

THE RELATION BETWEEN EUROPEAN UNION LAW AND PUBLIC INTERNATIONAL LAW – BETWEEN AUTONOMY AND COOPERATION

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Abstract

This article examines the complex relationship between European Union law and public international law, analysing the extent to which these two legal systems operate in autonomy or in cooperation with one another. The study identifies key structural differences between the two legal orders — including their subjects, sources, and enforcement mechanisms — while also highlighting the foundations they share. Drawing on primary treaty provisions and landmark jurisprudence of the Court of Justice of the European Union, the article argues that EU law constitutes a distinct and autonomous legal order, born out of international law yet operating beyond its classical confines. The analysis covers several dimensions of this relationship: the incorporation of the „pacta sunt servanda” principle, EU compliance with obligations under the UN Charter, the autonomous character of the EU legal order as confirmed through successive CJEU opinions, the international law origins of the founding treaties, and the manner in which EU law supplements international rules on State liability. The article concludes that, although the EU legal order is autonomous and cannot be reduced to classical international law, the two systems remain in a permanent relationship of mutual interaction and adjustment, with cooperation being an indispensable condition for the effectiveness of EU action on the international stage.

Keywords: *European Union law, public international law, legal order, autonomy, Court of Justice of the European Union, founding treaties.*

1. Introduction

International law and European Union law are two study subjects that are as complex as they are fascinating.

Over time, since the establishment of the first European Community, the Coal and Steel Community, the European Union has tried to consolidate and make its presence felt on the international stage, by achieving its own international identity. However, for more than 50 years, the complex and fragmented framework that has governed its international relations¹, as well as the multitude of distinctly configured powers, instruments and institutions, have represented an obstacle to achieving this objective.

From the perspective of international law, since 1 December 2009, the European Union has been, without any doubt, an international organization, bringing together all the constitutive elements of this subject of law (including acquiring legal personality, an aspect that has given rise to much debate and commentary both among lawyers and among those who have concerns in the sphere of the two fields: international and union field).

Public international law is defined, *lato sensu*, as “the set of legal rules that regulate the relations established within international society”². *Stricto sensu*, however, public international law is that branch of law, that set of principles and legal rules created by states, based on their agreement of will, for the purpose of regulating the international relations in which they participate. Thus, international law represents the set of norms and rules that govern the relations between states, between states and international organizations, between international organizations among themselves, as well as between them and other subjects of international law.

Lato sensu, the legal order of the European Union comprises all the legal rules that govern the legal relations between the European Union, on the one hand, and the Member States, the candidate states for accession, the associated states, third states, international organizations and individuals, on the other hand.

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¹ We consider the existence, until December 1, 2009, of the three pillars of the European Union, namely: pillar I (the community pillar – the European Communities); pillar II (the common foreign and security policy) and pillar III (police and judicial cooperation in criminal matters).

² R.M. Beștelu, *Drept internațional public*, vol. I, ed. 3, C.H. Beck Publishing House, Bucharest, 2014, p. 1.

Stricto sensu, this legal order encompasses all the material and procedural rules, applicable within the European Union (treaties, regulations, case law, etc.)³.

European Union law differs from public international law in a number of aspects, such as:

- European Union law is closer to the characteristics of the internal law of Member States, thus becoming internal law, and consequently having fewer characteristics than an “external” law for these states;
- while public international law regulates only the rights and obligations of states in their relations with each other, European Union law also regulates the legal relations established between legal persons and/or natural persons, as well as between them and the Member States;
- the legal instruments of international law are international treaties, to which the sovereign will of the States Parties is added; European Union law, however, confers on the Union institutions, the power to adopt binding legal rules, in accordance with the interest of the Union, that takes precedence over the national interests of the Member States, the two types of interests being in permanent and mutual adjustment;
- classic international treaties, which form the basis of international organization, do not sufficiently develop the jurisdictional side of the organization’s functioning, while European Union law also regulates the means of strict judicial control over the degree of compliance with the rules contained in the treaties or adopted by the Union institutions, with the Court of Justice of the European Union playing a leading role.

2. Dimensions of autonomy and cooperation between EU law and public international law

A. EU law recognises and makes enforceable the *pacta sunt servanda* international law principle. Article 216 para. (2) TFEU introduces the *pacta sunt servanda* international law principle into EU law, providing that agreements concluded by the Union are binding on both the EU institutions and the Member States.

B. European Union law complies with public international law. According to the UN Charter, “in the event of a conflict between the obligations of the Members of the United Nations under this Charter, and their obligations under any other international agreement, their obligations under the Charter shall prevail”. Aware of this aspect, which is translated into the fact that at international level, in particular in areas of major interest, all participants in international life must comply with the obligations they have undertaken, the drafters of the Treaty on European Union have provided, in Article 34 para. (2) that “Member States which are also members of the United Nations Security Council shall agree and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council shall, in the exercise of their functions, defend the positions and interests of the Union, without prejudice to their responsibilities under the Charter of the United Nations”.

Furthermore, Article 3 para. (5) TEU states that “in its relations with the rest of the international community, the Union shall affirm and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the planet, solidarity and mutual respect among peoples, free and fair trade, the eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and development of international law, including respect for the principles of the Charter of the United Nations”.

Furthermore, Article 21 para. (1) TEU provides: “the Union’s action on the international scene shall be guided by the principles which have inspired its creation, development and enlargement and which it seeks to promote throughout the world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the Charter of the United Nations and of international law”.

C. The legal system of the European Union is an autonomous legal order. When we make this statement, we have in mind the following:

- firstly, the judge of the Court of Justice in Luxembourg found, as early as 1962, the following: “The Community represents a new legal order of international law, for the benefit of which the Member States have limited, albeit in restricted areas, their sovereign rights and in which the subjects of law are not only the Member States but, equally, their nationals”⁴;

³ A. Fuerea, *Manualul Uniunii Europene*, 7th edition, revised and added, Universul Juridic Publishing House, Bucharest, 2026, p. 249.

⁴ Judgment of the Court of 5 February 1963, *Van Gend en Loos v Administratie der Belastingen*, Case 26/62, EU:C:1963:1.

- secondly, the relation between Community law (now Union law) and international law was to be clarified, a few months later, with the judgment in the *Costa v/ENEL* case⁵. Thus, the Court stated: “unlike ordinary international treaties, the Treaty establishing the European Economic Community created its own legal order, integrated into the legal system of the Member States upon the entry into force of the treaty and which is imposed on their jurisdictions; by constituting a Community of unlimited duration, with its own powers, its own personality and legal capacity, but also a capacity for international representation and, in particular, with real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the Member States limited their sovereign rights, albeit in limited areas, and thus created a body of law applicable both to their nationals and to themselves”;
- thirdly, confirming that the founding treaties represent “more than an agreement which merely creates reciprocal obligations between the contracting states”, the Court ruled in 1964 that they (the Treaties) establish “a new legal order governing the powers, rights and obligations (of the subjects to whom they apply) and the procedures necessary to establish and sanction any possible breach thereof”⁶.

In situations where the European Community (and, now, the European Union) has become a member of an organisation or party to an international agreement establishing institutions, the powers of which may conflict with those of the Union institutions, the Court of Justice has “defended” the autonomy of the EU legal order. In this regard, we recall Opinion 1/76⁷, in which the Court ruled out the possibility of setting up a specialised court composed of judges from the Court of Justice of the European Union and one from Switzerland, on the grounds that the judges of the Court in Luxembourg might face a conflict of jurisdiction or loyalty to two different courts.

The Court adopted a similar position in connection with the provisions of the draft Agreement establishing the European Economic Area⁸. The proposal to recognise the jurisdiction of a new Court of the European Economic Area, which would have been composed of three judges from the Court of Justice of the European Union and three from the Member States of the European Free Trade Association, was considered incompatible with European Union law. The fact that the Agreement had the effect of introducing into the legal order of the Union, a consistent body of legal rules which would have joined a fund of identical legal rules, with all the problems of interpretation and consistency. This aspect was considered to have contravened Article 220 TEC⁹, according to which “The Court of Justice and the Court of First Instance shall, within the limits of their powers, ensure that in the interpretation and application of the Treaty, the law is observed”.

Also supporting the claim that the legal order of the European Union is autonomous, is Opinion 1/00¹⁰ on the Agreement establishing a Common European Aviation Area, in which, although the Court ultimately confirmed the compatibility of the Agreement with the Treaty establishing the EC, the Luxembourg court ruled as follows: “(...) preserving the autonomy of the Community legal order presupposes, on the one hand, that, as regards the powers of the Community and its institutions, as they were conceived, they are not distorted (...). On the other hand, it presupposes that the mechanisms for the uniform interpretation of the rules of the CEEA Agreement, as well as those for the settlement of disputes, are not such as to impose on the Community and its institutions, in the exercise of their internal powers, a particular interpretation of the rules of Community law to which the agreement refers (...)”.

Consequently, we argue that European Union law represents the new type of relations that have emerged in the European space, thus creating a new legal order, different from both the international legal order and the national legal order.

D. The legal order of the European Union was established on the basis of public international law. We believe that the creation of a unitary legal order, such as that of the European Union, is not a novelty at the

⁵ Judgment of the Court of 15 July 1964, *Flaminio Costa v E.N.E.L.*, Case 6/64, EU:C:1964:66.

⁶ Judgment of the Court of 13 November 1964, *Commission of the European Economic Community v. the Grand Duchy of Luxembourg and the Kingdom of Belgium*, Joined Cases 90/63 and 91/63, EU:C:1964:80.

⁷ Opinion of the Court of 26 April 1977, delivered under the second subparagraph of Article 228 para. (1) of the EEC Treaty, “Draft Agreement on the establishment of a European Fund for the retention of inland waterway vessels”, EU:C:1977:63

⁸ Opinion No 1/91 of the Court of 14 December 1991, “Draft Agreement between the Community, of the one part, and the States of the European Free Trade Association, of the other part, on the creation of the European Economic Area”, EU:C:1991:490.

⁹ Current Art. 19 para. (1) TEU (“The Court of Justice of the European Union shall comprise the Court of Justice, the General Court and specialised courts. It shall ensure that the law is observed in the interpretation and application of the Treaties”).

¹⁰ Opinion 1/00 of the Court of Justice of 18 April 2002 on the draft agreement on the creation of a European Common Aviation Area between the European Community and third countries, EU:C:2002:231.

international level, as long as, at the basis of what today forms European Union law, we find several international treaties concluded according to the existing regulations at the level of international law. In this regard, we consider, first of all, the three founding treaties of the European Communities, that, from the point of view of international law, have at least three fundamental characteristics, namely: firstly, they express the legal link between the Member States of the Communities; secondly, they constitute an organized set of legal rules; thirdly, the acts drawn up on the basis of these treaties, by the institutions with powers in this respect, produce legal effects in the States Parties.

The Treaties of the European Union were concluded by sovereign States, by expressing their agreement of will. Thus, the States became “(High) Contracting Parties”¹¹ to three (initially) multilateral treaties, before becoming “Member States” of international organisations, the main objective of which is economic integration.

At the same time, according to international law, one of the constitutive elements of an international intergovernmental organization is the existence of its own institutional system. The founding treaties of the European Communities and, subsequently, of the European Union are not limited only to establishing reciprocal legal ties between the contracting parties, but they are also meant to create, for each organization they establish, its own institutional system. A significant part of the content of the founding treaties is reserved for the institutions of the European Union.

According to international law, international treaties in force may be modified by means of amendments adopted unanimously or by a qualified majority of two-thirds or by a simple majority, through two procedures: amendment and revision. Amendment refers to certain partial and minor changes, while revision designates substantial and extensive changes to the text of a treaty. And within the meaning of European Union law, revision is defined as any modification or addition to the founding treaties, a legal intervention that has the same legal value as the original treaties.

E. European Union law complements international law on State liability¹². Unlike public international law, the founding treaties do not contain provisions on the liability of Member States for breaches of EU law.

As in other cases, it was the Court of Justice of the European Union that, over time, has defined a right to reparation, which has its foundation in EU law and the conditions necessary to engage this right, for the benefit of victims.

As regards State liability in international law, the Court ruled that, “in the international legal order, the State, the liability of which would be engaged in the event of a breach of an international commitment, is also considered as a whole, regardless of whether the breach is attributable to the legislative, judicial or executive branch”¹³. The difference that arises, however, is that, in EU law, State liability can be directly claimed by private individuals, which is not the case in international law, since, as it is well known, the consideration of the interests of private individuals is ensured by the State, by virtue of the diplomatic protection of its nationals. Therefore, State liability can only be invoked indirectly, by private individuals.

International law provides only the liability of the State as a whole that is, taken in its entirety: it is irrelevant whether the damage caused to individuals was caused by the legislator or by the court or an administrator. At the same time, in international law, the State’s obligation to repair the damage arises even when, in practice, the compensation seeks to restore the financial position of individuals with regard to one or more States, and not, as is desired in this case, directly with regard to individuals.

However, when we talk about the legal system of the European Union, we must take its particularities into account. The system is, of course, conventional. The Treaty establishing the European Community includes, like other legal instruments establishing international organizations, a series of obligations incumbent on the Member States with regard to the achievement of the objectives stated and assumed, as well as the functioning of an institutional structure with powers that are defined, even if not entirely, in the treaty. However, in the case of the Union, the conventional basis aims at integration. Thus, the traditional instruments, including those of

¹¹ According to the Preambles to the Treaties of the European Union.

¹² “The legal liability is currently in the middle of a transformation process, together with the evolution of society actually, it has new dimensions, new correlations. In this context of the redefinition of the concept of legal liability, we acknowledge how actual the famous expression of Juvenal⁴³ is: “quis custodiet custodes?” Deservedly, this question summarizes one of the most difficult problems standing in the way of accomplishing the rule of law: find the most efficient procedural ways to make the state’s bodies, which directly or indirectly have constraining force in view of making the citizens be compliant with the laws and, in their turn, be forced to comply with them” (E.E.Ştefan, *The Concept Of Legal Liability, Challenges of the Knowledge Society*. Legal sciences, 2012, p.787).

¹³ Paragraph 34 of the judgment of the Court of 5 March 1996, *Brasserie du Pêcheur SA v./ Bundesrepublik Deutschland et The Queen contre Secretary of State for Transport*, ex parte: *Factortame Ltd et autres*, joined cases C-46/93 and C-48/93, EU:C:1996:79.

international law, provided for the correct performance of obligations by the Member States, are able to confer the greatest interest on the legal situation of individuals, in the sense that the obligations of the States and the institutions of the European Union are aimed, mainly, at the establishment of rights in the assets of individuals. This is the framework that was established by the authors of the Treaty and consolidated by the legislative institution of the Union. The Court, in its case-law, has often found the existence of this will, as included in the Treaty and, therefore, by the Union legislature, emphasizing the fact that the Treaty establishing the European Community created its own legal system, "for the benefit of which the States have limited, even in restricted areas, their sovereign rights"¹⁴. The subjects of this legal order are not only States, but also individuals, to whom European Union law gives rights.

F. EU law is not a component of international law. The European Union Court has played a decisive role in shaping the place and role of the Union in the field of international relations. We also believe that it has played a particularly important role in achieving what we currently call a new, independent legal order, which we can consider as being situated between that of federal states and international organizations, being between domestic law and international law.

3. Conclusions

In the context of developments in international relations, the relation between European Union law and public international law continues to be characterised by both autonomy and cooperation. Although the European Union has built its own legal order, distinct from classic international law, it cannot operate outside the international legal framework. On the contrary, the efficiency of the Union's action on the international stage depends on its capacity to maintain a balance between protecting the autonomy of the European legal order and complying with the obligations assumed under public international law.

The analysis of the relation between European Union law and public international law demonstrates that the Union's legal order cannot be understood exclusively from the perspective of classic international law or exclusively by reference to national legal systems. Although founded on international treaties and built within the framework of cooperation between states, the European Union has developed, through its institutions and the case law of the Court of Justice, an autonomous legal order, characterised by direct effect, priority and its own jurisdictional mechanisms. However, the autonomy of EU law does not exclude the applicability and influence of public international law, but presupposes the existence of a permanent relation of cooperation and mutual adjustment between the two legal systems. In conclusion, although there are a number of differences between international law and European Union law, they are not completely separate, with relations of mutual influence, interaction and inter-conditionality between them.

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¹⁴ Van Gend & Loos judgment, cited above.

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