CHAPTER ONE

THE EMERGING INTERNATIONAL IDENTITY OF THE EUROPEAN UNION – SOME PRELIMINARY OBSERVATIONS

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1. INTRODUCTION: THE RISE OF A CAPRICIOUS GLOBAL PLAYER

In countless respects, the European Union constitutes a most remarkable legal experiment. For one thing, it is the product of an unprecedented process of integration between formerly sovereign nation-states. Over time, the construct evolved into a hybrid of supranational and international forms of governance which transcends classic Westphalian norms. On the global scene, as an original composite structure, it cannot unreservedly be assimilated to federated actors. Apart from the enduring external presence of the EU Member States, until recently, the convoluted set-up was exacerbated by the unhelpful duality of a Community functioning alongside (or sometimes instead of) the Union. Consequentially, problems of demarcation have beset both the legal and the diplomatic field, and to an extent, such difficulties still persist today.

Internally, as has been richly documented elsewhere, the first regulatory steps focused on economic objectives. A phase of gradual broadening and intensification ensued which, facilitated by the European Court of Justice’s ‘implied powers doctrine’, has had a bearing far beyond the relations between the Member States. As envisaged by the Court, this conscious commitment to common internal and external policies was

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1 Ian Manners, ‘Normative Power Europe: A Contradiction in Terms?’, (2002) 40 Journal of Common Market Studies, p. 240. European Council President Herman Van Rompuy has recently typified the EU as “maybe the most sophisticated club of states that ever existed” (‘The European Union in a Changing World’, Speech by President of the European Council Herman van Rompuy at the India International Centre, 10 February 2012, EUCO 25/12).


3 See e.g. Mauro Cappelletti, Monica Seccombe and J.H.H. Weiler (eds.), Integration through Law, Berlin: Walter de Gruyter 1985.

4 As known, the kick-start was provided in Case 22/70, Commission v Council (ERTA), [1971] ECR 263.
bound to translate into a more refined profile vis-à-vis the outside world, and indeed at present, the Union’s system of internal measures can no longer be separated from its international relations counterpart.\(^5\)

For several years though, the shaping of a genuinely autonomous role of the EU in the global arena has been hampered by a significant amount of ambiguity surrounding its international legal personality.\(^6\) On the one hand, the presence of a European Community – which did possess that quality – offered a convenient substratum for Union action. On the other hand, this made it seem unwise or unnecessary to bestow a similar status upon the latter. Evidently, such confusing asymmetry did little to raise Europe’s profile in international legal traffic.\(^7\) The situation was partly remedied in 1999, by according the EU treaty-making competence under the Common Foreign and Security Policy, and wholly resolved in 2009, following the dissolution of the EC and its integral replacement by the EU.\(^8\) Both these renovations have brought some much-needed clarity, paving the way for the rise of a uniform global identity.

At this particular juncture, one might wonder whether the label ‘international organization’ may still be applied to the product of the remarkable integration experiment. Some have argued that it may be properly understood in federal terms, others regard the franchise as a highly advanced, but not intrinsically unique species.\(^9\) While the academic debate is bound to rage on, the ECJ, as known, has trumpeted the view

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\(^7\) Compare for instance the common, but misguided expectation among observers in the early 1990s that the move from the single EC structure to the three-pillar EU structure at Maastricht signaled a fundamental shift from civilian to military power: see Manners, *supra* n. 1, p. 237.

\(^8\) Pursuant to the entry into force of the Treaty of Amsterdam and the Treaty of Lisbon, respectively. The provision (ex Article 24 TEU) that accorded CFSP treaty-making competence was not unequivocal, as it did not make clear whether such agreements were to be concluded by the Council acting on behalf of the Member States, or by the Council on behalf of the EU as such. The latter supposition gradually became dominant, giving rise to the idea of the Union possessing ‘presumptive international legal personality’. See further Wessel, *supra* n. 6.

\(^9\) The two opposing lines are magisterially defended in respectively Robert Schütze, *From Dual to Cooperative Federalism: The Changing Structure of European Law*, Oxford: Oxford University Press 2009, and Bruno De Witte, *The European Union as an International Legal*