

INTERNATIONAL LAW AND THE ROLE OF THE EUROPEAN UNION AS AN ACTOR IN INTERNATIONAL DISPUTE SETTLEMENT

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Abstract

This study analyzes the meaning of public international law, international law interaction with European Union law and the perception of the European Union as an international actor in terms of resolving disputes. Debates and numerous theories have been raised about the nature and meaning of public international law, in relation to the rates that it carries, the willingness of states, its binding character and its difference with the European Union. Respect for international law is a primary aim of the Union, which functions on the basis of respecting and guaranteeing this right. In addition to the principles of international law is guaranteed by the Union and the principles on which the European Court of Justice holds the opposite view. The perception of the Union as an important global actor, comes and it strengthened, leaving aside the failures of the Union for resolving disputes and regional and international conflicts. Union has reinforced and create a suitable legal framework and institutional framework to resolve disputes and increase its international role. Increasing the role of the Union is reinforced through the Common Foreign and Security Policy which aims to establish peace, security, stability and conflict resolution.

Keywords: International law, European Union, international actor

Introduction:

The study focuses on the concretization of a common understanding of public international law based on different overview of this discipline. The study deals with the legal nature of international law, the legal nature of the European Union as an entity *sui generis*, either state or organization, unique in its kind. The European Union is an entity in international law and can not explain the role of the EU as an important actor in resolving international disputes unless develop an analysis to understand what is international law. The study addresses the complex nature of international law and the position

of the European Union, the relationship between the law and the binding nature or sanction.

International law legitimizes the protection of states in relations with each other, taking responsibility at the same time to assist countries to act on the principles, rules and international norms. The law is the instrument which entails respect for values, internationally recognized standards of actors in the international community. It is precisely the law which regulates the legal relationships of rights and obligations between States, staying at the same time in the center of the relationship. By offering the possibility of securing rights arising from an agreement as well as punishment for those actors in international law who violate its rules.⁴ Like life between people characterized by discontent and disputes relations between states having the core of their existence, the individual will be disposed of disrupts.

Although the debate between authors lawyers, politicians, philosophers about the nature of international law is alive, international law has proved its role more important as the guardian of relations between states, that they operate in their normal course and on all will be peaceful. This role as guardian of international law carries through international organizations, organizations which have as their goal of creating international dispute resolution as the United Nations. The European Union had originally intended development of economic and political ones later.

While over time the main purpose of Union became dispute resolution, a goal that most major development came after the Lisbon Treaty making the Union a important actor for the international disputes settlement. Expansion of policies and strategies, mainly the Common Foreign and Security Policy identified the need to undertake serious strategies in the context of resolving disputes and conflicts between states.

The meaning of International Law

International law, which its primary purpose, has regulation of relations between states, is a set of legal norms intertwined with political discipline. This is proved by the simple fact that states are the main subjects of international law, and any relationship between states is among others and external relations policies of each country in international relations. This approach reinforces the Shaw under which "can never be a complete separation between law and politics, despite the declaration of political theories and those of law, an unsolvable link connecting law and policy".⁵ Interaction in international law between politics and law have made possible the creation of the European Union as an entity in the international arena.

⁴ Shaw, Malcom. International Law, London: Cambridge, 2003, p. 11.

⁵ Shaw, Malcom. International Law, London: Cambridge, 2003, p. 11.

Besides the political and legal nature there is the social nature of international law, for Kelzenin “right is the sequence of human behavior”,⁶ defining the structure and social organization in the international community. International law 'has social origin and is a direct product of collective social conscience legal international community.⁷

Often the binding nature or not of international law has become the subject of discussion for its own existence as a right. But international practice has shown that such a debate has found the solution, not through obligation and imposition of this right but through the free will of the international subjects. Free will of states is also a basic element that creates the European Union, the states through their own free will give the Union competence and Union acts only within the competencies conferred.⁸ The willingness of these nations will create Union and other international organizations or regional, but cannot avoid compliance with the provisions.

Nations identify and accept international norms as important and binding to them. The right includes behavioral norms allowed and prohibited, on the basis of these norms should act allowed subjects of international law. The European Union is based on the respect of norms and the legal framework of the Union defines legal activity, activity which gives the opportunity to play an important role as an international actor in resolving disputes. Similarly determination of norms makes it possible to guarantee public order and legitimizes the use of force by the Union to maintain international order.

Although international law viewed as a guardian and responsible for the settlement of relations between states, it is wrong to see international law as the only tool that facilitates or controls the activity of states, because this is not its goal⁹. The legal system of international law is only one side of the coin, an evident and effective instrument but not sufficient. To determine a judicial order require the existence of a recognized body to legislate or to create laws, a hierarchy of courts with compulsory jurisdiction to resolve disputes on the basis of laws and accepted a system which implement these laws. Without a judicial legislature and the executive cannot seem to talk to a judicial order¹⁰, and international law does not fit this model. International law has no legislature.¹¹

⁶ Doherty, Michael. *Jurisprudence: The philosophy of law*, Old Bailey Press, 2001, p. 97.

⁷ Sinagra, Augusto & Bargiacchi, Paolo. *Lezioni di diritto internazionale pubblico*. Italia: Giuffre editore, 2009.

⁸ Treaty on European Union, Article 13, or former Article 5 of the European Community.

⁹ Dixon, Martin. *International Law*, Tirana, Institute of International Publication, 2010, p. 38

¹⁰ Shaw, Malcom. *International Law*, London: Cambridge, 2003, p. 11.

¹¹ Ibid

This does not mean that international law is not entitled, to be called, legal norm, as long as it obliges states to do certain things, but it does mean that there is similar state legislation. Another case is that of the European Union which is part of international law but which works differently from that, as Union owns a body that creates laws, a hierarchy of courts with compulsory jurisdiction, there legislature etc. And this makes the European Union a state? According to the famous debate about the European Union and agreed definitions that the European Union is neither a state nor the organization but an entity *sui generis*, unique in its kind.

Right equips us with a mechanism to resolve conflicts and to protect the states with each other.¹² The set of instruments that serve to regulate relations between states and establish security are peaceful means of dispute settlement. Current international law concentrates its powers in such peaceful means to restore international order. There is a present and philosophical problem in the implementation of international law and its mandatory character. The right and tightening sanctions or force remain closely linked to each other, and if not we will have constriction in the international law then it would not be considered right in its classical sense. Jeremy Bentham, who first used the word international law when speaking to sanction defines it as binding force of an order, conviction or law.¹³ There is no unified system of sanctions,¹⁴ in international law similar to the legal system that exists within national states.

On the state level law is hierarchical, at the international level has not authoritarian structure. There is no international executive, legislature no international court with no compelling jurisdiction.¹⁵ Right to its entirety consists of norms which international order is not binding. Law is the element that connects community members together in respect to the values and standards recognized public international law is not merely an adjunct of a legal order, but it is a completely separate system.¹⁶

International law differs from national legal systems because it deals mainly with the nations and not private citizens. Similarly to the "*Social Contract*" to Locke treated also by Hobbes and Rousseau, individuals voluntarily delegated his power, and gave up their freedom of unconditional giving the government through social contract. Also states voluntarily delegate their national jurisdiction in international law and international courts. If we refer to the famous expression of Hobbes "war of all against

¹² Mingst, Karen. *Essentials of International Relations*. Tirana: AIIS, 2008, p. 239.

¹³ Stumpf, Samuel. *Philosophy, History and Problems*. Tirana: Toena Publications, p. 339.

¹⁴ Reisman, W. Michael. 'Sanctions and Enforcement' in the *Future of the International Legal Order*, New York, 1971, p. 273.

¹⁵ Mingst, Karen. *Essentials of International Relations*. Tirana: AIIS, 2008, p. 239.

¹⁶ Shaw, Malcom. *International Law*. London: Cambridge, 2003, p. 11.

all", understand the chaos that reigned within the state before signing the social contract, and in the international arena, where history has shown the bloody wars which were part of everyday life in international law.

Here takes a special importance social will of nations to accept the principles, norms of international law. Will the social body does not require unanimity, but broad consensus and distribute independent entities, members of the community. Rejecting the contractual conception thus (according to which every member must agree to establish a norm or command) have implied that *Will* is the *Command* of the group that is able to impose even the dissenting member, based on the character *eteronom* the this command.¹⁷ No subject of international law does not deny the existence of international law, and that this right is not mandatory for them. Although there have been violations of international law by certain entities violations of these countries have attributed one other phenomenon or an other element but have never rejected or prejudice the existence of this international law.¹⁸ They regularly applied in everyday activities and not discussed their binding character.

EU law and international law

The European Union established on the basis of an international Treaty, changing its nature and developed as a federal constitution. According to Jean Paul Jacque from the moment that an institution created by states has to considerable autonomy in relation to them, and even institutions that express his will, he works in a materially constitutional framework.¹⁹ European Union implements its right by the ECJ. Creating a new international legal order by the community does not exclude the ECJ by reference to the general principles of public international law.²⁰ In many cases the Court of Justice has stated that "the rules of customary international law are binding on the Union"²¹ that the rules of customary international law relating to the termination and suspension of a treaty²² and a number of broad principles and rules of international law.

¹⁷ Sinagra, Augusto & Bargiacchi, Paolo. *Lezioni di diritto internazionale pubblico*. Italia: Giuffre editore, 2009.

¹⁸ Dixon, Martin. *International Law*. Tirana: Institute of International Publication, 2010, p. 38.

¹⁹ Jacques, Jean, Paul. *Institutional Law of the European Union*, Tirana: Papyrus, 2010, p. 77.

²⁰ Kaczorowska, Alina. *European Union Law*, Second edition. USA and Canada: Routledge, 2011, p. 206.

²¹ Case C-162/96 *Racke GmbH & Co. v Hauptzollamt Mainz* [1998] ECR I-3655, par. 46.; Chalmers, Damian., Davies, Gareth., and Monti, Giorgio. *European Union Law, Cases and Materials Second Edition*, New York: Cambridge University Press, 2010, p. 657.

²² Case C-162/96 *Racke* [1998] ECR I-3655.

Principles of international law as mentioned above underlie the functioning of the European Union, but there are principles, such as the principle of reciprocity, which is considered by the ECJ as incompatible with EU legal order, it specifically under its shape *exceptio non contractus adimpleti*.²³ Respect for the principles of public international law from the Union of shows in particular Article 3, paragraph 5, of the TEU, under which the Union contributes to "... the development of international law, including respect for the principles of the Charter of the United Nations". In connection with the Charter of the United Nations will focuses on international dispute settlement and commitment of these two organizations. This is evidenced also by the European Security Strategy established in 2003, its main purpose was security and international dispute resolution, also highlights the commitment to respect international law, which emphasizes the role of the EU in "contributing to international institutions function well, contributing to an international order based on rules, preservation and development of international law".²⁴

The European Union as an international actor

To determine whether or not EU is an international actor must connect the Union's role as an international actor with the power it enjoys, if it owns power. The European Union is a special case study because it contains elements of a state, but is not a state, also contains elements of a organization, but is not a organization. In this respect, in a special reunion of known forms in history the question arises, can European Union play an important role in resolving international disputes and conflicts? Judging by the cooperation between member states this notion raises wide-ranging discussions. On one side is regarded as an essential element to strengthen the foundation of unity and to make it an international actor, on the other hand is it not enough cooperation, because the Union is not a superpowers state. Meanwhile, if we rely on cooperation, founder of the European Union said, "The cooperation between the nations does not solve anything",²⁵ but Jean Monnet goes beyond cooperation, seeking the union of interests and not just their balance.

The European Union is trying to steadily since the establishment of its own, create a significant role on a global scale, not only in terms of trade relations, economic, humanitarian assistance. A role which the European

²³ Joined Cases 90 and 91/63 Commission v Belgium and Luxembourg [1964] ECR 625.; Kaczorowska, Alina. European Union Law, Second edition. USA and Canada: Routledge, 2011, p. 206.

²⁴ European Council, A Secure Europe in a Better World: European Security Strategy (12 December 2003) p, 8.

²⁵ Jean Monnet, Mémoires, Paris, Fayard, 2004, p. 371.

Union has already set, but requires play an important role as a global player in terms of resolving international disputes and conflicts. The fact that the European Union is the largest trading power in the world and the leading donor of development aid and humanitarian assistance, is pointed by different authors, such as Grainne De Burca and Joanne Scott. But perhaps the European Union should be a superpower to manage to reach the position which he claims or intends to own in the global order.

Europe has some power instruments, including instruments of a superpower according to Zaki Laidi. But these instruments are insufficient to achieve the rank of superpower, not because it does not have a military force as is often claimed, but because, in basically, *the Europeans did not see himself as the main guarantor of their security*.²⁶ This conception questioning the thesis of our discussion because, if the European Union cannot guarantee the security of its member states, how can it guarantee the security of countries in the world? How can contribute that states manage conflicts resolution between them and create a ceasefire?

Authors like Burca, Scott and Nye support the idea that "the European Union on a global scale based primarily on its soft power",²⁷ the Treaty of Lisbon does not change the character of the European Union in this regard, although he strengthened the institutional basis for the development of a common security policy and defense.²⁸ On the basis of this character smooth and soft power, the Union is perceived and described as an international actor in different ways, as a normative power, civil and structural.²⁹ Cremona has identified five different roles of the EU as a global actor: first, laboratory and model for other regions, secondly, market actor that protects and promotes its economic interests, thirdly, a generative rules and exporter norms that operate through a network of agreements with other countries and regions, the fourth, a stabilizing force within the European

²⁶ Laidi, Zaki. *Norms Over Force, The Enigma of European Power*, UK: Palgrave Macmillan, 2008.

²⁷ Nye, S. Joseph. *Soft Power, The means to success in World Politics*. Public Affairs, 2004.; Burca, De, Grainne and Scott, Joanne. *EU Law, Text, Cases, and Materials*, UK: Oxford, p. 425.

²⁸ Burca, De, Grainne and Scott, Joanne. *EU Law, Text, Cases, and Materials*, UK: Oxford, p. 425.

²⁹ Vooren, Van, Bart and Wessel. A. Ramses. *EU External Relations Law: Text, Cases and Materials*, London: Cambridge, 2014, p. 2.; Bull, Hedley. *Civilian Power Europe: A Contradiction in Terms?* *Journal of Common Market Studies*, Vol, 21. Issue 2, p. 149–170, 1982.; Nye, Joseph. S. *Soft Power, The Means to Success in World Politics*, New York, *Public Affairs*, 2005.; Manners, Ian. *Normative Power Europe: A Contradiction in Terms?*, *Journal of Common Market Studies*, 40:2, 235-258 (2002).; Manners, Ian. *Normative Power Europe reconsidered: beyond the crossroads*, *Journal of European Public Policy*, 13:2 (2006), 182-199.; Cremona, Marise. *The Union as a global actor: Roles, models and identity*, 2004. *Common Market Law Review*, Issue 2, p. 553-373.;

Union and beyond, and fifthly, a neighbor that uses magnets and stimulating membership.³⁰

In Article 3, paragraph 5, of the Treaty on European Union states that: "In relations with the world, the Union maintains and promotes its values and interests and contributes to the protection of its citizens".³¹ Through this provision would mean that the Union exists as a particular actor in international relations.³² Noting that the Union will contribute to the protection of mankind, highlighting once again the commitment of the Union to resolve disputes and conflicts between states in the international arena. This idea continues to rely even more of this article in the expression "the Union contributes to peace, security and sustainable development of the earth, solidarity and mutual respect between peoples".³³ So the Union's goal is to ensure peace and security, not only in European Union member countries to which the Union has and maximum responsibility, but to all countries of the world, to all nations, that identifies the European Union as actor in international order. Despite determined efforts of the European Union, increasing the role as an important global actor, mainly after the Lisbon Treaty, the Union is faced with many challenges and failures associated.

While one of the main mechanisms, of the Union to increase its role as a leading and effective actor in conflicts resolution, is the Common Foreign and Security Policy. Initially it was difficult to be given an understanding of the legal nature of this policy, Wessel defines two key notions of European law in the CFSP, primacy and direct effect.³⁴ On the basis of this reasoning community advocates would classify this policy under international law. EU on the other hand is not only seen as an organization that approves rates affecting its member states, but as a global actor for which a new institutional machinery is developed, (including Service of the European External Action).

Conclusion

International law is a right which includes the moral, social, political and punitive dimension. The same dimensions found in the European Union, created on the basis of respect for public international law. The study

³⁰ Cremona, Marise. *The Union as a global actor: Roles, models and identity*, 2004. *Common Market Law Review*, Issue 2, p. 553-373

³¹ Treaty of European Union, Article 3, paragraph 5.

³² Koutrakos, Panos. *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar, 2011. p. 149.

³³ Treaty of European Union, Article 3, paragraph 5.

³⁴ Ramses A. Wessel, *The legal dimension of European foreign policy*, To be published in *Handbook of European Foreign Policy*, London: Sage, 2015, p. 1.

develops an analysis of the right international assessing political, legal and social, nature. Regarding debate on the binding nature of international law, international law emphasize that the public owns binding not only the fact of the existence of coercion but by the will, states voluntarily comply with international law making it mandatory.

States through the will delegate powers to the European Union turning into a binding mechanism. Through the will of countries, Union can act as an important actor in the international arena to resolve disputes and conflicts between regional and global states. The willingness of states to cooperate with each other in view of international peace and security and ensuring a more sustainable development in all sectors of life in the country. In the spotlight of international law is to prevent violence, the war between the states and the growing cooperation between their effective and based on mutual interest and respect.³⁵ In conclusion we can say that the European Union extends its activity beyond the region while respecting the international law, his role has grown recently as an important regional actor and global activities through interaction with other international actors such as the United Nations.

Union is now an international actor and this has proven through his active activity in crisis management, conflict prevention, humanitarian aid, establishing democracy, respect for human rights, and conflict resolution. Failing to conflict resolution in the case of the Balkans, the Union is trying to change by improving the legal and institutional aspects in order to solve the disputes between states. The fact that the Union has on many occasions failed as an important international actor Union does not overshadowed his merits in many other cases in which has played an important role in international dispute settlement and regional conflicts.

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³⁵ Shaw, Malcolm. *International Law*, London Cambridge, 2003, p. 11.

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