

BOOK REVIEWS

The Europeanisation of International Law: The Status of International Law in the EU and its Member States by JAN WOUTERS, ANDRÉ NOLLAEMPER AND ERIKA DE WET (eds) [TMC Asser Press, The Hague, 2008, xvii + 238 pp, ISBN 978-906704-285, £50 (h/bk)]

*Being neither a State nor an international organization in the classical sense, the participation of the European Union in international relations often raises questions for which the tenets and practices of international law, used to dealing with either States or international organizations, fail to offer ready-made answers.*¹

In this collection of papers, leaders in the fields of European and Public International Law outline the origins of these difficult questions and attempt to provide some insights into the relationship between the two legal orders. International law is increasingly becoming part of the legal order of the European Union (EU), a process which this book terms 'Europeanisation'. It focuses on how Member States' international legal obligations are transformed as a result of their membership of the EU, highlighting that the 'classic' relationship between national and international law has now become a triangular one with the EU as an intermediary legal order.²

This process has been gaining pace in recent years, and the complexities of the area are deepening as the EU takes on greater responsibility in the fields of international relations and international law. The Treaty of Lisbon envisaged a specific role for international law within the EU:

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to *the strict observance and the development of international law*, including respect for the principles of the United Nations Charter³.

Though the Lisbon Treaty failed to be ratified, this objective has manifested itself in recent cases before the European Court of Justice (ECJ) which have questioned the hierarchy of the various legal orders. The *Kadi* decision⁴ held that the European Community (EC) can review the lawfulness of EC measures intended to give effect in the EU to United Nations Security Council Resolutions, and this involved no challenge to the primacy of that resolution in international law. The ECJ affirmed as a matter of principle that the review of the validity of any EC measure in the light of fundamental rights must be considered to be the expression of a constitutional guarantee stemming from the EC Treaty as an autonomous legal system which may not be prejudiced by an international agreement.

Although this important judgment was delivered after the publication of this book, it includes a full and detailed analysis of earlier stages of the case⁵ demonstrating the prescience of the editors and authors as to the issues of the moment. Similarly the book contains chapters on the interplay

¹ P J G Kapteyn, 'Introduction' in V Kronenberger *The European Union and the International Legal Order: Discord or Harmony?* (TMC Asser Press, The Hague, 2001).

² Part 1 of the book focuses on the nature of this relationship, including R Wahl 'Europeanisation Beyond Supremacy' 17, B de Witte 'The Emergence of a European System of Public International Law: The EU and its Member States as Strange Subjects' 39 and A Rosas 'The European Court of Justice and Public International Law' 71.

³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ 2007, C 306/1 (emphasis added).

⁴ Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat Foundation v Council and Commission* (3 September 2008).

⁵ N Lavranos, *UN Sanctions and Judicial Review* (Europa Law, Amsterdam, 2007) 185.

between Community Fundamental Rights and the European Convention on Human Rights,⁶ the ever-more blurred distinction between exclusive and shared competences and mixed agreements and the difficulties of implementing WTO law in the EU, as recently demonstrated in the *FIAMM* case⁷, and customary international law in the EU.⁸

As well as highlighting these contemporary issues, this book provides the reader with a comprehensive study of how international law, once implemented in EU law, becomes part of the EU legal order, governed by its own rules such as the principles of direct effect and supremacy. Often referred to as a *sui generis* entity,⁹ or as Jacques Delors once stated, an '*objet politique non identifié*', the EU does not fit the classical monist/dualist divide, but obeys a different model particular to itself. In this respect, some readers may feel the book insufficiently questions the premise of the title; that EU law is to a certain extent also being 'internationalised'. It discusses in detail how international law is shaping EU law, but does not develop the notion that EU law is therefore increasingly a product of international law and the impact this has on the EU legislature. Chapter 11 also views the relationship from the reverse perspective, assessing to what extent EU legislation and policies are in fact influencing international law. An example of this is the European Court of Human Rights' willingness to look at ECJ decisions on fundamental rights in deciding their own cases, which is lightly touched upon in Chapter 7. However, the book would perhaps have benefited from balancing these two perspectives more carefully, rather than being dedicated predominantly to one view with only one contribution concerning the reverse.

The book also covers the relationship between the EU and national law. As stated in Chapter 2, this is a dual relationship; the EU interacts not only with the legal system of a Member State (a vertical perspective) but also in its relationship with other Member States (a horizontal perspective), acknowledging the need for and enhanced status of comparative law.¹⁰ In this respect, the study of the impact of EU law in some Member States (Austria, Hungary) and third States (Liechtenstein, Switzerland, USA) is valuable, although one may perhaps question the choice of the states studied. Interestingly, the articles on the Member States intended to illustrate the relationship between international, EU and national law actually demonstrate some differences in approach to this relationship, depending on the State. For example, Chapter 8 states that although the international agreements the EC concludes are considered part of the Community legal system, such agreements are not to be considered Community law, but rather international law.¹¹ In contrast, the Hungarian article notes that in Hungary, international agreements concluded by the EC are thought of as Community law rather than international agreements¹².

⁶ Despite early divergences in cases brought before both the ECJ and European Court of Human Rights in recent years (see eg Case C-374/87 *Orkem v Commission* [1989] ECR 3283 and *Funke v France* [1993] 16 EHRR 297) the ECJ has been careful not to create diverging jurisprudence to facilitate cooperation between the two courts, and the *Bosphorus* case (*Bosphorus Hava Yollari Turizm v Ireland*, App No 45036/98 (ECtHR, June 30 2005)) demonstrates the reciprocal willingness of the Strasbourg Court to take note of the ECJ's decisions. This is discussed in detail in J Callewaert, "'Unionisation" and "Conventionisation" of Fundamental Rights in Europe: The Interplay between Union and Convention Law and its Impact on the Domestic Legal Systems of the Member States' 109.

⁷ Joined Cases C-120/06 P and C-121/06 P *Fabbrica Italiana Accumulatori Motocarri Montecchio SpA (FIAMM) and Others v Council and Commission*, 9 September 2008, which definitively rules out the possibility that Community institutions could be held liable for damages stemming from EC non-compliance with WTO law. C Tietje 'The Status of International Law in the European Legal Order: The Case of International Treaties and Non-binding International Instruments in Wouters, Nollkaemper and de Wets (eds) *The Europeanisation of International Law* (TMC Asser Press, the Hague, 2008) 55.

⁸ P J Kuijper, 'Customary International Law, Decisions of International Organisations and Other Techniques for Ensuring Respect for International Legal Rules in European Community Law' in Nollkaemper and de Wets (eds), *The Europeanisation of International Law* (TMC Asser Press, the Hague, 2008) 87.

⁹ Though note that international lawyers tend to reject this analysis in favour of defining the EC and EU as international organizations, as discussed by de Witte at 40.

¹⁰ R Wahl, 'Europeanisation Beyond Supremacy' 23.

¹¹ A Epiney, B Hofstötter, and M Wyssling, 'The Status of "Europeanised" International Law in Austria, Switzerland and Liechtenstein' 140.

¹² N Chronowski, T Drinóczy, 'A Triangular Relationship Between Public International Law, EC Law and National Law? The Case of Hungary' 176.

This review has sought to analyse the book from the perspective of an international or comparative lawyer, for whom it constitutes essential reading clearly illustrating the development and convergence of the two subjects and a useful introduction to the impact of EU law on international law and the obligations of Member States. Despite the criticisms made above, this is a timely and important contribution to this ever-changing field of debate, and constitutes one of the only books concentrating on the relationship between Public International Law and European law.¹³ It will also be a key volume for academics working in the field of ‘Europeanisation’, as it may now be known.

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The International Law Foundations of Palestinian Nationality: A Legal Examination of Nationality in Palestine under Britain’s Rule by Mutaz M Qafisheh [Martinus Nijhoff, Leiden, 2008, 252 pp, ISBN 978-90-04-16984-5, €100, \$141(h/bk)].

History is integral to understanding how the Israel-Palestine conflict emerged. This is because almost all aspects of that conflict—from the question of self-determination to territorial boundaries—were forged in the past. Any serious study on Palestine therefore entails revisiting the colonial era when Palestine was carved out of the Ottoman Empire and placed under a League of Nations Mandate. Dr Qafisheh’s book acknowledges the importance of history by examining Palestinian nationality during the Mandate era when many of the legal (and still unresolved) controversies concerning the Palestine question first arose.

This monograph is based on Dr Qafisheh’s doctorate for which he was awarded a distinction by the Graduate Institute of International and Development Studies in Geneva. It is comprised of twelve chapters, beginning with an introduction and literature review, and then examines the Nationality Law of Palestine during the Ottoman Empire, followed by a chapter entitled ‘Palestinian nationality in transition’. The latter chapter covers the era when Palestine was placed under British military occupation in December 1917, through to the Treaty of Lausanne of 1923, to the time when a Citizenship Order was first enacted in 1925. The former chapter examines the Ottoman Nationality Law of 1869 in some detail noting that it was inspired by the French legal model and ‘transformed the idea of citizenship into a secular concept by abandoning religion as the basis for nationality’ (page 27).

In his chapter on the Palestine Citizenship Order 1925, Dr Qafisheh makes the important observation that this law remains significant because, as he argues:

(1) it was the final nationality text applicable in Palestine at the end of the Mandate; (2) it affected nationality laws enacted Israel in 1952 and in Jordan (when then included the West Bank), in 1954; (3) it was effectively applicable in the Gaza Strip under the Egyptian administration from 1948 to 1967; (4) it is still valid in all the Palestinian Authority areas at the present day; and (5) the Palestinian legislator would have no choice but to review that text in the drafting process of nationality legislation in the future Palestinian state (page 75–6).

¹³ Earlier volumes include M Koskeniemmi, *International Law Aspects of the European Union* (Kluwer Law International, 1998), which includes only first and second pillar aspects and was written prior to the Treaty of Amsterdam, and V Kronenberger *The European Union and the International Legal Order: Discord or Harmony?* (TMC Asser Press, The Hague, 2001) which whilst current at the time of publication has in some respects been quickly superseded by the fast-paced developments in this field.

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