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## Current Problems of the Interaction Between International Law and the European Union Law

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### ABSTRACT

The objective of this article is to analyze the problems of the interaction between International Law and the Law of the European Union. In particular, attention is paid to the study of "traditionalist" and "autonomist" approaches to the relationship between International Law and EU Law, the place of EU Law in the international legal order and the international legal aspects of the interaction of EU law and the law of the EU Member States. In the investigation, dialectical, legal-comparative, historical and logical-formal methods were used. As a result of the analysis, it was concluded that the relationship between EU Law and International Law is difficult to fit into any of the traditional models. On the one hand, EU Law was formed as a component of International Law. On the other hand, although the EU legal order was created on the basis of international treaties, in the process of its development it acquired certain characteristics that are, to a certain extent, characteristic of national legal orders.

KEYWORDS: International law, European Union, international organizations, legal systems, legal status, law, doctrines, courts.

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## Problemas actuales de la interacción entre el Derecho Internacional y el Derecho de la Unión Europea

### RESUMEN

El objetivo de este artículo es analizar los problemas de la interacción entre el Derecho Internacional y el Derecho de la Unión Europea. En particular, se presta atención al estudio de los enfoques "tradicionalistas" y "autonomistas" sobre la relación entre el Derecho Internacional y el Derecho de la UE, el lugar del Derecho de la UE en el ordenamiento jurídico internacional y los aspectos jurídicos internacionales de la interacción de Derecho de la UE y el Derecho de los Estados miembros de la UE. En la investigación se utilizaron métodos dialécticos, jurídico-comparativos, históricos y lógico-formales. Como resultado del análisis se llegó a la conclusión de que la relación entre el Derecho de la UE y el Derecho Internacional es difícil de encajar en alguno de los modelos tradicionales. Por un lado, el Derecho de la UE se formó como un componente del Derecho Internacional. Por otro lado, aunque el ordenamiento jurídico de la UE se creó sobre la base de tratados internacionales, en el proceso de su desarrollo adquirió ciertas características que son, en cierta medida, características de los ordenamientos jurídicos nacionales.

**PALABRAS CLAVE:** Derecho internacional, Unión Europea, organismos internacionales, sistemas legales, estado legal, ley, doctrinas, tribunales.

### Introduction

When considering the relationship between EU law and international law, one can find that such interaction is built on the same grounds as the relationship between domestic (national) law and international law. For example, some researchers point out that despite the specificity of EU law, which was determined by the peculiarities of the legal system of the European Union, in the vast majority of cases, the issue of the relationship between EU law and international law was solved based on those approaches and doctrines that were formed and used in solving problems the ratio of international and domestic law (Marchenko, 2010). Taking into account the current development of EU law, it isn't easy to agree with such a point of view. It was based solely on drawing an analogy between the relationship between international and national law. However, the law of the European Union is a unique and complex system of law, which is fundamentally different from domestic law. That is why its relationship with international law will be based on

fundamentally different principles and principles than the relationship between international and domestic law.

These approaches cannot be applied because when comparing the law of European Union and international law, they often approach the understanding of EU law in different ways. For example, it can be understood as the law of a "supranational" or "integration organization" (Paasivirta, 2005) or as some kind of "experimental" law, as a law that reflects and consolidates the "great" integration "experiment" taking place on the European continent (Slavgher, 2006).

The objective of this article is to analyze the problems of the interaction between international law and the European Union Law, which is connected with the fact that in the EU today a "special legal order" has been formed, which is characterized as *sui generis*. Despite the importance of the study of problems of the interaction of international law and the European Union Law, the existing scientific research is limited only to some aspects of the subject of this paper.

In this article were solved the following tasks:

- to characterize conceptions of traditionalists and autonomists regarding the relationship between international law and the EU law;

- to define the particularities of the place of the EU law in the international legal order;

- to find out the specific features of the international legal aspects of the interaction of EU law and the law of EU member states.

The study was conducted through the critical analysis of the international law and the EU legal doctrine and the EU legislation. Particular attention is paid to the place of the EU law in the international legal order and international legal aspects of the interaction of EU law and the law of EU member states.

The subjects of the research were international and EU legal doctrine.

## 1. Literature review

The question of the interaction between international law and European Union Law has been reflected in the scientific works of such scholars as K. Barrett, D. Burchardt, L. Kirchmair, M. Mendez-Pinedo, O. Merezhko, V.I. Muravyov, T. Schilling.

Thus, conceptions of traditionalists and autonomists regarding the relationship between these legal systems were investigated by K. Barrett and R. Shtraints.

O. Merezhko notes that EU law was formed based on international law and gradually acquired features of a supranational legal order. In EU law, it isn't easy to draw a line between the domestic and international spheres (Merezhko, 2009). L. Kirchmair underlines that all actors of international law (in particular, the EU and EU member states) must comply with the norms of international law; all of them should base their mutual relations based on the fundamental principles of international law.

V. Muravyov notes that "the main forms of implementation of international law into the legal order of the European Union are incorporation and referral. Incorporation provides for the inclusion of provisions of international law in the law of the European Union. In this way of incorporation, the main principles of international law were included in the law of the European Union" (Muravyov, 2002).

## 2. Methodology

In the article were used dialectical, comparative legal, historical, and formal-logical methods.

The dialectical method makes it possible to highlight the place of the place of the EU law in the international legal order. The comparative legal method was used to compare the conceptions of "traditionalists" and "autonomists" regarding the relationship between these legal systems. The historical method is used to analyze the genesis of doctrinal approaches to the relationship between EU and international law. The formal-logical method made it possible to establish the unique nature of the EU legal order that cannot be separated from the international or member states' domestic legal order.

## 3. The relationship between European Union law and international law: traditionalists versus autonomists

The relationship between EU law and international law is still controversial. Such discussions usually depend on the angle from which this relationship is examined: from the perspective of international law (in this case, EU law is considered as a component of international law) or EU law (in this case, EU law is considered as a separate and

autonomous law). Therefore, regarding the relationship between the law of the European Union and international law, two approaches are distinguished: "traditionalists" and "autonomists".

From the point of view of "traditionalists", law of the European Union is international law. They justify this by the primary law of the EU (primarily the founding treaties) that arose based on international legal treaties between sovereign EU member states as international law actors, and its norms continue to be created in this way (Barrett, 2023). In this case, the question arises about how the norms of "secondary" EU law and other norms contained in the documents derived from the founding Agreements correlate with international law. However, from this approach (traditionalists), it is also possible to consider the secondary law of the EU as international law by its legal nature, since it is adopted in accordance with the powers derived from the primary law of the EU.

Indeed, despite the uniqueness of the phenomenon of European Union law, it cannot be considered as something that exists in isolation from international law. After all, relations between sovereign states cannot exist outside the boundaries of international law. Therefore, all subjects of international law (in particular, the EU and EU member states) must comply with the norms of international law; all of them should base their mutual relations based on the fundamental principles of international law (Kirchmair, 2018).

EU law was formed based on international law and gradually acquired features of a supranational legal order. In EU law, it isn't easy to draw a line between the domestic and international spheres (Merezhko, 2009). In favor of the "traditionalists", the practice of the European Union member states regarding the implementation of founding agreements in their domestic legislation also testifies. In EU member states, for these agreements to enter into force and their application within the framework of the domestic legal system, the necessary procedure is their ratification by adopting the relevant ratification laws. This is an argument in favor of the "international legal foundations" of EU law.

As for the "autonomists", in their opinion, the law of the European Union cannot be considered as international law and is: "an independent legal order sui generis". They argue for such an approach due to the fact that the mere fact of the emergence of EU law based on international treaties is not enough to conclude the contractually binding nature of the legal order itself. Although the analysis of the structure and complex interrelationships of the founding treaties of the EU allows us to conclude significant differences between these

treaties and the rest of the international legal treaties. Based on this, it could be concluded the primary law of the EU is no longer international law but has a dual nature: treaties and constitutional. In addition, EU law can be considered a system of norms with a constitutional character, which lacks a sovereign state character. The unique character of the European Union as an actor of law is also a confirmation of the position of the "autonomists" because the EU law reveals features that, although in essence, individual elements can be found in international organizations, but in such intensity and combination have so far been implemented only in the European Communities (Shtraints, 2009).

#### 4. The place of the EU law in the international legal order

With the formation and development of the EU legal order, more discussions and opinions began to arise regarding its place in the international legal order and interaction with it. Even scholars who believe that EU law is closely related to international law and derives from it have different positions on determining its place and role in the international legal order. Thus, some researchers are of the opinion that international law is the basis of the functioning of the EU legal order. Therefore the primary competence should always belong to the member states. According to this point of view, states should ensure their right to interpret the founding treaties of the EU, so in no way should EU law be considered as giving the Court of Justice certain legal competence. The basic idea of the concept is that the EU without legislative competence cannot have a court with legal competence (Schilling, 1996). In this case, supporters of this point of view question not only the observance of the law-making practice of the EU Court but also, in fact, question the legal foundations of this international organization's functioning in the form we have today.

Opponents of such a position, recognizing that the EU is an international organization based on international law, point out that through the analysis of the founding treaties of the EU, it is possible to conclude with certainty that the "primary law" of the EU refers the resolution of the issue of competence to the powers of the EU Court. Therefore, there is no reason why an international organization without legislative competence should not have a court with legal competence to be the primary

arbiter of disputes concerning the extension of this limited competence (Weiler, 1996). It seems that this point of view more accurately reflects the place of EU law in the international legal order.

In fact, the opinion that as a result of the deepening of integration within the EU, the interaction between the norms of international law and EU law becomes more dynamic and comprehensive, is generally held by a significant number of scientists. Thus, V. Muravyov notes that "the main forms of implementation of international law into the legal order of the European Union are incorporation and referral. Incorporation provides for the inclusion of provisions of international law in the law of the European Union. In this way of incorporation, the main principles of international law were included in the law of the EU... And by referring to the legal order of the EU, important provisions of international legal acts were included. In particular, the implementation of international legal norms in the field of human rights protection" (Muravyov, 2002). Therefore, international law significantly affects the functioning and development of EU law and, in fact, determines the further directions of its development. International law was transformed into EU law and became an part of it (Hobe, 2002).

Investigating the relationship between these legal orders, another group of scholars claims that EU law by its nature is a special, third system of law that occupies its own niche and functions alongside both international law and domestic (national) law of member states. This is since EU law is a peculiar combination of elements of the legal system, which is characteristic on the one hand for an international organization, and on the other for a state (Opryshko, 2002). It is said that EU law has created a separate legal order which must coexist with the international and national ones. This position is supported by researchers who consider EU law as an autonomous legal order endowed with unique, specific features, thanks to which it differs from international law. However, it should be noted that such a point of view is criticized by scholars who do not recognize the existence of any legal order, except international and domestic, and are of the position that the place of EU law must be clearly defined either in one or another legal order.

In this context, we note that some scientists, studying the relationship between EU law and international law, take the position that international law and EU law function and develop on different levels. However, unlike international law, the



generally recognized actors of EU law can be not only states, but also legal and natural persons, since the latter regulates legal relations not only between member states, but also between their actors (Oppermann, 1991). Such a position certainly has the right to exist, since natural and legal entities are usually the addressees of "secondary law" of the EU.

Due to the interaction of international and EU law, certain conflicts may arise, resulting in which the EU member states will find themselves in an uncomfortable position. If they comply with EU law, they will violate an international agreement, and then there is a possibility of legal action by judicial authorities. If the state complies with the international agreement, a situation may arise when it violates the law of the European Union; accordingly, the EU Commission may initiate a procedure in this regard. The resolution of this kind of conflict often occurs by avoiding a collision between these legal orders. Conflicts arising from the interaction of the mentioned legal systems are usually always resolved by the EU member states. Worthy of attention is the point of view that conflicts are a natural and normal phenomenon and they are resolved by states by resorting to appropriate legal techniques, developed theory and practice of international law application over a long period of time (Denisov, 1992). The resolution of these conflicts contributes to the development of these two legal systems (Wheatley, 2002).

##### 5. Problems of the interaction of EU law and the law of EU member states: international legal aspects

The uniqueness of the European Union is that it includes states whose legal systems are specific and different from each other, which in turn leads to various approaches to determining the relationship between EU law and the domestic law of member states, and differences in mechanisms of EU law implementation in national legal systems, as well as the regulation of conflicts that arise as a result of the interaction of these legal systems (Rosas, 2022). In this case, the question of what concept the EU member state adheres to in the interaction of domestic and international law plays a significant role. A general understanding of the effect of international agreements in their domestic legal order will depend on this.

In general, today pluralistic approaches to the interaction of EU law to the law of member states are considered to supplant the traditional monistic and dualistic approaches of international law (Mendez-Pinedo, 2020).

Pluralist concepts have created a holistic view of EU law and national law as a whole: EU law and domestic law should be analyzed together, not separately, when it comes to determining the relationship between them. Such a holistic view does not presuppose monism, but rather is pluralistic in nature: it recognizes the coexistence of independent law-making actors who create norms that can then be interconnected (Burchatdt, 2019).

The concept of legal pluralism has acquired specific features in EU law and has become not only a tool for solving "conflict" situations that occur in EU law, but also an effective means through which it is possible to understand the unique legal nature of EU law as a whole. For example, R. Kwiecien comes to the conclusion that from the point of view of the material sources of law, the legal order of the European Union and the national (constitutional) legal order of the member states constitute mutually complementary sets of legal norms and values that find their expression and embodiment in them. Therefore, such a relationship can be called "constitutional pluralism", "European legal pluralism", "multicentric legal system" or "European unwritten social contract", the result of which will be the coordinating activity of legal systems (Kwiecien, 2005). Thus, the relationship between the legal order of the EU and the national legal orders of the member states is often outlined by various concepts, however, in general, the term pluralism best reflects this interaction. Although we note that the terms legal pluralism and constitutional pluralism, which is a narrower legal category, should not be equated, the study of the content of the latter seems to be the subject of a separate study.

The concept of legal pluralism is based on the close relationship between the EU's legal order and the member states' national legal orders. It contributes to forming a new concept of the direct effect of norms in international legal doctrine and the same interpretation in light of their constitutional role, which will take into account the peculiarities of domestic constitutional law and be expressed in various constitutional legal systems (Gutnyk at al, 2021; Burak at al, 2022). This concept will be somewhat different from traditional approaches to understanding and using relevant principles of

both national and international law. Also, this concept is often used in the context of an analytical tool to study the functioning and interaction of various legal systems, branches of law and institutions.

In general, we note that the pluralistic nature of the EU legal order is manifested in the fact that in the vast majority of cases, without applying the mechanism of transposition concerning EU norms, they directly act in essence in other legal systems of the member states and have legal force. We believe that the active development of international and EU law forces us to revise the classical approaches and concepts regarding understanding these legal systems' interactions. The arguments of their supporters are mostly not related to modern theoretical discussions and do not help in any way in solving a whole range of legal issues, unlike when they arose. Thus, these doctrines should be slightly modified, and understanding the relationship between international law and national (domestic) law should be based on a different conceptual basis (Bratsuk, 2016).

Thanks to pluralistic concept, one of the essential tasks of law will be implemented in practice - ensuring the observance and development of universal values, thanks to which the development of law takes place. In general, even though the national legal systems of the member states and the EU are relatively independent, in a consequence of this doctrine that both countries with common and civil law systems can effectively coexist within the framework of the EU legal system. In this regard, the concept of legal pluralism is a reference point for candidates for membership in the EU (for example, Ukraine) in the process of bringing the national legal system closer to EU law to realize one of the main priorities of the foreign policy of such states - the acquisition of full membership in the European Union.

## Conclutions

The relationship between international and EU law is difficult to fit into any of the traditional models. The EU law was formed as a component of international law. It is indisputable that all subjects of international law, including the EU and its member states, must adhere to the fundamental norms and principles of international law; relations between sovereign states cannot be outside the international legal order. On

the other hand, although the EU legal order was established based on international treaties, in the process of its development it acquired certain features that are to some extent characteristic of domestic legal orders. The legal order of the EU is a rather complex legal phenomenon that is constantly in the process of its development. It is based on such basic legal principles as the direct effect and supremacy of the norms of EU law, the recognition of the jurisdiction of EU Court and the mandatory implementation of its decisions by all subjects of EU law, first of all, by the national courts of the member states. Considering these principles, the legal order of the EU is characterized by specificity that is not characteristic of classical international organizations. Thus, the EU legal order cannot be fully separated from either the international or the domestic legal orders of the member states, and the law of the European Union contributes to the effective observance of international law, including at the domestic level.

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