

International Business Law

International Public Law
International Private Law
EU Law



**SILESIAN
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SCHOOL OF BUSINESS
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Origins of the International Public Law

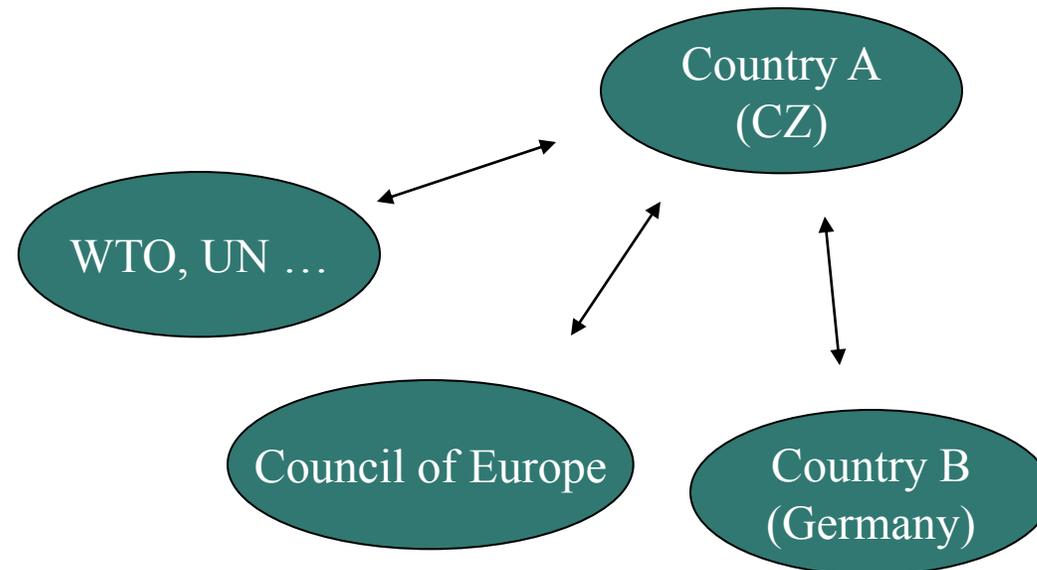
- Process of the creation of national states, i.e. the 19th century
- In 1815 (the Vienna Congress), the first collective security system was established under international law to protect the monarchy
- In the second half of the 19th century the first international organizations were set up in the field of communications
 - the International Telegraph Union, the International Post Union and the International Railways Union.
- Basic principles:
 - prohibition of the use of force, the respect for human rights, and the protection of the environment
 - The breach of these norms amounts to the breach of peace and security which may give rise to an action by the UN Security Council.

International public law characteristics

Definition: set of legal rules guarantees peaceful existence and continuous development of international community

- International community = community of countries (192 of them)
- No legal rule can be created without a will of countries

Function of international law
– lead community of countries to stability (world peace)



Subjects of International Public Law

- **subjects**, i.e. entities which have international legal personality.
 - **states** and **intergovernmental international organizations**
- **other actors**
 - TNCs (trans-national corporations)
 - NGOs (non-governmental organization)
 - Both TNCs and NGOs try to influence the creation of international rules by their lobbying activities.
- **semi-subjects of**
 - **they are in between being a state and an international organization,**
 - such as the Holy See (Vatican), the seat of the Roman Catholic Church.
 - The Holy See can conclude international agreements with states, it has an observer status with the UN, they have nuncios (like ambassador)

States

- International Public Law requires four constitutive elements for a state to enjoy an international legal capacity:
 - permanent inhabitants
 - defined territory
 - effective government
 - capacity to enter into international relations
 - Some entities fail to meet the condition of the capacity to enter into international relations, because they have not been widely recognized by the international community, such as the Republic of Northern Cyprus which has only been recognized by Turkey
- What about e.g. Islamic state?

International Organizations

- Only **Intergovernmental** International Organizations
 - i.e. international organizations having national states as their members are considered subjects of International Public Law
 - Private Law organizations, such as Greenpeace, which have individuals as their members, are not considered subjects of International Public Law
- different names for **the founding documents** of international organizations, such as
 - Charter (UN Charter),
 - Statute (Rome Statute establishing the International Criminal Court),
 - Treaty (Treaty on the Functioning of the European Union)
- Bodies of international organization
 - body representing the common interests (e.g. the UN Security Council)
 - body representing the interests of its Member States (e.g. the General Assembly of the UN)
 - administrative body (secretariat headed by its Secretary General)
 - Some international organizations may have a judiciary body (such as the ICJ serving the UN)

Implications of International Law with Respect to Individuals

- IPL has influence on real life situations, such as the rules on granting nationality, rules governing extradition, the protection of human rights and responsibility for internationally criminal acts.
- **The nationality** of business people is relevant whenever they make big international investments.
 - If their investments have been negatively affected by actions taken by a foreign state (e.g. raising taxes for profits resulting from investments into solar panels; nationalizing privately owned property without a corresponding retribution) foreign investors may rely on bilateral investment treaties (BITs) which provide them compensation of damages they incurred

International Public Law vs. International Private Law

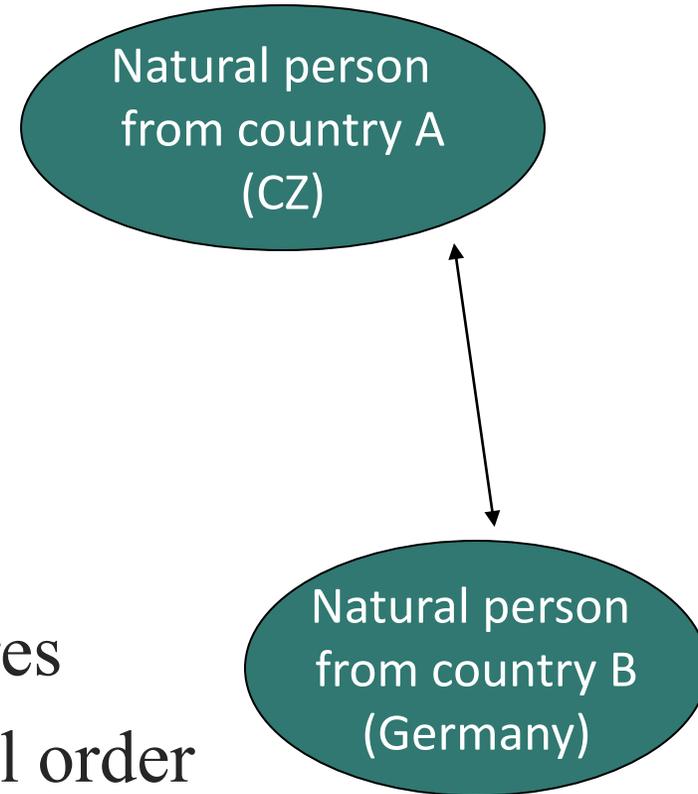
- International **public** law
 - International public law regulates especially relations between countries or international organisations
- International **Private** Law
 - International private law regulates civil relations with international subject (e.g. Marriage, contracts between citizens from different countries)
- Differences:
 - addressees of the norms
 - degree of their enforceability.
- **International Business Law contains legal rules of International Public Law as well as of International Private**

International private law

Definition: a part of legal order which regulates civil relations with so-called

foreign element

Regulates legislative relations
between Natural Persons and
Legal Entities from different countries
Connection with more than one legal order



Foreign element

Foreign element can be:

1. Subject of legal relation is foreign (a person from abroad)

- Natural person is citizen of different country or has permanent residence there– domicile
- Legal entity which was established in accordance with international law or has a registered place of business abroad

2. Legal fact decisive for particular legal relation which occurred abroad

- The fact can be act in law, event, behaviour
- e.g. signing a contract abroad

3. Object of legal relation is placed abroad

- Things, rights and intangible contribution of human activity

Consequences of foreign element existence

- It is useful to determine **decisive (applicable) law** so-called rule of law in particular country by which legal relation will be followed
 - e.g. in case of contracts, most common it is set of legal rules of the state whose *participant doesn't provide financial contribution*
- It is necessary to **consider legal regulation** and take into consideration **harmonisation and unification** of legal rules
 - International contracts
 - Community law (regulations, directions)

Conflict rules

- Don't involve rights duties of participants, only set legal rules of the country which has a leadership concerning international legal relations by certain criteria

Direct rules

- Set down rights and duties of participants in international legal relations itself.
They are included in international contracts

Outline of EU Law

- primary law,
 - international treaties concluded by the EU with third countries
 - secondary law
-
- mutual relations between EU Law and national law.
 - enforceability of EU Law

Primary Law

- equivalent to constitutional law of national states
- the highest legal rank
- composed of the
 - founding treaties and reform of founding treaties
 - accession treaties of those states who joined EU
 - Charter of Fundamental Rights of the EU

Founding treaties

- three founding treaties of the European Communities (mentioned ppt no. 3)
 - European Community for Coal and Steel (1951) - Paris Treaty
 - European Economic Community (1957) – later evolved into the EU
 - Euratom Community
- Founding members:
 - France, Germany, Italy and the three Benelux countries (Belgium, Netherlands and Luxembourg).

The successive reforms of the founding treaties

- in chronological order:
 - the Single European Act,
 - the Maastricht Treaty,
 - the Treaty of Amsterdam,
 - the Treaty of Nice and
 - the Lisbon Treaty.
- conceded more powers to the European Parliament at the expense of the Council of Ministers (Council of the EU)
- extended the powers of the EU at the detriment of the sovereign powers of its Member States
- extended the list of areas where the EU bodies are able to adopt secondary legislation by qualified majority rather than by unanimity

International Treaties concluded between the EU and third countries

- in relation to the common commercial policy which aims at liberalizing the world trade
- EU is one of the founding members of the World Trade Organization and it has concluded a number of free trade agreements (FTAs)
 - shared powers - it is not sufficient to be ratified at EU level, but it also requires the ratification by all EU Member States
- Before adopting an international treaty, its compatibility with the EU primary law may be assessed by the Court of Justice of the EU

Secondary Law

- regulations, directives and decisions
- **proposed by the European Commission**, which holds a monopoly with respect to drafting proposals of EU legislation.
 - The European Parliament is not authorized to propose EU secondary law
- **the proposal forwards to the Council of Ministers (Council of the EU) and to the European Parliament to be adopted.**
- after adoption it is **published in the Official Journal of the EU in all the EU official languages**
 - The adopted secondary legislation comes into effect on the day stipulated in its final provisions. If such a date has not been specified, the act becomes effective on the 20th day following its publication in the Official Journal of the EU

The Official Journal of the EU

- The Official Journal of the EU is publicly available at **eur-lex.europa.eu**
- free of charge
- There are two series of the Official Journal (OJ),
 - the L series publishes legislation, that is regulations, directives, and decisions
 - the C series publishes communications, for instance opinions adopted by advisory bodies to the EU (the Committee of Regions, the European Economic and Social Committee) or notifications by EU bodies, for instance notifications of open competitions by the European Personnel Selection Office (EPSO) inviting candidates to submit their applications to work for the EU.

Regulations

- binding source of EU secondary law
 - mostly adopted in the field of EU's exclusive powers since they leave no room for maneuver
- They are binding in their entire wording and they are binding for everyone,
 - not only the EU Member States, but also for individuals, natural persons and legal entities
 - very similar to acts or statutes adopted at national level which bind everyone as well.
- objective of regulations is to unify the legal system of EU Member States
- regulations exert a direct effect
 - individuals can rely directly on the provisions of the regulation in their mutual relations (horizontal direct effect), but also state authorities can rely directly on the provisions of the regulation before a law court in their dealing with individuals and vice versa (vertical direct effect).

Example of EU Regulation (Brussels I)

REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

General provisions

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

FINAL PROVISIONS

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 December 2012.

For the European Parliament, The President, M. SCHULZ

For the Council, The President, A. D. MAVROYIANNIS

Directives

- binding source of EU secondary law
 - mostly adopted in the fields of shared powers between the EU and its Member States
 - They are **not binding in their entire wording**, but they are binding in terms of **achieving the objective** envisaged in the directive.
- EU Member States are obliged to transpose the directives into their national legal orders within a period of two or three years
 - directives leave Member States with some room for maneuver
- their objective is to harmonize the legislation of EU Member States
- if the directive granted specific rights to individuals (for instance the right to terminate a contract in case of a purchase made outside the usual business premises) and individuals have suffered harm due to the impossibility of exercising these rights (for instance as in the famous *Faccini Dori* judgment), the directive can have a limited vertical direct effect.
 - This means that individuals can sue the state for damages they incurred as a result of the state's failure to transpose a directive in time.
 - But directives have no horizontal direct effect

Example of Services Directive

DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.

ADMINISTRATIVE SIMPLIFICATION

Article 6

Points of single contact

1. Member States shall ensure that it is possible for providers to complete the following procedures and formalities through points of single contact:

(a) all procedures and formalities needed for access to his service activities, in particular, all declarations, notifications or applications necessary for authorisation from the competent authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association;

(b) any applications for authorisation needed to exercise his service activities.

FINAL PROVISIONS

Article 44

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2009.

They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Decision

- it has to be proposed by the European Commission and adopted by the Council of Ministers and by the European Parliament.
 - decisions adopted by the Court of Justice of the EU are not considered secondary legislation, since they interpret secondary legislation rather than create it.
- rather a rare source of EU secondary legislation
- The addressees can be either EU Member States only, or both EU Member States and individuals.

Enforcement of EU Law by Law Courts

- **decentralized enforcement of EU Law**
 - EU Law is most often applied by **national courts as first instance courts**
- **Competencies:**
 - provides a binding interpretation of EU law if national courts expressly ask it
 - preliminary reference - may serve as precedents
 - **The Court of Justice does not serve as an appeals court** with respect to the decisions delivered by national courts.
 - It also resolves direct actions, such as infringements by EU Members States
 - it deals with appeals only against the General Court, a lower court instance which is part of the Court of Justice of the EU.

Extra judicial enforcement by EU Law

- out-of-court dispute settlement mechanisms
 - **mediation for resolving disputes between private parties**
 - European Ombudsman
 - SOLVIT
 - Petitions Committee of the European Parliament

European Ombudsman

- resolving cases of **maladministration** committed by an EU body or an EU institution with respect to an EU citizen or an EU resident.
 - If EU Law was breached by a national body, the European Ombudsman cannot deal with the case,
- Examples of maladministration:
 - undue delay, discrimination, and a failure to provide a document which is not classified ministration
- Usually, the European Ombudsman manages to reach a **friendly solution** to a complaint (80 % of cases)
- On-line lodge of complaint
- The European Parliament elects the European Ombudsman for a renewable period of 5 years.

SOLVIT

- network for solving problems of **nationals of one Member State with the public administration of another Member State**
 - Example: you are a professional and wish to work in a different Member State, where the public administration fails to recognize your professional qualification
- SOLVIT can also be used by businesses,
 - for instance when they have difficulties with their VAT refund from another Member State when importing goods for further sale in their home country.

European Parliament's Petitions Committee

- the only European Parliament committee which has direct contact with EU citizens
- It receives petitions (both individual and collective ones) from EU citizens when national authorities violate EU law
 - In practice very often when breaching EU environmental law
 - For instance, a state authority authorizes a construction of a housing estate or of a hotel in an area which should be protected due to its enhanced environmental value and is part of the Natura 2000 network. Such an authorization clearly breaches EU law