The European Union and the General International Law

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The development and diversification of the norms in public international law, through the emergence of some autonomous law systems such as the regional or the specific ones, like *lex mercatoria* (rules in international trade) or the regulations regarding the law of the sea, the international protection of the human rights or of the environment have generated a direct concern towards the "threat" implied by an objective process of international law's fragmentation and especially the relationship which should exist between the general dispositions and those of the autonomous systems which become more and more present in the international law system.

Such situations may actually occur in four different cases:

a) In the case of a conflict between different interpretations of the general international law. Such a situation has occurred in the Tadic case[1]. The Decision of the Appeal Chamber of the Criminal Court for the Former Yugoslavia included the term "general control" instead of "effective control" used by the International Court of Justice in the Nicaragua case[2], as a criterion to define the situations when a military or paramilitary group can be considered as having acted on the behalf of a foreign power.
b) In the case of a conflict due to an action that can be considered as an exceeding of the general international law, by applying provisions following special laws. A situation like this is the Belilos case[3] concerning an interpretation of the reserves regime different from the general practice of the international law.
c) In the case of a conflict generated by the application of a special law that contradicts the stipulations of the general international law. Such an example is given by the Gatt panel's decision to solve the 1994 differences in the *Dolphin and Tuna Dispute*[4] based upon the idea that the provisions regarding the protection of the environment are not relevant in the commercial cases.
d) The conflicts which can appear following the emergence of self-sufficient law systems, at a regional level, drawing up special compulsory norms for the member states which can differ from those of the general international law.

Given the fact that the European Union is one of the most juridically structured regional systems and the relationship between its system of juridical principles and norms and those of the public international law has a special practical importance, for Romania also, I have considered that a presentation of the subject can be useful.

1. Prolegomena

While examining a juridical order, the first problem that occurs is to determine the process of creating the juridical norms which compose the order in question. These norms give to certain facts the power to generate juridical effects, transforming them in what we call "acts generating norms" *normeszeugende Tatbestande* (in German) or law sources[5]. These norms have a specific validity, during a certain period of time and in a given place. At an internal level, a norm can be valid inside a certain region or the entire state[6]. The same thing applies to the public international law.

The phrase "communitarian law" refers to the set of juridical rules following the treaties that have founded the Communities, from the acts adopted by their institutions while exercising the attributions offered through the treaties and also from the agreements concluded by the Communities with other states or international organizations[7]. In the international documents, the notion of general international law appears only one time as such, except for the cases when general law principles are mentioned[8].

By general public international law we must understand a system of principles and norms considered by the state as being international rules unanimously accepted, even if they are customary or conventional dispositions.

2. The Communitarian Juridical Order

The communitarian juridical system has the quality of representing *a juridical order,* that is an organized and structured set of juridical norms with its own sources, organs and procedures capable of elaborating and interpreting them, but also of ascertaining and punishing the transgression of these norms, when necessary[9].

The priority of the communitarian juridical order is strictly related to the direct effect, because when the principle according to which the dispositions of the communitarian law can directly create rights and obligations comes into force, there can be, inevitably, certain conflicts between the two systems. The principle of the communitarian law's priority doesn't appear in the concluded treaties, but it was recognized by the European Court of Justice in two famous cases. The first one is the *Van Gend en Loos* decision from February 5th 1963 and the *Costa vs. Enel* one form July 15th 1964[10]. This decision stipulates that "an internal law disposition cannot oppose to the law created through communitarian agreements, by its very autonomous nature"[11] because, unlike the regular international treaties, **the founding treaty of the European Community has given birth to its own juridical order, integrated in the member states juridical systems.** The same decision stipulates that, by creating a Community for an unlimited period of time, with its own institutions, juridical personality and capacity, international representation right and especially with authentic powers as a result of the limitation of the states' competences or of their transfer towards the Community, the states have limited their sovereign rights in some specific fields and thus have created a law corpus applying to their followers and to themselves[12].

This approach on sovereignty is no longer the traditional abstract one, conceived almost as a metaphysical, indivisible and inalienable quality like in the classic doctrine elaborated by Bodin and Hegel and developed by many others, which seemed to be an inherent element of the state[13]. **This is a new conception of sovereignty which corresponds to the idea of the sovereignty's division, which doesn't mean its binding to a certain area of the state's territory, but to some of its competences**[14]. Pierre Pescatore[15] was the first one to develop the idea of the division of sovereignty,

surpassing the concept of sovereignty expressed by the International Court of Justice in the famous *Wimbledon Case*, when the Court decided that the conclusion of any treaty didn't mean the abandon of sovereignty, because the very right to conclude treaties was an attribute of sovereignty.

This new approach regarding sovereignty allows us to speak about the "divided" sovereignty or the one "exercised together" by states and organizations such as the European Community, because the state doesn't have the exclusive competence to exercise the attributes of sovereignty on its territory. Such an approach can lead directly to an analogy with the model represented by the federal states. This analogy would be forced and exaggerated, given the fact that in the federal system the states give up certain fields of actions in favour of the federation (defense, foreign affairs etc.) and, on the other hand, the relationship with the European Communities doesn't mean the delegation of competences, but of the exercise of certain competences that doesn't allow the states to intervene by actions which are incompatible with the communitarian rules[16]. Such an example is the common commercial policy regulated by the 113 article of the EEC Treaty and which is of the unique competence of the Community, including when it comes to concluding commercial agreements with third states[17].

The Juridical Personality of the European Union

According to the general theory of international law, the states are international law subjects and the international organizations are only derived law subjects, with a functional limited personality. The founding Treaties of the European Communities stipulate that, in the international relations field, they have the necessary juridical capacity to fulfill their functions and achieve the established objectives. The European Communities have the right to negotiate and conclude international treaties; they enjoy diplomatic immunities and privileges and have the right to active and passive legation. Thus, the 210 article of the EEC Treaty (the 184 article of the Euratom Treaty) clearly stipulates the juridical personality of the Community. The 6th article, 2nd paragraph of the founding Treaty of the Coal and Steel Community says that "concerning the international relations, the Community has the juridical capacity to exercise its attribution and achieve its objectives". These general dispositions permit the clear recognition of the fact that each of the Communities has the juridical capacity to exercise its functions and accomplish its objectives, which means that they have a certain international juridical personality.

The classical attributes related to the international juridical personality refer to the right to negotiate and conclude international treaties, to appear as part in front of the international courts of justice or to participate in other international procedures for the solution of conflicts, and also to have active and passive international responsibility.

The European Community Treaty clearly stipulates its right to conclude international treaties[18]. These ones refer to the external aspect illustrated by the European Communities' participation, in their own name, to the activity of certain international organizations and also by the set of agreements concluded with third states[19].

Besides the right to conclude agreements, the Community has developed a network of diplomatic missions, exercising the right of active and passive legation. It has over 150 such missions accredited at its headquarters in Bruxelles. These missions also called delegations or representations have a diplomatic statute and their functions are the classic ones: to represent, to negotiate and to inform. There are also additional functions to the classic ones: to participate to the activity of the consultative organisms of the Community and also to fulfill the tasks which

rests to the executive organisms of the Communities. The European Community doesn't have diplomatic delegations in other countries, where each state is represented by national embassies. Nevertheless, the Community has accredited 45 delegations inside the countries in development which it cooperates with, and another 15 in other states (Algeria, Australia, Brazil, Canada, China, Egypt, USA, India, Israel, Japan, Jordan, Lebanon, Morocco, Tunisia, Syria, the former Yugoslavia), two regional delegations in Caracas for the Latin America and in Bangkok for Asia, four delegations with the international organizations (in New York with the United Nations, in Paris with the EOCD, in Geneva and Vienna with the European headquarters of the United Nations). The European Community has over 120 such delegations, at the moment[20]. The EU Commission doesn't have the exclusivity of the external representation. The Presidency of the Council is also represented in third states by the diplomatic mission of the state which exercises the temporary Presidency of the European Union. The EU's capacity to appear as part in front of international arbitral courts has been lately recognized[21].

Even if the Community has important external competences, its member states are still responsible regarding their foreign policy, but this one makes the object of a consultative and coordination system inside the common foreign and security policy (ECSP) which is seen as an intergovernmental cooperation pillar by the founding Treaty of the European Union.

Neither the Maastricht Treaty, nor the Amsterdam or the Nice ones don't include such clear disposition regarding the recognition of the juridical personality of the EU. After having included in the Treaty of Amsterdam the provisions regarding the possibility offered to the Council of the European Union to conclude treaties in fields like foreign affairs and justice, based on the common decisions of the member states[22], the idea of the EU's juridical personality started to be considered as implicit. Moreover, these dispositions have already been used in the European Union's practice, to conclude the Agreement between the European Union and the Federal Republic of Yugoslavia regarding the EU's monitoring mission on the 9th of April 2001, and the European Commission has started to speak in the name of the Union and not of the Communities[23]. However, recent evolutions have shown that the clear stipulation of the EU's juridical personality has become only a matter of time, absolutely necessary given its growing part at the international level[24].

Communitarian Law and National Law

The relationship between communitarian and national law is based upon two fundamental principles: the priority of the communitarian juridical order over the law of the member states and the direct effect of an entire set of communitarian dispositions which apply directly to the states and to their citizens.

The direct effect of the communitarian norms refers to the capacity of the communitarian law to be a source of law on the territory of the member states, to directly create rights and obligations not only for the communitarian institutions and member states, but also for their citizens and to allow these ones to appeal to them in front of the national courts in order to obtain the recognition of a certain right or to stop the application of any internal provision which is incompatible with the communitarian law[25].

The Principle of Subsidiarity

The principle of subsidiarity is included in the European Union Treaty at the 3B article, taken over from the European Community Treaty in the following form: "In the fields that do not belong to its exclusive competence, the Community will intervene,

according to the principle of subsidiarity, only in the case and to the extent which the objectives of the action taken into consideration cannot be sufficiently accomplished by the member states alone and can be better achieved at a communitarian level, due to the dimensions or the effects of the action"[26]. The disposition concerning this principle is followed by the one referring to the principle of proportionality frequently used by the European Court of Justice: the action of the Community will not exceed what is needed to achieve the objectives of the treaty. The Maastricht Treaty transforms subsidiarity into a "principle" of the European Community and Union[27]. The fact that, during the latest negotiations of the intergovernmental Conference for the adoption of the Maastricht Treaty, this principle has been included in the disposition part and not in the preamble, as initially intended, seems to show that the negotiators have considered it as **a principle with a compulsory juridical value.** This is also the opinion expressed by the European Council of Lisbon, in 1992. It is clear although that, at this moment, this principle is especially of a political nature in spite of its recognized juridical value. It is true that it represents first of all a principle based on common sense, an element of clarity and democracy. The only danger that can appear and must be taken into consideration in the practice of law is that it shouldn't be used in an offensive manner, that is opposing or diminishing the field of application for the communitarian competences. If it is used to assure an optimum exercise of these competences, in a spirit of cooperation and solidarity between the different levels of competence, it will become one of the fundamental principles which will assure the integrated evolution of the European Union, because it is necessary to any federal structure.

We must keep in mind, however, that this principle doesn't apply to the fields of the EU's exclusive competence. Subsidiarity is frequently used to justify the necessity of the decentralization of communitarian law's application, even in the fields of exclusive competence for the Union[28].

3. The Relationship Between the European Union's Law and General International Law

The problem that occurs, from a theoretical but also practical point of view, is **if communitarian law represents or not a juridical order that is autonomous from the global order based on the public international law.** If in the first case brought in front of the European Communities' Court of Law (the Van Gend en Loos case in 1963), the Court stated that there was *a new juridical order of public international law*[29], in the Costa vs. Enel decision in 1964, the Court referred only to *an autonomous source of law, represented by the communitarian treaties,* without telling that this was part of the public international law[30]. Thus, during one year, the notion of communitarian law as public international law order has being replaced with an autonomous law order, even if this one has been founded upon sources following the international treaties.

Thus we are facing different options, from the point of view of the analyzed theme, with practical effects upon the relationship between public international law and the communitarian law order.

According to the classical theory of public international law, a juridical order is considered as autonomous if it fulfills two conditions: the former is that its founding law norms shouldn't be interpreted or applied by other institutions that the ones of the order in question and the latter is that this order should be self-sufficient, meaning that it shouldn't need to appeal to other principles or rules except for the ones included in the founding treaties of that order. These are at least two conditions that we will take into account in order to find an answer concerning the relation between the communitarian order and the public international law order.

Concerning the first condition, the founding treaties of the Communities give the European Communities' Court of Justice, in practically identical terms, the right to assure the respect of the law norms regarding their interpretation and application in the relations between the member states[31]. These dispositions can be interpreted only as provisions which give the judiciary organism of the Communities **a general and exclusive competence** regarding the regulation of these problems. Moreover, the Court's regulation procedures exclude the application of the public international law rule concerning *the appeal to all the internal means of attack* before bringing a complaint in front of the Court. In the *Humblet* case[32], the Court decided that "the prior resort to all national judiciary means of attack is out of the question because this would mean to submit the same case to the decision of the national courts". Moreover, the possibility of direct appeal for the member states' citizens and, in some cases, directly in front of the Court, and also the mechanisms of cooperation between the national and communitarian judges give more force to the conclusion that this basic rule of public international law, the resort to all the national means of appeal, doesn't function inside the Communities.

Besides these competences, the European Communities' Court of Justice can interpret the communitarian law and can also assure its autonomous development. Communitarian law can be the object of only one compulsory interpretation, given by the Court of Justice. This interpretation is not exercised, like in the national law, only by the decisions of the Court regarding the analyzed cases. The Court of Justice has also the autonomous function to assure the unitary application of the communitarian law for the whole Community, even in the cases when the national judges are competent to apply it.

Following the presentation above one can easily conclude that the communitarian law order fulfills the first condition to be considered an autonomous juridical order from the one of the general public international law.

The second condition for a juridical order to be autonomous is that the source of law which founds it should be sufficient and that it shouldn't need to resort to any other principles or external norms.

From this point of view, the situation of the communitarian law remains different. The communitarian treaties couldn't foresee, as any other juridical text, all the situations which should be regulated. On the other hand, the authors of these juridical documents have been more preoccupied by the regulation of the economic issues and less by the juridical aspects, usually limited at the institutional aspects[33]. The obligation to fill in any gaps naturally belongs also to the European Communities Court of Justice. While exercising this attributions, ECCJ recognized from the very beginning of its activity that it had been making use of the "common principles and approaches resulting from the national law systems of the member states" during this process of interpretation[34]. The Court of Justice has proved to be more reticent regarding public international law, considering that the use of international law principles and norms could affect the specific nature of communitarian law. The ECCJ has directly affirmed the subsidiary nature of the appeal to the dispositions of the public international law and, implicitly, its proceedings being abandoned when incompatible with the communitarian law. These cases are frequent in the jurisprudence of the Court. One of the most well-known such cases refers to the non application of the *non adimplenti contractus* exception. The non application of this exception isn't due to the fact that the international treaties wouldn't recognize the reciprocity principle, but to the fact that an institutional system of ascertaining the non-fulfillment of the obligations by a state has been established through these documents, thus eliminating the possibility for a state to adopt counter-measures according to the provisions of public international law[35]. This exception of

reciprocity is not the only international law rule that has been excluded from the communitarian law. A similar situation is the one concerning the *estoppel* or the foreclosure, in the cases when this exception refers especially to the issues concerning the Communities' institutional structure[36]. Another example refers to the Court's refuse to recognize the juridical effects of the *states' and international organizations' unilateral acts,* considered as law sources in the general theory of the public international law[37].

Another classic example frequently quoted is the interpretation given by the European Court for Human Rights in the 1995 *Loizidiu case*[38] regarding the effects of territorial reserves, different from the one of the International Court of Justice. The ECCJ decision in this case touches an entire field, the human rights, where communitarian norms prevail upon the norms and principles of public international law.

These examples illustrate the fact that in some cases the European Communities have advantaged their own norms in the detriment of the general ones. Meanwhile, we must take into account the fact that communitarian law doesn't regulate all the aspects of the relationship between its members and that, in some cases, the norms and principles of international law must be used. The relation between the two systems is proved by the simple conclusion that the European Union is an international organization with a clear specific nature, but an organization which must obey, nevertheless, the general rules of the public international law regarding the creation and functioning of these international structures. Of course, these relations aren't univocal because the EU, in its turn, has an influence upon the law of international organizations. It has been conceived following a specific model, different from the one of other classic interstate cooperation organizations. The European organisms have a more developed and complex institutional structure and also with competences which overtake the national competences of the states, having as an objective the creation of an integrate system closer to the structure of a federal state than of an international organization: a common economic policy, a single currency, a communitarian citizenship, a foreign and security policy, armed forces etc.

A second obvious relationship between general international law and the EU's law refers to the law of the treaties. The member states have been building up these European structures by concluding international treaties governed by the rules of general international law concerning the negotiation, the conclusion and the functioning of the treaties, as coded by the Vienna Convention regarding the law of the treaties. This enumeration could continue with the evaluation of other fields where the connection between the law of the European Union and the general international law is obvious, but this is not our purpose, but to prove the fact that European law isn't built up out of nowhere, but upon the general norms of public international law. These once proved, we must admit that the European law has in the same time the clear tendency of becoming an autonomous system of public international law, not only with a clear specific nature, but also with specific dispositions which differ from the norms of general international law.

This analysis proves, in our opinion, that even if the communitarian law order is frequently described as an autonomous juridical order, independent from the member states' national juridical orders and also from the general public international law, it seems to be basically an intermediate order with a high level of autonomy, but which is not created on an empty field, but in the context of the norms of general public international law which apply, *mutatis mutandis,* to the communitarian relations, except for the cases when they risk to put in danger their specific nature.

Starting from the European example, but also from other precedents, the International Court of Justice in Hague has started to draw the attention upon the danger of the "fragmentation" of the international law due

to the multiplication of the international organisms of jurisdictional nature and to the emergence of some autonomous systems of juridical rules, in fields like human rights, commercial disputes or the protection of the environment[39]. Such cases, as well as others presented in different academic works as examples of "fragmentation" of public international law, dangerous to its functioning and also to the entire international scene, are in fact only problems regarding the development and diversification of international law. This one has started indeed, from the very beginning, with the regulation of some specific fields: either regarding the relations between two or more states, or concerning a specific theme. Famous founding works in international law such as the ones of Hugo Grotius do not refer to international law as a whole but to specific fields like the law of war and peace or the law of the sea. Along with the codification process after World War II, "the law of the treaties" and "diplomatic and consular law" have become currently used. Notions like "humanitarian law" regarding armed conflicts or "human rights" are currently used in the academic literature.

We could wonder what could be the new elements which came along and determined this kind of preoccupations at the international level. It is beyond doubt that one of these elements is the development and diversification of the norms of international law following the growth of the complexity of the fields which it is supposed to regulate.

A second element is the evolution regarding the organization and functioning of the international society. After the important stage of multilateralism, general and global regulations, great global conferences of codification of the rules in general public international law, such as the Conferences organized by the UN in Vienna[40], the efforts to solve all problems at a world level, usually by the UNO, we are in the middle of a globalization process to which public international law must also adapt. The unique approach, in this new situation, is the example of the neoliberal theory concerning the minimal state. The application of this vision to the international society's functioning means to accept a set of values, principles and norms unanimously accepted and valid for all the democratic nations and a minimal international structure to assure their respect. The United Nations Organization can be this structure, reformed itself to answer the new conditions. It is obvious that such a minimal structure couldn't respond to the growing complexity imposed by the globalization process[41]. It would have to be completed by the regional regulations such as the European ones or by specific regulations for every field such as the law of international trade, human rights, the protection of the environment etc.

The natural question that appears refers to the manner in which these specific fields will relate with general public international law, the set of values, principles and norms that are unanimously accepted by the democratic states. I believe that this relation should be governed by fundamental principles of public international law such as *in tòto jure genus per specie derogatur* rule or the *generalia specialibus non deogant* rule. Other rules regarding the interpretation of the successive treaties or other such general rules can be added to the basic ones aiming to solve the conflict between the norms of public international law.

A supplementary argument to the ones already stated is the fact that, following the International Law Commission's session in 2002[42], it was decided that the activity regarding the fragmentation of international law should begin by a series of studies upon precise themes such as the ones mentioned above.

Following the Commission's Report, these themes are:

- The functioning and the sphere of application of the *lex specialis* rule and the problem of "autonomous regimes"
- The interpretation of the treaties following "all the pertinent rules of international law which can be applied in the relations between the parts" in the

context given by the general evolutions of international law and the preoccupations of the international communities
- The application of successive treaties which regulate the same field
- The modification of the multilateral treaties in the relations between the parts
- The hierarchy of the norms in international law: *jus cogens, erga omnes* obligations, the article 103 from the United Nations Chart.

At the 55th session in 2003, the International Law Commission has started its session with the very examination of these rules, the first theme being the *lex specialis*. The objective of the Commission has been to elaborate, following a series of analysis, certain recommendations for the states' international activity, which seemed to show that the approach stated above would be adopted in the end. Of course, the elaboration of such rules of conduct would have to be accompanied by an effort to assure the dialogue between the international jurisdictional institutions which allow the unitary and coherent application of the different rules in international law: general rules, special rules or regional rules.

Note:

[1] See the Decision regarding "The Prosecutor vs. Dusko Tadic", case no. IT-94-1-A, A. Ch., July 15th 1999.
[2] The case concerning the "Military and paramilitary activities inside and against Nicaragua" (*Nicaragua vs. The United States, The ICJ Report 1986*, p. 14, par. 109–116.
[3] The Belilos vs. Switzerland case, The ICJ Decision from April 29th 1998, the documents of the European Court for Human Rights (Series A), no. 132, par. 60.
[4] See the restrictions imposed by the USA to the tuna importations and the decision adopted by Gatt, document WT/DS26/AB/R February, 13th 1998.
[5] See Kelsen, *General Theory of Law and State*, Cambridge, 1945, p. 110 and 123, and also Julio Barberis, "Les règles spécifiques du droit international en Amérique Latine", in *Recueil des cours de l'Academie de droit international*, vol IV, 1992, Hague, 1993, p. 93–223.
[6] Julio Barberis, *op. cit.*, p. 113 – 114.
[7] Jean Boulouis, "Le droit des Communautes Européennes dans ses rapports avec le droit international general", in *Recueil des cours de l'Académie du droit international*, Hague, vol. IV, 1992, p. 19.
[8] *Ibid.*, p. 19.
[9] G. Isaac, *Droit communautaire général*, Paris, Masson, 1983, p. 111.
[10] The 6/64 case, in The Hansen Collection of ECJ Decisions, p. 1251.
[11] *Idem*.
[12] *Ibidem*.
[13] Jean Victor Louis, *L'ordre juridique communautaire*. CEE, Luxemburg, 1993, p. 15.
[14] *Idem*., p. 16.
[15] Pierre Pescatore, *Le droit de l'integration*, Leyden, 1972, p. 72 and the following.
[16] Jean Victor Louis, *op. cit.*, p. 20.
[17] See the "ECJ Decision from December 15th 1976" in the *Donckerwolcke Case* in the Hansen Collection, p. 1937, which stipulates that the states can intervene when it comes to common commercial policy only if the EEC allows them to do so.
[18] See the 113rd article referring to commercial agreements, the 238th article referring to association agreements etc.
[19] See Louis Dubuis, *Les rapports du droit régional et du droit universel*, « Colloque de Bordeaux de la societe francaise pour le droit international », Paris, Pedone, 1977, p. 271.
[20] Jean Victor Louis, *op. cit.*, p. 77.
[21] See Groux and Manin, *op. cit.*, p. 153 – 161.
[22] See the provisions of art. 24 of European Union founding Treaty.
[23] Nanette A. E. M. Neuwahl, "Legal personality of the UE", in *The European Union and the International Legal Order*, Hague, Asser Press, 2001, p. 22.
[24] Emmanuelle Bribosia and Anne Weyemberg, "La personnalité juridique de l'Union Européenne", in *L'Union Européenne et le monde après Amsterdam* published by The Institute of European Studies, 1999, p. 60.

[25] Mariane Dony, *Droit de la Communauté et de l'Union Européenne,* The University of Bruxelles Editions, 2001, p. 117.
[26] The dispositions of the 3B article, 2nd paragraph.
[27] See the *Papers of the Maastricht Debates: Subsidiarity and the defiance of change,* EIPA, Maastricht, 1991.
[28] Jean Victor Louis, *op. cit.*, p. 99.
[29] The decision of the ECJ on February 5th 1963 in the Van Gend en Loos case.
[30] The decision of the ECJ on July 15th 1964 in the Costa vs. Enel case.
[31] See the disposition of the article 31 of the Coal and Steel Economic Community, article 164 of the European Economic Community and article 136 of the CEEA.
[32] See the ECJ decision in the Humblet case, on the 16th of December 1960, case 6/60 in the Hansen Collection, p. 1127.
[33] Jean Boulois, *Le droit des Communautes européennes dans ses rapports avec le droit international général, op. cit,.* p. 45.
[34] See the decision of the ECJ in the case A.M.& S, May 18th 1972 in the Hansen Collection, p. 1575.
[35] See the case Costa vs. Enel, July 15th 1964, doc. cit, the Hansen Collection.
[36] See the case the Greece vs. the Council, September 27 th 1988, case no. 204/86, the Hansen Collection cit., p. 5323.
[37] *Idem.*
[38] Loizidiu vs. Turkey, Prelimiary Objections, the decision of March 23rd 1995, ECHR Papers (Series A) no. 310.
[39] Martti Koskenniemi and Paivi Leino, "Fragmentation of International Law? Postmodern Anxieties", in *Lieden Journal of International Life*, no. 15, 2002, p. 554.
[40] See the Convention regarding diplomatic relations, April 18th 1961, the Convention regarding the consular relations, April 24th 1963, the Convention regarding the law of the treaties, May 23rd 1969 and others in "Commission du droit international et son oeuvre", 5th edition, New York, 1997.
[41] See Teodor Melescanu, Speech at the UN international law Commission plenary session, July 24th 2003.
[42] See the Report of the International Law Commission, the 54th session, UNO Document A/57/10, supplement no. 10, p. 272.