

## Foreword

BY TAMÁS MOLNÁR\*

The Hungarian Academy of Sciences, Centre of Social Sciences, Institute for Legal Studies and the Corvinus University of Budapest, Faculty of Social Sciences and International Relations, Institute of International Studies co-organised a one day international workshop entitled “*The Autonomy of EU Law from the Perspective of International Judicial Bodies: A Mixed Blessing?*” on 1 October 2015 in Budapest, which took place in the premises of the Institute for Legal Studies.

The workshop was essentially inspired by the little academic attention that the concept of the autonomy of EU law has received since its inception in the 1960s when compared to other basic EU law premises such as “primacy” or “direct effect”, particularly from the theoretical or conceptual angle. However, “autonomy” is undisputedly a fundamental and structural principle of the EU legal order since its judge-made creation. In essence, the concept of autonomy oversteps the traditional divide between international law and domestic law by giving birth to a new category of law, a “new legal order”. Given the reflexive nature of the term “autonomy”, that is, to be distinct from something and to be able to function separately, it presupposes one or more points of reference. If these points of reference assume the form of legal orders, the autonomy of EU law can be basically conceived in two ways: vis-à-vis either international law or the domestic legal systems of Member States. The concept of autonomy is traditionally perceived in the context of international law (*external dimension of autonomy*) as the famous judgments of the Court of Justice of the European Union (CJEU) in *Van Gend en Loos*, *Costa v. E.N.E.L.* and many of its Opinions have further developed this doctrine. The CJEU pronounced that the “Community constitutes a new legal order” and that EU law arose out of an “independent source of law”. The external dimension of autonomy of EU law applies in relation to third States and international organisations and the whole body of general international law as such. Surely, this purely conceptual notion as it has been elaborated by the CJEU and cannot exist in total isolation from social reality in which it must be embedded and concretised. This claimed autonomy of EU law was not only emphasised and advocated by scholars of EU law, but many international lawyers have also examined its specific, autonomous character, whether or not it qualifies as a “self-contained regime”.

It is particularly interesting to see how external actors on the international plane, notably *international judicial bodies* have seen and considered the need of European Union law for structural separation and normative autonomy from international law. The organizers of the conference, Gábor Sulyok (Institute for Legal Studies) and Tamás Molnár (Corvinus University of Budapest) believed that examining the case-law of different international courts and tribunals can facilitate the better understanding of the external normative implications of the claimed autonomous character of EU law. While some international judicial bodies, such as the European Court of Human Rights, consistently treat it as a

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separate legal order, the practice of arbitration tribunals seems much more complex, with positions changing from one ad hoc tribunal to another. These divergences are well illustrated by the Permanent Court of Arbitration's "Iron Rhine Arbitration", which recognized the EU's special judicial system and by a decision of a panel of the International Centre for the Settlement of Investment Disputes (ICSID) in *Electrabel v. Hungary*, which plainly qualified EU law as part and parcel of international law.

This backdrop raises several questions: How much this self-perceived autonomy of the EU legal order is shared and accepted by different international courts and tribunals? How do international judges and arbitrators treat this structural principle of EU law after more than 50 years of its emergence? What is the relevance of the controversial position of these international judicial bodies at a time when the EU engages in more and more interactions with international law? The workshop sought to frame intellectual avenues to clarify and understand these issues as well as to formulate answers to the above questions.

The programme of the workshop was divided into two main panels. The first, chaired by Balázs Horváthy (Institute for Legal Studies), revisited the *theoretical foundations* of the autonomy of EU law, with presentations exploring the genuine or functional nature of the autonomy of the EU legal order by Márton Varjú (Lendület HPOPs Research Group of the Hungarian Academy of Sciences), and then reconsidering the theoretical foundations of the autonomy doctrine by Ramses Wessel (University of Twente). After discussing the conceptual framework, the second panel, moderated by Tamás Molnár, was focusing on judicial practice and provided a "reality check" on how the EU as an entity appears in international investment arbitration proceedings and how international arbitration tribunals actually treat EU law as an autonomous legal order. Presentations were held about the qualification of arbitral awards as state aid under EU law by Tamás Kende (Eötvös Loránd University of Budapest); investor-State (EU) arbitration after the Lisbon Treaty and the modalities of allocating financial responsibility between the EU and its Member States by Federica Cristiani (Institute for Legal Studies) as well as the award rendered by the ICSID in the case *Micula and others v. Romania* was commented by Mónika Papp (Eötvös Loránd University of Budapest), which illustrates nicely the clashes between EU state aid law and international arbitration.