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**RELATIONS BETWEEN THE EUROPEAN UNION AND
THE UNITED NATIONS – CONSIDERATIONS IN THE
CONTEXT OF INTERNATIONAL SECURITY AGAINST
THE CASE OF AHMED ALI YUSUF AND
AL BARAKAAT INTERNATIONAL FOUNDATION¹**

Keywords: International Relations, International Security, United Nations, European Union.

ABSTRACT: The actions indicated above and taken by the United Nations and the European Union (in spite of their different international law status) argue that objectives attributed to international organisations are not only postulates, but a basis for actions taken specifically, both in the legal and actual dimension. Therefore, the main research objective adopted for this study was to bring them closer, with particular emphasis on the UN and the EU joint actions for international security. Due to the complexity and multifaceted nature of the discussed subject matter of these considerations, they will be confined to the T-306/01 Ahmed Ali Yusuf and Al Barakaat International Foundation case recognized by the EU Court of First Instance. In there, as in a lens, interrelationships between the international organisations in questions are concentrated; and not only in terms of international cooperation, but, more importantly, in terms of the principle of the primacy of the United Nations law over other legal regimes.

Implementing this objective will allow to show that the law of the European Union refers to the achievements of the United Nations and, therefore, to the general categories of international law. This shows that the EU legal order cannot be treated as completely self-sufficient. In the era of fragmentation of international law, determination of interrelationships

¹ Translated by Agnieszka Kotula, Ewelina Cała-Wacinkiewicz.

between the international law and the EU one is crucial for assessing the systemic nature of the former.

I. UNITED NATIONS & EUROPEAN UNION AND INTERNATIONAL SECURITY – INTRODUCTION TO CONSIDERATIONS

Importance and value of the need to ensure and maintain peace² and international³ security⁴ do not need to be particularly proven. International community, by forming a normative basis for its operation, gave expression to this in the Charter of the United Nations adopted on 26 June 1945 in San Francisco⁵ (hereinafter UN Charter). By virtue of its provisions, the community attributed to the established United Nations (hereinafter UN) a priority objective, i.e. necessity to maintain international peace and security. The realisation of this goal – in accordance with the UN Charter – is to be carried out by application of effective collective measures for the prevention of threats to peace and removal thereof, suppression of acts of aggression or other breaches of peace, mitigation and settling – in a peaceful manner, according to the principles of justice and

² It is assumed after W. Malendowski that peace is the opposite of war, as the definitions of war and peace form a dialectic categorical pair. See: W. Malendowski, *Pokój i bezpieczeństwo międzynarodowe*, in: W. Malendowski, Cz. Mojsiewicz (Eds.), *Stosunki międzynarodowe*, Wrocław 2000, p. 381.

³ International security is defined as “a system of joint prevention of aggression, based on an international agreement. The system of international security can have a universal dimension when it covers all states; or a regional one if it applies to countries due to their geographical location. See: K. Stasiak, *Bezpieczeństwo międzynarodowe*, in: A. Przyborowska–Klimczak, D. Pyć (Eds.), *Leksykon prawa międzynarodowego publicznego*, Warszawa 2012, p. 29.

⁴ In the etymological sense, the term “security” is derived from the Latin *securitas*. In Roman times it meant political stability. Modern definitions define security as: the state of confidence, peace and protection, and indicate that it denotes a lack of danger and protection against dangers. See: G. Ciechanowski, *Międzynarodowe bezpieczeństwo*, in: E. Cała-Wacinkiewicz, R. Podgórzńska, D. Wacinkiewicz (Eds.), *Encyklopedia zagadnień międzynarodowych*, Warszawa 2011, p. 621.

⁵ Journal of Laws of 1947, No. 23, item 90 as amended.

international law – disputes or situations that could lead to a breach of the peace. The United Nations seek to achieve this specific objective not only in a legal aspect (adopting international conventions which are a basis for the peaceful coexistence of states in the international arena⁶), but above all in actual terms, i.e., by taking initiative and measures to ensure peace and security that have their basis in the resolutions of the Security Council⁷. These resolutions are not only a legal instrument, the use of which is included in the activities of said Council, but most of all, they form a special tool to ensure international peace and security. They further argue that the two mentioned aspects of activities (i.e. legal and actual) permeate in accordance with the principle that it is this law that prescribes what to do (*lex iubet ea, quae facienda sunt*).

Despite the priority significance of the UN (as a universal organisation with a common character) in the activity for world peace and security there are noticeable tendencies to strengthen these measures by regional initiatives. In the objective respect, a strong position can be attributed to the European Union, incorrectly associated by many only to the broadly defined economic activity. The legal basis for its actions in the context of international security are the provisions of the Treaty on the European

⁶ Exemplification of these constitute: Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted on 10 March 1988, Journal of Laws of 1994, No. 129, item. 635; The International Convention for the Suppression of Terrorist Bombings, adopted on 15 December 1997. Journal of Laws of 2007, No 66, item 438; International Convention for the Suppression of the Financing of Terrorism, adopted on 9 December 1999, Journal of Laws of 2004, No 263, item 2620; or International Convention for the Suppression of Acts of Nuclear Terrorism of 13 April 2005, Journal of Laws of 2010, No. 112, item 740.

⁷ The following may serve as an example: United Nations Hybrid Operation in Darfur adopted on 31 July 2007 by virtue of Resolution 1769 of the Security Council; United Nations Operation in Côte d'Ivoire established on 27 February 2004 by Resolution 1528 of the UN Security Council; UN Stabilisation Mission in Haiti (MINUSTAH) established on 30 April 2004 by resolution S/RES/1542 of the Security Council; United Nations Assistance Mission in Afghanistan, established on 28 March 2002 by the Security Council by resolution RES/1401(2002); United Nations Interim Administration Mission in Kosovo, established on 10 June 1999 by virtue of resolution S/RES/1244 of the Security Council. See: <http://www.unic.un.org.pl> (accessed: 11.10.2013).

Union (hereinafter TEU)⁸ in the version consolidated by the provisions of the Treaty of Lisbon of 13 December 2007⁹. In accordance with Art. 21 paragraph 2 of the TEU, the Union defines and pursues common policies and actions, and works for a high degree of cooperation in all fields of international relations. What the subject Treaty indicates as the purpose of such activities is the protection of values on which the European Union is based, its fundamental interests, security, independence and integrity, as well as consolidating and supporting democracy and the rule of law, human rights and international law. Against this background, the European Union, striving to preserve peace, to prevent conflicts and to strengthen international security in accordance with the purposes and principles of the United Nations Charter, as well as the Helsinki Final Act and the objectives of the Paris Charter, is highlighted as particularly important for the present analysis.

Clarification of these provisions is contained in Art. 24 TEU. It states that the Union's powers within common foreign and security policy shall cover all areas of foreign policy and all questions relating to its security. The wording of the article quoted grants the Union extensive powers to act for international security, to be done – what is important – in compliance with international law. They also show that the European Union does not isolate itself from the activities of other international organisations, including the UN, whose importance in this regard cannot be overstated, and which will be discussed further below.

Attributing the European Union with the responsibility for the implementation of international security and safeguarding peace, not only in Europe but also in the world, is not illusory. For attention should be paid to the acts of law issued by it, underlying the activities actually performed. The most common legal instruments are the

⁸ OJ C 326, 26.10.2012.

⁹ OJ C 306, 17.12.2007.

adopted decisions¹⁰ and regulations¹¹. As secondary EU legislation, they complement the provisions of the treaty that define in a general way the extent of involvement of said organisation in the subject of international peace and security.

The actions indicated above and taken by the United Nations and the European Union (in spite of their different international law status) argue that objectives attributed to international organisations are not only postulates, but a basis for actions taken specifically, both in the legal and actual dimension. Therefore, the main research objective adopted for this study was to bring them closer, with particular

¹⁰ Council decision 2013/87/CFSP of 18 February 2013 on the launch of a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) (OJ L 46, 19.2.2013, pp. 27–27); Council Decision 2013/133/CFSP of 18 March 2013 appointing the European Union Special Representative for the Sahel (OJ L 75, 19.3.2013, pp. 29–32); Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (OJ L 138, 24.5.2013, pp. 15–18); Council Decision 2013/320/CFSP of 24 June 2013 in support of physical security and stockpile management activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in Libya and its region (OJ L 173, 26.6.2013, pp. 54–64); Council Decision 2013/354/CFSP of 3 July 2013 on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS) (OJ L 185, 4.7.2013, pp. 12–15).

¹¹ Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ L 94, 30.3.2012, pp. 1–15); Council Regulation (EU) No 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau (OJ L 119, 4.5.2012, pp. 1–8); Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008 (OJ L 121, 3.5.2013, pp. 1–7); Council Implementing Regulation (EU) No 714/2013 of 25 July 2013 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) No 1169/2012 (OJ L 201, 26.7.2013, pp. 10–13).

emphasis on the UN and the EU joint actions for international security. Due to the complexity and multifaceted nature of the discussed subject matter of these considerations, they will be confined to the T-306/01 *Ahmed Ali Yusuf* and *Al Barakaat International Foundation* case recognized by the EU Court of First Instance. In there, as in a lens, interrelationships between the international organisations in questions are concentrated; and not only in terms of international cooperation, but, more importantly, in terms of the principle of the primacy of the United Nations law over other legal regimes.

Implementing this objective will allow to show that the law of the European Union refers to the achievements of the United Nations and, therefore, to the general categories of international law. This shows that the EU legal order cannot be treated as completely self-sufficient. In the era of fragmentation of international law, determination of interrelationships between the international law and the EU one is crucial for assessing the systemic nature of the former.

II. ANALYSIS OF THE ACTUAL STATE OF CASE T-306/01 AHMED ALI YUSUF AND AL BARAKAAT INTERNATIONAL FOUNDATION¹²

Referring to the title state of the facts, its analysis should begin with bringing closer the normative background against which actions were undertaken, directly contributing to the formulation by Ahmed Ali Yusuf and Al Barakaat International Foundation of their claims against the Council of the European Union and the Commission of the European Communities¹³.

A leading part in this regard, with the view of the broadly defined combating of international terrorism¹⁴, was played by UN Security Coun-

¹² The analysis of the state of facts will be carried out on the basis of the judgement of the Court of First Instance in the discussed case.

¹³ Now, European Commission.

¹⁴ What is interesting and what is confirmed in this article, the fight against international terrorism at the level of international law is carried out in the first place by means

cil resolutions. Of particular note is Resolution 1267 (1999) of 15 October 1999¹⁵, by which the UN condemns terrorist training on the Afghan territory and the fact of providing shelter to Osama bin Laden by the Taliban. According to its provisions, the Taliban should release him to relevant authorities and the UN nations should freeze funds coming from broadly defined assets of the Taliban. A specially appointed Sanctions Committee was equipped with an obligation to identify said funds.

As the continuation of the adopted solutions, Security Council resolution 1333 (2000) of 19 December 2000 followed¹⁶. Therein, a demand was posed to stop training terrorists or sheltering them, as well as to release Osama bin Laden to the competent authorities. In addition, the Security Council decided to introduce a ban on flights and to increase the scope of the freeze of funds, including funds of Al Qaeda. In reference to this resolution, the Sanctions Committee updated the list of individuals and entities associated with Osama bin Laden. As a result, on 8 March 2001, it published said list. On 9 November 2001, however, this list was revised again. This time – which is crucial from the point of view of the discussed case – *Barakaat International Foundation* Spånga, Stockholm, Sweden, and Ali Yusaf Ahmed, Hallbybybacken 15, 70 Spånga, Sweden, had been entered in the list.

Then, the Security Council adopted other resolutions such as resolution 1390 (2002) of 16 January 2002¹⁷, by which it upheld the measures imposed by resolutions of 1999 and of 2000 as regards freezing funds. It

of peaceful measures, and it is within the States that the contemporary legal obligation to combat terrorism lies. See: M. Kowalski, *Prawo do samoobrony jako środek zwalczania terroryzmu międzynarodowego*, Warszawa 2013, p. 37.

¹⁵ Resolution 1267 (1999) adopted by the Security Council at its 4051st meeting on 15 October 1999, S/RES/1267 (1999), available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1267%281999%29 (accessed: 14.10.2013).

¹⁶ Resolution 1333 (2000) adopted by the Security Council at its 4251st meeting, on 19 December 2000, S/RES/1333 (2000), available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1333%282000%29 (accessed: 14.10.2013).

¹⁷ Resolution 1390 (2002) adopted by the Security Council at its 4452nd meeting, on 16 January 2002, S/RES/1390 (2002), available at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1390%282002%29 (accessed: 14.10.2013).

also adopted resolution 1452 (2002) of 20 December 2002¹⁸ facilitating compliance with the obligations as regards fight against terrorism, and above all, allowing the possibility of applying exceptions from the restrictive measure imposed in the form of freezing funds.

Coupled with the activities signalled above and undertaken by the United Nations were the activities of the European Union, serving, as if, as the answer to the above. Only a month after the adoption of resolution 1267 (1999), Council Common Position of 15 November 1999 Concerning Restrictive measures against the Taliban (1999/727/CFSP)¹⁹ was adopted, relating to the restrictive measures against the Taliban and ordering the freezing of their funds.

Therefore, another UN resolution – 1333 (2000) – gained a reaction from the European Union, showing some dynamism in the interrelationships, aimed at ensuring global security. Council Common Position of 26 February 2001 concerning additional restrictive measures against the Taliban and amending Common Position 96/746/CFSP²⁰ was adopted. By virtue of the provisions of this act, not only were the earlier regulations concerning the necessity of freezing Osama bin Laden's funds upheld, but also a ban on accessing them was introduced. In the wake of these decisions Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000²¹ was also adopted. This regulation, which, because of its normative power is particularly important for the effective combating of financing terrorism, adopted a legal definition of 'funds'²², and 'freezing of

¹⁸ Resolution 1452 (2002) adopted by the Security Council at its 4678th meeting, on 20 December 2002, /RES/1452 (2002), available at: <http://www.un.org/docs/scres/2002/sc2002.htm> (accessed: 14.10.2013).

¹⁹ OJ L 294, 16.11.1999.

²⁰ OJ L 057, 27.02.2001.

²¹ OJ L 67, 08.03.2001.

²² In accordance with Art. 1 par. 4 of the resolution 'funds' means: financial assets and economic benefits of any kind, including, but not necessarily limited to, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt

funds²³, facilitating the use of the aforementioned categories. **Additionally, it was also accompanied by a list of individuals, entities and organisations against whom the freezing of funds is to be carried out, taking into account both *Barakaat International Foundation*, and *Ahmed Ali Yusuf*.**

In response to resolution 1390 (2002), wishing to ensure its implementation, Council Common Position of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other Individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP²⁴ was adopted. This was combined with the release of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing specific certain restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan²⁵. In their substance, these acts were similar to Regulation (EC) No 467/2001, containing analogous definitions of terms cited above and upholding the subjective scope of the appended lists, including, most importantly, *Barakaat International Foundation*, and *Ahmed Ali Yusuf*.

obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing.

²³ In accordance with Art. 1 par. 4 of the resolution 'freezing of funds' means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

²⁴ OJ L 139, 29.05.2002.

²⁵ OJ L 139, 29.05.2002.

The next step in the fight against international terrorism aimed at the implementation of Security Council resolution 1452 (2002), but also those previously adopted, was the adoption of Council Common Position 2003/140/CFSP of 27 February 2003 concerning exceptions to the restrictive measures imposed by Common Position 2002/402/CFSP²⁶. In accordance with its Art. 1., the European Community will provide for the exceptions permitted by United Nations Security Council resolution 1452 (2002). In assessing the legal consequences resulting from this decision it should be noted that not only did it recognise in its content the very option of introducing exceptions from the imposed restrictive measure of freezing of funds, but also, through referring to the Security Council resolutions, it pointed to it as the legal basis by which the European Union is bound.

A month after the issue of said Council Common Position, in reference to its decisions, Council Regulation (EC) No 561/2003 of 27 March 2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban²⁷ was adopted. By virtue of the provisions it was clarified which categories of funds and economic resources will not be subject to freezing, making use of the exceptions provided for in this regard.

In view of the above legal status, showing above all how the cooperation between the European Union and the United Nations in the scope of combating international terrorism developed, we can move on to discuss the very course of the proceedings before the Court of First Instance.

Somewhat summarising and narrowing them to issues relevant to this study, *Ahmed Ali Yusuf* and *Al Barakaat International Foundation* (hereinafter referred to as the applicants) on 10 December 2001 took actions against the Council of the European Union and the Commission of the European Communities requesting for, *inter alia*, the annulment of Regulation No 467/2001 or, alternatively, declaring it inapplicable. On 29 July

²⁶ OJ L 53/6, 28.2.2003.

²⁷ OJ L 82/1, 29.3.2003.

2002 the applicants adapted the content of their pleas, claiming that their aim as of then was for the Court to declare invalid Regulation No 881/2002, adopted on the basis of Security Council resolution 1390 (2002) which upheld sanctions imposed against them. They also noted that the original complaint against Regulation No 467/2001 should be considered devoid of purpose because of the repeal of that act by the contested regulation. They also modified the subjective scope of the complaint, directing it ultimately only against the Council of the European Union which adopted the contested act, rather than against the European Commission.

Recapitulating the claims raised by the applicants, they relied, *inter alia*, on: the Council of the European Union's lack of competence to impose sanctions, direct or indirect, on citizens of the Union (paragraph 84 of the judgement), and also on the fact that delegating decision-making power in the sphere of the civil and economic rights to an external body, that is to the Sanctions Committee (compare paragraph 177 of the judgement) was unfounded, as a result of which *Ahmed Ali Yusuf* and *Al Barakaat International Foundation* were placed on the list of persons whose funds were frozen due to links with Osama bin Laden. From their perspective, the objective freeze was based on the acts of the Security Council (with the participation of the Sanctions Committee) that were carried out in the European Union by the adopted regulation²⁸.

The Court of First Instance in its judgement of 21 September 2005²⁹, having considered the applicants' complaint, dismissed it, making a milestone in defining the legal relationship between the UN and the EU. And although the judgement on appeal was not upheld³⁰ arguments raised therein deserve special note, which is found in the rest of the study.

²⁸ Detailed discussion of claims put forward by the applicants is contained in: Wł. Czapliński, *Kilka uwag o sądowej ochronie praw jednostek przed decyzjami Rady Bezpieczeństwa ONZ*, in: J. Menkes (Ed.), *Prawo międzynarodowe. Księga pamiątkowa prof. Renaty Szafarz*, Warszawa 2007, pp. 108–125.

²⁹ Court Reports 2005 II-03533.

³⁰ See: Judgment of the Court (Grand Chamber) of 3 September 2008 — *Yassin Abdullah Kadi, Al Barakaat International Foundation v Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland* (Joined Cases C-402/05 P and C-415/05 P), OJ C 285/2, 8.11.2008.

III. RELATIONS BETWEEN THE EUROPEAN UNION AND THE UNITED NATIONS IN THE CONTEXT OF THE T-306/01 CASE

Given the above and directing further deliberations onto the ground of mutual relations between the United Nations and the European Union it is appropriate to pose several questions. First, priority should be given to the answer to the question of the basis on which the EU is taking actions relating to the implementation of resolutions adopted by the UN? This entails the need to outline the problem more broadly, which comes down to asking a question about the interrelationships between these legal orders as well as the need to determine which one (and where it derives from) will enjoy the principle of priority.

The state of facts examined above, taking into account the European Union's implementation of the United Nations Security Council resolution shows that the cooperation between the affected organisations is aimed at undertaking joint efforts to combat international terrorism. It is therefore evidence of concern for peace and security in the world. And while in the case of the UN the legal basis for taking these actions results *expressis verbis* from the provisions defining the very purpose for which this organisation was established³¹, it is also possible to interpret them in detail out of specific statutory provisions defining ways to implement this objective³². Legal instruments through which this is done are the discussed Security Council resolutions.

³¹ Article 1, par. 1 of the Charter of the United Nations expresses the primary goal of the organisation by pointing to the maintenance of international peace and security with the use of effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and adjustment or settlement – by peaceful means and in conformity with the principles of justice and international law – of disputes or situations which might lead to a breach of the peace.

³² It is sufficient to refer to the provisions of Art. 39 of the UN Charter, according to which the Security Council determines the existence of a threat to or a breach of the peace, or act of aggression and makes recommendations, or decides what measures should be taken to maintain or restore international peace or security.

For the EU, the question of legal basis entitling it to the fight for international security is slightly more complicated. Of course – as shown at the beginning of this study – one can point to legal provisions for the need to strengthen security, yet they are still part of a broader perspective of EU activities, i.e. its foreign and security policy, which is one of a number of policies pursued by the organisation. Nevertheless, the Treaty on the Functioning of the European Union³³ (hereinafter referred to as TFEU) in the version established by the provisions of the already referred to Lisbon Treaty contains provisions facilitating the fight against terrorism.

In accordance with Art. 75 the possibility of determining administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or gains from economic activity belonging to natural or legal persons, groups or other non-State entities, or which are owned or held by them. It is supplemented by the provisions of Art. 215 of the TFEU allowing for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries. The implementation of objectives set out in this way is carried out with the use of Council Common Position as a tool in the field of foreign and security policy of the European Union, as well as regulations as binding acts of secondary legislation.

Referring to the question posed at the beginning of this analyses of the basis in EU law to carry out Security Council resolutions, it is worth mentioning (except the above) the provisions of Art. 21 par. 1 of the TEU, according to which the Union's actions on the international arena are based, *inter alia*, on the principle of respect for the principles of the UN Charter and international law. The Union, seeking to develop relations and build partnerships with third countries and international organisations, regional or global, promotes multilateral³⁴ solutions to common problems, in particular within the framework of the United Nations.

³³ OJ C 326, 26.10.2012.

³⁴ On the subject of multilateral nature see: E. Cała-Wacinkiewicz, *Efektywny multilateralizm jako dowód jedności prawa międzynarodowego – rozważania w kontekście prawa Unii Europejskiej* in: J. Menkes (Ed.), *Prawo międzynarodowe. Księga pamiątkowa prof. Renaty Szafarz*, Warszawa 2007.

In light of these provisions, the argument of a “regular” cooperation between those organizations is not sufficient. What united them in joint activities was the seriousness of the problem and the need for systemic action. Without them, ensuring international security would certainly not be possible. Therefore, (to which the Court of First Instance drew attention in its judgement issued in the subject case), the execution of a binding decision of the Security Council is an objective expressly set out and legally justified by the Treaty on the European Community³⁵ (compare par. 92 of the judgement). For if these resolutions of the Security Council were not performed with the use of measures adopted at the EU level, it could lead to a divergence between Member States in the application of the freezing-of-assets measure (compare par. 104 of the judgement). Therefore, according to the Court, referring to the applicants’ complaint, in this case there was no delegation of EU powers to UN bodies. Security Council resolutions are in fact binding on all Member States of the European Union which are thus required to take all measures necessary to ensure that those resolutions are put into effect (paragraph 239 of the judgement). Although the Community itself is not a member of the United Nations, it is required to act, in its spheres of competence, in such a way as to fulfil the obligations imposed on its Member States as a result of their belonging to the United Nations (par. 210 of the judgement). This reason is the main *ratio* of the actions taken by the EU towards the implementation of a resolution of the UN Security Council, in the face of validity in both of organizations of provisions being a legal basis allowing such actions, which has already been shown.

Referring to the above questions about the interrelationships between international law and the EU law, the Court of First Instance described it quite boldly by pointing to the principle of the primacy of international law and obligations under the UN Charter over those under the law of the European Union. It stressed, referring to Art. 103 of the UN Charter, that obligations arising under it prevail over all other obligation (par. 177 of the judgement) under national law or customary international law, including, as regards the Member States of the Council of Europe, their obliga-

³⁵ Now, as pointed out above: Treaty on the Functioning of the European Union.

tions under the European Convention on human rights and fundamental freedoms³⁶ and, as regards countries that are also Members of the Union, the obligations arising out of its Treaties (compare par. 231 of the judgement).

This argumentation was not shared fully by the Court who, in its Grand Chamber, issued a judgement on 3 September 2008 linking the discussed case of Al Barakaat International Foundation to another one (of a similar content), i.e. the case of Yassin Abdullah Kadi³⁷, remaining, however, beyond the scope of this analysis. The Court, which has already been indicated above, overruled the judgement of the Court of First Instance in case T-306/01 *Ahmed Ali Yusuf and Al Barakaat International Foundation*, recognising the contested regulation No. 881/2002 as invalid.

What is particularly important from the point of view of this analysis, the Court, considering the different aspects of the case, referred, *inter alia*, to the relationship between the international legal order of the United Nations and the Community legal order by analysing the principle expressed by the Court of First Instance according to which the regulation contested in the course of proceedings before the Court – since it implements the Security Council resolution – cannot be subject to judicial review for its internal compliance with the law, with the exception of compliance with the *jus cogens* norms, and that it enjoys the jurisdictional immunity in this respect (par. 280 of the Court judgement). The Court stressed emphatically that such jurisdictional immunity, as a derivative of the principle of primacy of obligations under the Charter of the United Nations at the international level, in particular those relating to the Security Council does not find any justification in the Treaty of the European Community (par. 300 of the judgement). No international agreement can affect the competence structure defined in the Treaties, and thus the

³⁶ Signed in Rome on 4 November 1950, Journal of Laws of 1993, No 61, item 284 as amended.

³⁷ For full case number, see footnote 29. What is interesting, the Kadi case lived to see its continuation (the so-called Kadi II case). See: Judgment of the Court (Grand Chamber) of 18 July 2013 — European Commission and others v Yassin Abdullah Kadi. Joined Cases C-584/10 P, C-593/10 P and C-595/10 P. Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-584/10> (accessed: 14.10.2013).

autonomy of the Community legal system, observance of which is ensured by the Court (par. 282 of the judgement). However in this context, another Court statement is important, the one affirming that control of the compliance with the law that should be provided by the Community court applies to the Community act serving to exercise given international agreement³⁸, not an agreement as such (par. 286 of the judgement).

To sum up then, the Court of First Instance, in its judgement, stood by the exclusion of the possibility of judicial review of EU regulations issued to implement Security Council resolutions. Thus, *a priori* it accepted the validity of the application in the European Union of restrictive measures to combat international terrorism. In the assessment of the position at issue, taking as basis that the rights of individuals, as well as the fact that “the procedure of entering persons suspected of financing terrorism onto the lists kept by the Security Council or sanctions committees was quite special – namely, it was sufficient for any State to report the person in order for the entry to be made”³⁹ – it seems that it went “one step too far”. Therefore, the reasoning of the European Court of Justice is not surprising when it, considering the appeal against the judgement of the Court of First Instance, did not share its optimism, emphasising, to a greater extent than the latter did, the autonomous nature of the EU legal system, which must not be affected by any international agreement. It should be stressed here that the Court – by opting for the control of the regulations – did not cross out the importance of the principle of primacy of the obligations arising from the Charter, but only objected to the issuance of regulations as if “by default”.

³⁸ The Court also stressed that the UN Charter does not impose a pre-determined model for the implementation of Security Council resolutions. This implementation may be carried out in accordance with the rules applicable in this respect in the legal order of each State which is a member of the UN. The UN Charter leaves the UN members free to choose among the possible models for the adoption of such resolutions into their internal order (par. 298 of the judgement).

³⁹ W. Czaplński, *op. cit.*, pp. 124–125.

IV. IN SUMMARY

What these considerations seem to confirm, “the idea of European security was shaped along by the development of principles and norms of international law”⁴⁰. This thesis entitles to claim that regional organisations integrated themselves into the actions of the international community aimed at ensuring peace and security in the world, strengthening them with their activity. This shows therefore that, in the case of the UN, international security was – since its inception – not just a desirable state, but also the initial and structural value embedded in the activities of the organisation. However, in the case of the EU, security is an evolutionary value associated with the development of both, the organisation itself and the relationships with its participation.

Perhaps the discussed case T-306/01 divided the United Nations and the European Union in the field of control of the regulation issued by the latter on the basis of Security Council resolutions. Nevertheless, it constitutes evidence of a strong interaction between the organisations in question. The European Union referring to the provision of the Charter of the United Nations, as well as supporting the activities of the United Nations to ensure peace and security in the world shows the systemic nature of international law *in genere*. It also confirms that only joint actions based on effective cooperation are able to handle the fight against terrorism.

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⁴⁰ W. Malendowski, *Organizacja Bezpieczeństwa i Współpracy w Europie*, in: W. Malendowski, Cz. Mojsiewicz (Eds.), *Stosunki międzynarodowe*, Wrocław 2000, p. 441.

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