

Abstract

One of the proclaimed goals of the European Union is to contribute to an “*effective multilateral system leading to a fairer, safer and more united world*”. In order to enable itself to achieve these goals, the EU implemented a number of changes in the field of its common foreign and security policy. One of the most apparent elements of this process became its crisis management operations (CMOs). The progressive development of the ESDP, creation of capabilities enabling the EU to conduct military operations, and continuously raising number of military CMOs, point more and more urgently to the need to analyze these developments through the prism of international law. Out of these facts arises also the main question of the thesis: Has the EU’s increasing military emancipation been paralleled by the definition of a clear international legal framework? The thesis is divided in five parts.

The first chapter provides an overview of the basic characteristics and present status of the ESDP. We argued that the EU in order to achieve its goals has currently a wide range of instruments at its disposal, including an emergency a crisis response system. This system enables the EU to respond to whole spectrum of crisis situations and conflicts, including peace enforcement operations. The EU established respective financial and institutional structures, including permanent military structures within the Council of the EU, such as the Political and Military Committee, etc. On the basis of experience gained in the first operations, the EU started to develop also operational capacities, such as the Battle Groups. Cooperation with NATO, but also with the United Nations remains to be crucial for the EU and its Member States. This is true also for the cooperation with third states, which often participate in the European CMOs. All the above mentioned developments mark a change of the European Union from a solely civil to continuously military power.

The second chapter examines the legal status of international organizations in general and consequently the legal status of the European Union *in concreto*. In the first step, the key concepts are defined: “international organization” and “international legal personality”. We argue that even if not completely settled, it is no longer contested that international organizations may possess international legal personality, which may be granted explicitly or implicitly. Then the elements and the basis of international legal personality are analyzed, which are still a subject of controversy. One of the views considers the will of the founding States as central, leading to the conclusion that an international organisation can be regarded from the viewpoint of the international law system only as being an entity of particular international law. The other view derives personality of international organisations from general international law, resulting among other to a general opposability against third states

and subjects of international law. We concluded that the concept of so-called presumptive personality by Jan Klabbers is the best solution: it is presumed that an international organisation has personality under international law, if it performs acts that necessarily imply such personality, except where Member States expressed denial. The personality is objective in the sense that the existence of an international organization and the herewith connected rights and duties are opposable to all other subjects, whereas rights and obligations resulting from the treaty constituting the international organization are not opposable to third entities without their recognition. As to the EU, it can be considered as an international organization possessing international personality.

In Chapter three, we analyzed international law applicable to the European military CMOs. As a consequence of its international legal personality, the EU has rights and duties under international law to the extent of their relevance for the EU's functioning and activities. The sources of legal obligations include, among others: (1) general international law, (2) constituting documents of the European Union and related acts, (3) obligation created by the EU itself, for example unilateral acts or general principles of European law, etc. Taking this into regard, typical elements of the European CMOs' legal framework are: (1) the law of the UN-system, (2) an international mandate of the operation, which is not necessarily based on a UN Security Council decision, but may be based also on a peace agreement or a host state consent, (3) Status of Forces Agreement (SOFA/SOMA), usually concluded with the host state in order to clarify legal status of the operation on the territory of a third state, (4) Rules of Engagement and other relevant intra-organisational acts of the EU, (5) general international law, and (6) specific legal regimes, such as international humanitarian law, human rights law or law of international responsibility. We also concluded that the national contingents deployed in an European CMO are to be considered as *de-facto* organs of the European Union on the basis of the effective control, which the EU exercises through the command and control structures and decision-making procedures. Hence it is the EU itself who bears responsibility for the conduct of the contingents deployed. However, this does not mean that the Member States may evade their obligations by transfer of command and control to the EU.

Chapter four concerns application of the IHL in the context of ESDP operations. As this question has already been extensively discussed in the context of the UN forces, the chapter provides at the beginning a short description of conclusions reached in this context in order to analyze possible analogous application to EU forces. Furthermore we conclude that the IHL is not applicable in every military operation of the EU. In contrast, its applicability criteria must be fulfilled, including existence of an armed conflict or occupation. In a case of direct

participation in hostilities, the EU becomes a party to the conflict. The applicable IHL rules vary according to the character of the armed conflict the EU forces will be involved in. As to the legal basis of IHL application, relevant customary rules are applicable to the EU by virtue of its separate legal personality under international law. Also human rights provisions of the EU's constituent treaties provide such basis, as they encompass a core of the IHL. As to the treaty obligations, the EU itself is not and can not be a party to the relevant IHL treaties. However, the participating Member States continue to have obligations in this regard, especially by virtue of the specific IHL obligation to “*respect and to ensure respect*” for IHL in all circumstances. This obligation exists also towards the EU and may be implemented by Member States through the exercise of their competences within the EU institutional framework.

The last chapter intended to open a debate on responsibility for violations of international law by European CMOs and to provide an analysis of this aspect on the background of the EU's relevant practice. We concluded first that the EU has legal personality and therefore also rights and obligations under international law. Subsequently if committing a wrongful act, the EU will invoke international responsibility. Second, the analysis of relevant SOFA provisions shows that (1) the material basis of the EU's responsibility for CMOs is similar the one of the UN for its peacekeeping operations, (2) the claim settlement procedures have developed progressively over time, and (3) it is the EU, which comes to the fore in question of responsibility and the Member States, which play increasingly minor role in this regard. Third, also responsibility of Member States for their own conduct within the framework of the EU is of importance, especially from the background of their obligation to respect and to ensure respect for IHL in all circumstances. Such responsibility can Member State incur for an act committed by the EU, which, if committed by that State, would have constituted a breach of an international obligation of that Member State. The second basis is the conduct of the Member State within the EU, e.g. when voting within the structures of the EU or implementation of an EU's decision would amount to a violation of international law.

In summary we conclude that even if international law is being taken into account in the European military operations, for the EU in order to become a serious security organization it is necessary to proclaim its position towards international law publicly and clearly, and where appropriate through a legally binding act. This would significantly enhance credibility of the EU, contribute to further development of the ESDP, and also help to clarify important issues such as the application of IHL or responsibility issues. As Marten Zwanenburg once noted: “*Maturity does not come with age, but with the acceptance of responsibility*”.