

The EU Arctic policy and its critique: a view under Tocci's theory on foreign policy and normative power (Part 2)¹

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Abstract

What is the role of the European Union (EU) in the Arctic region? On what basis does it claim influence and/or authority (if any) over part of this vast area of the world? What can we learn about EU Arctic policy, tools and instruments adopted so far? Is the EU a normative foreign policy actor as described by Tocci's theory? What factors do influence the adoption and validity of EU policies in this region? This study tries to reply to all these questions casting a light over an area of great geostrategic importance and at the crossroads of historic developments. In a first part we study the current EU Arctic policy and assess its strength and weaknesses according to literature. In a second part we summarize Tocci's theory on kinds of normative policy actors and examine what kind of power is the EU exercising in the region.

Keywords: *Arctic, EU policy, Normative Foreign Policies, Tocci's theory.*

JEL Classification: K32, K33

Part 2: is the EU a normative foreign policy actor in the Arctic? (as in Tocci's theory)

1. Introduction

The Arctic region is in a state of flux as part of the complex system of political-legal, social-economic processes. It is not anymore a simple object of international relations, but it has become almost a subject in itself, a sort of invisible actor in the international arena. International actors are taking positions towards the region in order to secure their presence or, at least, defend their national interests in the region. Contrary to the Antarctic continent, the Arctic is inhabited by almost four million people living in small communities.

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The end of Cold War, and particularly a new policy led by Mikhail Gorbachev in Russia in the late 80's⁴, laid the foundation for the institutionalization of the relations of several Arctic actors with strong interest in the region based on a new fundamental different nature. While geopolitics still rules in the so called "Arctic game" and the issues of national security, military and defence aspects are increasingly dominating (especially today, in the time of "*the resurgence of Cold War ghost*"⁵); there are, however, joint efforts on environmental protection and sustainable development that bring not only material benefits, but also geopolitical stability to the region.

EU Arctic policy is already ten years old and has been revised three times. The goal of this study is to explore the EU Arctic policy and strategy in the light of recent literature (Part 1) and to examine whether its regional quasi-normative power falls under Tocci's doctrine (Part 2). Nathalie Tocci is a specialist in foreign policy relations and normative actions and a special advisor to Federica Mogherini, the EU's High Representative for Foreign Affairs and Security Policy⁶. The first part of the study reviews the period 2008-2018: What does the EU say in its public Arctic policy? What is it doing in practice? What are the strengths and weaknesses of the current EU action so far? In the second part of the study we adopt, instead, a point of view of international relations and political science: how does the EU try to secure its interest in the *rea vis-à-vis* other Arctic actors? Is the EU a truly 'normative' foreign policy actor or "it is just talk" (in Tocci's words)?

The outline of the work is as it follows. In the introduction we define the Arctic area for the purposes of the study as well as the international legal framework in place today. In Part 1 we make a brief description of the EU Arctic policy and some of its most important elements during the decade 2008-2018; while trying to assess its nature and justifying reasons on the basis of critical scholarship. In Part 2 we look at the changing EU Arctic policy from the perspective of Tocci's research model on foreign policy actors and normative rules.

Why Tocci's theory? Because her theory is novel and fully relevant for the Arctic. According to Tocci, there are some fundamental questions regarding foreign policy that we have to ask in the field of law and political relations: "what does it mean to be a 'normative' foreign policy actor? Who - if anyone - proves to be a normative foreign policy actor in practice?" Tocci applies a serious novel analytical framework to explore these essential questions setting pretty high

⁴ Mikhail Gorbachev speech at Ceremonial meeting on the occasion of the presentation of the order of Lenin and gold star to the city of Murmansk, Murmansk, 1 Oct. 1987.

⁵ UN Secretary-General Ban Ki-moon has warned against "the resurgence of Cold War ghosts" in a speech at the University of Iceland on 11 October 2016 (Arctic Circle Assembly) to commemorate the 30th anniversary of the so-called Reykjavik Summit in 1986.

⁶ See most important publications: Tocci, N. (2008). *The European Union as a Normative Foreign Policy Actor*. CEPS (Brussels); Tocci, N. et al. (2008). *Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners*. CEPS (Brussels); Tocci, N., and Hamilton, D. S. (2009). *Who is a normative foreign policy actor? The European Union and its global partners*. Centre for European Policy Studies; and Tocci, N. (2017), *Framing the EU Global Strategy: A Stronger Europe in a Fragile World*, Basingstoke: Palgrave Macmillan.

standards for the recognition of a real ‘normative’ foreign policy in theory as well as in practice. Her framework has three pillars: 1) goals and consistency in the objectives; 2) the means employed and 3) the normative impact or results obtained in the legal world. Otherwise, for Tocci, we are not talking about real (normative) policy but referring to “just talk”. Furthermore, her analytical framework identifies four paradigms of foreign policy behaviour: the normative, the *realpolitik*, the imperial and the *status quo actor*⁷. This study will be limited only to these essential elements, because Tocci’s full theory also includes other conditional factors (since international actors could pursue different foreign policy types over time and in different regions: internal political context; internal political opportunities; external environment).⁸

The proposed analysis scheme contains therefore three dimensions: the actor’s goals (what an actor wants), the means he uses (how an actor acts) and the normative impact (what an actor strives for). All along the study we try to figure out what factors influence the potential/actual creation of the EU’s norms in the Arctic region. In view of the above, the most important legal research question is the following: on the basis of the international *status quo* on the Arctic, what kind of power does the EU exercise already or aims to exercise in the future in Arctic? Does the EU policy qualify as “normative foreign policy” according to Tocci’s theory? The findings lead to provisional conclusions offered in the final section.

Regarding novelty of this contribution, a brief comment must be made in relation with part 2 of the study. This is of course not the first time that scholarship looks at the EU Arctic policy trying to understand and categorize its legal/political nature (soft power, tridimensional foreign policy, potential normative power, humanitarian vs. real power⁹). It is, however, the first time, that Nathalie Tocci’s theory serves as a framework to analyze the EU foreign policy in the region. A policy based on cooperation within the framework of international law and the role of the Arctic Council, “not on revolutionary proposals” in the words of Tocci’s.

2. Tocci’s theory on normative foreign policy

What does “normative” mean for the EU? In the research literature, the EU very often appears as a power in a new, unconventional format, not only because of its original institutional framework, but also as a consequence of its foreign policy: forefront the image of an “ethical”, “noble” Europe, which plays a special role in international politics, spreading the idealistic norms inherent only in it¹⁰.

⁷ Tocci et al. (2008) pp. 16-20.

⁸ Ibid. pp. 16-20.

⁹ For a more complete review of literature see Part 1 of this study. Among others, see Grøne, P. (2016). *The European Union’s Strategy towards the Arctic – A Normative Power in the Region?* Master Thesis in Development and International Relations, 31.5.2016. Aalborg University, Denmark.

¹⁰ For instance, M. Riddervold prefers to use the term “humanitarian” rather than “normative” in her book (2018) *The Maritime Turn in EU Foreign and Security Policies. Aims, Actors and Mechanisms of Integration*, Palgrave-MacMillan; where she covers some cases and issues relating to the Arctic.

In fact, the first person who laid out and conceptualized such ideas in a single system was J. Manners¹¹. His theory of the EU as a normative power is inherently a profound rethinking of previous thesis held by theorist of political scientists. The normative power of EU, according to Manners, has a special context inherent to it that must not be forgotten. “[The] normative power difference between the EU stems from the historical context, the hybrid nature of the very polity and the political and legal system”.¹² The influence of the EU is not so much in its soft power, as F. Duchene¹³ or J. Nye¹⁴ understood it (how much power over the world outlook, worldview, views on current processes, etc); but in the ability to determine “what is normal”. For Manners, this influence on the conceptualization of normality can be expressed, in another way, as normative. In this regards, two comments must be made reflecting our assumptions. First, the concept of J. Manners focuses on the non-material essence of EU power, presented in the form of norms with the inclusion in the analysis of symbolic (as opposed to real) components of foreign policy based on the Lisbon Treaties. Secondly, the normative power takes us to consider the process of the internal transformation of the EU, taking place together with the spread of the norms and ideas by the European Union.

In this study we use the word “normative” following Manners and Tocci’s theories. In other words, when studying EU foreign policy, it is not enough to study only the material interests and resources of the EU, it is also necessary to pay attention to the fundamental nature of the European community (now Union) and its law and regulatory framework (Treaties, declarations, joint policies). It is this normative framework that should be used to explain the EU’s actions, as it is the key element that the Union uses in its dealings with other actors. It is on the basis of EU law that the EU has the opportunity to construct a “normal” view of international relations, i.e. using and claiming a normative power with extraterritorial effects beyond its natural jurisdiction. The Lisbon Treaty and the EU Charter of Fundamental Rights, which entered into force on December 1, 2009, provide the most comprehensive set of EU normative principles¹⁵, together with the case-law of the Court of Justice of the European Union. Thus, today, it is a fact that

¹¹ Manners, I. (2002), “Normative Power Europe: A contradiction in terms?”, *Journal of Common Market Studies*, Vol. 20, No. 2, pp. 235-258; and (2006), “The European Union as a Normative Power: A Response to Thomas Diez”, *Millennium*, Vol. 35, No. 2, pp. 167-180.

¹² One of the main debates in the literature on EU foreign policy is whether it has a particular normative dimension that makes it different from foreign policy as it is conventionally understood. On this question see Manners, I. (2002). Normative power Europe: a contradiction in terms? *JCMS: Journal of common market studies*, 40(2), p. 240.

¹³ Duchene, F. (1972). “Europe’s Role in World Peace“. In R. Mayne, (ed). *Europe Tomorrow: Sixteen Europeans Look Ahead*. London: Fontana. 5.

¹⁴ Nye, J. (2004). *Soft Power. The Means to Succeed in World Politics*. New York: Public Affairs and (2006) *Think Again: Soft Power*. Foreign Policy, 1 March.

¹⁵ EU Treaty. Consolidated version of the Treaty on the Functioning of the European Union and Charter of Fundamental Rights of the EU. OJ C 326, 26.10.2012, pp. 47–390 and pp. 391-407 respectively.

the EU has a clearly formulated system of values, which it is trying to project both externally and internally.

In non-neutral manner, in turn, “normative” can mean other things. An actor is also considered normative in sense of acting according to a ‘good’ and ‘ethical’ foreign policy. However, with this other meaning, there is risk of subjectivity that could lead to the emergence of imperial foreign policy behaviour. Russian literature offers a good example of this. As Romanova has pointed out “*the EU is often balancing between the normative and the imperial power, at the same time, using tools that are debatable from the standpoint of normative power, and this it can de facto undermine the basis of its power in the modern world*”.¹⁶

While the different meanings of normativity pose a challenge to our study, Tocci argues that the real concern is not to determinate of a State (or, in this case, the EU) is normative power or not; but to assess the degree to which a state exercises its normative power. For this purpose, in given particular circumstances and over time, some high standards are set for a ‘normative’ foreign policy to be recognised as such: there has to be consistency in the goals, the means employed and the results obtained.

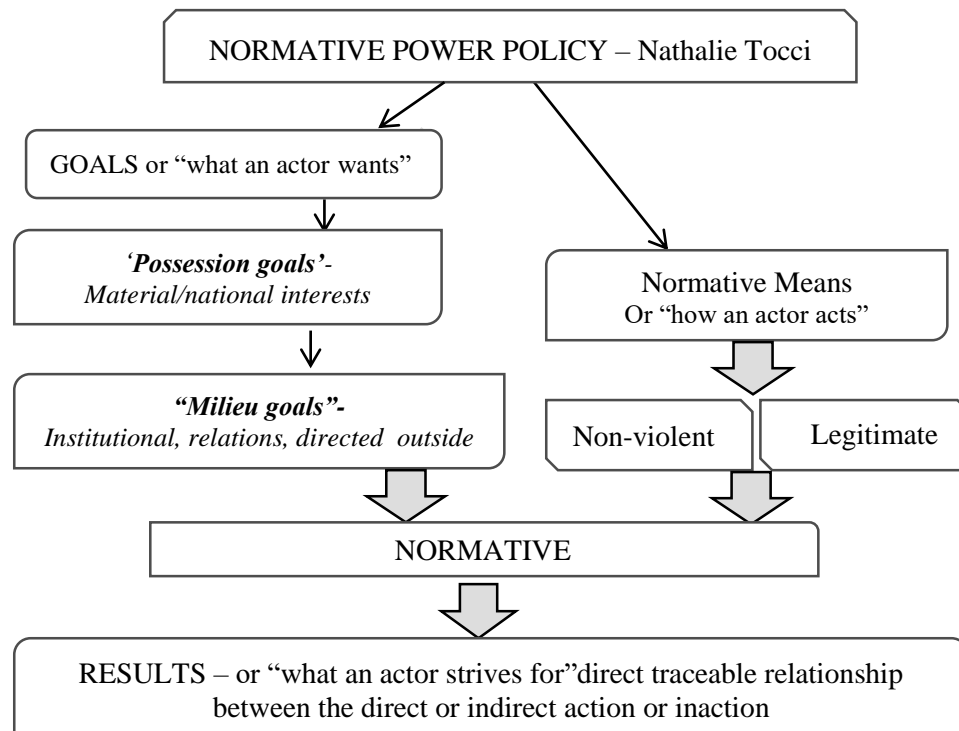
In this regard, Tocci’s theory is based on three dimensions: the actor's goals (what an actor wants), the means he uses (how an actor acts), and the normative impact (what an actor strives for).¹⁷ Our working hypothesis is to test whether Tocci’s theory can be useful to understand/criticise EU’s Arctic policy. See a summary of the theory here below in a graph.

Regarding the first dimension, goals, for a clearer understanding of it, Tocci uses the notions of ‘*milieu goals*’ and ‘*possession goals*’ introduced by A. Wolfers¹⁸. ‘*Possession goals*’ embody national material interests, e.g the desire of the state to acquire something to which it gives importance (ie. for the EU to be recognized as an important Arctic Actor).

¹⁶ Романова, Т. А. (2011). Евросоюз как нормативная сила и проблемы ее восприятия в России как барьер на пути политико-правового сближения. *Вестник Санкт-Петербургского университета. Серия 6. Политология. Международные отношения*, (Romanova, T.A. (2011). *The European Union as a normative force and the problems of its perception in Russia as a barrier to political and legal rapprochement*. Bulletin of St. Petersburg University. Series 6. Political science. International relationships), (1), p. 56.

¹⁷ Tocci N. et al. (2008). Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners. CEPS (Brussels), p. 7.

¹⁸ Wolfers, A. (1962). *Discord and collaboration: Essays on International politics*. Baltimore: Johns Hopkins Press, 1962, pp. 67- 80. Wolfers distinguishes between “milieu” and “possession” goals, arguing the former are not to defend or increase possessions held to the exclusion of others, but aim instead at shaping conditions beyond their national boundaries.



On the other hand, *‘milieu goals’*, which N. Tocci also equates to normative, are directed outside the state and transform its external environment. Such goals lead to greater institutionalization of relations, their greater ordering, peace and stability based on the principles of the supremacy of international law. International institutions and organizations in this case establish a "regulatory framework", reducing the degree of anarchy. At the same time, the actor, pursuing the normative goals, seeks to link all the participants' institutional ties to the same degree, including himself¹⁹.

The promotion of normative goals can be pursued through a variety of means. Manners, for example, analyzing the EU, as such instruments, notes the following policy means: persuasion, reasoned evidence, the imposition of a system of values or views with prestige and condemnation of alternatives.²⁰

Tocci, on the contrary, notes that it is not important what means the actor uses, but how it applies them. Firstly, they must be non-violent, which should lead to their voluntary adoption. Secondly, they must meet the requirements of

¹⁹ Tocci N. et al. (2008). *Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners*. CEPS (Brussels), p. 4.

²⁰ Manners I. (2002). "Normative Power Europe: A contradiction in terms". *Journal of Common Market Studies*, vol. 20, no 2, pp. 235-258.

legitimacy. Tocci proposes to take both the internal and international laws into account in this regard.²¹

After goals and means, Tocci leads our attention to the normative impact dimension. According to this theory, a third final variable of a normative foreign policy focuses on its result. A direct completion of the normative power is its normative impact, i.e. consolidation of the international distributed normative agenda for the other parties, and eventually its inclusion in the "self", in its own value system. The presence of a regulatory influence can be judged in the case when there is a direct traceable relationship between the direct or indirect action (or inaction) of the actor and the construction of an international regulatory environment.

Taking three variables, which collectively constitute a normative foreign policy we can then refer to different ways of referring to foreign policies (Tocci's theory).²²

		Legitimization of foreign policy goal	
Foreign policy means	Normative	NORMATIVE	STATUS QUO
	Non-normative	IMPERIAL	REALPOLITIK

Tocci classifies four types of different foreign policies: normative, realpolitik, imperial, status quo.

Normative. A normative foreign policy type is one which satisfies both conditions (goals and means), thus justifying its foreign policy actions by making reference to its *milieu* goals that aim to strengthen international law, institutions, promote the rights and duties enshrined and specified in international law and it does so by respecting its internal and international legal obligations.

Real-politik. In the realpolitik foreign policy type, an international actor uses policy instruments (coercive and non-coercive) by pursuing its possession goals in disregard for its internal and international obligation.

Status quo. A status quo foreign policy type is defined when a state, which seeks to work within the existing international system does not intend challenge the current order. In other words, this is a cooperative state which actively participates, complies with and absorbs the norms of the regime.

Imperial. In the imperial foreign policy type, the international actor claims to pursue normative foreign policy without restricting itself to existing international law. It does not view itself as bound by existing law and uses all means at its disposal, even if this entails the breach of international law with the aim of setting new norms that best serves its self-national interest.

²¹ Tocci N. et al. (2008). Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners. CEPS (Brussels), pp. 10-11.

²² Ibid.

3. The EU Arctic policy under Tocci's perspective

3.1. Goals

The Arctic today is becoming global. The Russian ambitions (exemplified by the planting of its “flag”) and the *ad hoc* meeting of the “Arctic Five” in *Ilulissat, Greenland in 2008* have shaped the existing Arctic order leading to a gradual adaptation of Arctic strategies by both Arctic and Non-Arctic States between 2008 and 2018.²³ The European Union (EU) is not an exception to this trend and it has also developed an Arctic policy during the last decade. We will examine the EU Arctic policy, according to Tocci's theory, taking into account two different goals: possessions and milieu²⁴.

3.1.1. “Possession Goals”

In Tocci's view, “possession goals” reflect the desire of the state (or an international organization in this case) to acquire something considered of great importance. The EU main ‘*possession goals*’ in the Arctic are no secret to anybody: the main objective of EU Arctic policy action is to be recognized as an Arctic Actor. In this sense, it is clear from these the 2008 and 2012 Communications on the Arctic that the EU is already a major player in the Arctic region due to the extent and depth of EU engagement through some of its policies directly or indirectly touching the region.²⁵

The same situation applies to the 2016 Communication entitled “Integrated European Union Policy in the Arctic”. In fact, Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, introducing the document, declared publicly in 2016 while introducing the policy:

‘A safe, sustainable and prosperous Arctic not only serves the 4 million people living there, our European Union and the rest of the world. It is a region of immense environmental, social, and economic importance to us all. The steps taken today underline our commitment to the region, its States and its peoples, and to

²³ For a recent summary and analysis of Russia's Arctic policies see Fralova, A. (2018). “The Arctic at the crossroads: Russia and EU policies viewed through Tocci's perspective”. Master's thesis. LL.M. in International and Environmental Law. University of Iceland. Faculty of Law.

²⁴ Tocci N. et al. (2008). Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners. CEPS (Brussels).

²⁵ European Commission (2008). Communication from the Commission to the European Parliament and Council. The European Union and the Arctic Region. Doc. COM (2008) 763; and European Commission (2012). Joint Communication to the European Parliament and Council. Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps.

ensuring that the region remains an example of constructive international cooperation'.²⁶

3.1.2. "Milieu goals"

Apart from possession goals, Tocci refers to "milieu goals", that is to say, the objectives of an actor to influence the milieu or external legal or political environment leading to a greater institutionalization of relations through (normative) international law. Taking into account this definition, it can be seen that the EU also declares some 'milieu goals', although this is done sometimes directly, and sometimes in a more indirect and subtle way. Due to the broad scope and number of diverse EU policies and relevant concrete and technical issues, there is a situation of complexity and diversity that is difficult to ignore.

On the other hand, the lack of normative coherence is one of the main criticisms towards EU Arctic policy.²⁷ While it is clear that the EU aims to influence the international legal order by actions such as gaining observer status in the Arctic Council; there is not yet an official holistic consolidated EU internal and foreign policy on the Arctic.

The EU Arctic policy finds its foundation in the EU legal framework, namely as Kobza rightly summarizes: 'Such an umbrella policy is per se nothing new in the development of various ... initiatives of the European Union, the legal competences which the EU already has for taking action in various policy fields, based legally on the interplay between articles 3-4 TFEU and Chapter V TEU, in the spirit of [article 3 TEU and] article 21 TEU'.²⁸ Therefore at least from an internal perspective, all EU's "milieu goals" announced in the EU Treaties are normative.

In other cases, we observe the formation of new regime (or, more precisely, a modification of the old international regime) in a move towards influencing the technical rules on resources management and environment; as well as new norms and new support for transportation routes and engineering tools. However, one way or another, all primary and secondary sources reflect the idea of an EU that intends to make international relations in the Arctic more orderly and institutionalized. On the basis of this, at least at first sight, the first (Tocci's) condition for the emergence of a normative power is fulfilled in the context of the EU Arctic policy.

²⁶ European Commission - Press release. A new integrated EU policy for the Arctic adopted in Brussels, 27 April 2016 The High Representative and the European Commission set out an integrated response to the challenges of the Arctic.

²⁷ Different dimensions of coherence are discussed: internal (lack of contradictory objectives), institutional (coherence between EU institutions), vertical (between the EU and its member states) and external (interaction with other Arctic actors). See Stępień, A. (2015). "Internal Contradictions and External Anxieties: One 'Coherent' Arctic Policy for the European Union?" *The Yearbook of Polar Law Online* vol. 7.1, pp. 249-289.

²⁸ Kobza, P. (2015). *Civilian Power Europe in the Arctic: How Far Can the European Union Go North?* Bruges: College of Europe, p. 6.

However, it is interesting to note how this emergence of the EU as an actor in the Arctic tries to be discrete and with a low-profile vis-à-vis its normative external consequences. Diana Wallis, a Member of the EP, commented on one occasion that not even the European Commission was sure about the nature of the policy: “*Is this a foreign policy? Or environmental, or energy? Or fishing? Of course, it is all of these things*”.²⁹

3.2. Means

In connection with the previous question we must also refer to the diversity and nature of different policies that the EU has already adopted that affect questions of importance for the Arctic. In the first two Communication (from 2008 and 2012) the main focus on *Circumpolar Arctic* has important tactical consequences because it directs the EU’s attention on the external elements of its policies. However, even in this case there are the differences between the two communications.

The first Communication from 2008 is interesting for several things.³⁰ In the first place, the Union moves from its traditional position being more and less involved in the region to promote “*efforts of a rule-based contributor to impose its own regulations, norms and values*”³¹.

Already there the EU declares its aim to operate at the international level, promoting its vision of international order in the Arctic by influencing its regime. It does not take into consideration sensitive Arctic matters. Offering what it calls a proactive engagement, the Commission’s more or less structured and coordinated 2008 approach is nevertheless too ambiguous and it is basically a proposal of EU action for the Arctic region where no contractual element from the Arctic States is foreseen. Criticizing the system of Arctic Governance, the EU tries to play role of normative power, proposing standards and patents of behavior that could be accepted by the Arctic Actors in the Region. For instance the EU says “*the goal is to ‘assess the effectiveness of Arctic relevant agreements to determinate whether addition initiatives or measures are needed; to explore the possibility of establishing new, multi-sector frameworks for integrated ecosystems, and the way of management of natural resources*”.³² Therefore, while we note that all means are non-violent; it very difficult, on the other hand, to call them legitimate. This puts the EU in the inherent difficulty of trying to operate largely on a foreign

²⁹ Ibid, p. 6.

³⁰ European Commission (2008). Communication from the Commission to the European Parliament and Council. The European Union and the Arctic Region. Doc. COM (2008) 763. Brussels, 20.11.2008.

³¹ European Commission (2012). Joint Communication to the European Parliament and Council. *Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*. Brussels, 26.6.2012. Doc. JOIN(2012) 19 final.

³² Ibid, p. 3.

ground without asking for the consent of the Arctic States.³³

The situation has changed in 2012. Understanding this time that the EU does not have legal instruments for implementing full-scale initiatives, the Union moves from its traditional position being more and less involved in the region to promote “*efforts of a rule-based contributor to impose its own regulations, norms and values*”³⁴. This policy of ambiguity among Arctic dominated States reflects more a soft, technical, supportive approach³⁵.

In this regard, the EU aims to “engage” more with the primary Arctic players in a “*successful international co-operation*”, with regional (the Arctic Council (AC) and the Council of the Barents Euro-Arctic Region (BEAC)) and international organizations, local inhabitants and other partners helping each other to meet the challenges³⁶ and supporting the EU regional/neighbourhood region-building initiatives.

This does not change the fact that the EU legal basis to act remains discontinuous and fragmented. The EU’s regional policy tools and mechanisms come from various chapters of the EU budget. In this sense, the EU’s cohesion policy and subjacent territorial cooperation programs are having an impact on the European Arctic. Furthermore, within the EU European Neighborhood Policy, other European countries are encouraged to adopt norms and practices compatible with those Union.³⁷ However, this differs from the EU Arctic policy since cooperation programs with third countries have been based on reciprocity and contractual relations, or at least attempt to engage the partner(s), whereas the EU cannot play by the same rules in the Arctic region.

Last but not least, we must refer to the last joint Communication adopted in 2016.³⁸ Despite Brussels' initial inclination to collective formats for discussing Arctic problems with the Arctic States, over time the EU has increasingly demonstrated a desire to act independently in this region. Although distinctive progress is made in “*the division between Circumpolar and European Arctic issues*”, the problem for the EU is that independent unilateral behavior is not accepted by other actors. The framework of international cooperation on Arctic issues is based on the UN platform and other international forums (among which the Arctic Council (AC) is recognized as primary in Region). In this international

³³ Kobza, P., 2015. *Civilian Power Europe in the Arctic: How Far Can the European Union Go North?*. Bruges: College of Europe, p. 8.

³⁴ European Commission (2012). *Joint Communication to the European Parliament and Council. Developing a European Union Policy towards the Arctic Region: progress since 2008 and next steps*. Brussels, 26.6.2012. Doc. JOIN(2012) 19 final.

³⁵ For a recent conceptualization of EU Arctic policy, see Lachmann, N. (-) 1 *The European Union's involvement in the Arctic: actor, irrelevant, intrusive?*, a non-dated paper probably published in 2015 or 2016.

³⁶ *Ibid*, p. 10.

³⁷ Behr, H. and Stivachtis, Y.A. (eds.) (2015). *Revisiting the European Union as empire* (Vol. 2). Routledge. p 91.

³⁸ European Commission and European External Action Service (EEAS) (2016). *Joint Communication to the European Parliament and the Council. An integrated European Union policy for the Arctic*. Doc JOIN/2016/021 final. Brussels, 27.4.2016.

framework, bilateral cooperation is the reference to deal not only with Arctic States, but also with all interested Non- Arctic countries, as well as directly with the indigenous peoples.

For all these reasons, regarding means of action, we must conclude that the EU lacks, however, a clear legitimacy in international law as well as in European (constitutional) law.

3.3. Results

As Tocci has noted, normative impact is extremely difficult to ascertain in a complex and multifaceted word.³⁹ It is even more difficult to assess the progress made by the EU from this perspective, since it is almost impossible to trace the relationship between the EU's multiple actions and diverse policies and the normative responses of the rest of Arctic actors. The extreme diversity and different scope of EU actions regarding the Arctic is so vast that it is difficult to make a holistic and global evaluation of all of them under a single umbrella. This region is a complicated territory for the EU to operate: the area is extremely varied as concerns its legal affinity, for it encompasses both territories belonging to EU (Sweden and Finland, which do not have the direct access to the Arctic Ocean) as well as to Iceland and Norway associated with the EU through the EEA- European Arctic, Greenland ... and expands to third countries, and the open sea- territories not subject to the sovereignty of any country.

All the European Union documents are built upon general EU policies based on diverse legal basis offered by the EU Treaties. In this sense, the European Arctic seems to be, in fact, a sort of umbrella policy on "anything that gets to be implemented".⁴⁰ Moreover, it is also important to note regarding this question that the EU's influence in various forums and existing structures of Arctic cooperation is rather limited. The role of the EU in the Arctic Council is even less significant: all decisions are made by permanent founding members ("Arctic Eight") and the EU does not even have the status of permanent observer in this forum due to a dispute with Canada (on trade ban on seal products⁴¹) and later with Russia (following Ukraine/Crimea crisis⁴²). The implemented ban on the trading of seal products in 2009, that was supported in the 2008 Communication, resulted in a serious breach in the EU-Canada relations. Since then the EU has gone through a difficult process of obtaining the permanent observer status in this organization.

³⁹ Tocci N. et al. (2008). *Who Is a Normative Foreign Policy Actor? The European Union and Its Global Partners*. CEPS (Brussels), pp. 11-12, 15.

⁴⁰ Stepień, A., & Raspotnik, A. (2016). The EU's new Arctic Communication: Not-so integrated, not so-disappointing?. *Articles: Arctic Centre Papers, 1*, 2016.

⁴¹ Koivurova, T., Kokko, K., Duyck, S., Sellheim, N., & Stepień, A. (2012). The present and future competence of the European Union in the Arctic. *Polar record, 48*(4), 361-371.

⁴² For a comparison of EU and Russia's Arctic policies including the effects of this crisis on the Arctic see Fralova, A. (2018). "The Arctic at the crossroads: Russia and EU policies viewed through Tocci's perspective". Master's thesis. LL.M. in International and Environmental Law. University of Iceland. Faculty of Law.

After rejection in 2009 and deferral in 2011, it was finally accepted as observer on an *ad-hoc* basis in May 2013 after a dispute later resolved within the WTO.⁴³ Russia, in turn, from the very beginning proceeded from the assumption that the three countries are members of the Arctic Council, and so are members of the EU, because there is duplication membership, but the EU's hope to gain observer status in the Arctic Council was unsatisfied once again after the escalating of the Ukraine crisis. In the Council of the Barents Euro-Arctic Region (BEAS), the EU also remains on the sidelines, as the main interaction in the region is carried out between the Arctic States.

In spite of the above, we cannot deny that the EU is a key player in international environmental negotiations. It is a party to numerous global, regional or sub-regional environmental agreements on a wide range of issues, such as nature protection and biodiversity, climate change, and transboundary air or water pollution. In the "mixed agreements", both the EU and its Member States participate in the Conventions (UNCLOS and other mixed environmental agreements). It is of paramount importance that they act in a uniform manner maintaining the unity of the EU. If the EU does not have full membership status in an international organization, the Member States are obliged to act jointly in the Union's interest on the basis of the duty of loyal cooperation Art. 4(3) TFEU which is a key constitutional principle of the EU legal order.

However, in Arctic case, as can be seen from the last 2016 Communication, the EU only "encourages" all partners to ratify environmental or international agreements as well as to facilitate developments of another international instrument relating to the Arctic. The question of how it is going to be done is unanswered in the document. Only one input of the EU Arctic policy is clearly traceable, the fact that the EU - due to its exclusive competence on conservation of marine resources - has become a Party of a recent Agreement signed by the Arctic Eight in 2018 intended to prevent unregulated fishing in the high seas area of the Central Arctic Ocean.⁴⁴

3.4. The EU as an Actor

Considering all the foregoing, we can say that the EU from its first 2008 Communication established a sort of imperial foreign policy type announcing its normative goals, but lacking means, without restricting itself to existing international law and using all EU policy instruments with the aim of setting new norms. As a result the EU Arctic policy can be called "an action 'for' a given

⁴³Østhagen, A. (2014). The European Union—An Arctic Actor? *Journal of Military and Strategic Studies* vol. 15(2), pp. 71-87, at p. 81.

⁴⁴ Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Agreement to prevent unregulated high seas Fisheries in the Central Arctic Ocean. Doc. COM/2018/453 final.

region rather than ‘with’ a given region, for it is *per se* a unilateral action of the EU”.⁴⁵

As today, on the basis of the rest of communications from 2012 and 2016, we can say that the nature of EU policy in the Arctic has evolved into a normative kind, satisfying both normative goals and means, at least from EU’s internal but supranational perspective. However, it is also important to notice that the presence of normative elements in EU Arctic policy does not mean that the EU is effective in building a common perception of the new “normal” (EU perspective) in the region for the main reason that the EU policy has no clear basis under international law and is still unilateral, that is to say, its claims are not recognized by other Arctic actors.

4. Conclusions

The EU has tried, since 2008, to increase its ability to gain influence over the Arctic region. Its involvement, however, shows the limits of the EU’s policy, lack of direct competences and lack of jurisdiction under EU Treaties and international law. The challenges are also due to the unique nature of this Northern area, the relations of some Member States with its own Arctic citizens and with the EU institutions as well as necessary consideration to diverse national interests and stakeholders across the region.

Arctic territories are different in terms of size, number and density of population, level of economy development, climate conditions, culture, etc. and they all have heterogeneous legal systems which have been shaped by the unique history of each country. Furthermore, not only major differences between regulatory regimens, standards and governance capacity differ across states; but also the perceptions of what is “normal” or desirable in international relations. Even within the European Arctic falling within the EU, the diverse perspectives have led to the adoption of different priorities in EU Arctic policy papers in the last decade 2008-2018.

For the EU, the first Communication from 2008 was the first respond to manifest its relevance in the region. The EU showed a proactive engagement in circumpolar issues in spite of several factors: the fragmentation of the legal framework, the lack of effective instruments and the absence of an overall policy-setting process in the wake of global changes in the Arctic. In the following years, specially 2012 and 2013, a new set of EU documents were published. The 2012 EU Communication by the Commission and newly formed EEAS continued this path by announcing similar objectives as those identified in 2008. The new policy increased EU support to Arctic issues and tried to reestablish its credibility in the region. More recent documents, in particular the 2016 Communication clearly

⁴⁵ Kobza, P., 2015. *Civilian Power Europe in the Arctic: How Far Can the European Union Go North?*. College of Europe. p. 8

shows a general shift in the EU's rhetoric (ie. pursuing a more self-interest based foreign policy).

What do we learn if we analyse EU's Arctic policy from the perspective of Tocci's theory? The EU policy aims to be distinctively normative, stressing the promotion of multilateral co-operation and offering its vision of what is "normal". But the real concern, according to Tocci's theory, is not to determine whether a State (or supranational organisation) is normative power or not but to assess the degree to which a state (or organisation) exercises this normative power. In this regard, three dimensions were evaluated: the EU's goals (what an actor wants), the means the EU uses (how an actor acts), and the normative impact of EU's policy (what an actor strives for). No other conditional factors were examined (since Tocci's theory also may take into account the fact that international actors can in fact pursue different foreign policy types over time and in different regions).

Our findings show that the EU is a paramount example of a normative foreign policy still in the making and in search of legitimation. From 2008, the policy has been revised three times and the paradigms have sometime shifted. However, in view of Tocci's theory on normative foreign policy, it is clear that – no matter the evolution- the EU pursues a set of clear and different "possession goals" and "milieu goals" in the Arctic.

The EU main '*possession goal*' is its desire to acquire something considered of great importance in the Arctic: legitimacy. This is not a secret to anybody: the main objective of EU Arctic policy action is to be recognized as an important Arctic actor, specially *vis-à-vis* the Arctic Council.

Starting as a "imperial power" in the Arctic, according to the Tocci research model; the EU has been promoting its "milieu goals" since 2008. While there is not yet an official holistic consolidated EU internal and foreign policy for the whole region, however, the EU's policy clearly aims to be normative although it lacks legitimacy and cannot rely on normative means (under international law).

The EU started in 2008 criticizing the current system of Arctic governance, trying to play the role of a normative power, proposing standards and patents of behavior for the Arctic actors in the Region without asking for their consent and without even having international legal competence to act.

Following strong criticism, the EU changed its approach in 2012 and tried to establish itself as a normative foreign policy actor, pursuing its normative "milieu goals" through different normative means. The EU announced its goal to "*engage*" more with the primary Arctic players in a '*successful international co-operation*' ... that is to say, with international organizations, local inhabitants and other partners helping to meet the challenges ahead together.

In 2016, the EU has finally recognized that many of the challenges impacting the Arctic can only be addressed through multilateral, regional and bilateral engagement. The paradigm has now totally shifted since the EU declares itself to be well placed to engage on Arctic issues taking part in the current system of Arctic governance.

What is interesting to note is that the EU case clearly shows that a normative Arctic policy does not mean that a policy is effective in building a common perception of the “normal” in the region for several reasons. First of all, there is not direct traceable relationship between the direct or indirect action or inactions of the EU as an Arctic foreign policy actor. In the first place, the analysis of the official EU-Arctic documents supports the argument that the EU, after three published layers of EU documents, continues to lack a clear strategy and holistic integrated policy towards the Arctic. In fact, the EU Arctic position is rather vague, it does not contain any specific revolutionary proposals, but merely lists existing initiatives. As scholarship as noted, all this indicates that the EU's Arctic policy is still at the stage of its formation *de facto*.

In the second place, the EU is trying to operate largely on weak foreign grounds in a grey area situated beyond its natural jurisdiction. While Arctic States recognize its soft power tools (investment, contribution to research and the Arctic Council working groups, etc); is also unsure what the EU is actually trying to achieve (indirectly) in the Arctic. Arctic States consider the EU as a supranational organization of regulatory character and would likely be irked by any direct EU attempt to project its regulatory power onto Arctic affairs.

Our findings suggest that, in view of Tocci's theory, the EU has therefore failed to be a fully normative foreign policy actor in the Arctic region. While the EU has clearly some tools and instruments to play a significant role in the area (and it has been successful in quite areas such as research and science); the implementation and effectiveness of its policy still depends on the cooperation with the “Arctic Five” and sometimes the “Arctic Eight”, depending on the issues.

The EU Arctic policy is only normative from a unilateral point of view since other Arctic actors have not acknowledged its legitimacy. *De lege ferenda*, EU Arctic Policy needs to be grounded – apart from EU Treaties – on the international legal system and effective diplomacy pursuing strategic collaboration and partnership with Arctic states. In this sense, the trial and error path needs to be put behind.

If we take a broader view, another picture emerges. The weakness of internal incentives for collective activities in the region, together with the relatively low level of cohesion of current interactions, have led to the spread of general norms of international politics to the Arctic. In fact, the nature and content of multilateral relations in this part of the world are determined, world to a large extent, by global problems and international relations that are formed, not so much in the Arctic, but in the world as a whole. As the United Nations' President Ban Ki-moon already stated in 2016, “*the resurgence of Cold War ghosts*” is here. Despite cooperation to some extent, we can also see a move again to protect national or self-concerned priorities in the region. This is true for the EU as well as other powers acting in the region (such as Russia).

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