

Master II Droit international et européen

La territorialité à géométrie variable de l'Union européenne

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The variable-geometry Territoriality of the European Union

Summary and Conclusions of the Master Thesis

The territorialization process of the European Union is, before everything else, an answer to the will to create, by every means, an “*ever closer union*” between the member States. It also responds to EU’s willpower to develop its cooperation with others States and International Organisations, so as to strengthen its legitimacy both on internal and external levels. To achieve the legitimization of its position and competence as an entity with its own territoriality, existing independently from the national territories of the 27 member States the EU is overlapped with, its territorial competences and boundaries have thus been developed and extended with the evolution of communal law : first by the creation of multiple community spaces of material and immaterial natures, and second with a necessary and productive cooperation with spaces of competence of others european and international organisations. This construction has made the European Union a major actor of international politics, mostly in Europe, but also on a worldwide level.

Section I. The European Union : between community spaces and international organisations

From the words of Robert Schuman himself in his declaration of May 1950, “*Europe will not be made all at once, or according to a single plan*”. Thus, the european construction’s aim was first to create, through concrete achievements, a “*de facto solidarity*” between member States before getting to a possible european federation in the future, which the French minister saw as “*indispensable to the preservation of peace*”. Therefore, the European Union’s territoriality was developed like a pyramid¹ ; starting with solid foundations that all member States would gladly accept, and then gradually expanding with new community spaces and policies by leaning on the previous ones, already well integrated in the Union. These ways the European Union will always aim to develop and strengthen itself. But the EU

¹ See Annex N°10 : HOUËL Guillaume, « Le schéma pyramidal de la territorialité communautaire », *La territorialité à géométrie variable de l’Union européenne* (mémoire Master II International and European Law (Law Faculty of University Rouen Normandie), physical version 2022 (p.161).

will also have to adapt to the internal and external crisis it will face, and equally to the potential conflicts of competence that could arise with others european and international organisations.

§1 : The Pyramidal construction of the European Union's territoriality

As we were able to see, a “european sovereignty” does exist, although partial and limited to the competences transferred by the member States, but still of a supranational nature. Therefore, the european sovereignty and its Community law will prevail over national and even International laws (principle of primacy of Community law) in the domains the EU has competence, because the Union is in this case the one that owns the sovereignty. This European sovereignty will thus mutualize the national territories and sovereignty in its own community jurisdiction. However, it does not mean this community jurisdiction will impose itself over the national ones (for example, by replacing them with Community bodies). But it will, in fact, become one with them and mobilize the national jurisdictions of the member States in the process of its own application² : therefore, national judges will “become” european judges when they will have to apply Community law, and will then act as guardians of the european law themselves. The european sovereignty will also extend and retract itself following the will of its sovereign member States. This is why the EU can be considered today as a “*supranational territorial constituted with community networks linking national territories together, and a product of the [joined] actions of national actors [...]*”³, (supranational territory that we prefer to refer in this case as supranational territoriality, as we should remind that the notion of territory in International law can only be linked to a sovereign State, to which he constitute one of the 3 main attributes⁴ and which the EU is not). These community networks that are the backbones of the european territoriality will multiply and develop, depending on the investment of the member States into the community project itself.

That is why we can speak of a pyramidal community construction in a territorial scope: the more member States decide to invest themselves into community spaces and transfer their sovereignty, the more the cooperation inside the EU's territoriality, and coincidentally its competence, will be strengthened. The EU's territoriality will thus, with each evolution of the community development, deconstruct national

² KAHN Sylvain, RICHARD Yann, « Le territoire communautaire européen, un impensé non représentable ? », in BRUNET Sylvia, LEBON Lydia et RICHARD Yann (dir.), *Prolifération des territoires et représentations territoriales de l'Union européenne*, Rouen, PURH, Les Dossiers des Annales de Droit, 2019, (p.133).

³ *Ibidem* (p.121 to 141).

⁴ To be considered as a sovereign State in regard to International law, a State must possess at least three different attributes (apart of course from sovereignty itself) : a permanent population, a territory with defined borders, and an established government.

limits from the territories of the 27 member States, to replace them with a new and uniformized community structure. This process will repeat this effect of deconstruction/reconstruction with each new community space created, at diverse levels, following the degree of investment by the member States. But it will still imply a loss of autonomy by national territories for the benefit of EU's territoriality, because it is then the Community law that will gradually become competent instead of the national law in the domains that the member States willingly transferred to the EU. This will of transferring competence from sovereign States to the EU can be observed has usually heavily linked to the actual international (mainly european) geopolitical situation :

The start of the european construction can easily be dated after World War II : it was the fear of the return of devastating armed conflicts in Europe, in a period when the Cold War was starting to mobilize tensions across the entire continent, forcing european countries to choose between the capitalist western bloc or the communist eastern one. To launch the progressive construction of a united Europe, the first community measures aimed to create a solid economic unification as a foundation for the Union, which is why those measures started by mutualizing the national productions of their main resources (steel, coal, and energy) under the governance of european institutions like the ECSC and EURATOM. The following fail of the European Defense Community (EDC) may have slowed down the european development, but it also served as an important lesson : the european solidarity was back then not strong enough to integrate the idea of a common defence policy between member States. The investments in the european development were subsequently aimed toward the enhancement of the economic community construction itself.

-Thus was gradually elaborated the Material Space of the EU, aimed toward the liberalization of economic trades between member States, objective which was concretized by the construction of EU Internal Market. This european market aimed to unify the national markets of the 27 into its supranational space of competence, which would guarantee free competition by protecting the four freedoms⁵ recognized by the community treaties as inherent to free competition. Measures were taken on European level to protect those four freedoms, resulting in the progressive suppression of internal barriers between the territories of each member States to facilitate their use inside a new and uniformized community market :

-Firstly, the European Union aimed to protect free circulation of goods, services and capital by creating various institutions and community spaces inherent to the Internal Market: firstly, with the creation of a Custom Union (suppressing custom duties and trade barriers), the introduction of Value Added Tax (VAT) creating a standardized taxation system for the member States, the development of the European Economic Area (EEA) recognizing freedom of movement for goods, services and capital. Along with these important constructions, different community

⁵ For reminder : freedom of movement for goods, people, services, and capital over borders.

policies in keys economic sectors (agriculture and fishing industries...), with legal standards on consumer's protection and the regulation of free competition between national companies of member States inside the Union's territoriality, were also implemented.

-But the progressive creation of an independent european economy, materialized notably inside the EU by the Custom Union and the EEA, also lead the European Union to develop its own Economic and Monetary Union (EMU), with the same objective in mind: increase the effectiveness of the Internal Market on a financial level (aiming mostly here to facilitate the use of free movement of capital between member States). This financial policy resulted first in the adoption of the european currency, the Euro, destined to replace the national currencies and to create its own exchange rate and its own community space, the Euro Zone, were all the 19 member States⁶ which adopted it share the same currency. Secondly, with the European Debt Crisis that showed the weakness of the Euro Zone and the risk that a financial crisis happening in a member States could quickly spread to the others, the EU introduced the Banking Union, the second internal space of the EMU, so as to overwatch the national banks and jugulate any risk of financial crisis under an organized european supervision.

-Finally, the Internal Market aimed to guarantee the last and maybe the most difficult of the four freedoms to implement : the free movement of persons inside the EU's territoriality. It will be really implemented into the Union by the creation of the Schengen Area. This new community space achieved the process of an almost complete dematerialization of all internal barriers (internal frontiers, national taxes, customs rules...) engaged by the elaboration of the Internal Market. The Schengen Area has, in effect, suppressed national controls in internal borders, allowing individuals to easily cross them and go to one member State from another. Thus the Schengen Area can be considered as the final step of the Material Space in the EU's territoriality: by achieving the dematerialization process of almost all national barriers between member States, it also coincidentally achieved the materialization of the european territoriality.

The internal barriers between member States are thus almost completely virtualized inside the EU now, and only the external barriers (between a member State and a third party State) remain materialized, protected by an uniformized european policy. In general terms, there is little to no differences now between most of the member States national territories in reality, as if they have fused together: for an individual that would, as an example, travel from France to Belgium and the Netherland, it would seem to him as if he never crossed a border and is still in the same country. But the suppression of internal barriers, although beneficial to the Internal Market, also led to problems across the European territoriality :

⁶ There will be soon 20 member States in the Euro Zone, as Croatia will officially join it in January 2023.

-Uncontrolled immigration from member States that faced migration crisis and had difficulties dealing with it and guarding their external borders, leading illegal migrants to spread in most of the 27.

-Spread of cross-border crime among the EU countries, which was difficult for members States authorities to deal with because they cannot normally pursue criminal outside their national territory. Likewise, it was also difficult to prosecute them before national courts if they were outside national territories. The relevant International laws then were not effective enough to contain these issues that arose.

-Increasing number of cross-borders judicial situations (marriage between nationals of two different EU countries, foreign workers or multinationals coming from a EU States to work in another one...), resulting in an increasing amount of conflicts of national laws to determine which was competent when cases including them were brought to the court.

All of these problems may have not appeared at the same time, but they required the same solution : the Material Space of the european territoriality, which deconstructed national barriers, absolutely needed an internal european framework, able to construct community rules, standards and institutions accepted by member States to recognize, categorize and rule peoples that lived in and interacted inside the european territoriality, so as to prevent them from “abusing” the freedom offered by the Internal Market.

-Therefore, on the ground of the Material Space, and most notably the Schengen Area, will be constructed the Immaterial Space of the EU, concretized with the elaboration of the Area of Freedom, Security and Justice (AFSJ). This immaterial space, as we already said, will aim to develop a european framework to deal with all individuals interacting with the EU’s territoriality and, more widely, a european identity to unite the 27 and create an european “way of thinking”. Instead of deconstructing national barriers between member States, like the Material Space, the Immaterial space will not aim to deconstruct national laws or authorities to replace them with european institutions. It will rather seek first to set european standards in the treatment of individuals inside the EU’s territoriality depending on their statute (third party States nationals, European Citizens, and national citizens) that all member States agreed to apply on behalf of the EU. Secondly, the Immaterial Space will aim to build bridges between national laws, authorities, and administrations to facilitate cooperation, including the mutual recognition of decisions and judgments delivered by national authorities, between the 27 in dealing with individuals. Finally, the AFSJ will, leaning on its previous achievement, build the basis of a European Identity of common culture and values shared by the 27, most notably by creating the European citizenship, whose objective is to gradually suppress distinctions between nationals and EU citizens inside a member State. The goal of the EU is to create a feeling of unity and solidarity between the citizens of each member

State, and to lead them to support the European development further. But how will this construction take form?

-First of all, this construction will go through the development of an asylum and migration community police under EU supervision, but applied by member States themselves so as to harmonize the entry rules inside the EU's territoriality and visas delivery (Schengen Convention, Dublin III Regulation...). Secondly, Schengen Area will increase cooperation between member States inside the Union in different yet crucial domains: police cooperation (legal right of cross-border pursuit and surveillance, increased cooperation in counterterrorism, Europol...) and judicial cooperation in civil and penal matters (recognition and execution of decisions and judgments from national jurisdictions of other member States, harmonization of rules in various sectors to solve conflicts of law so as to design the competent national law of a member State for a case, European Arrest Warrant...).

-In the second place, this construction will be completed by the recognition, on a community level, of fundamental human rights to all the subjects of law the EU will have to handle. This recognition will pass notably with the Charter of Fundamental Rights of the European Union (CFREU) which grants inalienable rights and liberties that both EU and its member States must guarantee to all individuals in the application of Community law. But it is mainly with the elaboration of a European citizenship that the European identity will really arise, by recognizing a special statute to all nationals of a member State. This special statute will automatically grant to all member States nationals, inside the whole European territoriality, many rights and liberties that only nationals of a member State (and non-nationals that were specifically authorized by said States in regard to their national laws) had: right of residence, right to work, right of work and freedom of establishment, right to vote in local elections... Moreover, European citizens were also granted special rights to participate into the community process (right to vote and to candidate in European parliament elections, right of petition to the European institutions...).

However, this European identity that would bound the 27 together is still in construction, because its outlines are yet not defined. This is partly due to the nature of the EU itself, which vocation is to expand to other European States beside the 27 (as article 49 of the Treaty on European Union states, "*Any European State [...] may apply to become a member of the Union*") and which, as the Brexit demonstrated, can also shrink when a member decides to quit the Union. As it turns out, it is really difficult to perfectly define a European identity shared by multiple sovereign States, especially when the circle of members is vowed to change in the future⁷, either by expanding to new members (whose adhesion might weaken the European identity that was just solidified between the old members) or by

⁷ DIDELOON-LOISEAU Clarisse, EMSELLEM Karine, DE RUFFRAY Sophie, « Apport des cartes mentales dans l'analyse des sentiments d'appartenance à l'Union européenne », (p.146).

diminishing, following the departure of some members (whose withdrawal might leave a hole in the definition of the common identity) : for example, the question was raised after the United Kingdom withdrawal about whether or not English should be challenged as dominant language used by the majority of EU's institutions.

-Today this european identity, although still in progress, is nonetheless serving as the foundation to the elaboration of the third great community space inside the EU's territoriality : we could definite it as the Geopolitical Space of the EU, aiming to export and defend europeans values and interests on the international scene. Instead of the Material and Immaterial spaces which are concentrated on the internal situation of the EU's territoriality they are part of, the Geopolitical Space will aim to defend the EU's territoriality against external threats, and to use EU's influence, it has gained over the years, to pose itself as an important actor on international stage. Thus, leaning on the shared interests and values that has grown within the european development as a commune identity, the EU will, in the scope of its Geopolitical Space, aim to mutualize foreign policies of the 27, so as the member States would speak and act as one (within EU's supervision) on international politics to defend their shared interests, which are also the interests of the Union. To do so, the European Union will elaborate its own Common Foreign and Security Policy (CFSP). The CFSP will aim to organize foreign policies and the cooperation of member States on these matters under the supervision of the EU, to find a common stance on questions of international matters and ensure the security of the european territoriality against external threats. To attain this objective, the CFSP will notably include two special clauses of support and mutual assistance which will guarantee for a member State, the help of all the other members, should he be victim of a natural/manmade disaster or an armed attack on its territory, threatening its sovereignty or integrity.

The CFSP will also include another domain, the Common Security and Defence Policy (CSDP), finally picking up a project that the failure of EDC has left aside for years. It's objective is to create in the future, when the member States shall all agree, a true european army, shared by the 27 member States and vowed to defend the european territoriality, but the CSDP is still far from that point. Nonetheless, the CSDP serve today as a foundation to promote and partly finance cooperation between members States in military development. It also serves for the EU to elaborate its own civil and military operations outside the EU's territoriality, in Europe and across the world, so as to participate into the stabilization of european and international peace.

§2 : The EU's territoriality, confronted with internal and external difficulties regarding the application of Community law

The elaboration of the EU's territoriality is pretty advanced, but will however be confronted with some major difficulties. Today these issues have become so important that some don't hesitate to qualify them as a "crisis of the European construction"⁸. Thus, the reluctances of the 27 concerning some community policies and the geopolitical situation of some special territories constitutionally linked to member States of the EU make impossible, for now, any attempt to a uniformized and stabilized application of Community law for the entire European territoriality.

The construction of EU's territoriality will therefore have to adapt to these multiple issues by proposing a modifiable "demand-driven" integration to the EU, resulting in a "two tiers" integration of member States based on their will to accept said policies and community spaces. Some national territories located in specific locations (sometime really far away from the European continent like Overseas Countries and Territories of the European Union (OCT)) will also benefit from a specific application of Community law, as their particularities (geographical position, cultural differences, specific statutes already recognized by their national State...) justify the EU granting them a special statute.

As every member State can modulate its adhesion, Community law will thus not be applied uniformly to every one of the 27 sovereign member States or to all of the national territories that are constitutionally linked to them. This is why the European territoriality necessarily reveals itself as a mosaic of various internal community spaces and will frequently change form as its extension and competence will not be the same depending on the concerned domain:

- The territoriality may extend to every one of the 27 member States (like in the Custom Union) and all of their national territories, or only part of them (as some territories within a State could benefit from a special application of Community law).

- The territoriality may also extend to part of the 27 only, as some member States are yet to join some key community spaces or policies (like the Euro Zone with only 19 members States). The territoriality can even include into its boundaries, third party European States that decided to join some community spaces or policies, but without joining the Union as a whole (like the EEA which adds Norway, Iceland and Liechtenstein to the 27 member States, or Schengen Area, which is composed of 26 States, including with some EU's member States, the 3 countries already mentioned and Switzerland). Those third party States will then apply parts of Community law into their national territory in the domains they have agreed to.

⁸ See notably BOURLANGES Jean-Louis, « Les crises que traverse l'Union européenne ne touchent-elles pas aux fondements mêmes de la construction européenne ? », *L'Europe entre crises et rebonds, La Documentation française*, 2017.

In parallel to this “two tiers” inclusion, the EU will also develop a policy of enhanced cooperation with other European and transcontinental spaces under the authorities of independent international organisations, which competences can contest its own. The goal of the European Union will therefore be to avoid conflicts of competence between itself and these organizations, to prevent the risks of paralyzing its own member States which are also members of these organisations. Indeed, these potential legal conflicts could also make member States unable to apply Community law on their territories, which could weaken the legitimacy of the EU and threaten its own territoriality. The EU will thus favour a moderated approach, working to prevent these conflicts so as to not force its member States to choose between applying Community law or the International law resulting from other organizations concurring to the EU. This partnership will change depending on the international organisation the EU will face :

-with the European Free Trade Association (EFTA), the ancient economic rival of the UE in Europe, the cooperation will take the form of a partial integration of the last four remaining members of EFTA into some community spaces and policies (mainly the EEA and the Schengen Area) to make them, if not member States, important partners of the EU. This partial integration will require from the members of EFTA to apply parts of Community law, to participate in various regional associations linked with member States of the UE (Alpine Convention, Nordic Council...), and to contribute to different community projects (financial help to development for the EU's countries the least developed in the EEA's framework...).

-With the Council of Europe, which includes every one of the 27 member States of the EU, the partnership will be centralized on the harmonization between both levels of Human Rights protection guaranteed respectively by the European Convention on Human rights (ECHR) and by Community law (notably the CFREU). While guaranteeing respect of the Community law principle of primacy against national law and International law, the EU will aim to ensure that the fundamental rights protection it grants is at least on the same level of protection granted by the ECHR, so as to avoid direct legal conflicts between both organisations courts (the ECtHR⁹ for the Council of Europe and the CJEU¹⁰ for the Union). The EU will also closely collaborate with the Council to promote the respect of rule of law and fundamental rights on the european continent. The EU's adhesion to the ECHR is even planned in the Treaty of European Union, to definitely solve any conflicts of competence between Community law and ECHR, but to this date, this project is yet to be concretized.

-With the North Atlantic Treaty Organisation(NATO), which reputation in the domain of european security overshadows the elaboration of the CSDP aiming to create a true european defence inside the territoriality of the UE, leading the latter to be very cautious in its relations

⁹ European Court of Human Rights.

¹⁰ Court of Justice of the European Union.

with NATO. Indeed, NATO includes 21 of the EU members as of now, and some of them strongly oppose any attempt of the Union to challenge NATO's role as the main protector of peace in Europe. So as to not face arising oppositions among its member States regarding its competence security matters, the EU decided to not outright challenge that role of NATO. The EU will concentrate on creating a partnership with NATO, making its CSDP a secondary mechanism which will support the action of the alliance rather than be a main actor: it will thus aim to intervene where NATO cannot or do not want to be involved, or to support NATO in joint operations or by picking up the operations transferred by the alliance. In exchange, the EU obtained access to logistical and technological resources from NATO to organize its own missions.

-With the Organisation for Security and Co-operation in Europe (OSCE), the EU will develop a partnership for the framework of its own CSDP construction, and thus the OSCE will be a close ally of the EU into its action to maintain European peace. A permanent dialogue will be instituted so as to enable an effective consultation between both organisations, to reach and publicly express a common stand on European issues, to organize joint actions in order to prevent continental crisis, and promote the values they share and defend (fundamental rights, respect of rule of law...).

-A similar partnership will be created with the Organisation for Economic Co-operation and Development (OECD) in economic matters: the EU has a unique statute of observer inside this organisation, allowing it to participate in the work of the OECD. The Union has not, however, the right to vote (reserved to member States of the organisation), but it can nonetheless formulate propositions of legal standards or amendments which can be voted by members to be implemented by the OECD. The EU also contributes to the OECD's budget and is also regularly evaluated by the latter on its economic situation and the effectiveness of the community policies on this matter. These objective evaluations are greatly relevant to the EU which can use them to ascertain the effects of its community development and identify, if necessary, the failures of its policies that would need to be corrected.

-Finally, the European Union will pursue a close cooperation with the United Nations (UN), the most universalized organisation in the world, and the source of a legitimate recognition in the international scene the EU seek, so as to consolidate its position as a main actor on international politics, which exists independently of the States it is composed of. To do so, the Union will aim to help the UN to achieve its objectives. As only sovereign States can be members, the EU isn't one of them, but even among the others international organisations, the Union has a special statute: while it is not a member of the UN, it was, in 1991, the first international organization to be granted the right to speak in the General Assembly of the UN. Since then, the UE was also

able to sign on its name some international treaties among sovereign States. The Union was even recognized a right to vote in an institution of the UN (The Food and Agriculture Organisation) and was able to organize in 2001, a summit of the UN in its own diplomatic capital, Brussels. The EU is constantly searching to develop and solidify its place in the universal organisation, aiming to coordinate the actions of its member States (notably in the Security Council of the UN, in which one of its members, France has a permanent siege with a *veto* right) to defend its interests. But the EU also closely cooperate with the UN in the stabilization of international peace : the EU notably received mandates (like NATO in various occasions) from the UN to organize civil and military operations in the framework of its CSDP, outside its own territoriality to maintain peace in the boundaries of its mandates.

Section II. The European ambition put to test

Since the starting point of its construction, the European Union has always been seeking legitimacy to solidify its statute and competence as supranational organisation, whether on the international scene (towards others States and international organisations) or inside its own territorial framework (towards its own member States and their citizens). This legitimacy constitutes the best way to unite member States by an economic, legal and politic solidarity, so as to prevent the rise of conflicts like in the 20th century on the european continent, by cementing the role of the Union as peace protector in Europe. Because of its objective, it is inherent to its own principle that the Union would seek to extend its competence and also its circle of members. Indeed, as observed by the geopolitical scientist Pierre Hassner, “*each adhesion (to the EU) is a State acquired to democracy, to rule of law, to interdependence into autonomy, therefore a State acquired to the extension of this area of peace and security that is the EU*”¹¹.

§1 : The European Union : a leading actor in european and international stage

The european construction seems to have slowed down since 2010, and even experimented a step back. Indeed, the Union has been greatly tested, on one side because of the crisis it has to face (european debt crisis, the Brexit and migration crisis...) and on the other side because of the dissensions between member States on the orientation for the evolution of the Union, which led to, among other consequences, a lack of effectiveness for the CFSP, last great community space actually developed.

¹¹ HASSNER Pierre, « Empire », in BERTONCINI Yves, CHOPIN Thierry, DULPHY Anne, KHAN Sylvain and MANIGAUD Christine (dir.), *dictionnaire critique de l'Union européenne*, Paris, Armand Colin, 2008, (p.141-143).

Those recent events brought to the light some deep disagreements between member States regarding the future of the European construction. This debate about the orientation of the community development, at a time when the European construction is in “crisis”, touches every category of European citizens. The geography specialist Yann Richard thus observes that “*for some Europeans (working class citizens or political leaders), the community territory is the cause or one of the causes of the crisis. For others, it is its cure, alone or partly*”¹². This is why the observation on the Union is, as of now, a “two tiers” Europe with on one side some member States who want to go further into the European construction while the other member States, more reluctant to the community development, would instead like to slow it down.

Nevertheless, despite failures and delays in the European construction, the Union remains a leading actor on the international scene. It is a very attractive market for foreign investors (27 member States and almost 450 millions of consumers) which can, combining all of its member States national economies (with notably Germany, the 4th economy in the world) argue to be one of the main economic actors in the world, along with the United States and China (with a combined GDP of approximately 16 610 billions of dollars in October 2022¹³). Moreover, the EU is still a credible military force even without having a proper army on its own (with the combined military power of its member States, notably France which also owns an independent nuclear arsenal), and diplomatically on international level even without being a sovereign State (the Union has indirectly, with France, a permanent seat in the Security Council of the UN, allowing it to defend its interests and voice its position in the highest instances of the UN). The EU also organizes, as we said previously, its own civil and military operations with its CSDP outside its own territoriality to work toward stabilization and peace in Europe and the whole world, also picking up diverse missions and responsibilities from NATO.

The Union might possess only a “Soft Power” (power of influence) limited by its lack of a complementary “Hard Power” (power of coercion, mostly military) to back it up. This Hard Power is still, in the EU’s framework, in the hands of its sovereign member States. However, the EU’s Soft Power, leaning on the consequent economic and diplomatic weight of the Union, remains a force to be reckoned with on the international scene, and seems to be an important driving force for the development of International law itself, beyond Community law. The Union will thus use its influence to “*favour the development of international rules to prevent pure power relations*”, by investing itself in multiple international organizations of prime importance like the World Trade Organisation (WTO), the OECD, the Council of Europe or the UN, so as to pacify international relations and promote States cooperation, on both European and universal levels¹⁴. For all these reasons, the European Union can undoubtedly be

¹² RICHARD Yann, « Du territoire à la territorialité. Dialogue entre juristes et géographes », (p.15).

¹³ FMI Official site : <https://www.imf.org/external/datamapper/NGDPD@WEO/CHN/USA/EU>.

¹⁴ BLIM Olivier, « Les rapports entre l’Union européenne et l’Organisation mondiale du Commerce : quel dialogue possible ? », dans RAPP Lucien (dir.), CARME Nadège, PHILIPPE Alice, *Le droit international : entre espaces et territoires*, Institut Francophone pour la Justice et la Démocratie, 2020.

seen as the most influent european actor on the international scene, despite its crisis and internal dissensions, especially in european level with an extremely developed diplomatic network.

Besides, nowadays, multiple european States are still applying to join the UE : Albania, Serbia, Montenegro, Turkey, North Macedonia, Ukraine and Moldavia¹⁵ which candidatures were officially registered and recognized by the EU, making them official candidates¹⁶, while Bosnia-Herzegovina and Georgia have applied but their candidatures are yet to be officially accepted by the EU (it is worth noting however that the European commission on October 12, 2022, has recommended for Bosnia-Herzegovina to be granted the statute of candidate, but this decision remains to be unanimously approved by the 27 member States to be implemented). Even if other States like Switzerland, Norway and Iceland which have previously applied to enter the EU, ended up cancelling their applications for internal reasons (notably for Iceland, a failure to strike a deal with the EU about european fishing quotas), these States remain closely linked to the Union, as they have partly integrated the EU's territoriality by joining some of its internal spaces and by actively participating into various programs for the community development.

Moreover, the model of withdrawal from the EU showed by the United Kingdom in 2016 does not seem to have influenced other member States to follow the same path. The adhesion to the Union has indeed contributed to increase the economy of member States, thanks to the suppression of internal barriers: countries from the East and the South of Europe notably (Poland, Greece, Croatia, Hungary, Romania, Bulgaria, Portugal and Spain...) greatly benefited from the EU Internal Market and have generally registered a growth of the standard of living since their adhesion (even though the european debt crisis has affected some of them in recent years). Membership also offers politic security on international scene: being member of the Union, it's also being part of an influent organisation adding to the diplomatic weight of a State.

And despite internal dissensions about CFSP and its failures from the past, the EU has also been able to manifest its unity about some international conflicts: the last major crisis to date is the invasion of Ukraine by Russia in February 2022.

¹⁵ Ukraine and Moldavia have been granted the statute of candidate by the European Council in the summit of 23 and 24 June 2022. General Secretariat of the Council, « European Council meeting (23 and 24 June 2022) - Conclusions (EUCO 24/22) », *Consilium*, 24 June 2022: <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>

¹⁶ The granting of the candidate statute by the EU open the accession procedure for the candidate State. However, the process takes time : Turkey applied in 1987, was granted candidate statute in 1999, but is still not a member of the EU today, as the negotiations for adhesion (last step before the entry into the Union) have been suspended since 2019. Among the 7 candidate States, 5 of them (including Turkey) have entered into negotiations with the EU (Montenegro since 2012, Serbia since 2014, and lastly North Macedonia and Albania since July, 19, 2022).

§2 : The Ukrainian Crisis of 2022 : a new leading force for the european development?

For some, crisis in the community development that EU is actually facing is the direct consequence of an extension and an european construction too wide and too fast, so that the foundations previously established cannot keep up with the last evolutions, causing the mechanism to start crumbling. The UE would be then unable to support its ambitions, following the lack of support by a part of the member States and european citizens composing it. Therefore the EU would be confined to remain an “ *original form of political association leaning toward including States in a bigger assembly with its own identity, without removing their existence as States [...and] building new territorialities without infringing already existing territories*”¹⁷.

However, as we previously saw, the internal and external crisis can equally damage the European Union than serve as foundation to its strengthening : World War II marked the start of the european construction, the european debt crisis gave birth to the Banking Union, the legal conflicts between constitutional national courts and the CJEU on fundamental rights led to the community consecration of fundamental rights by jurisprudence and the CFREU critics against default of integration for national citizens of member States in the community process paved way to the European citizenship... Proof is today again shown by the Russian invasion of Ukraine in February 2022. While since the annexing of Crimea in 2014 and the support of separatist movements in Donbass, internal dissensions were shown about the common strategy to adopt with Russia, the EU this time has been able to show unity so as to condemn the Russian aggression and support Ukraine's resistance. The Union could thus help Ukraine, notably with the adoption of financial plans up to more than 1,2 billion euros to support the Ukrainian economy (and another subvention of 120 million of euros to contribute to the resilience of the Ukrainian State), and also the coordinated delivery of humanitarian aid and the management of Ukrainian refugees¹⁸. But the EU also enabled economic and diplomatic sanctions against Russia and Belarus (which closely supports Russian invasion): freezing of Russians assets and capital inside the Internal Market, access to the EU forbidden for Russians oligarchs and other individuals close to the government, individual economic sanctions also targeting Russian and Belarusian well-known politic individuals... Even a ban of Russians Schengen visa was exanimated end of August 2022 by the EU¹⁹. This new sanction has however not been approved, as some member States voiced some concerns, notably fearing

¹⁷ MARTI Gaëlle, « Territoire(s) et Union européenne », *Civitas Europa*, vol. 2, n°35, 2015, (p.25-39).

¹⁸ European Commission, « Aide de l'UE à l'Ukraine », regularly updated : https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine_fr.

¹⁹ DUMAS Elise, « L'Union européenne doit-elle interdire les visas aux touristes russes ? », *France info*, 18 August 2022 : https://www.francetvinfo.fr/replay-radio/le-monde-est-a-nous/lunion-europeenne-doit-elle-interdire-les-visas-aux-touristes-russes_5246536.html.

that it could affect their economy too much (by limiting tourism for example). The European Commission equally raised the issue that this ban could prevent the opposants of the Russian government, possible targets of retaliations measures, to effectively flee their country. The 27 finally decided to agree on the suspension of an agreement from 2007 between the EU and Russia that eased the process of visas delivery (which will make Schengen visa harder to obtain for Russians), but without completely banning Russian visas²⁰.

If, despite its consequent soft power, the EU is still far from having a general influence equal to the one of its 27 member States combined, this last crisis affecting the security of Europe could nonetheless relaunch the European development. Indeed, this crisis showed the effectiveness of a European Union united with its 27 member States speaking with a unique voice, even if division subsists on some matters: for example, should Ukraine benefit from an accelerated procedure of accession to the EU? Or on the question about the European embargo on Russian oil, to which Hungary was still opposed before the end of May 2022²¹, and finally about the ban of Russian visas inside the EU and Schengen, supported by some member States, notably from the East like Poland and Lithuania.

This crisis seems indeed to revive the debate about the necessity of a closer cooperation in foreign policy, and most of all the elaboration of a true European defense under the UE, to make more efficient its reaction against such threats. Reactions from members generally reluctant to these ideas can already be seen after the Russian invasion: Germany decided to massively increase its military budget to invest more than 2% of its GDP so as to modernize its army, and also wish to develop military investments in Europe with its close partners (including France)²². Member States like Finland and Sweden, which always had a tradition to remain neutral on international conflicts, recently changed their policy to support Ukraine and applied to integrate NATO by fear of a future Russian invasion against them. Denmark, which has always refused to participate in the CSDP, decided with a referendum of June 1st, 2022, to revoke its clause of opting-out so as to finally integrate this policy. Moreover, French president Emmanuel Macron also proposed²³ the creation of a new “European Political Community”, sort of intergovernmental confederation including the EU on one side and third party European States on the

²⁰ AFP, « Les pays membres de l’UE suspendent un accord facilitant la délivrance des visas pour les russes », *Le Monde*, 31 August 2022 : https://www.lemonde.fr/international/article/2022/08/31/les-pays-membres-de-l-ue-suspendent-un-accord-facilitant-la-delivrance-de-visas-pour-les-russes_6139690_3210.html.

²¹ An agreement was finally found on May 31, 2022, establishing an progressive embargo on Russian oil to reduce from 90% importations to EU for the end of 2022.

MURRAY Shona & EURONEWS, « Un embargo pétrolier de l’UE lourd de conséquences pour la Russie », *Euronews*, 31 May 2022 :

<https://fr.euronews.com/my-europe/2022/05/31/un-embargo-petrolier-de-l-ue-lourd-de-consequences-pour-la-russie>.

²² « L’Allemagne augmente ses dépenses militaires, la Suède change de doctrine », *RFI*, 22 February 2022 : <https://www.rfi.fr/europe/20220227-allemande-augmente-budget-militaire-armement-guerre-ukraine>.

²³ Emmanuel Macron, « discours lors de la conférence sur l’avenir de l’Europe à Strasbourg », speech from 9 May 2022 to the European Parliament :

<https://www.vie-publique.fr/discours/285102-emmanuel-macron-09052022-union-europeenne>.

other side. This confederation includes candidate States for the EU, but also States only interested in an increased intergovernmental cooperation in various domains (european politics, security, transports, education...), without having to join the EU. This new entity, with a renewed territorial perimeter, aims to allow an increased cooperation between the EU and other european States on geopolitics in Europe, so as to stabilize the region. This project could extend the geopolitical space of influence of the EU and could also lead to develop a new “three tiers” process of community integration :

- 1- With the member States having joined every community spaces and policies of the EU ;
- 2- With member States that are yet to join every community spaces and policies of the EU;
- 3- With third party States, potentially candidates to the EU or that may have already joined some community spaces or policies and wish, thanks to this new alliance, partly join the geopolitical territoriality of the EU without being forced to join the Union in its entirety.

This new structure would therefore also act as some kind of temporary “insertion gate” for EU’s candidates before they join the Union, while also allowing the latter to extend its sphere of influence, without having to accept the adhesion of european States that are not unanimously supported among the 27. It is worth noting that a similar project was already proposed by another French president, François Mitterrand more than 30 years ago, between 1989 and 1991 (after the fall of the Berlin wall and the crumbling of the soviet alliance). For Mitterrand, this “Confederation”, would have been “*both a forum of political dialogue and a framework for cooperation to treat of concrete questions which could only be effectively resolved on a pan-European level*”²⁴. This new institution should not replace other existing european organisations, but indeed be part of a political Europe based on a “Theory of sets”, defining a political Europe composed of multiple successive circles (each representing a european organisation), connected between each other by this Confederation which would have include all european States. The European Community (ancestor of the EU) would have been, then, the core of this “*enlarged circle*”²⁵. This Confederation, if it has been favorably received “*as long as it stayed at the stage of project*”²⁶, did however received critics :

-Some States, who wished “*the Community [European Community] and only the Community*”²⁷, feared, by accepting to join this Confederation, to see their application to the old European Community be slowed down for years. The Community would then appear as a club of privileged States inside this European Confederation like a “two-tiers” process of integration,

²⁴ MUSITELLI Jean, « François Mitterrand, architecte de la Grande Europe : le projet de Confédération européenne (1990-1991) », *Revue internationale et stratégique* 2011/2 (n°82), (p. 18 à 28).

²⁵ *Ibidem*.

²⁶ *Ibidem*.

²⁷ Words of François Mitterrand to the president of Czech Republic Václav Havel at the official lunch Mitterrand-Havel at the Elysée Palace, March 23, 1991.

which could have made adhesion to the European Community more difficult for potential candidates.

-Other States, mostly the United States, which did not want “*Europe to exist, who wished that it would stay a dependent continent*”²⁸, wanted to preserve their dominant influence on European politics, influence that could have been challenged by this project of European Confederation.

The project would be finally dropped in the conference of Prague of 13 and 14 June 1991 about the foundations of the European Confederation, which was supposed to define the guidelines for the future institutions. This failure, however, did not fail to rise reactions. If some saw in the confederation an “*idea launched too soon*”²⁹ or even a “*stillborn project*” too ambitious, by the word of the ancient French minister of Foreign affairs Roland Dumas³⁰, others lamented a “*lost occasion*”³¹ to advance in the European construction, regretting that the project has not been continued.

It remains to be seen whether or not the rising of tensions in Europe and the world amidst the Ukrainian crisis will allow this new project of a confederal nature supported by President Emmanuel Macron to emerge in a similar form, perhaps an alternative form more realistic, or if its suitability will again be questioned. The first summit of the European Political Community took place in Prague on October 6, 2022, as we write. It has reunited 44 heads of State from the European continent representing the 27, the EU’s candidates from the Balkans and the Eastern Europe, States that share with the EU the Internal Market rules (Iceland, Norway, Switzerland, Liechtenstein), and also the United Kingdom or Turkey. Even Azerbaijan and Armenia were represented while there is an ongoing armed conflict between them: they have officially met at the summit and were able to discuss together with the president of the European Council and Emmanuel Macron, for the establishment of an EU civil mission along the border between Armenia and Azerbaijan so as to ensure stability. Both States have agreed to cooperate with the mission. But while this is a positive result toward peace in Europe, this new community of a new kind and with a new territorial perimeter aimed first of all to symbolize a united Europe against Russian President Vladimir Putin and Belarusian President Alexandre Lukashenko who were both excluded from the summit. Again, it remains to be seen whether the Political Community will be able to emancipate from this first objective, notably to realise what Mitterrand wished for, or if it will constitute a “storage track” for candidate States to the EU³².

²⁸ *Ibidem*.

²⁹ VÉDRINE Hubert, *Les mondes de François Mitterrand*, Fayard, 1996, (p. 448).

³⁰ DUMAS Roland « Un projet mort-né : la Confédération européenne », *Politique étrangère* n°3/2001, (p 687-703).

³¹ BOZO Frédérique, *Mitterrand, la fin de la Guerre Froide et l’unification allemande- De Yalta à Moscou*, Odile Jacob, 2005, (p. 244-361).

³² CHOPIN Thierry, LEQUESNE Christian, MACEK Lukas, “Il faut profiter de la Communauté politique européenne pour préparer l’élargissement de l’UE », *Le Monde*, 4 October 2022.

In a wider context, remains the still open, yet delicate, question about the eventuality of a future european “federation”, limited to the perimeter of member States but by definition more integrated, with the creation of a federal european “State”, which would consequently possess, not a territoriality, but its own sovereign territory. The idea is progressing, despite the ambient Euroscepticism, if not the Europhobia. Some authors, like the philosopher Céline Spector, thus think that an “*European Federal Republic is possible : it would even be inevitable, regarding the reorganization of the world economy, its powers and the multiplication of its household inside the transnational networks*”³³.

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³³ SPECTOR Céline, *No démos ? Souveraineté et démocratie à l'épreuve de l'Europe*, Seuil, 2022, (p. 14).