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List of Abbreviations

ADR	Alternative Dispute Resolution
AIS	Automated Information System
AMR	Annual Ministerial Review
ARIO	Articles on the Responsibility of International Organizations
AU	African Union
BRIC	Brazil, Russia, India and China
CAT	Committee against Torture
CE	Council of Europe
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CIS	Commonwealth of Independent States
COREPER	Committee of Permanent Representatives
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
DARIO	Draft Articles on Responsibility of International Organizations
DARS	Draft Articles on the Responsibility of States for International Wrongful Acts
DASR	Draft Articles on State Responsibility
DCF	The Development Cooperation Forum
Draft Articles	Draft Articles on the Responsibility of International Organizations, 2011
e-arbitration	Electronic Arbitration
EC	European Community

e-commerce	Electronic Commerce
EcoSoc	UN Economic and Social Council
ECtHR	European Court of Human Rights
e-democracy	Electronic Democracy
EEC	European Economic Community
e-elections	Electronic Elections
e-governance	Electronic Governance
e-government	Electronic Government
ECHR	European Convention on Human Rights
e-justice	Electronic Justice
e-mediation	Electronic Mediation
e-parliament	Electronic Parliament
e-procurement	Electronic Procurement
ERM	Exchange Rate Mechanism
e-state	Electronic State
EU	European Union
European Convention	Convention for the Protection of Human Rights and Fundamental freedoms
e-voting	Electronic Voting
FSC	Forest Stewardship Council
FST	Fair Share Theory
GAC	General Affairs Council
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GNP	Gross National Product
GSTP	Global System of Trade Preferences among Developing Country
HLPF	The High Level Political Forum
HRC	Human Rights Committee
IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICID	International Commission of Inquiry on Darfur
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technology
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law

IHRL	International Human Rights Law
ILC	International Law Commission
ILO	International Labour Organisation
IMF	International Monetary Fund
IOs	International Organizations
IUCN	International Union for Conservation of Nature
KFOR	Kosovo Force
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental Organisations
NT	National Treatment
OAS	Organization of American States
ODR	Online Dispute Resolution
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countires
PIL	Private International Law
RANHiGS	Russian Academy of National Economy and Public Administration
RIA	Regulatory Impact Analysis/Assessment
Roskomnadzor	The Federal Service for Supervision of Communications, Information Technology, and Mass Media of Russian Federation
RSIWA	Responsibility of States for Internationally Wrongful Acts
SDT	Special and Differential Treatment
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDESA	UN Department of Economic and Social Affairs
UNGA	United Nations General Assembly

UNIDO	United Nations Industrial Development Organization
Union	The Eurasian Economic Union
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council
VCIOM	All-Russian Public Opinion Research Center
VCLT	Vienna Convention on the Law of Treaties of 1969
WB	World Bank
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation
WWF	World Wildlife Fund
CDEDM	Center for the Development of e-democracy mechanisms of the North-West Management Institute RANHiGS

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David Sehnálek

The Responsibility of the European Union under International Law

Key words:
Responsibility | International Organization | European Union | Mixed Agreements | Effective Control | International Law

Abstract *| The aim of this article is to find out when the European Union is responsible for its conduct under international law and whether general rules on responsibility of international organizations also apply in case of this specific supranational organization. In the first part of the article general rules on responsibility in international law are identified. From a perspective of international law there is no reason to consider the EU as something other than an international organization. The second part focuses on cases where the EU is solely responsible under international law with special attention to its former but persistent pillar structure. The concept of effective control is applied to the European Union and its main policies that are part of its external actions. The third part of the article focuses on cases where the EU is responsible jointly with its Member States with special attention to so-called mixed agreements. The last part is dedicated to particular regimes in international law, namely within the World Trade Organization and the Council of Europe. The conclusion is that despite many internal similarities the European Union is still distinct from federations, and that general rules on responsibility of international organizations in international law apply. In addition to that, from the perspective of third states there is no need to call for special rules just for the European Union. Current legal practice as well as the theory of international law does not seem to show signs of a shift of the current paradigm. The truth is that the likelihood of a Member State being held*

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responsible is substantially lower, compared to traditional international organisations. This makes this organization de facto unique even from the perspective of international law.

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I. Introduction

12.01. Currently, there are probably no doubts that the *societas delinquere non potest* (corporations cannot commit a wrongful act*)* principle does not apply to international organisations and their responsibility attributable under international law. International organisations are in fact fully-fledged members of the international community and represent entities independent of their founding countries, which means that they must bear individual responsibility for their wrongful acts.[1] Indeed, international law rules will only be truly respected by their addressees if the consequences of any internationally wrongful acts are borne directly by those entities which have committed such acts. Otherwise, the legal regulations governing responsibility could not operate effectively and serve their intended purpose.[2] It is hardly conceivable that an entity that is subject to international law regulations would not be responsible for their violation.[3] Nonetheless, things are not as clear as they appear *prima facie.* The reason is that while *de iure* international organisations actually are separate legal entities independent of their member states, the level of their autonomy *de facto* varies depending on the actual degree of control exercised by the member states of an international organisation

[1] See e.g. Harald Ch. Scheu, *The Concept of Responsibility in International Law*, XVIII(4) JURISPRUDENCE 32 – 40 (2009).

[2] In this author's opinion, there is no support in applicable international law with the belief that in establishing international organisations and vesting them with certain tasks, the Member States authorise such organisations to act, and to act only in accordance with the law. From such a perspective, international organisations, as derived entities, act only within the scope of the competences delegated to them in their founding documents, as a rule. Accordingly, an international organisation cannot by definition perform wrongful acts as no such authorisation could have been vested in the organisation by its founding documents or Member States. Such an approach has certain advantages, e.g. in the form of a strictly stipulated impossibility of the relevant States avoiding the duty to respect rules of international law by acting through and participating in international organisations and invoking their separate legal personality. It should be noted in this context that in the mid-twentieth century, the responsibility of an international organisation was still not considered a matter of course. See Jan Klabbers, *The Paradox of International Institutional Law*, 5 INTERNATIONAL ORGANIZATIONS LAW REVIEW 9 et seq. (2008).

[3] MOSHE HIRSCH, THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS TOWARD THIRD PARTIES: SOME BASIC PRINCIPLES, Dordrecht: Martinus Nijhoff Publishers 8 (1995).

on the direction and implementation of the activities of the respective international organisation.[4]

12.02. Nonetheless, most of the current international organisations are typically intergovernmental. Thus, they represent a simple sum of the state's members of the organisation, rather than a truly separate and fully independent entity. The level of actual autonomy of such organisations from their member states is low. The European Union represents a certain exception in this respect, stemming from its supranational character. Unlike in other international organisations, the Member States exercise only limited control over the decisions of the European Union. This has been achieved through the establishment of supranational bodies independent of the Member States, on the one hand, and the introduction of majority voting in intergovernmental bodies on the other hand. Further, the European Union (EU) has been provided with its own funding and administrative apparatus to a substantially greater extent than other international organisations, which enables the EU to perform its activities directly and, at the same time, independently of the Member States. The quality of the EU compared to other organisations is therefore substantially different. From the viewpoint of the national law, we can illustrate this difference, in somewhat simplified terms, with the example of a couple who establish a limited liability company and simultaneously have a new-born child. In both cases, a (third) person acknowledged by the law is born/established. However, the degree of control the couple exercise over the intentions and acts of such a third person which has arisen based on their joint will, and thus the degree of the person's autonomy, substantially varies. In such a case, the European Union represents the often mischievous child. As explained in the following text, this characteristic is indeed of substantial importance from the viewpoint of attributable responsibility under international law.

12.03. In this context, one apparent fact should be noted, despite it often being rather disregarded. The European Union does in fact resemble a federation in many aspects. The supranational nature of its functioning makes the EU a truly unique entity within the international community. The really important aspect is that this only applies to an internal viewpoint, characterising the relations between the European Union and its Member States. On the contrary, the external viewpoint is traditional.

[4] Moreover, we can imagine an international organisation where only one State plays a dominant and determining role. A similar situation was established for example by the Treaty on Friendship, Cooperation, and Partnership signed on 14 May 1955, where the Soviet Union was the leading State and the other signatory. States could in fact exercise only limited control over the implementation of the Treaty.

It reflects the specific characteristics of the European Union, but only within the framework of the existing general rules of international public law.[5] From the latter viewpoint, the European Union is just one of many regional organisations. The current international case law and jurisprudence actually acknowledges the specific features of the European Union, but only does so to a limited extent, if at all.

12.04. This article aims to identify the general international law rules governing the responsibility of international organisations and to assess whether the rules are applicable to the European Union as such, or whether special regulations are required. It further deals with the attributability of internationally wrongful acts to the European Union. This follows from the fact that responsibility for an internationally wrongful act may lie (1) solely with the European Union; (2) with the European Union and the Members States jointly; or (3) solely with the Member States, if applicable, without any responsibility on the part of the European Union. The reason for this analysis is the strongly asserted supranational and unique nature of the European Union. A question thus arises whether or not this specific nature also manifests under the rules of international public law governing responsibility.

II. General Considerations on the Responsibility of the European Union Under International Law

12.05. The statutory responsibility of the European Union is stipulated in its founding treaties, namely in Article 340 Treaty on the Functioning of the European Union (TFEU). Nonetheless, the cited provision only sets out the internal responsibility of the European Union towards individuals and, where relevant, towards the Member States. Accordingly, the provision does not apply to the responsibility, if any, for violation of international duties under international public law[6] and is thus irrelevant for the purposes hereof.[7] At first sight, the provisions on

[5] Some professionals do not accept the special nature of the European Union and its laws at all, asserting that all the ever-so-often highlighted specifics can be easily explained through the concepts of the international public law. See, e.g. Timothy Moorhead, European Union Law as International Law, 5(1) EUROPEAN JOURNAL OF LEGAL STUDIES, 126-143 (2012).

[6] See Article 5 of Draft articles according to which the characterization of an act of an international organization as internationally wrongful is governed by international law and not by the internal law (of the European Union).

[7] From the viewpoint of the international law, the EU regulation is a mere fact. Cf. JIŘÍ MALENOVSKÝ, MEZINÁRODNÍ PRÁVO VEŘEJNÉ: JEHO OBECNÁ ČÁST A POMĚR K JINÝM PRÁVNÍM SYSTÉMŮM, ZVLÁŠTĚ K PRÁVU ČESKÉMU (International Public Law: The General Provisions of International Law and their Relation to Other Legal Systems, in Particular the Czech Law), Brno: Masaryk University, 420 (5th ed., 2008).

responsibility of the European Union contained in Article 340 TFEU could be considered as a special international law rule; nonetheless, this concept is not confirmed from the internal viewpoint concerning the relations between the European Union and the Member States, which promote a concept of autonomy. The relation of the cited provision of the EU law to the international law is analogous to the relation of the national law to the international law. In my opinion, the cited provision only represents an internal regulation.[8]

12.06. Identification of the general provisions on responsibility of international organisations under international law is rather complex. Unfortunately, contractual provisions governing such responsibility are lacking so far and even customary rules cannot be considered fully developed. We can thus only follow from the current case law of international courts and similar bodies; while the case law has not yet been harmonised and established to the same extent as in the case of responsibility of states, it is adequate to prove the existence of international customary law.[9] The Draft Articles on the Responsibility of International Organizations prepared by the International Law Commission can also serve as underlying material for determining the contents of the customary law. The strength of the Draft articles lies in particular in the fact that they represent in principle a comprehensive and detailed set of rules that could govern the responsibility of international organisations. This article is therefore focused primarily, though not exclusively, on the rules set out in the Draft articles. The analysis as such does not focus comprehensively on all conceivable aspects of responsibility of international organisations. My intention is rather to discuss only certain issues that may arise given the specific internal relations between the European Union, on one part, and its Member States, on the other part. These follow from the delegation of competences and their vesting, to various degrees, in the European Union and thus from the different impacts on the relations with third countries.

12.07. Before engaging in the analysis of the responsibility of the European Union under international law, in particular in the light of the Draft Articles on the Responsibility of International Organizations, there is another issue that needs to be addressed, which has been ignored, or tacitly considered clear and

[8] In principle similar, for example to the Czech Law No. 82/1998 Sb. (Coll.), the Liability for Damage Caused When Exercising Public Authority by a Decision or a Wrong Procedure Act, as subsequently amended.

[9] MOSHE HIRSCH, THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS TOWARD THIRD PARTIES: SOME BASIC PRINCIPLES, Dordrecht: Martinus Nijhoff Publishers 9 – 10 (1995).

resolved to date. Unlike in the period before the adoption of the Lisbon Treaty, the current European Union is an international organisation, which is moreover no longer conceived as having a pillar structure.[10] Despite this, the characteristics of the second pillar have survived and have been translated into the present arrangements for a common foreign and security policy. The functioning of this policy has not substantially changed in principle and its intergovernmental nature has thus been preserved. A certain homogeneity has been achieved internally, i.e. *vis-à-vis* the Member States, in the sense that the duality of the European Communities vs the European Union has been abolished. However, heterogeneity in the form of supranational law, on the one hand, and acts of an intergovernmental nature adopted in implementing the common foreign and security policy, on the other hand, perseveres to a certain extent. Nonetheless, the responsibility of the European Union *vis-à-vis* other entities within the international community is governed by a single set of rules stemming from international public law and encompassing commonly and, in principle, without any exceptions both the supranational co-operation and the co-operation based on the intergovernmental principle.[11] In this respect, the Lisbon Treaty simplified matters, not only by the aforementioned abolishing of the EC, but also by expressly vesting legal personality in the European Union.[12] Legal personality is in fact a necessary prerequisite for the emergence of legal responsibility,[13] as envisaged in the Draft Articles on the Responsibility of International Organizations.

[10] Between 1993 (Maastrich Treaty) and 2009 (Lisbon Treaty), the European Union legally comprised three pillars. This structure was introduced with the Treaty of Maastricht. Only the first pillar within which European Communities (the European Community, the European Atomic Energy Community and the European Coal and Steel Community), handled mostly economic cooperation was supranational. Common foreign and security policy as well as the police and judicial cooperation in criminal matters were regulated in a separate second and third pillar, both were intergovernmental. The whole system had one institutional framework and was called as European Union. However, only European Comminities were back then international organizations.

[11] The separate responsibility of the European Atomic Energy Community (EAEC or EURATOM), as an organisation that is independent of the European Union in terms of international law, has been preserved.

[12] In this respect, it should be noted that the Draft Articles on the Responsibility of International Organizations do not require that legal personality be expressly stipulated in the founding document of an international organisation. Accordingly, the actual, rather than declared, status is decisive. I am therefore of the opinion that the responsibility of the pre-Lisbon European Union is conceivable, too, even though it was not expressly vested with legal personality by the Member States. See Draft Articles on the Responsibility of International Organizations, with Commentaries – 2011, p. 8, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed on 12 July 2017).

[13] See Article 2(b) in conjunction with Article 1(1) of the Draft Articles on the Responsibility of International Organizations. From this point of view, any possible responsibility of the pre-Lisbon European Union would be problematic as there were quite justified doubts as to whether or not it had legal personality and thus whether or not it could be considered an international organisation at all. Legal personality is perceived as a precondition for the responsibility of an international organisation in general terms, too, i.e. without reference to the Draft articles. MOSHE HIRSCH, THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS TOWARD THIRD PARTIES: SOME BASIC PRINCIPLES. Dordrecht: Martinus

12.08. The responsibility of the European Union can arise where (1) the European Union commits an action or omission in violation of the international law and (2) such an action or omission is attributable to the European Union. The question of attributability of a certain conduct represents a fundamental issue, in particularly in cases with organisations such as the European Union. The reason lies in the complex pattern of relations between the European Union and its Member States, which is manifested both on legal and factual levels. By the former level, I mean a situation where the European Union and/or its Member States have assumed obligations in areas falling within the exclusive or at least partial competence of the EU. It follows from the above that the entity competent to regulate a certain matter internally (i.e. in the relation between the EU and its Member States) need not be simultaneously the entity that is legally responsible *vis-à-vis* third countries. For example, this was the case of the factual membership of the European Economic Community (EEC) in General Agreement on Tariffs and Trade (GATT) (1947), where the Member States were signatories to the Treaty despite the fact that internally, the relevant competences were exercised exclusively by the EEC.

12.09. The latter level means that the obligations of the EU are, as a rule, implemented by the Member States. This means that the entity that *de facto* fulfils (and therefore is also capable of violating) an international obligation and the entity that is responsible for the conduct *de iure* need not be the same.[14] As an example, we can refer to the practical implementation of the EU common commercial policy, which is administered by the competent authorities of the Member States.[15] This fact was reflected and acknowledged by the World Trade Organization Panel in one case, where the latter stated as follows:

> We recall the European Communities' explanation of its domestic constitutional arrangements, set out at paragraph 7.98, that Community laws are generally

Nijhoff Publishers 8 (1995).

[14] See European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. Complaint by the United States. WT/DS174/R Report of the Panel of 15 March 2005 paragraph 7.269, available at: https://www.wto.org/english/tratop_e/dispu_e/174r_e.pdf (accessed on 15 July 2017). Cf. also commentary on this issue in Vienna Convention II, which indicates that the jurisprudence is not consistent in this respect, see the Draft Articles on the Responsibility of International Organizations, with Commentaries – 2011 p. 101, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed on 15 July 2017). Šturma, too, concludes that the WTO approach seems to be an isolated instance and has never been applied by the ECtHR in similar cases to date. Pavel Šturma, *Drawing a Line between the Responsibility of International Organization and its Member States under International Law*, 2 Czech Yearbook of Public & Private International Law 13 et seq. (2011).

[15] Customs administration is carried out on a national level. Similarly, administrative justice remains in the competence of the Member States.

> not executed through authorities at Community level but rather through recourse to the authorities of its member States which, in such a situation, 'act de facto as organs of the Community, for which the Community would be responsible under WTO law and international law in general'.[16]

12.10. Both aforementioned situations have one common feature, namely, that they follow from the delegation of national competences to the European Union. Accordingly, the European Union acts as if it were a federation in relations under the international law, despite remaining a mere international organisation. While the EU Member States act as separate entities under international law, they have voluntarily restricted their competences through the provisions of the EU law. In general terms, it can be concluded that the issue of attributability of certain wrongful acts to the European Union conflicts with the concept of 'shared sovereignty', which is yet unknown with respect to traditional intergovernmental organisations.[17] Constitutional issues concerning the organisation of the European Union, delimitation of its competences and the scope of delegation of the competences are also reflected in external relations under the international law. Acts that are, as a rule, performed exclusively by States from the viewpoint of international law are undertaken by the European Union within the scope of its mandate. Nonetheless, in conceptual terms, I believe there is no need to adopt special rules to govern the acts of the European Union. The questions of the degree of delegation of competences and the limitation of sovereignty of the Member States, so important from the internal perspective of a Member State, are in fact legally quite irrelevant from the external viewpoint. From an international law perspective, the only relevant aspect is that the EU has been authorised to perform certain acts. This conclusion is supported in particular by the fact that even certain states federated within a (con) federation, such as Switzerland or Canada,[18] can act as separate entities under the international law, which leads to a situation rather similar to the relationship between the European Union

[16] See case European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. Complaint by the United States. WT/DS174/R Report of the Panel – 15 March, 2005 Sec. 7.269. Available at: https://www.wto.org/english/tratop_e/dispu_e/174r_e.pdf (accessed on 15 September, 2017).

[17] With respect to this issue, see ONDREJ HAMUĽÁK, NATIONAL SOVEREIGNTY IN THE EUROPEAN UNION VIEW FROM THE CZECH PERSPECTIVE, Cham: Springer 45 et seq. (2016),

[18] Compare VLADIMÍR TÝČ, MEZINÁRODNÍ, ČESKÉ A UNIJNÍ PRÁVO MEZINÁRODNÍCH SMLUV (International, Czech and EU and International Treaties Laws), Brno: Masaryk University, Faculty of Law 14 (2013).

and its Member States. The rules governing responsibility of such federations have not in fact been modified. Thus there is no reason to arbitrarily distinguish between situations that are, in principle, treated identically under international law.

III. Sole Responsibility of the European Union – the Issue of Effective Control

12.11. It is without a doubt that the European Union will, in principle, be solely responsible for any internationally wrongful act committed by its own bodies or employees. However, identification of the responsible entity can be more difficult in cases where funding and resources are provided by the Member States. This applies in particular in the area of implementation of the common foreign and security policy. Under this policy, the European Union is sometimes required to conduct civil and military missions, without having been assigned the appropriate human or material resources to date. The Member States are therefore expected to provide the requited means to the EU. This situation is rather similar to military missions carried out under the auspices of the United Nations Organization. The legal solution to such a situation, where the funding and resources are provided by the Member States but subsequently used by the relevant international organisation for its own purposes, is typical to such a degree that it has been envisaged in the Draft Articles on the Responsibility of International Organizations.[19] In this context, the concept of *'effective control'* is fundamental. Indeed, the responsibility shall lie with the entity which exercises effective control. Nonetheless, the problem is that the interpretation of the aforementioned provision is neither unambiguous, nor established.

12.12. Commentaries on the Draft articles analysing the current case law concerning the concept at hand conclude that the courts have not adopted a uniform approach to the issues of responsibility and exercise of effective control. On the one hand, it can be interpreted with reference to the concept of *ultimate control,* which would mean that the responsibility would as a rule lie with the European Union as the entity which has adopted the decisions on carrying out the missions and delegated their implementation to the Member States. On the other hand, the aforementioned perception does not reflect the

[19] See Article 7 of the Draft articles, which stipulates as follows: 'The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.'

actual state of affairs, where the missions are in fact carried out by the Member States, which are thus vested with 'operative control'.[20] Unfortunately, a more detailed and general analysis of the concept of effective control exceeds the scope of this article. Nonetheless, I rather agree with the approaches that favour operative control. Indeed, I believe that with regard to the general purpose of responsibility, the substantive approach should take precedence over a purely formalistic approach. Accordingly, I am of the opinion that responsibility should lie with the entity which in fact had direct influence on the violation and could thus have avoided it. In practice, each case will have to be assessed individually, taking account of various contributing factors, such as whether the relevant authorisation was general or contained concrete instructions to perform specific facts, i.e. whether or not the State could apply its own deliberation. Possible sanctions could be another relevant aspect, i.e. whether or not there was a possibility for the State to exceed the authorisation and act on its own will, for example.

12.13. The interpretation of the concept of effective control is also relevant for the European Union. The reason is that the aforementioned civil and military missions can be carried out either pursuant to Article 41(1) TFEU in conjunction with Articles 42(4) TFEU and 43(2) TFEU, or pursuant to Article 44 TFEU. The difference is that missions of the former type are carried out and directed by the European Union, where the Member States only provide the necessary capacities and resources. On the other hand, while missions of the latter type are also based on a decision of the Council whereby certain Member States are engaged to carry out a mission, in which aspect they are similar to the former type, the direction of such missions depends on the agreement of the Member States involved. The latter missions are thus directed by the Member States, in which aspect they differ from missions of the first type. Under the approach based on ultimate control, the European Union would be responsible for both types of missions. Under the operative control approach, responsibility of the EU for missions of the latter type can, in principle, be excluded, while its responsibility for missions of the former type will in principle exist, but not necessarily in all cases if Member

[20] See Draft Articles on the Responsibility of International Organizations, with Commentaries – 2011 p. 23, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed on 28 December 2018). Cf. also Pavel Šturma, *Drawing a Line between the Responsibility of International Organization and its Member States under International Law,* 2 CZECH YEARBOOK OF PUBLIC & PRIVATE INTERNATIONAL LAW 13 (2011).

States are allowed to exert their discretion, to a certain extent, in their own decision-making and direction.

12.14. Determining responsibility is less complex in case of acts performed within the former first pillar of the European Union. In that area, the EU is well equipped with developed enforcement arrangements stipulated in Articles 258 to 260 TFEU, the provisions of which the EU applies to the Member States to enforce EU law. Consequently, if an authority of a Member State acts under and pursuant to EU law[21] and thus violates international public law, the responsibility will most likely be attributed to the European Union. Indeed, this is true with regard to the specific supranational nature of EU law, as well as the possible consequences the EU might impose on a Member State for non-compliance with EU law.[22] The responsibility of the European Union in such cases of enforcement can be derived from Article 16 of the Draft articles.[23]

12.15. Any other conclusion would be illogical. We could hardly expect the Member States (or any states in general) to willingly act as bodies, or instruments, of an international organisation if the states themselves were to bear all responsibility for such acts. The truth is that the Draft Articles on the Responsibility of International Organizations do not provide any solution in this respect that would govern joint responsibility. We can indeed imagine a situation where a state is coerced by the international organisation of which it is a member to commit an internationally wrongful act under such circumstances, where the wrongful nature of the act is sufficiently substantial and apparent. In such a case, I believe that the state should act so as to avoid committing such an internationally wrongful act, irrespective of the possible consequences such conduct may have for the state in relation to the relevant international organisation. Compliance with international law should in fact take precedence over the particular interests of such a State. By way of an example, refer to the support for solar power plants provided by the Czech Republic. The Czech Republic is bound by bilateral treaties on the protection of investments, which guarantee that any investments made will not be frustrated. Simultaneously, it is possible that the support provided by

[21] For example, a judicial or governmental authority directly applying the EU law.

[22] Consider again the above-mentioned case 'European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs.' This was a complaint by the United States, where the European Communities themselves assume, most likely voluntarily, responsibility in such situations.

[23] This refers to situations where the European Union, by virtue of a binding decision addressed to a Member State (such as a decision of the Court of Justice of the EU) or by virtue of the EU law, coerces the Member State under the conditions set out in Article 16 to commit an internationally wrongful act.

the Czech Republic to the investors might represent state aid prohibited by EU law. While the Czech Republic is obliged to comply with the supranational EU law, such a situation cannot be resolved in a manner whereby the Czech Republic would violate the relevant bilateral treaties, not even if the EU law is thus disrespected.[24]

12.16. Nonetheless, the above-described solution is not the only possible one. In fact, further distinction can be made between situations where a Member State voluntarily provides its national authorities for disposal and situations where national authorities act as Union bodies because no other option is available.[25] Such a functional approach should require re-qualifying the latter acts of the Member States' authorities performed in the competence of the European Union and subject them under the provisions of Article 6, rather than Article 7, of the Draft Articles on the Responsibility of International Organizations. The question remains whether such a functional approach would correspond to the current state of affairs; in my opinion, this would not be the case. The EU law, given its supranational character, is in fact of a quasi-federalist nature and is reflected in the Member States. In practice, at least the judicial bodies, apart from Constitutional Courts, identify with, comply with and respect EU law. In many cases they act in a manner adversarial to the executive and legislative branches of the Member State concerned, and thus, in fact, act as true federative bodies of the European Union, from a functional viewpoint. On the other hand, the judicial bodies remain organisationally subjected to their Member States, which exercise direct control over them, in particular in financial, personnel and procedural terms, and ultimately also in terms of sovereign power. I therefore believe that such a distinguishing has no support in current international law practice.

IV. Joint Responsibility of the European Union and the Member States

12.17. This article so far has only dealt with the issue of attributability of a certain unlawful conduct to the European Union and its consequences in practice. Nonetheless, in certain cases,

[24] The problem is explained similarly in the article by David Sehnálek, *Support for Photovoltaic Power Plants – Czech Legislator's Dilemma from the perspective of both the EU and International law*, 3 EUROPEAN STUDIES - The Review of European Law, Economics and Politics, Czech Association for European Studies 142-152 (2016).

[25] Pieter J. Kuijper, *International Responsibility for EU Mixed Agreements, in* MIXED AGREEMENTS REVISITED: THE EU AND ITS MEMBER STATES IN THE WORLD, Bloomsbury Publishing 216 – 217 (Hillion, Ch., Koutrakos, P. eds., 2010).

responsibility will lie jointly with the European Union and its Member States. We can even imagine a situation where the European Union will bear no responsibility whatsoever and the responsibility (if any) will lie solely with the Member States.

12.18. The Draft Articles on the Responsibility of International Organizations actually envisages the responsibility of a member state for the act of the relevant international organisations. Member States could thus, in principle bear responsibility for an internationally wrongful act committed due to the State's aid,[26] control or direction, or due to coercion of the European Union by a Member State,[27] or due to circumvention of international obligations of a Member State through the European Union.[28] Accordingly, the existence of responsibility of a Member State is very likely in case of internationally wrongful acts following from the primary EU law. The reason is that the Member States exert direct influence over adoption of such law. On the other hand, the likelihood is substantially lower in case of secondary-law acts. This follows from the decision-making process within the European Union, in particular the involvement of bodies independent of the Member States.[29]

12.19. From a substantial viewpoint, responsibility of Member States for acts of the European Union performed within the former first pillar will be exceptional, rather than a matter of principle. In the area of the common foreign and security policy, where decisions are not made on the supranational level, the contrary shall apply. In this respect, the Member States exercise direct influence, and thus also effective control, over the acts of the European Union as a rule.

12.20. Despite the above, the existence of responsibility of a Member State is conceivable even in the area of supranational integration. The commentary on the Draft articles notes[30] in this respect the case *Bosphorus Hava Yollary Turizm ve Ticaret Anonim Sirketi* v. *Ireland*,[31] where the ECtHR concluded in principle that the Member States could not avoid their responsibility by ensuring that the relevant decision is not taken by the States themselves, but rather by an international organisation to which the States have delegated part of their competences.[32] However, the Court

[26] See Article 58 of the Draft articles on the Responsibility of International Organizations.

[27] See Articles 59 and 60 ibid.

[28] See Article 61 ibid.

[29] For example, The EU Commission, Court of Justice of the European Union and European Parliament.

[30] Draft Articles on the Responsibility of International Organizations, with Commentaries – 2011 p. 94, available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf (accessed on 15 July 2017).

[31] Judgement of the European Court of Human Rights, sitting as a Grand Chamber, in the case of *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi* v. *Ireland* of 30 June 2005, file No. 45036/98

[32] See paragraph 154 of the Bosphorus judgement in which this court stated:

ultimately did not find Ireland responsible on the grounds that at the relevant time, the European Communities, too, granted a sufficient degree of protection of fundamental human rights.[33] Since the necessary protection was indeed guaranteed, no avoidance of international obligations could have been declared on the part of Ireland.[34]

12.21. The *Bosphorus* case[35] was specific in that it fell within the former first pillar of the European Union, where the protection of fundamental human rights as well as the required procedural guarantees were adequately provided for at the EU level. This is despite the fact that the European Union adopted no legally binding act codifying and protecting human rights. The situation was substantially more complex in cases involving acts performed under the then-existing second or third pillar of the European Union. In those areas, procedural guarantees allowing individuals to defend their human rights were either completely lacking, as in the case of the common foreign and security policy,[36] or existed only to a limited extent, as with the case of judicial and criminal co-operation.[37]

12.22. Nonetheless, in the case *Gestoras Pro Amnistía, Juan Mari Olano Olano and Julen Zelarain Errasti* v. *Council of the European Union*, the Court of Justice of the EU concluded in response to the above fact that

In reconciling both these positions and thereby establishing the extent to which a State's action can be justified by its compliance with obligations flowing from its membership of an international organisation to which it has transferred part of its sovereignty, the Court has recognised that absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving *it of its peremptory character and undermining the practical and effective nature of its safeguards … The State is* considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention…

[33] The definition of a 'sufficient degree' of protection goes beyond the scope of this article. The same applies to a more detailed analysis of the Bosphorus judgement, its weaknesses and consequences. In this respect, I refer to the professional literature. For assessment of the Bosphorus judgement, see e.g. Kathrin Kuhnert, Bosphorus Double standards in European human rights protection? 2(2) UTRECHT LAW REVIEW, 177–189 (2006); for subsequent developments, see Ragnar Nordeide, Fragmentation and the Leeway of the VCLT: Interpreting the ECHR in Light of Other International Law, 20 FINNISH YEARBOOK OF INTERNATIONAL LAW 189–207 (2009).

[34] See paragraphs 155 and 156 of the Bosphorus judgement.

[35] The case was also heard by the Court of Justice of the European Union, see judgement of the Court of Justice of the EU of 30 July 1996, Case C-84/95 *Bosphorus Hava Yollari Turizm ve Ticaret AS* v. *Minister for Transport, Energy and Communications* and others, ECLI:EU:C:1996:312.

[36] In this area, however, the European Union should not have any competence to adopt legal acts and no issues should thus have occurred.

[37] The remedy consisting in the right to refer for preliminary ruling questions arising in national proceedings whereby an individual might have been affected and thus asserted their rights, was limited only to certain acts set out in Article 35(1) TEU (framework decisions, decisions *(on the interpretation of)* conventions and measures implementing such conventions) and was subject to voluntary referral by the State to the Court of Justice of the European Union (pursuant to 35(2)). Further, the protection of individual's rights could only be ensured indirectly through filing an action by a Member State or the Commission under the conditions stipulated in Article 35(6) TEU.

> it is for the Member States and, in particular, their courts and tribunals, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the lawfulness of any decision or other national measure relating to the drawing up of an act of the European Union or to its application to them and to seek compensation for any loss suffered.

12.23. In other words, the Court stated that the fact that the European Union lacked the required competence to ensure the protection could not be interpreted in that no such protection is granted, but rather that it is the task of the Member States to provide for the protection.[38] If national law could not provide such guarantees to individuals, the conclusions on limitation of the responsibility of a Member State[39] derived by the ECtHR in the Bosphorus judgement could hardly apply.[40]

The last circumstance giving rise to responsibility of a State, as envisaged in the Draft Articles on the Responsibility of International Organizations, is where the State itself has accepted the responsibility.[41] Such a situation would be similar to that in the above-mentioned case '*European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*,' only *vice versa*. Nonetheless, I have found no case where a Member State or all Member States would have thus accepted their responsibility and I cannot really imagine an issue that could lead to such a solution.

12.24. Joint responsibility of the European Union and its Member States should be established in cases where a certain wrongful act cannot be unambiguously attributed either to the European Union or to the Member States. The limited delegation of competences to the EU means that in certain cases, the EU and the Member States must act jointly. This state of affairs is reflected in contract law in the form of 'mixed agreements'.[42] Where

[38] See paragraph 56 of the judgment of the Court of Justice of the European Union (Grand Chamber) of 27 February 2007, Case C-354/04 P *Gestoras Pro Amnistía, Juan Mari Olano Olano and Julen Zelarain Errasti* v. *Council of the European Union,* ECLI:EU:C:2007:115.

[39] While the above-cited cases turned on the rights of an individual, Iam still addressing exclusively the issue of international responsibility of the European Union or the Member States, as appropriate, rather than their liability for damage caused to the affected individual.

[40] Accordingly, it can be assumed that the adoption of Article 275 TFEU by virtue of the Lisbon Treaty, which stipulates the right of an individual to, under certain circumstances, file an action for annulment even in cases falling under the common foreign and security policy was a consequence of the then unsatisfactory state of protection overlapping with the area of international responsibility of the EU and its Member States.

[41] See Article 62 of the Draft articles.

[42] This refers to agreements into which the European Union enters together with its Member States, as one contracting party, in cases where the European Union lacks sufficient competence to conclude the relevant agreement with a third country itself. For more information about mixed agreements, see

such an agreement does not provide for a clear distribution of responsibility between the EU and the Member States, it may be difficult to determine which entity shall be responsible for a breach of such an agreement.[43] It is nonetheless undoubted that the above shortcoming has been caused by the EU Member States and any negative consequences thereof cannot be borne by third countries. In the preceding text, Canada was mentioned as an example of a federation where the individual provinces can act as autonomous entities under international law. In this respect, however, the comparison does not apply. The reason is that while Canadian provinces are authorised to execute agreements independently, they do so on behalf of Canada as a whole and, consequently, Canada is the one responsible for any breach of such agreements.[44] In this context, it appears that the international jurisprudence does not fully recognize such open federations, i.e. such federations where concurrent or competing acts of the federation and the federal states respectively may occur simultaneously. Belgium is often cited as an example of such a federation and in practice tends to prefer to act directly with the state rather than with its provinces.[45] On the other hand, such a practice is quite common in case of the European Union.

12.25. The only acceptable solution applicable to mixed agreements, indeed to all cases where responsibility is not clearly distributed between the European Union and the Member States, consists in joint responsibility of both acting entities, i.e. both the European Union and the Member States.

DAVID SEHNÁLEK, VNĚJŠÍ ČINNOST EVROPSKÉ UNIE PERSPEKTIVOU PRÁVA UNIJNÍHO A MEZINÁRODNÍHO, Brno: Masarykova univerzita, 125 - 134 (2016).

[43] Unfortunately, these declarations are often too vague to sufficiently clarify the exact scope of EU competences, Thus, they fail to fulfil their function. ANDRÉS D. CASTELEIRO, THE INTERNATIONAL RESPONSIBILITY OF THE EUROPEAN UNION, Cambridge: Cambridge University Press 128 (2016). In addition to that, the scope of EU competences is not a static category. In cases of shared competences it is quite important whether the competence has been exercised and thus attracted to the EU level, while in cases of exclusive competences their scope is subject to changes of primary law. Such changes often have consequences towards third states as can be demonstrated for example in the Lisbon Treaty and effects this treaty had on investment policy. Cf. Alexander J. Bělohlávek, *International organizations in domain of international investment* law, 1 STUDIA SPOŁECZNE 124 – 125 (2014).

[44] Armand de Mestral & Evan Fox-Decent, *Rethinking the Relationship Between International and Domestic Law*, 53 MCGILL LAW JOURNAL 573, 645 (2008).

[45] Compare Robert Schütze, F*ederalism and Foreign Affairs: Mixity as an (Inter)National Phenomenon* in HILLION, Ch., KOUTRAKOS, P. eds., MIXED AGREEMENTS REVISITED: THE EU AND ITS MEMBER STATES IN THE WORLD, Bloomsbury Publishing, 57 *et seq.* (2010).

V. Certain Cases of Particular Arrangements Governing Responsibility of the European Union

12.26. As a rule, particular arrangements governing responsibility within international arrangements pose no problem in terms of attributing responsibility. Differences between various solutions can be demonstrated with the examples of the WTO and the Council of Europe. The European Union acts on behalf of the Member States in most cases as a full-fledged member of the WTO (in parallel to the Member States). Consequently, the European Union, rather than its Member States, bears responsibility for any breach of the agreements executed within the WTO. This is empirically documented by numerous disputes initiated by or against the European Union.[46] From the viewpoint of the Member States, the only practical issue may consist of the fact that the consequences of a breach by the European Union of the obligations assumed within the WTO, which would otherwise only affect one Member State, can actually affect the other Member States. The reason is that retaliatory measures or penalties for such a breach, if any, will be imposed on the European Union as a whole, i.e. also on all its Member States.

12.27. The position of the EU in the WTO is in sharp contrast with its position in the Council of Europe, in particular in relation to the European Convention. The European Union has indeed never become a signatory to the Convention, not even as a matter of fact (by succession),[47] unlike the case of the GATT (1947).[48] The reasons for such a different treatment are not clear from a legal perspective, although there may be political considerations. In fact, the author is convinced that the possible argument invoking a lack of competence on the part of the European Union to become a signatory of the Convention prior to the adoption of the Lisbon treaty[49] cannot stand in light of the doctrine of implied competences. This is because the Court

[46] For a list of such disputes, see http://trade.ec.europa.eu/wtodispute/search.cfm?code=1

[47] The issue of the succession of the European Union in an international treaty previously entered into by the Member States as such is complex and exceeds the scope of the present article. However, it is not legally excluded. Schütze refers in this context to analogous application of the doctrine of succession of States, where in this case the succession will not be territorial and general, but rather functional and limited. ROBERT SCHÜTZE, FOREIGN AFFAIRS AND THE EU CONSTITUTION: SELECTED ESSAYS. Cambridge University Press 127 (2014).

[48] Under EU law, the succession became effective on 1 July 1968, upon expiry of the transition period. See the judgement of the Court of Justice of 16 March 1983. Administration des finances de l'État v Società petrolifera italiana SpA (SPI) and SpA Michelin italiana (SAMI), Joined cases 267/81, 268/81 and 269/81. ECLI:EU:C:1983:78, paragraph 17.

[49] The Lisbon Treaty amended Article 6(2) TEU in that the Union was required to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

of Justice of the European Union did rule that the European Union was so authorised under the EU law. Nonetheless, it should be noted that the circumstances surrounding the GATT and the European Convention, respectively, were not identical. Delegation in the framework of the common commercial policy comprised all competences, which means that the Member States could be fully substituted with the European Union as a signatory of the GATT.

12.28. On the other hand, full succession was impossible in case of the European Convention[50] and accordingly both the Member States and the European Union had to be signatories of the Convention. However, it is more important that the GATT did not exclude involvement of the European Union and none of the Member States disagreed with the participation of the European Union acting on behalf of the Member States. Nevertheless, the European Convention did not permit accession of international organisations until the adoption of Protocol No. 14.[51] Only the amendment to the Convention eliminated this obstacle.[52] Nonetheless, the conclusion relevant for the purposes of this article is that a Member State can be responsible for violation of the standard of protection of human rights guaranteed by the European Convention. The responsibility can arise both in cases of a wrongful act committed by a Member State and in cases of a wrongful act committed by the European Union, provided that the act is attributable to the Member State concerned (see above). On the other hand, the European Union cannot be held responsible, not even jointly with the Member States. The reason is that the European Union is not a signatory of the Convention and, unlike in case of the GATT, the EU cannot even be deemed a party thereto as a consequence of delegation of competences.

[50] This follows from the different nature of co-operation under the GATT and the European Convention, respectively. While the former is sector-based and thus vertical, the latter is horizontal by its nature as it is reflected in all sectors of the Member States' activities, i.e. those that have been delegated to the European Union and those that have remained vested in the Member States.

[51] See Article 15 of Protocol No. 14. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680083711 (accessed on 15 July 2017).

[52] It should be noted that the relevant Article 59(2) of the European Convention allows only the European Union to participate; this possibility does not apply to any other international organisation. The obstacle was eliminated only on the part of the Council of Europe, issues nonetheless remain on the part of the European Union as EU law allows accession, but under conditions that have been rather strictly set out by the Court of Justice of the European Union in the opinion of the Court (Full Court) of 18 December 2014. Opinion 2/13. ECLI:EU:C:2014:2454. For more in this respect, see Martin Kuijer, *The Accession of the European Union to the ECHR: a gift for the ECHR's 60th anniversary or an unwelcome intruder at the party?* 3(4) AMSTERDAM LAW FORUM 17 et seq. (2011) Available at: http://amsterdamlawforum.org/article/view/240 (accessed on 15 September 2017).

VI. Conclusions

12.29. The *Bosphorus* case shows that the much emphasised specific aspects of the European Union are in fact relevant predominantly for its internal relations. If the same situation concerned a federal state (where the federation would play the same role as the European Union in the case at hand), the ECtHR would have found the federation responsible. From an outside perspective, the European Union thus partly loses its special nature. Nonetheless, its specific features are still present, in particular in determining which entity shall be held responsible for certain wrongful acts, whether the EU or a Member State. Given the supranational nature of the EU and the great degree of its autonomy from the Member States, it is actually in principle certain that the European Union indeed exercises effective control and should thus bear responsibility. While this fact does not always relieve the Member States of their responsibility, the likelihood of a Member State being held responsible is substantially lower, compared to traditional international organisations.

12.30. In reality, the scope of activities performed by the European Union on behalf of its Member States is substantially greater than with any other international organisation. In certain cases, the EU even substitutes for the Member States as an agent under internal law, such as with respect to the GATT (1947). The substantive scope of cases where responsibility of the European Union can be considered is large and includes such areas as economic co-operation, issues concerning regulation of the internal market or sectoral policies including the common commercial policy. This also applies to the protection of fundamental human rights as well as foreign affairs and defence. Nonetheless, neither the theory of international law nor the relevant jurisprudence indicate that the overall perception of international organisations has changed. The pragmatic functional approach based on the characteristics of the European Union, likening it to a federation, is inapplicable in this context. Accordingly, while in reality the structures of international organisations and their member States appear in all shades of grey, the rules of international law are black-and-white. The Member States have the power to change this situation themselves, without there being any need to adjust international public law. The solution would lie in transforming the European Union into a fully-fledged country, which,

however, is a proposition that is hardly achievable under the current political climate in Europe.

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Summaries

FRA [***La responsabilité de l'Union européenne au regard du droit international***]

Le but du présent article est de définir les conditions dans lesquelles la responsabilité de l'Union européenne peut être engagée au regard du droit international et de déterminer dans quelle mesure les États membres peuvent être (co-)responsables des actes de celle-ci. La question qui se pose est de savoir si les règles générales applicables à la responsabilité des organisations internationales peuvent être appliquées dans le cas de l'Union ou s'il convient de formuler des règles spécifiques, prenant en compte sa nature supra-étatique. À cette fin, nous analysons dans la première partie de l'article les règles générales du droit international régissant la responsabilité des organisations internationales. Il s'avère que ni le caractère de ces règles ni la nature de l'Union européenne n'empêchent nullement leur application. La deuxième partie de l'article est consacrée au problème de responsabilité exclusive de l'Union européenne, qui est envisagé sous l'angle des trois piliers de l'UE, concept aujourd'hui daté, mais toujours utilisé dans certains contextes. Nous insistons en particulier sur le concept de contrôle efficace et sur ses manifestations dans les relations extérieures de l'UE. La troisième partie de l'article analyse les cas de responsabilité partagée de l'UE et de ses États membres dans le domaine des « accords mixtes ». La dernière partie du texte se focalise sur les cas spécifiques de responsabilité de l'UE dans le cadre de l'Organisation mondiale du commerce et du Conseil de l'Europe. Nous arrivons à la conclusion que, malgré les nombreuses caractéristiques internes que l'UE partage avec les États fédéraux, elle tombe sous le coup du droit international en tant qu'organisation internationale, ce qui implique également le choix des règles de responsabilité qui lui sont opposables. En outre, du point de vue des États tiers, la nécessité de formuler des règles spécifiques à l'Union n'est pas suffisamment fondée. Ni la pratique actuelle ni la doctrine ne semblent indiquer que ce paradigme devrait changer. D'un point de vue pragmatique, la probabilité pour un État membre d'être tenu responsable pour les actes de l'UE est, à l'heure actuelle, inférieure en comparaison avec les autres organisations internationales. Ceci fait de l'UE un organisme unique au regard du régime de responsabilité instauré par le droit international.

CZE [***Mezinárodněprávní odpovědnost Evropské unie***]
Cílem tohoto článku je identifikovat, za jakých podmínek může být Evropská unie odpovědná za své jednání v režimu mezinárodního práva a do jaké míry mohou nést za její jednání (spolu)odpovědnost také členské státy. Otázkou přitom je, zda lze i v jejím případě použít obecná pravidla o odpovědnosti mezinárodních organizací, nebo zda existuje důvod pro formulaci pravidel odlišných zohledňujících její specifickou nadstátní povahu. Za tímto účelem jsou v první části článku analyzována obecná pravidla mezinárodního práva upravující odpovědnost mezinárodních organizací. Konstatováno, je, že charakter těchto pravidel a povaha Evropské unie nijak nebrání jejich použití. Druhá část článku je zaměřena na případy výlučné odpovědnosti Evropské unie; zohledňována je přitom dřívější, ale stále do určité míry přetrvávající pilířová povaha. Důraz je kladen především na koncepci efektivní kontroly a její projevy ve vnějších vztazích EU. Třetí část článku rozebírá případy společné odpovědnosti EU a jejích členských států v oblasti tzv. smíšených dohod. Poslední část článku je zaměřena na zvláštní případy odpovědnosti EU v rámci Světové obchodní organizace a Rady Evropy. Článek uzavírá, že přes mnoho vnitřních podobností EU s federativně uspořádanými státy, je v dosahu mezinárodního práva i nadále jen mezinárodní organizace a podle toho se na ni též uplatní pravidla o odpovědnosti. Nadto, z pohledu třetích států, vlastně není dán důvod k vytváření zvláštních pravidel speciálně pro EU. Stávající praxe ani teorie navíc nenaznačuje tendenci ke změně paradigmatu. Pragmaticky vzato, pravděpodobnost, že členský stát bude podle stávajících pravidel odpovědný za EU je nižší, nežli je tomu v případě jiných mezinárodních organizací. Právě tato skutečnost činí EU de facto jedinečnou z pohledu režimu odpovědnosti v mezinárodním právu.

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POL [***Odpowiedzialność międzynarodowo-prawna Unii Europejskiej***]
Niniejszy artykuł szuka odpowiedzi na pytanie, czy Unia Europejska jest odpowiedzialna na płaszczyźnie międzynarodowej za swoje działania, czy też odpowiedzialność spoczywa częściowo lub w całości na krajach członkowskich. Ponadto bada kwestię, czy w odniesieniu do organizacji o charakterze ponadnarodowym można zastosować powszechne zasady dotyczące odpowiedzialności organizacji

międzynarodowych. W pierwszej części opisano ogólny mechanizm odpowiedzialności organizacji międzynarodowej nie tyle w prawie europejskim, co w świetle prawa międzynarodowego. W drugiej części przywołano przypadki samodzielnej, wyłącznej odpowiedzialności UE. Uwzględniono tu również wcześniejszą, częściowo nadal aktualną strukturę filarową Unii. Trzecia część omawia przypadki wspólnej odpowiedzialności UE i państw członkowskich w szczególności w przypadku tzw. umów mieszanych. W ostatniej części przeanalizowano specyficzne mechanizmy odpowiedzialności Unii Europejskiej.

DEU [***Völkerrechtliche Belangbarkeit der Europäischen Union***]
Dieser Beitrag hat sich die Beantwortung der Frage zum Ziel gesetzt, ob die Europäische Union auf internationaler Ebene für ihr Vorgehen verantwortlich ist, oder ob diese Verantwortung ganz oder zu Teilen von den Mitgliedsstaaten getragen wird. Des Weiteren wird die Frage untersucht, ob sich die allgemeinen Regeln betreffend die Haftung internationaler Organisationen auch auf internationale Organisationen mit supranationalem Charakter anwenden lassen. Im ersten Teil der Arbeit wird deshalb die allgemeine Haftungsregelung für internationale Organisationen im Völkerrecht (in Abgrenzung zum Unionsrecht) abgesteckt. Der zweite Teil befasst sich mit denjenigen Fällen, in denen die EU völlig selbständig haftet. Dabei wird ihre frühere (und zum Teil bis heute fortdauernde) Drei-Säulen-Struktur berücksichtigt. Der dritte Teil befasst sich mit Fällen einer gemeinsamen Haftung der EU und Mitgliedsstaaten, insbesondere im Fall sog. gemischter Abkommen. Der letzte Teil analysiert dann die Staatenverantwortlichkeit der EU nach dem Partikularrecht.

RUS [***Международная правовая ответственность Европейского союза***]
В данной статье поставлена цель выяснить, несет ли Европейский союз в международном масштабе ответственность за свои действия, или эту ответственность частично или полностью несут государства-члены. Кроме того, рассматривается вопрос, можно ли к международным организациям наднационального характера применять общие правила ответственности международных организаций. Поэтому в первой части определен общий режим ответственности международной организации в международном праве, а отнюдь не в законодательстве ЕС. Во второй части рассматриваются случаи, когда ЕС полностью несет ответственность. При этом берется во внимание его

прежняя, но по-прежнему частично сохраняющаяся уровневая структура. В третьей части рассматриваются случаи совместной ответственности ЕС и государств-членов, особенно в случае так называемых смешанных соглашений. В последней части анализируются отдельные режимы ответственности Европейского союза.

ESP [***Responsabilidad internacional de la Unión Europea***]
El artículo tiene como objetivo averiguar si la Unión Europea es responsable a nivel internacional por sus actos, o bien, si son los Estados miembros los que tienen dicha responsabilidad total o parcialmente. Posteriormente, se examina si las reglas generales referentes a la responsabilidad jurídica de las organizaciones internacionales pueden aplicarse también a las entidades internacionales de carácter supranacional. Es por ello que en la primera parte se identifica el régimen general de la responsabilidad jurídica de la organización internacional en el derecho internacional y no en el derecho unitario. La segunda parte se centra en los casos en los que la UE es responsable de manera totalmente autónoma. Se toma en consideración su antigua estructura de pilares que, sin embargo, persiste parcialmente. En la tercera parte, se estudian los casos de la responsabilidad común de la UE y los Estados miembros, sobre todo, en relación con los llamados acuerdos mixtos. En la parte final, se analizan los regímenes particulares de la responsabilidad de la Unión Europea.

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