

## EUROPEAN UNION – SUBJECT OF PUBLIC INTERNATIONAL LAW

**Ph.D. Emilian CIONGARU**

**Associate researche**

**, Romanian Academy – Institute of Legal Research „Acad. Andrei Radulescu”,  
Bucharest, Romania.**

**Researcher, Hyperion University, Bucharest, Romania,**

**E-mail address: emil\_ciongaru@yahoo.com.**

### **ABSTRACT**

*THE CONCEPT OF PUBLIC INTERNATIONAL LAW MEANS THAT THE OBJECT OF REGULATION IS REPRESENTED BY THE INTERNATIONAL, INTERSTATE RELATIONS AND/OR RELATIONS BETWEEN OTHER SUBJECTS OF INTERNATIONAL LAW. INTERNATIONAL LAW INFLUENCES AND GUIDES THE STATES' EXTERNAL POLICY THROUGH THE ACTION OF ITS NORMS AND PRINCIPLES THAT MUST BE OBSERVED IN THE IMPLEMENTATION OF EXTERNAL POLICY BY THE STATES. THE EUROPEAN UNION HAS EVOLVED AND IS OPERATING AS A UNIQUE ORGANIZATION ACCEPTED AS A SUI GENERIS ORGANIZATION. ITS CHARACTERISTICS AND MANNER OF OPERATION MAKE IMPOSSIBLE ITS FITTING INTO ONE OF THE TYPOLOGIES OF INTERNATIONAL ORGANIZATIONS KNOWN AND THEORIZED SO FAR SINCE IT HAS SOME FEATURES SPECIFIC TO THE FORMS OF STATE ORGANIZATION BUT, DESPITE ALL THAT, IT DOES NOT FIT INTO ANY DEFINITION OF SUCH FORMS OF ORGANIZATION AND IT MAY NOT BE CONSIDERED AS A FEDERATION OR A STATE CONFEDERATION EITHER. BY THE COMING INTO EFFECT OF THE LISBON TREATY, THE EUROPEAN COMMUNITY CEASES TO EXIST AND ITS ACQUIS IS TAKEN OVER BY THE EUROPEAN UNION WHICH ALSO HAS A LEGAL PERSONALITY, THUS REDEFINING THE ROLE OF THE UNION IN A GLOBALIZED WORLD.*

**KEYWORDS:** PUBLIC INTERNATIONAL LAW, THE EUROPEAN UNION, SUBJECT OF LAW, LEGAL PERSONALITY OF THE UNION, INTERNATIONAL RELATIONS.

### **INTRODUCTION**

The need to establish certain well-defined rules of conduct to be used by the states as guidelines has led to the emergence and development of international law and, from the issue of the first rules of conduct (Diaconu, 1993, pp. 19-21) to be used at an international level, through the development of a system of mandatory rules able to govern the most important international relations, many changes have occurred.

During the historic evolution thereof, international relations have developed and diversified, being subject to significant mutations and, due to such mutations within the international relations, the public international law is continuously renewing and developing, and, in an innovative approach, international law is referred to as transnational (Miga-Bestelciu, 1997, pp. 27-29) law.

Public international law is to be tailored to the new realities of international life, by way of an improvement in the contents of the rules thereof and the adoption of new principles and rules, for it to become an effective instrument for the states with a view to strengthening peace and international security. International relations are conducted in all areas where the states' interests exercise their will and, as such, this kind of relations may lead to conflicts of interests.

International relations include a comprehensive, diversified field of inter-state contracts in the form of power relations by way of which the states collaborate and tackle the great issues of international life such as the economic (Moca, 1989, pp. 78-79), cultural (Butculescu, 2012, pp. 365-366) and family ones. This large, complex range of connections between the states awards an extremely rich content to international relations. These relations are supplemented by numerous relations arising between natural and legal persons from different states, between institutions and public organisations. With the emergence on the international stage of new entities, such as international organisations, and the involvement thereof in the international life, international law acquired new dimensions. The process of the emergence and historical evolution of international law is tightly connected to the emergence and development of the states, of other international entities, and of the relations between them, representing an emission of the states, in a permanent interdependency due to the relations between them. This fact determines both general features and the particularities of the international law by reference to the internal law. While international law regulates the relations occurring within the relationships between states (Popescu, Nastase & Coman, 1994, pp. 18-22), internal law regulates the social relations within the concerned state. By the principles and rules thereof, the international law regulates the conduct of the states, laying-down mutual rights and obligations. Considering international law as principles and rules as a whole, the entire diversity of the relations to which the states award legal incumbency is taken into consideration.

Such reports are established and conducted as part of each state's foreign policy, as overall guidelines and actions, within the relations with other states and other subjects of international law. For this reason, there is interaction between international law and the states' external policy, international law also being used as a means of influencing the foreign policy and also, as an instrument thereof. The effectiveness of international law rules is ensured by way of the concern of the states to regulate the relations between them from a legal perspective. When such rules are breached, they may be safeguarded by coercive means applied at collective and individual levels by the states, and such legal rules that may be: general - mandatory for all states, and specific - applicable for two or more states, in a matter or another pertaining to the mutual relationships. Among the general legal rules, fundamental principles may be separated, which are mandatory and determine the classification of contemporary international law as a general law, applicable in the relationships between all world states.

The subject matter of international law mainly consists in the relationships between the states, which are determined, in terms of reach and contents thereof, by the concerned states which, by the agreement thereof, include any matter that is deemed to be international, in the regulations and the legal relations thereof. The matters which, under Art. 2 (7) of the Charter of the UN, *are essentially within the domestic jurisdiction of any state*, are not considered as a subject matter of international law regulations because, by the

very character thereof, they are governed by State sovereignty, by the full and exclusive exercising of such, nor are the relations in which the state is not the state power holder.

However, the subject matter of international law cannot be reduced to the relationships between states, because the scope of the legal regulations also includes the relations of other entities seen as subjects of international law, if they are determined by the states. Therefore, the subject matter of international law is also represented by the relationships arising between states and other subjects of the contemporary international law (e.g.: U.N., N.A.T.O.), as well as representative bodies of the peoples fighting for freedom, for creating a state of their own (e.g.: Palestine Liberation Organisation – P.L.O, South West Africa People's Organisation – SWAPO, the unrest in Angola, Mozambique, Guinea-Bissau and Cape Verde).

Therefore, the subjects of the contemporary international law are the following: the states; the international inter-governmental organisations and other entities, such as the peoples and the national liberalisation movements (Bolintineanu, Nastase & Aurescu, 2000, p. 139), governmental organisations and transnational societies. The latter ones have special status, being entitled to being awarded certain rights and undertaking certain international obligations, however, without having full legal capacity on an international level, a special role in terms of international law legal capacity being played by the individual.

### **MAIN TEXT**

For a certain period of time, international law regulated the relations between states because such appeared most often on the international stage. Starting the 19<sup>th</sup> Century, under the influence of the technical developments, of the growth of international cooperation between the states, the inter-state international organisations started appearing on the international stage in the form of associations of states, established on the grounds of the agreement thereof, for the purposes of achieving specific objectives and activities determined at international level.

In order to have full (Geamanu, 1975, pp. 184-188) international legal personality, an international organisation is to meet the following integrant elements: it is to consist in states in capacity of members; it is to be established on the grounds of a multilateral treaty (Mihaila, 2001, p. 99) concluded between member states; it is to have own institutional structure consisting in bodies with permanent or temporary functioning and tasks laid-down by the treaty, which are able to adopt documents enforceable on the members of the organisation and also, the need for the organisation to conform to international law rules. Once these elements are met, the international organisation acquires international legal personality distinctive from that of the member states. Unlike the states, the international organisations have limited and specialised international legal personality connected to the purpose and specific functions determined upon establishment. The international legal personality awards the following rights to the international organisations: to conclude treaties with the member states, with third party states and with other organisations, except when the establishing document prohibits such; to establish and maintain connections with the permanent missions of the member states accredited for such, and to appoint own missions for member states, third party states or other international organisations; to submit international complaints for the prejudice suffered by the organisation or the representatives thereof; to organise and manage financial resources.

Likewise, the international organisations also obtain certain obligations, given the international personality thereof, thereby having the obligation to conform to the international law and conduct their activity in accordance with the regulations thereof.

International organisations also have specific competencies, such as: normative competence – to issue international law rules or conventional regulations; competence to control or punish as part of the relations with the member states.

The states, the peoples fighting for freedom and the international inter-state organisations are subjects of the public international law but, among such, it is only the state that is the main subject, the international organisations being secondary subjects. The peoples are also subjects of international law, but their legal status is limited and temporary, the state, as a sovereign entity, playing a decisive role in the development of international organisations.

In the contemporary international law and in the practice of the states, the following developments of the relations between the international law and the internal law may be outlined, which prove a more acute trend for mutual influencing of the two legal orders: Art. 46 of the Convention of Vienna on the law of treaties, providing that a state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance (Fitzmaurice, 2003, p. 174); the awarding, by the states, of direct effects of international treaties in the internal law; the recognition of the precedence of international law regulations, particularly of those relating to human rights, over the internal law; creation of a *sui generis* international order, the most explicit example being the European Union, increasingly aiming at mixing the features of an international system with those of a constitutional system.

The need to create a union of states at European level has increased following the catastrophes caused by the First and the Second World Wars, due to the desire to reconstruct Europe and remove the possibility for a new war to occur. It is this feeling that has eventually led to the establishment of the European Coal and Steel Community by Germany, France, Italy and Benelux countries (Belgium, Netherlands, and Luxembourg), this being possible following the signing of the Treaty of Paris in April 1951, which came into force in July 1952. The first total customs (Tutunaru & Morega, 2010, pp. 18-19) union, initially referred to as the Economic European Community, was established by the Treaty of Rome in 1957 and implemented on the 1<sup>st</sup> of January 1958. The latter one has become the European Community, which is at the basis of the current European Union. The European Communities enjoyed the privileges and immunities necessary for achieving the objectives thereof and benefited from tax and customs exemptions for the operations they conducted, however, they did not have jurisdictional immunity (Fuerea, 2003, pp. 33-35). European Union has evolved from a commercial body into an economic and political partnership. The European Union was completed by the ratification of the Treaty of Maastricht by all member states of the European Community, on the 7<sup>th</sup> of February 1993. The European Economic Community was established for an undetermined period of time and the organisation which, in the view established (Tizzano, 1998, p. 11) by the International Court of Justice, was to become a subject of international law, having own responsibilities and international representation capacity as well as real powers arising from the limitation of member states competences or from the transfer of the responsibilities thereof for the benefit of the Community. The legal personality of the

Communities was recognised from the actual signing of the establishing treaties because the contracting parties had the intention to award to the European Community the capacity to have rights and obligations. Therefore, in this case, there were three public law legal persons (CJCE, 43-48/59, Lachmuller, 15. 07. 1960. Rec. 953; si CJCE, 44/59, Fiddelaar, 16. 12. 1960, Rec. 1094.) which, enjoying legal personality independent from that of the states, had autonomous budget, own patrimony, distinctive institutions and bodies and own agencies.

Having its origin in a form of cooperation in the economic field, the European Union has evolved and functions as a unique organisation, accepted as a *sui generis* (Manolache, 2006, pp. 31-33) organisation. Until recently, it has been the international organisation having reached the highest level of integration in a large number of fields and the features thereof, as well as its functioning manner, make it impossible to classify it as one of the types of international organisations known and theorised until now.

The European Union also shows specific state organisation features but, nevertheless, it does not meet the definition of either such form of organisation and it cannot be considered to be either a federation or a confederation of states.

The state form of cooperation for the purposes of a state union was developed with an implicit legal personality (It was debated on the session of the European Parliament of the 25<sup>th</sup> and 26<sup>th</sup> of April 2002.), because the legal personality of the European Union was not mentioned in the establishing treaties or in the other treaties (Jaque, 2004, p. 493) precedent to the Treaty of Lisbon.

The European Union is much more than a simple international organisation if the classical definition of the latter as cooperation exclusively intergovernmental in a specific field is to be considered but, nevertheless, although it has some characteristic features, it does not meet the definition of a stratal form of organisation, either. Given the above, the occurring issue pertains to the legal status (Stefan, 2006, pp. 3-5) of the European Union and the capacity thereof to be subject of the public international law.

As a legal entity, mainly in the foreign relations, the European Union has played a limited role and this is because the legal status thereof was not clearly stated in the establishing treaties of the European Communities nor in the Treaty of Maastricht – the funding treaty of the European Union. The successive treaties of Amsterdam and Nice, amending the Treaty on European Union, have hardly contributed to the settlement of this issue, on the contrary, they have led to an increase in the ambiguities on the legal personality (Issac & Blanquet, 2001, pp. 30-32).

It is the Treaty of Lisbon, in Art. 46A amending Art. 47 of the Treaty on European Union signed on the 13<sup>th</sup> of December 2007 and becoming effective on the 1<sup>st</sup> of December 2009 the one expressly awarding legal personality to the European Union.

The treaty of Lisbon completed a complex process for European Union reform and there is hope that it will be able to ensure, for a long period of time, the evolution of the most important continental organisation (Fuerea, 2008, pp. 321-322).

With the entering into force of the Treaty of Lisbon, the European Community ceases to exist and the Communitarian *acquis* is taken over in full by the European Union which also has legal personality. Nevertheless, the declaration concerning the legal personality of the European Union attempts to lay down some limitations on the European Union competence and authority: *The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.*

An important achievement of the reform laid-down by the Treaty of Lisbon is the comprehensive and thorough delimitation of the competences between the European Union and the Member States. Therefore, by way of the amendments thereof, the Treaty succeeds in overcoming the insufficiency of previous regulations which did not regulate, with sufficient clarity, the fields of Communitarian competence and laid down only the general characteristic of the Communitarian actions by reference to Member States' actions in certain fields. The legal personality awarded by the Treaty of Lisbon considers the European Union as a potential subject of the law but it does not specifically establish the classification of the European Union in a specific category of subjects of public international law. Acquiring legal personality, the European Union proves the specific nature thereof and the competences resulting therein exceed the prerogatives particular to the international organisations, still inferior the state prerogatives. The European Union cannot be a primary subject of international law because, under the European law, the Union acts on the grounds of a power regulating the competences and prerogatives conferred by the states and exercised through their own institutions with responsibilities in terms of legal rule developing, and budget and patrimony managing.

However, the European Union cannot be classified as a federal state in the strict sense of the concept, because it does not have the integral elements of a state – the territory, the population and the government (public authorities), and the member states continue to keep the international legal personality thereof. In the view of Georges Burdeau (Burdeau, 1950, pp. 204-207), a federal state is a state which, although appearing to be a single subject of public international law, consists of member states that keep certain responsibilities of internal sovereignty and, particularly, an important part of the legislative power. According to the treaties, the states award competences to the Union in a limited and reversible manner. The federal states admit, by way of exception, the right of withdrawal, while the Treaty of Lisbon explicitly enshrined it. The debate on the nature of the Union from the perspective of a federation increasingly tends to relate to the evolution and potential of the Union. European integration is seen as a process aiming at laying-down a federal ensemble characterised by the distribution of competences between several power exercising levels and by the exercising of shared sovereignty.

Considered also as a state confederation or as an actual union of states, the European Union is not a confederation (Draganu, 1998, p. 225) because it is not an egalitarian association of states, as part of which they accept to cooperate within a specific number of fields, while all of them mainly keep their sovereignty. The legal ground of a confederation (Quermonne, 2001, pp. 113-115) is the international law and the activity thereof is conducted by way of conferences of the state representatives, which make unanimous decisions.

The European Union cannot be a real union of states because it is not characterised by an integration resulting from the joint exercising of certain competences in the matter of foreign policies and defence policies, which are characteristics of unions of states.

Given the supra state characteristic thereof, the European Union takes over certain sovereignty (Filipescu & Fuerea, 1999, p. 23) features, i.e., competences from member states, thereby becoming superior to the member states, and the Union substitutes for such not only in relation to certain fields pertaining to the internal organisation of the society specific to the member states, but also, to the participation to the international life – member states lose their jurisdiction and their representativeness as subjects of international law.

## CONCLUSION

In conclusion, it can be asserted that the European Union is neither a confederation of states nor a real union of states, being more similar to the characteristics of a constitutional system consisting in a national and supranational level of legitimate public power that are mutually influenced and encompass the same citizens as subjects of the law. The legal personality of the European Union is similar to that of an international organisation and not to that of a state, because the member states do not give up their own legal personality. The European Union has evolved from a classical international organisation into an entity increasingly resembling a state organisation. Even though it does not have that supremacy of competences, i.e., it is not still able to determine the fields of competence on its own, the bodies based on which the Union functions, as well as some features thereof, are similar to those of the states. Unlike international organisations, which have low identity and where there is not a direct connection between the citizens of the member states thereof and the organisation bodies, the European Union has much stronger identity and, although it is far from the identity particular to the nation-states, it follows that path. The legal personality awards a legal existence to the European Union alongside the political one, being a prerequisite for the growth of its role at an international level, including of its individual representation within international organisations and conferences. The enshrinement of the legal personality is accompanied by a declaration meant to prevent the Union from acquiring new competences, such declaration showing that the legal personality does not authorise the European Union to enact or act beyond the competences thereof awarded by the states; however, under the treaties, the Union possesses the most comprehensive legal capacity recognised for legal persons under the national legislations, with a view to achieving the purposes thereof.

## REFERENCES

- [1]. Bolintineanu, A., Nastase, A. & Aurescu, B. (2000). *Contemporary international law – second edition, revised and supplemented*, All Beck Publishing House, Bucharest.
- [2]. Burdeau, G. (1950) *Traité de Science politique, tome I: le Pouvoir politique ; tome II : l'Etat*, In: *Revue internationale de droit comparé*. Vol. 2, no. 1, Paris.
- [3]. Butculescu, C.R. (2012). *Considerations on the influence of legal culture on the codification in Romania during 1864-2009*, in volume of *Science and coding in Romania*, Law Publishing House, Bucharest.
- [4]. CJCE, 43-48/59, Lachmuller, 15. 07. 1960. Rec. 953; si CJCE, 44/59, Fiddelaar, 16. 12. 1960, Rec. 1094.
- [5]. Diaconu, I. (1993). *International law course*, Casa de Editura si Presă Sansa S.R.L. Publishing House, Bucharest.
- [6]. Draganu, T. (1998). *Constitutional law*, Lumina Lex Publishing House, Bucharest.
- [7]. Filipescu, I. & Fuerea, A. (1999). *European communitarian institutional law*, Actami Publishing House, Bucharest.
- [8]. Fitzmaurice, M. (2003). *The practical working of the law of treaties/International Law*, Malcom D. Evans, Oxford University Press, Oxford.
- [9]. Fuerea, A. (2008). *European Union manual*, Universul Juridic Publishing House, Bucharest.
- [10]. Fuerea, A., (2003). *European communitarian law. General part*, All Beck Publishing House, Bucharest.
- [11]. Geamanu, Gr. (1975). *International law*, Didactica si pedagogica Publishing House, Bucharest.

- [12]. Isaac, G. & Blanquet, M. (2001). *Droit communautaire general*, 8 edition, Dalloz Publishing House, Paris.
- [13]. Jacque, J.P. (2004). *Droit institutionnel de l'Union Europeenne*, Cours Dalloz, Paris, p. 493.
- [14]. Manolache, O. (2006). *Communitarian law treaty*, C. H. Beck Publishing House, Bucharest.
- [15]. Miga-Besteliu, R. (1997). *International law*, All Educațional Publishing House, Bucharest.
- [16]. Mihaila, M., (2001). *Elements of public and private international law*, All Beck Publishing House, Bucharest.
- [17]. Moca, Gh. (1989). *Public international law*, Bucharest University, pp. 78-79.
- [18]. Popescu, D., Nastase, A., & Coman, F. (1994). *Public international law*, Casa de Editura si Presa Sansa S.R.L. Publishing House, Bucharest.
- [19]. Quermonne, J.-L. (2001). *L'Europe peut-elle inventer un fédéralisme spécifique?*, Revue internationale et stratégique, no. 42, Paris.
- [20]. Stefan, T. (2006). *Introduction to communitarian law*, C.H. Beck Publishing House, Bucharest.
- [21]. Tizzano, A. (1998). *La personnalite internationale de l'Union europeenne*, Rev. du marche unique europeen, no. 4.
- [22]. Tutunaru, M & Morega, R. (2010). *Material law of the European Union*, Scrisul Romanesc Publishing House, Craiova.