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# The EU and its Member States' Joint Participation in International Agreements

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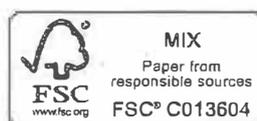
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## THE EU AND ITS MEMBER STATES' JOINT PARTICIPATION IN INTERNATIONAL AGREEMENTS

EU law has developed a unique and complex system under which both the Union and its Member States can act under international law, separately, jointly or in parallel. International law was not set up to deal with such complex and hybrid arrangements, which raise questions under both international and EU law.

This book assesses how EU law has adapted to cope with the constraints of international law in situations in which the EU and its Member States act jointly in relations with other States and international organisations. In an innovative scholarly approach, reflecting this duality, each chapter is jointly written by a team of two authors. The various contributions offer new insights into the tension that continues to exist between EU and international law obligations in relation to the (joint) participation of the EU and its Member States in international agreements.

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## FOREWORD

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The external relations of the EU and its 27 Member States is a fascinating subject, which attracts ever more attention and debate among politicians, practitioners and scholars. Since the 1960s, the EU has been able to greatly expand its role as an international actor, without, however, completely overtaking the foreign policy space of its Member States.

In fact, as long as the Member States continue to be viewed as independent states in their own right, with national foreign policy agendas and stances not always in line with the positions or interests of the EU, the Union will be unable to assume a role as a global player similar to that of, say, the United States or China. That said, the combined force of the EU and its Member States does constitute a factor to reckon with in international relations, particularly in areas where the Union enjoys an exclusive competence, notably in the area of trade policy.

In other areas, such as the environment, human rights and sustainable development, it is a more mixed bag, with the activities of the Union and the Member States intertwined but sometimes also more or less separate from each other. In some other areas, notably in security and defence, the role of the Member States (particularly some of them) continues to be predominant. The great complexity of the institutional and other aspects of EU and Member States' external relations makes this subject a heaven for scholars of law and political science. At the same time, this complexity contributes to the formidable problems the EU is facing in trying to assert a role as a global player able to project its economic strength, standard-setting power and value agenda to the rest of the world.

These challenges continue to merit further academic research, whether or not the current institutional complexity and behavioural cacophony (which I have somewhat impolitely referred to as a 'gaggle of geese'<sup>1</sup>) will continue or whether, some day, institutional and constitutional reforms could enable the EU to match the other global players on an equal footing. As long as the present situation continues, it is to be hoped that scholars do not limit their focus to legal rules and official documents while turning a blind eye to the actual practice of Union and Member States' institutions and the 'reality on the ground'.<sup>2</sup>

This is not to say that there is no need for legal scholarship. On the contrary, an understanding of EU external relations requires an understanding of relevant legal

<sup>1</sup> Allan Rosas and Lorna Armati, *EU Constitutional Law: An Introduction*, 3rd edn (Oxford, Hart Publishing, 2018) 244.

<sup>2</sup> Allan Rosas, 'EU External Relations Law: Time for a Reality Check?' (2020) 27 *Maastricht Journal of European and Comparative Law* 277–83.

rules, their application in practice and case law from Union and national EU courts. Much has already been done. There is, in fact, an abundance of literature on EU external relations law, including the intricate question of mixed agreements, that is agreements concluded by the Union as well as its Member States.<sup>3</sup>

Does this mean that the subject is already exhausted? No, that is certainly not the case, as demonstrated by the present volume. There are two main reasons why this book has added value. First, the focus is on joint participation of the Union and Member States in international agreements, without limiting the analysis to mixed agreements in the strict sense. Second, the perspective is not that of Union law only but the book also aims to see the problems through the lens of public international law, international treaty law in particular. It is also welcome that some of the chapters focus on concrete cases or subject areas rather than a general discussion at abstract level. The approach of involving two authors for each chapter, generally one more senior and the other more junior researcher, is refreshing.

All in all, the editors and authors should be congratulated for having produced a volume which clearly enhances our understanding of the participation of the EU and its Member States in international affairs.

Allan Rosas

<sup>3</sup> My own contributions to the literature on mixed agreements include Allan Rosas, 'The European Union and Mixed Agreements' in A Dashwood and C Hillion (eds), *The General Law of E.C. External Relations* (London, Sweet & Maxwell, 2000) 200–20; Allan Rosas, 'The Future of Mixity' in C Hillion and P Koutrakos (eds), *Mixed Agreements Revisited: The EU and its Member States in the World* (Oxford, Hart Publishing, 2010) 367–74; Allan Rosas, 'Mixity Past, Present and Future: Some Observations' in M Chamon and I Govaere (eds), *EU External Relations Post-Lisbon: The Law and Practice of Facultative Mixity* (Leiden, Brill – Nijhoff, 2020), 8–18; Rosas (n 2 above).

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