

Global Governance  
International Law and Contemporary Challenges



# The Law of the International Community: Subjects and Sources of International Law

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3B – Subjects: The EU and other entities

# The process of juridical integration in the EU

- The EU Treaty and the Treaty on the functioning of the EU give the EU Institutions the power to adopt **several kinds of binding acts** (regulations, directives, decisions)
- EU regulations always have - and EU law in general can have - **direct effect** in the domestic legal orders of the member States and all EU law has **primacy** over domestic law
- The **Court of Justice** of the European Union **ensures compliance** to European law in and by member States through:
  - preliminary rulings
  - proceedings for failure to fulfil an obligation

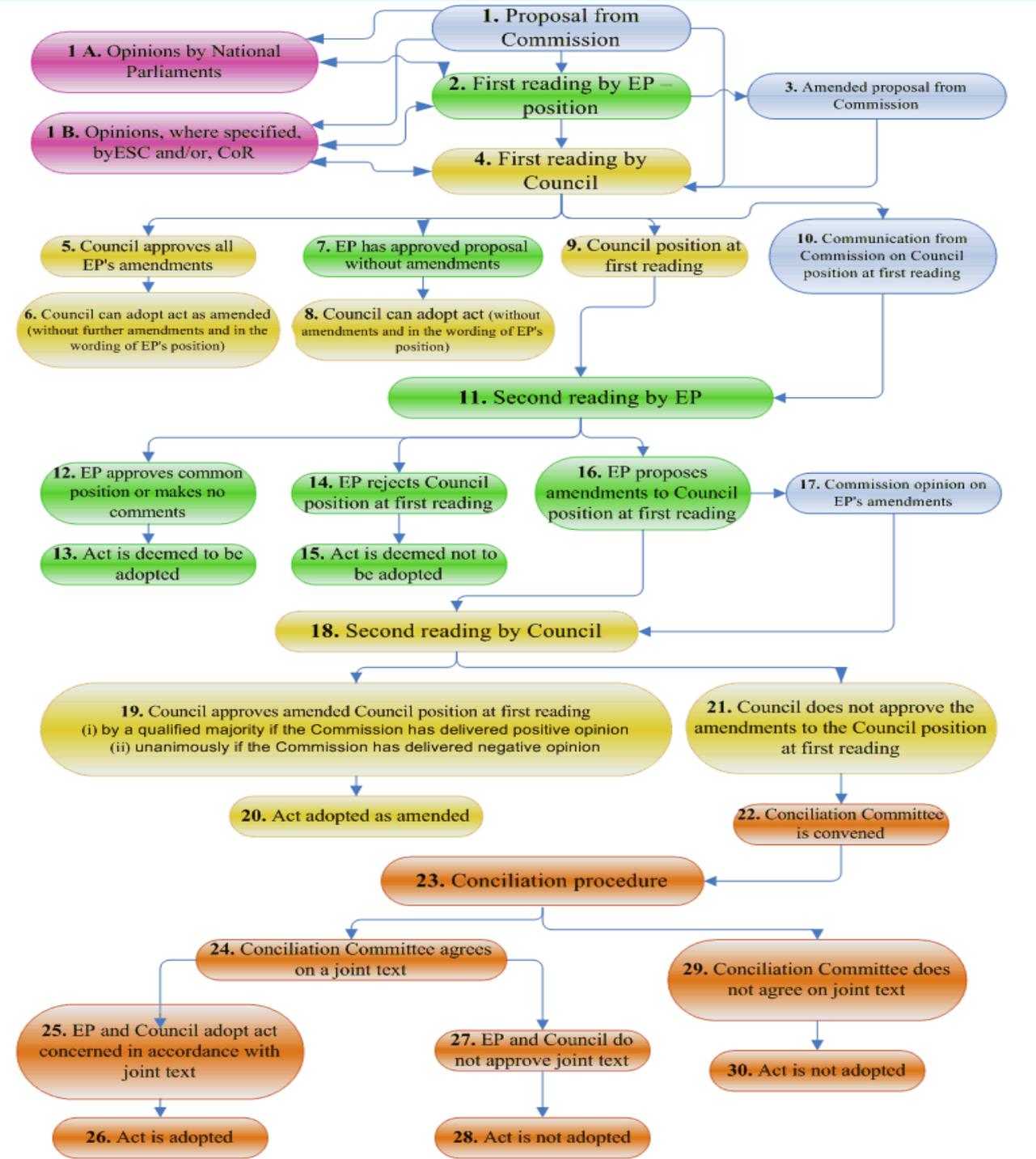
# The process of juridical integration in the EU

- such a system produces “juridical integration” among the domestic legal orders of the member States in the fields of EU competence (regulations/uniformation of the domestic laws; directives/harmonization of the domestic laws)
- such legislative powers have been given by member States originally to the EEC only in some sensitive but mainly economic fields and then have gradually extended (“economic functionalism”)
- After the Maastricht Treaty, the EC became the EU “1<sup>st</sup> pillar”, and after the entry into force of the Lisbon Treaty it has been “replaced and succeeded” by the EU. Its unique legislative powers have not yet been extended to one of the other “pillars” of the EU, CFSP

# Adoption and implementation of EU binding acts



# EU ordinary legislative procedure flow chart



# The process of juridical integration in the EU

- such legislative powers are typical only of the EU, in the scenario of the international organizations; because of this uniqueness someone has talked about an **hypothetic “third genus”** in the international Community
- Though we can speak of “**regional economic integration organizations**”, no “third genus” can exist between sovereign States and international organizations (either **members of the EU still are sovereign States**, separate subjects of the international legal order – as it is nowadays and will be in the foreseeable future – or they create a unique new subject, presumably of federal nature)
- member States are still individual, separate subjects of international law, beside the EU, which, in consequence, can be considered **an international organization** that has been attributed very important and unusual law-making powers, in consideration of its functions

Charles De Visscher, “Theory and reality in public international law” (1968),  
Book II, “General relations of power and law in international relations”,  
Ch. III, “Sovereignty and international organizations”

“The world is a comedy for the man who thinks, a tragedy for the man who feels”

“(…) The legal image of power is of course never a mere reflection of the forces that constitute and animate it. This image always tends to give power a direction that may deviate more or less from that in which it is carried by its natural make-up and its spontaneous impulses. It is normal, even necessary, that there should be some difference between the largely individualist and unordered practice of external sovereignty and the conception that international law forms of it for purposes of common interest. But this difference must not become so great that the law loses contact with life and thereby ceases to play its ordering role (…)”

“(…) The drafting of an international Charter is – or should be – only the last stage in an enterprise which, to be adapted to life, demands at once a jus appreciation and a new balancing of all the forces, political, cultural, economic and social, that shape the structure of international relations. Associated in a common task, politician and jurist owe it to each other to get a clear perception of its object, without losing sight of the particular demands of their respective disciplines (…)”

# Are there other subjects of international law, apart from States and international organizations?

- **Sui generis subject: The Holy See** (participates in international conferences, concludes treaties): not derived, **originary functional subject**
- **Beneficiaries** (not full subjects): **individuals** (they can enforce their rights only in some conventional systems (ECHR, EU))

**BUT** individuals have also a few obligations deriving from customary international law (individual criminal responsibility – see ICC)

## A. Cassese: «**limited locus standi** in international law»

«The features of the world community are unique. Failure to grasp this crucial fact would inevitably entail a serious misinterpretation of the impact of law on this community. »

«**In the international community States are the primary subjects and individuals play a limited role**, they are as puny Davids confronted by overpowering Goliaths holding all the instruments of power.»

«The world population of about six billion human beings is currently divided up amongst nearly two hundred States. Without the protection of a State human beings are likely to endure more suffering and hardship than what is likely to be their lot in the normal course of events.»

# On the way to become a State?

- **Insurgents** (rebels succeeding in controlling a modicum of territory and setting up an operational structure capable of effectively wielding authority over the individuals living there)

Provisional in character, they can succeed in developing into States. In the meantime, some States usually engage in dealings with them.

- **National liberation movements** (organized groups fighting on behalf of a whole «people» against colonial powers)

If they have a representative that comes into contact with other international legal persons, «they enjoy a limited international personality. They are granted locus standi in the international community for the limited purpose of discussing, on a perfectly equal footing with territorial States, the **means and terms for the self-determination** of the peoples they politically control, pursuant to the principle of self-determination of peoples» (Italian Court of Cassation, Arafat and Salah, 1985)

Outstanding **actors** (not international subjects)

- **International non-governmental organizations (INGOs)**

They exert pressure on States, positively affecting - indirectly - the three functions of the international legal order

- **Transnational Corporations**

The international legal system dictates guidelines to States for them and they begin to adopt voluntary codes of conduct on the issues of the protection of human rights and the environment