

Introduction

THIS VOLUME IS the product of the Tenth EU/International Law Forum hosted by the University of Bristol Law School in May 2011. The Forum, and the ensuing series of books to which it has given rise over the years, reflect the need to ensure that scholarship in European Law and scholarship in International Law are not carried out in isolation. The Forum aims to bring these two strands closer together and ensure that they remain in contact by exploring areas and developments of common interest.

The increasingly prominent role of the Union on the international scene has rendered this work of the Forum ever more topical. It has also given it a sense of urgency, as it has been raising unique questions with which both the international legal practice and doctrine have been grappling. The Seventh Forum, held in 2005, had as its starting point the unique constitutional features of the European Union, and then placed them within the wider debate about the constitutionalisation of the international legal order.¹ It sought to ascertain the extent to which there is an osmosis between the idiosyncratic constitutional maturity of the Union, and the emerging debate about global constitutionalism which still underpins the development of the international economic order. The Ninth Forum, held in 2009, relied upon this analysis and reframed it in a policy-oriented context: it enquired about whether the debate about transnational constitutionalism is borne out by policy developments on the ground, and explored the interactions between the approach of the EU and that adopted at international level.²

This volume takes a step further and explores the central issue of international responsibility which underpins the interactions between the EU and third countries and international organisations. The law of international responsibility has been the subject of intense study by international lawyers.³ However, a number of factors have rendered it of central significance for the Union. The first factor is the increasingly prominent role of the Union on the international scene. Since the adoption of the Maastricht Treaty in 1993, the Union started raising its international profile not only

¹ N Tsagourias (ed), *Transnational Constitutionalism: International and European Perspectives* (Cambridge, Cambridge University Press, 2007).

² M Evans and P Koutrakos (eds), *Beyond the Established Legal Orders—Policy Interconnections Between the EU and Rest of the World* (Oxford, Hart Publishing, 2011).

³ For a recent illustration see J Crawford, A Pellet and S Olleson (eds), *The Law of International Responsibility* (Oxford, Oxford University Press, 2010).

in economic and trade matters but also in the area of foreign and security policy. This gradual process has led to the intense first decade of the twenty-first century when, positively middle aged, the Union was courageous enough to articulate its vision for a robust international posture with ambition and rigour, and to adjust its constitutional make up in a way which would purport to facilitate its objectives.

In this vein, the Laeken Declaration, the document adopted by the European Council in December 2001 which signaled the beginning of the process leading to the adoption of the Lisbon Treaty, refers to the Union as⁴

a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development.

This bold vision underpinned the process which led to the negotiation, conclusion and long and painful death of the Treaty Establishing a Constitution for Europe. It also underpins the Lisbon Treaty which entered into force on 1 December 2009.⁵ This policy and legal framing of the increasingly confident and active Union has given rise to the emergence of another conception of responsibility which underpins the Union's international activities. The Laeken Declaration states that⁶ 'in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation', and the European Security Strategy, endorsed by the European Council in December 2003, points out that⁷

The increasing convergence of European interests and the strengthening of mutual solidarity of the EU makes us a more credible and effective actor. Europe should be ready to share in the responsibility for global security and in building a better world.

This is a soft, almost moral, understanding of responsibility and it emerges as a central theme which shapes the Union's international role. Therefore, the reach of its international ambitions, and the deeply embedded sense of responsibility towards the world render the definition and implications of its legal responsibility a matter of priority for academic scholars, practitioners and policy-makers alike.

⁴ Ibid.

⁵ For an assessment of the external relations provisions of the Lisbon Treaty, see P Craig, *The Lisbon Treaty—Law, Politics, and Treaty Reform* (Oxford, Oxford University Press, 2010) ch 10; P Koutrakos, 'The European Union's Foreign and Security Policy after Lisbon' in D Ashiagbor, N Countouris and I Lianos, (eds), *The European Union after the Treaty of Lisbon* (Cambridge, Cambridge University Press, 2012) 185.

⁶ Laeken Declaration, 14–15 December 2001, 2.

⁷ *A Secure Europe in a Better World—European Security Strategy* (Brussels, 12 December, 2003) 1.

There is another factor which makes this exercise worthwhile, namely the work of the International Law Commission on the Draft Articles on the Responsibility of International Organisations. The long gestation of its proposals has coincided with a period of considerable development of the Union's idiosyncratic constitutional character which led to the current set of primary rules. Therefore, the question whether the proposed rules provide a legal space flexible enough to accommodate the unique features underpinning the constitutional maturity of the Union is worth-exploring. This is all the more so given the lingering ambiguity about the main tenets and legal implications of responsibility, particularly in relation to international organisations.

There is a third factor which highlights the need for this exercise, namely the methodological characteristics of the study of the law of international responsibility so far. This has been carried out mainly by international law scholars and, only relatively recently and to a limited extent, by EU law scholars.⁸ However, these communities do not necessarily approach the issue in the same manner, their points of reference may be considerably varied and, in any case, they do not interact frequently enough. This volume aims to bring them together and enable them to converse about different aspects of the international responsibility of the Union.

The above legal, political and methodological factors determine the approach and structure of this collection of essays. On the one hand, it identifies areas of common interest and, on the other hand, it approaches them from both the international and EU law perspective. This becomes clear from the start, as Tomuschat and, then, Kuijper and Paasivirta provide a conceptual exploration of the notion of international responsibility from these two points of view respectively. By framing their analysis within the broader international law framework and, then, within the specific features of the Union order and the challenges these raise in terms of distinguishing the Union's responsibility from that of its Member States, the two chapters set out the canvas against which a number of horizontal themes will be examined.

A couple of common themes emerge from the various contributions to this volume. These include the concern whether the legal idiosyncrasies of the EU may be accommodated within the framework of the existing rules and proposals on international responsibility. Another theme, not unrelated to the above, has to do with the new dimensions that responsibility

⁸ See, eg P Eeckhout, 'The EU and its Member States in the WTO—Issues of Responsibility' in L Bartels and F Ortino (eds), *Regional Trade Agreements and the WTO Legal System* (Oxford, Oxford University Press, 2006) 449; F Hoffmeister, 'Litigating against the European Union and Its Member States—Who Responds under the ILC's Draft Articles on International Responsibility of International Organizations?' (2010) 21 *European Journal of International Law* 723; PJ Kuijper and E Paasivirta, 'Further Exploring International Responsibility: The European Community and the ILC's Project on Responsibility of International Organisations' (2004) 1 *International Organisations Law Review* 111.

has acquired in the highly volatile and constantly evolving current international order. It is in this vein that Klabbers explores the ways in which accountability has become a central tenet of the functioning of international organisations, and Redgwell explains the difficulties of applying our traditional understanding of responsibility in one of the most important areas of environmental law, namely climate change.

These themes are examined separately in chapters adopting a horizontal and a vertical approach. The former deals with the manner in which international actors and legal mechanisms tackle responsibility and include international courts (Evans and Okowa), the Court of Justice of the European Union (Rosas) as well as three important tools for determining and engaging international responsibility, namely *erga omnes* and *ius cogens* (Tamms and Asteriti) and declarations of competence (Heliskoski).

A vertical approach to responsibility is adopted by chapters which focus on substantive policy areas. Whilst it makes no claim to comprehensiveness, this book focuses on policy areas both sufficiently diverse to reflect the scope of the Union's international role, and sufficiently topical to convey its involvement in areas where other international actors are quite active. To that effect, it explores the issues of international responsibility which the Union's activities raise in trade (Larik and Delgado Casteleiro), finance and investment (Denza), environment (Hilson, Redgwell), human rights (Cannizzaro), and security and defence (Naert, Wessel).

Consistently with the previous edited collections originating in the Bristol EU/International Law Forum, this book by no means seeks to provide a definitive account of its subject matter. Instead, it is work in progress into the enquiry about the fit between the incrementally evolving and consistently idiosyncratic EU legal order and the public international legal orthodoxy underpinning the law of international responsibility. It is a contribution to the ongoing conversation between the EU and international legal scholarship which constitutes the core objective of the Bristol Forum.

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