

AN EVER-CLOSER UNION?

TOWARDS A COMPREHENSIVE APPROACH OF
THE EUROPEAN DISINTEGRATION PROCESS

Manuela Sánchez Gómez



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COLEX 2023

To Teresa and Alonso

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ABBREVIATIONS

CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CSDP	Common Defence and Security Policy
EASO	European Asylum Support Office
ECB	European Central Bank
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECOFIN	Economic and Financial Affairs Council
EDF	European Defence Fund
EDP	Excessive Deficit Procedure
EFSM	European Financial Stabilisation Mechanism
EFSF	European Financial Stability Facility
EPF	European Peace Facility
ESDP	European Security and Defence Policy
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
EU	European Union
FCC	German Federal Constitutional Court
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IMF	International Monetary Fund
NATO	North Atlantic treaty organization
NPMA	New Pact on Migration and Asylum
PESCO	Permanent Structured Cooperation
SGP	Stability and Growth Pact
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union

TPD	Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
UK	United Kingdom
UN	United Nations
UNHCR	United Nations Refugee Agency
US	United States

A PRELIMINARY NOTE

During this book, the use of the concepts “person in need of international protection”, “refugee” and “stateless person” is based on the definition provided by the UNHCR.

The need for international protection “arises when a person is outside their own country and unable to return home because they would be at risk there, and their country is unable or unwilling to protect them. Risks that give rise to a need for international protection classically include those of persecution, threats to life, freedom or physical integrity arising from armed conflict, serious public disorder, or different situations of violence. Other risks may stem from: famine linked to situations of armed conflict; natural or man-made disasters; as well as being stateless. Frequently, these elements are interlinked and are manifested in forced displacement” (UNHCR 2017: 1).

Refugees are “in need of international protection, being outside their country of origin because of serious threats against which the authorities of their home country cannot or will not protect them. Left unprotected, they seek protection from a country of refuge, and from the international community. It is this vital need for international protection that most clearly distinguishes this category from others crossing international borders. Refugees are broadly understood to include all persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder” (UNHCR 2017: 1–2).

Stateless persons are “another category who do not enjoy full national protection as citizens” (UNHCR 2017: 4).

ABSTRACT

The EU was created with the aim of promoting an ever-closer union among the peoples of Europe. For decades, the European project has been consolidated to the extent that new countries have joined the EU and its supranational governance areas have been gradually increasing. However, the EU, as any international organization, has also suffered and overcome different crises.

In the period between 2010 and 2020, the context changed drastically. In that period there have been three crises that differ from all the previous ones that have jeopardized the European integration process. This book addresses, from the perspective of public international law, what have been the repercussions of the eurozone, migration and Brexit crises to shed light on whether there have been any signs of European disintegration and provide researchers with a set of explanatory factors that shows different results for each crisis. Despite decades of research in the field of European integration, as of the date of writing this book, academic studies assessing European disintegration are profoundly scarce.

The eurozone crisis has led to a strengthening of European integration in the vertical, sectoral, and horizontal dimensions, although the underlying consequences have been the adoption of mechanisms outside the EU Law, the lack of transparency and accountability and the exacerbation of differences among States. In the migratory crisis, a process of disintegration is confirmed to the extent that the authority of the institutions has been weakened and there has been a renationalization of competences. In addition to this, it is worth noticing that there has been a reduction in the safeguarding of the fundamental rights of people seeking international protection. The Brexit crisis highlights a setback in the horizontal dimension of integration as a Member State leaves the EU for the first time. However, the vertical dimension has been strengthened because the remaining Member States have gathered their powers over the negotiation process at the European institutions, renouncing intergovernmental agreements. Although it was not the initial object of this work, I have concisely analysed the consequences of the Ukrainian War. It has caused a reinforcement of

European integration and has shown that if the Member States have the willingness, the EU can provide a fast, strong and innovative regulatory framework to deal with to a conflict that has put the security and prosperity of the continent at risk.

After confirming that some crises have resulted in a reinforcement of European integration process while others have caused signs of disintegration, the book concludes by determining which are the explanatory variables that constitute a pattern to understand how the different crises will affect the future of the EU. First, the existence of a common good to be protected. There is a greater probability that decision-making will be executed in the European sphere when EU Heads of State or Governments the Member States agree that there is a common supranational objective to protect and promote that prevails over their national preferences. Second, the typology of legislation adopted within the EU. It has been confirmed that the more binding, mandatory, and conditional law instruments that are adopted, the greater the deepening in European integration will be. Third, the asymmetric role of the European institutions. When there are institutions or organizations, both existing and recently created, determined to protect European public policies, a strengthening of the dimensions of the EU is promoted. Forth, the higher the degree of politicization of a public policy and the more it touches on matters of national sovereignty, the less likely the EU institutions is to get involved in decision-making on those. Fifth, leadership at the European level. the existence of strong leadership, whether from a Member State, a European institution or a supranational negotiator, is vital to ensure progress in European integration. If there is a lack of leadership at the European level, national preferences are more likely to prevail. Sixth, the potential risk of contagion. When the EU intends to avoid the so-called contagion effect, its institutions promote different measure to do so. However, when the potential for contagion is not considered as a risk the EU even supported attitudes markedly opposed to European integration.

As a summary, the value of this book lies in addressing systematically if there has been a process of European disintegration between 2010 and 2020 as well as empirically verify what are the explanatory factors that have caused different results for each crisis.

AN EVER-CLOSER UNION?

The EU was created with the aim of promoting an ever-closer union among the peoples of Europe. For decades, the European project has been consolidated to the extent that new countries have joined the EU and its supranational governance areas have been gradually increasing. In the period between 2010 and 2020, the context changed drastically. In that period there have been crises that differ from all the previous ones that have jeopardized the European integration process. Despite decades of research in the field of European integration, as of the date of writing this book, academic studies assessing European disintegration are profoundly scarce. This investigation addresses, from the perspective of public international law, the consequences of the eurozone crisis, migration crisis, Brexit, and the war in Ukraine to shed light on whether there have been any signs of European disintegration and provide readers with a set of explanatory factors that show different results for each crisis.



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