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1. The crisis of Public International Law

The Second World War, being the largest historical and political event of the 20th century, changed not only the borders of states, but also the world outlook of people, as well as the legislation of states. The law-forming factor in the development of public international law was
precisely those worldview shifts that occurred as a result of gigantic human losses during the Second World War. The war has become a factor in the crisis of legal consciousness, externally expressed, first of all, in the change of axiological (value) priorities in international law-making as well. Post-war international law-making developed on the same normative basis as pre-war international law. However, now the emphasis has shifted from the content of the norm to its effectiveness. In public international law, the awareness of the need to create effective, but nondeclarative and recommendatory norms in the field of protecting the rights of the individual was the result of the crisis of legal consciousness that occurred after the Second World War.

We can say that it was a crisis of confidence in public international law, resulting from a repeated failure. Despite the creation of the League of Nations after First World War, a body charged with preventing of another bloody war and the awareness of states that an international arbiter was needed to coordinate important areas of law, thanks to which they would then be less likely to engage in violent conflict in general. But these developments proved inefficient in preventing the Second World War.

To look at it another way, international law appeared to citizens in one of three ways after the Second World War: it was ineffective and unreliable, addressed to other individuals, or operated in a highly specialized and small field with minimal questions about legitimacy.

First, international law was largely regarded as inefficient and untrustworthy as a safeguard of international peace and security.

Several ideas put forward in order to solve the problem created by crisis of trust. The transformation of international law after the Second World War concerned the establishment:

(i) the United Nations Organizations. The UN was established in 1945 with the aim of preventing future wars, succeeding the ineffective League of Nations;

(ii) the European Convention on Human Rights drafted in 1950 (ECHR is an international convention to protect human rights and political freedoms in Europe);

(iii) the European Coal and Steel Community (ECSC) was an organisation of six European countries to regulate their industrial production under a centralised authority. It was formally established in 1951. The ECSC was the first international organisation to be based on the principles of supranationalism and started the process of formal integration which ultimately led to the European Union.

Also, in the USA the concept of "transnational" was introduced in 1956 by Philip Jessup.

Jessup wrote of the concept of transnational law as problem-solving during the Cold War, when hope in public international law and public international institutions had withered. He defined this phrase

"to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories."

We can say that Transnational law and Europeanisation, what became later the European Union were created more less the same years. They were created to get out of crisis in which public international law was after wars.

2. What is Transnational Law?

2.1 Introduction

As we noted above, the legal landscape has undergone profound empirical changes since the end of World War II. First of all, the state has lost its monopoly on law-making. It ceased to be the sole source of law. The role of the state in international law, while still central, has therefore weakened. Previously, the only actors on the international stage were the states themselves; thus, international law could be defined strictly as the law of nations, in which the balance between states was based primarily on their sovereignty. The emergence of international organizations changed this pattern and linked it to the gradual loss of sovereignty of states.

Along with a number of international organizations and international adjudicatory bodies, the State became one of many subjects of international law. Non-state actors began to appear on the international scene who challenged traditional rules. This opposition was mainly based on the fact that the rules of public international law were only applied to states, while international organizations shifted their focus to human rights, creating a series of human-directed rules. This means that people can now bring a complaint to the International Court against a state if it has violated an obligation.

Some international regimes have even gained functional independence from their founding states. Among these self-sufficient regimes is the supranational legal order of the EU. The European Union has been promoted and advocated as a post-national model to complement and save, not supplant, Member States. It should facilitate common goals that would be more than half-hearted inter-state compromises. Which were a method of international law, which as a result was marked by ineffectiveness, lack of trust. The EU law is an example of a field that cannot be assigned to either the sphere of public or private international law. It contains elements that transcend both these spheres. The interpenetration of public and private international law has in fact created a new order.

Since the 1990s, we have seen an unprecedented increase in the law-making powers of nonstate actors at the transnational level. In addition to states, other transnational actors (private, public, and hybrid) have emerged that operate more or less autonomously, free from the
influence of states, while having a strong influence on their own functioning. Today, the main area of jurisdiction is no longer just relations between states, as we saw in the classical approach to public international law. Instead, we are dealing with new actors, such as individuals, business organizations, and non-state actors, who assert their rights in private processes.

2.2 Definition

The prefix "trans" national law denotes that we are dealing with legal issues that cross or extend beyond ("trans-") national borders in some way. To put it another way, it's about situations that aren't just domestic. Why don't we just call it "inter" national law, which likewise refers to law that exists outside the scope of national law? The reason for this is because the phrase "(public) international law" refers to a single body of law that applies only between ("inter-") states and has states as its primary topic. As a result, "trans-national law" can be separated from both domestic and international law, though it is considered to include both. Jessup defines the *"[…]*

term 'transnational law' to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories."

Transnational law is own, autonomous and a distinct legal discipline. The transnational law *sensu lato*, includes any law that has an impact outside of the state, whereas the latter, the transnational law *stricto sensu*, solely refers to the corpus of transnational law that does not originate, either directly or indirectly, from state authorities. The transnational law *stricto sensu* is thus transnational law without a state.

2.3 Scope

There are three types of transnational law *sensu lato*: **public, administrative** and **private.**

A. **Public transnational law** consists of international law, supranational law, private international law and transnational human rights litigation regimes.

1) Legal standards that regulate relationships between states and between states and international organizations are referred to as **international law**. International law belongs to public transnational law because it exists outside of the legal domain of the state and is only established by public entities, either directly or indirectly through states' participation in international lawmaking through international organizations.

2) **Supranational law** is an example of an autonomous legal system that is distinct from both national and international law. The EU's law is the most developed, but certainly not the only, example. Originally conceived as a regional international organization, it has developed its own legal system, with its own foundational norms, principles, and practices that, in many respects, differ considerably from general international law, thanks to institutional procedures sanctioned by Member States. We can say that the supranational law of the European Union is part of public transnational law, it exists in a legal area outside of the Member States. They retain control of the EU's constitutional set-up and law-making powers as masters of the founding treaties, although having long lost their

monopoly due to the weakening of the consensus requirement, the Commission's unique autonomous function, and the European Parliament's expanding powers.

3) **Private international law** is state - made law, governs the choice of law and establishes the competent jurisdictions in cross-border matters. Private international law belongs to transnational law due to the scope of its applicability. It is state law, which is applying to transnational situations. In this manner, it varies from international and supranational law, which originates from states but is not part of the national legal hierarchy; instead, it is positioned in the transnational legal space from which it regulates and affects both transnational and national situations.

4) **Transnational human rights litigation regime** belongs to public transnational law since its legal foundation is derived from the state, and it is carried out in state courts They decide on matters of pure transnational origin, which fall within their jurisdiction merely because the plaintiff filed a tort action against a person over whom the judging state has personal jurisdiction.

As a result, states retain relatively direct control over the transnational law-making process, which is distinctive of public transnational law.

B. **Administrative transnational law** exists in a transnational administrative environment administered by transnational administrative bodies that might be **public**, **hybrid** (public private), or **private** in nature.

1) The state's organs, international organizations, and supranational organizations all establish **public administrative transnational law.** On two levels, state organs have the authority to develop transnational administrative law. First, states create transnational administrative rules in the domestic administrative space by adopting regulatory decisions with transboundary effects, and second, states create transnational administrative rules in the transnational administrative space beyond the state by participating in formal, semi-formal, and informal transnational regulatory networks in which they collaborate with other states and/or international and supranational organizations. Public administrative transnational law is also derived from international administration, specifically from international organizations that deal with regulatory issues in the sectors of business, finance, environment, and security.

2) Public and private actors collaborate to develop **hybrid transnational administrative law** in the transnational administrative arena beyond the state. Private actors can represent a variety of international civil societies; they can be drawn from a variety of specialist groups; they can be commercial representatives, and so on. Transnational civil society has mostly consisted of transnational actors and non-governmental organizations (NGOs).

3) At the same time, we've seen a massive increase in the number of transnational sector-based non-governmental organizations (NGOs) and their geographic reach. Transnational NGOs are described as a collection of persons or of societies formed on their own initiative to pursue a common goal that crosses or transcends national borders. Non-governmental organizations (NGOs) should be separated from intergovernmental organizations (IGOs) that are formed via intergovernmental cooperation, as well as from

transnational corporate actors, because they are not profit-driven. In the transnational realm, NGOs play four key roles: They help to formulate, interpret, apply, and enforce transnational law. The majority of rule makers in the field of **private administrative transnational law** are thus established as private, non-governmental, not-for-profit organisations, despite the fact that they can be recognized or approved by the legislature or administration of the country in which they are established. Thus, private administrative transnational law is not a contract-based law of horizontal application between willing parties, but rather includes verticality and power that are not based on agreement.

C**. Private transnational law** also belongs to transnational law and is usually founded on contracts. It arises from the voluntary agreements and behaviors of private parties engaged in horizontal, non-authoritative partnerships, defined at the very least by formal equality of parties.

This law includes new **lex mercatoria** and **transnational corporations.**

1) It regulates and institutionalizes (primarily arbitral) procedural processes for resolving international trade disputes. Both sets of regulations in the new **lex mercatoria** were initially practice-based, driven by the functionalist objective of facilitating global trade. As a result, they have assisted in the gradual adoption and codification of the European Union by private transnational specialized organizations and chambers of professional interests. This codification was done without the involvement of national governments to guarantee the autonomy of the new lex mercatoria. While the states remain the primary and final enforcers of the new lex mercatoria, they have recognized this autonomy and made greater leeway for it for a number of instrumental reasons, as well as their inability to offer effective means to encourage transnational trade.

2) **Transnational corporate law** consists of the norms controlling a corporation's internal governance as well as its connections with other corporations. Transnational corporations have become their own autonomous rule-makers in many respects. Their norms, which are formed independently of national legal and political pressures, are generally established and enforced through contracts, and frequently take the form of soft law with functionally equivalent consequences to hard law. Transnational corporate law thus refers to transnational corporations' private, autonomous, and increasingly institutionalized law-making capacities as they conduct business across national borders on a transnational and even global scale in specific, narrow, or all-encompassing functional economic domains.

3. Van Gend & Loos case

The foundations for the priority principle have been laid in two steps. In Van Gend en Loos, although the Court did not explicitly state that it is the duty of national courts to give priority to Community law, it focused rather on examining when and under what circumstances the
provisions of that law could be found to be directly effective. The Court emphasized that Community law, although deriving from international law, constitutes a new legal order.

In 1963, the European Court of Justice (ECJ) issued a judgment in case C-26/62, which is a cornerstone in the development of European law, giving rise to the idea of

supranational law established by an international organization. The judgment changed perspective to the international law approach. Rights that were to be binding not only on the Member States, but also constitute the basis for the rights and obligations of their citizens. It was a new quality for both politicians and lawyers. Until now, the law established by international organizations, or the provisions of international agreements created by these organizations, did not directly introduce any rights for an ordinary citizen.

I will briefly present the facts. The Dutch company (whose abbreviated name is Van Gend & Loos) was forced to pay 8% duty on chemicals imported from Germany. Of course, the decision to impose the duty was contested. In their arguments, the company's lawyers argued that on the date of entry into force of the Treaty establishing the European Economic Community (EEC), i.e. the Treaty of Rome, the chemical was subject to a 3% duty rate, the Netherlands unlawfully increased the rate up to 8%, which violated Art 12 of the Treaty. This provision stated that Member States should refrain from introducing any new import and export duties as well as other charges having the same effect between them and should not increase those charges that already existed between them. As we can see, the treaty provision did not stop the Dutch authorities from increasing the customs duties. The appeal of the Company was dismissed. But lawyers did not give up and an appeal was brought to the Customs Commission, as the final body, which judged that the dispute was about the interpretation of the Treaty of Rome. The Commission, fulfilling its duty, referred the question to the Court of Justice.

Referring to the aim of the Treaty, which was the creation of a common market, the Tribunal concluded that it was something more than a simple international agreement creating obligations between Member States. This view is confirmed by the content of the preamble to the Treaty, which refers not only to governments but also to citizens. Moreover, institutions with sovereign rights have been established, the exercise of which affects the Member States and their citizens.

On the basis of this argumentation, the ECJ formulated the thesis:

"The Community is a new legal order of international law, to which the Member States have limited their sovereign rights, albeit in limited areas, and the subjects of which are not only Member States, but also their citizens".

In conclusion, the Court stated:

"Irrespective of the legislation of the Member States, Community law not only imposes obligations on citizens, but also aims to grant them rights which become part of their legal heritage. These rights arise not only when they are expressly granted by the Treaty, but also as a result of obligations which the Treaty imposes, in a clearly defined manner, on citizens and on the Member States and the Community institutions".

In Van Gend en Loos the ECJ reversed the presumption generally applicable in international law, according to which changes in the legal sphere of private entities were dependent on national legal regulation. For the first time, the ECJ has admitted that a provision of the Treaty of Rome can confer rights on citizens of the Member States, independently of the Member States themselves. Since then, citizens of the present the

European Union have gained the right to refer directly to the provisions of EU law before national courts in disputes with the authorities of a Member State (vertical direct effect).

The ruling was fundamental to establishing the principle of the direct effect of Community law. The Tribunal also emphasized the specificity of the Community legal order, pointing to its autonomous character. It is also indicated that the ruling influenced the shaping of the principle of direct application of Community law, which makes it possible to base the decision of the national court on the basis of the Community law.

The decision is an example of the Court's contribution to the creation of Community law.

This principle was not included in the act of primary law, but it penetrated the foundations of the Community legal order.

4. Comparison between the European Union legal order and Transnational legal approach

The European Union legal order and Transnational legal approach have common features which we can describe below.

Firstly, both refer to case which have elements of Translationally and Europeanisation.

And both do not apply to things related to a single state but to two or more legal orders or states.

Transnational issues are those that affect more than one country or people of various nationalities. Also, we should speak about the European Union when we have a case concerns more than one state.

Secondly Transnational Law as well as the European Union concern problems of individuals. Related to issues which are interests of individuals. Individuals are subject of the EU law and individual rights and obligations can derive directly from the EU law. Judgment of the Court in Van Gend & Loos says:

"Independently of the legislation of Member States, Community Law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage".

Individuals' interests are protected under transnational law. Individuals can engage in international law making alongside private transnational corporations. Individuals have the capacity to represent themselves in front of international judicial and quasi-judicial institutions for the preservation of their rights.

Thirdly Transnational Law and the European Union have to do issues which are discussed in judgment, they are judge-made law. Arbitral decisions, which may or may not be published, drafted and adopted "restatements" of law, including joint efforts of private organizations such as the American Law Institute, UNIDROIT, and decisions of regional legal bodies such as the European Court of Justice or the European Court of Human Rights, are all examples of transnational sources of law.

The process of the impact of the judgments of the European Court of Justice on Community law is enormous. Its meaning in system of the European Union law is growing

as the judgments issued by the ECJ become an important element of the European law. Regardless of whether the judgments are based on a rule or a legal principle, the goal of each of them is to ensure the legal coherence of the entire legal system and to unify the matter within all Member States. Without the help of case-law, achieving this goal would be very difficult.

5. The European Union as a Federal State or an International Organization

The European Union is unique. It is not a Federal State like the United States of America because the countries that are its members retain their independence and sovereignty. Nor is the EU a purely international organization like the United Nations, because the countries that make it up are united by certain sovereign rights by which their power and influence compared to that of a single state is greatly enhanced. Countries pool their sovereign rights through collegial decisions made by joint institutions such as the European Parliament, which is elected by EU citizens, and the European Council and the Council (which represent national governments).

They make decisions based on proposals from the European Commission, which represents the interests of the EU as a whole.

6. The European Union as a Network

The European Union speaks in the language of a Federal State, but yet it is nothing more than a group of States. As we discover the real nature of the European Union is not a Federal State and not an international organization. In order to use the policies of the Member States to achieve common goals, the European Union uses new form of cooperation within the states. It is the Open Method of Coordination which is an intergovernmental method of governance in the European Union, based on the voluntary cooperation of the Member States. It is used in areas where it is difficult to apply mandatory acts for various reasons. In this intergovernmental method, Member States control each other, and the European Commission has only an observer role. We can say that the Open Method of Coordination is a network between States. In areas where the Member States have control, such as employment, social protection, social inclusion, education, youth, and training, the open method of coordination is used. It deals with measures that have different degrees of obligation on Member States but never take the form of directives, rules, or decisions. Governments learn from one another through exchanging information and comparing projects under the "open method of cooperation" (OMC). As a result, they are able to embrace best practices and align their national policy. The EU is series of links between Member States which are managed by institutions which were created precisely for this aim.

But institutions cannot be clarifying as institutions of Federal State. Thus, the idea of the European Union we can describe as a network. The European Union in fact is a network of networks. Judges and scholars also are meeting in the network. For example, the European judicial network was established to facilitate judicial collaboration (EJN). The network is made up of contact points in each EU Member State's courts or

prosecutor's offices, whose purpose is to facilitate judicial collaboration and who meet on a regular basis.

States are collaborating, but in order to speak of a transnational legal order, we need more: networks of individuals, groups, and private businesses. The European Union is a network of states, but it also includes other entities such as territorial authorities, companies and individuals. They are forming a network. These networks are being networked out in a general framework by the European Union.

7. Conclusion: The European Union legal order can be considered as a Transnational legal order?

The European Union is a complicated framework that creates networks among Member States and allows for the use of a wide range of features to solve problems. It's possible to use a typical community approach or open method of cooperation, or something else entirely. In the hands of states and the EU institutions, the European Union is extremely adaptable (The Commission and Court of Justice). The European Union is a transnational legal experiment that belongs to a broad family of transnational legal approaches.

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