

BOOK REVIEWS

The European Union and its Court of Justice by ANTHONY ARNULL [2nd edn, OUP, Oxford, 2006, lxxx + 699pp, ISBN 0-19-925885-6]

This is the expanded (about 100 extra pages) and substantially rewritten second edition of a book that first appeared in 1999. The first edition was very well received and has entirely deservedly become a standard work on the Court of Justice.

While the first edition was divided into three parts ('Legal foundations', 'Substantive law', and 'The Court's general approach'), the second edition consists of four parts: 'The Court and its jurisdiction', 'The Court and the legal order', 'The Court and the substantive law', and 'The Court and its general approach'.

The new first part now contains a more complete description of the structure and workings of the Court, which is a welcome addition in comparison to the first edition. This can be seen especially in chapter 1, which has been substantially enlarged to include sections on the judgment, the Advocate General, the appointment of Members of the Court and the accountability of the Court. Chapter 5 on the judicial architecture of the Union is also new. Infringement proceedings, the action for annulment and the preliminary ruling procedure are now dealt with in separate chapters 2, 3, and 4. However, the book could perhaps usefully have included a short section containing some basic internal procedural steps in answer to the question of what happens to a case when it arrives at the Court: from appointment of a judge rapporteur and an advocate general through the preliminary report and the report for the hearing to the opinion of the advocate general and the judgment. These matters would presumably be of interest to the majority of readers, as they are mostly known only to people who have in some capacity had the opportunity to experience the Court from the inside (as, indeed, Professor Arnall, who was a Legal Secretary in the chambers of Advocate General Jacobs from 1989 to 1992, was able to).¹

The second part has also been enlarged and now includes a new chapter 8 on direct effect, primacy, and the national courts, which addresses the *Kompetenz-Kompetenz* question ('who has . . . competence to determine the limits of the Community's competences?' (225)), while the discussion of directives and direct effect in chapter 7 has been expanded. The discussion of the 'general principles of law and fundamental rights' in chapter 10 is now to all intents and purposes a thorough discussion of fundamental rights with a brief prologue on general principles, and the title of the chapter has therefore become something of a misnomer. It is perhaps regrettable that the short yet useful overview of general principles included in the first edition has been dropped.

In the third part, the attention has now been shifted further towards the extent to which the Court has 'formed' substantive Community law, which puts the discussion in this part of the book apart from 'standard' discussions of, say, freedom of movement for persons. The chapter on competition law has been left out of this edition, which is a shame, given that the previous edition contained one of the more concise (as far as such a thing is possible regarding competition law) treatments of the subject. The separate short chapter on public policy, public service, and official authority has also been left out of this edition. The other chapters in this part have been reworked. Chapter 12 on workers has, among other things, lost its separate sections on the rights of migrant workers (discussion of Regulations 1612/68 and 1408/71) and on wholly internal situations, but has gained a separate section on the outer limits of Article 39 EC, discussing the possible existence of a *de minimis* rule and the role of abuse of rights. These problems could perhaps have been explored more fully regarding other areas as well. What used to be the chapter on supplementing the basic principles has now been incorporated into an interesting separate chapter 14 on citizen-

¹ First edition, p xi.

ship of the Union. Both the chapter on establishment and services (chapter 13) and that on equal treatment (chapter 16) have been expanded to incorporate recent developments.

In the fourth part, the chapter on precedent has in the new edition been renamed 'The normative status of the case law' (chapter 17) and expanded to contain sections on the origin and evolution of the Court's judicial style, as well as a separate section on 'Precedent and the Court of Justice'. The latter contains concise but interesting discussions on how the Court deals with previous case law, with subsections on overruling, and reaffirming and distinguishing.

The general tone of the book has remained the same as in the first edition. Professor Arnall is not afraid to praise the Court or at times even mount quite a passionate defence. For example, the author points out that the critics of the Court's alleged activism were not quick to praise it for its contribution to the introduction of the possibility of interim relief against the Crown in the English law of remedies (292). The author's reply to a critic's claim that the Court had been undermining the rule of law with its judgment in *Francovich*² and its case law on direct effect in general is the rather testy: 'It might be said that what really undermines the rule of law is the persistent failure of Member States to comply with their Treaty obligations' (298). Quite. The view that the Court of Justice ignores the wording of Community provisions to pursue an agenda of its own is labelled 'a parody of its approach', and the author adds that it is perhaps unsurprising that the dynamic interpretation of the Treaty by the Court has attracted particular criticism, 'some of it politically motivated', from 'a Member State which lacks a written constitution' (620–1). Perhaps the lack of a written constitution of the said Member State which shall remain nameless is not the only explanation. Other jurisdictions that do have a written constitution know similar debates on alleged 'activism' of the courts. One can think of at least one justice of the Supreme Court of the United States who would presumably be quite sympathetic to the criticism of the Court of Justice's 'flexible approach'.³

However, the author equally does not spare criticism where it is due. For example, the author responds with 'a resounding yes' to the question whether it is regrettable that more recent case law has shattered the hope raised by the *Codorniu*⁴ case that a break with the Court's restrictive attitude to the standing of private applicants under Article 230 of the EC Treaty was forthcoming (91). The author's assessment of the justification for vertical direct effect put forward by the Court in *Ratti*⁵ (ie that a Member State must not be permitted to plead its own default in failing adequately to implement a directive when the latter is relied on by an individual) is that it 'led the Court into a *cul de sac* from which it has yet fully to emerge' (195). The Court's judgment in *Akrich*⁶ is described as 'obscure and badly organized, perhaps a sign of internal dissent' (459). Regarding the Court's failure to explain the effect of its decision in *Familiapress*⁷ (that Member States must observe fundamental rights when derogating from the free movement of goods on the basis of a mandatory requirement) on previous case law that had held the opposite, the author observes that to common lawyers, this failure is 'unforgivable' (628). The same opinion, it is submitted, would presumably be held by quite a few civil lawyers.

The overall approach is sympathetic, but mostly well-balanced. The author writes about the Court as about an old friend: generous in recognizing qualities, but not afraid to criticize shortcomings.

As the title indicates, however, this book is not 'just' about the Court of Justice. It is a book about the European Union *and* its Court of Justice. As a consequence, large parts of the book read as a treatise on the foundations of EU law. Occasionally, the book drifts into discussions that may be valuable and insightful, but have no obvious necessary link with the Court, such as the inter-

² Joined Cases C–6/90 and C–9/90 [1991] ECR I-5357.

³ See A Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press, Princeton, NJ, 1997).

⁴ Case C–309/89 [1994] ECR I-1853.

⁵ Case 148/78 [1979] ECR 1629.

⁶ Case C–109/01 [2003] ECR I-9607.

⁷ Case C–368/95 [1997] ECR I-3689.

esting thoughts on human rights in foreign policy at the end of the fundamental rights chapter (386–90). Nonetheless, the fact that it is possible to describe the foundations of EU law through the prism of a study of the Court of Justice says something about the primordial role the Court has played and still plays in their development. This approach also implies that the previous edition is not actually wholly out of date. The overall analysis of the Court's role and the historical evolution of the case law still stands.

This highly readable book manages to demonstrate just how important the role of the Court has been in constructing the Union's legal order. In doing so, the book draws on the author's impressive breadth of knowledge of the case law, the Court and of EU law in general. The book's aim of examining the contribution of the Court of Justice to shaping the legal framework within which the EU operates has therefore amply been achieved. It is warmly recommended.

GEERT DE BAERE*

Compendium of Key Human Rights Documents of the African Union [Pretoria University Press, Pretoria, 2005, viii+267pp, ISBN: 0-620-34672-8 (p/bk)]

Separated into three sections, this book contains a compilation of various treaties, resolutions and declarations from the African Union and its organs. Compiled by the Centre for Human Rights at the University of Pretoria and the University of Peace, Costa Rica, the editors hope that it will be 'of use to lawyers and non lawyers alike who have an interest in the African human rights system, whether from an academic or a practical point of view'.

The first section on 'Instruments of the African Union' and its predecessor the Organization of African Unity (OAU), includes what one would expect to find in a volume of this kind: the founding treaties of the OAU and AU (Charter of the Organization of African Unity and the Constitutive Act) as well as documents establishing the various AU organs (Protocol establishing the Pan-African Parliament; Protocol establishing the Peace and Security Council; and Statutes of the Economic, Social and Cultural Council). There is also the African Charter on Human and Peoples' Rights, as well as its two Protocols (on the establishment of an African Court on Human and Peoples' Rights; and the Protocol on the Rights of Women in Africa). The Compendium then continues with other OAU/AU treaties relevant to human rights, including the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1990 African Charter on the Rights and Welfare of the Child and the revised 2003 African Convention on the Conservation of Nature and Natural Resources. Other documents included are the two Declarations adopted by the OAU and AU ministerial human rights conferences in 1999 and 2003 (Grand Bay (Mauritius) Declaration and Plan of Action and Kigali Declaration respectively), the OAU Declaration on Unconstitutional Changes of Government and the Conference on Security, Stability, Development and Cooperation in Africa (CCSDCA) Solemn Declaration.

Besides the more obvious treaties and documents, the compilation also contains those which are less visible, but still important, such as the Guidelines for African Union Electoral Observation and Monitoring Missions (although these are not provided in full) and the Vision and Mission of the African Union Commission adopted in 2004. Useful organograms of the AU and of the Commission of the AU are also included.

The second section on the African Commission on Human and Peoples' Rights includes the Rules of Procedure of the African Commission and the amended Guidelines for National Periodic Reports under the African Charter. Oddly, however, also included are 'sample concluding observations on a periodic report' and some selected decisions. Although it is arguable this makes the documents more accessible and some of the cases selected are clearly important in terms of their contribution to the development of human rights law as well as the African Charter, the informa-

* Chambers of Advocate General Sharpston, Court of Justice of the European Communities.