EUROPEAN UNION AND ARAB LEAGUE

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**Introduction**

On 9 May 1950, the Schuman Declaration proposed the establishment of a European Coal and Steel Community, which became reality with the Treaty of Paris of 18 April 1951. This put in place a common market in coal and steel between the six founding countries (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands). The aim, in the aftermath of the Second World War, was to secure peace between Europe’s victorious and vanquished nations and bring them together as equals, cooperating within shared institutions.

A new kind of hope emerged from the rubble of the Second World War. People who had resisted totalitarianism during the war were determined to put an end to international hatred and rivalry in Europe and create the conditions for lasting peace. Between 1945 and 1950, a handful of courageous statesmen including Robert Schuman, Konrad Adenauer, Alcide de Gasperi and Winston Churchill set about persuading their peoples to enter a new era. New structures would be created in Western Europe, based on shared interests and founded upon treaties guaranteeing the rule of law and equality between all countries.

As for the Arab League, representatives of the first six member states – Egypt, Iraq, Jordan, Lebanon, Syria and Saudi Arabia – that initiated the league’s formation signed the agreement in Cairo, on March 22, 1945. Since then, 16 more states joined the organization, but due to recent uprising in Syria and their government’s brutal way of dealing with political opponents, the league suspended this member state and now counts 21 members.

According to the Arab League’s main document, Charter of Arab League, the organization’s main goal is “strengthening of the relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries”. These affairs and interests include all important economic issues, including finances, commerce, business, currency, etc. They also include social, cultural and health affairs, communication, transport, travel, the question of nationality, visas and passports.

Despite this declaration of good intentions, the historical evolution of the member states of the Arab League show little success. Rare are the countries that avoided civil wars, coups and political instability. The commitment to national self-interest seems to be stronger than the commitment to the objectives of the Organization per se. political archaism may be identified as a reason for such failure. If liberal democracy opened the door for more regional integration in Europe, traditional regimes closed the door for a better integration between member states of the Arab League.

Similar in their objectives, these two organizations have not been equally successful. While the European Union can be considered today as one of the major players on the international scene, the role of the Arab League remains, at the very least, marginal. We will explore in this paper the legal, institutional and political reasons that determined the success of the first and the failure of the latter.

**Part I – The Political Reasons**

After the Second World War, the European continent was ravaged on all levels; human, political, institutional, economic and infrastructure. The war as means to spread ones supremacy showed its limits. Other choices had to be explored: Peace instead of war, cooperation rather than confrontation and solidarity replaced nationalisms.

According to Pascal Fontaine[[1]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22), “before becoming a real political objective, the idea of uniting Europe was just a dream in the minds of philosophers and visionaries. Victor Hugo, for example, imagined a peaceful ‘United States of Europe” inspired by humanistic ideals. The dream was shattered by the terrible wars that ravaged the continent during the first half of the 20th century”.

Those ideals were later carried out, in a more realistic manner, by people like Robert Schuman[[2]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn2%22%20%5Co%20%22) who, on the 9th of May 1950, took up an idea originally conceived by Jean Monnet that proposed the establishment of a European Coal and Steel Community (ECSC). The production of coal and steel would be managed by a common High Authority in countries which had once fought each other. The raw materials of war would be therefore transformed into instruments of reconciliation and peace.

The middle-east did not escape the catastrophic consequences of the two World Wars. At the end of the First World War, the Ottoman Empire was dispossessed from its conquered territories and the victorious allies have been granted mandate over them by the League of Nations. The Mandate authorities have then started a large enterprise of redesigning boundaries that later have been contested by members of the Arab League themselves once they became independent[[3]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22).

The major difference between the European countries and the Arab world lies however in the evolution they have witnessed ever since the end of the Second World War. When European countries have evolved towards liberal democracy[[4]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn4%22%20%5Co%20%22), institutionalization and inclusiveness, Arab countries remained archaic and often headed by absolute monarchs or autocratic self designated dictators. Finding in this context a consensus that may lead to a common denominator of common interests between Arab countries was then made almost impossible. Six initial members signed however the founding agreement of the Arab League in Cairo, on March 22, 1945[[5]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn5%22%20%5Co%20%22).

What are the reasons then for the relative success of the European Union as a common supranational regional organization and the failure of the Arab League to follow such an evolution?

To answer this question, one should recognize that member states of each of these organizations do not have the same commitment to the goals of the organization to which they belong and consequently they do not have a clear vision for the future.

**Section 1- The level of commitment**

From the early fifties, the founding members of what is known today as the European Union have been struggling in order to meet the objectives of their organization.

The first one being to build and maintain the peace established between its member states; we did not witness any war between any European member state ever since.

The second objective being to bring European countries together in practical cooperation; after the collapse of the Soviet empire, many countries of central and Eastern Europe decided that their future lay within the family of democratic European nations[[6]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn6%22%20%5Co%20%22).

Knowing that security is a major preoccupation for individuals, the EU had, as a third objective, to insure that European citizens can live in security. Making the EU an area of freedom, security and justice where everyone has equal access to justice and is equally protected by the law is a new challenge that requires close cooperation between governments. Bodies like Europol, the European Police Office and Eurojust[[7]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn7%22%20%5Co%20%22) also have to play an active and effective role.

The fourth objective being economic and social solidarity, the “structural funds”, managed by the European Commission, encourage and supplement the efforts of the EU’s national and regional authorities to reduce inequalities between different parts of Europe. Inequalities leading to social frustration and frustration to conflicts, money from the EU budget and loans from the European Investment Bank are used to improve Europe’s transport infrastructure[[8]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn8%22%20%5Co%20%22), thus providing better access to outlying regions and boosting their economies.

The fifth challenge for the EU is to preserve European identity and diversity in a globalized world. Working together does not mean erasing the distinct cultural and linguistic identity of individual countries[[9]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn9%22%20%5Co%20%22). Many EU activities help promote regional specialties and the rich diversity of Europe’s traditions and cultures. The old saying “unity is strength” is as relevant as ever to today’s Europeans. The European Union is the world’s leading trading power and therefore plays a decisive role in international negotiations. The EU takes a clear position on sensitive issues affecting ordinary people, such as environmental protection, renewable energy resources, the precautionary principle in food safety, the ethical aspects of biotechnology, etc. the EU remains the forefront of global efforts to tackle global warming[[10]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn10%22%20%5Co%20%22).

Ultimately the European member states are committed to a certain number of values that the European citizens share. These are humanitarian and progressive values. People’s needs cannot be met simply by market forces, or by individual countries taking unilateral action. Europeans cherish their rich heritage of values, which includes a belief in human rights, social solidarity, free enterprise, a fair distribution of the fruits of economic growth, the right to a protected environment, respect of cultural, linguistic and religious diversity and a harmonious blend of tradition and progress.

Governance of the Arab League has been based on the duality of supra-national institutions and the sovereignty of the member states. Preservation of individual statehood derived its strengths from the natural preference of ruling elites to maintain their power and independence in decision making. Moreover, the fear of the richer that the poorer may share their wealth in the name of Arab nationalism, the feuds among Arab rulers, and the influence of external powers that might oppose Arab unity can be seen as obstacles towards a deeper integration of the League.

The lack of commitment is coupled with a lack of vision. If politics could be defined as the art of the possible, the ambitious objectives of the Arab League seem to be hard to reach, if not impossible.

**Section 2 – A vision for the future**

The Arab League is rich in resources, with enormous oil and gas resources in certain member states. Another industry that is growing steadily in the Arab League is telecommunication. With less than a decade, local companies such as Orascom and Etisalat have managed to compete internationally. Economic achievements initiated by the League amongst member states have been less impressive than those achieved by smaller Arab organizations such as Gulf Cooperation Council (GCC). Among them is the Arab Gas Pipeline that will transport Egyptian and Iraqi gas to Jordan, Syria, Lebanon and Turkey.

This shows, if need be, the incapacity of the Arab League to initiate appropriate actions and be the precursor of equal development. As of 2013, a significant difference in economic conditions exists between the developed oil states[[11]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn11%22%20%5Co%20%22) and developing countries[[12]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn12%22%20%5Co%20%22) within the same League. Such unequal development is unlikely to happen in the EU that promote economic and social solidarity and where resources are fairly redistributed.

The EU, on the other hand, is gone so far as creating a single market. The single market is indeed one of the European Union’s greatest achievements. Restrictions on trade and free competition between member countries have gradually been eliminated, thus helping standards of living to rise. The single market has not yet become a single economy however. Some sectors are still subject to national law[[13]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn13%22%20%5Co%20%22). Freedom to provide services is beneficial, as it stimulates economic activity. Over the years the EU has introduced a number of policies[[14]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn14%22%20%5Co%20%22) to help ensure that as many businesses and consumers as possible benefit from opening up the single market. The Single European Act, which came into force in July 1987, provides the extension of the powers of the EEC in some policy areas[[15]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn15%22%20%5Co%20%22), the establishment of the single market by the end of 1992 and making more frequent use of majority voting in the council of ministers, to make it easier to take decisions about the single market.

Consequently, all borders within the EU on goods have been abolished, together with customs controls on people, but the police still carry random spot checks as part of the fight against crime and drugs. Moreover, EU countries have agreed to recognize one another’s rules on the sale of most goods. Since the famous “cassis de Dijon” ruling by the European Court of Justice (ECJ) in 1979, any product legally manufactured and sold in one member state must be allowed to be placed on the market in all others. To end up, tax barriers have been reduced by partially aligning national VAT rates, which must be agreed by the EU member states and public contracts in any EU country are now open to bidders from anywhere in the EU, regardless of who awards them.

For the single market to be successful some required policies had to be enforced. In particular, this means giving transport companies free access to the international transport market and allowing transport firms from any EU country to operate in all other EU countries. This benefits the European consumers as much as free competition that should be fair. The purpose of this policy is to prevent any business cartel, any aid from public authorities or any unfair monopoly from distorting free competition within the single market. The EU legislation in this field aims to give all consumers the same degree of financial and health protection, regardless of where in the European Union they live, travels or do their shopping.

All these provisions would have been ineffective if the human dimension would have been forgotten. Citizens of the European Union can travel, live and work anywhere in the EU. The EU encourages and funds programs, particularly in the fields of education and culture, to bring EU citizens closer together. A sense of belonging to the European Union will develop only gradually, as the EU achieves tangible results and explains more clearly what it is doing for people. People recognize symbols of shared European identity such as the single currency and the European flag and anthem. A European public sphere is beginning to emerge, with Europe-wide political parties. Citizens vote every five years for a new European Parliament, which then votes on the new European Commission.

As a citizen of the European Union you are not just a worker or a consumer: you also have specific political rights. The European Union’s commitment to citizens’ rights was made clear at Nice in December 2000 when the European Council solemnly proclaimed the Charter of Fundamental Rights of the European Union. Under six headings[[16]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn16%22%20%5Co%20%22) its 54 articles set out the European unions’ fundamental values and the civil, political, economic and social rights of EU citizens.

A sense of belonging together and having a common destiny cannot be manufactured. It can only arise from a shared cultural awareness, which is why Europe needs to focus not only on economics but also on education, citizenship and culture. The EU does not say how schools and education are to be organized or what the curriculum is: these things are decided at a national or regional level. But the EU does run programs to promote educational exchanges so that young people can go abroad to train or study, learn new languages and take part in joint activities[[17]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn17%22%20%5Co%20%22).

The charter of the Arab league points out in its article 2 that “The League has as its purpose the strengthening of the relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries. It has also as its purpose the close co-operation of the member-states, with due regard to the Organization and circumstances of each state, on the following matters:

A-Economic and financial affairs, including commercial relations, customs, currency and questions of agriculture and industry.

B- Communications; this includes railroads, roads, aviation, navigation, telegraphs and posts.

C- Cultural affairs.

D- Nationality, passports, visas, execution of judgments and extradition of criminals.

E- Social affairs.

F- Health affairs.

Intrinsically, the vision is not too different from the European one but the means used are insufficient. A more effective regional integration supposes the establishment of a more complex institutional architecture. The political vision and commitment can only be translated by the establishment of appropriate responsive institutions.

**Part II- The institutional reasons**

A congenital disease affects the institutions of the Arab League. A kind of an impossible marriage between supranationality and national sovereignty. In the one hand the Arab League aims at the coordination of policies in order to achieve cooperation between member states and at safeguarding their independence and sovereignty. It goes on to add, in the other hand, in article 9 that “States of the League which desire to establish closer co-operation and stronger bonds than are provided for by this Charter may conclude agreements to that end. Treaties and agreements already concluded or to be concluded in the future between a member-state and another state shall not be binding or restrictive upon other members”. That is to say that ultimately the League dispossesses itself from the monopoly of being the initiator of such cooperation that should be uniform within all member states.

Furthermore, article 7 of the Charter states that “unanimous decisions of the Council shall be binding upon all member-states of the League; majority decisions shall be binding only upon those states which have accepted them”. In other words, it means that compliance with the decision of the council is left to the discretion of the member states. The adhesion of all member states for critical decisions being unlikely to happen, a further integration is being de facto jeopardized.

The European Union granted itself reliable institutions able to foster a better integration. Without talking about a United States of Europe, the European Union constitutes a very singular of supranational organization able to operate in a rather coherent manner without dispossessing member states from their national sovereignties. In order to reach such objective the European Union have adopted an inclusive approach by associating as much as possible the European citizens in the decision making process within representative institutions at the European level. Furthermore, the European Union have operation a division in competence between issues that are being dealt with exclusively at the European level[[18]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn18%22%20%5Co%20%22), issues that are being dealt with at the domestic level[[19]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn19%22%20%5Co%20%22) and issues where the European Union and its member states share responsibility[[20]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn20%22%20%5Co%20%22).

To reach these goals, the European Union acts through legally binding rules. It can use regulations or directives. Regulations are directly binding for member states, while directives are binding as to the objectives designated within leaving to the member state the freedom to choose the legal means to meet them. How does the EU work then? The EU’s Heads of State and /or Government meet, as the European Council, to set the EU’s overall political direction and to take major decisions on key issues. The Council, made up of ministers from the EU member states, meets frequently to take policy decisions and make EU laws. The European Parliament, which represents the people, shares legislative and budgetary power with the Council. The European Commission, which represents the common interest of the EU, is the main executive body. It puts forward proposals for legislation and ensures that EU policies are properly implemented.

The European Council, being the top political institution, fixes the EU’s goals and sets the course for achieving them. It provides the Impetus for the EU main policy initiatives and takes decisions on thorny issues that the Council of Ministers has not been able to agree on. The European Council also tackles current international problems via the common foreign and security policy which is a mechanism for coordinating the foreign policies of the EU’s member states.

The Council[[21]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn21%22%20%5Co%20%22) is made up of ministers from the EU’s national governments. Rather than playing an executive role left for the European commission, its main job is to pass legislation. According to the Lisbon Treaty, the Council has to take its decisions either by a simple majority vote, a qualified majority vote or unanimously, depending on the subject to be decided. The Council has to agree for instance unanimously on important questions such as taxation, amending the Treaties, launching a new common policy or allowing a new country to join the Union. In most other case, qualified majority voting is used. This means that the Council decision is adopted if a specified minimum number of votes are cast in its favor. The number of votes allocated to each EU country roughly reflects the size of its population. We find the same preoccupation of proportionality in the European Parliament.

The European Parliament is the elected[[22]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn22%22%20%5Co%20%22) body that represents the EU’s citizens. It supervises the EU’s activities and, together with the Council, it enacts EU legislation. The European Parliament holds its major debates at monthly gatherings[[23]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn23%22%20%5Co%20%22)attended, in principle, by all MEP’s. The Parliament takes part in the legislative work of the EU in two ways: via co-decision, which is the ordinary legislative procedure and via the assent procedure, where Parliament must ratify the EU’s international agreements[[24]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn24%22%20%5Co%20%22), including any new treaty enlarging the European Union. Most importantly, the Parliament exercises democratic supervision over the Union and in particular over the Commission.

The Commission itself is a key European institution. It alone has the right to draw up proposals for new EU legislation, which is sends to the Council and Parliament for discussion and adoption. The Commission enjoys a substantial degree of independence in exercising its powers. Its job is to uphold the common interest, which means that it must not take instructions from any national government. As ‘Guardian of the Treaties’, it has to ensure that the regulations and directives adopted by the Council and Parliament are being implemented in the member states. If they are not, the Commission can take the offending party to the Court of Justice to oblige it to comply with EU law. As the EU’s executive arm, the Commission implements the decisions taken by the Council in areas such as the common agricultural policy. It has wide powers to manage the EU’s common policies, such as research and technology, overseas aid and regional development. It also manages the budget for these policies.

 Other EU bodies play specific roles in carrying out decision. Such as the Court of Justice whose role is to ensure that EU law is complied with, and that the Treaties are correctly interpreted and applied. The European Central Bank (ECB), in Frankfurt, is responsible for managing the euro and the EU’s monetary policy. Its main task is to maintain price stability in the euro area. The Central Bank acquired the status of EU institution under the Treaty of Lisbon. The European Court of Auditors, checks that all the European Union’s revenue has been received and all its expenditure incurred in a lawful and regular manner and that the EU budget has been managed soundly. The Council and Commission consult the European Economic and Social Committee (EESC). Its members represent the various economic and social interest groups that collectively make up ‘organized civil society’, and are appointed by the Council for a five-year term. The Committee of the Regions (CoR) consists of representatives of regional and local government. They are proposed by the member states and appointed by the Council for a five-year term. The Council and Commission must consult the CoR on matters of relevance to the regions, and it may also issue opinions on its own initiative. The European Investment Bank (EIB), based in Luxembourg, provides loans and guarantees to help the EU’s less developed regions and to help make businesses more competitive.

All these institutions play an important role in shaping the present and the future of the European Union. Their role is made central because their decisions are binding within all member states.

The population has been associated to the decision-making process granting European institutions democratic legitimacy.

The Arab League also has a number of Committees[[25]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn25%22%20%5Co%20%22) each one competent in a specific domain. But their role remains primitive not to say ineffective, since decisions of these committees, like the decisions of the Council, remain under the discretion of the member states. The Arab League’s institutions lack therefore popular democratic legitimacy. Its decisions lack the necessary binding force to make them uniform within all member states. Ultimately, the Arab League does not have specific judicial authority to sanction member states who infringe the Leagues’ decisions. The Charter of the Arab League goes on to add in its article 8 that “each member state shall respect the systems of government established in the other member states and regard them as exclusive concerns of those states. Each shall pledge to abstain from any action calculated to change established systems of government”. This exclusiveness and the expressed desire to maintain domestic affairs away from any interference constitute an obstacle for further regional integration.

Political vision needs active action in order to become reality. This action cannot be carried out without appropriate institutions granted legal authority.

**Part III- The legal reasons**

To illustrate the huge difference between the Arab League and the European Union concerning its legal action on the ground, the example of France and the UK is striking. Belonging each to a different legal tradition, they had both to assimilate uniform European legislation. France and the United-Kingdom (UK), two Member States (MS) of the European Communities (EC), two modern democracies, so close so far. Close to each other geographically, the two countries adopt however different position vis-à-vis the statute. The place occupied by the statue is not the same whether we are in France or in the UK. But this difference is reduced, to a certain extent, by EC law the supremacy of which is proclaimed over all MS.

In England, the source of any Act is the parliament. Its legislative texts take a lead in other sources of law. Contrary to what occurs in other countries, in France for example, in England the legislative field has no restriction. Any privilege, any legal provision, any legislative text, any constitutional requirement can be implemented or repealed by an Act of Parliament. The Parliament is free to legislate on any subject matter: It is neither bound by any precedent nor by any legislative text.

In France, the legislative power is limited by the Constitution and the Conseil Constitutionel (constitutional council) is keen to keep the parliament within its powers.

From the famous formula “you are legally wrong because you are a political minority”[[26]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn26%22%20%5Co%20%22) to the other famous “the law does not express the general will unless it respects the Constitution”[[27]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn27%22%20%5Co%20%22), where is the democracy situated? Is France more democratic than the UK or is the UK more absolutist than France is? In the European context what happened to the democracy in France and in the UK? How is the “general will” expressed?

The necessity of a structure, of an organization creating a consensus stands to save, or try to save, the social harmony. This structure is, in modern democracies embodied in the Parliament which reflects via the representatives of the people the aspirations and divergences resulting from them. The law is therefore the expression of the consensus. It draws its power from the fact that it is respected because it preserves peace and social harmony.

That is how Marx affirmed that, “the State is nothing else but the form of organization which the middle-class men give to themselves by need to guarantee reciprocally their property and their interests, as well inside as outside. All the common institutions pass via the State and take a political form”. The law is thus nothing else but the form that the capitalist society gives it by necessity to preserve its interests.

This idea of reciprocity is developed by Rousseau as well who supports the view according to which “All justice comes from god, he is the only source of justice, but if only we knew how to receive it, we would need neither government nor laws. There is without a doubt a universal justice product of the sole reason; but for this justice to be admitted between us, it must be reciprocal… We need thus conventions and laws to link the rights to the duties and to bring back justice to its object”[[28]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn28%22%20%5Co%20%22).

Be it in France or in the UK the law occupies its function of social rule imposed upon all members of the community. The statute is voted by parliaments in both countries and is supposed to be the expression of the general will. But when it comes to the place that is given to the statutes, divergences appear. Whereas an Act of Parliament is supreme in England, in France it would be limited by the Constitution.

The principle of parliamentary supremacy in the UK “means simply that in England each successive Parliament is completely dominant and can repeal or amend any legislation of its predecessors, with the corollary that no Parliament can bind its successors, for to do so would, of course, place restrictions upon them inconsistent with the doctrine”[[29]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn29%22%20%5Co%20%22). In the absence of a written Constitution, there are no limits to the legislative power of the Parliament.

Parliament have, according to Dicey, “under the English constitution, the right to make or unmake any law whatever; and further that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament”[[30]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn30%22%20%5Co%20%22). “All that a court of law can do with an Act of Parliament is to apply it”[[31]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn31%22%20%5Co%20%22).

In the Madzimbamuto case[[32]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn32%22%20%5Co%20%22) concerning the effect of a unilateral declaration of independence by the Rhodesian government in 1965, Lord Reid said: “It is often said that it would be unconstitutional for the UK Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things. If Parliament chose to do any of them, the courts could not hold the Act of Parliament invalid”.

This means that courts can only interpret and apply an Act of Parliament. That is probably what made De Lolme say: “It is a fundamental principle with English lawyers that Parliament can do everything but make a woman a man and a man a woman”[[33]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn33%22%20%5Co%20%22).

 Thus, Parliament can legislate in any domain. It can vote retrospective laws, as the War Damage Act 1965 which provided that no person is entitled to receive compensation in respect of damage to or destruction of property caused by lawful acts of the Crown “during, or in contemplation of the outbreak of, a war in which the sovereign is or was engaged”. This law precluded Burmah Oil Company[[34]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn34%22%20%5Co%20%22) from having damages. The facts are as follows: In 1942, oil installations were destroyed by British troops in Rangoon to avoid them falling in enemy hands. After having received £4 million from the British government, the company sued the Lord Advocate representing the Crown in Scotland for over £31 million. The company was successful in its claim.

Legislative supremacy of Parliament is not limited by international law either. In Cheney v. Conn[[35]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn35%22%20%5Co%20%22), a taxpayer challenged an assessment of income tax made under the Finance Act 1964 on the ground that part of the money raised would be used for the manufacture of nuclear weapons contrary to the Geneva Convention to which the UK was part. Ungoed-Thomas J stated: “What the statute itself enacts cannot be unlawful, because what the statute says and provides is itself the law, and the highest form of law that is known to this country. It is the law that prevails over every other form of law, and it is not for the court to say that parliamentary enactment, the highest law in this country, is illegal”.

According to Dicey, “the logical reason why Parliament has failed in its endeavors to enact unchangeable enactments is that a sovereign power cannot, while retaining its sovereign character, restrict its own powers by any parliamentary enactment”.

The same concept can be found among “the men of the Revolution (i.e., French Revolution) who claimed that a generation cannot bind permanently future generations”[[36]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn36%22%20%5Co%20%22).

The same concept, indeed, but pushed further because in the absence of a written Constitution, the Act of Parliament has, as soon as it is enacted, a constitutional significance.

Any Act incompatible with a subsequent one is automatically repealed. This is called the doctrine of implied repeal. “If two inconsistent Acts be passed at different times, the last must be obeyed, and if obedience cannot be observed without derogating from the first, it is the first which must give way… Every Act is made either for the purpose of making a change in the law, or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment”[[37]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn37%22%20%5Co%20%22).

This concept exists in all legal systems, but it has a special constitutional significance in the UK.

When a conflict between two Acts arises it is up to the courts to resolve it by applying the most recent one. In the Ellen Street Estates Ltd.[[38]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn38%22%20%5Co%20%22) case, Maugham LJ said: “The legislature cannot, according to our constitution, bind itself as to the form of subsequent legislation, and it is impossible for Parliament to enact that in a subsequent statute dealing with the same subject-matter there can be no implied repeal. If in a subsequent Act Parliament chooses to make it plain that the earlier statute is being to some extent repealed, effect must be given to that intention just because it is the will of Parliament”.

Another example of implied repeal can be found in Vauxhall Estates Ltd.[[39]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn39%22%20%5Co%20%22) where the argument according to which a provision contained in a previous Act binds the future Parliament unless an express provision repeals it, was rejected.

English law does not have repeal by desuetude, contrary to Scottish law. A precision is however required. Indeed, the repeal by desuetude in Scotland can only concern Acts which were voted before 1707 by the then Scottish Parliament, i.e. before the Union between England and Scotland. Two conditions are however required: the Act must not have been applied for a long period and a change of circumstances must have occurred[[40]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn40%22%20%5Co%20%22).

Thus, in theory, the parliamentary power has no limits. It can for instance enact laws that violate human rights without fearing being disobeyed by courts whose power is limited to the application of the Act. The limit can however be political. Parliament being composed of representatives of the people must reflect their will. If the citizens persist in their will to achieve their claim, the Parliament cannot, for fear of political sanction, but carry out this claim. This is probably what made Dicey think that “the electors can in the long run always enforce their will”.

However, would this not lead to a situation of tyranny of the majority? Isn’t democracy the reign of the law rather than the reign of the number?

Is there any legal limit to the parliamentary sovereignty?

This question still does not have a definitive answer. Lawyers give in this concern the example of the Treaty of union 1707 between Scotland and England and the example of the impact of EC law. The impact of EC law being dealt with below, we will concern ourselves with the impact of the Treaty of Union 1707.

The Treaty gave the power to the new Parliament to legislate for both Scotland and England. But the Treaty gave no attribution of general legislative competence. This Treaty provided clearly that the new Parliament was free to legislate in some limited matters.

In MacCormick[[41]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn41%22%20%5Co%20%22), the rector of Glasgow University challenged the Queen’s title as “Elisabeth the Second”, on the grounds that this was contrary to historical fact and contravened article first of the Treaty of Union. At first instance, Lord Gurthie dismissed the challenge for the reason, inter alia, that an Act of Parliament could not be challenged in any court as being in breach of the treaty of Union or on any other ground. In appeal, MacCormick was equally dismissed but for other reasons. After holding that MacCormick had no legal title or interest to sue, that the royal numeral was not contrary to the Treaty, Lord President Cooper said: “The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law”.

According to Bradley and Ewing, “he had difficulty in seeing why it should have been supposed that the Parliament of Great Britain must have inherited all the peculiar characteristics of the English Parliament but none of the Scottish Parliament”[[42]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn42%22%20%5Co%20%22).

Furthermore, in Lord Coopers’ view, there was no precedent that the courts of Scotland or England had authority to determine “whether a governmental act of the type here in controversy is or is not conform to the provisions of a Treaty, least of all when that Treaty is one under which both Scotland and England ceased to be independent States and merged their identity in an incorporating union”.

In Gibson[[43]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn43%22%20%5Co%20%22), Gibson argued that an EC regulation giving nationals of Member States the right to fish in Scottish waters and the European Communities Act 1972 were contrary to article 18 of the Union, since it was a change in the law concerning a private right which was not for the “evident utility” of the Scottish people. Lord Keith held that the control of fishing in territorial waters around Scotland was a branch of public law, which might be made the same all over the United Kingdom and was not protected by article 18.

These two cases don’t give an answer to the essential question: What would be the attitude of the courts if an Act of Parliament violated openly the Treaty of Union?

If it is true that Parliament cannot bind its successors in the UK, it is true also that a written Constitution would set limits upon the Parliamentary sovereignty. We cannot affirm however that the UK has no Constitution but that this Constitution is unwritten and the parliamentary sovereignty plays an essential role in it, if not the essential role.

“We ENGLISHMEN” said Mr. Podsnap to the French gentleman in Our Mutual Friend, “are very proud of our Constitution, sir. It was bestowed upon us by the Providence. No other country is favored as this country”. “And other countries”, said the foreign gentleman, “they do how?” “They do sir,” replied Mr. Podsnap, gravely shaking his head, “they do, I am sorry to be obliged to say it, as they do”[[44]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn44%22%20%5Co%20%22).

To what the French gentleman could reply: “we are no less proud of ours”. Indeed the French Constitution of the Fifth Republic is the result of more than two centuries during which many Constitutions were written.

But what is the role played by the Statute in this Constitution? Is the Parliament as sovereign as it is in the UK?

The French approach: “the law does not express the general will unless it respects the Constitution”.

“The law is the expression of the general will. All citizens have the right to contribute personally or via their representatives to its enactment”. Thus, this provision of the article 6 of the Déclaration des droits de l’homme et du citoyen of the 26th of August 1789 underlines the congenital relationship between law and Parliament. Only Parliament can vote Acts reflecting the general will that it represents.

The influence of Rousseau is obvious. As J. -J. Chevallier puts it: “Instead of the State is me, the sovereign is me according to Hobbes and Bossuet, Rousseau substituted we are the State, the whole people and citizens. A new absolutism no less majestic but which is without any danger because it reflects the absolutism of the general will and which is always seeking for the best and is always right”[[45]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn45%22%20%5Co%20%22).

But this absolutism extolled by Rousseau seems not to be operational nowadays. This is due to the reduction of the legislative power of Parliament in one hand and, in the other, to the establishment of a control of conformity to the Constitution of the Acts of Parliament.

**1- Restriction of the domain of intervention of Parliament**

The Constitution of the Fifth Republic was highly inspired by two men of State of great importance: Mr. Michel Debré and the General Charles de Gaulle. For the former, it was a matter of re-establishing the real governmental power by giving the executive an authority and a scope of action that was altered by the absolute parliamentarism of the third and fourth Republics. For the latter, his positions have changed in reaction against the constituents of the Fourth Republic. His vision was firstly expressed in his famous discourse de Bayeux after the failure of the referendum of the 15th of May and especially in his speech in Epinal a few days before the referendum of the 13th of October.

Concerning the reduction of the legislative power of the Parliament, J. -P. Gridel said that “one of the fears that faced the constituent of 1958 was the rationalization and responsibility of the legislative activity of Parliament. Consequently, a substantial, but limited enumeration of material competence of the law and were set by many provisions aiming to discipline the parliamentary procedure”[[46]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn46%22%20%5Co%20%22).

Thus article 34 of the Constitution, after providing that “statutes shall be passed by Parliament” it provides also that “statutes shall determine the rule concerning:

Civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties; the obligations imposed for the purposes of national defense upon citizens in respect of their persons and their property;

Nationality, the status and legal capacity of persons, matrimonial regimes, inheritance and gifts;

The determination of serious crimes and other major offences and the penalties applicable to them; criminal procedure; amnesty; the establishment of new classes of courts and tribunals and the regulations governing the members of the judiciary;

The base, rates and methods of collection of taxes of all types; the issue of currency;

The electoral systems of parliamentary assemblies and local assemblies;

The creation of categories of public establishments;

The fundamental guarantees granted to civil and military personnel employed by the State;

The nationalization of enterprises and transfers of ownership in enterprises from the public to the private sector;

Statutes shall determine the fundamental principles of:

The general organization of national defense;

The self-government of territorial units, their powers and their resources;

Education;

The regime governing ownership, rights in civil and commercial obligations;

Labor law, trade-union law and social security”[[47]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn47%22%20%5Co%20%22).

Furthermore, article 34 provides that “finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act. Social security finance acts shall determine the general conditions for the financial balance of social security and, in the light of their revenue forecasts, shall determine expenditure targets in the manner and with the reservations specified in an institutional Act. Program Acts shall determine the objective of the economic and social action of the State”.

We note that the old normative hegemony has disappeared. However, Parliament can intervene in the domain reserved to the Government, i.e. secondary legislation. In his decision Blocage des prix des revenus[[48]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn48%22%20%5Co%20%22) of the 30th of July 1982, the Conseil Constitutionnel stated that “by articles 34 and 37[[49]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn49%22%20%5Co%20%22) (1) the Constitution did not intend to declare as unconstitutional a provision contained in a statute, when it should have been contained in a regulation, but intended to recognize that the government has its own domain that can be protected against an omnipresent Parliament by using articles 41 and 37(2)”[[50]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn50%22%20%5Co%20%22).

In 1967, René Capitant, the then President of the Law Commission, said that “…even if article 34 of the Constitution enumerates the reserved matters for statutes and if article 37(1) provides that matters other than those that fall within the ambit of statute shall be matters of regulation, we should not assume that the distinction of the two domains is strict. We should interpret these provisions in bearing in mind articles 37(2) and 41 of the Constitution. It appears then that the Constituent was not willing to prohibit Parliament from penetrating the domain of regulations. It gives only the Government the means by which it can oppose the inadmissibility that can be controlled by the Conseil Constitutionnel in case of a conflict arising between the Government and the President of the concerned assembly. If the Government did not object that it is inadmissible, the statute will be valid. The Constitution makes it clear however that this would only have the form of a Statute which can be modified by the Government simply by secondary legislation after asking the Conseil Constitutionnel to declare it as a regulation”.

And Mr. Michel Debré, one of those who had a great influence in the making of the Constitution of 1958, said while exposing the motives of a Bill laid in 1974 under the number 1219: “…The Government can make some incursions in the domain of Parliament if this latter accepts it, this is article 38[[51]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn51%22%20%5Co%20%22) and the Ordinances. Parliament can make incursions in the domain of the Government if this latter accepts it. This is the logic of our Constitution and institutions”.

But to this little incursion of Parliament, and consequently of Statutes, in the domain of regulations, the Government enjoys a range of possibilities that can be used to limit the role of Parliament in the making process of a Statute.

Besides, the control is obligatory for standing orders of the Houses of Parliament in respect of article 61(1). Moreover, the Government can, by virtue of article 44(3), ask “the assembly having the bill before it to decide by a single vote on all or part of the text under discussion, on the sole basis that amendments proposed or accepted by the Government”. Alternatively, “the Prime Minister may”, by virtue of article 49(3), “after deliberation by the Council of Ministers, make the passing of a bill an issue of the Government’s responsibility before the National Assembly”. In that event, Parliament may introduce a motion of censure with all the consequences[[52]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn52%22%20%5Co%20%22) of such a vote or make the bill becoming a statute. To all that, we may add the difficulty caused by article 40 which states that “bills and amendments introduced by Members of Parliament shall not be admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure”.

One more restriction is given by the Constitutional Council that refuses that Parliament introduces amendments without any link with the text discussed. The Constitutional Council’s case laws are clear in this concern[[53]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn53%22%20%5Co%20%22).

We should not assume that a statute cannot exceed article 34. According to Henry Roussillon, it is “like if we say that a territory of a State is limited by the continental ground, forgetting island, continental shelves and the airspace”[[54]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn54%22%20%5Co%20%22). Islands are set to represent articles of the Constitution upon which the legislative competence is founded. These articles are: 3(4); 53(1); 66; 72; 73 and 74[[55]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn55%22%20%5Co%20%22). The continental shelf would be constituted of what is called bloc de constitutionnalité which will be discussed below.

This distribution between executive and legislative would lead to some confusion in the absence of an arbiter whose job is to make each one respect its limits. This mission is entrusted within the Constitutional Council in the Fifth Republic.

**2- The control of constitutionality**

Instead of the control by the opinion serialized in the Constitution of 1793[[56]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn56%22%20%5Co%20%22) and to the political control proposed by Siéyès in his speech of Thermidor de l’an III[[57]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn57%22%20%5Co%20%22), the Constitution of the Fifth Republic preferred to create a new body which mission is to safeguard it. Indeed, “if we adopt a system of written Constitution, it would be a logical inconsistency not to declare invalid statutes violating the fundamental pact”[[58]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn58%22%20%5Co%20%22). Some precise detail may be useful however. If article 6 of the Déclaration des droits de l’homme et du citoyen of 1789 provides that “the statute is the expression of the general will”, it provides also in its preamble that natural rights of men which are inalienable” are proclaimed “in order that actions of the legislative power and those of the executive can be compared, at any time, with the aim of any political institution, and therefore be more respected”[[59]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn59%22%20%5Co%20%22). And the Constitutional Council added that, “the statute does not express the general will unless it respects the Constitution”[[60]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn60%22%20%5Co%20%22).

Consequently, accused of playing the role of a third House in the legislative process, the Constitutional Council has defined, since 1975 that “article 61 of the Constitution” did not confer to him “a general power of appreciation and decision similar to Parliament’s, but only competence to control the conformity of the statutes laid before him for examination”.

The Constitutional Council is not reluctant however to sanction the Erreur manifeste d’appréciation[[61]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn61%22%20%5Co%20%22). Was Rousseau wrong when he said that the general will is always right?

Paying tribute to the Member of Parliament who said one day “you are legally wrong because you are a political minority”, Henry Roussillon[[62]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn62%22%20%5Co%20%22) said that “thanks to that MP, we understood, at last, that a majority can be oppressive and ignore the law, voluntarily or not”.

The Constitutional Council has another mission as well which is the protection of fundamental rights. In the execution of its mission, the Constitutional Council may rely on a multitude of sources to which the expression bloc de constitutionnalité was attributed. According to Henry Roussillon, the bloc de constitutionnalité can be divided between contested and uncontested elements.

The uncontested elements would be the Constitution of the Fifth Republic, strictu sensu; the preamble of this Constitution that once considered the decision liberté d’association[[63]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn63%22%20%5Co%20%22), as having constitutional value, gave rise to the attribution of the constitutional value to the Déclaration des droits de l’homme et du citoyen of 1789 and to the preamble of the Constitution of 1946 which, consequently, gave rise to the Principes Fondamentaux Reconnus par les Lois de la République (PFRLR) and to the Principes Particulièrement Nécessaires à notre Temps (PPNT). We can add to the uncontested elements the Principes de valeur constitutionnelle.

The contested elements are the standing orders of the Houses of Parliament and the institutional acts.

Thus, for a statute to be in conformity with the Constitution, it is not sufficient that it respects the division of powers between legislative and executive, it should also respect the bloc de constitutionnalité.

Be it in France or in the UK, the great majority of the statutes are the result of a governmental initiative, because in France as well as in the UK the government emanates from the elected majority on the basis of electoral promises. That is how, wondering about the signification of the famous phrase “the law is the expression of the general will”, F. Terré said “The obligatory force of the law is related principally to the confidence inspiring the citizens towards the power. Whereas the national will is moving away, the law is considered as such because it expresses the will of those who govern — in the large sense of the word — who represent the aspirations of the citizens. We may say that the situation in which the legislator enacts is of a decisive importance. The law has ceased being the expression of the general will to become the expression of the legislator”[[64]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn64%22%20%5Co%20%22).

But in a democracy the legislator must be the representative of the citizens and exercise the sovereignty that was entrusted to him. Without speaking of the democratic deficit in the European Communities, what puts EC law on a higher level than domestic law? What is, in definitive, the impact of EC law on the law of Member States, and more precisely on the law of France and the UK?

The Community aiming for harmonization, if not unification, of the law of the Member States, albeit within limited areas, couldn’t reach this objective without claiming the supremacy of its law. This supremacy of EC law has created upheavals in the legal systems of many Member States.

**Section I**

**Supremacy and direct effect of EC law**

Supremacy of EC law being proclaimed to achieve the missions for which the Community was created couldn’t give entire satisfaction without the addition of the principle of direct effect

**1- Supremacy of EC law**

The European Court of Justice (ECJ) laid out the principle of supremacy of EC law in the two leading cases of Van Gend en Loos[[65]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn65%22%20%5Co%20%22) and Costa v ENEL[[66]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn66%22%20%5Co%20%22).

 In Van Gend en Loos, the Van Gend en Loos Company was charged by customs and excise with an import duty which the company alleged had been increased since the time of coming into force of the EEC treaty, contrary to article 12 of that Treaty. An appeal against payment of the duty was brought before the Dutch Tariefcommissie, and article 12 was raised in argument.

Article 12 (new 25 EC) prohibits States from: «… introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect». The Dutch Administrative Tribunal, referring the matter to the ECJ, under article 177, asked the court two questions, one of which is: «whether article 12 of the EEC Treaty has direct application within the territory of a Member State, in other words, whether nationals of such a State can, on the basis of the article in question, lay claim to individual rights which the court must protect». The court answered by stating that «the EEC constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subject of which comprise not only the Member States but also their nationals».

In Costa v ENEL the facts were as follows: by the law of 6 December 1962 and subsequent decrees the Italian Republic nationalized the production and distribution of electric energy and created an organization (ENEL) to which the assets of the electricity undertakings were transferred. In proceedings about the payment of an invoice for electricity between Flamino Costa and ENEL, before the Giudice Conciliatore, Milan, Mr. Costa, as a shareholder of Edison Volta, a company affected by the nationalization, and as an electricity consumer, requested the court to apply article 177 of the EEC Treaty so as to obtain an interpretation of articles 102, 93, 53 and 37 of the said Treaty, which articles, he alleged, had been infringed by the law of 6 December 1962. The Giudice Conciliatore, acceding to this request, decided that having regard to article 177 of the Treaty establishing the EEC, incorporated into Italian law by law nº 1203 of 14 October 1957 and having regard to the allegation of Mr. Costa…the Court hereby stays the proceedings and sought for a preliminary ruling by the ECJ.

Mr. Costa asked the court for an interpretation of the Treaty, in particular of articles 102, 93, 53 and 37. The Italian Government submitted that the application for a preliminary ruling was «absolutely inadmissible» and that there were no grounds for raising the question referred. ENEL also submitted that there were no grounds for raising these questions.

It was held by the Court that, “ By contrast with ordinary international Treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply. By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves. The integration into the laws of each Member State of provisions which derive from the Community and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. The transfer by the States from their domestic legal systems to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights”.

It is clear from that statement that the Court was referring to the supremacy of EC law but did not employ the word itself.

In Internationale Handelgesellschaft[[67]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn67%22%20%5Co%20%22), it was emphasized that, “the recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. In fact, the law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. Therefore the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the Constitution of that State or the principles of a national constitutional structure”.

Thus, we can see that even constitutions of the Member States cannot preclude Community measures from being applied.

In Simmenthal[[68]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn68%22%20%5Co%20%22), the ECJ held that,“in accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically applicable any conflicting provision of current national law but\* in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States \* also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions… It follows from the foregoing that every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule”.

As J. Weiler[[69]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn69%22%20%5Co%20%22) puts it, “the evolutionary nature of the doctrine of supremacy is necessarily bidimensional. One dimension is the elaboration of the parameters of the doctrine by the European Court. But its full reception, the second dimension, depends on its incorporation into the constitutional orders of the Member States and its affirmation by their supreme courts”.

With regard to the principle of EC law supremacy (see above), the principle of direct effect of EC law is held to be the corollary of the former in order to achieve the mission allocated to the Community.

**2- Direct effect of EC law**

If a legal provision is said to be directly effective, it means that it gives individual rights which can be enforceable before national courts. There is, therefore, a close link between supremacy and direct effect of Community law as they both flow from the very nature of Community law. If direct effect is to be enforced, three conditions must be satisfied:

 The provision must be clear and unambiguous;

 It must be unconditional, and its operation must not be dependent on further action being taken by Community or national authorities.

**3- Direct effect of EC Treaty provisions**

In the early Case of Van Gend en Loos (above), it was already stated by the ECJ that “to ascertain whether the provisions of an international Treaty extend so far in their effects it is necessary to consider the spirit, the general scheme and the wording of those provisions. The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting States. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples… Independently of the legislation of Member States, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon Member States and upon the institutions of the Community”.

And article 12 of the EEC, concerning obligation imposed upon Member States to abstain from something such as levying duties, was held to have direct effect.

In Reyners[[70]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn70%22%20%5Co%20%22), the question was whether article 52 was directly applicable in the absence of implementing directives under articles 54 and 57. The ECJ held that “The rule on equal treatment with nationals is one of the fundamental legal provisions of the Community. As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all Member States. It is not possible to invoke against such an effect that the council has failed to issue the directive provided for by articles 54 and 57 or the fact that certain of the directives actually issued have not fully attained the objective of non-discrimination required by article 52”.

In Defrenne[[71]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn71%22%20%5Co%20%22), the question referred to the ECJ was whether article 119 (now 141) was directly effective. It was held that “the question of direct effect of article 119 must be considered in the light of the nature of the principle of equal pay, the aim of this provision and its place in the scheme of the Treaty…”. And article 119 was held to be directly effective even though its complete implementation necessitates the taking of appropriate measures at Community and national level.

**4- Direct effect of measures other than Treaty provisions**

We will be concerned here with the direct effect of regulations, directives, decisions and international agreements.

In the Commission v Italy[[72]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn72%22%20%5Co%20%22) case, the ECJ held that “According to the terms of articles 189 and 191 of the Treaty, Regulations are, as such, directly applicable in all Member States and come into force solely by virtue of their publication in the Official Journal of the Communities, as from the date specified in them, or in the absence thereof, as from the date provided in the Treaty. Consequently, all methods of implementation are contrary to the Treaty which would have the result of creating an obstacle to the direct effect of Community Regulations and jeopardizing their simultaneous and uniform application in the whole of the Community”.

Furthermore, it was held in Amsterdam Bulb case[[73]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn73%22%20%5Co%20%22) that “by virtue of the obligations arising from the Treaty the Member States are under a duty not to obstruct the direct effect inherent in regulations and other rules of Community law. Strict compliance with these obligations is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community”.

Concerning decisions, it was held by the ECJ in Franz Grad[[74]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn74%22%20%5Co%20%22) that “it would be incompatible with the binding effect attributed to decisions by article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by a decision”. And the decision in question was sufficiently unconditional, clear and precise to be capable of giving rise to direct effect.

Concerning international agreements, the ECJ was asked in the International Fruit Company cases[[75]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn75%22%20%5Co%20%22) whether it had jurisdiction to rule on the validity of a Community measure against a measure of international law and if so whether the impugned regulations were contrary to the GATT.

The court followed the line of reasoning of Advocate General MAYRAS who said the following words: “I consider first that by the general agreement the States undertook only to adopt a particular line of conduct in commercial policy, that they did not intend to establish directly applicable rules which the national courts must protect, even when it conflicts with a domestic law; secondly, that the procedures prescribed by GATT for the settlement of conflicts arising through its application also exclude the concept of direct effect”.

In accordance with article 249 (formerly 189), “directives shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”.

In Van Duyn[[76]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn76%22%20%5Co%20%22), the ECJ held that the directive 64/221 concerning restriction on the admission and movement of aliens was directly effective because it “imposes on a Member State a precise obligation which does not require the adoption of any further measure on the part of either the Community institutions or of the Member States and which leaves them, in relation to its implementation, no discretionary powers”.

In Ratti[[77]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn77%22%20%5Co%20%22), the ECJ went further, saying that “a Member State which has not adopted the implementing measure required by a directive in the prescribed period may not rely, as against individuals, on its own failure to perform the obligations which the directive entails”.

We have seen that supremacy and direct effect are the main features of EC law, because of the very nature of the Community. But it wasn’t easy for national courts to adapt themselves to the changes provoked by the affirmation of these two principles.

**Section II**

**Legal upheavals on national levels**

The assertion by the ECJ of the supremacy of EC law provoked legal upheavals on national levels. In the UK, the fundamental constitutional principle of parliamentary sovereignty (as we have seen above) constituted an obstacle as to the recognition of the supremacy of EC law. In France, the courts were equally reluctant to acknowledge the supremacy of EC law, especially the Conseil d’Etat.

**1- Parliamentary supremacy v. Supremacy of EC law**

The traditional position of the UK towards international law depends on whether international law follows from customary international law or from Treaties.

Britain adopts a monistic approach to customary international law. The British view was well expressed by Lord Alverstone in West Rand[[78]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn78%22%20%5Co%20%22): “It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant. But any doctrine so invoked must be one really accepted as binding between nations, and the international law sought to be applied must, like anything else, be proved by satisfactory evidence, which must show either that the particular proposition put forward has been recognized and acted upon by our own country, or that it is of such a nature, and has been so widely and generally accepted, that it can hardly be supposed that any civilized State would repudiate it… that the law of nations forms part of the law of England, ought not be construed so as to include as part of the law of England opinions of text-writers upon a question as to which there is no evidence that Great Britain has ever assented, and a fortiori if they are contrary to the principles of her laws as declared by her courts”.

However, when customary international law is inconsistent with municipal law, British courts will apply municipal law even if the State will incur liability on the international scene.

It was held in Mortensen[[79]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn79%22%20%5Co%20%22) that “to decide whether an Act of the legislature is ultra vires as in contravention of generally acknowledged principles of international law… an Act of Parliament duly passed by Lords and Commons and assented to by the King, is supreme, and we are bound to give effect to its terms”.

Concerning Treaties, as Lord Oliver puts it in Maclaine Watson[[80]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn80%22%20%5Co%20%22): “Treaties, as it is sometimes expressed are not self-executing. Quite simply a Treaty is not part of English law unless and until it has been incorporated into the law by legislation”.

The UK adopts then a dualistic approach to Treaty law. Therefore, if an Act of Parliament conflicts with a Treaty, the domestic legislative measure will prevail.

However, the position of the courts is quite different when it comes to Community law. The courts have indeed adopted a “European attitude” towards Community law.

The EC Treaties were incorporated into UK domestic law by the European Communities Act 1972. We have seen that in the UK an Act of Parliament is supreme but can nevertheless be repealed by a subsequent inconsistent Act. But the European Communities Act 1972 seems to occupy a special place in the UK domestic law, giving in the mean time a special place for EC Treaties.

As Lord Denning — Known for his lack of orthodoxy — puts it in Shields v Coomes[[81]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn81%22%20%5Co%20%22): “long before the UK joined the European Community, the European Court had laid down two principles of great importance to all member states and their citizens. When we joined the Community, our Parliament enacted that we should abide by those principles laid down by the European Court… The first principle is of direct applicability… The second is the principle of the supremacy of Community law. It arises whenever there is a conflict or inconsistency between the law contained in an article of the EEC Treaty and the law contained in the internal law of one of the member states, whether passed before or after joining the Community. It says that in any such event the law of the European Community shall prevail over that of the internal law of the member state… It seems to me that when the Parliament of the United Kingdom sets up a tribunal to carry out its Treaty obligations, the tribunal has jurisdiction to apply Community law, and should apply it, in the confident expectation that this what Parliament intended. If such a tribunal should find any ambiguity in the statutes or any inconsistency with Community law, then it should resolve it by giving the primacy to Community law”.

But Lord Denning avoided answering the essential question of implied repeal. It is true that there have been no conflict between UK law and EC law in Shields. A conflict did arise however in Macarthys[[82]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn82%22%20%5Co%20%22) between article 119 (now 141) of the EC Treaty and section 1 of the UK Equal Pay Act 1970. Lord Denning went on to say that,“under s. 2(1) and (4) of the European Communities Act 1972 the principles laid down in the Treaty are without further enactment to be given legal effect in the United Kingdom; and have priority over any enactment passed or to be passed by our Parliament… In construing our statute, we are entitled to look to the Treaty as an aid to its construction; but not only as an aid but as an overriding force. If on close investigation it should appear that our legislation is deficient or is inconsistent with Community law by some oversight of our draftsmen then it is our bounden duty to give priority to Community law… I pause here, however, to make one observation on a constitutional point. Thus far I have assumed that our Parliament, whenever it passes legislation, intends to fulfill its obligations under the Treaty. If the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or intentionally of acting inconsistently with it and says so in express terms then I should have thought that it would be the duty of our courts to follow the statute of our Parliament”.

But the opinion of Lord Denning in Macarthys was not shared by his two fellow judges. Cumming-Bruce LJ said: “I do not think that it is permissible, as an aid to construction, to look at the terms of the Treaty. If the terms of the Treaty are adjudged in Luxembourg to be inconsistent with the provisions of the Equal Pay Act 1970, European law will prevail over that municipal legislation. But such a judgment in Luxembourg cannot affect the meaning of the English statute”.

Shortly afterwards, Lord Diplock, in Garland[[83]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn83%22%20%5Co%20%22) adopted a harmonious construction of national law rather than the direct application of EC law method seen in Macarthys in order to secure the supremacy of EC law: “My Lords, even if the obligation to observe the provisions of article 119 were an obligation assumed by the United Kingdom under an ordinary international treaty or convention and there were no question of the treaty obligation being directly applicable as part of the law to be applied by the courts in this country without need for any further enactment, it is a principle of construction of United Kingdom statutes, now too well established to call for citation of authority, that the words of a statute passed after the treaty has been signed and dealing with the subject matter of the international obligation of the United Kingdom are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation and not to be inconsistent with it. A fortiori is this the case where the treaty obligation arises under one of the Community treaties to which s. 2 of the European Communities Act 1972 apply”.

The arm wrestle between supreme Acts of Parliament and supreme EC law continued however concerning non-directly effective EC law as directives. In Duke[[84]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn84%22%20%5Co%20%22), Lord Templeman stated clearly that «of course a British court will always be willing and anxious to conclude that United Kingdom law is consistent with Community law. Where an Act is passed for the purpose of giving effect to an obligation imposed by a directive or other instrument a British court will seldom encounter difficulty in concluding that the language of the Act is effective for the intended purpose. But the construction of a British Act of Parliament is a matter of judgment to be determined by British courts and to be derived from the language of the legislation considered in the light of the circumstances prevailing at the date of enactment…. The Acts were not passed to give effect to the Equal Treatment directive and were intended to preserve discriminatory retirement ages…. On the hearing of this appeal, your Lordships have had the advantage… of full argument, which has satisfied me that the Sex Discrimination Act 1975 was not intended to give effect to the Equal Treatment directive… and that the words of s. 6(4) are not reasonably capable of being limited to the meaning ascribed to them by the appellant… section 2 (4) of the European Communities Act 1972 applies and only applies where Community provisions are directly applicable…. The submission that the Sex Discrimination Act 1975 must be construed in a manner which gives effect to the equal treatment directive as construed by the European court in Mashall’s case is said to be derived from the decision of the European court in Von Colson… The Von Colson case is no authority for the proposition that… a court of a member state must distort the meaning of a domestic statute so as to conform with Community law which is not directly applicable».

However the ECJ made it clear in Marleasing[[85]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn85%22%20%5Co%20%22) that «in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter».

It seems that Marleasing case was followed by English courts since it was held in Webb[[86]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn86%22%20%5Co%20%22) that domestic law should be «open to an interpretation consistent with the directive whether it is or not also open to an interpretation inconsistent with it».

Finally, the UK courts position seem to be emphasized in Lord Bridge’s statement in the Factortame case (nº2)[[87]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn87%22%20%5Co%20%22): «Some public comments on the decision of the Court of Justice, affirming the jurisdiction of the courts of member states to override national legislation if necessary to enable interim relief to be granted in protection of rights under Community law, have suggested that it was a novel and dangerous invasion by a Community institution of the sovereignty of the United Kingdom Parliament. But such comments are based on a misconception. If the supremacy within the European Community of Community law over the national law of member states was not always inherent in the EEC Treaty it was certainly well established in the jurisprudence of the Court of Justice long before the United Kingdom joined the Community. Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act 1972 was entirely voluntary. Under the terms of the 1972 Act it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law. Similarly, when decisions of the Court of Justice have exposed areas of United Kingdom statute law which fail to implement Council directives, Parliament has always loyally accepted the obligation to make appropriate and prompt amendment. Thus there is nothing in any way novel in according supremacy to rules of Community law in those areas to which they apply and to insist that, in the protection of rights under Community law, national courts must not be inhibited by rules of national law from granting interim relief in appropriate cases is no more than a logical recognition of that supremacy».

The proclamation of the supremacy of EC law provoked (as we have seen above) legal upheavals in the UK as well as in other Member States. But for the purpose of our study we will only be concerned by the case of France.

**2- France and the supremacy of EC law**

The French approach to international law is set out in article 55 of the Constitution: “Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in regard to each agreement or treaty, to its application by the other party”. We can see that France has a monistic approach to international law.

Even if article 55 provides clearly that once a treaty is ratified and published it should prevail over national law, the courts were reluctant to give primacy to EC law when conflicting with a subsequent Act of Parliament.

The Constitutional Council has stated since 1975, in a decision called Interruption Volontaire de Grossesse [[88]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn88%22%20%5Co%20%22)(IVG), that he cannot control the conformity of an Act of Parliament to the provisions of a treaty because of the very nature of a treaty. The reason is that a treaty has a relative and contingent authority. This decision was followed by many others where the Constitutional Council adopted the same position[[89]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn89%22%20%5Co%20%22).

This decision indicated that ordinary courts are competent to give effect to international law when conflicting with national law. It is then to the ordinary judges to enforce international law, and especially EC law by which our study is concerned.

We should precise, on this stage of the analysis, that the French judicial system is divided between administrative courts and ordinary courts. Both did not react in the same way to the decision IVG of the Constitutional Council.

Supremacy of EC law was accepted since 1975 by the Cour de Cassation[[90]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn90%22%20%5Co%20%22), the highest of the ordinary judicial courts. In the Café Jacques Vabre case, the Cour de Cassation was faced with a conflict between article 95 of the EC Treaty and a later provision of the French Custom Code. The Cour de Cassation following the suggestion of the Procureur Général held that the question was not whether it could review the constitutionality of a French law. The court based its decision on article 55 of the French Constitution rather than a global approach argued by Procureur Général Touffait: “It would be possible for you to give precedence to the application of article 95 of the Rome Treaty over the subsequent statute by relying on article 55 of our Constitution, but personally I would ask you not to mention it and instead to base your reasoning on the very nature of the legal order instituted by the Rome Treaty. Indeed, so far as you restricted yourselves to deriving from article 55 of our Constitution the primacy in the French internal system of Community law over national law you would be explaining and justifying that action as regards our country, but such reasoning would let it be accepted that it is on our Constitution and on it alone that depends the ranking of Community law in our internal legal system. In doing so you would implicitly be supplying a far from negligible argument to the courts of the Member States which, lacking any affirmation in their constitutions of the primacy of the Treaty would be tempted to deduce the opposite solution, as the Italian Constitutional Court did in 1962 when it claimed that it was for internal constitutional law to fix the ranking of Community law in the internal order of each Member State”.

The Conseil d’Etat was more reluctant to admit the primacy and direct effect of EC law. Indeed, the supreme administrative court did not abandon its position until 1989 in the case called Nicolo[[91]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn91%22%20%5Co%20%22).

The applicant were French citizens who brought an action for the annulment of the European Parliament elections in France in 1989, on the grounds that the right to vote and to stand had been given to French citizens in the non-European overseas departments and territories of France. It was argued that the French statutory rule under challenge, Act 77 729 was contrary to the EEC Treaty.

The case came before the Conseil d’Etat, where the Commissaire du gouvernement considered that the applications should be dismissed. The Conseil d’Etat did not adopt the view expressed by the Commissaire du gouvernement. It ruled however that the French statutory rules were invalid on the ground that they were “not incompatible with the clear stipulations of the above mentioned article 227 (1) of the Treaty of Rome”.

The Commissaire had argued as follows: “the whole difficulty is then to decide whether, in conformity with your settled case law, you should dismiss this second argument by relying on the 1977 Act alone, without even having to verify whether it is compatible with the Treaty of Rome, or whether you should break fresh ground today by deciding that the Act is applicable only because it is compatible precisely with the Treaty…. I am aware that the Court of Justice of the European Communities — which, as we know, gives Community law absolute supremacy over the rules of national law, even if they are constitutional — has not hesitated for its part to affirm the obligation to refuse to apply in any situation laws which are contrary to Community measures…. I do not think you can follow the European Court in this judge-made law which, in truth, seems to me at least open to objection. Were you to do so, you would tie yourself to a supranational way of thinking which is quite difficult to justify, to which the Treaty of Rome does not subscribe expressly and which would quite certainly render the Treaty unconstitutional, however it may be regarded in the political context…. I therefore suggest that you base your decision on article 55 of the Constitution and extend its ambit to all international agreements”.

The Conseil d’Etat later adopted the same position towards Regulations in Boisdet[[92]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn92%22%20%5Co%20%22) and towards Directives in Philip Morris[[93]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn93%22%20%5Co%20%22). Administrative and ordinary judicial courts, in their latest case-law, seem to take into account general and fundamental principles consecrated by the European case-law. The Cour de cassation did apply the principle of proportionality by referring to EC law[[94]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn94%22%20%5Co%20%22).The Conseil d’Etat seems to have admitted, although implicitly, that secondary legislation can be declared invalid when it contravenes legitimate expectations[[95]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn95%22%20%5Co%20%22).

**Conclusion**

We may conclude by saying that EU law has achieved the aims of comparative law which are the unification of laws, although only to a certain extent.

By proclaiming the supremacy of EU law over domestic laws of all Member States the ECJ makes EU law uniform all over the Community.

We did not criticize the European Union for the lack of democracy in its legislative process, our purpose being to analyze and not to criticize.

If, however, a Member State is discontented with being in this Community, it can withdraw from it. As Boissy d’Anglas said “when the insurrection is general it does not need any justification, but when it is partial it is always guilty”[[96]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftn96%22%20%5Co%20%22).

Indeed, insurrections flourished the last years in the streets of the Arab world and the Arab League was incapable to take appropriate actions in this regard. The Arab spring have led the population, in many member states, to change regimes. The incapacity of the Arab League to deal with such situations is characterized by the lack of appropriate legal, institutional and political tools to find a settlement for disputes caused by popular frustration. The Arab League gave the impression of being an outdated institution.

To sum it up, no regional integration can be perfect. Weaknesses can be identified here and there. But when weaknesses outweigh the advantages we can assume that the organization is going towards discrepancy and desuetude.

The reasons for success of any regional organization are directly related to the level of commitment of its members. The same rules govern any other organization.

[[1]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref1%22%20%5Co%20%22)-   Former assistant to Jean Monnet and Professor at the Institut d’Etudes Politiques, Paris. Europe in 12 Lessons, European Commission, Directorate-General for Communication, Publications, Brussels, 2010, p. 5.

[[2]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref2%22%20%5Co%20%22)-   French Foreign Minister.

[[3]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref3%22%20%5Co%20%22)-   This is the case for example of Iraq after the invasion of Kuwait.

[[4]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref4%22%20%5Co%20%22)-   Greece got rid of the last European dictatorship in 1975. We do not mention eastern European countries because they were still satellite states of the Soviet Union until the Perestroika and their access to independence in the early nineties.

[[5]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref5%22%20%5Co%20%22)-   Egypt, Iraq, Jordan, Lebanon, Syria and Saudi Arabia. Since then, sixteen more states joined the organization. But due to recent uprising in Syria, the League suspended this member state and now counts 21.

[[6]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref6%22%20%5Co%20%22)-   Eight of them joined the EU in 2004, followed by two others in 2007 and finally Croatia joined in 2013 to make a total number of 28 member states. Iceland, Turkey and several countries in the Balkans are willing to join in.

[[7]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref7%22%20%5Co%20%22)-   This promotes cooperation between prosecutors, judges and police officers in different EU countries.

[[8]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref8%22%20%5Co%20%22)-   For example, to extend the network of motorways and high-speed railways.

[[9]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref9%22%20%5Co%20%22)-   The EU has 24 official languages.

[[10]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref10%22%20%5Co%20%22)-  In December 2008, it unilaterally committed itself to a 20% cut in greenhouse gas emissions by 2020.

[[11]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref11%22%20%5Co%20%22)-  Algeria, Qatar, Kuwait, Saudi Arabia and the United Arab Emirates.

[[12]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref12%22%20%5Co%20%22)-  Comoros, Djibouti, Mauritania, Somalia, Sudan and Yemen.

[[13]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref13%22%20%5Co%20%22)-  In particular services of general interest.

[[14]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref14%22%20%5Co%20%22)-  Dealing for example with transport and competition.

[[15]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref15%22%20%5Co%20%22)-  Such as social policy, research and environment.

[[16]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref16%22%20%5Co%20%22)-  Dignity, freedoms, equality, solidarity, citizens’ rights and justice.

[[17]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref17%22%20%5Co%20%22)-  This is the case of Erasmus program.

[[18]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref18%22%20%5Co%20%22)-  The European Union alone is responsible for custom union, rules governing competition within the single market, monetary policy for countries using the Euro, conservation of marine biological resources under the common fisheries policy, common commercial policy and concluding international agreement when this is provided for in EU legislation.

[[19]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref19%22%20%5Co%20%22)-  Fields for which the member states remain responsible and in which the EU may play a supporting or coordinating role: protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport, civil protection and administrative cooperation.

[[20]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref20%22%20%5Co%20%22)-  The European Union and its member states share responsibility for the single market, aspects of social policy as defined in the Lisbon Treaty, economic and social cohesion, agriculture and fisheries, the environment, consumer protection, transport, trans-European networks, energy, creating an area for freedom, security and justice, research, technological development and space.

[[21]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref21%22%20%5Co%20%22)-  Not to be confused with the European council. It is also known as the Council of Ministers.

[[22]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref22%22%20%5Co%20%22)-  Since 1979, members of the European Parliament (MEP’s) have been directly elected, by universal suffrage, every five years.

[[23]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref23%22%20%5Co%20%22)-  Known as plenary sessions’.

[[24]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref24%22%20%5Co%20%22)-  Negotiated by the Commission.

[[25]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref25%22%20%5Co%20%22)-  Article 4 provides that “each of the questions listed in Article II there shall be set up a special committee in which the member-states of the League shall be represented. These committees shall be charged with the task of laying down the principles and extent of co-operation. Such principles shall be formulated as draft agreements to be presented to the Council for examination preparatory to their submission to the aforesaid states”.

[[26]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref26%22%20%5Co%20%22)-  French text: “vous avez juridiquement tort parce que vous êtes politiquement minoritaire”.

[[27]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref27%22%20%5Co%20%22)-  Decision of the Conseil Constitutionel, DC 85-197, 23 august 1985, Evolution de la Nouvelle Calédonie, G.D. 39. French text: “la loi votée n’exprime la volonté générale que dans le respect de la Constitution”.

[[28]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref28%22%20%5Co%20%22)-  J.-J. Rousseau, **«Du Contrat Social»**, L. II, Ch. VI. French text: “Toute justice vient de Dieu, lui seul en est la source, mais si nous savions la recevoir de si haut, nous n’aurions pas besoin ni de gouvernement ni de lois. Sans doute il y a une justice universelle émanée de la raison seule; mais cette justice pour être admise entre nous, doit être réciproque… Il faut donc des conventions et des lois pour unir les droits aux devoirs et ramener la justice à son objet”.

[[29]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref29%22%20%5Co%20%22)-  C.E.P. Davies, **“Law”**, edited by R.H. Graveson, 1967, p.47.

[[30]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref30%22%20%5Co%20%22)-  Dicey, **“The Law of the Constitution”**, pp. 39-40.

[[31]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref31%22%20%5Co%20%22)-  Keir & Lawson, **“Cases in Constitutional Law”**, p.1.

[[32]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref32%22%20%5Co%20%22)-  Madzimbamuto v. Lardner-Burke [1969] 1 AC 645.

[[33]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref33%22%20%5Co%20%22)-  Quoted by Dicey, **“Law of the Constitution”**, Macmillan, 1961, p.43.

[[34]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref34%22%20%5Co%20%22)-  Burmah Oil Company v. Lord Advocate [1965] AC 75.

[[35]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref35%22%20%5Co%20%22)-  Cheney v. Conn [1968] 1 All ER 779.

[[36]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref36%22%20%5Co%20%22)-  Henry Roussillon, “Le pouvoir de révision dans les déclarations de l’an I” in **“Les Déclarations de l’an I”**, PUF, 1995. French text: “les hommes de la Révolution qui proclamaient haut et fort qu’une génération ne saurait lier définitivement les générations futures”

[[37]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref37%22%20%5Co%20%22)-  Lord Langlade in Dean of Elly v Bliss (1842) 5 Beav 574.

[[38]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref38%22%20%5Co%20%22)-  Ellen Street Estates Ltd. v Minister of Health [1934] 1 KB 590.

[[39]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref39%22%20%5Co%20%22)-  Vauxhall Estates Ltd. v Liverpool Corpn [1932] 1 KB 733.

[[40]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref40%22%20%5Co%20%22)-  M’Ara v Magistrates of Edinburgh 1913 SC 1059.

[[41]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref41%22%20%5Co%20%22)-  MacCormick v Lord Advocate 1953 SC 396.

[[42]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref42%22%20%5Co%20%22)-  Bradley & Ewing,**“Constitutional and Administrative Law”**, twelfth edition, Longman, p.81.

[[43]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref43%22%20%5Co%20%22)-  Gibson v Lord Advocate 1975 SC 134. See also Stewart v Henry 1989 SLT (Sh Ct) 34; Murray v Rogers 1992 SLT 221.

[[44]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref44%22%20%5Co%20%22)-  Quoted by Sir Kenneth Wheare, **“Modern Constitutions”**, Oxford University Press, 1951, p.18.

[[45]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref45%22%20%5Co%20%22)-  J.-J. Chevallier, “J-J Rousseau ou l’absolutisme de la volonté générale”, revue française de science-politique, 1953, pp. 18 et 19. French text: “On voit comment à l’Etat c’est moi, le souverain c’est moi de Hobbes et de Bossuet, Rousseau substitua l’Etat c’est nous, le souverain c’est nous de l’ensemble des citoyens, ou peuple en corps. Nouvel absolutisme non moins majestueux, qui lui est sans danger car il se ramène à l’absolutisme de la volonté générale qui veut toujours le meilleur, qui est toujours droite”.

[[46]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref46%22%20%5Co%20%22)-  J.-P. Gridel, **«Introduction au droit et au droit français»**, Dalloz, 2ème édition, 1994, p.665. French text: “il y a truisme à rappeler que l’un des soucis du constituant de 1958 fut de rationaliser et responsabiliser l’activité législative du Parlement. Il s’est traduit, notamment, par une énumération substantielle mais limitative des compétences matérielles de la loi et par diverses dispositions destinées à discipliner la procédure parlementaire”.

[[47]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref47%22%20%5Co%20%22)-  For French text and more information see http://www.elysee.fr/ang/instit/txt58co.htm.

[[48]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref48%22%20%5Co%20%22)-  DC 82-143, Rec.57.

[[49]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref49%22%20%5Co%20%22)-  Article 37 of the French Constitution: “matters other than those that fall within the ambit of statute shall be matters of regulation”.

[[50]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref50%22%20%5Co%20%22)-  Art. 37(2): “Acts of Parliament passed concerning these matters may be amended by decree issued after consultation with the Conseil d’Etat…”; Art. 41:”Should it be found in the course of the legislative process that a Member’s Bill or amendment is not a matter for statute or is contrary to a delegation granted by virtue of article 38, the Government may object that it is inadmissible”.

[[51]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref51%22%20%5Co%20%22)-  Article 38: “In order to carry out its program, the Government may ask Parliament for authorization, for a limited period, to take measures by ordinance that are normally a matter for statute”.

[[52]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref52%22%20%5Co%20%22)-  Article 50: “Where the National Assembly carries a motion of censure, or where it fails to endorse the program or a statement of general policy of the Government, the Prime Minister must tender the resignation of the Government to the President of the Republic”.

[[53]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref53%22%20%5Co%20%22)-  85-191 DC, 10th of july 1985; 85-198 DC, 13 of December 1985, Amendement Tour Eiffel; 90-278 DC, 7th of November 1990, Règlement du Sénat.

[[54]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref54%22%20%5Co%20%22)-  Henry Roussillon, **“Le Conseil Constitutionnel”**, Dalloz, 3ème édition, pp.114-115.

[[55]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref55%22%20%5Co%20%22)-  An English version of the French Constitution can be found on internet: http://www.elysee.fr/ang/instit/txt58co.htm.

[[56]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref56%22%20%5Co%20%22)-  Article 35, comp. art. II et 33: “Quand le Gouvernement viole les droits du peuple, l’insurrection est pour le peuple, le plus sacré des droits et le plus indispensable des devoirs”.

[[57]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref57%22%20%5Co%20%22)-  “Je demande d’abord à un jury de Constitution … une jurie constitutionnaire. C’est un véritable corps de représentants que je demande, avec une mission spéciale de juger les réclamations contre toute atteinte qui serait portée à la Constitution”.

[[58]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref58%22%20%5Co%20%22)-  F. Larnaude, Bull. De législ. Comp., 1902. French text: “Si l’on adopte un système de Constitution écrite, c’est au prix d’une inconséquence logique qu’on ne déclare pas nulles les lois violant le pacte fondamental”.

[[59]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref59%22%20%5Co%20%22)-  French text: “Les droits naturels, inaliénables et sacrés de l’homme” sont proclamés “afin que les actes du pouvoir législatif et ceux du pouvoir exécutif, pouvant être à tout instant comparés avec le but de toute institution politique, en soient plus respectés”.

[[60]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref60%22%20%5Co%20%22)-  85-197 DC, 23rd of August 1985, Evolution de la Nouvelle-Calédonie.

[[61]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref61%22%20%5Co%20%22)-  The decisions of the Constitutional Council in this concern are numerous, example: 85-197 DC and 85-196 DC of the 8th and the 23rd of august 1985, Evolution de la Nouvelle-Calédonie.

[[62]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref62%22%20%5Co%20%22)-  **«Le Conseil Constitutionnel»**, Dalloz, 3ième édition, 1996, p.1.

[[63]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref63%22%20%5Co%20%22)-  71-44 DC, 16th of July 1971.

[[64]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref64%22%20%5Co%20%22)-  François Terré, **“La crise de la loi”**, Archives de philosophie du Droit, Tome 25, Sirey, 1980, p. 19. French text: “la force obligatoire de la loi est reliée principalement à la confiance inspirant les citoyens à l’égard du pouvoir. Tandis que la volonté nationale s’éloigne, la loi est reconnue comme telle parce qu’elle exprime la volonté de gouvernants — au sens large du mot — qui traduisent les aspirations des citoyens. Autant dire que la situation dans laquelle se trouve le législatur lorsqu’il légifère prend une importance décisive. La loi a cessé d’être l’expression de la volonté générale pour devenir, ou redevenir, l’expression du législateur, le législateur”.

[[65]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref65%22%20%5Co%20%22)-  Case 26/62, NV Algemene Transporten Expeditie Onderneming Van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR 1.

[[66]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref66%22%20%5Co%20%22)-  Case 6/64, Flamino Costa v ENEL [1964] ECR 585.

[[67]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref67%22%20%5Co%20%22)-  Case 11/70, Internationale Handelsgellschaft mbH v Einfuhr-und Vorratsstelle Fur Getreide und Futtermittel [1970] ECR 1125.

[[68]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref68%22%20%5Co%20%22)-  Case 106/77, [1979] ECR 629, Administrazione delle Finanze dello Stato v Simmenthal SpA.

[[69]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref69%22%20%5Co%20%22)-  J. Weiler, **“The Community System: the Dual Character of Supranationalism”**, (1981) 1 YBEL 267, 275-6.

[[70]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref70%22%20%5Co%20%22)-  Case 2/74, [1974] ECR 631, Reyners v Belgium.

[[71]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref71%22%20%5Co%20%22)-  Case 43/75, Defrenne v Société Anonyme Belge de Navigation Aérienne [1976] ECR 455.

[[72]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref72%22%20%5Co%20%22)-  Case 39/72 [1973] ECR 101.

[[73]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref73%22%20%5Co%20%22)-  Case 50/76, Amsterdam Bulb BV v Produkschap Voor Siergewassen [1977] ECR 137.

[[74]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref74%22%20%5Co%20%22)-  Case 9/70, Franz Grad v Finanzamt Traunstein [1970] ECR 825.

[[75]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref75%22%20%5Co%20%22)-  Cases 21-24/72, International Fruit Company v Produktschap Voor Groenten en Fruit [1972] ECR 1219.

[[76]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref76%22%20%5Co%20%22)-  Case 41/74, Van Duyn v Home Office [1974] ECR 1337.

[[77]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref77%22%20%5Co%20%22)-  Case 148/78, Pubblico Ministero v Tullio Ratti [1979] ECR 1629.

[[78]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref78%22%20%5Co%20%22)-  West Rand Central Gold Mining Co. [1905] 2 KB. At 391.

[[79]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref79%22%20%5Co%20%22)-  Mortensen v Peters (1906) 8 F.(J.) 93.

[[80]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref80%22%20%5Co%20%22)-  Maclaine Watson v Department of Trade and Industry [1983] 3 All ER 523.

[[81]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref81%22%20%5Co%20%22)-  Shield v E. Coomes (Holdings) Ltd. [1979] 1 All ER 456.

[[82]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref82%22%20%5Co%20%22)-  Macarthys v Smith [1979] 3 All ER 325.

[[83]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref83%22%20%5Co%20%22)-  Garland v British Rail Engineering Ltd. [1983] 2 AC 751.

[[84]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref84%22%20%5Co%20%22)-  Duke v GEC Reliance Ltd. [1988] AC 618.

[[85]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref85%22%20%5Co%20%22)-  Case 206/89, Marleasing SA v La Commercial International de Alimentation SA [1992] 1 CMLR 305.

[[86]](https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league%22%20%5Cl%20%22_ftnref86%22%20%5Co%20%22)-  Webb v EMO Air Cargo (UK) Ltd. [1992] 4 All ER 929.

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**الاتحاد الأوروبي وجامعة الدول العربية : تقويم قانوني ومؤسساتي وسياسي**

جامعة الدول العربية والاتحاد الأوروبي منظمتان إقليميتان تتشاركان أهدافًا متشابهة. إلا أنهما شهدا طريقة مختلفة تمامًا من النموّ. وأدّى الالتزام السياسي وإطار العمل القانوني والمؤسساتي دورًا مهمًا في صياغة نموّ هاتين المنظّمتين.
المنظّمتان ذات الأهداف المتشابهة لم يكن نجاحهما متساويًا بالقدر نفسه وفيما يمكن اعتبار الاتحاد الأوروبي حاليًا أحد اللاعبين الأساسيين على الساحة الدولية فيما يبقى دور جامعة الدول العربية هامشيًا في أقلّ تقدير. سنستكشف في هذا البحث الأسباب القانونية والمؤسساتية والسياسية التي حدّدت نجاح المنظّمة الأولى وفشل الثانية.
تنامت حالات العصيان خلال السنوات الأخيرة في شوارع العالم العربي وبدت الجامعة العربية عاجزة عن اتخاذ الخطوات المناسبة في هذا المجال. وقاد الربيع العربي في العديد من الدول الأعضاء في الجامعة العربية شعوب هذه الدول إلى تغيير الأنظمة. إن عجز جامعة الدول العربية عن التعامل مع مثل هذه الأوضاع ناجم عن غياب الأدوات القانونية والمؤسساتية والسياسية للتوصّل إلى تسوية الخلافات الناتجة عن حالات الإحباط لدى الشعوب. وقد أعطت جامعة الدول العربية الانطباع بأنها منظمة قديمة.
ما من اندماج إقليمي يمكن أن يكون مثاليًا ويمكن ملاحظة وجود نقاط ضعف هنا وهناك ولكن حين تصبح نقاط الضعف أكبر حجمًا من نقاط القوة يمكننا أن نفترض بأن المنظّمة تتجه نحو التناقض والانحلال.
أسباب نجاح أي منظمة إقليمية فترتبط مباشرةً بمستوى التزام الأعضاء فيها والقوانين نفسها تنطبق على أي منظّمة أخرى.

- See more at: https://www.lebarmy.gov.lb/en/content/european-union-and-arab-league#sthash.GnqDB34l.dpuf