



CALL FOR PAPERS

The EU & its Member States' Joint Participation in International Agreements

Academic Workshop at the Global Studies Institute of the University of Geneva

15-17 April 2020 in Geneva, Switzerland

In the context of an academic workshop on 'The EU & its Member States Joint Participation in International Agreements', we would like to invite legal and political science scholars to contribute either a theoretical legal reflection on the nature of the EU and its Member States' joint participation in international agreements; or a case-based contribution analyzing concrete examples of international agreements with joint participation of the EU and its Member States from EU and international law perspectives. The workshop, to be held at the Global Studies Institute of the University of Geneva, is organized within the Geneva Transformative Governance Lab and is part of broader reflections on fragmentative dynamics in multilevel governance systems under the stress of globalization. It will consist of 4 to 5 panels with one chair and one discussant. For each panel, the organizing committee will select 3 to 4 papers which will be discussed by the Professors invited to the workshop. The planned panels are, subject to change:

1. The EU and its Member States' joint participation in international agreements: EU Law perspective;
2. The EU and its Member States' joint participation in international agreements: international law perspective;
3. The UK's (un)certain participation in EU mixed agreements after Brexit: case-studies of various agreements;
4. An attempt to classify the international agreements which include the EU and its Member States as contracting parties.

Concept:

According to the art. 351 TFEU, the obligations contracted by the Member States before their accession to the EU 'shall not be affected by the Treaties'. Nevertheless, the second paragraph of this article states: "To the extent that such agreements are not compatible with the Treaties, the Member States or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude". Considering: on the one hand, the principle of pre-emption of EU law and the positive obligation upon EU Member States to terminate all international commitments incompatible with the EU law; and on the other hand, the obligations under international agreements concluded before accession to the EU under the principle of *pacta sunt servanda*; it might be difficult to reconcile the different international legal commitments of EU Member States.

Furthermore, the ever-increasing competences exercised by the EU may call for the joint participation of the EU and its Member States in international agreements. This joint participation in international agreements does not necessarily have to take the form of a mixed agreement (regarding the distribution of competences within the EU), but can take different legal forms:

- All or some EU Member States, with or without the EU, as contracting parties to international treaties (mostly conventions within the Council of Europe);
- All EU Member States as well as the EU itself on multilateral basis, especially when the EU gains a competence in a field where EU Member States already have international commitments. For example, with regard to the European Convention on Human Rights (ECHR), all EU Member States are contracting parties to the ECHR and the EU has the obligation to become a member as well (according to the art. 6(2) TEU). This raises many legal difficulties notwithstanding that despite the obligation for the EU to join the ECHR being in force since 2009, its accession is not yet effective;
- All EU Member States have to sign and ratify an international agreement with a third country willing to accede to the EU (art. 49 TEU). This agreement of accession also modifies the treaties on which the EU is founded and is thus linked with the EU treaties;
- Mixed agreements.

When an agreement is concluded by the EU and its Member States on the one side, and one or more third States on the other side, EU legal doctrine calls it a 'mixed agreement'. Such an appellation or category doesn't seem to exist in general international law. The EU's practice of concluding mixed agreements is one of the main revealers of its singular constitutional structure.

Within the field of EU law, an abundant body of legal literature explains the nature of EU Member States' commitments under mixed agreements. EU legal doctrine is rich in classifications of mixed agreements and categorizations of Member States' participation in mixed agreements under EU law. From an international law perspective however, mixed agreements are, to say the least, a very unusual category of international agreement.

The dominant suggestion in EU law doctrine that Member States' participate in mixed agreements, not as sovereign States, but as members of an international organization is simply not consistent with general international law. Under international law, mixed agreements should be understood as multilateral agreements concluded by the EU, its Members States and third States; an analysis which is consistent with international treaty law as codified by the 1969 Vienna Convention on the Law of Treaties (1969 VCLT) and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986 VCLT).

Mixed agreements, therefore, seem a particularly uncertain form of legal instrument, as they are neither envisaged by general international law, nor are they clearly regulated in EU law. Yet, the practice nevertheless exists and was not questioned until recently. The complex classification of various degrees of the EU and its Member States' joint participation in international agreements could have remained a very theoretical issue, irrelevant for practical considerations; but the current international challenges facing the EU and its Member States

(Brexit, negotiations of a new generation FTAs...) are forcing academics and practitioners to address them from a more practical perspective.

During this academic workshop, we propose to look broadly at the issue of the EU and its Member States' joint participation in international agreements. Even if the case of EU mixed agreements seems to be of a particular importance, we consider that it is worth taking a step back to also consider the EU and its Member States' joint international commitments as a whole. This issue is particularly interesting with regard to the law applicable to different kinds of relations within an agreement (relations between the EU and third State(s); relations between the EU Member States and third State(s); relations between the EU and its Member States; relations between EU Member States).

For this academic workshop, we invite submissions addressing, but not limited to, the following questions:

- How should we differentiate between the various forms of EU and its Member States' joint participation in international agreements?
- What is the nature of the EU Member States' participation in mixed agreements?
- What is the status of the EU Member States parties' under EU mixed agreements? Are EU law considerations relevant for third parties to such agreements?
- Regarding its participation to mixed agreements concluded while a Member State of the EU, what happens if a Member State leaves the EU? (Theoretical but also practical questions analyzing for example one or several mixed agreements as case-study).

Expected output: An edited book on “The EU & its Member States' Joint Participation in International Agreements”, with specific focus on mixed agreements, is envisaged. The analysis of the UK's participation in selected agreements under the stress of Brexit will also be considered as part of this publication.

Confirmed discussants: Prof. Laurence Boisson de Chazournes, Prof. Marise Cremona, Prof. Elaine Fahey, Prof. Christine Kaddous, Dr. Marcus Klamert, Prof. Panos Koutrakos, Prof. Nicolas Levrat, Prof. Makane Mbengue.

Eligibility: PhD Candidates and Post-Doctoral Researchers from various backgrounds (e.g., International Relations, International Law, International Political Economy, European Studies, EU Law).

Deadline for paper proposals: Please send your paper proposal (no more than **500 words**) and one-page CV to gtglab@unige.ch by **13 January 2020**. Successful applicants will be notified by **3 February 2020**. The paper will be due by **15 March 2020**. The final paper will be due by **29 June 2020 (7000 words with footnotes)**.

Funding: On-site costs will be covered by the University of Geneva. Travel fees should be covered by the affiliated institution but might exceptionally be reimbursed by the hosting side upon request.

Scientific Committee: Yuliya Kaspiarovich, Prof. Nicolas Levrat, Prof. Sophie Meunier, Flore Vanackère, Angus Wallace, Dr. Didier Wernli.