

The European Union as an Actor in International Law

– Annotated Course Outline –

1. The Foreign Relations Law of the European Union

- EU as an international actor (the common foreign policies)
- International legal personality of the EC/EU
- Foreign relations powers of the EC/EU
- Role of the Council, the Commission, the (future) Union Minister of Foreign Affairs, and the European Parliament

2. The Relationship Between International Law, European Law and Domestic Law of the Member States

- Monism or dualism: the European dimension of the great debate
- Position of international law (custom and treaties) in European law
- Binding force of customary international law on the EU
- Direct effect of international agreements in European law
- Conflicts between international law and European law
- European law as regional customary international law

3. Treaty-Making Power of the European Union and Its Member States

- Treaty-making procedure within the EU (division of powers between Council, Commission and Parliament)
- Treaty-making power of the EU and its member States (express and implied, exclusive and concurrent powers)
- Treaties on subjects within the EU's competence to which only States can be a party
- Mixed agreements and joint commitments
- The peculiarities of association agreements

4. Treaty Relations of the European Union

- Succession of the EU to treaties of its member States
- Conflicts between European law and (prior) treaty obligations of the member States
- Conflicts between treaties and other (primary and secondary) European law
- The status of treaty bodies and their decisions in international and European law
- Violation of treaty obligations of the EU and its member States

5. The Role of Recognition in the European Union's Foreign Policy

- The EU's competence to recognize (States, governments, title to territory)
- EC recognition policy: origins and terms of reference
- The EPC declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union'
- The EU's recognition policy in the cases of Cyprus, the Israeli occupied Palestinian territories, Transnistria and the Western Sahara
- Economic consequences of the EU's non-recognition of illegal situations

6. The Membership and Representation of the European Union in International Organizations

- Competence of the EC/EU to become a member of international organizations
- Impediments to EC/EU membership of international organizations
- Problems of membership (exercise of voting rights, payment of membership dues)
- Relationship between the EU and its Member States in international organizations (duty of cooperation, unity of representation)
- The EU and the United Nations (representation, status, the EU as a regional arrangement under Chapter VII of the UN Charter)
- The Member States as trustees of the EU in international organizations

7. The European Union and the Exercise of Extraterritorial Jurisdiction

- The concept of (extraterritorial) jurisdiction in international law
- International law requirements for the extraterritorial exercise of jurisdiction
- Special EC law requirements for the exercise by third States of jurisdiction within the European Union
- EU-US controversies over the exercise of extraterritorial jurisdiction (PNR, Helms-Burton, SWIFT data)
- EU standards as a form of economic/legal imperialism (EC REACH legislation, MiFID)

8. Promotion of Human Rights and Democracy by the European Union

- The EU's human rights obligations under international law
- Competence of the EU/EC to act in the area of human rights
- Human rights and democracy clauses in the EU's trade agreements
- Other ways to promote human rights and democracy
- The EU and the European Convention of Human Rights

9. Imposition and Implementation of Sanctions by the European Union

- Binding force of sanctions imposed by the United Nations
- Competence of the EU/EC and the Member States to implement UN sanctions
- Procedures for the implementation of UN sanctions
- Legality of sanctions imposed by the EU unilaterally
- Review of UN sanctions by the ECJ
- The need for a 'United Nations Regulation' equivalent to the British United Nations Act 1946

10. The European Union as a Driving Force in International Environmental Law

- The EC's external competence and the protection of the environment
- The EC's role in the adoption and implementation of the UN Framework Convention on Climate Change and the Kyoto Protocol
- The EU's Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT)
- The EU strategy for global sustainable development

11. The European Union as a Major Player in the Law of the Sea

- The EC and the Member States as parties to the UN Convention on the Law of the Sea
- The EC as a member of regional fisheries organizations (NAFO, NEAFC, NASCO)
- Marine environmental protection in the "Mare Europaeum"
- Role of the ECJ in the resolution of Law of the Sea disputes between EU Member States

- The difficult relationship between the EU and the IMO
- The EU's proposal for an implementation agreement to UNCLOS regarding the protection of marine biodiversity in areas beyond national jurisdiction
- Global enforcement of the law of the sea by the EU (criminalization of seafarers)

12. The European Union and the World Trading System

- The replacement of the Member States by the EC in matters of international trade
- The EC as a member of EBRD and WTO
- The ECJ's jurisprudence on the status of GATT, GATS and TRIPS within the EC legal order
- Implementation of the recommendations of reports adopted by the WTO DSB in the field of antidumping and anti-subsidy measures
- Recent Trade Disputes between the EC and the US
- The EC's and Member States' participation in the WTO Dispute Settlement Understanding

13. The European Union–US Controversy over the International Criminal Court

- EU support of the ICC
- The EU's position on the 'unsigned' of the Rome Statute by the US
- The EU position on the conclusion of 'Article 98 Agreements' by the US
- EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the International Criminal Court and the United States Regarding the Conditions to Surrender of Persons to the Court
- The EU reaction to the American Service Members' Protection Act
- The EU's position on Security Council resolutions 1422 (2002) and 1487 (2003)

14. European Peacekeeping and Other Missions Abroad

- Legal framework for the establishment/deployment of "EU missions/forces"
- Recent missions/forces to Aceh, Sudan, Congo, Moldova (Transnistria) and the Rafah border crossing in Palestine/Israel
- Status of force agreements with the host State on the tasks, status, privileges and immunities of the mission/force
- Responsibility of the EU, its Member States and participating third States for actions of the EU mission
- Authorization of EU missions by the UN

15. The Settlement of International Disputes between the European Union and Third States and between its Member States

- The EU and the problem of State centred dispute settlement procedures
- The EU before international courts and tribunals (ITLOS, WTO DSB, ICJ, PCA, ICSID)
- The Member States as trustees of the EU before international courts
- Dispute settlement clauses in treaties between the EC/EU and third States
- The ECJ as (exclusive) dispute settlement mechanism for international law disputes between Member States

16. Violation of International Law by the European Union and its Member States

- The EU between State responsibility and the responsibility international organizations
- Division of responsibility between the EU and its Member States
- Responsibility for (internal and external) *ultra vires* acts of the EC institutions

- Responsibility of the Member States for human rights violations of the EU/EC
- Liability for treaty violations (especially in the case of mixed agreements)
- The ECJ as a forum for claims against the EC and the Member States for violations of international law