

Babeş-Bolyai University  
Doctoral School of  
International Relations and Security Studies

***EUROPEAN UNION-LEGAL STATUS IN THE  
INTERNATIONAL RELATIONS***

**Research Supervisor :** Prof.univ.dr. ADRIAN IVAN

**PhD candidate :** MIHAELA BOC

Cluj-Napoca  
2013

## Summary

This paper aims at clarifying some of the legal issues regarding the European Union as an actor in the international relations. Given its characteristic features and the way it came into being, the legal status of the EU has been for a long time the source of numerous theoretical and academic disputes, but it also gave rise in practice to many legal problems as far as the relationship between the EU and its Member States, third countries or international bodies is concerned.

As I have mentioned in the introduction of my thesis, the idea of approaching this issue came with noting a statement allegedly made by Henry Kissinger: "If I call in Europe, who am I talking to?" I found this question particularly interesting if we take into account the answers that can be associated with it. It is hard to imagine someone, as expert as he might be in the international relations field, that does not hesitate before attempting to answer this question.

Furthermore, the wording of the question has a connotation that is worth noting. Thus, Europe is seen as a whole, as a global player and not as a geographical entity that consists of a number of states.

The answer to the question mentioned above can take different forms depending on the approach that is intended to be adopted. As far as this thesis is concerned, I tried a politico-legal approach with both theoretical and practical dimensions.

The *motto* I have chosen is not by random. It highlights the desideratum of the "founding fathers" of the European Union, if we adopt the terminology used in the case of the U.S. Constitution: *Founding Fathers*.

Moreover, Robert Schuman's statement that we chose as the *motto* of our scientific approach, predicts the road Europe started on with setting up the European Coal and Steel Community. As I have stated many times throughout my work, the European Union, in the form in which it appears today, developed empirically. New facts required the adoption of new regulations. Once these regulations entered into force, other new regulations needed to be adopted due to the, let's say, the domino effect that early European construction has on the world stage.

Due to its institutional, economic and political development throughout its history, the EU has increasingly been regarded more as a unitary subject of public international law with a single voice especially in the economic, foreign and social world affairs.

Originally a form of economic cooperation, the EU has developed and operates as a unique organization, considered to be a *sui generis* organization. So far, it is the international organization that has achieved the highest level of integration in a large number of areas. Its features and the way it functions, makes it impossible to classify the EU as one or another type of international organizations that exist and have been theorized so far.

The European Union has also some features specific to states as forms of administrative organization. However, it is not by far a state. It is neither a federation nor a confederation of states.

This form of cooperation has developed as an entity with an implied legal personality and that because the EU's legal personality was mentioned neither in the founding treaties nor in other treaties that preceded the Treaty of Lisbon.

Our academic approach aims at answering several questions about the place the EU occupies in the international order. Undoubtedly, the EU is more than a mere international organization, if we consider the classical definition of the latter as an exclusively intergovernmental cooperation in a specific field. However, it does not fall within the definition of a state. With above mentioned considerations in mind, the problem to be solved regards the legal status of the European Union and its ability to be a subject of public international law.

As a legal entity, especially in external relations, the EU played a limited role and that because its legal status was not explicitly mentioned neither in the founding treaties of the European Communities nor in the Treaty of Maastricht which established the European Union. The successive treaties of Amsterdam and Nice, which modified the Treaty of the European Union, did not contributed to the clarification of this issue. On the contrary, they have increased the ambiguities regarding the legal personality of the EU.

It is the Treaty of Lisbon (Art.47 TEU), signed on December 13<sup>th</sup>, 2007 and entered into force on December 1<sup>st</sup>, 2009, that expressly conferred legal personality to the European Union.

Recognition of the legal personality of the EU is undoubtedly an important step forward in strengthening its position as a global player in international relations. Nevertheless, there are still many issues to be solved regarding the relation of the EU with other forms of cooperation. Moreover, the form the EU will embrace in the future still remains uncertain.

Regarding the structure of the paper, it is composed of five parts: 1. Theoretical considerations regarding the legal status of international organizations; 2. European Union as a distinct entity under international law; 3. International legal personality reflected in the treaties of the European Union; 4. Relation of the European Union with other international organizations; 5. Perspectives on the European Union as a global actor with separate legal status in the world order. The five parts include twelve chapters organized in a logic designed to meet the intended purpose of our research.

The manner in which the parts alternate is not chosen by random. I could say that this approach was inspired by the EU evolution itself.

The first part deals with theoretical issues concerning the notions of *legal status*, *legal personality*, *subject of public international law*, *international organization*, *the features and the legal system applicable to the international organization*. The purpose of this part is to see to what extent the EU is falling under the definitions of the concepts mentioned above.

In this part of the paper, we demonstrated that the EU is a public international law subject in the sense established by the International Court of Justice. And that because it has the ability to assume international rights and obligations, it has the capacity to conclude international agreements (even before the entry into force of the Lisbon Treaty the European Union and, before that the European Communities, were given the right to conclude certain international agreements) and, in some cases, its international responsibility may be engaged, with certain particularities.

The second part reflects the specific features of the EU as a distinct subject of public international law, which does not fall within the definition of any classic subject recognized

so far by international public law. To this end, we appealed to the main theories of European integration to have an overview of this form of cooperation and its future. Furthermore, we tried to approach each institutional feature that distinguishes it from other international organizations and state entities.

A first conclusion of this part is that the EU has evolved from a classical form of an international organization to an entity that resembles more and more to a state entity. Although the EU still doesn't have what you might call "the power to establish its competences", that is to say it is still not able to set its own areas of competence, the organs on which the EU work is based and some of its features are similar to the state.

Another conclusion of this part is that unlike other international organizations that have a low identity and there is a no direct link between citizens of member states and the organization bodies, the EU has a much stronger identity and although it does not have the strong identity specific to nation-state, it is following that direction.

The third part of our work reflects the dynamic nature of the EU and the main problems that hinder it, and ends up in a typology established by international relations. The evolution of the EU legal status, as shown in the treaties that establish its functioning, highlights the characteristics of the evolution of this entity. New events entail new procedures that involve new regulations and thus a change in the EU definition. The main legal issues that the EU is facing in its attempt to be a strong and influential global actor in international relations are reflected in chapter eight of our work referring to the EU accession to the European Convention on Human Rights.

Failure to adopt the Treaty establishing a Constitution for Europe highlights the main national impediments faced by the EU on its way to establishing a federal structure. Member States are entities with a strong national identity which are not willing, at least apparently, to give up too much of their sovereignty. In the words of Charles de Gaulle, it is like trying to make scrambled eggs out of hard eggs. Moreover, the diversity of the Member States, different mentalities and the Member States' divergent interests make the decision-making process very bureaucratic and extend on a long period of time, leading to its inefficiency.

However, the successful adoption of the Lisbon Treaty, which incorporates most of the provisions of the Treaty establishing a Constitution for Europe, leads us to the following conclusion: when there is political will, national sensibilities and reservations can be overcome. On this respect, one good example is the double organization in Ireland of the referendum to adopt the Fiscal Governance Agreement. It appears that when the political class wants to obtain a certain result, it has the power to establish mechanisms in order to achieve it.

The fourth part of our paper refers to the way in which the EU relates to major international organizations existing at the present time. The international organizations which I considered are: the Council of Europe, the North Atlantic Treaty Organization and the United Nations. The reason I chose these organizations as part of my analysis, is not just because they are the most important in the world, but also because all EU Member States are members of these organizations and I tried to see to what extent this is operational and which are the problems this situation involves.

On the last part of our work, I tried to find answers regarding the finality of the project called the European Union and the place it occupies and aims at occupying in international relations. As a case study I analyzed the adoption of the Fiscal Governance Agreement that reflects the deciding factors that will shape the EU evolution, the main legal and political issues that influence this development and also *the need* of a unifying vector for the European construction.

My study is based on an interdisciplinary approach of the subject matter because the EU legal status cannot be clarified without an overview of the context in which the European construction arose, evolved and continues to evolve. Factors that led to defining the legal status of the EU in international law are numerous and of different kind.

Thus, in approaching the subject matter of my research, I turned to the fields of history, international relations and security studies, economic, political, sociological, cultural or social sciences.

Noting the purpose of this research, the classical research methods I used are as follows: qualitative research method, analytical method, diachronic method, descriptive method, comparative method and, not least, the case study.

A key element in this approach is treating in detail some case law of the utmost importance for European and international law. This case law represents the milestones in the evolution of the European construction, and succeeds to regulate and "force" to some extent the EU recognition as a distinct subject of international law in international relations.

The approach of the paper is a progressive one. Starting with the definitions we are interested in, positioning the European construction in the historical and international context, observing the form the EU has nowadays, I am trying to light the path the EU will take in the future. The main idea in this approach is that the EU has developed empirically, new situations required new regulations, new areas of cooperation, the increase in the level of integration and rethinking the functionality of the institutions. From this point of view, I join the supporters of functionalism as European integration theory.

I tried to argue that the establishment of the United States of Europe would be an ideal target to achieve by the European construction, but this is not an end in itself. Integrated European cooperation is no longer an option but a necessity in the present economic, political and social world.

My research is not aiming at an exhaustive approach of the subject-matter, as such an approach is basically impossible. Considering the practical importance of the subject, as currently in large number of fields one must think in national and at least European context, I tried to deal with the most important issues regarding the legal status of the EU in the world.

The starting point of my research is that the EU has emerged as a form of economic cooperation based on necessity. Later, encouraged by its success and forced by political circumstances and the economic crisis, the EU has developed as an extended form of cooperation in many areas, moving towards a form of state organization that could be either federation or confederation.

The fact that the legal personality was not expressly included in the Lisbon Treaty is understandable to some extent. The hidden desire of the EU "founding fathers" was to create

the United States of Europe, which, at the time of setting up the ECSC seemed just a utopia. But as far as this thesis is concerned, I share the view that Europe, in order to become an important and influential global actor on the international relations stage, should consider becoming a state-oriented organization that would help it to become more operational and therefore more efficient. One can notice that the EU is moving towards achieving this goal, if we carefully study the institutional and policies gradually adopted by the EU, which I did in this scientific approach.

In order to count and resist in a world dominated by globalization, by threats and challenges that transcend state borders, the EU must become and act as a whole, as a hard core, consolidated in the European environment marked by an ancient history and culture.

The European Union is an ambitious political project whose main objective initially was to maintain peace and security on the European continent. Presently, taking into account the way and the manner in which it has developed, it appears that the road followed by this construction is that of federalization, but this should not be an end in itself.

In order to face the new economic, political or military challenges, Europe must stay united. It's like a snowball in a mountaintop: it started as a small economic project, rolled down the slope becoming bigger and stronger, and, in order to withstand collisions with other giants of the world order, it must become sufficiently strong and agile. Otherwise, it will crumble and it will not matter in international relations.

In the current global context, the European unity has become a necessity. This is what I highlighted in the case study related to the EU facing the global economic crisis that began in 2008. Beyond the discontents of the Member States at a certain moment on various punctual issues, we are convinced that at the time of this writing no responsible European leader is unaware of the fact that the existence of the EU is necessary for the welfare and safety of the European citizens.

One of the main deficiencies of the EU, as noted also by an european MP, is the lack of necessary tools in order to quickly adopt decision when it is needed. This could be fixed by the agreement of the Member States to cede more of their sovereignty. Europeans, especially those from the West, are quite reluctant when it comes to ceding sovereignty. But this is no



longer true when one must deal with emergencies, such as the case of adopting the Fiscal Governance Agreement in the context of the global economic crisis, which has been our case study in the last part of our work.

Joining the functionalists' group, we consider that the legal status of the EU is a dynamic and evolving concept. Just as linguistic terms evolve according to new cultural and social context at a certain time, the concept of legal status also follows the social and political evolution in the international environment. Although it appears that the EU is moving towards a federal structure, this does not have a particular importance. Quoting another european MP, the EU is part of the world and it should evolve at the pace of the world, seeking to continuously adapt its institutions to its permanently changing circumstances.