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Some Reflections on the EU-Russia Partnership After the 1994 Corfu Agreement, with Specific Reference to Maritime Affairs

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Abstract

The aggression by the Russian Federation against Ukraine in 2022 has rewritten the EU-Russia partnership that had developed over the last thirty years. In those thirty years, both the EU and the Russian Federation became maritime powers. This paper offers an analysis of the main dynamics that have brought about the developments of the EU-Russia partnership, with specific reference to maritime affairs. It focuses on the challenges these dynamics pose from a historical perspective. Indeed, specific attention is paid to the 1994 Corfu Agreement that marked a new stage in EU-Russia relationships and, still today, is the main legal basis of their relations. This research contributes to highlighting the evolution of EU competences and its policy actions as a global maritime actor. Accordingly, it explores the progressive developments of its maritime-related relations with the Russian Federation, as shown by the adoption of the 2009 Agreement on fisheries cooperation in the Baltic Sea. In any case, EU-Russia relations have never been easy. Finally, by looking at the most recent developments, this paper addresses the question of compatibility of EU sanctions with the Corfu Agreement and their impact on EU-Russia maritime affairs.

Keywords: European Union; Russian Federation; maritime affairs; trade and investment; sanctions; security.

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1. Introduction

The Agreement on Partnership and Cooperation between the European Communities and its Member States and the Russian Federation was signed on the occasion of the Corfu European Council in June 1994 (Corfu Agreement or PCA).¹

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¹ The URSS's collapse dramatically changed the balance of power, including in Europe, while, at the same time, the adoption of the Treaty of Maastricht laid down the foundations of the European Union as we know it today (Treaty on European Union [1992] OJ C191/1). This changing international scenario called for a new approach to future European relations with the Russian Federation. Consequently, bilateral negotiations with Russia began at the end of 1992 and were completed in the first half of 1994 with the adoption of the Corfu Agreement (Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, on one side, and the Russian Federation, on the other [1997] OJ L 327/3). A few years before the USSR's collapse, the two powers had already established partnership and cooperation which would have strengthened and widened their relations, i.e. the Agreement between the European Economic Community and the European Atomic Energy Community, on the one hand, and the Union of Soviet Socialist Republics, on the other, on Trade and Commercial and Economic Cooperation [1990] OJ L 68/3. The Russian Federation being the continuing State of the former USSR, the Corfu Agreement had automatically become an agreement with the Russian Federation. On the other side, the EU has replaced and succeeded the European Community in line with art 1.3 of the Treaty on the European Union (TEU) and art 217 of the Treaty on the Functioning of the European Union (TFEU). Consequently, since the entry into force of TEU and TFEU (1 December 2009), the EU exercises all rights and assumes all obligations of the European Community, while continuing to exercise the existing rights and assume the existing obligations of the EU. Consolidated Versions of the Treaty on European Union and of the Treaty on the Functioning of European Union [2012] OJ C326/47.



The PCA signature reflected the achievement of an ambitious result due to international efforts to promote peace, stability, and prosperity on the continent of Europe.²

In contrast to an association agreement, which generally serves as the basis for implementation of the accession process to the EU by a third country, the PCA serves to gradually strengthen political and economic freedoms in Russia. Today, as then, these freedoms constitute the very basis of the EU-Russia partnership,³ the effective implementation of which presupposes the continuation and accomplishment of Russia's political and economic reforms.⁴ Accordingly, the Corfu Agreement refers to 'Russia's progressive integration'⁵ not into the EU in terms of its membership, but 'into the open international trading system.'⁶

In this sense, the Corfu Agreement reflects a framework for enhancing political dialogue;⁷ supporting the efforts made by Russia to strengthen its democracy and developing its economy towards a market economy;⁸ and encouraging trade and investment,⁹ including in maritime sectors.

Soon after the PCA was signed, diplomatic efforts regarding 'Russia integration' were thwarted because of the outbreak of violent military tensions in the northern Caucasus. The procedure for ratification of the Corfu Agreement was suspended.¹⁰ The Corfu Agreement entered into force on 1 December 1997.¹¹

The ups and downs that characterize the relationship between the EU and Russia are not a new phenomenon. Two years after the Corfu Agreement came into force, an armed conflict was launched once more in Chechnya (1999-2000).

This paper offers an analysis of the main dynamics that have impacted developments in the EU-Russia partnership, with specific reference to maritime affairs. It focuses on the challenges these dynam-

2 Amongst others, see the Conference on Security and Cooperation in Europe 'Final Act' (Helsinki 1 August 1975), and subsequent meetings; the Meeting of Heads of State or Government of the countries participating in the Conference on Security and Cooperation in Europe (CSCE) 'Charter of Paris for a New Europe' (Paris, 19–21 November 1990); the Organization for Security and Co-operation in Europe (OSCE) 'The Challenges of Change' (10 July 1992).

3 Preamble PCA (n 1), para 3. In addition, paramount importance is placed on the respect of the rule of law and human rights, as well as the establishment of a multi-party system and economic liberalization. See also art 2 PCA.

4 *ibid* para 8.

5 *ibid* para 12.

6 *ibid*.

7 PCA (n 1) Title II.

8 *ibid* art 3 includes an 'evolution clause' on the establishment of a free-trade zone in the case that the economic preconditions in Russia have been fulfilled.

9 *ibid* art 1.

10 Tensions led to the Russia's military intervention in Chechnya from December 1994 to August 1996, when peace negotiations were finalized and Russian troops withdrew from Chechnya. European Commission, 'The European Union and Russia: The Future Relationships – A Strategy Designed by the European Commission' [1995] IP/95/533 <https://ec.europa.eu/commission/presscorner/detail/en/IP_95_533> accessed 3 May 2023.

11 Following enlargement, an Additional Protocol was signed with Russia a few months earlier, on 21 May 1997, so as to enable Austria, Finland and Sweden to become members of the Corfu Agreement alongside the other twelve Member States.



ics portray from a historical perspective. Accordingly, the analysis begins with the study of specific provisions of the 1994 Corfu Agreement related to maritime affairs, especially transport and trade.¹² There follows a study of the most relevant legal and political factors that have contributed to advancing EU-Russia maritime-related developments. In particular, attention is paid to the first decade of the Corfu Agreement implementation (1997-2007). It then focuses on the main initiatives and legal instruments adopted from 2008 to 2014 that were aimed at expanding the EU-Russia cooperation on maritime affairs, with specific reference to the 2009 EU-Russia Agreement on fisheries cooperation in the Baltic Sea and other initiatives.¹³

While EU-Russia relations have never been easy, the 2014 illegal annexation of Crimea and the 2022 invasion of Ukraine rewrote the EU-Russia partnership that had formed over the previous thirty years.

Finally, by looking at the most recent developments, this paper addresses the question of compatibility of EU sanctions with the Corfu Agreement, as well as their impact on EU-Russia maritime affairs.¹⁴

In conclusion, this paper argues that economic interests in oceans and seas might constitute a crucial point to be addressed in diplomatic efforts regarding resolution of the current crisis.¹⁵

2. Specific Provisions of the Corfu Agreement Related to Maritime Affairs

The Corfu Agreement asserts the importance of granting each other national treatment no less favorable than that accorded to any third country.¹⁶ The ‘treatment no less favorable’ is also applied within the context of maritime affairs, especially in relation to transport¹⁷ and trade,¹⁸ while specific reservations are adopted for the fisheries sector.¹⁹

More specifically, article 30 PCA regulates the conditions affecting the establishment and operation of companies, including shipping companies.²⁰ Indeed, these conditions are for bringing about the freedom

12 Section 2.

13 Section 3.

14 Section 4.

15 Section 5.

16 PCA (n 1) Title II, Political Dialogue, arts 6-9.

17 *ibid* chapter II, Conditions affecting the establishment and operation companies, arts 28- 35.

18 *ibid* chapter III, Cross-border supply of services, arts 36-43.

19 *ibid* annex 3 and Annex 4.

20 *ibid* art 30 (h) (2) considers that, with regard to international maritime transport, shipping companies are beneficiaries of the provisions of Chapters II and III PCA. Furthermore, it has to be specified that art 38 PCA states that the ‘treatment no less favorable’ as established by art 28 PCA does not apply to air transport, inland waterways transport and maritime transport. However, it adds that, as for activities undertaken by shipping agencies for the provision of services to international maritime transport, including intermodal transport operations involving a sea-leg, each Party permits to the companies of the other Party to have a commercial presence in its territory in the form of subsidiaries or branches, under conditions of establishment and operation no less favorable than those accorded to its own companies or to subsidiaries or branches of companies of any third country.



of the establishment of the shipping industry operating in international maritime transport and include their right to take up economic activities by means of the setting up of subsidiaries and branches in Russia or in the EU, respectively.²¹ In this sense, the Corfu Agreement specifies that shipping companies established outside the EU or outside Russia, but controlled by nationals of Member States or Russia, are also beneficiaries of these conditions if vessels are registered in that Member State or Russia, respectively.²²

In addition, article 39 PCA refers to the principle of unrestricted access to the international market and traffic on a commercial basis²³ in accordance with a freely competitive environment.²⁴ It also specifies that commercial principles and related freedoms to provide services to maritime transport between Member States and Russia do not prejudice the rights and obligations in relation to shipping lines arising under other international instruments, i.e. the United Nations Convention on a Code of Conduct for Liner Conferences (Code of Conduct).²⁵

This reference to the Code of Conduct implies a normative coordination between the Corfu Agreement and the international regulatory framework for shipping conferences. This coordination acquires particular importance by means of rules on access to share of trade by ship owners established in the territories of State Parties to the Code of Conduct, which serves mutual foreign trade. In any case, the Code of Conduct contains no provision allowing EU accession. However, the EU avoids normative conflicts and possible breaches of its rules of competition through requirements that Member States have to fulfil when ratifying the Code of Conduct, or when acceding thereto.²⁶

At this point, it is worth briefly underlining that the Corfu Agreement does not make any reference to the international shipping regulations of the International Maritime Organization (IMO).²⁷ Furthermore, the fact that the EU is not a member of the IMO does not seem to prevent its external competence in international shipping being indirectly exercised through its Member States, which

21 Art 30 (a-h). In more general terms, see also art 1 PCA.

22 *ibid* art 30 (h) (2-3).

23 *Ibid* art 39 (1).

24 *ibid* (b).

25 United Nations Convention on a Code of conduct for Liner Conferences (Adopted 6 April 1974, entered into force 6 October 1983) 1334 UNTS 15. On the other side, the Corfu Agreement establishes, at its art 39 (1) (a), that non-conference lines are free to operate in competition with a conference as long as they adhere to the principle of fair competition on a commercial basis.

26 Already at the end of the 1970s, the EU recognized that maritime affairs covered by the Code of Conduct were of importance not only to the Member States but also to the EU. It was considered important to adopt a common position in relation to this Code, thus stabilizing the role of Liner Conferences in ensuring reliable services to shippers, while avoiding possible breaches by conferences of the rules of competition laid down in the then EEC Treaty. To this aim, a specific Regulation was adopted concerning the application of those rules to sea transport that provided for requirements that Member States had to fulfil when ratifying the Code of Conduct, or when acceding thereto. See Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences [1979] OJ L 121/1. Regulation (EC) No 1490/2007 of the European Parliament and of the Council of 11 December 2007 repealing Council Regulation (EEC) No 954/79 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences [2007] OJ L 332/1.

27 The Convention on the International Maritime Organization (IMO) (adopted 6 May 1940, entered into force on 17 May 1958) 289 UNTS 3. As is well known, the IMO general scope falls mainly within regulating international shipping, preventing marine pollution by ships and handling matters of maritime security. It reserves full membership only for States, and Russia is one of its State Parties.



are also State Parties to the IMO.²⁸ This is because the transport sector was one of the EU's first common policy areas towards the creation of a common transport market, allowing freedom to provide services, and the opening up of transport markets.²⁹ The maritime transport sector has been of particular importance for trade between Member States and between them and third countries, particularly those from the European Economic Area and Eastern and Central Europe.³⁰

Returning to the maritime provisions of the Corfu Agreement, article 39 specified that each Party grants, amongst others, a 'treatment no less favorable' than that accorded to a Party's own vessels, for vessels used for the transport of goods, passengers, or both, and flying the flag of the other Party, with respect to access to ports open to foreign vessels, the use of infrastructure and auxiliary maritime services of those ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading. Nevertheless, nothing prevents Parties from making additional special agreements on maritime transport following the entry into force of this Partnership³¹

Finally, as for the fisheries sector, specific reservations on the 'treatment no less favorable' are indicated by both Annex 3 and Annex 4 of the Corfu Agreement, respectively adopted by the EU and Russia. According to the EU reservation, the access to and use of the biological resources and fishing grounds situated in the maritime areas under the sovereignty or within the jurisdiction of Member States remains restricted to fishing vessels flying the flag of Member States and registered in Community territory, unless otherwise provided for.³² As for the Russian reservation, it indicates that authorization from the respective governmental body is necessary for fishing.³³

At this point it is important to underline that the aforementioned EU reservation was made in accordance with its exclusive competence in fisheries conservation. Since the 1970s, this applies to waters under national fisheries jurisdiction and to the high seas. According to the Court of Justice of the European Union (Court of Justice or CJEU), Member States are 'no longer entitled to exercise any power in the matter of conservation measures,'³⁴ neither internally nor externally. Indeed, the CJUE affirmed that in any matter where the EU had internal competence, there was a parallel external com-

28 Claudia Cinelli, 'Law of the sea framework. Is EU engagement a sine qua non for influence?' in *Ramses Wessels and Jed Odermatt* (eds), *Research Handbook on the EU's Engagement with International Organizations* (Edward Elgar Publishing 2019).

29 It is worth mentioning that the way forward to common legislation in the transport sector was cleared by the case that Parliament brought before the Court of Justice of the European Union against the Council for failure to act with regard to transport policy. The Court of Justice condemned the Council for failing to ensure free provision of international transport services or lay down conditions enabling non-resident carriers to operate transport services within a Member State. The Court urged the Council to act and thus to start developing a genuine common transport policy. Case C-13/83 *European Parliament v. Council of the European Communities* [1985] ECR 1556, paras 68-69. The TFEU does not include sea transport within the EU transport policy, which applies to transport by rail, road and inland waterway (art 100.1), although the European Parliament and the Council 'may lay down appropriate provisions for sea and air transport' (art 100.2).

30 Commission, 'Progress towards a common transport policy-Maritime transport' (Communication) COM (1985) 90; Id. 'Towards a new maritime strategy' (Communication) COM (96) 84.

31 According to Art 39 PCA. See also Annex 5 PCA which regards cross-border of supply service and includes insurance of risks relating to (i) maritime shipping covering any or all of the following: persons being transported, the goods being exported from or imported to, the same vehicle transporting the goods and any liability arising therefrom; (ii) goods in international transit; and (iii) accident and health insurance; and personal motor liability insurance in the case of cross-border movement.

32 PCA (n 1) annex 3, para 2.

33 *ibid* Annex 4.

34 Case C-804/79 *Commission v. United Kingdom* [1981] ECR 1045, para 17.



petence,³⁵ including in maritime sectors, such as maritime transport, which is a shared competence.³⁶ When the EU exercises its shared competence, Member States are then prevented from exercising theirs.³⁷ Furthermore, the CJEU observed that ‘from the very duties and powers [to take fisheries conservation measures] which Community law has established and assigned to the Community on the internal level that the Community has authority to enter into international commitments for the conservation of the resources of the sea’.³⁸

On this legal basis, and guided by the Corfu Agreement legal framework, over the years the EU has adopted a body of maritime legislation and developed policy actions contributing to further developments of EU-Russia maritime relationships.

3. Legal and Political Factors that Brought about Further EU-Russia Maritime-Related Developments

The legal nature of the Corfu Agreement does not substantially diverge from the model used for other cooperation agreements between the EU and third countries, such as association agreements, which are typically broad instruments, providing a framework for further and deeper cooperation. They are also susceptible to producing direct effects.³⁹ Hence, one should bear in mind that, according to settled case-law, some provisions of the Corfu Agreement are regarded as directly applicable. According to the Court of Justice, provisions guaranteeing the non-discrimination of legally employed Russian workers in EU Member States establish a clear and precise obligation which is not subordinated, in its performance or in its effects, to the intervention of any further act.⁴⁰ As for the direct effect of the Corfu Agreement’s provisions related to maritime affairs, they have not yet been tested before the CJEU.

In any case, differently from the association agreements, the Corfu Agreement does not aim to integrate the Russia Federation in the EU legal system, but instead refers to more modest ambitions of political and economic cooperation.

35 Case C-22/70 *Commission v. Council* [1971] ECR 264.

36 TFEU (n 1) art 4. For a more detailed discussion of the EU’s competences and related references, see Robin Churchill, ‘The European Union as an Actor in the Law of the Sea, with Particular Reference to the Arctic’ (2018) 33 *The International Journal of Marine and Coastal Law* 290.

37 TFEU (n 1) art 2.2.

38 Joined Cases 3, 4 and 6/76, *Officier van Justitie v. Kramer* [1976] ECR 1279, para 33. See also Case C-405/92 *Mondiet SA v. Armement Islais SARL* [1993] ECR I-6133, paras 11-16; Case C-459/03 *Commission v. Ireland* [2006] ECR I-4635, para 109.

39 Case C-113/97 *Babahenini* [1998] ECR I-183, para 17, and Case C-162/96 *Racke* [1998] ECR I-3655, paras 34-36. Case C-149/96 *Portugal v Council* [1999] ECR I-8395, para 34; Case C-63/99 *Gloszczuk* [2001] ECR I-6369, para 30; ase C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, para 54.

40 Case C-265/03 *Igor Simutenkov v. Ministerio de Educación y Cultura e Real Federación Española de Fútbol* [2005] ERC I-2596, para 28.



To this end, an institutional framework of political dialogue is laid down in the Corfu Agreement⁴¹ and includes regular EU-Russia summits, twice a year, alternatively on Russian and EU territory.⁴²

This Section combines legal and political factors in order to offer a study related to the most relevant historical developments in the cooperation (or lack thereof) between the EU and Russia in the maritime sectors in accordance with the Corfu Agreement implementation through the political dialogue. In particular, subsection 3.1 analyses the first decade of implementation of the Corfu Agreement from 1997 to 2007, while subsection 3.2 focuses on further developments, especially the 2009 EU-Russia Agreement on fisheries cooperation in the Baltic Sea, until the unlawful Crimea annexation by the Russian Federation in 2014.

3.1 Towards a 'Common Strategy' and Others Policy Actions Led by the EU (1997-2007): Implications for Maritime Cooperation with Russia

The Corfu Agreement entered into force in 1997. It was the same year as Russia's accession to the United Nations Convention on the Law of the Sea (LOSC).⁴³ Accordingly, one year later, the Russian Federation established the status and legal regime of its internal waters, territorial sea and contiguous zone.⁴⁴

In parallel, according to LOSC accession rules, the EU made a Declaration setting out the extent of its maritime competence.⁴⁵ The EU Declaration specifies the nature and extent of the EU maritime competences. In particular, as for maritime transport, the Declaration specifies that it has exclusive competence only to the extent that specific provisions of the LOSC, or legal instruments adopted in implementation thereof, affect common rules established by the EU.⁴⁶ When its rules exist but are not affected, in particular in cases of provisions establishing only minimum standards, the Member States have competence to act in this field, without prejudice to EU competence.⁴⁷

The exercise of the maritime competences that the Member States have transferred to the EU is,

41 Link <<https://russiaeu.ru/en/basic-documents>> accessed 3 May 2023.

42 PCA (n 1) art 7.

43 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

44 The Russian Federation ratified the LOSC on May 12, 1997. See Federal Act on the internal maritime waters, territorial sea and contiguous zone of the Russian Federation, 17 July 1998; Federal Act on the exclusive economic zone of the Russian Federation, 2 December 1998.

45 Council Decision (98/392/EC) of 23 May 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof OJ L 179/1. See the text of the Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention (Declaration made pursuant to article 5(1) of annex IX to the Convention and to article 4 (4) of the Agreement) at <<https://treaties.un.org>> accessed 3 May 2023.

46 *ibid.* With regard to the provisions on maritime transport, safety of shipping and the prevention of marine pollution contained *inter alia* in Parts II, III, V, VII and XII LOSC.

47 [2005] ERC I-2596 (n 40).



by its very nature, subject to continuous development.⁴⁸ Indeed, the conferral of competence upon the EU follows the development of its legal order towards affirming its ambitious leading role in improving international ocean governance,⁴⁹ with direct and indirect implications for the EU-Russia maritime-related relationship.⁵⁰

In the meantime, Yeltsin's so-called period of liberal pluralism ended with the manifestation of a large majority of Russian support for Putin's policies.⁵¹ Putin aspires to affirm Russia's global standing in a multipolar world, something that has been clearly shown by its foreign policy in, for example, Chechnya, Georgia, Crimea and, most recently, the aggression against Ukraine.

In parallel with Putin's rise to power, in 1999 the EU began to assume an increasingly proactive role in managing its relationship with Russia. Accordingly, two main policy actions led by the EU acquired specific importance: on the one hand, the Common Strategy of the European Union on Russia;⁵² and, on the other hand, the Northern Dimension Policy (NDP).⁵³

The Common Strategy of the European Union on Russia was adopted by the European Council in 1999,⁵⁴ which set out political objectives, as well as the means to be used by the Union in taking forward the Corfu Agreement implementation. The overall goal was to promote the integration of Russia into a wider area of cooperation in Europe, as well as through creating the necessary conditions for the future establishment of a free trade area.⁵⁵ Russia's response to the Common Strategy of the EU highlighted its refusal of EU interference in its internal matters and thereby asserted the Russian position to defend its national interests,⁵⁶ as the second war in Chechnya clearly showed.

48 The CJEU has played a significant part in determining the powers of the EU in various areas of the law of the sea. Gemma Andreone, 'Rapport General. Jurisprudence: Convergence ou Divergence?', in INDEMER (ed), *Droit International de la Mer et Droit de l'Union Européenne. Cohabitation, Confrontation, Cooperation?* (Pedone 2014). The EU currently exercises maritime exclusive competence in relation to 'the conservation of marine biological resources under the common fisheries policy' (art 3.1 d TFEU), and also in other sea-related sectors such as international trade (art 206 TFEU), as well as development cooperation policies (arts 208-214 TFEU). Additionally, the EU has shared maritime competence in relation to other aspects of fisheries (for example, research and technological development and development cooperation) with regard to environment, transport, energy and research (art 4 TFEU).

49 Henrik Ringbom, *The EU Maritime Safety Policy and International Law* (Martinus Nijhoff 2008); Commission and the High Representative of the Union for Foreign Affairs and Security Policy, 'International Ocean Governance: An Agenda for the Future of Our Oceans' [Communication] Join (2016) 49 final.

50 This is also a consequence of the EU enlargement policy which has led the EU presence in regional sea-basins, such as the Arctic Ocean, Baltic Sea and the Black Sea, thus strengthening its cooperation with and between the EU Member States and third coastal States of the aforementioned basins, including the Russian Federation. See Section 3.2.

51 Elena Dundovich, 'The Russia of Yeltsin Looks to Europe' (2019) 2 *De Europa* 35.

52 European Council (EC) 1999/414/CFSP Common Strategy of the European Union of 4 June 1999 on Russia [1999] OJ L 157/1.

53 The Northern Dimension Policy was initiated in 1999 and renewed in 2006 <<https://northerndimension.info/about-northern-dimension/>> accessed 3 May 2023.

54 TEU (n 1) article 13.

55 *ibid* 1, 3, 8.

56 Hiski Haukkala, 'The Making of the European Union Common Strategy on Russia' (2000) 28 *Upi Working Papers* 1; Dov Lynch, 'Russia's Strategic Partnership with Europe' (2004) *The Washington Quarterly*. Maurizio Massari, 'Russia and the EU Ten Years On: A Relationship in Search of Definition' (2007) 42 *The International Spectator* 1. At this point it is important to mention that, as will be better analyzed below, article 99 of the Corfu Agreement considers the possibility of taking any measures which a Party considers necessary for the protection of its essential security interests. See Section 4.



In any case, the outbreak of the second war in Chechnya had no relevant impact on EU-Russia relations within a long-term perspective. As the EU enlarged, the EU and Russia became even closer neighbors and their relationship of even greater importance. Soon, the idea was reaffirmed of creating an EU-Russia free-trade area in terms of 'Russia's progressive integration' into the European cooperation and open international trading system.

In this sense, the NDP contributed to fruitful political cooperation in terms of EU-Russia multi-sector cooperation that had already been established under the Corfu Agreement. More specifically, it was a regional initiative which involved the Russian Federation jointly with Norway and Iceland to address problems in the Baltic Sea, which also included cooperation on maritime transport and logistics.

In any case, the Russian Federation intended to strengthen its positions as a great maritime power. A few years after the NDP, in 2001, Russia's Naval Doctrine was adopted. It has been generally directed to establish a favorable logistics and economic environment contributing to the development and maintenance of the fleet and coastal port infrastructure at a level that guarantees economic independence and national security of the Russian Federation State, a reduction of shipping costs and increases in foreign trade, including with the EU.⁵⁷

At the 2003 St. Petersburg Summit, a decision was made to create four EU-Russia 'common spaces' which cover economic issues and the environment, including maritime trade and marine environment; issues of freedom, security and justice; external security, including crisis management and non-proliferation; and research and education, including cultural aspects.⁵⁸

Despite the low relevance of the Corfu Agreement's implementation, after the largest enlargement in 2004,⁵⁹ the European Commission affirmed that the Corfu Agreement remained valid, considering it to be neither outdated nor exhausted. The Commission specified that there is no limit in scope for EU-Russia cooperation and that its implementation through the Corfu Agreement institutions needs to become more operational and flexible.⁶⁰

In 2007, the Corfu Agreement was due to expire. Since neither party notified the other of its withdrawal, it was automatically renewed for one year.⁶¹

57 Russia Maritime Studies Institute, *Maritime Doctrine of the Russian Federation* [2015]. English translation by the U.S. Naval War College Foundation.

58 At the 2003 St. Petersburg summit, the EU and Russia decided to reinforce their cooperation already established under the Corfu Agreement by creating four 'common spaces' in the long term: (i) common economic space, (ii) common space of freedom, security and justice, (iii) common space of cooperation in the field of external security; (iv) common space of research and education, including culture. Joint Statement 9937/03 [2003] (Presse 154) <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/75969.pdf> accessed 3 May 2023.

59 Erkki Liikanen, Member of the European Commission, 'The Enlargement of the EU: Impact on the EU-Russia bilateral cooperation' (Speech at the 5th EU-Russia Industrialists' Round Table Moscow, 1 December 2003).

60 European Commission, 'Communication from the Commission to the Council and to the European Parliament on relations with Russia' (Communication) COM (2004) 106.

61 PCA (n 1) art 106.



The aforementioned policy actions led by the EU within the first decade of the Corfu Agreement implementation had no direct implications on further developments of EU-Russia maritime cooperation. However, they constituted important steps forward in increasing political dialogue which progressively led to the implementation and expansion of the scope of application of the Corfu Agreement, including those provisions with specific reference to maritime affairs.

3.2 Expanding Bilateral Cooperation on Different Maritime Sectors (2008-2014)

In 2008, the negotiation process for a new EU-Russia Agreement to replace the PCA was launched. The EU and the Russian Federation agreed for the Corfu Agreement to remain in force until replaced by a new one that would provide a comprehensive framework for EU-Russia relations for the foreseeable future and help to develop the potential of their relationship.⁶²

In the meantime, the EU has set out steps to affirm itself as a global maritime actor with a new vision for the oceans and seas,⁶³ which involves the adoption of the EU Integrated Maritime Policy.⁶⁴ In order to influence international debate on maritime affairs and to reap all the benefits of its own integrated policy, in 2009 the Commission presented its strategy to strengthen global governance of seas and oceans.⁶⁵

The EU has become increasingly concerned about maritime regional activities mainly devoted to the protection of fragile and vulnerable sea basins. While the negotiation of a new EU-Russia comprehensive agreement was on standby, they promoted the adoption of sectorial maritime initiatives concerning regions of interests to both the EU and the Russian Federation, in particular the Black and Baltic, and most recently, Arctic marine regions.

With the aim of intensifying its maritime relations with Russia, the EU launched the Black Sea regional cooperation framework⁶⁶ Indeed, the Black Sea region comprises several EU Member States (Bulgaria, Greece and Romania), the candidate country Turkey and European Neighbourhood Policy (ENP)⁶⁷ partners (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine), as well as the Russian Federation as a strategic partner.

62 Permanent Mission of the Russian Federation to the European Union, *Russia-EU Partnership and Cooperation Agreement turns 20* [2017] <<https://russiaeu.ru/en/news/russia-eu-partnership-and-cooperation-agreement-turns-20>> accessed 3 May 2023.

63 European Commission, 'Green Paper. Towards a future Maritime Policy for the Union: A European vision for the oceans and seas' (Communication) COM (2006) 275 final.

64 European Commission, 'An Integrated Maritime Policy for the European Union' (Communication) COM (2007) 575 final.

65 European Commission, 'Developing the international dimension of the Integrated Maritime Policy of the European Union' (Communication) COM (2009) 536 final.

66 European Commission, 'Black Sea Synergy – A new regional cooperation initiatives' (Communication) COM (2007) 160.

67 The ENP has evolved over time. It was launched in 2003 by the European Commission, 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' (Communication) COM (2003) 104 final. Revisions took place and were renewed in 2011 and 2015. See, respectively, Commission, 'A new response to a changing Neighbourhood' (Communication) COM (2011) 303 final; European Commission, 'Review of the European Neighbourhood Policy' (Communication) JOIN (2015) 50 final. For a general overview, see Sara Poli (ed), *European Neighbourhood Policy – Values and Principles* (Routledge 2016).



The EU has been successful in pursuing its global interests in general, and its agenda in the Black Sea in particular. Indeed, in 2009 the EU and the Russian Federation signed the Agreement on co-operation in fisheries and the conservation of the living marine resources in the Baltic Sea (Baltic Agreement), guided by both the LOSC principles and provisions and Corfu Agreement framework⁶⁸

The objective of the Baltic Agreement is to ensure close co-operation between the EU and the Russian Federation on the basis of the principle of equitable and mutual benefit for the purposes of conservation, sustainable exploitation and management of straddling, as well as associated and dependent stocks in the Baltic Sea.⁶⁹ It sets out provisions on joint management measures⁷⁰ licensing,⁷¹ compliance with conservation and management measures and other fisheries regulations,⁷² control enforcement cooperation,⁷³ including inspections, arrest and detentions of vessels.⁷⁴ To this end, there was agreement to establish a Joint Baltic Sea Fisheries Committee which examines the development and dynamics of fish stocks in the Baltic Sea, supervises the implementation of the agreement, and serves as a forum for the amicable resolution of any disputes regarding the interpretation or application of the agreement.⁷⁵

Therefore, the Baltic Agreement helped strengthen EU-Russia partnership in maritime affairs, namely curbing illegal fishing activities in the Baltic, thus providing a framework for close co-operation between the Parties to ensure the conservation and sustainable exploitation and management of fish stocks in the Baltic Sea. However, the Russian Federation preferred not to extend the geographical scope of the 2009 Agreement beyond the Baltic.

Over the last ten years, the EU as a global maritime actor has also tried to be present in the Arctic Ocean. After much discussion, it has now taken on the role of 'observer in principle' of the Arctic Council. The EU's permanent observer status in the Arctic Council has been opposed by Russia, given EU sanctions following the annexation of Crimea and the situation in Ukraine.⁷⁶

Despite this opposition, the EU participates directly in other regional fora where the Russian Federation is present too, such as the Barents Euro-Arctic Council,⁷⁷ and it played a relevant role within

68 Agreement between the European Community and the Government of the Russian Federation on cooperation in fisheries and the conservation of the living marine resources in the Baltic Sea [2009] OJ L129/2 (Baltic Agreement).

69 *ibid* art 4.

70 *ibid* art 5.

71 *ibid* art 7.

72 *ibid* art 8.

73 *ibid* art 9.

74 *ibid* arts 10-11.

75 *ibid* art 14.

76 The Arctic Council 'receive[d] the application of the EU for observer status affirmatively, but defer[red] a final decision on implementation until the Council ministers are agreed by consensus . . . the EU may observe Council proceedings until such time'. Arctic Council Secretariat, Kiruna Ministerial Meeting Documents [2013] <<https://oaarchive.arctic-council.org/handle/11374/1569>> accessed 3 May 2023.

77 The Barents Council is the official body for inter-governmental co-operation in the Barents Region. For more information see the Barents Council web page <<https://barents-council.org/>> accessed 3 May 2023.



the negotiation process for the adoption of the multilateral Agreement for preventing unregulated fishing in the high seas of the central Arctic Ocean.⁷⁸

From 2008-2014, EU-Russia maritime cooperation experienced a significant expansion in maritime affairs, from trade and transport to fisheries and marine environment. Despite this, the illegal annexation of Crimea and the recent aggression in Ukraine by the Russia Federation have raised the question of compatibility of EU sanctions with the Corfu Agreement and their impact on EU-Russia maritime affairs.

4. The Question of Compatibility of EU Sanctions with the Corfu Agreement and their Impact on EU-Russia Maritime Affairs

The relations between the EU and Russia have been strained since the 2014 illegal annexation of Crimea and the city of Sebastopol by the Russian Federation and its destabilizing actions in eastern Ukraine. In response to these serious internationally wrongful acts, the EU imposed a number of restrictive measures against Russia, including individual sanctions, economic sanctions and diplomatic measures.⁷⁹

At the same time, the EU also decided to suspend bilateral talks with the Russian Federation on the new comprehensive agreement which was to replace the Corfu Agreement. However, the Corfu Agreement was not suspended.

As is well known, the EU adopted sanctions against the Russia Federation concerning export prohibitions and restrictions on access to the EU capital market. The legal questions that have consequently arisen regard the compatibility of EU sanctions with relevant international agreements, especially the Corfu Agreement. The Corfu Agreement established a sort of 'security exception' according to which prohibitions or restrictions on goods in transit can be imposed if justified, inter alia, on grounds of public security or protection of health and life of humans, or protection of intellectual, industrial, or commercial property, and to protect essential security interests.⁸⁰

More specifically, article 99 of the Corfu Agreement does not prevent a party from taking measures

78 The International Agreement to Prevent Unregulated Fishing in the High Seas of the Central Arctic Ocean prevents commercial fishing by the Parties in the high seas of the Arctic Ocean for the next 16 years. Parties are: Canada, Iceland, the Kingdom of Denmark, Norway, the United States and the Russian Federation, as well as China, Japan, South Korea and the European Union. See Council Decision (EU) 2019/407 of 4 May 2019 on the conclusion, on behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean [2019] OJ L 73/1; Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean [2019] OJ L 73/3.

79 Council Decision 2014/512/CFSP of 31 July 2014, concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine [2014] OJ L 229/13; Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine [2014] OJ L229/1. See, Elena Sciso, 'La crisi ucraina e l'intervento russo: profili di diritto internazionale' (2014) *Rivista di diritto Internazionale* 992; Sara Poli, 'The Common Foreign Security Policy after Rosneft: Still imperfect but gradually subject to the rule of law' [2017] 54 *Common Market Law Review* 1799; Id. *Le misure restrittive autonome dell'Unione europea* (Editoriale Scientifica 2019) 45 ss.

80 PCA (n 1) arts 19 and 99.



that it considers necessary for the protection of its essential security interests, including in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war.⁸¹

At this point, it is important to understand to what extent the imposition of EU sanctions against Russia could be considered 'necessary for the protection of its essential security interests,' including in the event of 'serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war' that do not affect directly the territory of the EU.

On the other hand, the Russian Federation, on occasion of the twentieth anniversary of the Corfu Agreement, considered that many of the mechanisms of EU-Russia dialogue developed under the Corfu Agreement 'fell prey to short-sighted Western policies.'⁸² Furthermore, Russia argued that the EU-imposed sectoral sanctions against Russian companies were in breach of the provisions of the Corfu Agreement.⁸³

In particular, the question of the compatibility of EU sanctions with the Corfu Agreement was addressed by the CJUE in the *Rosneft case*.⁸⁴ The Court declared that the restrictive measures are compatible with the Corfu Agreement. It considers that the EU sanctions clearly contribute to achieving the objective pursued by the EU to protect its security interests and to promote a peaceful settlement of the crisis in Ukraine, consistently with the overall goal of maintaining peace and international security.⁸⁵

In addition, the Court specified that the wording of article 99 of the Corfu Agreement does not require that the 'war' or 'serious international tension constituting a threat of war' refer to a war directly affecting the territory of the EU. Accordingly, events which take place in a country bordering the EU, such as those which have occurred in Ukraine, are capable of justifying measures designed to protect essential EU security interests and to maintain peace and international security.⁸⁶

In recent years, several channels of cooperation have been frozen. In particular, after the Russian invasion of Ukraine in February 2022, the EU adopted additional restrictive measures that build on, and expand, the earlier aforementioned sanctions.⁸⁷

Amongst others, they prohibit the entry into EU ports of any Russian registered vessels, as well as

81 *ibid* art 99 (1) (c-d).

82 Permanent Mission of the Russian Federation to the European Union (n 62).

83 *ibid*.

84 The Rosneft Oil Company OJSC (Rosneft) is a company that conducts its exploration and production activities in the key hydrocarbon provinces of Russia and the Russian Continental Shelf, including include in waters deeper than 150 meters and in shale formations. Rosneft requested a preliminary ruling that relates to the validity of restrictive measures. Case C-72/15, *The Queen (PJSC Rosneft Oil Company) v. Her Majesty's Treasury* [2017] ECLI:EU:C:2017:236.

85 *ibid* para 108-117.

86 *ibid* esp. para 112. Poli, *Le misure restrittive autonome dell'Unione europea* (n 79).

87 For an overview of meetings, press releases and policies of the Council of the EU and the European Council in relation to the EU's response to Russia's military aggression against Ukraine, including a detailed description of restrictive measures, see European Council, Council of European Union, Russia's war on Ukraine, <www.consilium.europa.eu/en/topics/russia-s-war-on-ukraine/> accessed 3 May 2023.



prohibiting the sale, supply, transfer or export of maritime navigation goods and technology to any person or entity in Russia, for use in Russia or for the placing on board of a Russian-flagged vessels.⁸⁸

In accordance with the aforementioned CJUE jurisprudence, the EU current sanctions are compatible with the Corfu Agreement.⁸⁹

In any case, under specific authorizations, derogations are granted for agricultural and food products, humanitarian aid, and energy. Currently, the EU ban only includes imports of caviar and caviar substitutes, along with crustaceans such as crab and shrimp. Other seafood products, like Alaska Pollock and cod, are not affected by the measures.⁹⁰

In addition to sanctions, some of the EU policy frameworks of regional cooperation on maritime affairs have been suspended with Russia, such as the Baltic Sea Regional Transitional cooperation programme.⁹¹ Nevertheless, the 2009 EU-Russia Baltic Agreement is not suspended and its objective and scope do not fall directly within the scope of current sanctions.

Theoretically speaking, sanctions can be expanded to include all Russian fishing vessels and all seafood, banning all fish and seafood originating in Russia or caught by Russian-flagged or Russian-owned vessels, regardless of its route to the EU market, and refusing access by Russian-flagged and Russian-owned fishing vessels into EU waters and ports.

In this case, the question of compatibility of these sanctions with the 2009 Baltic Agreement would assume relevance because the treaty-text does not include 'security exceptions.' However, it includes a saving clause according to which nothing affects or prejudices in any manner the positions or the views of either Party with respect to 'any question relating to the Law of the Sea.'⁹² Hence, the wording 'any question relating to the Law of the Sea' does not seem to exclude matters of maritime security, allowing each Party, i.e. the EU, to take appropriate measures to contribute to maintaining the peace and international security in accordance with the LOSC, which is consistent with the UN Charter and rules and principles of general international law.

Furthermore, general interpretation rules of treaties provide a mechanism of inter-systemic interpretation between same States parties to same treaties, i.e. the EU and Russia to the Corfu and

88 Related technical or financial assistance and brokering or other services are also prohibited. as listed in Annex XVI of Regulation (EU) 833/2014.

89 Note that sanctions are applicable to 500 GT and beyond (from smaller to the biggest) sailing commercially in international shipping. Hence, a fishing vessel certified in accordance with the most relevant international instruments (SOLAS, MARPOL or Load Lines Conventions) has to be considered as a 'ship' for the purposes of EU Regulation (EU) 833/2014 and falls within the scope of the ban.

90 Guidance for Member States <https://finance.ec.europa.eu/system/files/2022-09/faqs-sanctions-russia-export-import-guidance_en.pdf> accessed 3 May 2023.

91The EU joined members of the Council of the Baltic Sea States (CBSS) in suspending Russia and Belarus from the Council's activities. See also EEAS Press release, 'Russia/Belarus: Members suspend Russia and Belarus from Council of the Baltic Sea States' (05 March 2022) <www.eeas.europa.eu/eeas/russiabelarus-members-suspend-russia-and-belarus-council-baltic-sea-states_en> accessed 3 May 2023.

92 Baltic Agreement (n 68) Art 14.



Baltic Agreements. Indeed, this mechanism of inter-systemic interpretation asks States to take into account, together with the treaty context, any relevant rules of international law applicable in the relations between the parties.⁹³ Hence, these could include 'security exceptions' due to article 99 of the Corfu Agreement.

Furthermore, this inter-systemic integration between the Corfu and Baltic Agreements is evident from the Preamble of the latter, which recalls the Corfu Agreement as a general framework which has guided both Parties to intensify their relations. This led to enrich bilateral cooperation on trade and investment fields, including maritime transport, with more specific sectors related to conservation, sustainable exploitation, and management of Baltic fisheries.

Since the Baltic Agreement does not exclude explicitly the applicability of 'security exceptions,' it is here argued that in case of the adoption of extended sanctions that might fall under the Baltic Agreement scope of application, they would be, in principle, compatible with the latter.

Presently, however, most concerns are not focused on the Baltic Sea. Current EU interests and concerns involve to a greater extent the Black Sea where States bordering the Black Sea are NATO and EU members (Bulgaria, Greece and Romania), which is of geostrategic importance for the energy security of the EU.

Furthermore, because of its geostrategic importance, a safe maritime humanitarian corridor was opened in the Black Sea, i.e. the Black Sea Grain Initiative. In July 2022, the Black Sea Grain Initiative was signed by the UN, Ukraine, Russia and Türkiye, and has transported close to 10 million metric tonnes of grain from three Ukrainian ports along agreed routes.⁹⁴ Indeed, it was adopted to facilitate the safe navigation of export of grain, foodstuffs, and fertilizers from Ukraine. After of a temporary suspension of the aforementioned initiative by Russia,⁹⁵ most recently positive and significant developments led to the confirmation by the Russian Federation to continue its participation in the Black Sea Initiative.

5. Conclusion

The Corfu Agreement is the primordial legal basis for the subsequent development of EU-Russia maritime cooperation. It includes specific provisions related to maritime affairs, especially regarding transport and trade sectors in accordance with the 'treatment no less favorable' standard. Reservations on the 'treatment no less favorable' standard are instead made in relation to the fisheries sectors.

93 General rules of interpretation codified by the Vienna Convention on the Law of Treaties between States [1969] 1155 UNTS 331 and by Convention on the Law of Treaties between States and International Organizations or between International Organizations [1986] are today considered customary law. Ibid art 31 (3) (c).

94 For more detail see <www.un.org/en/black-sea-grain-initiative> accessed 3 May 2023.

95 The European Union condemns Russia's suspension of Black Sea Grain Initiative and urges Russia to reverse its decision and to immediately resume the implementation of the UN Black Sea Grain Initiative: EEAS Press release, 'Food security: Statement by the High Representative on the extension of the Black Sea Grain Initiative' (17 November 2022) <www.eeas.europa.eu/eeas/food-security-statement-high-representative-extension-black-sea-grain-initiative_en> accessed 3 May 2023.



During the first decade of the Corfu Agreement implementation (1997-2007), the development of the EU-Russia maritime cooperation was negligible. At the end of the 1990s the Russian Federation experienced a dramatic political change with important implications for the EU-Russia relationship in general, and for maritime cooperation in particular. However, the 1999 EU Common Strategy and other policy actions led by the EU might be appreciated in terms of engaging in dialogue with the Russian Federation. In any case, both the EU and the Russian Federation aspired to be global maritime powers. Once they succeeded, the EU and the Russian Federation focused on marine regions of mutual interest, such as the Baltic, Black and Arctic regions. Accordingly, they expanded their maritime cooperation from transport and trade to fisheries and marine environment sectors.

Despite a general context of difficulties for adopting a new agreement which would replace the PCA, in 2009 they adopted the Agreement on fisheries conservation in the Baltic Sea that aims to ensure close cooperation between the EU and Russia based on fair and mutual benefits for the purpose of conservation, sustainable use, and management of marine living resources that migrate between zones under their respective jurisdiction.

This shows that the EU and the Russian Federation can adapt to each other to meet evolving challenges and demonstrates the continuing strength and promise of bilateral cooperation.

However, EU-Russia relations have never been easy. Flexibility and perseverance met an escalation of tension because of the Crimea annexation in 2014 and the invasion of Ukraine in 2022. The EU adopted economic sanctions against Russia, which are compatible with the Corfu Agreement, according to its article 99.

The EU-Russia maritime relationships are today a matter of security concern where only diplomacy can play a crucial role. The geostrategic and economic importance of oceans and seas might become a relevant point to be addressed in diplomacy for reducing the current crisis, as shown by the recent positive outcome in relation to the Black Sea Grain Initiative. According to the UN Secretary General, '[e]ven in the darkest hours, there is always a beacon of hope and an opportunity to find solutions that benefit everyone.'⁹⁶

⁹⁶ Secretary-General's press encounter on the Black Sea Initiative 'Beacon on the Black Sea' <www.un.org/en/black-sea-grain-initiative> accessed 17 May 2023.