

COMPARATIVE STUDY: EUROPEAN COUNCIL - COUNCIL OF THE EUROPEAN UNION - COUNCIL OF EUROPE

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Abstract

At present, in the period of rapid development of scientific and technological progress, it is impossible for states to exist without their interaction. The interaction between states is achieved through both economic and political relations. In the modern world, cooperation between states is achieved with the help of international organizations. International organizations not only regulate interstate relations, but also make decisions about the global problems of our time. The purpose of creating any international organization is to unite the efforts of states in one field or another: political, military, economic, monetary and financial and others. The purpose of this article is to study by comparison three European international organizations, in their diversity and their role in the international political process. To reveal how they were formed, the historical evolution, the role and positions of these international organizations on the European scene. The study presents their legal personality, the analysis of the differentiation of concepts such as competence, authority and capacity of international organizations.

Keywords: international organizations, European Council, Council of the European Union, Council of Europe.

JEL Classification: K33

1. Introduction

"Although they are considered derivative subjects of public international law, international organizations have a prominent role in international society, representing a form of harmonization of state efforts toward international cooperation."²

These international organizations have proven to be very effective in crisis situations, either in facilitating the peace and security of the Member States and in the evolution of cooperation and cooperation between them in various fields.

The multiplication and diversification of international organizations is due to the development of international society, the transformations undergone, especially in the twentieth century, such as: the two world wars, the formation of new states, the "cold war", the management of a continent divided into two ideological blocs, or the fall of communism.

Because international organizations are diverse; with various objectives, purposes and financial resources, the formulation of a definition has been complicated, therefore, in the literature we find many definitions related to them. G. Fitzmaurice, Rapporteur of the International Law Commission, within the UN International Law Commission, defined international organizations as: "an association of states, constituted by treaty, endowed with a constitution and common bodies and possessing legal personality distinct from that of Member States"³. Although doctrinally accepted G. Fitzmaurice's definition later in the 1969 Vienna Convention on the Law of Treaties, the theory was expressed that "the term international organization means an intergovernmental organization"⁴, as results from art. 2, letter i). Within the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, held on March 14, 1975, a new definition was formulated with respect to international organizations, as it results from art. 1, lit. of "an association of States constituted by a treaty, endowed with a common constitution and bodies and having a distinct legal personality from that of the Member States"⁵. Thus we conclude that international organizations "have an interstate character; are created by treaties concluded between states, as primary subjects of international law; they have permanent bodies, have autonomous will

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² Dan Vătăman, *Organizații europene și euroatlantice*, Ed. Lumina Lex, Bucharest, 2008, p. 13.

³ Raluca Miga-Besteliu, *Drept internațional. Introducere în dreptul internațional public*, Ed. All Beck, Bucharest, 2003, p. 135, *apud* D. Vătăman, *op. cit.*, p. 16.

⁴ Ion M. Anghel, *Dreptul tratatelor*, vol. 2, Ed. Lumina Lex, Bucharest, 2000, p. 1215.

⁵ Dan Vătăman, *op. cit.*, p. 16.

and legal personality distinct from that of the states that created them; they have functional competence and adopt acts which are directly assigned to them (independently of the Member States), and their activity is regulated, to a certain extent, directly by international law"⁶.

2. Classification of international organizations

International organizations can be classified according to several criteria, "established with difficulty due to the diversity of the constitutive acts of the organizations, the particular ways of accession of the states, as well as the functions established by statutes, in many cases, overlapping legal attributions or responsibilities. However, some general criteria can be established, based on which a certain typology of international organizations can be outlined, these being: composition, field of activity, structural or institutional, as well as the possibility of acquiring membership"⁷.

Depending on the area of action compared to the number of states participating in these organizations, we note universal international organizations, for example the UN and regional international organizations (consisting of states belonging to a certain geographical area).

According to the field of activity, international organizations can be classified into general international organizations, with a general or political purpose, and functional international organizations, which operate in different fields, such as: technical, economic, financial, etc.

International organizations with a general or political purpose may be involved in almost any matter of fundamental interest to Member States, such as the UN, the OSCE, except in areas excluded from their sphere of action.

From the point of view of the classification of international organizations, the widest category is occupied by specialized organizations, they can seek to develop and improve or initiate actions in certain fields (communications, meteorology, health, social, finance-banking or cultural).

Regarding the classification of international organizations according to the field in which they operate: political, economic, financial, social, technical, etc., it is necessary to remember two aspects. "On the one hand, the fact that the interdependence and multidimensional character of contemporary international cooperation leads to the interpenetration of the activities of organizations, being difficult to demonstrate that the field of activity of economic organizations does not include political aspects or political organizations do not pursue certain economic interests. On the other hand, given the nature of relations between States in international organizations and the powers with which they are vested, no governmental powers are transferred to them, and thus they cannot act beyond the will of the Member States⁸. Except for the UN Security Council, which, according to the sphere of competence in the application of Chapter VII, art. 39-51 of the UN Charter Action in the event of threats to the peace, violations of the peace and acts of aggression, according to which the UN may intervene in the event of such conflicts.

3. Creation of international organizations

International organizations are created following a conventional act, concluded by the subjects of international law that establish it, bearing the name of Covenant, Charter, Constitution, Statute, Constitutive Act. Usually, the constitutive act for the creation of an organization is negotiated within a diplomatic conference, convened at the proposal of some states that aim at the establishment of the organization, or by an already existing organization, at the initiative of its members. The elaboration of the text of the treaty, which represents the constitutive act of an international organization, is done in a varied and complex way. A preparatory committee for the conference drafts the treaty, which, after being debated or amended, is concluded by signing it, following negotiation, which has the same value as authenticating the negotiated text. "For this act to enter into force, each signatory state must

⁶ Ion Diaconu, *Manual de drept internațional public*, Ed. Lumina Lex, Bucharest, 2008, pp. 151 – 158.

⁷ Raluca Miha-Beșteliu, *Organizații internaționale interguvernamentale*, Ed. C. H. Beck, Bucharest, 2006, pp. 12-18, *apud* D. Vătăman, *op. cit.*, p. 17.

⁸ Dan Vătăman, *op. cit.*, p. 19.

follow a subsequent procedure by which it expresses its consent to be bound by the treaty, a procedure which may, depending on the domestic law of each state, take the form of ratification, acceptance or approval"⁹. For each constitutive act, in the final provisions, the conditions for entry into force are provided, varying depending on the character of the organization, the object of activity, the number of bodies it creates, etc. The constitutive act of an international organization establishes a new subject of international law, a determined existence, different and independent of the Member States that founded it.

4. Cessation of international organizations

The cessation of the validity of the constitutive acts, for the most part, does not depend on a certain period of time, but there are situations in which the founders of the international organization decide from the beginning, in what circumstances its dissolution or replacement may take place.

The reasons that could be the basis for the dissolution of an international organization are: the achievement of the objectives proposed at its establishment or the takeover of its functions by another organization. If one of the reasons led to the dissolution of an international organization, this action results in the annulment of some of the legal acts, and those that remain valid are assumed by the successor organization. The goods are taken over by the new international organization or are divided between the member states, according to the contribution quota to the organization 's budget.

5. Legal personality under domestic law

By the fact that international organizations have rights and obligations in domestic law relations, in the territory of any Member State, they are endowed with legal personality under domestic law. "The organization shall enjoy in the territory of each of its members the legal capacity necessary for the performance of its functions and the achievement of its purposes."¹⁰ Following the UN model, the articles of incorporation of the other international organizations included provisions of the same nature¹¹. Thus, we conclude that the personality of domestic law of international organizations is established following the signing and ratification of the constitutive acts, allowing them to intervene as legal persons in the domestic law of any Member State.

"It should be noted that the recognition of the personality of domestic law of international organizations is not equivalent to their assimilation with the subjects of domestic law in these states, because international organizations have some privileges and immunities derogating from common law."¹²

6. International legal personality

The analysis of the concept of subject of international law was made accurately by the International Court of Justice (ICJ), which in its advisory opinion of April 11, 1949, given at the request of the UN General Assembly on Reparation for damages suffered in the service of the United Nations, shows that the UN is a subject of international law, which means that it has the capacity to be the holder of international rights and obligations and that it has the capacity to exercise its rights through international complaints¹³. As a result, all international organizations, through the constitutive act, gain rights and arrogate their obligations within the international legal order.

⁹ Raluca Miga-Beștelu, *op. cit.*, pp. 21-22.

¹⁰ Chapter XVI - Miscellaneous provisions, art. 104 of the UN Charter, http://www.anr.gov.ro/docs/legislatie/internationala/Carta_Organizatiei_Natiunilor_Unite_ONU_.pdf

¹¹ Art. XII of the UNESCO Constitution http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html; art. 39 of the Constitution of the International Labor Organization, http://oim.ro/attachments/article/357/OIM_constitutia_legea_123_19_iun_1998.pdf; art. 2 of the CAER Statute, <http://www.monitoruljuridic.ro/act/statut-din-14-decembrie-1959-a-consiliului-de-ajutor-economic-reciproc-emitent-consiliul-de-ajutor-economic-reciproc-publicat-n-28415.html> etc.

¹² Dan Vătăman, *op. cit.*, p. 25.

¹³ "Reparation for Injuries Suffered in the Service of the United Nations. Advisory Opinion", in ICJ Reports, 1949, p. 179, *apud*, Dan Vătăman, *op. cit.*, p. 25.

Legal personality is manifested by the fact that they have the right: to conclude treaties, of legation, to present international complaints, to draw up norms and rules of international law, of control and/or sanctioning towards the member states.

The right to conclude treaties between organizations, with states and with other subjects of international law is enshrined in the Vienna Convention of 1986, through the provisions of art. 6. In general, treaties concluded by international organizations refer to "their administrative functioning and the activity they carry out (agreements on privileges and immunities, agreements on the headquarters of the organization, as well as agreements concluded with other organizations on cooperation between them, or coordination of their activities)."¹⁴ The right of legation (*ius legationis*) of international organizations is similar to the right of legation of states. The right of passive legation consists in the appropriation of one entity to receive the diplomatic mission of another entity; and the right of active legation consists in the ability to send a diplomatic mission to another subject of international law. The right to file international claims for damages suffered by the organization is not provided in the articles of association, but in order to perform their functions or to protect agents, "international organizations must have the opportunity to settle their disputes, which could result from the activity and which could oppose it to states or other international organizations"¹⁵.

7. The constitution of the European Council, the Council of the European Union and the Council of Europe and their evolution

7.1. Council of Europe

After the end of World War II, Europe was devastated by the devastating conflict, which took place mainly on the European continent. As a result, European states were determined to strengthen their economy, regain their influence and, even more, take all measures to avoid such a catastrophe in the future.

The term "Council of Europe" was first coined by British Prime Minister Winston Churchill during World War II. In October 1942 he declared: "As far as this goal may seem today, I firmly hope that the European family will act in close union in the Council of Europe. I look forward to and want the creation of the United States of Europe where any unhindered journey will be possible. I hope to see the economy of Europe studied as a whole. I hope to see a Council that regroups maybe 10 nations, among which the former Great Powers ..."¹⁶. On September 19, 1946, in Zurich, W. Churchill urged France and Germany to reach an agreement for the step-by-step implementation of the "Council of Europe", calling it a remedy which, miraculously, would completely transform the situation and, in a few years, will give Europe the same freedom and happiness as today in Switzerland [...] We must build the United States of Europe¹⁷. A year later, Duncan Sandys, a British politician, former minister in several governments, W. Churchill's son-in-law, stimulated the launch of movements aimed at Western European unity. These movements met in the group "International Committee for the Coordination of Movements for the Unification of Europe", convening on May 7-10, 1948, in The Hague, a congress attended by 800 personalities from 19 countries.

The congress took place in the "Knights' Hall" in the complex of the royal palace "Binnenhof" in The Hague, being patronized by Regent Juliana of the Netherlands and Prince Bernhard. "In the Gothic Hall was hoisted a huge flag with the letter "E" in red on a white background, at that time the common symbol of all movements for European unity. Winston Churchill, who was elected honorary president of the congress, also took his place in the rostrum, next to the sovereigns of the Netherlands."¹⁸

¹⁴ Ion Diaconu, *op. cit.*, p. 155, *apud*, Dan Vătăman, *op. cit.*, p. 26.

¹⁵ Raluca Miha-Besteliu, *op. cit.*, pp. 45-46.

¹⁶ Nicolae Ecobescu, Mariana Niștelea, *Manualul Consiliului Europei*, Autonomous Direction "Official Monitor", Bucharest, 2006, p. 32, *apud*, Dan Vătăman, *op. cit.*, p. 28.

¹⁷ *Ibid.*

¹⁸ *Les Pionniers de l'Europe communautaire*, Centre de recherches européennes de l'université de Lausanne, 1968, préface d'Henri Rieben, *apud*, Dan Vătăman, *op. cit.*, p. 29.

The plenary sittings were chaired by Anthony Eden and Paul van Zeeland, with a view to economic cooperation and the development of the defense capacity of Western countries; the group of federalists believed that the union should be formed as soon as possible and called for a partial transfer of sovereignty to the participating countries, leading to the establishment of a European federation, like the United States of America.

In the last session of the congress, a "Message to the Europeans" was adopted, written and read by Denis de Rougemont: "Together we will be able to build, tomorrow [...] the largest political party and the largest economic ensemble of the times our. Human history has never seen a stronger gathering of free people. War, fear, and misery have never been held in check by a more formidable adversary."¹⁹ The message also included some requirements that had to be met: the adoption of measures for the integration of the economies of the participating countries, recommended by the Economic Commission; the creation of a European assembly elected by universal suffrage; the opening of a united Europe to Germany; adoption of a charter of fundamental rights; the establishment of a supreme court of justice; setting up a European cultural center for children and youth²⁰.

At the meeting of the Advisory Council of the Treaty of Buxelles, held in July 1948, two months after the Hague Congress, Georges Bidault launched the first official proposal at government level on the establishment of a European parliament, received with some restraint by the states.

"On October 28, 1948, the International Committee organizing the Hague Congress created the "European Movement", a permanent official organization dedicated to the progress of European unification. Its honorary presidents became the Frenchman Léon Blum, Winston Churchill, the Italian De Gasperi and the Belgian Paul-Henri Spaak, who guaranteed its international and non-partisan character"²¹ a committee that met in Paris in the same month of 1948, the Franco-British side called for the establishment of a European Parliamentary Assembly, in opposition to the British delegation, which recommended a European Council, on issues of common interest, excluding military defense and economic problems, which fell to the OECE.

At the same time, the British delegation called for the creation of an Assembly of government delegates to the Committee of Ministers, rejecting the idea that it should have its own decision-making power, ie parliamentary. However, at the meeting of the Consultative Council of the Treaty of Brussels on 27 and 28 January 1949, Great Britain gave its consent to the establishment of a Parliamentary Assembly, but with an advisory role. The foreign ministers of the five states agreed to the creation of a Council of Europe consisting of a ministerial committee, whose meetings were held behind closed doors, and an advisory body, for which the meetings were public. They also decided to convene a conference of ambassadors to determine the responsibilities and organization of the new institution, the status of the Council of Europe, and invited Denmark, Ireland, Italy, Norway and Sweden to take part in the negotiations.

In early May 1949, ten foreign ministers met at Saint James's Palace in London to study the ambassadors' conclusions and find solutions to unresolved obstacles. Following this meeting, on 5 May 1949, Belgium, the Netherlands, Luxembourg, the United Kingdom, Ireland, France, Denmark, Norway, Sweden and Italy signed the Statute of the Council of Europe. "The official statement issued reads: The essential feature of the Statute [...] is the creation of a Committee of Ministers and an Advisory Assembly of the Council of Europe. The Committee of Ministers will be responsible for developing cooperation between governments, and the Consultative Assembly, expressing the aspirations of the peoples of Europe, will provide governments with the opportunity to remain in constant contact with European public opinion."²² The Statute of the Council of Europe entered into force on 3 August 1949, and immediately afterwards the first sessions of the Committee of Ministers and the Consultative Assembly took place in Strasbourg.

In the late 1980s, the Council of Europe, through its foreign ministers, expressed its desire for a dialogue with the socialist countries, and on June 8, 1989, even though the Iron Curtain was not

¹⁹ Dan Vătăman, *op. cit.*, p. 29.

²⁰ *Ibid.*

²¹ *Idem.*, p. 30.

²² Nicolae Ecobescu, Mariana Niștelea, *op. cit.*, p. 31.

removed, it granted Hungary, Poland, the Soviet Union and Yugoslavia special guest status. in the Parliamentary Assembly of the Council of Europe.

Even if at the beginning of its existence the Council of Europe sought to defend human rights, parliamentary democracy and the rule of law; extending the agreements on the European continent in order to establish the social and legal practices of the member countries, but also advancing the European identity, after the disintegration of communism the organization became a human rights watchdog for post-communist democracies in Central and Eastern Europe sustainability of political, legal and constitutional reform, along with economic reform.

Today the Council of Europe is composed of 47 states, another 6 states have observer status (Vatican, United States, Canada, Japan, Mexico and Israel) and received the candidacy of the state of Belarus. The permanent seat of the Council of Europe is the Palace of Europe in Strasbourg since 1977, occupying an area of 64,000 square meters, on nine levels, with 17 meeting rooms.

7.2. European Council

The European Council was not included in the initial treaties establishing the European Union. It has the quality of a body that brings together the heads of state and government of the Union, resulting from a historical process, in response to the requirements of high-level political cooperation between Member States, thus through the Single European Act, art. 2 and by the Maastricht Treaty, art. D. The European Council was regulated. According to the Maastricht Treaty, art. D, the European Council "gives the Union the impetus necessary for its development and defines its general political guidelines".²³

It should not be confused with the Council of the European Union, made up of ministers or the Council of Europe, which is an international organization made up of all the states of the European Union, as well as other states in Central and Eastern Europe.

The literature states that this "was the creation of diplomatic practices consisting of meetings at the level of the heads of state and government of the Member States of the European Union that aimed to overcome moments of crisis and adopt decisions essential to the smooth running of the European Union, such as the election of the European Parliament by direct universal suffrage, the creation of the Economic and Monetary Union, the accession of the new Member States, etc."²⁴

The timeliness of the summits was reconsidered after overcoming the institutional deadlock in which the Communities had entered, "resolved by the "Luxembourg Compromise" which recognized the "veto right" in the Council (1966), but also by the inefficiency of the Ministers of acting within the Council"²⁵.

The Treaty of Lisbon²⁶, signed by the EU member states on December 13, 2008, entered into force on December 1, 2009, preserves and completes the provisions of art. D, from the Maastricht Treaty, as follows: "The European Council provides the Union with the necessary impetus for its development and defines its general political guidelines and priorities".

On September 14, 1974, French President Valéry Giscard d'Estaing convened in Paris all the heads of state and government of the member states, with the theme of holding regular meetings. As a result, between 9 and 10 December 1974, it was also decided in Paris to set up the European Council, meeting for the first time in Dublin on 10 and 11 March 1975.

At first, after the establishment of the European Communities, the summit at the level of political cooperation conferences did not take into account Community issues, but in February 1961, at the Conference of Heads of State and Government in Paris, the issue of setting up a system of European political cooperation. This conference was followed by others: Bonn (July 1961), Rome (May 1967), The Hague (December 1969), Paris (October 1972), Copenhagen (December 1973),

²³ Maastricht Treaty on European Union (TEU), signed on 7 February 1992 and entered into force on 1 November 1993, <http://cursde.guvernare.ro/wp-content/uploads/2014/07/maastricht-1992.pdf>.

²⁴ Ioan Ciochină-Barbu, *Drept instituțional al Uniunii Europene, Monografii*, Ed. Wolters Kluwer, Bucharest, 2010, p. 102.

²⁵ Felician Cotea, *Drept comunitar european*, Bucharest, Wolters Kluwer, 2009, p. 272.

²⁶ <https://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.ro07.pdf>, consulted on 1.05.2021

Paris (December 1974), but no enjoyed a legal organizing framework, taking place exceptionally, where political issues were analyzed that could not be postponed, determined by the evolution of political events. At the Paris Conference of 9-10 December 1974, the final communiqué specified the decision of the Heads of State and Government to meet three times a year, or whenever necessary, seconded by foreign ministers. a Council of the Communities on political cooperation.

The initial legal basis of the European Council is laid by the Single European Act which specifies its creation, composition and frequency of meetings, in Title I, art. 2: "The European Council shall bring together the Heads of State or Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers of Foreign Affairs and a member of the Commission. The European Council meets twice a year."²⁷ However, according to the doctrine, "it has been given a legal basis without consecrating it as a new Community institution²⁸, being only a body of Political Cooperation and the European Communities", or "a court of political dialogue, at the level of the heads of the Member States. through its declarations, it establishes the general policies whose regulation belongs to the EU Council as a community institution".²⁹

The Treaty of Lisbon complements the provisions of the Single European Act regarding the European Council, deciding that meetings take place at least twice a year, while introducing the position of President, who was to be elected by qualified majority, for a period for two and a half years, having the right to renew the mandate only once.

Following the meetings, the European Council was tasked with presenting a report to the European Parliament and, each year, a report outlining the progress made by the European Union.

7.3. Council of the European Union

The Council of the European Union is the product of the governments of the Member States of the European Union, setting out the Community negotiating framework between national administrations. It is an intergovernmental authority that expresses state legitimacy, having many functions in the community system. Its basic norms are found in primary law: art. 26 - 30 TCECA, art. 145 - 154 TEC and art. 115 - 123 TCEEA.

Together with the Parliament and the Commission, the EU Council composes "the institutional triangle of the European Union. This tripartite structure is at the heart of major decisions in the field of community relations and the EU's relations with the Member States"³⁰.

From the provisions of the EC Treaty, amended by TFEU, art. 9C, it results: "The Council exercises, together with the European Parliament, the legislative and budgetary functions. It shall exercise policy-making and coordination functions under the conditions laid down in the Treaties." The initial treaties included for each of the three communities, a similar body: "The Special Council of Ministers within the ECSC; Council of the European Economic Community; Council of the European Atomic Energy Community. These bodies were set up and operated on the basis of the provisions of the respective treaties"³¹.

The Treaty of Brussels of 8 April 1965, which entered into force on 1 January 1967, merges the three Councils into a single one. In art. 1 "The Treaty provides for the establishment of a Council of the European Communities called the "Council", which shall replace the three existing Councils and exercise the powers and powers conferred on them by the original Treaties and the Merger Treaty."³² This Council was composed of the delegated ministers, who represented the governments of the Member States, as it appears from art. 2, Brussels Merger Treaty.

²⁷ <http://cursdegovernare.ro/wp-content/uploads/2014/07/actul-unic-european-1986.pdf>, consulted on 1.05.2021.

²⁸ F. Capotorti, *Le statut juridique de Conseil européen à lumière de l'Act unique*, Melangees Pescatore, Nomos Verlag, 1987, p. 79 et seq.; W. Wessels, S. Bulmer, *The European Council – Making in European Politics*, London: Macmillian and New York Sheridan House, 1987 *apud* I. Ciochină- Barbu, *op. cit.*, p. 103.

²⁹ Ștefan Munteanu, *Integrare europeană. O perspectivă juridico – filosofică*, Ed. C.H. Beck, Bucharest, 2006, pp. 125 – 126.

³⁰ Dumitru Mazilu, *Integrare europeană. Drept comunitar și Instituții europene*, 3rd ed., Ed. Lumina Lex, Bucharest, 2005, p. 111.

³¹ Art. 26 - 30 EEC Treaty, art. 145 - 154 EEC Treaty, art. 115 - 123 EAEC Treaty.

³² <http://cursdegovernare.ro/wp-content/uploads/2014/07/bruxelles-1965.pdf>, consulted on 1.05.2021.

At the time of the entry into force of the Maastricht Treaty, the Council was entitled "Council of the European Union"³³, being amended some previous provisions regarding the composition of the Council, which concern art. 146 of the EEC Treaty, art. 27 of the ECSC Treaty, art. 116 of the EAEC Treaty, art. 2 - 7 of the Brussels Treaty.

At that time the EU Council was an institution common to the two Communities, the EC and the EAEC, but they differed from one Community to another. The EU Council held powers deriving from the provisions of the TCECO/TCECA, when acting within them, and others deriving from the provisions of the TEC and the TCEEA, when acting within them. Competences were limited to the ECSC and broader to the EC and EAEC.

"The establishment of a single Council by the Merger Treaty of 1965 has not brought about a dramatic change in practice, because, since the first session of the EEC and EAEC Council on 25 January 1958, the EEC and EAEC Councils have had a Joint Secretariat, the same as the existing one. for the ECSC/ECSC"³⁴. The Council was composed of the representatives of the EU member states, as it results from art. 2 of the Merger Treaty of 1965 which replaces art. 27 TCECA, 146 TCEE and 116 TCEEA. It also consisted of a ministerial representative for each EU Member State, in accordance with Articles H7, G41 and E15 of the Union Treaty. They were empowered to engage the government of that state, so we conclude that the members of the Council are representatives of the Member States, with the help of which the states participate in the Community decision-making process.

According to the literature, the wording set out above shows the dual nature of the Council: Community institution vs. International Conference: "on the one hand of the Community institution, insofar as it is regulated by Community law it is governed by Community rules; on the other hand, as an institution representing the governments of the Member States"³⁵.

The fact that it is made up of government representatives gives it the quality of an authority to defend national interests, resembling an international organization, but because it can issue its own normative acts, the EU Council achieves the Union's own objectives. The representatives of the States within the Council shall express their national interests but shall not be entitled to act freely as members of the Commission and it is necessary to have a power to hire the government it represents. Representatives of the governments of the EU Member States in the Council, representing their interests, may be ministers, as well as other senior officials. Foreign ministers usually have the capacity of Member States' representatives on the Council in the formation of "general affairs". The ministers participating in the work of the Council are accountable to the Parliament of the country they represent for their work, but the decisions taken cannot be changed.

"The decision-making process of the Council is subject to the norms provided in primary and secondary law; they state, inter alia, that representatives of the governments of the Member States may adopt agreements "only as members of the Council" and "not as members of governments", which demonstrates the status of the Council: that it is more than an intergovernmental conference"³⁶.

The Lisbon Reform Treaty changes the composition of the Council and the way it votes. Member States have reached an agreement on the redistribution of Member States' votes in the Council, which will take place in several stages between 2014 and 2017. The new voting system is simpler, so a decision can be taken if 55% of Member States agree to this or if the states that vote for it make up 65% of the EU population. At present, Member States each have a number of votes in the Council directly proportional to the number of citizens.

Decisions taken by the EU Council become binding on the Member States, "part of the *acquis communautaire*, which must be adopted by all existing Member States, but also by future members"³⁷.

³³ Decision no. 93 - 591 of November 8, 1993 (OJEC no. 281 of November 16, 1993). The Council is hereinafter referred to as the "Council of the European Union" and is hereby designated in particular in all acts which it adopts, including those adopted under Titles V and VI of the Treaty on European Union; thus, the political declarations adopted by the Council in the framework of the common foreign and security policy are made in the name of the "European Union".

³⁴ Iordan Gheorghe Bărbulescu, *Procesul decizional în Uniunea Europeană*, Ed. Polirom, 2008, p. 230.

³⁵ *Idem*, p. 231.

³⁶ *Idem*, p. 231.

³⁷ This condition is included in the EC/EU Accession Treaties.

8. Conceptual delimitations regarding the European Council, the EU Council and the Council of Europe

8.1. The purpose of the Council of Europe

According to art. 1, letter a), Chapter I, of the Statute of the Council of Europe, "the aim is to achieve greater unity among its members in order to safeguard and realize the ideals and principles that are their common heritage and to facilitate their economic and social progress".³⁸

The Council of Europe has competence in all areas related to European society, except for matters of national defense, as it results from art. 1, lit. d, Chapter I, of the Statute.

Since its creation in August 1949, the Council has been a force for peace and cooperation in the common European heritage, human rights and democracy.

"Human rights and pluralist democracy, the rule of law and the security of the citizen, the fight against racism, xenophobia and intolerance, the protection of national minorities, social cohesion and quality of life, cultural cohesion and cultural pluralism, judicial cooperation are all interests of the Council of Europe"³⁹.

8.1.1. Human rights

As a central mission, the Council of Europe permanently promotes and ensures fundamental human rights and freedoms, by creating systems of effective control and protection of fundamental human rights and freedoms; identifying dangers that threaten human rights and human dignity; community awareness of the value of human rights and; promoting human rights education and training. In order to achieve the protection of fundamental human rights and freedoms, the Council of Europe has concluded: the European Convention on Human Rights; European Social Charter; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; The Framework Convention for the Protection of National Minorities, but also many other conventions, treaties and agreements, which are intended to protect the 800 million inhabitants of Europe.

The European Convention on Human Rights, signed in Rome on November 4, 1950 and entered into force in 1953, recognizes the Council of Europe as an organization advocating for the protection of human rights. Over time, the Convention has been amended and supplemented by 14 protocols, depending on changes within countries or in relations between European states.

The European Social Charter, signed in Turin in 1961, was adopted to guarantee economic and social rights. This document was supplemented by three protocols: the Additional Protocol of 5 May 1988, which guarantees new rights; Protocol of Amendment of 21 October 1991 reorganizing the review procedure and Additional Protocol of 9 November 1995 laying down the procedure for collective complaints and European Convention on Social Security (1972) and the European Convention on the Status of Immigrant Workers (1977). The Charter aimed to guarantee the fundamental rights regarding working conditions: the right to work; the right to working conditions and fair pay; trade union law, etc. and social cohesion: the right to health protection; the right to social security and the right to social and medical assistance; the rights of children and adolescents, mothers, families, people with disabilities, migrant workers and their families, etc. The application of the Charter in the Member States is monitored by an international control system. State governments shall periodically submit reports on the status and status of compliance with the provisions of the Charter. 15 independent and impartial members, appointed by the Committee of Ministers for a period of 6 years, which can only be reconfirmed for another 6 years, form the European Committee of Social Rights (ECHR), which has the role of evaluating the way in which in practice the provisions of the Charter in the Member States.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment

³⁸ www.irdo.ro/file.php?fisiere_id=4&fmt=pdf, consulted on 1.05.2021.

³⁹ Dan Vătăman, *op. cit.*, p. 37.

or Punishment, which entered into force in 1989, guarantees humane conditions of detention for persons detained in prisons, psychiatric institutions and police stations. To this end, a European Committee for the Prevention of Torture has been set up, from independent and impartial experts, numerically equal to that of the Member States, which carry out unannounced visits to places of detention in the territories of the States Parties to investigate treatment of individuals. of freedom.

The Framework Convention for the Protection of National Minorities, adopted in 1994, entered into force on 1 February 1995, being the first international legal instrument established to protect the rights of national minorities. The protection of minorities and the rights and freedoms of persons with regard to minorities belongs to the international protection of human rights and therefore falls within the scope of international cooperation, constituting individual individual rights and because each provision of the Convention addresses any person belonging to a national minority.

8.1.2. Legal cooperation

From a legal point of view, the Council of Europe makes an important contribution to aligning the legal systems on the European continent, based on the rules adopted within the organization. The main purpose is to support the stability and development of state bodies and democratic procedures at the national level, and to promote respect for the rule of law. Legal cooperation between the organization and European states supports the profitability of justice by reducing procedures, the fight against corruption, organized crime, finding ways to solve new problems arising from scientific and technological progress.

In the context of legal cooperation, the Council of Europe adopts conventions, binding on the states that ratify them (member or non - member), or recommendations setting out guiding principles.

Due to the discussions within the Ad-hoc Committee of Legal Advisers for Public International Law (CAHDI), the organization has made a considerable contribution to the development of public international law and reaching an agreement on different points of view. CAHDI is the only pan-European body where lawyers from foreign ministries present their views on the progressive development and codification of public international law. This committee meets twice a year, with the main aims of evolving the role of public international law and reaching close views on it; the establishment of a framework for international cooperation on strengthening the role and influence of public international law by expressing the views and experience of Member States' lawyers; analyzing the novelties of international law and confronting the experience and practice of states in solving them; studying the work of other bodies in the legal field and developing common views of the Member States.

In 1990, the organization set up the Venice Commission (European Commission for Democracy through Law), in order to collaborate in the European legal field, by studying the constitutional, legislative and administrative principles and techniques that allow the application of the fundamental principles of the European Council.

8.1.3. Promoting democracy

Another key goal of the organization is to promote and strengthen local and regional democracy in the Member States, to issue and enforce rules on the proper functioning of the state, its central bodies and other structures.

"The activities undertaken in order to achieve this objective are carried out on several complementary levels, namely: carrying out a continuous exchange of information and experience between Member States on issues related to local and regional democracy; protection and promotion of cultural and spiritual diversity at local and regional level; supporting Member States, especially those in Central and Eastern Europe, in carrying out reforms and strengthening their democratic systems, including in the field of local and regional democracy; expanding cooperation between ministers responsible for local and regional public administration issues; promoting cross-border cooperation as an effective means of strengthening democratic security and stability and as an

important factor in building trust between neighboring states; actively supporting the objectives of the Stability Pact for South-Eastern Europe with a view to local democracy and cross-border cooperation"⁴⁰.

8.1.4. Education

In the field of education, the Council of Europe contributes to the identification of major educational problems in the context of the new Europe; estimates the actions, directions and alternatives of educational policies in Europe; facilitates dialogue at European level between the partners involved, through the exchange of information, the propagation of new concepts and positive models.

The Council of Europe's programs in the field of education and culture are administered by steering committees that address issues of education, higher education and research, culture and cultural heritage.

The Bologna Process is the most valuable and extensive reform in the field of higher education, registered by the Council of Europe, with the aim of establishing a sphere of European higher education by 2010, following which the qualifications acquired are correctly recognized; objective that is reflected in six directions, precisely established in the Bologna Declaration: "a system with easily identifiable and comparable levels; a system based in principle on two cycles: one relevant to the labor market, the second requiring the completion of the first cycle; a credit accumulation and transfer system; mobility of students, teachers, researchers, etc.; cooperation for quality assurance; the European dimension of higher education"⁴¹.

8.2. Purpose of the European Council

The European Council is characterized by the functional duality of the Community space and that of political cooperation. Through the TEU, it wanted to go beyond this aspect, giving it a global character, turning it into the political decision-making center of the Union. According to art. 4, para. 1 of the Treaty on European Union, it "impels the development of the European Union".

The European Council is not precisely determined at Community level, or in the field of cooperation on JHA, but only in cooperation on CFSP issues: "art. J8, when assigned responsibilities in establishing the general principles and guidelines of the CFSP; art. J3, when it is stated that the general guidelines and principles established by the European Council form the basis for the adoption of Joint Actions by the Council; art. J4.6, where, regarding the European Council, it is established that it will receive a report from the Council which will contain an assessment of the progress and experience gained in security and defense, which is the basis for reviewing the rules according to art. N2 TUE"⁴².

Within the European Council, political decisions are taken regarding the future of the European Union, "decisions that establish the strategic orientations, principles and directions of the integration process; given answers in the case of major problems facing Community policies; decided to enlarge the Union and to start the procedures for amending the Treaties; statements on common foreign and security policy"⁴³. At the same time, debates are taking place and political decisions are being taken in crisis situations triggered within the European Union, finding solutions for easing the misunderstandings that arise between Member States, either in terms of EU institutions or in bilateral relations. This role was given to him after the London Conference in 1977, so the European Council acquires the decision-making role in matters that are suspended between Member States, an attribution correlated with the role of mediator in political matters where opinions differ, so that the

⁴⁰ Nicolae Ecobescu, Mariana Niștelea, *op. cit.*, pp. 234-235, *apud* D. Vătăman, *op. cit.*, p. 44.

⁴¹ Joint Declaration of the Ministers of Education of Europe, signed on the occasion of the Conference of the Confederation of Rectors of the European Union (18-19 June 1999) by the Ministers of Education of 29 European countries.

⁴² Iordan Gheorghe Bărbulescu, *Procesul decizional în Uniunea Europeană*, Ed. Polirom, Bucharest, 2008, p. 269.

⁴³ Felician Cotea, *op. cit.*, p. 274.

solution found satisfies all Member States.

Even if he does not hold legislative positions, "indirectly, by ordering the Council to carry out the political decisions taken, he does so."⁴⁴

In addition, its fundamental role in the efficient functioning of the EU's "institutional machinery" cannot be denied. The European Council is a new space for cooperation between states in the field of foreign policy. Justice and Internal Affairs (JIA), the future of the EU, EU enlargement, EU reform, adoption of financial perspectives, etc.⁴⁵

The EU Treaty, as amended by the Amsterdam and Nice Treaties, determines the powers of the European Council: according to art. 4, paragraph 1, of the Maastricht Treaty, stimulates the development of the EU, deciding the future evolution, in this sense the general political orientations of the Union are determined, foundation on which all policies and actions are built and correlated, or positions; according to art. 13, par. 2, point 1 and par. 3, point 2 of the Maastricht Treaty, as regards the common foreign and security policy, states that general principles and guidelines are defined in this area, including defense, and the European Council, on the recommendation of the EU Council, decides on common strategies will be implemented by the Union, where the Union has important common interests; from art. 99, para. 2, point 2, of the Treaty establishing the European Community, shows that economic policy is a matter of common interest in the EU, so the European Council discusses and adopts solutions regarding the general guidelines of economic policies in the Member States, following the report of the EU Council, which includes a draft general guidelines for these policies, approved by a qualified majority on a proposal from the European Commission; adopts political decisions for all cases, to which the EU Council cannot find solutions, due to their importance or complexity, or due to the political obligation to be assumed that goes beyond its competence. However, from art. 4, para. 3 of the Treaty on European Union, it follows that the European Council also has a duty to present to the European Parliament a report containing the conclusions of each summit and each year a report on the evolution of the integration process.

"The general guidelines, strategies, declarations and resolutions are documents adopted by the European Council following the debates and negotiations taking place at the summits, but these acts do not produce legal effects, which is why they cannot be subject to control and interpretation by the Court of Justice of the European Union"⁴⁶.

8.3. Purpose of the Council of the European Union

At the level of the European Union, the interest of the states is represented by the Council of the European Union, through which the essential policies and guidelines of the Union are implemented.

It is also the main Community legislative body; "it is a Community institution, but at the same time an intergovernmental one, appearing in the first case in cases where it adopts normative acts that fall within the scope of activity of the Communities and the Union, and in the second when the ministers that compose it make decisions in matters which exceed the Community interest".⁴⁷

The EU Council is made up of representatives of the Member States, acting in defense of national interests.

As the acts it issues produce binding effects on the territory of the Member States, the Council of the European Union is a supranational institution.

According to art. 145 TEC, the purpose of the EU Council is to ensure the coordination of the general economic policies of the EU Member States, adopts decisions, gives the Commission, through the documents it adopts, the capacity to implement the rules it decides, having the power to impose certain conditions in order to capitalize on this capacity.

Through the Council of the European Union, most of the legislation is adopted at Union level,

⁴⁴ Corina Leicu, *Drept comunitar*, Ed. Lumina Lex, Bucharest, 1998, p. 76.

⁴⁵ I. Gh. Bărbulescu, *op. cit.*, p. 266.

⁴⁶ Tudorel Ștefan, *Introducere în dreptul comunitar*, Ed. C. H. Beck, Bucharest, 2006, p. 12, *apud*, F. Cotea, *op. cit.*, p. 276.

⁴⁷ Ion P. Filipescu, Augustin Furea, *Drept instituțional comunitar european*, 5th ed., Ed. Actami, Bucharest, 2000, p. 125.

together with the European Parliament, therefore the legislative function is exercised.

The co-decision procedure is usually applied for the adoption of Community legislation, a plan in which the EU Council and Parliament are on an equal footing. In other areas, such as the accession of a new state to the European Union, the assent of the EP is sufficient, with the power to approve or reject the proposal, but cannot change it. There are areas where the EU Council is required to consult the EP, for example in the field of agriculture or economic policy. At the same time, it coordinates the economic policies of the Member States, but is also involved in areas such as education, employment or public health.

The Council concludes international agreements between the Union and other non-member states, or international organizations, on taxation, company law, consular protection, but also within the framework of police and judicial cooperation in criminal matters. It also exercises the budgetary function, deciding each year the EU budget, together with the European Parliament, "the role of the Council is to take final decisions on compulsory expenditure, resulting from the provisions of the Treaty or other documents adopted on its basis, such as: financing of international agreements, employee pensions, etc."⁴⁸

The development of the common foreign and security policy (CFSP) in the Union is carried out through the EU Council, the body being the main forum for conducting intergovernmental cooperation. Each Member State acts independently in this area, but joint decisions are taken in this area within the Council of the European Union. To respond more effectively to international crises, the "Rapid Reaction Force" has been set up to carry out humanitarian, rescue, peacekeeping and crisis management missions, working with the Political and Security Committee, the Military Committee of the European Union and the Military Staff of the European Union.

Coordinates police and judicial cooperation in criminal matters in order to combat cross-border crime. To this end, it shall coordinate cooperation between the courts, police forces, customs services and immigration services of the Member States of the Union.

8. Conclusions

The creation and existence of international organizations open up wider opportunities for the rapprochement of the entire state and contribute to the rapid development of civilization.

All relations that exist between states are regulated by themselves through the international organizations they create. These international organizations have emerged at a certain stage in the development of human society.

The historical knowledge of the creation of international organizations allows us to follow the whole complex path of the emergence of interaction between states. Given the problem from a historical point of view, one can understand what principles were based on and how international relations have improved and what humanity is striving for.

A characteristic feature of human development is the constant improvement of technical progress, economic and cultural life of all peoples, hence the increasing proportion of international relations. Hence the need to solve international problems, but not with the help of military force, but through established international organizations. Increasing the role of international organizations creates certain guarantees for states, both in resolving various disputes and in preventing military conflicts. The existence and creation of international organizations open up wider opportunities for bringing humanity closer together and contribute to the fastest development of civilization. It should be noted that at the current level of relations, humanity has increasingly begun to solve problems together.

Bibliography

1. Dan Vătăman, *Organizații europene și euroatlantice*, Ed. Lumina Lex, Bucharest, 2008.

⁴⁸ Institutional Agreement of 6 May 1999, published in the C series of the Official Journal, of 18 June 1999 (C172) <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=OJ:C:1999:172:TOC>.

2. Raluca Miga-Beșteliu, *Drept internațional. Introducere în dreptul internațional public*, Ed. All Beck, Bucharest, 2003.
3. Ion M. Anghel, *Dreptul tratatelor*, vol. 2, Ed. Lumina Lex, Bucharest, 2000.
4. Ion Diaconu, *Manual de drept internațional public*, Ed. Lumina Lex, Bucharest, 2008.
5. Raluca Miga-Beșteliu, *Organizații internaționale interguvernamentale*, Ed. C. H. Beck, Bucharest, 2006.
6. Nicolae Ecobescu, Mariana Nițelea, *Manualul Consiliului Europei*, Autonomous Direction “Official Monitor”, Bucharest, 2006.
7. Ioan Ciochină-Barbu, *Drept instituțional al Uniunii Europene, Monografii*, Ed. Wolters Kluwer, Bucharest, 2010.
8. Felician Cotea, *Drept comunitar european*, Bucharest, Wolters Kluwer, 2009.
9. F. Capotorti, *Le statut juridique de Conseil européen à lumière de l’Act unique*, Melangees Pescatore, Nomos Verlag, 1987.
10. W. Wessels, S. Bulmer, *The European Council – Making in European Politics*, London: Macmillian and New York Sheridan House, 1987.
11. Ștefan Munteanu, *Integrare europeană. O perspectivă juridico – filosofică*, Ed. C.H. Beck, Bucharest, 2006.
12. Dumitru Mazilu, *Integrare europeană. Drept comunitar și Instituții europene*, 3rd ed., Ed. Lumina Lex, Bucharest, 2005.
13. Iordan Gheorghe Bărbulescu, *Procesul decizional în Uniunea Europeană*”, Ed. Polirom, 2008.
14. Iordan Gheorghe Bărbulescu, *Procesul decizional în Uniunea Europeană*, Ed. Polirom, Bucharest, 2008.
15. Corina Leicu, *Drept comunitar*, Ed. Lumina Lex, Bucharest, 1998.
16. Tudorel Ștefan, *Introducere în dreptul comunitar*, Ed. C. H. Beck, Bucharest, 2006.
17. Ion P. Filipescu, Augustin Fuerea, *Drept instituțional comunitar European*, 5th ed., Ed. Actami, Bucharest, 2000.