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*Law and Practice of EU External Relations: Salient Features of a Changing Landscape*

by Alan Dashwood and Marc Maresceau (eds) (Cambridge: Cambridge University Press, 2011), 506 pages, £35, Paperback, ISBN 978-05-2118-255-3

As the subtitle of this edited volume aptly puts it, EU external relations law is indeed a ‘changing landscape’. In the introduction, the editors underline further that research in this area amounts to ‘firing at a constantly moving target’ (*Introduction*, 1). Since this review covers a paperback edition of a book that was first published in 2008 and the origins of which lie in a workshop that took place in late 2005, the following question inevitably imposes itself: Was there in fact merit in republishing what amounts to a volley of shots fired years ago, notably before the entry into force of the Lisbon Treaty, by marksmen and women taking aim in a landscape that is prone to have acquired rather different contours ever since? When the hardcover version of this volume came out, it had already received a number of reviews in esteemed journals including the *Common Market Law Review*, the *European Law Review*, and the *European Journal of International Law*. They all unequivocally praised the collection, arguing overall that its high quality preserved its value despite intervening events. The present review still generally subscribes to this praise. Without reiterating points already made elsewhere, and following a brief overview of the volume as a whole, four additional observations will be made here.

This collection features an impressive line-up of top-class scholars and practitioners whose combined expertise is indeed capable of spanning the entirety of the vast and complex domain of EU external relations law and whose combined vision can discern the ‘salient features’ thereof. The book is divided into three main but uneven parts. The first and largest part deals with a range of constitutional and institutional questions fundamental to EU external relations law. The second part covers bilateral and regional approaches addressing a variety of the Union’s (legal) relations with some of its neighbours both small and large, near and far. The third part, finally, tackles two highly topical substantive areas of law, ie the external dimension of intellectual property rights enforcement and EU environmental law, respectively.

The first observation to be made needs to account for the additional years that have passed between the publication of the hardback and its reissue as a paperback. Notwithstanding the developments that have taken place in the meantime, this book remains a valuable asset in an expanding body of literature on this subject for the following reasons. As the contributions on the EU’s relations with various regions and partners around the world show, EU external relations

have roots going back to the very beginning of European integration (see in particular the contribution of Günter Burghardt on transatlantic relations) and can be both deep and comprehensive (see in particular the chapters on the Neighbourhood Policy by Christophe Hillion and on relations with Switzerland by Christine Kaddous). They have developed and indeed flourished despite legal uncertainties. Juxtaposing the uncertain constitutional and institutional framework with the long history of the practice of EU external relations considerably mitigates the effect of 'ageing'; it definitely refutes any notion that on the morning of 1 December 2009, after the Treaty of Lisbon had entered into force, Europeans awoke to a brave and completely different new world. The changes to the Treaties, significant as they are, cannot sweep away more than half a century of internal legal integration, external relations practice, and legal commitments entered into by the Union and its predecessors. This preserves in particular the value of the contributions in the second part of the book.

With regard to the other parts, subsequent events have revealed a clear path dependency, vindicating largely the arguments and projections made in this volume. For instance, the trajectory predicted by Francis Jacobs, in his chapter on the case-law of the Court of Justice, on the direct effect of international agreements is borne out further in the most recent case-law. The Court of Justice continues to deny direct effect on the GATT/WTO agreements,<sup>1</sup> but grants it to a certain extent to other agreements.<sup>2</sup> Concerning Piet Eeckhout's chapter on the effects of United Nations Security Council Resolutions in the Union's legal order, the 'right fit', as he puts it, is still wanting. Whether the next episode in the *Kadi* saga will change this is questionable. As we now know, the Court of Justice cast the *ius cogens* test devised by the General Court (formerly Court of First Instance) into the dustbin of legal history.<sup>3</sup> Nevertheless, Eeckhout's piece remains an important reminder of the various roads available to resolve this case at the time. It furthermore illustrates the normative merit that the General Court's particular approach, despite its superficial but ultimately misguided 'friendliness towards international law', was not taken. Moreover, Marise Cremona's chapter on the definition and codification of external competences in the EU Treaties during the latest Treaty reform process clearly reveals that it would be an abortive exercise to draw any conclusions from the new Treaty text alone without taking into account the pre-existing case-law of the Court of Justice. What all these contributions show is that despite the obvious merits of codification and clarification through Treaty reform, large parts of the

<sup>1</sup> See regarding the TRIPS agreement, Case C-135/10, *Società Consortile Fonografici (SCF)*, judgment of 15 March 2012, not yet reported.

<sup>2</sup> See in particular Case C-366/10, *Air Transport Association of America and Others*, judgment of 21 December 2011, not yet reported, granting direct effect to certain provisions of the EU-US Open Skies Agreement, albeit to no avail to the claimants in the underlying dispute.

<sup>3</sup> This was eventually, albeit grudgingly, accepted by the General Court, Case T-85/09, *Kadi* [2010] ECR II-5177.

Union's 'constitutional charter' are not, and will hardly ever become, *actes clairs*. Knowledge of the history of EU external relations and in particular the case-law of the EU Courts prior to Lisbon will remain vital in appraising emerging issues and legal controversies in this area.

Having said that, and secondly, it is regrettable that an important historical source for understanding EU external relations law is hardly tapped into, ie the Convention on the Future of Europe of 2002/03. Its proceedings were available well before work on this collection commenced. This point applies primarily to the first part of the volume, with the exception of the chapters by Cremona and Müller-Graff. Reworking the Treaties with a view to making the EU a stronger and more assertive player on the global stage was a stated objective of the reform process. The legal framework of EU external relations was one of the most extensively discussed issues at the Convention. A tendency to sweep these discussions under the carpet may be understandable given the overall sentiment at the time this volume was written. The brainchild of the Convention, the Treaty establishing a Constitution for Europe, had just been rejected in the French and Dutch referenda and the EU found itself in a deep constitutional crisis euphemistically termed a 'period of reflection'. However, unlike the *ius cogens* approach in *Kadi*, the Convention's designs for reform of the primary law have hardly been cast away. On the contrary, the overwhelming majority of these ideas found their way into the Lisbon Treaty, including in the area of external relations. Thus, unless one is writing about the flag, motto, or anthem, it would seem unwise to turn a blind eye to the events which took place between the Laeken Declaration and the signing of the Lisbon Treaty.

This seems to be part of a general phenomenon in EU law scholarship: After an outburst of very detailed literature on the Convention and the Constitutional Treaty, the demise of the latter was followed by literature that tends to sideline both, as though wanting to focus on the way ahead without looking back. Of course, it is somewhat awkward to embrace the *travaux préparatoires* of a document that was evidently rejected. However, this is outweighed by the need to recognize the origin of most of the new language found in the Treaties on EU external relations. Against this backdrop, one would hope that future legal scholarship will rediscover and embrace the proceedings at the Convention as an important part of EU legal history, next to the practice and case-law mentioned earlier.

Thirdly, this volume highlights a particularly salient feature in the landscape of EU external relations law, ie the need for, importance of, and ambiguities pertaining to the codified objectives in EU external relations. Like a mountain ridge running through this figurative landscape, the Treaty objectives of EU external action appear in a number of contributions, in particular those by Cremona, Dashwood, Eeckhout, and Müller-Graff. Together, they reveal the various subtle ways in which these objectives pervade the legal discourse. In Cremona's contribution, the tension between the principle of conferred

powers and ambitious objectives, both codified in the post-Lisbon Treaties, is a prominent topic. On the one hand, streamlining the objectives into a unified set for EU external action may be conducive to substantive consistency, a point that is also made by Müller-Graff with regard to the Common Commercial Policy within the post-Lisbon framework. On the other, it makes identification of the proper legal basis according to the principal aim of a measure more difficult. This remains a contentious issue until the present day. Despite the formal collapse of the pillars, their ruins still cast a long shadow over the issue of distinguishing whether a measure is to be properly located either within what is now the Common Foreign and Security Policy (CFSP) or one of the competences under the TFEU. In this regard, both Dashwood and Cremona point to the fact that the CFSP, through the treaty reform process, has been deprived of a set of specific objectives that might help delineate its scope. This creates an ambiguity open to differing interpretations. While Cremona argues for a more restrictive use of CFSP objectives following a *lex specialis* logic and pointing to the continued imperative to preserve the *acquis communautaire*, Dashwood advocates a more expansive use of the CFSP, arguing that the new overarching Article 21 TEU has its textual origin largely in Article 11 of the pre-Lisbon TEU on the CFSP objectives. In any event, as Eeckhout reminds us (even before the ECJ did so), the pursuit of international security and compliance with international legal obligations is outweighed by the preservation of the fundamental structural features of the EU legal order, an important part of which is upholding human rights. Nonetheless, he, too, notes that human rights also figure among the Union's objectives for external action (Eeckhout, 119).

Fourthly, while Europe's codified aims in the world are well accounted for, it is regrettable that this volume fails to engage with related and long-standing political science literature, notably the 'normative power' debate. Of course, the focus of this book is law. It caters to a demand for scholarly elucidation of legal principles, patterns, and developments. Nevertheless, the 'changing landscape' evoked in the title has been roamed by numerous surveyors from the two disciplines for quite a while now. Given that the volume also relies on 'practice', political science might provide inspiration in terms of ordering and appraising this practice and offer linkages between the legal norms and normativity in EU external action.

In sum, it can be said that while the switch to paperback has slashed the price of this volume in half, its academic value, compared to the hardback as it came out in 2008, has only diminished by a fraction thereof. For projects involving a regional focus of EU external relations, the contributions of the second part of this volume still serve as a good starting point. Also the constitutional/institutional and substantive parts have retained much of their value, especially given their remarkable success in anticipating legal developments and contentious areas following the entry into force of the Lisbon Treaty. However, it would obviously be necessary to read these contributions together with more recent

assessments that have emerged in the meantime. There is certainly no scarcity in this regard, as many more edited volumes on EU external relations law have appeared since or are still forthcoming, many of which with 'Lisbon' in the title.

One is left to wonder when this landscape of EU external relations law will consolidate to the extent that may see the end of this 'age of exploration', with the results of various expeditions being primarily compiled in collections of essays. In all likelihood, this will not be anytime soon. Comprehensive textbooks in this field remain, before and after Lisbon, the exception rather than the rule. In English-language literature at least, we have only three principal monographs on EU external relations law thus far which could make a claim to comprehensiveness.<sup>4</sup> A fourth, by van Vooren and Wessel, following a 'cases and materials' approach specifically aimed at being comprehensible for students, will be forthcoming in 2013. The extent to which the latter and other future textbooks will be capable of mapping out this ever-evolving landscape more accurately than their predecessors will be the principal benchmark of their success.

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<sup>4</sup> Panos Koutrakos, *EU International Relations Law* (Oxford: Hart Publishing, 2006); Geert de Baere, *Constitutional Principles of EU External Relations* (Oxford: Oxford University Press, 2008); Piet Eeckhout, *EU External Relations Law*, 2nd edn (Oxford: Oxford University Press, 2011).