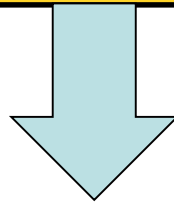


# EUROPEAN UNION LAW

## INTERNATIONAL LAW WITHIN THE EU LEGAL ORDER

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# THE SOURCES OF THE EU LEGAL ORDER



*International  
Law???*

# Breaking the Silence: art. 3(5) TEU

## Art. 3(5) TEU

**In its relations with the wider world**, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter

# Content and Consequences of art.

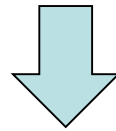
## 3(5) TEU

- A violation of international law performed by one of the EU institutions = internationally wrongful conduct in **external relations** only, «*in its relations with the wider world*».
- The EU is bound to comply with general international law only *vis à vis* Third States, not *vis à vis* member States! With reference to the latter the TEU and the TFEU are *lex specialis*. Accordingly, they take precedence over customary law, (mutual derogability of treaties and customary rules)

# International Law within Internal Relations

*Inadimplenti non est inadimplendum* (art. 60 VCLT)??

No way! A member State cannot disrespect its obligations under EU law for the purposes of reacting to another member State's violation of its duties under EU law



**no countermeasures:** no self-help,  
only avenues provided for by the treaties  
Case 232/79, *Commission c. France*, [1979]

# The Hierarchy of the Sources of EU Law.

## The Rank of International Law

- *Treaties + al.*
- *Intermediate Sources*
- *Secondary Legislation*

# The Implications of the Intermediate Rank of International Law

- The Union is bound to comply with general international law, which is a part of its own legal order (C-162/96, Racke, 16 giugno 1998) however subordinate to the TEU and the TFEU (C-589/15 P, Anagnostakis c. Commission, 12 settembre 2017, para. 100).

## **BUT**

- The competences of the EU must be exercised compatibly with international law (C-402/05 P and C-415/05 P, *Kadi* 3 settembre 2008, para. 291)

# The Hierarchy of the Sources of EU Law.

## The Rank of International Law

Primary legislation ➤ **International Law** ➤ Secondary Legislation

*Intl Law is hierarchically subordinated to the Treaties, the EU Charter of Fundamental Rights as well as general principles\**

**BUT**

*takes precedence over the acts of the institutions\*\**

*\*(Kadi, paras. 285, 307-308)*

*\*\* (Kadi, para. 291)*



# The Hierarchy of the Sources of EU Law.

## The Rank of International Law

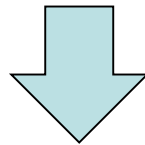
International **takes precedence** over secondary legislation

2 exceptions only:

- *WTO agreements*, flexible in nature;
  - 2 counter-exception only:
    - Act implementing obligations under agreement
    - Act expressly recalls provisions in the agreement
- *UNCLOS (Intertanko)*

# Customary International Law

EU = autonomous subject of Intl. Law,  
≠ member States.



- It has the faculty to **conclude treaties** with other States or other IOs to **become a member of other IOs** (art. 47 TEU).
- It is bound to comply with general international law (=custom)
- Case C-366/10, *Air Transport Association of America and Others*, [2011], par. 101

Under Article 3(5) TEU, the European Union is to contribute to the strict observance and the development of international law. Consequently, when it adopts an act, it is bound to observe international law in its entirety,

***including customary international law,***  
which is binding upon the institutions of the European Union)

# The Dual Function of General International Law in the EU Legal Order

- **Interpretative Instrument**

*Front Polisario*, self-determination of peoples - art. 1 UN Charter - art. 34 VCLT - a treaty EU/Marocco is not to be applied to Western Sahara (*Sahel*)

- **Ground for Review of the acts of the institutions**

C-162/96, *Racke*, [1998] preliminary ruling validity v/ Council regulation that suspended the agreement between the CEE and Former Jugoslavia by invoking art. 62 VCLT, *rebus sic stantibus*. The regulation was evaluated with reference to custom.

# International Treaties

- Treaties concluded by Member States only?  $\neq$  EU Law
- What if a Conflict with EU Law arises??  
*before* January 1st 1958/before admission)



Arts. 39, 54, 59 VCLT; art. 351 TFUE

**limit:** fundamental principles, *Kadi*, par. 304  
no derogation whatsoever!

# International Treaties in a subject of exclusive competence of the EU

...only if all member States were parties to a treaty in a subject subsequently becoming an exclusive competence of the EU, then a *succession* in the obligations will occur (e.g. GATT'47, Case 21/72 *International Fruit*, [1972] paras 17-18)

*What about the  
UN Charter?*  
**NO!!**

*Kadi*, paras 293, 295,  
296

# International Treaties

- The Union (with third States or other IOs) - 216(2) TFUE
- Both (*mixed agreements*)

