

BRUSSELS SCHOOL OF INTERNATIONAL STUDIES

SYLLABUS 2017/2018

LW 916

EU International Relations Law

Module Convenor: Dr. Laurens Ankersmit

Email: L.Ankersmit@kent.ac.uk

Office Hours: to be announced on Moodle

MODULE FACTS AT A GLANCE

Level: Masters (M /7)

Teaching Period: Autumn Term 2017/2018

Credits: 20

ECTS Credits: 10

Learning Outcomes: The learning outcomes of this module are as follows:

The student should be able to understand and discuss how the EU interacts with the rest of the world from a legal perspective. This includes an understanding of:

- the key legal concepts, principles, doctrines, and rules relating to the institutional and legal framework of EU external action, and how these have evolved and in particular;
- the process of international treaty-making by the EU;
- how the EU can act as a member of international organisations;
- the powers of the ECJ in the field of EU international relations and the relationship between the ECJ and other international courts;
- understand the constitutional limits to the EU's external powers imposed by legal principles and fundamental rights.
- The student should further be able to access the main sources relating to the law governing the EU's external relations, including relevant treaty sources, other foreign policy instruments and case-law, as well as literature in the field, for the purpose of preparing module assessments in both written and oral form.
- The student should also understand and critically evaluate the theoretical perspectives and academic debates which underlie the EU international relations law for the purpose of preparing module assessments in both written and oral form.

INTRODUCTION

As the Court of Justice held in Opinion 2/13, '*the EU is, under international law precluded by its very nature from being considered a State*'. And yet, while the European Union (EU) is indeed not a state, it is a unique international actor with extensive legal powers on the international stage. The EU has treaty making powers, can assume international legal responsibility, and can give effect to international commitments in its own legal order. At the same time, the exercise of these

powers raises intricate legal issues over the respective roles of the institutions of the EU in negotiating and concluding international agreements and the representation of the EU, the relationship between the Member States and the EU at the international stage, and the role of the European Court of Justice (ECJ) in giving effect to international commitments.

This course is about these constitutional aspects of EU international relations law. While the focus of the class is on constitutional law, the class will inevitably cover substantive areas of law, such as trade, environmental protection, and sanctions as well. The EU is visible in many areas of international relations and international law. Most prominently it conducts a common commercial policy by negotiating trade agreements and giving effect to the EU's trade defence instruments. The EU is also party to a host of international environmental and development agreements and is increasingly active in more traditional forms of foreign policy relating to collective security issues. Last and not least, this class will also cover important EU legal aspects of Brexit. The EU is currently negotiating an agreement with the United Kingdom, following the UK's notification under Article 50 TEU.

This class will provide students an insight into the three core areas of EU international relations law. Firstly, this class will in Part I elaborate on the internal constitutional aspects of the EU's external actions, discussing the powers of the respective institutions as well as the division of powers between the EU and its Member States. This part will also discuss membership of international organizations and the unique EU legal construct of 'mixed' agreements. Secondly, in Part II this class will look into the role of the European Court of Justice in EU international relations law. It will discuss the Court's powers and how it gives effect to international law, as well as its relationship with other international courts and tribunals. Part III finally will discuss selected substantive aspects of EU international relations law, including Brexit.

LEARNING AND TEACHING METHODS

This course consists out of two hour weekly meetings that are divided into a lecture part and a seminar part. The seminar part will consist out of one or two student presentations of an important case of the European Court of Justice in EU international relations law, following a discussion. For each week students are required to spend around four hours preparing the class by reading the reading assigned for that week. Examination is based on an essay (80%) and the presentation (20%).

LECTURES: 11

SEMINARS: 10

PRIVATE STUDY: four hours per week

ELECTRONIC SUPPORT: This module will be supported by Moodle and the online reading list. Use of PowerPoint.

MOODLE: Moodle will be used to provide students with an online overview of the class and to provide additional material.

LECTURE CAPTURE: If Lectures are recorded they will be uploaded to Moodle

PERSONAL DEVELOPMENT

This module promotes the development of the following key skills:

- Legal analytical thinking;
- Presentation skills;
- Legal writing.

ASSESSMENT

The module is assessed based on an essay of around 5,000 words (80%) and on a presentation (20%).

Essay: Essay topics will be provided by mid-term, though students may write an essay on another topic within the scope of the module, provided that the title of this is stated and approved by the module convenor in advance of submission. The essay is due on **9th January 2018 12:00 (noon) UTC+1 (Brussels time)**.

Oral presentation: Students are required to make an oral presentation on a selected judgment of the Court of Justice of the EU or a designated seminar question. Presenting students are required to distribute a handout or a PowerPoint, and non-presenting students are encouraged to engage in debate about the issues raised. Usually seminar presentations take about 10 minutes, with about 5 minutes allocated to questions. A seminar presentation should show good verbal communication skills, knowledge of relevant research materials, organisation of the materials, originality of thought and an ability to construct and present sound legal arguments.

Number	Format (and word limit if applicable)	Submission Date	Where to submit	Mark and Feedback Returned	% of final mark
1	Essay of 5000 words ¹	9th January 2018	Electronic copy to Moodle	Within 3 weeks	80%
2	Oral presentation	Each student is required to give a short presentation during class		Before Christmas	20%

Specific guidance on Essays:

The essay for this course is a legal essay. Writing a legal essay successfully requires the student to do legal and literature research by reading case law of the ECJ and by researching law journals. A legal essay is also strongly based on making authoritative logical arguments based on the interpretation of legal sources and by citing or referencing to those legal sources (EU Treaties,

¹ The word count is excluding footnotes

secondary legislation, case law of the ECJ, legal commentary). The topic of a legal essay is generally a discussion of a particular legal problem and making arguments to support one or several views of that problem. In order to assist students with successfully writing an essay, the module convener will in hold an **individual meeting** with the student in **week 6** to discuss the outline and approach to the essay. This module will also offer a list of essay topics that the students may choose.

The following document provides guidance on how to research and write essays.

www.kent.ac.uk/brussels/handbook/styleguide.pdf

www.kent.ac.uk/brussels/handbook/polessay.pdf

Law essays should be typed, double or 1½ line spaced and fully referenced. Essays must state the actual word count. Each Module Convenor will set a list of essay topics for the students to choose from, or may give students the opportunity to set their own essay topic after consultation and agreement of an alternative essay title.

www.kent.ac.uk/brussels/handbook/klstyle.pdf

Word Limit Policy: The policy is available in the BSIS PGT handbook. See: <https://www.kent.ac.uk/brussels/handbook/pgt.pdf>

Marking Criteria: *Literature and legal research, argumentative strength and depth, strength and depth of the legal analysis, referencing, knowledge of the relevant researched materials, verbal communication skills (for presentations), organisation of the materials, originality of thought and grammar.*

Feedback: Feedback on your essay will be provided in electronic format on Grademark. All essays submitted on time will be returned to you within three weeks. It is imperative that you read and analyse the feedback given to you as this will provide an explanation of why you received a particular mark, what you did well, and what you need to work on to improve your grade.

Essays are seen by three markers: two internal, one external. Dissertations are marked by two internal examiners and read by an external examiner.

Both Kent Law School and the School of Politics and International Relations use the categorical marking scale as set out in the Credit Framework Annex 6: Marking and the standard categories of marks, which are: Pass 50-59%;

Merit 60-69%; Distinction 70% and above.

Details on the Assessment Criteria used by each school can be found below:

• Politics - <http://www.kent.ac.uk/brussels/handbook/acpolitics.pdf>

• Law - <http://www.kent.ac.uk/brussels/handbook/aclaw.pdf>

Please note that all marks remain subject to change until confirmed by the Board of Examiners.

How/where to submit: All students are required to submit ONE typewritten electronic copy to Moodle, of each piece of coursework by 12 noon on the day of the deadline. No email notice will be sent to the student to remind them of this deadline.

ACADEMIC DISCIPLINE

The procedures on academic discipline are outlined in annex 10 to the credit framework (please see the link below for more information)

<https://www.kent.ac.uk/teaching/qa/credit-framework/creditinfoannex10.html>

The following paragraphs outline and highlight some of the most common types of breaches of academic discipline (plagiarism, duplication of material and conspiring with others) and provide additional school specific information on plagiarism. This list is **not an exhaustive list of academic offences** and you should **familiarise yourself with all relevant rules**.

WHAT IS PLAGIARISM?

Common to all forms of plagiarism is that you intentionally or unintentionally present someone else's arguments, information or words as your own. **You plagiarise**, for example, if: 1) You **copy** sentences or parts thereof **verbatim** from any source **without quotation marks**, thereby suggesting that the copied words are your own when they are not. 2) You **paraphrase** sentences or paragraphs very **closely**. 3) You **use** arguments, information or verbatim quotes from a source **without** acknowledging the source by providing **a reference every time** you use information, arguments or verbatim quotes from that source. Anything written or said by someone else is a **source**, including articles, books, lectures, lecture notes, web pages, dictionaries, speeches, interviews, radio and TV programmes, other students' essays, etc.

Just to make it absolutely clear:

- Every time you use a quote (i.e. you copy sentences or parts thereof verbatim) you have to use quotation marks **and** provide a reference, including the page number.
- Every time you state an argument or information from a source in your own words you have to provide a reference.

WHAT IS DUPLICATION OF MATERIAL?

Duplication of material is a lesser known academic offence which nevertheless carries the same penalties as plagiarism. Duplication of material refers to the submission for assessment of any work or substantial parts thereof that you have previously submitted for assessment at the University of Kent or elsewhere without acknowledging that you are doing so.

If you work on your assignments together with other students, there is a risk that your submission may at least in parts be very similar to the work submitted by the students you worked with. Our plagiarism detection software will detect any such overlaps and report them as plagiarism, thus requiring us to take disciplinary action. Therefore, if you work with others, please check your work for possible similarities and overlaps so that you, and we, can be confident that the assignment you submit is the result of your work and not the work of others.

WHAT IS CONSPIRING WITH OTHERS?

Section 2.3 of Annex 10 to the credit framework specifies the following academic offence: 'Conspiring with others to reproduce the work of others, including knowingly permitting work to be copied by another student'. To highlight an often unappreciated aspect of this type of academic offence it is important to stress that to knowingly allow someone to copy your work (e.g. essay,

report etc.) is an offence just as it is an offence to copy someone else's work. Therefore, making your essay or other assignments available to someone else means that you may be penalised if your essay is copied from/by someone else.

WHAT ARE THE PENALTIES?

The penalties can be severe. They include marks of zero for individual coursework and de-registration from university for serious or repeat offences. Additionally, offences may be noted in your student record.

For more information on plagiarism (and referencing) please see The Politics and International Relations Student Guide: <https://moodle.kent.ac.uk/2016/course/view.php?id=3209> and the University's policy on academic discipline (Annex 10 to the Credit Framework) which can be found at: <http://www.kent.ac.uk/teaching/ga/credit-framework/creditinfoannex10.html>

MODULE READING

The reading for this module consists out of a combination of readings from a student handbook, case law, and selected other literature. This module will give the student the option of using one of two handbooks. One is available online via the University's library but can also be purchased, the other is only available in hardcopy.

These two handbooks are:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), **available online** see Moodle and the online reading list
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014)

Further reading is available through the University's library services pages unless otherwise indicated.

Case law is readily available on the web, at <http://curia.europa.eu>

Jurisprudence listed in this syllabus covers case-law that is most significant for the topic of the particular week. * and ** indicate the relative importance of the case, with ** marking the most important cases for this module.

WEEKLY TOPICS AND READINGS

Week	Topic	Reading
1	Introduction to the EU as a global actor	<i>See detailed weekly readings</i>
2	The EU institutions and the negotiation and conclusion of international agreements	EH: p. 193-212 / VVW: chapter 1
3	Existence and nature of EU external competence	EH: p. 70-120 / VVW: chapters 3 and 4
4	Nature and scope of EU trade policy	EH: p. 11-70 / VVW: chapter 9
5	Scope and choice of EU external competence	EH: p. 35-69, 120-164, 212-222 / VVW: chapter 5
6	ESSAY MEETINGS	
7	Membership of international organizations	EH: p. 222-267 / VVW: chapters 6 and 8
8	Agreements concluded by Member States (a) and the powers of the EU courts and international agreements (b)	EH: p. 267-323, 421-436
9	Legal effects of international agreements	EH: p. 323-439 / VVW: chapter 7
10	The EU and international courts and tribunals	<i>See detailed weekly readings</i>
11	Brexit	<i>See detailed weekly readings</i>
12	EU International Relations Law and Fundamental Rights	EH: 501-547

THE MODULE AT A GLANCE (WEEKS 1-12)

1 Introduction to the EU as a global actor

PART I: Constitutional aspects of EU international relations law

- 2 The EU institutions and the negotiation and conclusion of international agreements
- 3 Existence and nature of EU external competence
- 4 Nature and scope of EU trade policy
- 5 Scope and choice of EU external competence
- 6 ESSAY MEETINGS
- 7 Membership of international organizations

PART II: The EU courts and EU international relations law

- 8 Agreements concluded by Member States (a) and the powers of the EU courts and international agreements (b)
- 9 Legal effects of international agreements
- 10 The EU and international courts and tribunals

PART III: Selected substantive aspects of EU international relations law

- 11 Brexit
- 12 EU International Relations Law and Fundamental Rights

DETAILED WEEKLY READINGS

WEEK 1: Introduction to the EU as a global actor

This module will start by introducing the convenor and student, explaining the format of the course, and the assignments that students will be required to complete. The convenor will discuss the main constitutional legal texts and give the student the basic framework of the class. Following this, the class will provide an introduction to the law of international relations of the European Union, discussing:

- the legal position of the EU under international law;
- its constitutional goals and ambitions on the international scene; and
- the supranational and intergovernmental aspects of the EU's external action.

The class will conclude with a brief consideration of current topics in EU international relations law, including Brexit, the Transatlantic Trade and Investment Partnership (TTIP), and the 2015 United Nations Climate Change Conference (COP 21), reflecting on the evolution of the EU from the perspective of these current developments.

Main issues:

- The legal position of the EU as an international actor (international legal personality)
- The EU's goals and ambitions on the international scene
- The supranational and intergovernmental aspects of the EU's external action

Required Reading:

- (available via Moodle) Jan Klabbers, 'The legal position of international organizations' in: *An Introduction to International Institutional Law* 2nd edn (Cambridge: Cambridge University Press, 2012), pp. 38-52; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapter 1

Further Reading:

- Jan Wouters, Dominic Coppens and Bart De Meester, 'The European Union's External Relations after the Lisbon Treaty' in: Stefan Griller and Jacques Ziller (eds.) *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty?* (Springer: Vienna, 2008), pp. 144-166 (note that you do not have to read the entire article)

PART I: Constitutional aspects of EU international relations law

WEEK 2: The EU institutions and the negotiation and conclusion of international agreements

When the EU negotiates and concludes international agreements, it has to do so with regard to two separate legal orders: the international legal order and the EU legal order with its own set of 'domestic' constitutional requirements. When the EU wishes to accede to the European Convention on Human Rights (ECHR), for example, it will need to follow the rules of international law on the conclusion of international agreements. These are in a way 'external' legal requirements. However, when negotiating and concluding international agreements, the EU also needs to comply with its own 'internal' rules that form the EU's autonomous legal order. The EU Treaties set out certain procedural and substantive requirements that the institutions need to comply with before the EU can, from an EU law point of view, accede to an international agreement such as the ECHR.

Week 2 will focus on the EU's internal processes in negotiating and concluding an international agreement. It will examine articles 218 and 207 TFEU which set out in detail the procedures to be followed for the negotiation and conclusion of international agreements. It will discuss in detail the respective powers of the different institutions involved in treaty-making by the EU, the role of the Member States, and assess how treaty-making in the EU compares to legislating in the EU and to treaty-making in other jurisdictions. Finally, this session will look into how treaty-making practice holds up to modern demands of transparency and accountability of government, in particular in the context of the negotiations of EU trade agreements such as TTIP.

Presentations:

- Case C- 425/13, *Commission v Council (ETS agreement with Australia)* EU:C:2015:483
- Case C-263/14, *Parliament v Council ('Somali Pirates II')*, EU:C:2016:435

Main issues:

- The executive nature of treaty-making powers of the EU
- The interinstitutional balance of powers during the negotiation and conclusion of international agreements
- Transparency and accountability during the negotiation and conclusion of international agreements

Jurisprudence and other legal materials:

- ** Case C- 425/13, *Commission v Council (ETS agreement with Australia)* EU:C:2015:483
- * Case C-28/12, *Commission v Council*, EU:C:2015:282, in particular paras. 39-55
- ** Case C-263/14, *Parliament v Council ('Somali Pirates II')*, EU:C:2016:435, in particular paras. 68-82
- * Case C-327/91, *France v Commission* [1994] ECR I-3641, in particular paras. 19-43
- Council, 'Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America' (17 June 2013)
- Decision of the European Ombudsman closing her own-initiative inquiry OI/10/2014/RA concerning the European Commission available at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark>

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 193-212; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapter 1

WEEK 3 – Existence and nature of EU external competence

Week 3 will turn to one of the key principles in EU international relations law: the principle of conferral. Under the principle of conferral, the EU shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

Session 3 will then discuss the complex and controversial doctrine of implied powers. It will discuss the ECJ's the origins of the doctrine, its development and justification, and its nature. The session will also discuss the codification of the doctrine with the Lisbon Treaty and the consequences for Member State activity in the field of EU external relations.

Presentations:

- Opinion 2/94, *Accession to the ECHR* [1996] ECR I-1759
- Case 22/70, *ERTA* [1971] ECR 263

Main issues:

- The relationship between the principle of conferral and the doctrine of implied powers
- The nature of the EU's implied powers
- The principle of parallelism between external and internal competences

Jurisprudence:

- ** Case 22/70, *ERTA* [1971] ECR 263, in particular paras. 12-22
- Opinion 1/76, *Inland Waterways* [1977] ECR 741, in particular paras. 1-7
- Opinion 2/91, *ILO Convention No. 170* [1993] ECR I-1061, in particular paras. 7-34
- Opinion 2/94, *Accession to the ECHR* [1996] ECR I-1759, in particular paras. 23-36
- * Opinion 1/03, *Lugano Convention* [2006] ECR I-1145, in particular paras. 114-133
- ** Opinion 1/13, *The 1980 The Hague Convention on child abduction* EU:C:2014:2303, in particular paras. 65-89

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 70-120; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapters 3 and 4

WEEK 4 – Nature and scope of EU trade policy

Week 4 will continue with the exploration of the principle of conferral in EU international relations law and discuss one of the earliest areas where the EU was conferred powers to act externally: the

field of trade. The Common Commercial Policy provided the EU with express powers to regulate trade with third countries. To this day, the Common Commercial Policy is one of the most significant fields of EU external action. This session will look at the development of the scope and nature of the powers of the EU in the field of trade which has been both volatile and increasingly expanding. It will also discuss the pivotal role played by the ECJ in the development of the EU's powers and the consequences for Member State action in this field.

Presentations:

- Opinion 1/75, *Understanding on a Local Cost Standard* [1975] ECR 1355
- Opinion 2/15, *EU-Singapore Free Trade Agreement* EU:C:2017:376

Main issues:

- The nature of the EU's powers in the field of trade policy
- The scope of the EU's powers in the field of trade policy
- The powers of the Member States in the field of trade policy

Jurisprudence:

- ** Opinion 1/75, *Understanding on a Local Cost Standard* [1975] ECR 1355, in particular pages 1362-4
- ** Opinion 1/78, *International Agreement on Natural Rubber* [1979] ECR 2871, in particular paras. 43-45
- Opinion 1/94, *Accession to the WTO* [1994] ECR I- 5267, in particular paras. 28-33, 36-46, 48-59
- ** Case C-414/11, *Daiichi Sankyo Co. Ltd, Sanofi-Aventis Deutschland GmbH v. DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon* EU:C:2013:520, in particular paras. 45-52
- Opinion 2/15, *EU-Singapore Free Trade Agreement* EU:C:2017:376, in particular paras. 33-39, 139-147

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 11-70; OR
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapter 9

Further Reading:

- Laurens Ankersmit, 'The Scope of the Common Commercial Policy after Lisbon: The Daiichi Sankyo and Conditional Access Services Grand Chamber Judgments' (2014) 41*Legal Issues of Economic Integration*, Issue 2, pp. 193–209

WEEK 5 – Scope and choice of EU external competence

Week 5 will explore the ECJ's case-law on the choice of the correct legal basis by the institutions for an act in the field of external relations. Sometimes it is clear that a measure falls within a particular policy field and is covered by a specific legal basis. But sometimes the legal basis for the adoption of an act may be less clear. For instance, is a decision to conclude an international

agreement that regulates and restricts trade in dangerous substances a trade or an environmental measure? Is a decision to conclude an agreement with a third country on the transfer of suspected pirates a measure of foreign and security policy or a measure relating to judicial cooperation in criminal matters? The answer to that question has significant political and legal implications. If a measure is classified as falling within the scope one area instead of the other, the EU's powers may be exclusive or shared, and different procedures (with different powers and responsibilities of the institutions) will have to be followed for its adoption. This week will also discuss the situation where parts of the agreement are not entirely covered by EU powers and which therefore require the participation of the Member States; so-called mixed agreements.

Presentations:

- Opinion 2/00, *Cartagena Protocol* [2001] ECR I-9713
- Case C-94/03, *Commission v. Council* [2006] ECR I-1 and Case C-178/03, *Commission v Parliament and Council* [2006] ECR I-107 (the Rotterdam Convention cases)

Main issues:

- The legal criteria for determining the correct legal basis in the field of international relations
- The relationship between article 40 TEU and the legal criteria for determining the correct legal basis
- The relationship between the principle of conferral, the doctrine on the choice of the correct legal basis, and Council practice
- The legal reasons and consequences of mixed agreements

Jurisprudence:

- ** Opinion 2/00, *Cartagena Protocol* [2001] ECR I-9713, in particular paras. 22-43
- Case C-281/01, *Commission v Council (Energy Star Agreement)* [2002] ECR I-12049, in particular paras. 33-39
- * Case C-94/03, *Commission v. Council* [2006] ECR I-1 and Case C-178/03, *Commission v Parliament and Council* [2006] ECR I-107 (the Rotterdam Convention cases), in particular paras. 34-55
- Case C-91/05, *Commission v Council (Small Arms and Light Weapons)* [2008] ECR I-03651, in particular paras. 64-70, 92-108
- ** Case C-263/14, *Parliament v Council ('Somali Pirates II')*, EU:C:2016:435, in particular paras. 42-55
- Opinion 2/15, *EU-Singapore Free Trade Agreement* EU:C:2017:376, in particular paras. 244 and 292

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 35-69, 120-164, 212-222; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapter 5

WEEK 6 – ESSAY MEETINGS

WEEK 7 – Membership of international organizations

Week 7 will address the Union's ability to exercise its external powers through membership of international organisations. This can be a particularly complex phenomenon because sometimes the EU cannot become a member of an international organisation (for instance the United Nations) or because its Member States are also members of that organisation. This week will therefore look at membership of international organisations through the lens of a second fundamental principle in EU international relations law: the duty of cooperation. The principle requires the EU and the Member States to assist each other in carrying out tasks which flow from the Treaties and requires Member States to take action to fulfil its EU obligations or refrain from action that would jeopardize the attainment of EU goals. This principle is very important to understand how the EU and its Member States can and must operate in exercising their powers as members of international organisations.

Membership of international organisations raises complex issues regarding the exercise of powers within these organisations, such as voting rights and taking positions, in particular in areas which may fall within competences of both the Member States and that of the EU.

Presentations:

- Case C-246/07, *Commission v. Sweden (PFOS)* [2010] ECR I-3317
- Case C- 73/14, *Council v. Commission (ITLOS)* EU:C:2015:663

Main issues:

- The participation of the EU in international organisations
- The consequences of the duty of cooperation for Member State membership of international organisations

Jurisprudence:

- * Case C-25/94, *Commission v Council (FAO)* [1996] ECR I-1469, in particular paras. 40-51
- Opinion 2/91, *ILO Convention No. 170* [1993] ECR I-1061, in particular paras. 36-38
- ** Case C-246/07, *Commission v. Sweden (PFOS)* [2010] ECR I-3317, in particular paras. 70-104
- ** Case C- 73/14, *Council v. Commission (ITLOS)* EU:C:2015:663

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 222-267; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapters 6 and 8

Further reading:

- Marise Cremona, 'Case C-246/07, *Commission v. Sweden (PFOS)*, Judgment of the Court of Justice (Grand Chamber) of 20 April 2010' (2011) 48 *Common Market Law Review*, Issue 5, pp. 1639–1665

PART II: The EU courts and EU international relations law

WEEK 8 – Agreements concluded by Member States (a) and the powers of the EU courts and international agreements (b)

Week 8 will conclude the Part I on the constitutional aspects of EU international relations by discussing the legality of agreements concluded by Member States under EU law pre-dating accession. Article 351 TFEU provides for a transitional period for such agreements to the extent that they are not compatible with EU law.

This session will then proceed with Part II of this module by introducing the main powers of the European Court of Justice in the field of EU international relations and outline some of the specific legal remedies available as well as the particularities of the more general powers of the ECJ in relation to EU international relations law.

Presentations:

- Case C-249/06, *Commission v Sweden* [2009] ECR I-01335
- Case C-431/05, *Merck Generos* [2007] ECR I-7001

Main issues:

- Legality of agreements of Member States pre-dating accession
- Rights and obligations under agreements of Member States pre-dating accession
- The jurisdiction of the ECJ to interpret (mixed) agreements
- The differences and particularities of remedies available before the EU courts in the field of international relations

Jurisprudence:

- * Case C-249/06, *Commission v Sweden* [2009] ECR I-01335, in particular paras. 33-45
- Case 812/79, *Attorney General v Burgua* [1980] ECR 2787, in particular para. 10
- ** Case 181/73, *Haegeman v Belgium* [1974] ECR 449, in particular paras. 2-6
- * Opinion 2/94, *Accession to the ECHR* [1996] ECR I-1759, in particular paras. 1-22
- ** Case C-431/05, *Merck Generos* [2007] ECR I-7001, in particular paras. 34-46
- * Joined Cases C-120 and 121/06P, *FIAMM v Fedon* [2008] ECR I-6513, in particular paras. 119-124

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 267-323, 421-436

WEEK 9 – Legal effects of international agreements

Week 9 concerns the legal effects of international agreements. In *Haegeman* the ECJ found that when EU international agreements come into force, they form an integral part of EU law. The consequence of this finding is that the ECJ is able to determine the legal effects of EU international agreements in the EU legal order. This has important repercussions on the ability of individuals to rely on provisions in such international agreements before Union courts. This session will discuss the ECJ's case-law in that regard and in particular the Court's varying approach towards WTO law, other trade agreements, and international agreements that do not concern trade.

Presentations:

- Case 104/81, *Hauptzollamt Mainz v Kupferberg* [1982] ECR 3541
- Case C-377/02, *Léon Van Parys NV v Belgisch Interventie- en Restitutiebureau (BIRB)* [2005] ECR I-1465

Main issues:

- Direct effect of WTO law
- Direct effect of other international agreements
- Direct effect of decisions of international bodies
- Duty of consistent interpretation
- Conclusion and suspension of international agreements

Jurisprudence:

- Joined Cases 21 to 24/72, *International Fruit Company v Produktschap voor Groenten en Fruit* [1972] ECR 1219, in particular paras. 19-27
- Case 181/73, *Haegeman v Belgium* [1974] ECR 449
- ** Case 104/81, *Hauptzollamt Mainz v Kupferberg* [1982] ECR 3541, in particular paras. 11-26
- * Case 812/79, *Attorney General v Burgua* [1980] ECR 2787, in particular para. 10
- Case 70/89, *Fediol v Commission* [1989] ECR 1781, in particular paras. 19-22
- Case C-69/89, *Nakajima All Precision v Council* [1991] ECR I-2069, in particular paras. 28-32
- * Case C-192/89, *Sevince* [1990] ECR I-3461, in particular paras. 14-26
- ** Case C-377/02, *Léon Van Parys NV v Belgisch Interventie- en Restitutiebureau (BIRB)* [2005] ECR I-1465, in particular paras. 38-54
- Case C-414/11, *Daiichi Sankyo Co. Ltd, Sanofi-Aventis Deutschland GmbH v. DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon* EU:C:2013:520
- * C-401 to 403/12, *Council e.a. v. Vereniging Milieudefensie* EU:C:2015:4, in particular paras. 52-60

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 323-439; **OR**
- Bart Van Vooren and Ramses Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge, Cambridge University Press 2014), chapter 7

WEEK 10 – The EU and international courts and tribunals

The EU is party to a number of international agreements that contain various forms of dispute settlement. The EU is for example party to WTO Agreements that set up a dispute settlement body whose decisions are binding on the EU. However, the establishment of such courts may conflict with the powers of the ECJ and more generally with the Treaties. Week 10 will discuss the ability of the EU to enter into international agreements which submit the EU to decisions of courts which are created by such agreements. One of the most prominent obstacles for the EU in this regard is the autonomy of the EU legal order, a concept narrowly linked to the ECJ's powers to interpret, apply, annul, and give effect to EU law. This session will discuss the ECJ's restrictive case-law on the EU's ability to subject itself to international courts and tribunals, with a particular emphasis on

the ECJ's recent Opinion on the EU's accession agreement to the European Convention on Human Rights (ECHR).

Presentations:

- Opinion 1/92, *Agreement on the EEA* [1992] ECR I-2821
- Opinion 2/13, *Accession to the ECHR (II)* EU:C:2014:2454

Main issues:

- The autonomy of the EU legal order and international courts and tribunals;
- Jurisdiction of international courts over claims by individuals which involve questions of EU law;
- The legal effects of decisions of international courts and tribunals

Jurisprudence:

- Opinion 1/76, *Inland Waterways* [1977] ECR 741, in particular paras. 17-20
- ** Opinion 1/91, *Agreement on the EEA* [1991] ECR I-6079, in particular paras. 13-68
- * Opinion 1/92, *Agreement on the EEA* [1992] ECR I-2821, in particular paras. 17-37
- Opinion 1/00, *ECAA Agreement* [2002] ECR I-3493, in particular paras. 23-45
- Case C-459/03, *Commission of the European Communities v. Ireland (Mox Plant)* [2006] ECR I-4635, in particular paras. 123-139
- Opinion 1/09, *European and Community Patents Court* [2011] ECR I-1137, in particular paras. 58-89
- ** Opinion 2/13, *Accession to the ECHR (II)* EU:C:2014:2454, in particular paras. 153-258

Required Readings:

- (available via Moodle) Allan Rosas, 'The EU and International Dispute Settlement', 1 (2017) *Europe and the World*, pp 1-29

Further Readings:

- Juliane Kokott and Christoph Sobotta, 'Investment Arbitration and EU Law' 18 (2016) *Cambridge Yearbook of European Legal Studies*
- Benedikt H. Pirker and Stefan Reitemeyer, 'Between Discursive and Exclusive Autonomy – Opinion 2/13, the Protection of Fundamental Rights and the Autonomy of EU Law' 17 (2015) *Cambridge Yearbook of European Legal Studies*, pp 168 - 188

PART III: Selected substantive aspects of EU international relations law

WEEK 11 – Brexit

Week 11 explores the legal aspects of Brexit. The Treaty of Lisbon for the first time included a provision to regulate the departure of a Member State from the Union. The United Kingdom is the first Member State that has triggered this procedure and has started negotiations to leave the Union. This unprecedented situation brings about a number of interesting legal questions, in particular in the field of EU international relations law. Can the UK negotiate a trade agreement prior to leaving the Union, or should the article 50 TEU procedure be completed first? Should it be a 'mixed' agreement? How are future dispute settlement provisions to be designed? How can a future trade agreement with the EU look like? What are, for example, the legal particularities of the 'Swiss' and 'Norwegian' models? What happens to the EU's mixed agreements, to which the

UK is a party to? What does UK membership of the WTO look like post-Brexit? This session will explore these questions and discuss both the legal aspects of the UK's departure as the future of UK-EU relations.

Presentations:

- The scope and nature of the withdrawal agreement
- Legal options for a joint UK-EU court

Main issues:

- The UK's current and future legal relationship with the EU
- The consequences of Brexit for mixed agreements
- The consequences of Brexit for the UK's WTO membership

Required Readings:

- Halvard Haukeland Fredriksen, Christian N.K. Franklin, 'Of pragmatism and principles: The EEA Agreement 20 years on' (2015) 52 *Common Market Law Review*, Issue 3, pp. 629–684
- Benedikt Pirker and Astrid Epiney, 'The Integration of Switzerland into the Framework of EU Law by Means of the 'Bilateral Agreements' in: Peter-Christian Müller-Graff and Ola Mestad (eds), *The Rising Complexity of European Law* (Berliner Wissenschafts Verlag: Berlin, 2014), pp. 39-66

WEEK 12 – EU International Relations Law and Fundamental Rights

Week 12 will look at the increasing relevance of the fundamental rights in EU international relations law. This primary area where fundamental rights constrain and shape EU external action is in EU sanctions law. Economic sanctions imposed on states have a long history in the EU and find their origins in the EU's common commercial policy and the need to impose uniform restrictions on trade with certain countries. Since 1991 the EU increasingly resorts to 'smart sanctions' and freezing assets of individuals. Such measures can have significant consequences for the individuals targeted, and may therefore conflict with fundamental rights. Recently, however, we see that the EU is also constrained in its external action when data of EU citizens is involved, as exemplified by the ECJ's rejection of the passenger data agreement between the EU and Canada and the ECJ's decision in *Schrems* concerning data transfer to the United States.

Presentations:

- Joined Cases C-402 and 415/05P, *Kadi and Al Barakaat v Council and Commission* [2008] ECR I-6351
- Opinion 1/15, *PNR Agreement* [2017] EU:C:2016:656

Main issues:

- The EU's competence to impose smart sanctions and freeze assets
- The relationship between sanctions and protection of fundamental rights in the EU
- Fundamental Rights as a constraint and impetus to EU external action

Jurisprudence:

- * Case C-84/95, *Bosphorus v Minister for Transport, Energy and Communications, Ireland and the Attorney General* [1996] ECR I-3953, in particular paras. 21-27
- Case C-177/95, *Ebony Maritime and Loten Navigation v. Prefetto della Provenica di Brindisi and Others* [1997] ECR I-1111
- ** Joined Cases C-402 and 415/05P, *Kadi and Al Barakaat v Council and Commission* [2008] ECR I-6351, in particular paras. 166-235, 280-328, 333-372
- Case T-228/02, *OMPI v Council* [2006] ECR II-39, in particular paras. 89-171

Required Readings:

- Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford, Oxford University Press 2011), pp. 501-547