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The Europeanisation of International Law: The Status of International Law in the EU and its Member States by Jan Wouters, André Nollkaemper and Erika de Wet (editors)

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The europeanisation of international law is one of the consequences of European integration. It can be described as the process through which international law becomes binding on the European Union and through which distinct qualities and features are given to such international law within the EU, thus becoming a system that can be distinguished from general international law. The europeanisation of international law also affects the European member states. International law enters their domestic legal systems via the European legal order. As a result, the classical legal relationship between international and national law in respect of the member states has been altered into a triangular relationship between international law, European law and nation al law. International law still continues to bind the member states directly but once it has been europeanised, its application and interpretation stops being a purely national constitutional question and becomes a matter of European law, especially in the light of the principles of uniform application and interpretation. The ten contributions to this book focus on questions related to this triangular relationship and are divided into two parts. Part one addresses the phenomenon of europeanisation while part two highlights the consequences of europeanisation for domestic law, international law and judicial protection in the EU.

The introductory chapter by the editors points out the existence of different types of europeanisation not limited to the legal field, including the influence of the European Union on international law as such in its attempt to increase its influence on the shaping of international law and policies of international organisations. However, the main theme of the book is concerned with another form of europeanisation which focuses on the qualities and features international law acquires once it enters the sphere of the EU.

In “Europeanisation beyond Supremacy”, Rainer Wahl chose not to approach the europeanisation of international law from the external perspective of international law but from its internal dimension. Within this internal perspective, he decided not to portray the vertical dimension, i.e. between European and national law, characterised by the principle of supremacy of EC law but to focus on the horizontal dimension, i.e. the relationship between the legal orders of the member states. He argues that one of the effects of European integration would be that political, legal and economic actors would constantly observe the legal systems of the member states, encouraged by the idea of learning from others. Wahl’s centre of interest is the law in action, referring to examples from Germany whenever he feels that they can be generalised. It is this unique internal perspective that makes his contribution especially interesting.

Bruno de Witte approaches the question of europeanisation in “The Emergence of a European System of Public International Law: the EU and its Member States as Strange Subjects” from a different angle, asking whether there is a European system of international law with distinct features that differentiate the way in which international law develops and is practised between the member states from the way this is done in the rest of the world. Like Wahl, de Witte chose to utilize an innovative perspective. He is not looking at europeanisation from the relationship between different legal orders but from the perspective of the doctrine of subjects of international law. Hence his analysis centres on the question whether the European member states are becoming strange subjects of international law as they might be constrained under EC and EU law in respect of their treaty making capacity in the light of European international agreements.

The following contributions by Christian Tietje, Allan Rosas and Pieter Jan Kuijper are taking on yet another perspective by focusing on the position of international law in EU law by highlighting the case-law of the European Court of Justice. In “The Status of International Law in the European Legal order: The Case of International Treaties and Non-binding international Instruments” Tietje examines the status of international law in the European Union legal order by looking at international treaties, paying special respect to WTO law, mixed agreements and international instruments which are non-binding on the EC. He questions whether the principle of international law according to which the internal constitutional order of a state is irrelevant is applicable to the EC, due to its internal legal structure. As international law does not traditionally regulate the legal status of an international agreement within the legal order of a contracting party, he goes on to analyse how an international agreement gains relevance and what hierarchical status it will have in the Community legal order. According to the case law of the ECJ, international agreements form an integral part of the EC legal order and in Tietje’s view their status would be between primary and secondary law. In contrast to Rosas, he rejects the idea that the relationship between EC law and international law could be characterised as monist. Tietje not only offers arguments against the monist nature of the relationship but refuses to use the classical doctrine of monism and dualism altogether and suggests speaking of “communitarisation” of international law instead. In respect of international agreements which are non-binding on the Community, Tietje argues that the ECJ would show its willingness to apply Community law in conformity with international standards by briefly referring to the court’s attempt to bring EC law in conformity with the European Convention on Human Rights and its references to other international standards, indicating the court’s positive attitude towards international law.

Rosas' contribution "The European Court of Justice and Public International Law" examines international agreements concluded by the European Union and general customary international law as sources of European law, pointing out that the EU courts might have to interpret and apply international norms not in the distinct teleological Community law approach but in the same way national courts approach international law. In line with Tietje, he argues in favour of the ECJ`s open attitude towards international law as demonstrated by the adoption of the principles of direct applicability and direct effect in connection with international agreements.

Kuijper's contribution looks at the reception of customary international law, decisions of international organisations and other techniques for ensuring respect for international legal rules in European Community law. He distinguishes three strands of case law by the European courts that are concerned with customary international law, namely cases concerning jurisdiction of the European courts, cases where the European courts use customary law as a rule of interpretation and finally cases where customary international law is used to set aside a rule of Community law. Kuijper is thus asking whether the openness of Community law to international law reaches as far as granting direct effect even to rules of customary international law, leaving conflicting rules of Community law unapplied. The next part of Kuijper's contribution turns to decisions of international organisations founded by the European Community, especially decisions taken by Association Councils set up by the Union's numerous association agreements. He shows that the European courts have been liberal in opening up the Community legal order to these decisions, and in granting them direct effect. Kuijper then turns to decisions of international organisations of which the Community is not a member, putting special emphasis on the United Nations and UN Security Council resolutions. Finally, he proposes the Community's infringement procedure as a tool to ensure conformity of member state action with international law.

To summarise, the first part of the book not only creates awareness of the different possible perspectives from which the phenomenon of europeanisation of international law can be approached but also highlights some dimensions of europeanisation that are often overlooked, such as the internal horizontal perspective, focused on how the member states influence each other or the analysis of europeanisation of international law centred around the doctrine of subjects of international law. It is especially this comprehensive approach of the europeanisation of international law which could be of interest for readers.

After the first part of the book offers some definitions of europeanisation, the second part highlights the consequences of europeanisation for domestic law, international law and judicial protection in the EU by studying examples of europeanisation. In "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", Johan Callewaert, by taking on yet another perspective - namely the perspective of the European Convention on Human Rights - addresses the question whether the European Convention on Human Rights is affected by the increased influence of European Union law leading to a process of europeanisation of the convention on the one hand and whether the convention affects Union law, leading to a process of conventionisation on the other hand. Hence, Callewaert's contribution can be seen as complementing Tietje's chapter in respect of the ECJ's proposed openness to international standards.

The contribution by Astrid Epiney and Bernhard Hofstötter in collaboration with Markus Wyssling, as well as the contribution by Nora Chronowski and Timea Drinoczi examines the status of europeanised international law in specific domestic legal systems in Europe. "The status of "Europeanised" International Law in Austria, Switzerland and Liechtenstein" by Epiney, Hofstötter and Wyssling is appealing due to its focus on countries enjoying different relationships with the EU. The authors argue that as a result of differing levels of integration into the Community legal order, the europeanisation of international law has reached different stages in these countries. They

conclude that not only the pressure of the common market but also the wide-reaching development of Community law forces non-EU member states to be aware of the legal dynamics of the EC legal order when concluding treaties. Chronowski and Drinoczi's contribution "A Triangular Relationship between Public International Law, EC Law and National Law? The case of Hungary" studies the interrelation of international and Community law from the perspective of constitutional law of Hungary as one of the younger member states.

Nikolaos Lavranos'essay "UN sanctions and judicial review" analyses the implementation of UN Security Council sanctions though the European legal order as a prime example of the europeanisation of international law. By putting his main emphasis on the Court of First Instance's *Kadi* and *Yusuf* rulings as well as on the European Court of Human Right's *Bosphorus* judgment in order to explore the rights of individuals to judicial review against UN Security Council resolutions on the European level, he argues in favour of a change of attitude from the sacrifice of fundamental rights in the light of "the war against terrorism" to the putting of the protection of fundamental rights first as illustrated by some of the latest cases of the Community courts. The last contribution to the book "Europe, America and the "Unity" of International Law" by Joost Pauwelyn scrutinises the implications of europeanisation for the unity and coherence of international law from European as well as American attitudes to international law.

To summarise, the second part of the book, outlining some consequences of europeanisation of international law appeals through its look beyond the EU, asking how europeanisation affects states that are not members of the EU, albeit connected to the Union by special agreements and what consequences europeanisation could produce for the system of international law in general. Furthermore, with the chapters on judicial review of Security Council resolutions and on the impact of the European Convention on Human rights on the EU and vice versa, the book addresses two areas of law where the problems underlying the relationship of international law, European law and domestic law are most apparent.

In conclusion, *The Europeanisation of International Law: The Status of International Law in the EU and its Member States* offers a well balanced approach to the phenomenon of europeanisation of international law, pointing out the multitude of perspectives from which this phenomenon can be studied. By doing so, the book creates awareness for the huge impact europeanisation has on different actors and on different fields of law. Although the term "europeanisation of international law" is frequently used these days, hardly any substantial research has been done so far and this book offers the reader a valuable insight into the complex problems behind the phenomenon of europeanisation of international law.