Research and Space) (Mar. 9-10, 2011); Press Release, Eur. Comm’n, Competitiveness Council—9&10 March 2011 (Mar. 9, 2011), <http://europa.eu/rapid/pressReleasesAction.do?reference=memo/11/148&format=HTML&aged=1&language=EN&guiLanguage=en>.

determine the proper jurisdiction in cases of dispute.⁷² The purposes include providing legal certainty, predictability, flexibility, and preventing forum shopping by a spouse seeking unfair advantage.⁷³

The new unitary patent regime addresses the significant competitiveness issue presented by twenty-seven different Member State national patent jurisdictions in the EU. One common, harmonized patent system for the large group would significantly lower the cost of acquiring patent protection across Europe and contribute to the EU's drive to make its internal market function more efficiently.⁷⁴ Adopting a single patent from a single patent office applicable in the twenty-seven countries would be far less expensive and far more efficient than the current system of national patents that presently require issuance, translation, and enforcement in every individual national system in Europe.⁷⁵ "It is well-known that patents are a driving force for innovation, growth and competitiveness."⁷⁶ "The urgency is in part justified by the fact that a compromise on the EU patent has been the subject of many years of failed negotiations, contributing to a loss of European competitiveness in the global patent market."⁷⁷ As described above, two Member States effectively blocked common action by vetoing the legislation that required unanimity. However, Italy and Spain objected only to the omission of their native languages from the harmonized patent regime.⁷⁸ Had unanimity been required, legislation would have been impossible. Thus, this instance of enhanced cooperation dramatically illustrates the utility of such a flexible legislative process.

72. *Commission Staff Working Document: Impact Assessment—Accompanying Document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, at 8-12, SEC (2011) 327 final (Mar. 16, 2011) ("In 2007 in EU, 13% of all marriages celebrated in EU were international (307,158), and in the same year approximately 500,000 international marriages were dissolved through divorce or death.").

73. Council Regulation 1259/2010, *supra* note 70, *pmbl.* para. 9.

74. *EU Plans Cheaper European Patents Regime*, *supra* note 62.

75. The lack of such a common patent in the EU was seen by some as a huge weakness in the EU market. Nikki Tait, *EU Lawmakers Set To Back Single Patent*, *FIN. TIMES*, Feb. 15, 2011, <http://www.ft.com/home/us> (search for "EU Lawmakers Set To Back Single Patent").

76. Eugene Eteris, *Progress Made in Creating European Patent*, *DIPLOMATIC ECON. CLUB*, <http://www.dec.lv/?id=1255> (last visited Sept. 15, 2011) ("Furthermore, the lack of a unified and specialised patent litigation system results in legal risks and high costs both for companies wanting to enforce and wanting to challenge patents.").

77. *Parliament To Fast-Track Vote on EU Patent*, *EURACTIV.COM*, <http://www.euractiv.com/en/print/enterprise-jobs/parliament-fast-track-vote-eu-patent-news-501590> (last updated Jan. 28, 2011).

78. Press Release, Council of the Eur. Union, *supra* note 71 (including only French, German, and English).

Moreover, having been used twice in two years, the revised enhanced cooperation procedure could alter the political psychology of negotiating future EU legislation. Recalcitrant countries that could previously block all legislation can now be left behind, as happened to Spain and Italy in this legislative process. They must now suffer the added costs of mandating their own language translations within their protected markets.⁷⁹

Enhanced cooperation also renders unnecessary the cumbersome intergovernmental cooperation outside the EU, as happened originally with the Schengen Accord. With enhanced cooperation, the collaboration remains in the EU system, with use of EU institutions and guarantees for those not participating.⁸⁰

Also significant are the Treaty of Lisbon amendments that allow for simplified treaty revision procedures, thus allowing for more flexibility in the governance of the EU. Specifically, a new article 48 was inserted into the TEU.⁸¹ The article repeats the previous ordinary cumbersome method for treaty amendment, requiring European Council consideration and decision, the calling of a constitutional convention or conference of representatives of the Member States, agreement, and then formal ratification by all of the Member States.⁸² The new article 48(6) added a simplified revision process specific to Part Three of the Treaty on the Functioning of the European Union (TFEU).⁸³ The simplified process allows the European Council to adopt a decision amending all or part of Part Three, using unanimity voting after consulting the European Parliament and the Commission (and European Central Bank if the matter affects monetary policy).⁸⁴ The decision takes force only after Member States' approval or "in accordance with their respective constitutional requirements."⁸⁵ Another provision in the amended article 48(7) allows for "'passerelle' or enabling clauses opening up for more

79. Both countries have sued in the European Court of Justice to stop the patent system's harmonization, claiming illegal discrimination against their languages. Valentina Pop, *Italy and Spain Sue EU over Patent Language*, EUOBSERVER.COM (June 1, 2011, 9:23 AM), <http://euobserver.com/19/32434>.

80. INNOVATIONS, *supra* note 59, at 99.

81. Treaty of Lisbon art. 1(56) (revising TEU art. 48).

82. *See id.*

83. Ralf Grahn, *EU Treaty of Lisbon: Treaty Revision Procedures*, GRAHNLAW BLOG (Feb. 3, 2008), <http://grahnlaw.blogspot.com/2008/02/eu-treaty-of-lisbon-treaty-revision.html>. Part Three contains Union Policies and Internal Actions, including important functional areas such as the internal market, free movement of goods, persons, services, and capital, agriculture and fisheries, competition, economic and monetary policy, and others.

84. *Id.*

85. TEU art. 48(6).

effective or democratic and transparent decision making.’⁸⁶ The new provision allows the Council to adopt a decision to permit qualified majority voting on TFEU subject matters that normally require unanimity; then after notifying national parliaments and in the absence of opposition, the European Council may adopt the decision.⁸⁷

At its March 2011 Summit, the European Council agreed to use the simplified revision process for the first time, adding a provision to article 136 of the TFEU, authorizing eurozone Member States to establish a stability mechanism to safeguard economic stability.⁸⁸ Soon thereafter, commentary called for further reform based on the now more flexible article 136: “The good news is that the Lisbon Treaty makes this [reform] relatively easy.”⁸⁹ As is explained below, however, this simplified treaty revision process is a step forward in less rigid law making.

B. Further European Integration Has Deepened Member State Collaboration in Other Less Planned Ways, Out of Emergency Reaction to Perceived Crises

Recent reaction to the widely reported eurozone crisis of 2010 and 2011 offers the most vivid example of deepening European integration prompted out of emergency reaction.⁹⁰ At the March 2011 Summit of the European Council, European leaders understated the situation: “Over recent months, Europe has gone through a serious financial crisis.”⁹¹

86. Grahn, *supra* note 83.

87. Treaty of Lisbon art. 1(56); TEU art. 48.

88. See European Council Conclusions 24/25 Mar. 2011 (EU) EUCO 10/1/11 Rev. 1 (Apr. 20, 2011). For welcomed clarity on this complicated mechanism, see CHRISTA TOBLER & JACQUES BEGLINGER, *ESSENTIAL EC LAW IN CHARTS* chart 2/13 (Renumbering the provisions of the Treaties), chart 2/16 (Important Treaty revisions), chart 7/3 (Economic integration in the EC), chart 7/1 (Substantive EC law: an overview).

89. Wolfgang Münchau, *Why Debt Rescues Will Boost Scenario of a Closer Union*, *FIN. TIMES*, June 13, 2011, (USA ed.) at 13.

90. Patrick McGroarty & Brian Blackstone, *Rift over Greece Deepens in Europe*, *WALL ST. J.*, June 11-12, 2011, at B1; Noah Barkin & Jan Strupczewski, *EU Agrees Crisis Package, Portugal Clouds Summit*, *REUTERS*, Mar. 25, 2011, available at <http://uk.reuters.com/article/2011/03/25/uk-eu-summit-idUKTRE72M4P520110325>; see also Gabriele Steinhäuser, *Portugal, Ireland Woes Dominate EU Summit*, *ASSOCIATED PRESS*, Mar. 24, 2011, available at <http://www.businessweek.com/ap/financialnews/D9M5QBNG1.htm>. The crisis erupted in “May 2010, [when] Greece narrowly avoided default with the help of a €110 billion loan from its fellow eurozone members and the IMF.” McGroarty & Blackstone, *supra*.

91. European Council Conclusions, *supra* note 88, at 1. The EU, the ECB, and the IMF have injected more than €400 million into the countries and banks at risk. Guy Verhofstadt, *Can the Euro Survive Merkel, Sarkozy, and Barroso?*, *EUROPOLITICS* (June 8, 2011), <http://www.europolitics.info/economy-monetary-affairs/can-the-euro-survive-merkel-sarkozy-and-barroso-art-306215-29.html>.

Facing the financial collapse of at least three eurozone Member States, they agreed to the new Euro-Plus-Pact by utilizing the Treaty of Lisbon's simplified revision procedures described in the previous Part.⁹²

This new Euro-Plus-Pact commits its signatories to more far-reaching collaboration in cross-border national economic management than previously thought possible.⁹³ The leaders faced a financial dilemma, with the existing European Financial Stability Facility (EFSF) and its European Financial Stabilization Mechanism (EFSM) running out of money and time, and yet Portugal needing an enhanced rescue effort.⁹⁴ The European Council decided to create the stronger European Stability Mechanism (ESM) with more resources and closer supervision in 2013, to replace the EFSF and the EFSM when they expire.⁹⁵ Critics claimed the effort was devoid of credibility because it is intergovernmental,⁹⁶ while others disagreed:

The good news is that a new permanent crisis resolution mechanism has been put in place. . . . This European Stability Mechanism (ESM) will be a supranational institution, established by international treaty. By mid-2017, it will be properly funded, with a fully paid up capital base of EUR80bn . . . sufficient for a fund with a lending ceiling of EUR500bn. So, from 2018, the eurozone will be able to tackle future crises.⁹⁷

Regardless of technical characterization, any reading of the instrument illustrates that it represents more economic supervision and collaboration—even if on a voluntary basis—than before.⁹⁸

Thus, this form of deeper integration of the willing advanced, once again, including most, but not all of the EU's Member States. The

92. Based on the new article 48 authority revised by the Lisbon Treaty, the European Council decided to revise article 136 of the TFEU, adding the authority to establish a stability mechanism, termed the European Stability Mechanism (ESM), with an effective lending capacity of €500 billion. European Council Conclusions, *supra* note 88, at 2-6. The Pact will include eurozone members as well as Bulgaria, Denmark, Latvia, Lithuania, Poland, and Romania. *See id.* at 5.

93. Manuel Barroso, President, Eur. Comm'n, Speech to Brussels Economic Forum (May 19, 2011), *available at* <http://www.iewy.com/26575-jose-manuel-durao-barroso-president-of-the-european-commission-a-european-economy-fit-for-the-future-brussels-economic-forum-brussels.html> (“[R]eforms that we would have thought impossible two years ago are today a reality.”).

94. Roddy Thomson, *Portugal's Crisis Gatecrashes Euro Summit*, JAKARTA GLOBE, Mar. 24, 2011, <http://www.thejakartaglobe.com/afp/portugals-crisis-gatecrashes-euro-summit/431406> (“A Portugal bailout would come at the worst possible time, because it would have to be sourced from a temporary European Financial Stability Facility.”).

95. European Council Conclusions, *supra* note 88, at 21.

96. Verhofstadt, *supra* note 91.

97. Wolfgang München, *A Grand Bargain that Cannot End the Crisis*, FIN. TIMES, Mar. 28, 2011, (London ed.) at 13 (warning that all could collapse).

98. *See* European Council Conclusions, *supra* note 88, annexes I-II, at 13-34.

seventeen eurozone countries were joined by six non-eurozone Member States, motivated by the fear “of being stuck on the lower tier of a two-tier Europe.”⁹⁹ Again, the ability to shortcut the ordinary, demanding EU legislative processes can spur cooperation.

The Euro-Plus-Pact represents a major advance of Union participation in Member State economic governance. The European Central Bank (ECB) Vice-President insisted recently: “[T]he ESM builds on the ad hoc stability facilities established in 2010 to arrest contagion and thereby preserve overall financial stability in the euro area These measures—although at varying stages of development—represent an important step forward towards remedying the problems of economic governance in the euro area.”¹⁰⁰

The Pact adopts voluntarist language but includes a plan of extensive, intrusive EU supervision and leadership on national finances.¹⁰¹ All previous EU economic instruments are implicated and strengthened by the Pact, including the Europe 2020, the European Semester, the Integrated Guidelines, and the Stability and Growth Pact.¹⁰² Pointedly, the purpose is to “radically pare back the welfare state . . . to convince markets that [the EU has] their economic house in order.”¹⁰³ Most notably, this concerted action focuses on policy areas that are explicitly within the provenance of the Member States; common objectives will be agreed upon by heads of state, and each nation will pursue the objectives with its own policy mix while considering its own needs.¹⁰⁴ Concrete national commitments and specific measures to achieve them will be undertaken by each country annually, all to be monitored by eurozone heads of state or government, based on Commission reports.¹⁰⁵

Further explicit terms of the agreements are set forth in the annexes to the Pact, including the following: National leaders promise to consult others on major economic reforms having spill-over effects and each country undertaking reforms to address wage restraint, pension and

99. Leigh Phillips, *EU Summit on “Comprehensive” Crisis Response To Leave Loose Ends*, EUOBSERVER.COM (Mar. 24, 2011), <http://euobserver.com/19/32053>.

100. Vítor Constâncio, Vice-President of the ECB, *The Macroeconomic and the Financial Landscape in the Aftermath of the 2007 Crisis: New Challenges and Perspectives*, Speech at High Level Policy Seminar at the European University Institute of Florence (June 8, 2011), <http://www.ievy.com/27960-the-macroeconomic-and-the-financial-landscape-in-the-aftermath-of-the-2007-crisis-new-challenges-and-perspectives.html/>.

101. European Council Conclusions, *supra* note 88, at 15, 19.

102. *Id.* at 14.

103. Phillips, *supra* note 99.

104. European Council Conclusions, *supra* note 88, at 14.

105. *Id.* at 14-15.

retirement system reform, reduction in public services, labor market reform, and limited government borrowing, among others. Read as a whole, these commitments constitute collaborative and more responsible economic planning.¹⁰⁶ The Pact specifies accountability in the form of “strict policy conditionality under . . . rigorous analysis of public-debt sustainability . . . conducted by the Commission together with the IMF and in liaison with the ECB [including] private-sector involvement,”¹⁰⁷ which ensures that every recipient of financial assistance complies.

As illustrated above with enhanced cooperation, further integration does not always include all of the Member States. As the eurozone leaders negotiated for enhanced financial mechanisms, critics complained that German Chancellor Angela Merkel was “allowing the euro zone’s role in forming the EU’s economic policies to be greatly enlarged,” arguing, “[T]his may be remembered as the week Europe began to split apart.”¹⁰⁸ “Historians may come to see this as the moment when the EU split into a dominant, corporatist euro area and a smaller, more liberal outer zone.”¹⁰⁹ At the peak of the crisis, George Soros wrote that if the financial stability mechanism were not structured fairly,

[t]he European Union will suffer something worse than a lost decade; it will endure a chronic divergence in which surplus countries forge ahead and deficit countries are dragged down by debt The solution to the euro crisis to be put in place this week will set in stone a two-speed Europe. This will generate resentments that will endanger the EU’s political cohesion.¹¹⁰

Some commentators declare that the eurozone crisis has forced the EU to a turning point: “The debt crisis is forcing the 17 euro-zone countries to pool economic sovereignty to a degree that was unthinkable before.”¹¹¹ The EU resolve to rescue Greece and Ireland and to create the EFSM now “has far-reaching consequences for Europe’s self-confidence and credibility.”¹¹² “One way or another, the sovereign-debt crisis is

106. See *id.* at 13-20 (explaining the terms of the Pact).

107. *Id.* at 21.

108. *Can Angela Merkel Hold Europe Together?*, *ECONOMIST* (Mar. 10, 2011), <http://www.economist.com/node/18332786>.

109. *Id.* (“This is a matter not just of power but also of philosophy. The euro group of 17 is less liberal than the EU of 27.”).

110. George Soros, *Germany Can Avoid a Two-Speed Europe*, *FIN. TIMES*, Mar. 22, 2011, (London ed.) at 13.

111. Charlemagne, *The Union Within the Union*, *ECONOMIST*, Feb. 10, 2011, <http://www.economist.com/node/18112137>.

112. Gerard Errera, *A Sputtering Europe Has Its Mojo Back*, *FIN. TIMES*, Feb. 10, 2011, (Asia ed.) at 9 (noting a push for convergence of national fiscal and tax policies was unthinkable a few years ago).

pushing euro-zone countries into deeper integration. Unless the process is handled with care, the day of separate summits may come to be seen as the moment when the euro zone uncoupled from the rest of the EU.”¹¹³

Or, as shown by the agreement of the six non-eurozone countries joining the Pact, perhaps this emergency economic collaboration will lead to broader cooperation within the EU in general. Regardless, when twenty-seven Member States are unable to progress within the ordinary legislative processes, the added flexibility now available in the Treaties can produce an alternative form of legal collaboration. The post-Lisbon EU today has become a more complex, flexible, and multispeed Europe.

III. EUROPE’S ADVANTAGEOUS LEADERSHIP POTENTIAL IS RESTRAINED BY ITS INTERNAL DISSONANT VOICES AND ASYMMETRICAL POWER

Amid the economic and political stresses mentioned above, the EU of 2011 finds itself markedly divided and unable to act together on several important issues. While some disagreement must be expected at some level when twenty-seven sovereign nations are engaged together in a broad range of common governance, the EU’s “one voice” difficulty is at a peak today as controversial current events combine with impending national elections in many Member States to inflame political discourse.

Leadership in the numerous forms described above requires the EU to reach some form of agreement on its policies and positions. Experience shows that the EU’s vast potential is often hindered by its asymmetry of power and dissonant voices as Member States often find themselves unwilling to agree on some important though sensitive issues. The twenty-seven Member States possess different resources, interests, needs, and often vastly different political power. Plainly, powerful north-central Germany with its huge population, geographical size, GDP, and voting strength in European institutions differs from tiny southern Malta, as does France from Finland.¹¹⁴ In addition to the natural dissonance

113. Charlemagne, *supra* note 21 (“The deepest financial crisis in a century has exposed the fragility of a monetary union without a fiscal and economic union.”).

114. Populations comparisons include: Germany, approximately 82 million inhabitants, 29 Council votes, 99 seats in the European Parliament (MEPs), and a GDP of \$3.3 trillion; Malta, 413,000 inhabitants, 3 Council votes, 5 MEPs, and a GDP of \$7.8 billion; France, 65 million inhabitants, 29 Council votes, 72 MEPs, and GDP of \$2.5 trillion; Finland, 5 million inhabitants, 7 Council votes, 13 MEPs, and a GDP of \$232 billion. See *Total Population Table*, EUROSTAT, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1> (last visited Oct. 10, 2011); *World Economic Outlook: October 2010*, INT’L MONETARY FUND, <http://www.imf.org/external/data.htm> (follow “Data” hyperlink; then follow “World Economic Outlook Databases (WEO)” hyperlink; then follow “World Economic Outlook Database October 2010” hyperlink) (last updated Oct. 6,

caused by different Member States reflecting their own economies, geographic positions, cultures and histories, the Union's potential for international leadership is further undermined by three major interrelated negativities: (1) the acute financial crisis in Europe, with massive eurozone bailouts and the accompanying disagreements among participants over terms of the bailouts and for effective future financial governance; (2) the seemingly endless inability to act together under the EU's Common Foreign and Security policy; and (3) the simultaneous immigration emergency resulting from huge flows of refugees from multiple eastern and southern regions of discord and poverty, causing a few Member States to suspend Schengen Zone travel rights—exacerbated by the rise of extreme right-wing, anti-immigration rhetoric in public discourse, exaggerated in the heat of political elections.

A. *The EU Struggles To Find Consensus on Bailouts, Budget Cuts, and the Future*

The Member States' recent struggle to address the acute eurozone crisis has displayed vividly the disparity of interests and political stresses in the different Member States. The toxic issue of Member States cutting domestic budgets has sent thousands of protesters into the streets of the troubled countries,¹¹⁵ and sent governments toppling.¹¹⁶ On a single newspaper page in May 2011, reports described France protesting rescued-Ireland's low corporate tax rate, Finland resisting agreement on the bailout for Portugal, and the Greek cabinet's falling out over passing economic reforms in the face of "European politicians and economists speaking out at the flagging pace of Greek economic reforms."¹¹⁷

Just as the heads of state and government proclaimed in March that success was achieved, it soon became clear that a full agreement had not

2010); *Country Economic Reports & GDP Data*, GLOBAL FIN., <http://www.gfmag.com/gdp-data-country-reports> (last visited Oct. 10, 2011); *Council of the European Union*, EUR. COMM'N, <http://www.consilium.europa.eu/councilaspx> (last visited Oct. 10, 2011); *How Many Members of the European Parliament Does Each Country Have?*, FOLKETINGET, http://www.eu-ophlysnigen.dk/euo_en/spsv/all/29/ (last visited Oct. 10, 2011).

115. For example, a June 2011 protest by 25,000 people in Athens to criticize new austerity measures broke into violence. Elena Becatoros & Nicholas Paphitis, *Greek Anti-Austerity Protestors Clash with Police*, OFFICIAL WIRE, June 15, 2011, available at http://official.wire.com/main.php?action=posted_news&rid=76575&catid=62.

116. The Portuguese Prime Minister resigned after the Portuguese Parliament refused to adopt austerity measures. Charles Forelle, *Lisbon Political Crisis Clouds EU's Fund Deal*, WALL ST. J., Mar. 24, 2011, at A14.

117. Peggy Hollinger & John Murray Brown, *Paris Resists Ireland's Low Corporate Tax*, FIN. TIMES, May 11, 2011, (Asia ed.) at 4; Andrew Ward & Joshua Chaffin, *Finland Keeps EU Waiting on Lisbon Bail-Out*, FIN. TIMES, May 11, 2011, (London ed.) at 9; Kerin Hope, *Greek Cabinet Falls Out over Reforms*, FIN. TIMES, May 11, 2011, (USA ed.) at 4.

been reached, as solitary Finland blocked final agreement on raising the rescue funds available.¹¹⁸ Finland “has been gripped by a fit of anti-bail-out populism from a surging hard-right anti-immigrant party.”¹¹⁹

Agreement has been difficult on how best to organize the future rules for insuring solvency of sovereign debt as citizens clamor for responsible financial management.¹²⁰ German economists and politicians have argued from the beginning of the financial crisis in Greece that any rescues of other Member States must also involve private creditors in addition to just taxpayer money, conflicting with positions taken by the ECB and France.¹²¹ Ratcheting up the political conflict over the bailouts, in June 2011, the German lower house of Parliament passed a nonbinding motion that any further aid to Greece should be premised on required partial responsibility for private bondholders, effectively “deepening a rift with the European Central Bank, which oppose[d] any such debt restructuring.”¹²² Meanwhile, Greeks remain in the streets.

B. Dissonance Regarding Libya, Energy Supplies, and Asylum Policies Undermine the EU’s Foreign Leadership Potential

Equally glaring has been the EU’s failure to coordinate within the Common Foreign and Security Policy regarding support for the Libyan pro-democratic movement and the subsequent military action to protect the Libyan people. But how do twenty-seven diverse nations speak with one voice in foreign and security policy? As it turns out, not well.

In February 2011, when Libya’s Muammar Gaddafi responded to popular protest with harsh military repression, the leaders of Germany, France, and the United Kingdom quickly spoke out in favor of EU sanctions against the regime.¹²³ However, a common EU position was not forthcoming because of resistance from Italy, Malta, and Cyprus, who expressed “reservations about sanctions, because of business ties and the fear that prolonged unrest in Libya could bring a tide of migrants to their

118. European Council Conclusions, *supra* note 88, at 1 (“[E]conomic recovery in Europe is on track We adopted today a comprehensive package of measures which should allow us to turn the corner of the financial crisis and continue our path towards sustainable growth.”).

119. Phillips, *supra* note 99.

120. Bruce Crumley, *In Paris and Berlin, Fury over a Greek Bailout*, TIME (Feb. 16, 2010), <http://www.time.com/time/world/article/0,8599,1964443,00.html> (“[T]here seems to be more anger in parts of Europe over Greece’s financial recklessness than a willingness to save Planet Euro from imploding by bailing Athens out.”).

121. Quentin Peel, *A Deepened Disillusion; Germany Upsets Its Allies*, FIN. TIMES, June 11, 2011, (Asia ed.) at 5.

122. McGroarty & Blackstone, *supra* note 90.

123. Joshua Chaffin & Daniel Dombey, *EU and Washington Signal Sanctions*, FIN. TIMES, Feb. 24, 2011, (London ed.) at 6.

shores.”¹²⁴ Though certain Member States wished to act in favor of the rebel cause, they were forced to inaction by this ever-present “one voice” problem.

When numerous national leaders were prodding Egypt toward reform in February, the newly appointed High Representative for Foreign and Security Policy, Lady Catherine Ashton,¹²⁵ was not, because she had not received the required unanimous consensus from the twenty-seven governments of the Member States.¹²⁶ A similar event occurred in early 2011 when EU leaders were urged to take military action to protect and support the Libyan rebels. France and the UK aggressively led the early call to arms to protect civilians in Libya from their repressive military leader, strongly pushing for U.S. military participation.¹²⁷ Disagreement deepened when the U.N. Security Council finally authorized concerted action to protect Libyan civilians, and Germany, one of the leading EU Member States, abstained from the vote.¹²⁸ Conversely, as the conflict became more deadly, France and Britain aggressively promoted action, sending not only aid to Libya but also helping to produce a changed position from the reluctant U.S. administration.¹²⁹ Then Sarkozy unilaterally granted formal recognition to the emerging Libyan Transitional Council, angering German Chancellor Merkel such that she publicly complained, and Germany refused to support joint military action.¹³⁰ At the March 2011 Summit at which the Euro-Plus-Pact was agreed, the Member States suffered a further breakdown on common action.¹³¹ “Europe’s common security and foreign policy is in crisis,”

124. *Id.*

125. See *High Representative of the Union for Foreign Affairs and Security Policy*, EUR.COMM’N, <http://consilium.europa.eu/policies/council-configurations/foreign-affairs/high-representative-of-the-union-for-foreign-affairs-and-security-policy.aspx?lang=en> (last visited Oct. 10, 2011) (discussing this new international position).

126. Charlemagne, *Out of the Limelight*, ECONOMIST, Feb. 5, 2011, at 64.

127. Kim Willsher, *As France Takes the Reins on Libya, Sarkozy Triumphs*, L.A. TIMES (Mar. 20, 2011), <http://articles.latimes.com/2011/mar/20/world/la-fg-libya-sarkozy-20110320>.

128. Dan Bilefsky & Mark Landler, *Military Action Against Qaddafi Is Backed by U.N.*, N.Y. TIMES, Mar. 18, 2011, at A1.

129. Peggy Hollinger, *French Reap Rewards from Persistence*, FIN. TIMES, Mar. 18, 2011, (USA ed.) at 6; Daniel Dombey, *Washington Explains Reason for Rethink on No-Fly Zone*, FIN. TIMES, Mar. 18, 2011, (USA ed.) at 6 (“[T]he US’s hand was also forced by an emotional appeal by Nicolas Sarkozy The Pentagon in particular has been irritated by the Franco-British push for a no-fly zone.”).

130. Dilip Hiro, *Libya: When Bombs Fall and Allies Fall Apart*, YALEGLOBAL ONLINE (Mar. 21, 2011), <http://yaleglobal.yale.edu/content/libya-bombs-fall-allies-fall-apart>.

131. *EU Summit Split on Libya, Upset by Portugal*, EUBUSINESS (Mar. 24, 2011), <http://www.eubusiness.com/news-eu/summit-libya-unrest.98v/> (“‘It’s sad to think that the EU finally found a solution to the economic crisis but that faced with a foreign policy emergency it has totally lost its way,’ said a senior EU diplomat . . .”).

protested an EU diplomat as Germany again broke ranks with its EU partners by refusing to vote for the Libya-UN resolution; other countries were irritated by British and French aggressiveness, while France was reluctant to allow NATO to assume control of the mission.¹³² As the Libyan campaign dragged on, U.S. Secretary of Defense, Robert Gates, specifically “singled out Germany, Poland, Spain, the Netherlands and Portugal for having the means to contribute to the Libya operation but refusing to do so.”¹³³ One European expert added that disagreement among EU members was normal: “Americans and Europeans—and indeed the Europeans among themselves—disagree more often than not about what constitutes a security risk, and whether it requires the application of military force. . . . Libya is not an exception.”¹³⁴

Germany has caused considerable concern in this recent time. Germany’s leadership has been criticized by its European partners on a series of issues from the financial crisis in the eurozone, to nuclear energy for “pursuing an introspective national agenda at the expense of EU solidarity.”¹³⁵ The decision to refrain from participating in the NATO intervention in Libya was “greeted with dismay. Berlin’s abstention in the UN Security Council vote to impose a no-fly zone over Libya revived fears of Germany reverting to a semi-neutral, stay-at-home strategy that could undermine the alliance just when it is struggling to prove itself more relevant and effective.”¹³⁶ Spanish and other EU officials are also furious with Germany after a German laboratory incorrectly blamed the recent and deadly E. coli bacteria outbreak in Germany on Spanish cucumbers, which cost millions in damages to Spanish and other EU agricultural exports.¹³⁷

Member States have not spoken with one voice about important Russia-EU relations. European Commission President Manuel Barroso

132. *Id.* (internal quotation marks omitted).

133. James Blitz & Anna Fifield, *NATO’s Internal Strains Worsen over Libya*, FIN. TIMES, June 16, 2011, (London ed.) at 9.

134. Constanze Stelzenmüller, *Gates Was Far Too Nice About NATO’s Failings*, FIN. TIMES, June 16, 2011, (Asia ed.) at 11.

135. Peel, *supra* note 121 (discussing issues such as the financial crisis and debate over nuclear energy).

136. *Id.*

137. Henry Chu, *A Battered Germany Recovers from E. Coli Outbreak*, L.A. TIMES, June 10, 2011, <http://articles.latimes.com/2011/jun/10/world/la-fg-germany-ecoli-20110611> (“Germany, which routinely chides its neighbors for economic mismanagement and other sins is finding itself uncomfortably on the defensive. As the continent’s biggest economy and most populous country, Germany is used to bossing smaller European nations around, especially those in need of its help amid the ongoing euro debt crisis. But it is now under pressure to explain a series of missteps that turned a public-health scandal into a political debacle and made the country that gave us the term ‘schadenfreude’ a victim of it.”).

and Russian Prime Minister Vladimir Putin have openly and forcefully disagreed on human rights, access to Russian gas, EU dependence on that gas, and Georgia.¹³⁸ The one voice problem emerged again; for example, as Barroso tried to wean the EU off its dependence on Russian gas, Germany and other EU Member States “were actively courting the Kremlin.”¹³⁹ A Member State’s willingness to tolerate Russian misdeeds varies in relation to its geographic proximity to Russia and need for its consumer markets. As with the Libya issue, Member States refuse to come together on ideas concerning Russia, and because of this, no real action can be taken.

The EU could substantially advance many goals by developing a common approach towards Russia.¹⁴⁰ The French and Germans often decide policies without real consultation or participation of other Union Member States, as was vividly illustrated with the creation of the Weimar Triangle, in which Poland, France, and Germany meet with Russia in a non-EU context.¹⁴¹ “Britain is not involved and now finds herself isolated in the making of eastern policy. Meanwhile, in June 2010 Germany saw fit to offer Moscow a Permanent Security Committee between the EU and Russia, without informing the EU institutions beforehand.”¹⁴² Also in 2010, France, Germany and Russia consulted privately at the Deauville Summit “to the annoyance of many EU states in the east that felt unrepresented.”¹⁴³ Discord exists on the issue of relations with Russia, but unfortunately the EU countries refuse to work together to sort them out. Today, these relations are uncertain as Poland and the United Kingdom, among others, are rethinking their previous harder line with Russia.¹⁴⁴ Other Member States may retain their commitment to pushing Russia into better protection of human rights, despite the economic potential in warmer relations with Russia. EU leadership would be as helpful as it may be difficult to achieve.

Related problems are the competing EU voices that aspire to a common energy policy and the best way to improve energy security for

138. Peter Spiegel, *Putin Set To Resume Battle with Barroso*, FIN. TIMES, Feb. 24, 2011, (London ed.) at 8.

139. *Id.*

140. Judah, *supra* note 23.

141. *Poland Invites Russia to “Weimar Triangle,”* EURACTIV.COM (Feb. 8, 2011), <http://www.euractiv.com/future-eu/poland-invites-russia-weimar-triangle-news-501974>.

142. Judah, *supra* note 23.

143. *Id.*

144. The new British government in 2010 may wish to foster economic growth by engaging the Russian investment wealth and market. *See id.*

Europe.¹⁴⁵ Russia controls a large percentage of Europe's natural gas supply.¹⁴⁶ After the repeated gas cutoffs of Belarus and Ukraine (in 2005, 2007, and 2009) caused gas shortages in Germany, Poland, Austria, and Italy, the need to secure more reliable sources became urgent.¹⁴⁷ The European Commission has supported its flagship Nabucco project, yet some EU Member States have also supported competing pipelines that continue with Russian-controlled gas.¹⁴⁸ For example, in March 2011, the BASF Chemical Company of Germany purchased a 15% stake in South Stream, a competitor to the EU-supported Nabucco.¹⁴⁹ Italy's petroleum company ENI and France's EDF also participate in South Stream,¹⁵⁰ which is also supported by Bulgaria and Slovenia.¹⁵¹ Playing both sides of the street is not always helpful. The EU aspires to promote economic relations with the energy-rich Eurasian country of Azerbaijan, as it "steps up attempts to diversify away from its dependence on Russia for energy supplies."¹⁵²

Tens of thousands of political and economic refugees are flowing into Europe as the unstable Mediterranean region experiences its tumultuous Arab Spring.¹⁵³ The popular unrest, multiple government implosions, and general fighting have prompted or forced thousands of political asylum seekers and economic migrants into Europe, which

145. For thorough review of this topic, see PAUL BELKIN, U.S. FOREIGN AFFAIRS, DEF., & TRADE DIV., *THE EUROPEAN UNION'S ENERGY SECURITY CHALLENGES* (2008), available at <http://www.fas.org/sgp/crs/row/RL33636.pdf>; *Commission Communication on the EU Energy Policy: Engaging with Partners Beyond Our Borders*, EUR. COMM'N (Sept. 7, 2011), http://ec.europa.eu/energy/international/security_of_supply/doc/com_2011_0539.pdf.

146. *Dispute Hits Europe Gas Supplies*, BBC NEWS (Jan. 7, 2009), <http://news.bbc.co.uk/2/hi/7814743.stm>.

147. BELKIN, *supra* note 145, at 4-5; see also *Dispute Hits Europe Gas Supplies*, *supra* note 146.

148. BELKIN, *supra* note 145, at 8 ("However, bilateral energy agreements between some member states, notably Germany, Italy, and Bulgaria, and Russian firms, illuminate continued disagreement within the EU on how best to deal with Moscow.")

149. Press Release, Michael Grabicki, BASF, Wintershall Intends To Acquire a Stake in the Offshore Section of the South Stream Pipeline (Mar. 21, 2011), <http://www.wintershall.com/pi-11-05.html>.

150. *South Stream*, GAZPROM (July 4, 2011), <http://www.gazprom.com/production/projects/pipelines/south-stream>.

151. *Slovenian President Backs the South Stream Pipeline Project*, SOFIA ECHO (June 6, 2011, 2:44 PM), http://sofiaecho.com/2011/06/06/1101394_slovenian-president-backs-the-south-stream-pipeline-project.

152. *Nabucco Signs "Milestone" National Deals*, UNITED PRESS INT'L, June 10, 2011, http://www.upi.com/Business_News/Energy-Resources/2011/06/10/Nabucco-signs-milestone-national-deals/UPI-38161307700900.

153. Barbie Latza Nadeau, *Exodus*, DAILY BEAST (June 12, 2011), <http://www.thedailybeast.com/newsweek/2011/06/12/thousands-of-refugees-fleeing-north-africa.print.html> ("In the first five months of 2011, more than 45,000 people made their way to Lampedusa—more than 10 times the total number of last year.")

places severe strains on resources primarily in the countries of first entry.¹⁵⁴

Member States differ regarding policy on how to accommodate these unexpected and unwelcomed financial demands. When Italy requested EU aid in meeting the demands of proper asylum processing and housing for the thousands of refugees, the northern Member States resisted, urging a more cautious approach.¹⁵⁵ Italy and Greece found themselves especially victimized because of their faltering economies and high government debt.¹⁵⁶

At their extremes, the disagreements among the Member States have been embarrassing. Following the EU's refusal of the proposed burden-sharing solution for this crisis, "Italy started issuing the immigrants with temporary residence papers, released them from detention centres and ushered them towards France, even buying their train tickets."¹⁵⁷ French police then stopped trains at the French border and returned some of the passengers to Italy, trying to thwart the Italian effort.¹⁵⁸ Soon thereafter, Denmark reacted with its own suspension of free cross-border transit.¹⁵⁹ "Under pressure from a growing nationalist movement, the government in Denmark . . . reintroduced stringent checks on its borders with Germany and Sweden, dealing a major setback to one of the European Union's most popular and tangible measures: the freedom to cross frontiers without controls."¹⁶⁰ "The eurozone crisis is being met with more Europe. The immigration crisis is being met with less Europe."¹⁶¹

The matter is made worse by reactions across Europe against immigrants, leading to vociferous right-wing rhetoric and poisonous civil political discourse.¹⁶² The radicals are in high pitch. For example, in the face of 10,000 recently arrived refugees landing in Lampedusa Italy, the new leaders of France's National Front, Marine Le Pen, were on the

154. Tony Barber, *Fortress Europe: Immigration*, FIN. TIMES (June 14, 2011), <http://www.ft.com/intl/cms/s/0/30085d52-96b8-11e0-baca-001144feab49a.html#azl5yW2BBX>.

155. James Kanter & Judy Dempsey, *Italy Seeks E.U. Aid To Cope with Libyan Refugees*, N.Y. TIMES, Feb. 24, 2011, <http://www.nytimes.com/2011/02/25/world/europe/25iht-migration25.html> (noting France, Spain, Malta, and Cyprus's request for emergency aid).

156. *Id.*

157. Guy Dinmore & Peggy Hollinger, *Rome and Paris Seek Border Reforms*, FIN. TIMES, Apr. 25, 2011, (Asia ed.) at 4.

158. Edward Mortimer, *Europe's Battle for Diversity and Freedom*, FIN. TIMES, May 10, 2011, (Asia ed.) at 10.

159. Judy Dempsey, *Denmark Reintroduces Border Controls*, N.Y. TIMES, May 12, 2011, <http://www.nytimes.com/2011/05/13/world/europe/13iht-border13.html>.

160. *Id.*

161. Barber, *supra* note 16 (quoting Joseph Muscat, leader of Malta's Labour Party).

162. *Id.*

island to tell the refugees they were not welcome: European navies should go closer to the African coast and prevent the refugee boats from getting to the Italian island, according to the right wing nationalist Le Pen.¹⁶³

More politicians appear to be calculating the profit of adopting what was once considered radical campaign rhetoric. One pollster questioned whether racism has simply become acceptable in the mainstream.¹⁶⁴ Politicians “recognize that a flood of refugees would add to prevailing unease about the difficulties of integrating immigrants, especially Muslims.”¹⁶⁵ “While on the one hand, [politicians] support the transformation that is now going on in Africa, this short-term anti-immigrant wave that is washing over Europe is so strong This is about getting to the next election.”¹⁶⁶ One writer in Turkey surmises: “After the economy, the issue of immigration in country after country in Europe is affecting and influencing the outcomes of elections and usually not in a positive way.”¹⁶⁷ “Schengen is in serious trouble. Pressure from national governments, often egged [on] by anti-migrant populist parties, has created a climate of fear around open borders.”¹⁶⁸

The desirable pro-democratic events of the Arab Spring can have dangerous side effects. As thousands of refugees seek safety and prosperity, “[h]uman traffickers, criminals and terrorists stand ready to exploit chaos stemming from the collapse of the old order. Europe must act quickly, or the ‘arc of crisis’ will lead to more illegal immigration, terrorism and Islamic radicalism.”¹⁶⁹

The EU desperately needs an effective common asylum policy, and in spite of some progress, the twenty-seven Member States cannot agree

163. Russel Shorto, *Marine Le Pen, France's (Kinder, Gentler) Extremist*, N.Y. TIMES, Apr. 29, 2011, <http://www.nytimes.com/2011/05/01/magazine/mag-01LePen-t.html?Pagewanted=all> (“Sarkozy is seen as representing the elitists who support the increasingly unpopular European Union, while Le Pen wraps herself in the mantle of the French republic.”); Michael Day, *Protests over Marine Le Pen's Visit to Refugee Island*, INDEPENDENT (U.K.) (Mar. 15, 2011), <http://www.independent.co.uk/news/world/europe/protests-over-marine-le-pens-visit-to-refugee-island-2241879.html>; Alan Greenblatt, *Arab Refugees Finding Harsh Welcome in Europe*, NPR (Mar. 18, 2011), <http://www.npr.org/2011/03/18/134622556/arab-refugees-encounter-harsh-welcome-by-some>.

164. See Shorto, *supra* note 163.

165. See Greenblatt, *supra* note 163.

166. *Id.* (internal quotation marks omitted).

167. Amanda Paul, *Is Multiculturalism in Europe Dead?*, TODAY'S ZAMAN (Turkey) (May 29, 2011), http://www.sundayszaman.com/sunday/columnistDetail_getNewsById.action?newsId=245422&columnistId=69.

168. Stanley Pignal, *Defenders of the Schengen Zone Face a Battle on Many Fronts*, FIN. TIMES, May 25, 2011, (Asia ed.) at 3 (internal quotation marks omitted).

169. Frattini, *supra* note 45.

on the principles and practices.¹⁷⁰ Asylum requests are handled differently in all of the Member States. Hundreds of thousands of immigrants request asylum each year, and those numbers are surging with events in the first half of 2011.¹⁷¹ These applicants have rights according to the European Court of Human Rights and international law to sustenance while they await a hearing.¹⁷² An effective asylum policy must be capable of distinguishing between refugees and economic migrants.

Miscellaneous examples further illustrate the divisions. Some recent controversies between newer Member States and older Member States feed the “one-voice” problem. Perhaps most significant may be the EU’s failure to speak with one voice about Turkey’s accession to the Union.¹⁷³ Focus-blurring perception from the Islamic world arises from the EU’s inability to follow through with promises to Turkey. The EU’s opportunity to embrace the most advanced, West-oriented Muslim country in the world was poorly handled by national political leaders in the EU, partly reacting to the changed political context of popular resistance to immigration and terrorism fears.¹⁷⁴

The disagreements and cross-border irritations seem endless. Perhaps it is natural to find difficulty in agreeing to many issues among so many diverse countries; this difficulty is made acutely poignant by the lost opportunities for a constructive common voice.

IV. CONCLUSION

Today’s emerging post-West and post-Lisbon European Union faces serious challenges and fruitful opportunities. The EU stands, unquestionably, as a symbol of considerable virtue, such as democracy,

170. *EU Struggles To Set One Asylum Policy*, UNITED PRESS INT’L (May 27, 2011), http://www.upi.com/Top_News/World-News/2011/05/27/EU-struggles-to-set-one-asylum-policy/UPI-39151306513401/?spt=hs&or=tn; see *Asylum*, EUR. COMM’N, http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm (last visited Oct. 10, 2011).

171. *Asylum Levels and Trends in Industrialized Countries 2010*, UNITED NATIONS REFUGEE AGENCY (2011), <http://www.unhcr.org/4d8c5b109.html> (noting that the EU Member States registered 235,900 asylum claims in 2010); Stanley Pignal & Giulia Segreti, *Italians Fear Surge in Immigration*, FIN. TIMES, Feb 21, 2011, (London ed.) at 6.

172. See *Asylum*, *supra* note 170 (describing harmonized minimum standards for asylum procedures); U.N. Office of High Comm’r for Human Rights, *The Rights of Non-Citizens 2006*, at 29, HR/PUB/06/11, UN Sales No. E.07.XIV.2 (2006).

173. For full discussion of Europe’s rejection of Turkish accession, see Patrick R. Hugg, *Accession Aspirations Degenerate: A New Chapter for Turkey and the EU*, 9 WASH. U. GLOB. STUD. L. REV. 225, 230-33 (2010) (elaborating the benefits of a Turkish EU membership).

174. *Geert Wilders Says Turkey’s Trojan Horse Not To Be Allowed to the EU*, PANORAMA (Armenia) (Nov. 18, 2009), <http://www.panorama.am/en/politics/2009/11/18/troya> (reporting that Geert Wilders believes Turkey, an Islamic country, may promote Islamic immigration).

rule of law, and human rights. In other areas, the EU has failed to act effectively to meet pressing needs; in some areas, a mix of partial success and partial failure.

Flexibility and lateral thinking are keys to further improved governance, as exemplified by the treaty amendments and common action as described herein. Today's one-of-a-kind EU achieves and falls short, inspires and frustrates, as it slowly but steadily winds its way through today's crises, forward to the future.