

DOI: <https://doi.org/10.34069/AI/2023.62.02.17>

How to Cite:

Pasechnyk, O. (2023). Suprastatehood and supranationality in the prism of modern international law. *Amazonia Investiga*, 12(62), 182-188. <https://doi.org/10.34069/AI/2023.62.02.17>

Suprastatehood and supranationality in the prism of modern international law

Наддержавність та наднаціональність у призмі сучасного міжнародного права

Received: February 18, 2023

Accepted: March 29, 2023

Written by:

Olena Pasechnyk¹<https://orcid.org/0000-0002-2032-1851>

Abstract

Suprastatehood and supranationality is a legal quality of an international organization that allows it, following the procedure approved by the member states, to make binding decisions, including without the direct consent of an individual state. In modern international law, the role of suprastatehood and supranationality has changed. Therefore, taking into account the dynamics of development and the rapidity of change, it is necessary to analyze the place of suprastatehood and supranationality in the prism of modern international law. The purpose of the work is to examine the peculiarities of the influence of supranational institutions on international relations and international law. The methodological basis of this study is such methods as a method of formal-logical analysis, historical method, comparative method, and functional method. As a result of the conducted research, the peculiarities of the manifestation of suprastatehood and supranationality in the prism of modern international law were analyzed. Definitions of the terms "suprastatehood", "supranationality", "supranational Union" are provided. The peculiarities of the contractual regulation of relations between states and the impact of such regulation on the international legal order and international law are remarked on. It is finalized that the presence of supranational and suprastatehood institutions is a characteristic feature of modern international relations.

Keywords: supranationality, suprastatehood, international law, European Union, integration.

Анотація

Наддержавність та наднаціональність є правовою якістю міжнародної організації, що дозволяє їй, відповідно до затвердженої державами-членами процедури, приймати рішення обов'язкового характеру, в тому числі без прямої згоди на те окремої держави. У сучасному міжнародному праві роль наддержавності та наднаціональності змінилася. Тому, зважаючи на динаміку розвитку та стрімкість зміни, важливо проаналізувати місце наддержавності та наднаціональності у призмі сучасного міжнародного права. Метою роботи є аналіз особливостей впливу наддержавних та наднаціональних інституцій на міжнародні відносини та міжнародне право. Методологічним підґрунтям даного дослідження слугують такі методи, як: метод формально-логічного аналізу, історичний метод, порівняльний метод та функціональний метод. В результаті проведеного дослідження проаналізовано особливості прояву наддержавності та наднаціональності у призмі сучасного міжнародного права. Надано визначення понять "наддержавність", "наднаціональність", "наднаціональний Союз". Зауважено на особливостях договірного врегулювання відносин між державами та впливу такого врегулювання на міжнародний правопорядок та міжнародне право. Підсумовано, що наявність наддержавних та наднаціональних інституцій є характерною рисою сучасних міжнародних відносин.

Ключові слова: наддержавність, наднаціональність, міжнародне право, Європейський союз, інтеграція.

¹ Ph.D., Associate Professor of the department of international and European law of the National University "Odesa Law Academy" (Ukraine).

Introduction

The issues of suprastatehood and supranationality in international law are quite controversial. On the one hand, this is due to the lack of definition at the international level about the content of superpower. On the other hand, supranationalism and supranationalism without normative consolidation are often found in the activities of international organizations, including the European Union, the North American Union, and others.

The problem arises of the relationship between supranationality and the sovereignty of member states of international entities (organizations, associations, etc.). In particular, there is a duality of positions regarding whether the presence of supranational elements in the structure of a certain international organization leads (does not) to limiting the sovereignty of its member states.

There are positions that even when a supranational organization qualifies as a confederal union of states that acts in the international arena not only on its behalf but also on behalf of its members, the latter do not lose their sovereignty, because they simply transfer part of their powers to a jointly created to the union. Although there are positions on the limitation of the sovereignty of such states. Several scholars arguing the existence of mutual obligations towards other member states, the existence of a common policy, and other factors, believe that being a member of a suprastatehood association, the "effectiveness" of the state is limited.

Given the above, the question of the study of suprastatehood and supranationality in the context of modern conditions of international law is extremely relevant and requires research.

The article analyzes the peculiarities of the doctrinal consolidation of the concepts of suprastatehood, supranationality, "supranational Union" and others. The peculiarities of the functioning of such supranational and suprastatehood entities as the Council of Europe, the European Union, and the North American Union have been studied in detail. Modern trends in international law and the activities of supranational and suprastatehood entities as an integral part of international relations are noted.

Theoretical Framework or Literature Review

During the study of the phenomenon of suprastatehood and supranationality in the context of modern international law, the research of such scientists as Baimuratov, Vegera, Vyshnyakov, Voytenko, Vodyannikov, Zadorozhna, Yefimenko, Maletych, Matveeva, Moiseev, Skorokhod, Khomenko, Shperun, Yakovyuk, Kiljunen, Rosenau, Amerasinghe was analyzed.

Thus, Baimuratov (2022) analyzed the peculiarities of the constitutionalization of international public law and the internationalization of the constitutional legal order of states in the context of the strategic formula of legal globalization. The author noted that the formation and development of the architecture of modern international public law, its institutional and structural system, are usually related to its branch structure, however, today, in the formation of new branches, an important role is played by the fundamental strategic-paradigmatic and functional-status tendency, which actually transformed into the corresponding formula of a new form of globalization - legal, which has the following nomenclature – constitutionalization of international public law and internationalization of the constitutional legal order of states. Moreover, Vegera (2018) considered some aspects of the relationship between the supranationality of the EU and the sovereignty of the member states. The author concluded that the presence of manifestations of supranationalism in the essence of the European Union does not harm state sovereignty, although it somewhat limits it. Such restriction is carried out only with the consent of the states and within the limits established by them, which are determined by the norms of Union law and recognized by the national legislation of the EU member states. In general, it was concluded that supranationality and state sovereignty are mutually determined, and their interconnection is a necessary feature of an integration association.

Further, Vyshnyakov (2014) studied supranationality as a legal phenomenon in his work. The researcher concluded the interconnectedness and interdependence of supranational and national law.

Additionally, Voytenko (2009) examined supranational institutions of the European Union. Vodyannikov (2001) also explored supranationality in European Union law in detail. Thus, the author investigated the phenomenon of

supranationality, which arises as a result of the activities of intergovernmental organizations and the transfer of part of their sovereign powers to them by their member states. It is substantiated that by acquiring membership in a certain international organization, states do not lose their sovereignty, because they continue to act in the international arena as independent subjects of international relations, the theoretical approaches of domestic and Western schools of international law are given, based on which it is determined that modern science offers separate concepts of supranationality, without, however, creating a single universally recognized theory. It is concluded that, by joining an international organization with supranational elements of regulation, states exercise their sovereign rights and international legal personality, and do not lose them.

Modern principles of international law in the hierarchy of norms of international, supranational, and national law are analyzed in the work of Zadorozhna (2019). Features of the application of the principle of subsidiarity as a balance of the interaction of institutions were studied by Yefimenko (2022). The author emphasizes the importance of understanding the fundamental ideas and concepts that form the basis of modern principles of administrative law, their genesis, and influence on the processes of state formation, and the issue of the distribution of competencies in the hierarchy of subjects of different levels (in this case, the principle of subsidiarity), which, in their turn, actively influence mutual relations in society, and as a result, further development and potential improvement of their interaction.

The question of the ratio of supranational and national administrative proceedings in the countries of the European Union and Ukraine was analyzed in the study of Maletych (2022).

What is more, Matveeva (2022) examined current transformational processes in international private law.

The transformation of the superpower of the European Union after the entry into force of the Treaty of Lisbon was analyzed by Moiseev (2012). The author concluded that the basis of the existence of a suprastatehood is the institutional mechanism of international organizations. At the same time, suprastatehood can manifest itself at various stages of the activity of an international organization, regardless of the indication of this quality in its statutory documents. The essence of the phenomenon of suprastatehood lies precisely

in the ability and opportunity of almost any international organization to make decisions that are binding on member states.

Problematic issues related to ensuring the right to sovereignty in the law of the European Union were analyzed by Skorokhod (2012).

It should be remarked that Khomenko (2004) studied certain issues regarding international legal cooperation within the framework of the North American Free Trade Agreement. Furthermore, Shperun (2012) investigated in detail the question of the supranational status of the International Monetary Fund. Finally, Yakovyuk (2008) researched the European Union through the lens of an international organization.

Modern conceptual approaches to the law of the European Union are analyzed in the work of Yavorska (2012).

Separate issues regarding the institutional principles of the European Union and other suprastatehood and supranational entities are explored in the works of Kiljunen (2004), Rosenau (1998), and Amerasinghe (1996).

Methodology

During the study of the phenomena of suprastatehood and supranationality through the prism of modern international law, the method of formal-logical analysis was used. This method helped to research and study the norms regulated in the framework of international legal relations and regarding the activities of international organizations and their place in the states. In particular, the formal-logical method as a means of mental activity of people made it possible to better understand and investigate the objects of this research. Therefore, the formal-logical method plays a vital role in scientific activity and scientific knowledge and helps to solve specific theoretical and practical problems in the field of international law and to acquire new knowledge in the process of cognitive conditioning.

The application of the historical method helped to study the norms governing the activities of international and supranational unions in the process of their formation and development. At the same time, it is worth noting that the historical method was used in the study as a method of studying the development of social phenomena from their inception to their termination, as well as their current state (due to the sequential disclosure of the properties,

functions, and changes of the reality under investigation in the course of its historical movement). At the same time, the historical method was used together with the comparative method to compare supranational and supranational formations in space and time and identify similarities and differences between them. Also, the interaction of historical and typological methods was used to identify common features in spatial groups of historical events and phenomena or to identify homogeneous stages in their continuous-time development. The application of the tools of historical and systemic methods provided an in-depth analysis of socio-historical systems, revealing the internal mechanisms of their functioning and development.

The comparative research method is of great importance for the conducted research. With the help of this method, the general and special were identified, and the norms of the EU legal system itself, as well as the norms of member states, other socio-political systems, and international organizations, were compared. The methodological toolkit of comparative analysis of supranational and supranational politics is based on the principles of similarities and differences, deductive theoretical models of organizations, and inductive methods of their verification with the help of diachronic-historical and synchronous-functional methods of data collection. In addition, the work compares the impact of regulatory and legal regulation of various supranational institutions and their peculiarities of activity and development due to the cause-and-effect relationship of legal consolidation of provisions on activity and their implementation in practice (EU, MERCOSUR, NAFTA, etc.). Also, the basis of the comparison is the agreements that regulate the activities of these organizations and their influence on the legislation of individual participating countries.

The functional research method played an equally important role. When using this method, the functions of individual power bodies of individual Communities, the European Union, and other supranational and supranational institutions as a whole were studied and analyzed. The extraction of such an approach through the prism of the functional characteristics of various organs, and their real activity, helped to understand not only the formal place of the latter in the system of organs but also the actual situation, actually performed functions, and opportunities for further development and transformation.

Results and Discussion

Supranationality and suprastatehood are legal qualities of an international organization that allows it, following the procedure approved by the member states, to make binding decisions, including without the direct consent of an individual state.

suprastatehood arises at the stage of implementation of the goals and objectives of the international organization established in the founding treaty or other international treaties of the organization.

Sovereign member states enshrine in their legislation provisions the possibility of assigning state rights to an international organization.

Supranational Union (English supranational union) is a type of multinational political union where the agreed powers of the governments of the member states are delegated. The concept of supranational association is sometimes used to describe the European Union (EU) as a new type of political organization (Vodyannikov, 2001).

The European Union is the only organization that provides international elections beyond the level of political integration usually provided by international agreement (Kiljunen, 2004).

The term "supranational" is sometimes used in a loose, vague sense in other contexts, sometimes as a substitute for the term international, transnational, or global. Another method of decision-making in international organizations is intergovernmentalism, in which state authorities play a more prominent role.

Examples of such suprastatehood and supranational entities are the Council of Europe, the EU, the North American Union, and others.

The Council of Europe is the leading human rights organization on the continent. It includes 46 member states, including all members of the European Union. All member states of the Council of Europe have signed the European Convention on Human Rights, a treaty aimed at protecting human rights, democracy, and the rule of law (Council of Europe, 2023).

The Council of Europe helps member states in the fight against corruption and terrorism, as well as in the implementation of necessary judicial reforms. A group of constitutional law experts known as the Venice Commission offers legal advice to countries around the world.

The Council of Europe protects human rights under international conventions such as the Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on Cybercrime. The organization monitors the progress of member states in these areas and makes recommendations through independent monitoring bodies.

The European Union, sometimes also the European Union (German – Europäische Union; French – Union européenne; abbreviated: EU) is an economic and political union uniting 27 member states located in Europe. It dates back to the creation of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC), which consisted of six countries in 1957. In the following years, the territory of the EU was increased due to the inclusion of new member states, simultaneously increasing its sphere of influence through the expansion of political powers. In its current form, it exists based on the Maastricht Treaty, signed on February 7, 1992, and in force since November 1, 1993. The last significant revision of the constitutional principles of the EU was approved in the Lisbon Treaty, which entered into force in 2009. Legally, there is no capital in the EU, but de facto it is the city of Brussels, where most of the institutions of the European Union are based.

The EU operates through a system of independent supranational institutions and jointly agreed on decisions of member states. The most important institutions of the EU are the European Commission, the Council of the European Union, the European Council, the Court of Justice of the European Union, the European Central Bank, and the European Parliament, which is elected every 5 years by the citizens of the European Union.

The purpose of the EU is to: promote the implementation of a balanced and long-term social and economic policy, in particular by creating a space without internal borders, employing economic and social equalization, the creation of an economic and monetary union, which aims to introduce a common currency; the establishment of the European Community in the international arena, in particular by conducting a common foreign policy and a policy in the field of public security, which could lead to the creation of a common defense system if necessary; strengthening the protection of the rights and interests of citizens of the participating states through the introduction of citizenship of

the Union; development of close cooperation in the field of judicial practice and internal affairs.

Maintaining the achieved level of integration of the Community and, based on it, determining to what extent policies and forms of cooperation established by the Treaties need to be revised to ensure the effectiveness of EU mechanisms and institutions.

The effectiveness of EU activities is ensured by its relevant bodies. The organizational structure of the EU is based on the general principles of the Western political system, but its specific forms differ significantly from national systems. Its characteristic features include 1. Association of institutions of two types – interstate and supranational. 2. Flexible distribution of competencies between EU bodies and national governments. 3. A significant number of types of decisions are made – from regulations and directives, which are mandatory for implementation by national governments and all members of the association, to conclusions that are only recommendatory. 4. The supremacy of EU law over the national legislation of the member states within the limits determined by the content of the founding treaties.

The organizational structure of the EU is based on the principle of separation of legislative, executive, and judicial functions. The main bodies of the EU include the European Parliament, the European Council, the Council of Ministers, the European Commission, the European Court of Justice, and the Chamber of Auditors.

The North American Free Trade Agreement (NAFTA) is an agreement between Canada, Mexico, and the United States. According to this agreement, the formation of the largest market in the world began in January 1994, the creation of which was supposed to be completed in 2009.

The specificity of NAFTA was determined by several characteristics that to some extent distinguished it from both Western European and other models of international economic integration. On November 30, 2018, in Buenos Aires (Argentina), the United States, Mexico, and Canada signed a new trade agreement, the USMCA (Agreement between the United States of America, the United Mexican States, and Canada), which will replace the North American Free Trade Agreement trade (NAFTA) (Khomenko, 2004).

The North American Free Trade Agreement has continental dimensions. In the world economy, this is the first integration grouping with such a characteristic. It unites only three, but quite large in terms of territory, human resources and economic potential of the country. The USA, Canada, and Mexico are countries in which the oil industry is quite well developed.

The countries that joined NAFTA have different levels of economic development, moreover, the level of Mexico is in sharp contrast with the level of the USA and Canada. Actually, this is not an exceptional phenomenon: in the Western Hemisphere, a similar example is demonstrated by MERCOSUR, which, along with such giants of Latin America as Brazil and Argentina, includes Uruguay and Paraguay, which are significantly inferior to them in terms of economic development.

The clearly defined center of the North American Free Trade Zone remains the United States, a world leader with scientific and technical potential and a competitive economy.

Reflecting on modern trends in the organization of interstate relations, James Rosenau noted that "the state-centric traditional world is by no means replaced by a new world consisting of numerous centers of power, but, on the contrary, it exists and interacts with this multicentric world. State actors operate both in the traditional state-centric world and in the new multicentric world, participating simultaneously in negotiations and meetings held both within the framework of intergovernmental cooperation (multilateral summits, bilateral meetings, regional conferences) and the framework of international activities of non-governmental organizations. At the same time, non-state actors are increasingly active in the sphere of world politics, interacting with its state-centric world through public consultative meetings; influencing the content of state policy with the help of coverage of certain public actions by mass media, the result of which is a kind of diffusion, penetration into the stable set of norms and principles of the traditional system of general security - alternative norms and principles related to human rights, global civil society, human security, global governance" (Rosenau, 1998).

Therefore, we can state that the presence of supranational and supranational institutions is a characteristic feature of modern international relations.

Conclusions

As a result of the conducted study of suprastatehood and supranationality through the prism of modern international law, the following conclusions were drawn:

- 1) Although the concepts of suprastatehood and supranationality are not fixed at the legislative level, and their content is defined only in the doctrine of international law, the essence of suprastatehood is determined by the interests of participating states, which are reflected in the statute and activities of international organizations, associations, unions, etc.
- 2) Suprastatehood arises at the stage of implementation of the goals and objectives of the international organization established in the founding treaty or other international treaties of the organization, and sovereign member states enshrine in their legislation provisions on the possibility of assigning state rights to the international organization.
- 3) The suprastatehood of individual organizations is manifested in the cases of adoption of relevant regulations, directives, or decisions, which are mandatory for implementation by individual institutions of such a union (association, etc.). In other cases, relations between the union (organization) and its member states should be qualified as traditional interstate relations.
- 4) In modern conditions of development and transformation of international relations, the presence of suprastatehood and supranational institutions is a characteristic feature of such relations.

Regarding further scientific research, we consider it necessary to investigate the peculiarities and problematic issues of supranationality of the European Union in modern conditions.

Bibliographic references

- Amerasinghe, C.F. (1996). *Principles of the Institutional Law of International Organizations*. Cambridge University Press. Retrieved from https://assets.cambridge.org/97805218/37149/frontmatter/9780521837149_frontmatter.pdf
- Baimuratov, M.O. (2022). *Constitutionalization of international public law and internationalization of the constitutional legal order of states as a strategic formula of legal*

- globalization. In Proceedings of the 1st International Scientific and Practical Conference "Science: Development and Factors its Influence", 248-255. Retrieved from <https://acortar.link/BF2qZG>
- Council of Europe. (2023). On the Council of Europe. Retrieved from <https://www.coe.int/uk/web/kyiv/the-coe/about-coe>
- Khomenko, G. (2004). North American Free Trade Agreement. Ukrainian diplomatic encyclopedia. Kyiv: Knowledge. Retrieved from <https://sj.npu.edu.ua/index.php/pnsdp/article/view/1066>
- Kiljunen, K. (2004). The European Constitution in the Making. Centre for European Policy Studies. ISBN 9290794933. Retrieved from <http://aei.pitt.edu/32581/>
- Maletych, M.M. (2022.) Correlation of supranational and national administrative proceedings in the countries of the European Union and Ukraine: a comparative-legal study. Kyiv Law Journal, 1, 49-54. Retrieved from http://journals.fpk.kyiv.ua/index.php/kyivla_wjournal/article/view/7/6
- Matveeva, A.V. (2022). Current transformational processes in private international law. Actual problems of law: theory and practice, 1(43), 64-72. Retrieved from <https://journals.snu.edu.ua/index.php/app/article/download/365/346>
- Moiseev, O. (2012). The suprastatehood of the European Union after the entry into force of the Treaty of Lisbon. International law, 2, 55-64. Retrieved from <https://acortar.link/aVjUiV>
- Rosenau, J. (1998). The Future of Politics. Future, 31(9-10). Retrieved from <https://www.sciencedirect.com/science/article/pii/S0016328799000592>
- Shperun, H.V. (2012). On the issue of supranationality of the International Monetary Fund. Journal of the Kyiv University of Law, 2, 371-373. Retrieved from http://kul.kiev.ua/images/chasop/2012_2/371.pdf
- Skorokhod, G. M. (2012). Supranationality in the law of the European Union and the problem of sovereignty. Scientific Bulletin of the Lviv State University of Internal Affairs, 4, 126-133. Retrieved from https://www.lvduvs.edu.ua/documents_pdf/library/visnyky/nvsvy/04_2012/12sgmips.pdf
- Vegera, A. V. (2018). Some aspects of the relationship between EU supranationality and the sovereignty of member states. Kharkiv: Istina. Retrieved from <https://dspace.nlu.edu.ua/handle/123456789/14961>
- Vodyannikov, O. (2001). Supranationality in the law of the European Union: Goetterdammerung Europe or rethinking the law? Bulletin of the Ministry of Justice of Ukraine, 3, 162-192. (In Ukrainian)
- Voytenko, I.R. (2009). Supranational Institutions of the European Union. Strategic priorities, 4(13), 231-236. Retrieved from https://eenujeanmonnet.files.wordpress.com/2020/02/eu_missin_organiz_syllabus_ua-1-1-1.docx
- Vyshnyakov, O.K. (2014). Supranationality as a legal phenomenon. Scientific works of NU "OYUA", 14, 119-124. Retrieved from <https://acortar.link/SgN0Sr>
- Yakovyuk, I. V. (2008). The European Union through the prism of an international organization. State construction and local self-government, 15, 58-67. Retrieved from https://dspace.nlu.edu.ua/bitstream/123456789/2930/1/Jakovyk_58.pdf
- Yavorska, I. (2012). Law of the European Union: modern conceptual approaches. Bulletin of Lviv University. International relations series, 30, 201-209. Retrieved from <https://acortar.link/ww8xWW>
- Yefimenko, V.C. (2022). The principle of subsidiarity as a balance of institutional interaction (on the example of the European Union). Historical and legal journal, 1, 14-38. Retrieved from <http://chasopys.hl.vnu.volyn.ua/index.php/chasopys/article/view/100>
- Zadorozhna, S. M. (2019). Modern principles of international law in the hierarchy of norms of international, supranational and national law. Legal horizons, 1, 125-131. Retrieved from <https://essuir.sumdu.edu.ua/handle/123456789/72861>