

‘Geopoliticization through Law’: The European Union and Beyond

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Abstract

This chapter investigates the reactions of the European Union (EU) and other regional international organizations (RIOS) – and their laws – to today’s more challenging geopolitical environment. This is warranted as the creation of collective strength against outside threats is a prominent rationale in regional integration theories. The chapter first demonstrates that in the EU not only a “geopolitical awakening” in terms of changing political discourse, but also of its legal toolbox can be observed. To illustrate this, a range of new instruments in trade and defence (industry) are surveyed. The chapter subsequently argues that the EU seems to be quite special in that regard compared to other RIOS such as the East African Community (EAC) and the Association of Southeast Asian Nations (ASEAN). In these other RIOS, at most, political discourse acknowledges the new geopolitical landscape, albeit in more general terms. The chapter offers some possible explanations for this discrepancy, focussing on both the difference in demand for new geopolitical tools and the difference in the capacity to supply them. The chapter concludes that the EU’s turn to geopolitics may contribute to make it more special (again) compared to other RIOS.

Keywords

Association of Southeast Asian Nations – Comparative regionalism – Defence industry – Defence policy – East African Community – European Union – Geopolitics – Legalization – Strategic autonomy – Trade policy

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1 Introduction

The term ‘geopolitics’ is ubiquitous these days in Western discussions about international politics,² not least in Europe. In the 2023 ‘State of the Union’ speech, European Commission President Ursula von der Leyen proclaimed the creation of a ‘a geopolitical Union – supporting Ukraine, standing up to Russia’s aggression, responding to an assertive China and investing in partnerships’.³ Previously, the EU High Representative for Foreign Affairs and Security Policy Josep Borrell had already noted that we live in an era of hard power politics, in which everything can be used as a weapon.⁴ He then called for the EU’s ‘geopolitical awakening’ to translate into permanent strategic positioning, which makes use of all Union policies and instruments.⁵

This chapter investigates the reactions of regional international organizations (RIOS) to today’s more hostile and challenging geopolitical environment. This is merited for two main reasons. First, in theorizing regional integration, one prominent rationale is to create collective strength to be able to better stand up to great powers and other external security threats.⁶ Second, as the EU has clearly embraced the notion of geopolitics, and since it continues to serve – sometimes – as a model for other RIOS,⁷ it is worthwhile exploring how the EU gave concrete expression to its own ‘geopolitical awakening’ and whether this reaction can be recognized in other RIOS as well.

Scrutinizing these issues, the chapter argues that one of the main consequences of the EU’s ‘geopolitical awakening’ has been a proliferation of new instruments, including legislation. This proliferation could be described as ‘inter arma gerimant leges’ – times of geopolitical tensions spawn new laws – thus the opposite of Marcus Tullius Cicero’s adage ‘inter arma silent leges’, which can be loosely translated as ‘when the weapons speak, the law is

2 C. Nickel, ‘What do we talk about when we talk about the “return” of geopolitics?’ (2024) 100 *International Affairs* 221.

3 European Commission, ‘2023 State of the Union Address by President Von der Leyen’, Strasbourg, 13 September 2023, <https://neighbourhood-enlargement.ec.europa.eu/news/2023-state-union-address-president-von-der-leyen-2023-09-13_en> (accessed 20 January 2025).

4 European Union, *A Strategic Compass for Security and Defence*, 24 March 2022, <https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf> (accessed 20 January 2025) 4.

5 Ibid.

6 F. Schimmelfennig, ‘Regional Integration Theory’, in *Oxford Research Encyclopedia of Politics* (26 February 2018), attributing this line of thinking to intergovernmentalism.

7 International Law Association, *The International Law of Regional Organizations: Final Report* (2024), 44–45.

silent'.⁸ In the EU, therefore, as much as particularly Russia's full scale invasion of February 2022 is seen as a historic rupture (*Zeitenwende*),⁹ there is continuity in the heavy reliance on law as the propellant for taking European integration forward. In other words, after decades of 'integration through law',¹⁰ what can now be observed is the 'geopoliticization through law' in the EU. Meanwhile, considering the examples of two other ambitious regional organizations – the East African Community (EAC) and the Association of Southeast Asian Nations (ASEAN) – it can be concluded that no similar development can be observed. At most, political discourse acknowledges the new geopolitical landscape in these other RIOS. Therefore, as the chapter argues furthermore, the EU's 'geopolitical awakening' and its legal ramifications may thus contribute to make the EU more special (again) compared to other RIOS.

The chapter starts with a brief tracing of the EU's 'geopolitical awakening' as a shift in political rhetoric. Subsequently, the chapter provides an overview (without claiming exhaustiveness) of important new geopolitical instruments adopted by the EU as a legal consequence of this awakening. The analysis then turns to the EAC and ASEAN as comparators, concluding a clear absence of concrete measures. The chapter ends with a conclusion and an outline for a research agenda on the topic of RIOS, geopolitics, and the law.

2 The 'Geopolitical Turn' in the EU

As noted, one major rationale for regional integration is to create collective power vis-à-vis regional or global great powers. However, unlike military alliances such as the North Atlantic Treaty Organization (NATO), the security dimension is mostly not the solely dominant one in RIOS. In addition, RIOS are often set up with the aim of ensuring peace between the member of the RIO and boosting welfare through market integration and its scale effects. The

8 J. Klabbers, *International Law* (4th edn, Cambridge University Press, 2024) 218.

9 German Federal Government, 'Regierungserklärung von Bundeskanzler Olaf Scholz am 27. Februar 2022', 27 February 2022, <<https://www.bundesregierung.de/breg-de/aktuelles/regierungserklaerung-von-bundeskanzler-olaf-scholz-am-27-februar-2022-2008356>> (accessed 20 January 2025); T. Bunde, 'Zeitenwende as a foreign policy identity crisis: Germany and the travails of adaptation after Russia's invasion of Ukraine' (2025) *British Journal of Politics and International Relations* [online first].

10 M. Cappelletti, M. Secombe and J.H.H. Weiler, 'Integration Through Law: Europe and the American Federal Experience – A General Introduction' in M. Cappelletti, M. Secombe and J.H.H. Weiler (eds.), *Integration Through Law: Europe and the American Federal Experience* (Walter de Gruyter, 1986).

economic dimension can be seen as the prime rationale for integration for many RIOS, which is already reflected in their designations, including terms such as 'economic' (e.g., the Economic Community of Western African States, ECOWAS) or 'market' (e.g., the Southern Common Market, Mercosur). This was of course also the case for the EU, which was preceded by the European Economic Community (EEC). It is also reflected in the term 'regional economic integration organization clause' (REIO), which was adapted to 'regional integration organization clause' in newer international agreements.¹¹ Many RIOS pursue a broader agenda than economic integration, having branched out, such as the EU with its three 'pillars' following the Maastricht Treaty signed in 1992 and the Association of Southeast Asian Nations (ASEAN) with its three communities launched in 2009.¹²

Hence, the EU is certainly not alone in being a RIO that has embraced a wide agenda spanning economics, security, and many other issues. In the last few years, it has embarked on what some scholars term a 'geopolitical turn',¹³ which goes hand in hand with a 'geoeconomic turn',¹⁴ a 'unilateral turn',¹⁵ and the quest for 'strategic autonomy'.¹⁶ This section will trace this development, which serves as the conceptual platform from which the new geopolitically inspired instruments were launched.

To better understand the meaning of the EU's 'geopolitical awakening' and its legal ramifications, it is useful to contrast the present with the not-so-distant past. Anecdotally speaking, one could say that a quarter of a century ago one of the most hotly debated issues in the EU's external relations was the import of bananas (the so-called 'banana wars').¹⁷ In 2025, we find ourselves in confronted with debates about scaling up ammunitions production, the pur-

11 R.A. Wessel and J. Odermatt, 'The European Union's engagement with other international institutions Emerging questions of EU and international law' in R.A. Wessel and J. Odermatt (eds.), *Research Handbook on the European Union and International Organizations* (Edward Elgar, 2019) 13.

12 ASEAN, *Roadmap for an ASEAN Community 2009–2015* (2009).

13 K.R. McNamara, 'Transforming Europe? The EU's industrial policy and geopolitical turn' (2024) 31 *Journal of European Public Policy* 2371.

14 S. Bauerle Danzman and S. Meunier, 'The EU's Geoeconomic Turn: From Policy Laggard to Institutional Innovator' (2024) 62 *JCMS: Journal of Common Market Studies* 1097.

15 T. Verellen & A. Hofer, 'The Unilateral Turn in EU Trade and Investment Policy' (2023) 28 *European Foreign Affairs Review* 1.

16 See A. Steinbach, 'The EU's Turn to "Strategic Autonomy": Leeway for Policy Action and Points of Conflict' (2023) 34 *European Journal of International Law* 973, 975.

17 T.G. Taylor & T.E. Josling, *Banana Wars: The Anatomy of a Trade Dispute* (CABI, 2003); H. Kuschel, 'Bananenstreit – und kein Ende?' (1998) 44 *Recht der Internationalen Wirtschaft* 122.

chase of tanks, and where even European nuclear weapons are openly discussed.¹⁸ This shows a remarkable shift in political and scholarly thinking surrounding the EU and its foreign policy.

Originally, the external relations of the European Economic Community focused on trade and development cooperation.¹⁹ The EEC therefore only had civilian instruments, unlike states, which could also rely (to varying degrees) on military might. This gave rise to the characterization of the EEC as a 'civilian power'.²⁰ At the outset of the integration process in Europe, the main contribution that a united Europe was considered to make to peace and security in the world was to prevent a new war *between* its own Member States, especially Germany and France, as the 1950 Schuman Declaration made clear.²¹

This image of European integration as a mainly inward-looking peace project changed over the course of the 1970s and 1980s, when political leaders wanted to better coordinate their national foreign policies. In the Maastricht Treaty of 1992, this form of cooperation was institutionalized as the 'second pillar' of the European Union, the Common Foreign and Security Policy (CFSP). That the EU was no longer just a 'civilian power' became apparent after the activation of the Common Security and Defence Policy (CSDP), which is part of the CFSP, after the Saint-Malo Declaration in 1998.²²

While the fall of the Berlin Wall and the enlargement process towards Central and Eastern Europe led to an optimistic sentiment about the role and future of the EU, frustration arose about internal divisions, for example during the Gulf War, the Yugoslavia War, the Kosovo War and the Iraq War.²³ This tension between ambition and reality explains the tone of policy documents from this period. This can best be exemplified by the Laeken

18 J. Hanke Vela & N. Camut, 'As Trump looms, top EU politician calls for European nuclear deterrent', *Politico* (25 January 2024) <<https://www.politico.eu/article/europe-nuclear-warfare-deterrence-manfred-weber-vladimir-putin-ukraine-russia-war/>> (accessed 18 January 2025).

19 Treaty establishing the European Economic Community (1957) art. 110 and 130.

20 F. Duchêne, 'Europe's Role in World Peace' in R. Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead* (Fontana, 1972).

21 Schuman Declaration, 9 May 1950, <https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_nl> (accessed 20 January 2025).

22 S. Keukeleire & T. Delreux, *The Foreign Policy of the European Union* (3rd edn, Bloomsbury Academic, 2022) 190.

23 M. Tocci, 'From the European Security Strategy to the EU Global Strategy: Explaining the Journey' (2017) 54 *International Politics* 487, 488; C. Guicherd, 'The Hour of Europe: Lessons from the Yugoslav Conflict' (1993) 17 *Fletcher Forum of World Affairs* 159.

Declaration from 2001, which provided an outline of the intended new position of the EU:

Now that the Cold War is over and we are living in a globalized, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalization. (...) A power seeking to set globalization within a moral framework, in other words to anchor it in solidarity and sustainable development.²⁴

To put it simply, in the eyes of political leaders, Europe should be capable of much more on the global stage than just fighting 'banana wars'. This sentiment was shared and further elaborated by leading scholars. Due to its economic weight,²⁵ but also through its pioneering role in the field of norms and regulation,²⁶ the EU could and should become a prominent global player.

This self-confident, and quite non-self-critical, image of the EU as a player on the world stage began to crumble from 2014 onwards with the illegal annexation of Crimea by Russia. In 2016, then High Representative Federica Mogherini released a 'Global Strategy' for the EU. This was, in a sense, the successor to the 2003 European Security Strategy,²⁷ but characterized by a broad perspective covering the full spectrum of EU policy areas.

On the one hand, emphasis was still placed on the international legal order and multilateralism. On the other, it was now being noted more clearly than before in several places that the EU had its own interests to safeguard, that it must be selective in its external action, and simply cannot achieve all of its ambitions on its own.²⁸ The central creed of the Global Strategy was therefore 'principled pragmatism'.²⁹ Furthermore, by prioritizing 'Europe and its surrounding regions',³⁰ the strategy reflected the 'return' or even 'revenge of ge-

24 European Union, Presidency Conclusions – European Council Meeting in Laeken, 14 and 15 December 2001, SN 300/1/01 REV 1, 20.

25 C. Damro, 'Market power Europe' (2012) 19 *Journal of European Public Policy* 682.

26 I. Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *Journal of Common Market Studies* 235; A. Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press, 2020).

27 European Council, *A secure Europe in a better world – European security strategy*, Brussels, 12 December 2003.

28 J. Larik, 'The EU's Global Strategy, Brexit and "America First"' (2018) 23 *European Foreign Affairs Review* 343.

29 European Union, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy* (June 2016) 16.

30 *Ibid.*, 19.

ography'³¹ in thinking about external relations, which is a clear characteristic of a *geopolitical* approach. In addition, the concept of 'strategic autonomy' was given a prominent place in the strategy.³² The term 'open' was later added to this, to express, as with 'principled pragmatism', that the EU would still endeavour to adhere to its values – including (economic) openness – as far as possible, while building capacity to safeguard its own values and interests with sufficient independence.³³

In policy documents from recent years, the call for an 'open but assertive approach' with a focus on European values and interests has only become louder.³⁴ In a communication on 'rules-based multilateralism', the European Commission and the High Representative stated in 2021 that 'we cannot be multilateralists alone nor only for the sake of it'.³⁵ Rather multilateralism ought to 'deliver results that serve both EU and global interests and values'.³⁶ The tone of the discourse on EU foreign policy has thus clearly shifted twenty years after the Laeken Declaration – from optimistic to pessimistic and from fully multilateral to more unilaterally oriented.

The use of the term 'geopolitics' has by now become *de rigueur* in EU policymaking and strategizing. President of the European Commission Ursula von der Leyen stated already in 2019 that she wanted to launch a 'geopolitical Commission'.³⁷ This was followed in 2023 by the aforementioned observations of the emergence of a 'geopolitical Union'³⁸ and the EU's 'geopolitical awakening'.³⁹ This all happened prior to the Russian full-scale invasion of Ukraine,

31 R. Kaplan, *The Revenge of Geography: What the Map Tells Us About Coming Conflicts and the Battle Against Fate* (Random House, 2013).

32 European Union (n 29) 9, 19 and 46.

33 Steinbach (n 16), 974–975.

34 European Commission, *Trade policy review – An open, sustainable and assertive trade policy*, Brussels, 18 February 2021, COM(2021) 66 final, 16; see also European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *EU economic security strategy*, Brussels, 20 June 2023, JOIN(2023) 20 final.

35 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *Strengthening the EU's contribution to rules-based multilateralism*, Brussels, 17 February 2021, JOIN(2021) 3 final, 1.

36 Ibid.

37 European Commission, 'Speech by President-elect von der Leyen in the European Parliament Plenary on the occasion of the presentation of her College of Commissioners and their programme', Strasbourg, 27 November 2019 <https://ec.europa.eu/commission/presscorner/detail/MT/speech_19_6408> (accessed 20 January 2025).

38 European Commission (n 3).

39 European Union (n 4) 4.

which began in February 2022 and was termed a *Zeitenwende* (historical turning point) by German Chancellor Olaf Scholz.⁴⁰

The *Zeitenwende* caused by Russian aggression was therefore not the starting point of the 'geopoliticization' of EU foreign policy, but it did work as an accelerator of this trend in the field of defence and military capabilities,⁴¹ as well as in other areas. In the Versailles Declaration of 11 March 2022, EU leaders responded collectively to the Russian invasion, which they described as a 'tectonic shift in European history'.⁴² The EU response, according to the declaration, would consist of a broader geopolitical repositioning based on three pillars: first, the strengthening of defence capabilities within the EU, including a significant increase in defence budgets; second, the reduction of energy dependence, including gas and oil from Russia; and third, building a more robust economic base, including limiting strategic dependencies such as critical raw materials and semiconductors. These three pillars would thus cover multiple policy areas of the EU, and find their concrete expression in a range of new laws and other instruments.

3 A Growing *Acquis* of 'Geopolitical Law' in the EU

Given that there is a whole range of new instruments adopted by the EU as a tangible expression of its 'geopolitical awakening', there is a need to define them as a group and subsequently to categorize them. It is suggested here that the instruments form an emerging *acquis* of 'geopolitical law', which started to develop already several years before the *Zeitenwende* of February 2022. This *acquis* covers different policy areas and uses different legal bases, among which the CFSP/CSDP, but also other, supranationally characterized Union powers. EU 'geopolitical law' often takes the form of secondary legislation (particularly regulations), but also of other measures, some of which could potentially be considered 'soft law', such as memoranda and policy documents.

Regardless of this diversity, a common feature of these instruments is that they were adopted with the clear objective of addressing geopolitical risks and threats. Although there is no uniform definition of these risks and threats, a plausible definition from the literature is that they concern, firstly, the rivalry

40 German Federal Government (n 9).

41 R.A. Wessel, 'Ontwikkelingen in het Europees defensiebeleid: bevoegdheden en beperkingen' (2024) nr. 12 *SEW – Tijdschrift voor Europees en economisch recht* 514, 519.

42 Versailles Declaration, 11 March 2022, <<https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>> (accessed 20 January 2025) pt. 6.

between and with great powers (United States, China and Russia), secondly, the challenges and disruptions of technological progress, and, thirdly, economic dependencies on countries outside the EU.⁴³

The legal instruments, which are part of what is understood here as 'geopolitical law', sometimes explicitly state their underlying geopolitical motivation, for example by referring to the 'current geopolitical situation in the Eastern neighbourhood countries'.⁴⁴ Although the term 'geopolitics' is not used in other instruments, the geopolitical dimension is still quite clearly recognizable by implication. This is the case, for example, when an instrument emphasizes the need for 'increasing the Union's resilience in the field of semiconductor technologies' and 'reinforcing the Union's semiconductor ecosystem by reducing dependencies'.⁴⁵ Another common feature of these instruments is that they provide the Union with new, unilateral means to expand its options for action in the face of geopolitical risks and threats in the spirit of 'open strategic autonomy'.

These characteristics highlight the inherent geopolitical character of the instruments proposed here, especially if one also takes into account the political context from which they arise. Therefore, this chapter posits that it is possible to adequately define the EU's new 'geopolitical law', even though there will of course always remain borderline cases of instruments that do have a geopolitical dimension, but whose main motivation is different, such as protection of the climate.

Moreover, this chapter proposes to divide the EU's 'geopolitical law' into two main categories. On the one hand, there are security and defence instruments, which are mainly aimed at Russia. On the other hand, there are foreign trade and investment instruments mainly aimed at China, with the United States partly in the background, certainly considering the arrival of the second Trump administration.⁴⁶ It must be added, lastly, that instruments of a clearly economic nature are also used to for the purposes of security and defence. Hence, they are grouped here under security and defence instruments. This

43 Steinbach (n 16) 974.

44 Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 establishing an instrument for the strengthening of the European defence industry through joint procurement (EDIRPA) [2023] OJ L, recital 11.

45 Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework for measures to strengthen the European semiconductor ecosystem and amending Regulation (EU) 2021/694 [2023] OJ L 229/1, recital 2.

46 M. Milanovic, 'Trump's Coercion of America's Allies and the Prohibition of Intervention', *EJIL:Talk!* (13 January 2025), <<https://www.ejiltalk.org/trumps-coercion-of-americas-allies-and-the-prohibition-of-intervention/>> (accessed 18 January 2025).

includes sanctions and measures to promote European cooperation in the defence industrial domain.

3.1 *'Geopolitical Law' in Security and Defence*

Part of the EU's 'geopolitical law' is aimed at ensuring the security of the European Union, especially against Russian aggression. However, the instruments in this category are not all based on the CFSP/CSDP but also make use of other EU competences such as industrial policy and the internal market.

In 2017, three years after the annexation of Crimea but five years before the Russian invasion of Ukraine, European defence cooperation took three important steps forward. Firstly, the format Permanent Structured Cooperation (PESCO) was launched, promoting closer defence cooperation between EU Member States.⁴⁷ Although PESCO was already present in the EU Treaty after the amendments to the Lisbon Treaty, it was only activated in 2017.⁴⁸ More than sixty projects are now underway within the framework of PESCO, including military mobility.⁴⁹ Secondly, an EU Military Planning and Conduct Capability (MPCC) within the European Union Military Staff.⁵⁰ This concerns an operational headquarters that can coordinate small-scale, non-executive military missions such as the EU training missions in Somalia and Ukraine. Both initiatives were most likely made possible by the fact that the United Kingdom had already begun its withdrawal from the EU and had therefore dropped its opposition.⁵¹ Third, although not in the form of EU legislation, in 2017 the Coordinated Annual Review on Defence (CARD) has been launched, which identifies and maps out gaps on an annual basis within the defence plans of the Member States.⁵²

47 Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing Permanent Structured Cooperation (PESCO) and drawing up the list of participating Member States [2017] OJ L 331/57.

48 Consolidated version of the Treaty on European Union [2012] OJ C 326/13, art. 42(6), art. 46, and Protocol 10.

49 For an overview of the projects within the framework of PESCO, see: <<https://www.pesco.europa.eu/#projects>>.

50 Council Decision (EU) 2017/971 of 8 June 2017 laying down the planning and implementation arrangements for EU non-executive military CSDP missions [2017] OJ L 146/133.

51 J. Barigazzi, 'EU's small steps toward (whisper it) a military HQ', *Politico* (28 February 2017), <<https://www.politico.eu/article/eus-small-steps-toward-whisper-it-a-military-hq-defense-cooperation/>> (accessed 20 January 2025).

52 European External Action Service, 'Coordinated Annual Review on Defence (CARD)', 29 March 2024, <https://www.eeas.europa.eu/eeas/coordinated-annual-review-defence-card_en> (accessed 20 January 2025).

The European Defence Fund was then launched in 2021.⁵³ It was already proposed by the Commission in 2017. It is notable that the fund is part of the regular EU budget within the multiannual financial framework. Nearly €8 billion will be earmarked for this between 2021 and 2027, allowing the European Commission to grant subsidies for cross-border and joint purchase and development of defence technology and capabilities, including PESCO projects.⁵⁴

After the Russian invasion of Ukraine, the development of the EU's geopolitical instruments accelerated further. Firstly, this has led to innovation within the Union's sanctions policy. In addition to economic sanctions against Russia and individuals and entities supporting Putin's regime, the EU also developed new forms of sanctions. These include sanctioning the Russian central bank and disconnecting several Russian and Belarusian banks from the SWIFT financial messaging system. The EU has adopted fourteen such sanctions packages as of early 2025.⁵⁵

Another notable instrument deployed in aid of Ukraine defence against Russian aggression is the European Peace Facility (EPF). It has its origins in the 2003 African Peace Facility, an instrument through which the EU could financially support peace operations and initiatives of the African Union and subregional organizations in Africa.⁵⁶ In 2021, it was recast as the 'European Peace Facility', which could also be used outside the African context.⁵⁷ After the Russian invasion it was rapidly transformed. The emphasis was now no longer on peacekeeping, but, despite the name *peace* facility, it was used predominantly to support Ukraine's war effort, including by financing the supply of lethal equipment.⁵⁸ By the end of 2024, the EU has supported Ukraine with

53 Regulation (EU) 2021/697 of the European Parliament and of the Council of 29 April 2021 establishing the European Defense Fund and repealing Regulation (EU) 2018/1092 [2021] OJ L 170/149.

54 S.N. Mengelberg, 'EU en NAVO: concurrerend of complementair? Europese strategische autonomie en de EU-NAVO-relatie' (2022) 3 *Militaire Spectator* 154, 158.

55 Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine [2024] OJ L 1745/1.

56 M. Carbone, 'An Uneasy Nexus: Development, Security and the EU's African Peace Facility' (2013) 18 *European Foreign Affairs Review* 103.

57 Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility and repealing Decision (CFSP) 2015/528 [2021] OJ L 102/14. A second purpose of the EPF is to jointly finance certain costs incurred by EU CSDP missions.

58 For example, Decision 2022/338/CFSP of 28 February 2022 on a support measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment and platforms designed to kill [2022] OJ L 60/1.

more than €11 billion through the EPF.⁵⁹ The EPF is not part of the regular EU budget, but is a so-called 'off-budget' instrument.⁶⁰

The most recent chapter in this context is a series of new instruments to facilitate the procurement of military equipment within the EU, on the one hand to further support Ukraine in the fight against Russia and on the other hand to ensure the supply of the armed forces of the EU Member States. To be mentioned here is, firstly, the Act in Support of Ammunition Production (ASAP).⁶¹ Through ASAP, €0.5 billion was made available in the period 2023–2025 to financially support EU ammunition producers and the associated supply chains.

Secondly, in October 2023 the European Defence Industry Reinforcement through Common Procurement Act (EDIRPA) was adopted.⁶² Through this, €310 million are made available to create financial incentives for coalitions of member states to jointly purchase defence equipment in the period 2024–2025. ASAP and EDIRPA are both part of the regular EU budget.

Given that ASAP and EDIRPA are short-term measures of limited scope, a new strategy for the European defence industry was published by the European Commission and the High Representative in March 2024.⁶³ On this basis, the European Commission has proposed a European Defence Industry Programme (EDIP).⁶⁴ Under this programme, €1.5 billion will be made available during the period 2025–2027 for strengthening the European defence industry, with Ukraine also being closely involved.

As regards the legal basis of these new geopolitical instruments, it is remarkable that some instruments with a clear defence character make use of supranationally established powers of the Union. For example, the legal basis of EDIRPA is Article 173(3) of the Treaty on the Functioning of the European

59 European Council, 'European Peace Facility' <<https://www.consilium.europa.eu/en/policies/european-peace-facility/>> (accessed 20 January 2025).

60 F. Fabbrini, 'Funding the War in Ukraine: The European Peace Facility, the Macro-Financial Assistance Instrument, and the Slow Rise of an EU Fiscal Capacity' (2023) 11 *Politics and Governance* 53.

61 Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on support for the production of ammunition [2023] OJ L 185/7.

62 Regulation (EU) 2023/2418 (n 44).

63 European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *A new strategy for the European defence industry*, Brussels, March 5, 2024, JOIN(2024) 10 final.

64 European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the European defence industry program and a framework of measures to ensure the timely availability and delivery of defence products (EDIP Regulation), Brussels, 5 March 2024, COM(2024) 150 final.

Union (TFEU), i.e., the domain of competitiveness of the Union's industry.⁶⁵ In ASAP, the legal basis is, in addition to Article 173(3) TFEU, also Article 114 TFEU – the functioning of the internal market.⁶⁶ The Commission's proposal for EDIP identifies four different legal bases. In addition to Articles 173 and 114 TFEU, Article 322 TFEU on financial provisions is also mentioned here, as well as Article 212 TFEU on economic, financial and technical cooperation with non-EU countries. This latter legal basis has been added due to the close involvement of Ukraine in this package of measures.⁶⁷ What these instruments have in common is that none of them uses the intergovernmental CFSP/CSDP as a legal basis, despite the strong connection with security and defence policy. This can be explained by the prohibition in EU law on combining different legal bases, when the respective procedures are incompatible.⁶⁸ Instead, based on the so-called centre of gravity test, the main objective of a measure is identified.⁶⁹ Adding the CFSP/CSDP as a legal basis is not permitted under EU law because the intergovernmental way of decision-making is at odds with the supranational *modus operandi* of the other EU policy areas set out in the TFEU.

This use of TFEU powers in the broader context of security and defence means that the role of the European Commission as a 'geopolitical actor'⁷⁰ is further strengthened. At the same time, this is a gradual shift rather than a landslide, because the Member States continue to play a prominent role here through the Council. Furthermore, other instruments in this domain, which rely less directly on the internal market, use the CFSP/CSDP as a legal basis, such as PESCO and the European Peace Facility. Here the Member States retain their veto power in decision-making. But also outside of the intergovernmental organized CFSP, EU law has been 'geopoliticized'.

3.2 'Geopolitical Law' in Trade and Investment

In the field of foreign trade and investment, the EU already possessed an arsenal of trade defence instruments, including anti-dumping measures and countervailing measures. The EU has actively used this in the past against,

65 Regulation (EU) 2023/2418 (n 44); Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47.

66 Regulation (EU) 2023/1525 (n 61).

67 European Commission (n 64).

68 Case C-300/89 *Titanium Dioxide*, ECLI:EU:C:1991:244.

69 A. Ott, 'EU External Competence' in R.A. Wessel & J. Larik (eds.), *EU External Relations Law: Text, Cases and Materials* (2nd edn, Hart Publishing, 2020) 88.

70 C. Håkansson, 'The Ukraine war and the emergence of the European Commission as a geopolitical actor' (2023) 46 *Journal of European Integration* 25.

among others, the United States, China, and Russia. These existing instruments were thoroughly modernized in 2018.⁷¹

From 2019 onwards, several new unilateral legal instruments with a clear geopolitical motivation have been added.⁷² Here, firstly, the 2019 Foreign Direct Investment Screening Mechanism can be mentioned.⁷³ It creates a framework for the European Commission and the Member States to ensure that strategic and security interests are not affected by foreign investments. An updated version of this framework was proposed by the European Commission in January 2024.⁷⁴ In addition, there are discussions about whether there should additionally be an EU framework for outbound investments.⁷⁵

In 2021, the EU furthermore adopted the Global Gateway. This is a program through which the EU and the Member States intend to invest no less than €300 billion in third countries in the period 2021–2027. The intention is to further develop the infrastructure in these countries, but at the same time it is the European answer to the Chinese Belt and Road Initiative, which has been used as an instrument for increasing China's global influence since 2013.⁷⁶

Greater momentum in terms of producing new geopolitical legislation can be seen from 2022 also in the field of trade and investment. First, the Foreign Subsidies Regulation was adopted in December 2022 and launched in July 2023.⁷⁷ Its objective is to combat illegal competition and distortion of the

71 J. Cornelis, 'The EU's Modernization Regulation: Stronger and More Effective Trade Defence Instruments?' (2018) 13 *Global Trade and Customs Journal* 539.

72 Verellen & Hofer (n 15).

73 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union [2019] OJ L 79I/1.

74 European Commission, Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452, Brussels, 24 January 2024, COM(2024) 23 final.

75 European Commission, *White Paper on Outbound Investments*, Brussels, 24 January 2024, COM(2024) 24 final.

76 C.-P. Chu & Z.A. Ferenczy, 'The Shifting Role of the EU's Economic Diplomacy Towards China: The Case of China's Belt and Road Initiative and the EU's Global Gateway' in C.-P. Chu & S.-C. Park (eds.), *Strategies in Changing Global Orders* (Springer, 2023). It should be noted that the foundation for the Global Gateway is not EU legislation, but a policy document: European Commission and High Representative of the Union for Foreign Affairs and Security Policy, *The Global Gateway*, Brussels, 1 December 2021, JOIN(2021) 30 final.

77 Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market [2022] OJ L 330/1.

internal market through state aid from third countries. The European Commission launched the first investigation within this framework in February 2024 against a Chinese state-owned company.⁷⁸

Furthermore, the EU adopted the Anti-Coercion Instrument (ACI) in November 2023.⁷⁹ The relevance of such an instrument is highlighted by a dispute between China and Lithuania over the opening of a Taiwanese representative office in Vilnius in 2021. China, which considers Taiwan a renegade province, imposed trade restrictions on Lithuania to put pressure on the country. With the EU ACI, the EU can now formulate collective responses in such cases, including, as a last resort, sanctions.⁸⁰ It has already been speculated whether the ACI could be used to counter American coercion against Denmark as part of the Trump administration's stated quest for acquiring Greenland.⁸¹

Moreover, the European Chips Act of September 2023 can be seen as a geopolitical instrument.⁸² Its adoption underlines the strategic importance of semiconductors and associated technologies and aims at developing a European industrial base for semiconductors, making Europe more resilient to future crises and disruptions to supply chains. It is therefore an industrial policy measure aimed at an important aspect of the EU's 'strategic autonomy'. In the same spirit, a regulation was adopted in April 2024 with the aim of better guaranteeing the EU's access to critical raw materials.⁸³ This goal is to be achieved by strengthening supply chains within the EU on the one hand and by diversifying foreign sources of such raw materials on the other. This turn, propels also the adoption of new bilateral instruments, such as the stra-

78 European Commission, 'Commission opens first in-depth investigation under the Foreign Subsidies Regulation', 16 February 2025, <https://ec.europa.eu/commission/press-corner/detail/nl/ip_24_887> (accessed 20 January 2025).

79 Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States against economic coercion by third countries [2023] OJ L.

80 C. Freudlsperger & S. Meunier, 'When Foreign Policy Becomes Trade Policy: The EU's Anti-Coercion Instrument' (2024) 62 *Journal of Common Market Studies* 1063; L. Schaupp, 'Decoding the Intersection of Trade and Security in the EU's Anti-Coercion Instrument' (2024) 29 *European Foreign Affairs Review* 133.

81 Milanovic (n 46).

82 Regulation (EU) 2023/1781 (n 45). For other EU initiatives aimed at ensuring access to and control over strategic technologies, see Steinbach (n 16) 993.

83 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework to ensure a secure and sustainable supply of critical raw materials [2024] OJ L.

tegic partnership on raw materials the EU concluded with Serbia in July 2024.⁸⁴

While this list of geopolitical instruments in the field of trade includes the most important examples, one could add others, which may not focus on geopolitics, but which do have a geopolitical dimension attached to them. An example of this is the Carbon Border Adjustment Mechanism (CBAM), which was launched in 2023.⁸⁵ Its main objectives are environmental protection and climate action (which is also reflected in the use of Article 192 TFEU as the legal basis for CBAM), as well as protecting the internal market against unfair competition from third countries. Nevertheless, it is also partly about countering competition from China and signalling a pioneering role for the EU on the world stage in the field of regulations. In addition, some internal legislative instruments, such as the Corporate Sustainability Due Diligence (CSDDD) of June 2024 and the Artificial Intelligence (AI) Act of July 2024 and the could be seen as an expression of a geopolitically tinted, long arm of the 'Brussels effect'.⁸⁶ These internal instruments allow the EU contribute to setting the global tone in regulation, at least in markets and with actors where the EU exercises such influence.⁸⁷ At the same time, such measures can prompt a backlash with clear geopolitical implications, as evidenced by Qatar's threat to halt gas exports to the EU if penalties were imposed under the CSDDD.⁸⁸

The aforementioned trade and investment instruments, as well as certain regulatory instruments, mainly use as legal basis either the common commer-

84 Memorandum of Understanding between the European Union and the Republic of Serbia on a strategic partnership on sustainable raw materials, battery value chains and electric vehicles, Belgrade, 19 July 2024.

85 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L 130/52. Another example is the legislation on dual-use goods, Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 establishing a Union regime for the control of exports, brokering, technical assistance, the transit and transfer of dual-use items (recast) [2021] OJ L 206/1.

86 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence (Artificial Intelligence Regulation) [2024] OJ L.

87 See, but also with some critical comments, M. Almada & A. Radu, 'The Brussels Side-Effect: How the AI Act Can Reduce the Global Reach of EU Policy' (2024) 25 *German Law Journal* 646.

88 Giedre Pescekyte, 'Qatar warns it will halt gas supplies to Europe if fined under EU due diligence law', *Politico* (22 December 2024), <<https://www.politico.eu/article/qatar-warned-to-halt-eu-gas-supplies-if-fined-under-due-diligence-law/>> (accessed 20 January 2025).

cial policy (Article 207 TFEU; such as the Anti-Coercive Instrument), or Article 114 TFEU on the functioning of the internal market (such as the Critical Raw Materials Regulation), or a combination of the two (such as the Foreign Subsidies Regulation). This makes sense from an EU law point of view. At the same time, the adoption of these types of geopolitical instruments with an economic character, or 'geo-economic' instruments, can also be seen as an institution shift which strengthens the role of the European Commission through the use of supranational legal bases.⁸⁹ The Commission not only has the right of initiative to propose such instruments, but is also responsible for a large part of their implementation.⁹⁰ Seeing the wealth of new legal instruments as the most tangible expression of the EU's geopolitical awakening, the analysis now turns to how other RIOS have responded to the rougher international environment.

4 Beyond the EU: Who Else Is Awakening?

Turning now from the EU to other RIOS, the same question can be investigated: Do they show signs of 'geopolitical awakening', and if so, do they translate into any specific measures. To shed light on this, the chapter considers as comparators the East African Community and ASEAN. While this of course cannot claim general findings, this selection brings in two other world regions and two different types of organizations. Both, moreover, have in common that they have wide-ranging ambitions, considering, for example, ASEAN's Political-Security Community and the EAC's recent enlargements (Democratic Republic of Congo in 2022 and Somalia in 2024) and codified aim to establish a common currency and political federation.⁹¹ Therefore, they seem likely candidates for 'geopolitical awakening' as a response to the deteriorating climate in international politics. However, as this section shows, beyond general acknowledgments of this changed climate, no dedicated actions can as of yet

89 C. Weinhardt, K. Mau & J. Hillebrand Pohl, 'The EU as a Geoeconomic Actor? A Review of Recent European Trade and Investment Policies' in M. Babić, A.D. Dixon & I.T. Liu (eds.), *The Political Economy of Geoeconomics: Europe in a Changing World* (Palgrave Macmillan, 2023).

90 F. De Ville, S. Happersberger & H. Kalimo, 'The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments' (2023) 28 *European Foreign Affairs Review* 15.

91 Treaty for the Establishment of the East African Community, signed 30 November 1999, art. 5(2). Note also the East African Community Protocol on Co-operation in Defence Affairs, signed 28 April 2012.

be detected. As explanations, the chapter offers the geographical remoteness of the Russo-Ukrainian war and the lack of the combination of strong institutions and (economic) power in either of them.

As regards for the EAC, its 'EAC Vision 2050', published in 2016, does not use the term geopolitics. It does note under the heading 'Defence, Peace and Security' the ambition to establish an EAC mutual defence pact and to achieve 'self-sufficiency in production of defence hardware for regional security needs and export'.⁹² This could be seen as signs of strengthening EAC as a security actor and striving towards its own version of 'strategic autonomy'. However, great power tensions or pressures from such outside powers on the EAC are not made explicit as motivating factors. Specialized bodies such as the EAC Monetary Affairs Committee do occasionally note 'rising geopolitical tensions'.⁹³ On a ministerial retreat in July 2024, a call was made for expediting the conclusion of the abovementioned East African Community mutual defence pact and the operationalization of an EAC Council of Ministers on Peace and Security.⁹⁴ However, also here there was no explicit mention of a geopolitical necessity or context. The 2024 communiqué of the EAC's highest body, the EAC Summit, does not mention geopolitics, focusing on peace and security issues in the region.⁹⁵

It does not appear that any specific measures, including legislation, have been adopted in the EAC which can clearly be seen to have been prompted by the changed geopolitical environment. It should be added that this includes also measures in the area of trade, which could be used as geopolitical instru-

92 East African Community, *Vision 2050* (EAC Secretariat, 2016) 78.

93 East African Community, *Communiqué of the 25th Ordinary meeting of the East African Community Monetary Affairs Committee, virtual meeting*, 4 March 2022, <<https://www.eac.int/press-releases/145-financial-sector/2387-communiqu%C3%A9-25th-ordinary-meeting-of-the-eac-monetary-affairs-committee>> (accessed 18 January 2025). See also East African Community, *EAC Monetary Affairs Committee addresses regional economic challenges and progress towards the EA Monetary Union*, 7 May 2024, <<https://www.eac.int/press->releases/145-financial-sector/3084-eac-monetary-affairs-committee-addresses-regional-economic-challenges-and-progress-towards-the-ea-monetary-union>> (accessed 19 January 2025).

94 East African Community, *Communiqué of the EAC ministerial retreat on peace and security, partner states relations and integration process*, 8 July 2024, <<https://www.eac.int/communiqué/3132-communiqu%C3%A9-of-the-eac-ministerial-retreat-on-peace-and-security-partner-states-relations-and-integration-process>> (accessed 19 January 2025) pt. 5.

95 East African Community, *Communiqué of the 24th ordinary summit of the East African Community Head of State*, 30 November 2024, <<https://www.eac.int/communiqué/3254-communiqu%C3%A9-of-the-24th-ordinary-summit-of-the-east-african-community-heads-of-state>> (accessed 19 January 2025).

ments, as is the case for the EU, given that EAC is a customs union, which implies a common trade policy.

As regards ASEAN, the 'Blueprint 2025' for the ASEAN Political-Security Community, published in 2016, remarks on the 'changing strategic and geopolitical landscape'.⁹⁶ In this context, it notes the need for a 'common vision for a regional architecture to strengthen ASEAN centrality'⁹⁷ and for enhancing 'the role of the ASEAN Foreign Ministers Meeting (AMM) and its Chair' to address geopolitical challenges.⁹⁸ Within the ASEAN Political-Security Community, the ASEAN Defence Ministers' meeting recognizes 'the complexity posed by geopolitical and geostrategic dynamics affect regional and global peace and stability',⁹⁹ noting also the South China Sea dispute, which implicated the People's Republic of China as a great power. The ASEAN defence ministers, furthermore, stress both the need to 'deepen defence and security cooperation'¹⁰⁰ and commitment to 'a rules-based regional architecture with ASEAN at the centre that upholds international law'¹⁰¹ in this environment, which is a comparable sentiment to the EU's 'principled pragmatism'. The 2024 Chairman's statement of the ASEAN Summit, the RIO's highest body, also noted 'concern on the intensifying geopolitical tensions in the region' and expressed the leaders' commitment to keep developing the 'regional architecture including through ASEAN-led mechanisms and managing the impact of geopolitical and geostrategic shifts on our region to ensure regional peace and security are not disrupted'.¹⁰²

Thus, compared to the EAC, ASEAN is more explicit about geopolitical tensions, and continues to develop its political-security community, including through various initiatives in the area of defence. However, all this is progressing along the lines of the classic 'ASEAN Way'¹⁰³ of consultations, consensus, and a strong reliance of non-binding declarations. Moreover, given that

96 Association of Southeast Asian Nations, *ASEAN Political-Security Blueprint 2025* (ASEAN Secretariat, 2016) 32.

97 Ibid.

98 Ibid., 12.

99 Association of Southeast Asian Nations, *Vientiane Joint Declaration of the ASEAN Defence Ministers' Meeting on ASEAN: Together for Peace, Security and Resilience*, 20 November 2024, 1.

100 Ibid., 3.

101 Ibid., 1.

102 Association of Southeast Asian Nations, *Chairman's Statement of the 44th and 45th ASEAN Summits*, Vientiane, Lao PDR, 9 October 2024, pt. 44.

103 A. Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (3rd edn, Routledge, 2014) 62–68.

ASEAN is a free trade area, there is no common trade policy among its Member States. This is visible, for example, in the example of Singapore, but not other ASEAN countries, imposing unilateral sanctions against Russia due to the latter's aggression against Ukraine.¹⁰⁴

In sum, it appears that only the EU has 'awakened' geopolitically to such an extent that, first, its general foreign policy outlook changed, and second, it followed suit with a range of new instruments in the areas of trade, defence, and their intersection, which it is already deploying. While the EAC, in its official documents, only shows marginal attention to geopolitics, ASEAN does recognize it more explicitly, though without seeming to pivot its general outlook and adopt new instruments. This leads, then, to the question of why only the EU is showing this clear reaction to the new geopolitical situation and heavy reliance on new legal tools. This chapter suggests two answers: one geographical, one legal and economical.

That geopolitics signifies a 'return' of geography to international politics, is something Europeans became acutely aware of due to the Russian full-scale invasion of Ukraine in 2022. Close proximity to a militarily aggressive great power subsequently caused Sweden and Finland to join NATO, and Denmark to give up its thirty year-long CSDP-opt out and join PESCO.¹⁰⁵ It shattered (misguided) ideas of Europe as a 'garden' of peace compared to a rough 'jungle' outside.¹⁰⁶ While also other developments such as China's growing economic weight and assertiveness and the volatility of U.S. foreign policy contributed to this, it was above all this shock of the *Zeitenwende* which created the political will and momentum in the EU to accelerate down the path described above.

104 Singapore Ministry of Foreign Affairs, *Sanctions and Restrictions against Russia in Response to its Invasion of Ukraine*, 5 March 2022, <<https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/03/20220305-sanctions>> (accessed 20 January 2025).

105 Council of the EU, *EU defence cooperation: Council welcomes Denmark into PESCO and launches the 5th wave of new PESCO projects*, 23 May 2023, <<https://www.consilium.europa.eu/en/press/press-releases/2023/05/23/eu-defence-cooperation-council-welcomes-denmark-into-pesco-and-launches-the-5th-wave-of-new-pesco-projects/>> (23 May 2023).

106 European External Action Service, *European Diplomatic Academy: Opening remarks by High Representative Josep Borrell at the inauguration of the pilot programme*, 13 October 2022, <https://www.eeas.europa.eu/eeas/european-diplomatic-academy-opening-remarks-high-representative-josep-borrell-inauguration-pilot_en> (accessed 21 January 2022); see also earlier, R. Cooper, *The Post-modern State and the World Order* (Demos, 2000).

This is not to say that geography does not matter in the other world regions – of course it does. However, to regions like East Africa and Southeast Asia, the Russian invasion of Ukraine was a more distant, and less pivotal event. Aggressive great power behaviour has long been known in Southeast Asia, in particular in the form of the South China Sea dispute, and military interventions by great powers, considering, for example Vietnam's experience with both the United States and the PR China half a century ago. Meanwhile, as becomes evident from the EAC's documents, security concerns and other crises, especially in the DR Congo, are so preoccupying that the Russian invasion represents a remote event. It is certainly an event with ripple effects, as evidenced by the importance of Ukrainian grain exports for food security in the region,¹⁰⁷ but it is not a direct threat. Perhaps this is an obvious point to make, but from a European (or even 'Eurocentric') point of view, it bears making explicit, seeing also the lack of active support for sanctions imposed on Russia by 'Global South' countries.¹⁰⁸ It is also reflective of a broader disagreement or disconnect, including allegations of hypocrisy and double standards.¹⁰⁹ In the words of Indian Foreign Minister S. Jaishankar, there is a need 'to grow out of the mindset that Europe's problems are the world's problems but the world's problems are not Europe's problems'.¹¹⁰ Hence, Europe's 'geopolitical wake-up call' was not necessarily the world's. While this may be true for the Russian invasion of Ukraine, the geopolitical effects of more assertive Chinese and U.S. foreign policies will be experienced in different world regions, perhaps especially in the Indo-Pacific, therefore leaving geography only as a partial explanation for the lack of 'awakening' and the equipment with new tools in other RIOS.

Hence, the legal and economic explanation may complete the picture. While there was perhaps less of an immediate and acute demand for new instruments in regions more remote from the Russian aggression against Ukraine, the question is also what other RIOS are capable of offering in

107 S.M. Mwatu, 'Impact of the Russia–Ukraine war on grain and fertilizer supply: Evidence from Kenya' (2023) 9 *World Food Policy* 250.

108 C. Seshadri, 'Western Sanctions on Russia and the Global South's Stance', *RUSI Commentary* (23 November 2023), <<https://rusi.org/explore-our-research/publications/commentary/western-sanctions-russia-and-global-souths-stance>> (accessed 20 January 2025).

109 C. Alden, 'The Global South and Russia's Invasion of Ukraine' (2023) 3 *LSE Public Policy Review* 1.

110 'Europe Has to Grow Out of Mindset That Its Problems Are World's Problems': Jaishankar', *The Wire* (3 June 2022), <<https://thewire.in/government/europe-has-to-grow-out-of-mindset-that-its-problems-are-worlds-problems-jaishankar>> (accessed 21 January 2025).

terms of supplying such tools. This requires a combination of both strong institutions embedded in a legal system and economic weight. In the case of the EU, the Commission takes a leading role in the economic instruments, with individual Member States generally not having veto powers to block decisions. In decisions about sanctions and the rest of the CFSP/CSDP, it is true that the unanimity principle in the Council applies.¹¹¹ Nevertheless, the political will was there, arguably facilitated by backroom deals and diplomatic pressures, in the wider EU framework, to proceed in expanding and applying the EU's new geopolitical instruments. For example, despite various Hungarian threats of vetoes,¹¹² the EU had adopted eighteen sanctions packages against Russia as of July 2025.

Moreover, perhaps another obvious but worthwhile point to make is that geopolitical instruments can only work if backed up with the requisite economic weight. This applies to sanctions, including against economic coercion, but also investments, subsidies, and for influencing global standards. In addition, in matters for military aid, procurement, and research and development. Despite the legitimate criticisms of the fragmented EU defence market,¹¹³ which the new measures like EDIP aim to fix, at least the potential of the EU's internal market is there, as is the combined defence spending power of the Member States of now more than 300 billion euro.¹¹⁴

It is this combination of strong institutions and legal order and economic weight that makes the EU's geopolitical awakening, and the specific expression it has given to it, possible and meaningful. What the EAC can offer in supranational institutions, it lacks in economic weight. Conversely, what ASEAN can offer in economic potential, it seems to lack in strong common institutions. This is a snapshot of the current situation and could change in the future, including the decline of the EU's relative economic weight and competitiveness, but it contributes to explaining why the EU's geopolitical awakening has taken shape the way it did, and not in other RIOS.

111 Treaty on European Union (n 48) art. 24(1).

112 G. Gavin, V. Jack and C. Gijs, 'Hungary teases veto over new EU Russian gas sanctions', *Politico* (13 May 2023), <<https://www.politico.eu/article/hungary-veto-eu-russia-gas-sanctions/>> (accessed 20 January 2024).

113 T. Mueller, 'Strategic options for the European defence industry in the 2020s' (2024) 41 *Defense & Security Analysis* 49.

114 Joshua Posaner, 'EU defense spending projected to boom to €326B', *Politico* (4 December 2024), <<https://www.politico.eu/article/eu-defense-spending-projected-boom-326b-european-defence-agency-russia-war-security/>> (accessed 21 January 2025).

5 Conclusion and RIO Research for the Future

As this chapter has shown, the turn to geopolitics has met with very different responses from RIOS. The EU's 'geopolitical awakening' is not only expressed in the form of a more sombre and assertive political rhetoric, but has led to a range of new legal instruments, of which key examples were presented. These instruments can be considered as a growing *acquis* of 'geopolitical law', whereby regardless of the use of different legal bases, the coverage of different policy areas and whether Russia or China is the main target, the geopolitical motivation is clearly recognizable. While this trend already started several years before the full-scale Russian invasion of Ukraine, that latter development has been the major driver and accelerator of this trend for the EU.

By contrast, other RIOS, namely the East African Community and ASEAN, show no similar development of 'geopoliticization through law'. This is so despite the high ambitions of both organizations, including in the field of security and defence. Geopolitics are mentioned in some policy documents, but a clear rhetoric shift, let alone the adoption of a new toolkit of instruments, cannot be detected so far. The chapter offered a dual explanation of geographical remoteness from the Russo-Ukrainian war and the lack of a combination of strong institutions and economic weight.

Since many of the EU's new instruments have only recently been adopted, and RIOS will continue to evolve and adapt around the world, a research agenda for comparative regionalism and the legal aspects of RIOS emerges. In closing this chapter, the following core research questions are proposed for this agenda:

- *Rule of law*: What remedies are available to persons targeted or otherwise adversely affected by the Union's new geopolitical instruments? This includes, for example, (legal) persons who are affected by EU sanctions, but also companies that experience negative consequences due to investigations into foreign subsidies, or that do not agree with the outcomes of tender procedures in the field of defence equipment. At the same time, as both people and companies in other world regions will be affected by geopolitical tensions, the question there arises if they would not benefit from regional measures to protect them. For both these aspects, legal research is essential.
- *Effectiveness*: To what extent will the EU's new instruments be able to achieve their respective objectives, and the overarching goal of a more resilient and decisive Union? The adoption of laws and their analysis alone still say very little about whether they will actually make the EU an effective geopolitical force. Hence, tackling this question will require an

approach that combines law, economics, political science, and other disciplines. These findings, in turn, will serve as valuable evidence for other RIOS that may consider going down the path of ‘geopoliticization through law’.

- *Interinstitutional relations and reform*: To what extent are the new geopolitical instruments shifting the balance of power between the EU institutions? In particular, do they lead to a (creeping) power transfer towards supranational institutions such as the European Commission? This article noted a slight move towards supranationalization through the use of legal bases from the TFEU for some of the new instruments in the field of security and defence. This will form an important part of the broader discussion on decision-making processes within the EU, and could serve as inspiration – or cautionary tales – for other RIOS.

It is expected that further instruments that can be considered part of the EU’s ‘geopolitical law’ will be adopted in the coming years. At the same time, it will become clear how existing instruments are applied in practice – including in the context of the foreign policy of the second Trump administration in the U.S. – and in which cases this will lead to legal disputes. Other RIOS will also continue to develop and adapt to internal and external challenges. The need for rigorous legal and interdisciplinary research on the subject of RIOS, geopolitics, and the law will therefore only increase.

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