CAN THE EU REPLACE ITS MEMBER STATES IN INTERNATIONAL AFFAIRS? 
AN INTERNATIONAL LAW PERSPECTIVE

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1. Introduction

As Professor Marc Maresceau held, students of EU external relations are constantly firing at a moving target. Post-Lisbon this seems true in particular in relation to the EU’s external representation. The strengthening of the global ambitions of the EU, the establishment of the European External Action Service (EEAS) as “the first structure of a common European diplomacy” with ‘embassy-like’ delegations all over the globe, the development of the EU as an actor in international security on the basis of its Common Security and Defence Policy (CSDP), or the more outspoken wish to play a role in international institutions, be it as a full member (as in the case of the WTO) or simply as a visible and audible representative (as in the UN General Assembly) all seem to point to the EU taking up ‘state-functions’ in more areas than before.

International law, on the other hand, is still quite traditional. Created as ‘inter-state’ law it continues to struggle with the presence of non-state actors in the

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1 Credits are due to Dr. Bart Van Vooren for his willingness to share some ideas that were developed in papers written jointly with him.
international order. Yet, international organisations obviously found their place as international legal actors, and other fora and networks are also increasingly recognised as legally relevant. It is a truism that the European Union is not a regular international organisation. From the outset, Member States have been willing (or were forced . . . ) to transfer competences to the Community and later the Union. The Lisbon Treaty, however, seems to herald a new phase in which not only EU law itself, but also international law may be faced with new challenges.

This contribution will not primarily take the perspective of EU external relations law—a field that owes so much to the prolific academic production of Professor Maresceau—but will rather attempt to view the developments from the angle of public international law. Taking an ‘outside-in’ perspective allegedly highlights the possible limits of competence-transfer within the EU as well as possible necessary changes in international law. I will do so by focussing on a few key areas in which the EU comes within the scope of what traditionally would be regarded as state functions and competences: the international legal status of the EU (section 2), international representation (section 3), and the EU as a diplomatic actor (section 4). The leading question can be found in the title of this contribution. Given the dynamic nature of the development of the ‘international actoriness’ of the Union, this contribution will produce a research agenda, rather than final conclusions.

2. The International Legal Status of the European Union Post-Lisbon

With the succession of the European Community by the European Union on the basis of the Lisbon Treaty (Art. 1 TEU), the world was confronted with an international legal actor with new competences. Prior to the Lisbon Treaty the EU did of course exist at the global stage, not only politically, but also legally—given the large number of international agreements to which it became a party. Yet, for many the explicit recognition of the European Union’s legal personality (Art. 47 TEU)—or perhaps even more the dissolution of the European Community—