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# The European Union as an Actor in International Relations

Edited by Enzo Cannizzaro

The sovereignty of the Member States of the European Union limits the competence of the EU in international relations. Yet in certain manifestations – such as its restraints on the treaty-making power of the Member States, and its significant weight in international organisations – the EU is developing what may be regarded as a coherent foreign policy. It is crucial at this point in history to examine and come to an understanding of what that policy entails and how it is likely to pursue its development.

This symposium, brought together under the auspices of the Institute of International and EU Law of the University of Macerata, presents immensely valuable legal, political, and economic analysis by nineteen leading European scholars. The topics covered include:

- the EU decision-making process in foreign relations;
- the roles of the EU institutions—the Commission, Council, Parliament, Court of Justice, and Central Bank;
- economic and monetary policy;
- international relations law jurisprudence in the ECJ and the Member State judiciaries;
- supranational vs. intergovernmental models; and
- *erga omnes* obligations.

In a world becoming ever more interdependent, the European Union is increasingly called upon to play a role on the world stage befitting its collective economic might. As an insightful synthesis of how the EU is currently acting – and how it is perceived – this timely book is of enormous value.

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The European Union as an Actor in International Relations

Enzo

IST. DI DIRITTO  
INTERNAZIONALE  
"La Sapienza" Roma  
Fac. di Giurisprudenza

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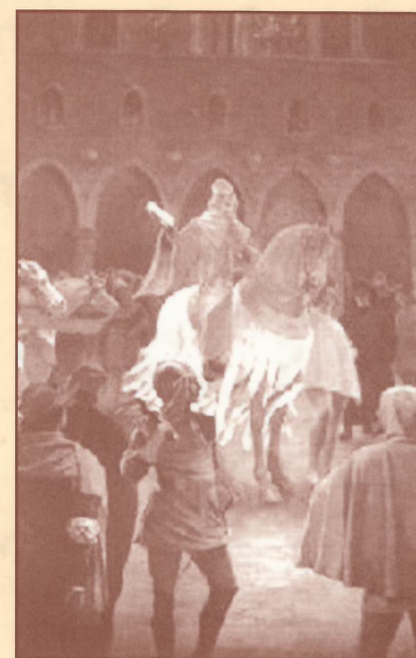


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### *List of Contributors*

ALLAN ROSAS, Deputy Director-General of the Legal Service of the European Commission; Professor of Law

ANTONIO TIZZANO, Professor of EU Law, University of Roma "La Sapienza"; Advocate General at the Court of Justice of the European Communities

TULLIO TREVES, Professor of International Law, University of Milano; Judge of the International Tribunal for the Law of the Sea

CHRISTIAN TOMUSCHAT, Professor of International Law, Humboldt University of Berlin

## INTRODUCTION

The essays collected in this book are based on the reports presented to the Symposium "*the European Union as an Actor in International Relations*", jointly organised by the two historical Universities of Macerata and Camerino, held on 5-7 April 2001.

The purpose of this initiative is to provide a study on the foreign-relations power of the EU and its impact on the sovereignty of the Member States. Although there is plenty of excellent work on the question, there is also a need for a general reconsideration.

First, there is the need to look at the decision-making procedure of the EU in the field of external relations, in order to assess its ability to develop and implement autonomously and effectively its own course of foreign affairs. Second, the foreign-relations power of the EU must be looked at also in the context of international law, in order to assess the legal position of the EU, in its own right and as it relates to the international activities carried out by Member States.

These questions have a more general theoretical significance, and point to the problem of defining the legal nature of the EU in international law. It is now a truism that the allocation of external powers in the process of European integration does not follow the lines of any other contemporary legal experience. It differs from the experience of federal States, in so far as the devolution of external powers to the EU is only partial, and it has certainly not entailed the disappearance of the Member States as international legal persons. On the other hand, the quantity and the quality of the functions exercised by the EU on the international plane, and its capacity to autonomously develop its own course of foreign relations, makes it an entity with few, if any, traces of resemblance with other existing international organisations.

The fact is that to give a positive definition of the legal nature of the EU, and to explain the uniqueness of its features in the framework of the existing conceptual categories of international law, constitute formidable challenges for legal research and could ultimately lead to a renewal of our traditional conceptions of statehood and sovereignty.

The attribution of international powers to the EU has fragmented the unitary nature and comprehensiveness of the foreign-relations power belonging to the Member States and has distributed between these entities prerogatives hitherto possessed only by the latter. Thus, instead of unitary actors, possessing the full panoply of powers and prerogatives of sovereign states within international law, a plurality of actors exists, each possessing some powers of action, but none possessing the plenitude of powers generally associated by the notion of sovereignty.

One can hardly expect that the transfer of powers, while attributing a partial capacity to the EU, has left untouched the sovereignty of the Member States. It may be opportune to recall what has been written metaphorically by Madison, albeit in a purely internal context, in his celebrated "Federalist" N. XLII, as early as 1788:

*"... the articles of the Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain".*

Thus the international role of the EU raises questions that go to the core of the issue of sovereignty, and call for a re-appraisal of the meaning of this concept in the context of the European integration. This is a question that has attracted much interest and that is still not completely solved.

In the minimum, the notion of sovereignty represents the bundle of international powers and prerogatives at the disposal of States, conceived as fully-fledged actors in international relations. Yet, in the context of the process of European integration, it is precisely this idea that seems to be at stake.

Many voices have been raised recently, echoing that we should simply expunge from the legal discourse a concept that in the past has given cause for much controversy and still appears mysterious in its very content. But has the time finally come to abandon it? Can the notion of international competence, which evokes certain limitations as well as the idea of partial capacity of a given entity, replace the notion of sovereignty, which implies a complete set of powers? Can international action by a number of power-sharing entities meet the need for coherence and comprehensiveness in the handling of foreign affairs, which is inherent in the concept of sovereignty?

The simplest way of looking at the co-existing international functions of the EU and the Member States is by considering them as distinct legal persons, each possessing and exercising individually its own international powers. This perspective, which recalls the idea of a divided sovereignty, has a certain attractiveness, in so far as it simply tends to share the international prerogatives between the EU and the Member States in correspondence with their respective competencies. Moreover, it more effectively maintains the reciprocal autonomy of the decision-making process of the various entities. It is no surprise then that this model is largely relied upon in legal literature and jurisprudence for protecting the sphere of international powers assigned to the EC from the influence and control of the Member States.

The idea that the EU and the Member States necessarily act as distinct and independent legal actors, however, does not always appear entirely persuasive. The practice of international relations has satisfactorily proved that an individual consideration of the international powers with which the EU and the Member States are endowed may cause gaps and shortcomings, and may ultimately result in the emergence of severe legal obstacles in the handling of foreign relations.

The fact is that the international legal positions of the EU and the Member States cannot be precisely divided according to the powers that each of these actors holds by virtue of its internal competency. Certain powers are possessed individually, either by the EU or by its Member States; others are possessed jointly by them; still others lie across the fields of competence belonging respectively to the EU and to its Member States.

The multifarious structure of the international legal positions thus requires a wider

background against which to appraise the relations between the EU and the Member States. While the model of divided sovereignty constitutes an adequate frame of reference for powers possessed individually, the idea of international positions jointly possessed, seems to presuppose a conception of the EU and the Member States as one single international actor. A more sophisticated model, one of co-operative sovereignty, is required in order to cope with the third class of situations, in which the EU and the Member States can be viewed as sub-units of a composite entity. It does not seem unreasonable to think that the international powers of either unit could be used not only for the attainment of its own objectives, but also on behalf and in the interest of the other.

The present book is comprehensively devoted to the interference and overlaps produced by the distribution of foreign powers between the EU and the Member States. It seeks to contribute to the ongoing analysis of an event that has profoundly changed, and continues to change, our understanding of foreign-relations power, in a legal environment characterised by the fragmentation of powers.

Having described the purpose of the research project, it remains for me to present the somewhat complex structure of the book.

The book is divided into two parts. Each part is subdivided into sections, containing a general report, entrusted to distinguished international and EU law scholars, completed by short reports and comments, mainly prepared by young scholars who took part in the discussion.

The first part contains an analysis of the decision-making procedures within the sphere of the EU's external relations. The procedures that apply in the framework of EC activities, those applying to the Common Foreign and Security Policy (CFSP), and the relations between activities carried out within the two pillars, are dealt with respectively by the first three contributions, entrusted to Professors Pocar, Decaux and Baratta. A report, by Prof. Louis, is specifically devoted to the external relations of the European Monetary Union (EMU), which has characteristic features that call for an autonomous analysis. Questions connected to democratic and judicial control in the handling of EU foreign relations have been explored by Professors Bieber and Gaja. The elements emerging from the overall context have been looked into by Prof. Tizzano, whose report has been reproduced at the end of Part One.

The essays contained in Part Two regard mainly the legal status of the EU in international law, and its overlap and intersection with the activities carried out by the Member States.

This part opens with a study by Prof. Klabbers concerning the restraints on the treaty-making power of the Member States deriving from the transfer of competence to the EU. The two subsequent reports deal with the question of the status of the EU in international law. Professors Rosas and Paasivirta address the sanctions and countermeasures issued by the EU. Prof. Tomuschat deals with the international responsibility of the EU. The membership of the EU in other international organisations, and the questions related therewith, are explored by Prof. Marchisio. The following two reports, prepared by Prof. Treves and by the current author, concern the action of the

## *Introduction*

EU in the fields of the law of the sea and of the international protection of human rights, two topics in which the action of the EU is almost inextricably interconnected with that of the Member States. The closing report of this Part, by Prof. Petersmann, contains an overall assessment of the impact of the international activities of the EU on the sovereignty of the Member States.

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In finalising the book for publication, and putting an end to what has represented for me an extraordinarily stimulating experience, I wish to record my appreciation for the work of many who have made significant contributions.

I should like to express warm thanks to my colleague and friend Antonietta Di Blase, Professor of International Law at the University of Camerino, who co-directed the research project.

My gratitude also goes to my colleagues at the Institute of International and EU Law of the University of Macerata and at the Department for Legal Studies of the University of Camerino, and to the Ph.D. students, in particular to Eugenia Bartoloni and to Andrea Caligiuri, whose ideas and enthusiasm proved very helpful in carrying out the research project and the editing of this book.

To Professors Andrea Giardina, Angelo Davì, Paolo Picone and Paolo Mengozzi, goes my gratitude not only for accepting to chair the sittings of the Symposium, but also for contributing to the discussion with very stimulating observations and comments.

The final word must be addressed, with heartfelt thanks, to Dr. Patrizia Sabbatini, who has indefatigably supervised the organisation of the Symposium and has passionately contributed to the outcome of the research project.

Macerata, October 2001

Enzo Cannizzaro

## PART ONE

### Decision-Making Procedures of the EU in the Field of International Relations