

glass of international law remain a relative oddity. The existing EU literature is mostly devoted to the study of the EU's internal legal framework. As a result, analysis of the EU's place in the international legal arena tends more often than not to be limited to the rules governing the EU's external relations, particularly in the field of international trade, which raise questions concerning the respective powers of the EU and its Member States to conclude international agreements and the effect that such agreements have in the EU legal order. Notwithstanding the importance of such questions, any book that does not limit itself to an EU-centric approach and undertakes a study of the EU from an international law perspective must therefore be welcomed. The value of this particular work lies in the wide range of topical subjects covered, encompassing all three pillars of the EU. Inclusion of several chapters dealing with the third pillar is particularly welcome since cooperation in criminal matters is the most recent addition to the EU's competences and very little has been written on its implications for international law. In this respect at least, the book does represent something of a novelty in legal literature.

The book is a compilation of articles contributed by an impressive line-up of European and international legal specialists, including academics, practitioners and officials from various European organizations. The 25 chapters are arranged in four parts. The first part covers the EU as a whole and deals with so-called 'horizontal' questions that cut across all its three constitutive pillars, whilst the remaining parts examine current issues specific to each of the EU's three pillars, namely the European Communities (EC), the Common Foreign and Security Policy (CFSP) and Police and Judicial Co-operation in Criminal Matters (PJCC).

The opening chapter deals with the EU as a subject of public international law. Nanette Neuwahl's piece on the international legal personality of the EU retraces the emergence of the legal capacity of international organizations in public international law before focusing on the status of the EU. While it is

Kronenberger, Vincent (ed.). *The European Union and the International Legal Order: Discord or Harmony?* The Hague: T.M.C. Asser Press. 2001. Pp. 640.

Publications that examine the European Union's legal framework through the looking-

generally accepted that the EC has international legal personality by virtue of the inclusion of provisions to that effect in the EC and Euratom Treaties, the position regarding the EU is less clear-cut since the Treaty on European Union is silent on this point. Although the question is ultimately left open, Neuwahl does present a number of convincing arguments that militate in favour of accepting that the EU does possess international legal personality. As reference is made to the International Court of Justice's Advisory Opinion in the *Reparations for Injuries Case*,<sup>13</sup> it is a shame that the chapter does not also explore the case law of the European Court of Justice (ECJ) on the subject of legal personality. Building on the ERTA decision of the ECJ,<sup>14</sup> for example, the case could have been made that because the EU has specific powers under all three pillars to enter into international agreements, then the EU, as the sum of these parts, should also be recognized as having international legal personality. Despite the unresolved status of that question, both Jan Wouters and Richard Desgagné remind us that the EU has become a very real actor on the international scene, both in terms of its concerted action within the UN General Assembly and its practice in the field of humanitarian law. Nonetheless, it should be noted that since publication of this book, the draft Treaty establishing a Constitution for Europe has been unveiled. If adopted in its current form, the Constitution will resolve the issue since its Article 6 provides that the EU 'shall have legal personality'.

What stands the EU apart as an international organization, at least as far as the EC is concerned, is its relationship to domestic law. From the outset, the ECJ has resolved conflicts between EC and domestic law by recognizing the supremacy of EC law. In addition, the judicial development of the concept of 'direct effect', which enables individuals and companies to rely on provisions of EC

legislation both against Member States and other individuals and companies, has meant that the EC legal framework has taken on a life of its own independently of the domestic laws over which it takes precedence. This contrasts sharply with the judicial treatment given to international legal instruments by domestic courts through the doctrine of Act of Government, which denies individuals the right to rely on international obligations to seek judicial review of measures taken by national authorities. However, as Andrea Ott illustrates in her contribution, the ECJ has been far less willing to follow such a revolutionary approach to judicial interpretation as regards the legal effects of international law within the EC legal order. Ott's overview of 30 years of ECJ case law on international agreements and their effects in EC law leaves the reader in no doubt that the ECJ's approach to resolving conflicts between EC law and international obligations is far from consistent.

The part dealing with the EC pillar which leans heavily towards WTO-related issues provides us with many examples of actual conflict between the EC legal framework and the international legal order, particularly in the area of international economic law. The run-up to the Cancun summit has re-ignited the dispute over agricultural subsidies and their effects on the economies of the developing world. Although the chapters by Wybe Douma and Mariëlle Matthee explain the legal context within which the EU has traded blows with the US over agricultural issues — be it growth hormones in beef or the ongoing saga over the safety of GM crops — the book is silent on the pressing issue of agricultural subsidies. Given the importance of the EU's Common Agricultural Policy (CAP) within the EC pillar, the book could have therefore greatly benefited from a chapter examining the CAP within the context of the GATT's Agricultural Agreement and the reform pledges made prior to the Doha conference. Agricultural issues are further considered by Geert Zonnekeyn who suggests that the EU has a mixed record as regards compliance with WTO rules and procedures by examining the EU's liability in EC law for non-implement-

<sup>13</sup> *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports (1949) 174.

<sup>14</sup> *European Road Transport Agreement case*, Case 22/70 Commission v Council [1971] ECR 263.

tation of findings by the WTO 'judiciary'. The author takes the EU/US bananas dispute, which concerned the EU's preferential trade treatment of banana imports from African Caribbean and Pacific countries, as his case study. However, despite Zonnekeyn's optimistic take on the issue, such a case is unlikely to be successful at present given the current state of ECJ case law on the effect of WTO rules within EC law. In any event, the European Court of First Instance is expected to clarify the issue of the EU's liability when it renders judgment in a number of actions for compensation brought by companies that have fallen victim to US retaliatory sanctions.

Another area of conflict, albeit potential, is the specific question of human rights in Europe. As Allan Rosas explains, the concept of fundamental rights has been developed as a general principle of EC law by recourse to various international human rights instruments. Although the EU is not a signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the ECJ has consistently held that the EU must respect fundamental rights as embodied therein. In its Opinion 2/94 on whether the EC (not the EU) should become the signatory to the ECHR,<sup>15</sup> however, the ECJ concluded that the EC did not have the competence to enter into international human rights conventions, since this would require a change to the EC Treaty. It also suggested that this was not necessary, given that effective judicial control exists within the EC to ensure the respect of fundamental rights such as those protected by the ECHR. Opinion 2/94 was seen by many as a fudge to ensure that the ECJ's position as supreme court of the EU was retained, since adherence to the ECHR implies that the Luxembourg Court would then become subject to the jurisdiction of the European Court of Human Rights (ECtHR). However, it is arguable that in recent years

the ECJ's interpretation of fundamental rights derived from the ECHR has on a number of occasions diverged from the ECtHR's own case law, thereby sowing the seeds for future conflict between Luxembourg and Strasbourg. As Jörg Polakiewicz rightly argues in his piece on the relationship between the ECHR and the EU Charter of Fundamental Rights, the risk of conflict between the two Courts can only be resolved if and when the EU becomes a fully-fledged signatory to the ECHR.

Whereas the EC pillar offers several examples of real and potential conflict between EC law and the international legal order, the parts devoted to the EU's second and third pillars, the CFSP and CJP, provide fewer examples of real or potential conflict. The reason, as Vincent Kronenberger suggests in his Introduction, is that, while the EC pillar is characterized by the existence of a separate yet integrated legal framework that operates at a higher level than domestic law, EU action under the second and third pillars manifests itself by looser intergovernmental cooperation. However, as the EU embarks upon further integration within the second and third pillars, this will necessarily increase the possibilities for future conflict. Firstly, the EU is likely to make increasing use of its relatively new powers to enter into international agreements under the second and third EU pillars. One notable example provided by Stephan Marquardt is in relation to the conclusion of binding agreements between the EU and NATO in the context of action within the embryonic European Security and Defence Policy. Another area for the emergence of future conflict is EU policy action taken in areas which are already within the remit of other international organizations. Meri Rantala provides us with an example in the field of the PJC, in which she considers separate initiatives by the EU and the Council of Europe to increase cooperation in criminal matters and identifies possible conflicts between these initiatives. Nonetheless, the book leaves the reader with the undeniable impression that the second and third pillars currently provide

<sup>15</sup> Opinion 2/94 *Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECR I-1759.

many more instances of harmony with existing international norms than does the EC pillar.

The absence of a concluding chapter matters little. However, the biggest drawback of this work is the absence of a comprehensive index, which limits its usefulness as a reference book for practitioners. Although each chapter is preceded by a summary and useful keywords, which are complemented by a full table of contents, these features do not fully compensate for the lack of an index. All in all, however, this is a very useful addition to this under-explored subject and is recommended to anyone with an interest in the relationship between European law and international law.  
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