

# Can New Issues Be Raised Without Discussion Of The Old? A Review of Stephan Hobe (ed.), "Kooperation oder Konkurrenz internationaler Organisationen" (2001)

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**Stephan Hobe (ed.), "Kooperation oder Konkurrenz internationaler Organisationen", Baden-Baden: Nomos Verlagsgesellschaft 2001, Price:30 Euro.**

**["Co-operation or competition between international organisations"**

**(Stephan Hobe ed.): A Conference on the relationship between the UN and the EU at the beginning of the 21st century ]**

## Introduction

[1] The book consists of a compilation of papers and subsequent discussion, presented at a conference at the University of Cologne on October 12, 2000. The conference, "The relationship between the United Nations and the European Union at the beginning of the 21st Century", was organised by the Legal Centre for European and International Co-operation and the German Society of the United Nations. The submissions focus on the legal and political aspects of the relationship between the UN and its specialist agencies with both the European Community and the European Union. The structure of the conference was broken up in to four main areas for discussion; the legal nature of the relationship between international organisations, the economic policy area, defence and security, and finally development policy.

[2] *Prof. Dr. Stephan Hobe*(1) , in his introduction to the compilation of which he is the editor, sets out the context in which the theme of the conference is set. Given the evolution of the EU in to an increasingly self-assured global player, enjoying ever-expanding areas of competence, the question of its interaction with the UN, the world's most important international organisation, must be reassessed, he argues. The spheres of action of the two organisations are tending to overlap to an increasing extent. This overlap can be resolved in two ways, either through co-operation or through competition between the two organisations. The submissions presented at the conference attempt to systematically identify what exact areas of overlap exist and the tensions arising from both the viewpoint of the EU/EC and of the UN. The contributors also attempt to foresee new potential areas of tension arising between the two organisations. This is more urgent than ever before, claims *Hobe*, given that now at the beginning of the 21st century there is increasing general recognition of the possible future disappearance of national states' capability to articulate their own main interests independently without recourse to one of the two organisations.

[3] The questions raised in this book are new, highly contemporary and dynamic. The submissions approach the relationship between the two organisations from the rather novel angle of examining tension and overlap, competition or co-operation, in the four main areas mentioned. All the participants are aware of the present need to recognise these tensions before EU competence expands further in to even wider areas.

[4] Although these more recent tensions and questions are identified, the submissions and discussion tend largely to dwell on some of the older, staler themes in both European and International law. However this may be due to the fact that the issues raised are in fact so highly topical and new that deeper analysis is not yet in fact possible without attempting to accurately foresee future events e.g. the future course and extent of further European integration. A brief summary of the contributions and the proceeding discussions is necessary before a final conclusion on the book can be drawn.

## 1. The Law of International Organisations, *Volker Epping*(2)

[5] In the first submission, *Volker Epping* sets out in a general factual way, the status of the United Nations as an international organisation and the basis of its international legal subjectivity.(3) He then explains and contrasts the legal basis of the international subjectivity of the three European communities, the European Community, the European Atomic Community and the European Coal and Steel Community. He moves on to address the more controversial issue of the legal status of the European Union which came in to being in 1992. Too much time is perhaps devoted to explaining the pillar structure in some detail, before he reaches the relatively uncontroversial conclusion that the Union is not at present considered entitled to international legal subjectivity. The more interesting discussion only then begins, focusing on the theoretical legal problems arising if one international organisation joins another international organisation alongside member states that are parties to both e.g. should the EC along with its member states, have the legal capacity to join the UN and if so how could this be theoretically possible given the charter of the UN and the mandate of the members? He explains the "observer status" of the EC in the UN contrasting this with "full" membership which the EC enjoys since 1991 in the Food and Agricultural Organisation (FAO). He identifies some of the problems that can arise e.g. the problem of liability, which subject, the EC or the

member state, should be held responsible for the breach of an obligation within the organisation? The grey area of shared competence and the consequences of the decision reached in Opinion 1/94 are briefly discussed.<sup>(4)</sup> He contrasts the way competence of the EC and its member states are demarcated in the WTO and the FAO, preferring the approach adopted in the latter. Raising briefly the issue of whether obligations under the Common Foreign and Security Policy now oblige the two permanent members of the security council, France and the UK, to adopt the EU position in voting and exercising the veto, he reaches no real clear conclusion. He postulates that this is unlikely but leaves the analysis rather vague, admitting that the situation will remain too political.

[6] The discussion which follows his submission is a little disappointing in that it generally concentrates on the "classic" issues which have been discussed at length elsewhere already e.g. to what extent EU/EC law is a source of international law, whether membership of the EC in the FAO should be termed full-membership or limited-membership and exactly what difference this really makes in practice. Some more interesting topics such as whether the UN's "state-centric-sovereignty" approach to membership should be revised given the passage of time and using a teleological interpretation of the Charter, thereby opening up the possibility of EC membership, are mentioned briefly, but unfortunately not pursued in depth. The issue of legal subjectivity of the EU as opposed to the EC is raised by Professor *Werner Meng* and the discussion turns to the classic international law question of to what extent subjectivity of an organisation must be derived from the states who are members explicitly endowing it with that status, or whether a more factual test for subjectivity should be used instead. One has the sense of new questions having been raised but then being subsumed very quickly by the more typical and "classical" International and European law questions preventing more topical discussion on fresh issues.

## **2. The Relationship in the Economic spheres, the relationship between the UN, WTO, IMF and the EU/EC,** *Werner Meng, Andreas Bluethner*

### *2.1. Werner Meng (5)*

[7] The first paper presented by *Werner Meng* in this section on economic relations provides an excellent overview of both long-standing issues of shared competence within the World Trade Organisation, and newer issues e.g. the problems created by European monetary union within the International Monetary Fund. The area of economic policy is the one where the member states have to perhaps the greatest extent ceded sovereignty. Yet within the auspices of other international financial organisations such as the WTO and the IMF, they are not prepared to cede their right of representation and participation fully to the EC. This inconsistent approach leads to many practical and theoretical problems.

[8] *Meng* outlines clearly the relevant competences of both the EC/EU and the member states in the organisations of the FAO, WTO (elaborating on the extensive role played by the EC in the dispute settlement process) and finally within the IMF.

[9] He dwells on Opinion 1/94 for some time (6), though this is understandable given the relevance it has to this delicate area of shared competence. Within the context of the WTO he draws attention to the tensions that can arise now between the EC and the member states. Lack of co-ordinated action can damage both the community as a cohesive entity and also the standing of the EC/EU in the world community and its need to be taken seriously as a global player, he argues. Likewise he also warns of the inclination of other third country parties to the WTO to deliberately exploit the differences and tensions between EU member states and the EC itself in order to further their own positions within the WTO.

[10] He bemoans the failure of the Community and the member states five years after the Opinion 1/94 was issued and given the opportunity in Nice, to meet the challenges outlined in the opinion for the Community to agree upon a regulation and concretisation of the shared competence procedure. But he fails really to offer any good and workable solution to that very issue.

[11] Moving on to the issue of representation in the IMF he highlights a relatively new and very interesting problem. Monetary union, which in theory came into existence in January 1999, raises various difficulties regarding participation and representation in the IMF. The problem arises due to the fact that the twelve EU member states that are also members of the monetary union now have a wide range of shared common rights and responsibilities within the IMF, but the Community cannot represent the monetary union in the IMF as it is not a party to the Fund and neither is the European Central Bank. The difficulty in ensuring a co-ordinated position given the exclusion of the EC as a member is clear. However he argues the real difficulties arise in deciding which body is most entitled to represent the monetary union as a whole, the European Central Bank, the Commission, or the new monetary union representative body due to be set up? What about the three member states of the EU that are parties to the IMF but are not in the monetary Union? How will they interact with the Community and the Commission?

[12] *Meng* uses the IMF as a very good example of how as the EC becomes progressively entitled to greater

exclusive competence in new areas, it will increasingly find itself in more of these "mixed contract" situations with other states. But in order for the EC to be capable of acting in the best interests of all member states in a co-ordinated way, this demands that third states recognise in the primary law of the organisation the reality of the new entity of the EU and then allow the EC access to institutions where until now only states have been admitted as members.

[13] Incomprehensive procedural rules concerning representation, membership rules and methods of reaching a common decision position, all lead to tensions that on the one hand are politically damaging and on the other are unnecessary, he claims. All in all he concludes that the lack of clarity in these situations is leading to an alarming retreat in the willingness of member states of other international organisations to accept the Community as an equal partner and also to less co-operation between Commission, Council, and member states in organisations where competence is "shared". This is epitomised in the IMF situation where there clearly remains reluctance on the part of EU member states to endow the Community with the necessary power/status within the IMF given the Community's very relevant exclusive competences.

[14] *Meng* succeeds in highlighting these problems in a clear, accessible and comprehensive way without dwelling excessively on older well-discussed issues.

[15] *Andreas Bluethner* (7) follows *Meng* with a paper discussing the new UN "Global Compact" Initiative. This initiative is a novel and ambitious idea, attempting to unite the private sector, the big-business lobby groups, the neo-liberal free traders, the social activists, environmentalists and NGOs in a joint operation that will somehow lead to a "win-win" situation for all. The basis of the alliance of these very different partners is the concept of "sustainable development". The concept of sustainability is expressed in the nine principles of the Global Compact which all members have committed themselves to realising. (8) The "due process" of the initiative incorporates three formal procedural commitments for all members. But the nature of these commitments is necessarily voluntary in nature.

[16] In trying to explain what the exact legal nature of the Global Compact is, *Bluethner* elaborates on what *it is not*, and identifies frankly and thoroughly the obvious weaknesses in the organisation. It cannot monitor its members; instead it relies upon the key principles of transparency, openness, and dialogue as instruments of self-regulation. More importantly there are no sanctions. He does therefore question whether it really has the "teeth" to make any difference at all.

[17] But having identified the procedural weaknesses, he goes on to list "Ten reasons why the global compact can work" and seems to conclude that the new initiative can indeed succeed. He emphasises the economic advantage for the private sector in adhering to the nine principles, claiming this is a reason why the free trade lobby can actively support them.

[18] His submission is informative, topical and concise but he is perhaps a little too optimistic as to what the Global Compact can achieve. Of course given the benefit of hindsight for the reader since *Bluethner* wrote this submission, it is now easier to see the weaknesses of the initiative and also his arguments in favour of it, especially given the extent of recent criticism of the Global Compact.

[19] The discussion which follows the two submissions on economic co-ordination/co-operation moves quickly on to the current "hot topics" of trade and labour rights, the capacity or even the duty of the WTO to take sustainable development in to account and the issue of whether trade/ economic law should be accorded a lower normative status than that of human rights law. Issues of "cultural imperialism" in the trade/labour standards debate are raised. It is disappointing however that there is so little discussion of the "Global Compact" and that there is practically no discussion of the EU's role in the area of trade/economic law and human rights and private sector regulation, the latter being the central plank of the Global Compact. Nevertheless, the contemporary significant issues in international trade, human rights and labour law are raised and debated, albeit from a purely international law angle.

### 3. The Relationship of the EU and the UN in Security and Defence Policy

[20] *Wolff Heintschel von Heinegg* (9) opens his submission in this third section, laying out the recent highly significant developments that have taken place in the Common Foreign and Security Policy since the Treaty of Amsterdam. The 1997 decision to "reactivate" the Western European Union (10) in order for it to take up the defence and security policy of the EU is discussed, as are the implications it may have on the relationship of the EU with NATO and on the international security system in general. The Declarations made at Cologne (11) and in Helsinki (12) in 1999, are laid out and the institutional structure they aim to create is outlined comprehensively. The creation of such new and powerful structures in the EU is not a simple process, facing as it does the obstacle of an over-bureaucratised EU. *Von Heinegg* also condemns the present relevant EU financial procedures as unsuitable and inefficient if the EU is serious about ensuring an effective crisis management response capability. The extension of

qualified majority voting in to the second pillar in order to speed up the process of decision-making is rightly singled out as potentially extremely significant, but he also warns that the actual effect in practice remains to be seen given the limitations on its application.

[21] Aside from these structural difficulties existing within the EU as an organisation, he then discusses the main areas of controversy, known as "*the three Ds*"; *duplication*, *decoupling* and *discrimination*. Duplication refers to the need to avoid overlapping with NATO action and to ensure adequate co-operation and effective crisis management at the appropriate level. Decoupling refers to the very sensitive European alliance with the US and the diverging approaches that different member states take to it, France and the UK being the two most prominent member states whose views on the necessity or otherwise of maintaining the link are clearly opposed. Lastly discrimination refers to the problem of the non-EU allies. NATO has been clear in its demands that the EU must find appropriate solutions satisfactory to all allies for the necessary involvement of non-EU European NATO members in operations and ensuring the necessary dialogue, consultation and co-operation with the European NATO members.

[22] On the issue of interaction with the UN he mentions very briefly the Kosovo situation and asks the pertinent question, should a similar situation arise again whereby the necessary security council authorisation is lacking, could the EU stand by and do nothing given its new capacity to act or would it have to rely on NATO once again? In essence he poses the basic question of what difference the new EU defence project is really going to make in the future. However unfortunately he can reach no real conclusion as the relevant developments in the CFSP must be awaited.

[23] *Dieter Fleck* (13) in his submission continues on roughly the same theme but chooses to concentrate instead on the application of European law within the Common Foreign and Security Policy. He discusses some of the practical legal issues arising e.g. how the necessary bodies will be set up using the legal structure of the EU, the relationship of EU law to NATO obligations, and most interestingly the influence of EU law on the way troops and military activities of national states are organised.

[24] Within the four areas he examines, he raises pertinent questions like how the new institutions that are due to be set up will cope with the inclusion of non-NATO members of the EU and non-EU members of NATO in the same operations. Here it has been suggested that the NATO concept of the Combined Joint Task Forces (CJTF) could play a role, albeit a controversial one. He questions whether the CJTF approach will lead in practice to a strong US influence on European military decisions, and if so how the member states would react to this.

[25] The most interesting discussion concerns the fourth aspect he chooses, the possible effect of European law on the structure and the organisation of national armies and defence policies, even given the general defence/security exception in the treaty. Women in the army, homosexuals in the army, environmental protection policies, fiscal regulations, and laws on access to documentation, are all presented as possible issues where national security interests and an EU defence policy may clash. He points out that differing current national military approaches to discipline laws, sanctioning procedures, complaints procedures and recruitment could all lead to tensions in a European common army situation. Cases of discrimination arising within such a Community-wide group could have very damaging effects on the motivation of troops and on the task of building up the necessary comradeship. Harmonisation of the laws in these areas, even to a limited extent, could help to avoid those situations he claims. But how the crucial challenge of achieving of consensus can be met in such a sensitive area is not resolved.

[26] The proceeding discussion, despite the attempt at a legalistic approach in both submissions, is very political in nature. It focuses mainly on the issue of whether it is really possible to decouple the EU military strategy from the US alliance. The debate turns to the question of whether any realistic future conflict scenario can be envisaged whereby the EU would be under pressure to intervene whereas the US would have no interest in the same events. Likewise the crucial and central role of NATO is emphasised by some participants and there is general recognition and confirmation of the need to maintain this position. Before long however the discussion turns to the controversial and much discussed international law issue of whether the Kosovo situation created a precedent or was in fact a breach of international law. This is dwelled upon for much of the discussion.

[27] In general politics rather than law thus dominates both the submission and the discussion in the third section of the book. Given the topic at issue however, this is hardly surprising.

#### **4. The relationship between the UN and the EU in development policy**

[28] *Stephan Klingebiel* (14) in his submission concentrates on the UN perspective of development policy. He sets out in a factually accurate and clear way the various aspects of the UN's policy and outlines the advantages he claims it

enjoys in this sphere in contrast to bilateral arrangements or other international actors. He sets out the pressing need for reform of the UN's policies identified in the early 90s and the reform plan initiated by Kofi Annan analysing whether the reforms (15) have been relatively successful or not. He concludes that the reforms have been important and positive but that they have not been sufficiently politically honoured by most UN member states. He does not rule out the need for further reforms, claiming that the decision-making and implementation structures of the UN and its development agencies are still plagued with weaknesses and a lack of co-ordination.

[29] *Klingebiel's* brief submission is followed by *Klaus Schilder's* (16) who sets out development policy from the EU's perspective. He describes the two relevant levels of action; on one level the EU acts in a certain sense, as a rival development agency to the UN, having its own programmes and policies. On the another level it is a very important contributor and actor within the UN's development policies and the UN agencies that implement them. Hence the relationship between the two organisations in this field captures perfectly the theme of the book, being composed of both "co-operational" and "competitive" elements.

[30] The EU together with its member states, is the biggest donor in the international-donor community and the EC alone is the fifth largest OECD donor of world wide Overseas Development Aid. However the Commission has been roundly criticised for the way it handles its development policy and condemned for having an approach that is over-administrative, inefficient and fragmented. (17) Schilder discusses the recent Prodi reforms and the impact they may have on development policy is outlined. The Commission listing six areas of difficulty within development policy has issued a strategic paper on reform.(18) But *Schilder* is dubious, and rightly so it is submitted, as to whether this will make much practical difference in the short term at least. He discusses at length the proposed administrative reforms, e.g. the December 2000 plan to create a new authority with the name "Europe Aid", designed to administer and better co-ordinate under one roof all the development policies of the EU.

[31] He then examines the recent Cotonou Agreement with the African, Caribbean and Pacific (ACP)states, praising the direction it takes and citing it as a model for any future relationships with Southern countries that the EU should undertake. The agreement is not concerned purely with development issues rather it is an agreement concerning freer trade and the opening up of new markets. It manages to combine development objectives, human rights clauses and free trade objectives in one document which in itself is a relatively novel and promising path for any trade law agreement to take. He questions whether it is a suitable model for the UN's development policy agreements, but correctly points out the fundamental differences in both the strategies and aims of the two organisations. He concludes that unfortunately differing internal foreign policy interests within the EU still continue to present obstacles to the fulfilment of a common European development policy.

[32] His paper is then followed by a very brief submission by *Wolfgang Stoeckl* (19) , presenting a view of the salient issues from actual practice in the government development policy area. He dismisses immediately the notion that there is any degree of competition between the two organisations of the EU and the UN with regard to development strategies and claims that from the angle of practice in government policies, the relationship is one concerned purely with issues of co-operation. Greater efficiency in such co-operation demands nevertheless, as he acknowledges, consensus on the basic issues of strategy and the goals of development policy. He emphasises the need for clearer co-ordination and co-operation between the two organisations pointing out that a basic agreement between them regarding the direction and management of a co-ordinated development policy has never been concluded. Likewise co-ordination between the Commission and the World Bank needs to be improved he claims, but he does not take up the task of analysing how this might be achieved.

[33] The discussion which follows the three submissions centres mainly on the relationship between freer trade and development and the impact, both positive and negative of free trade on developing countries. The role which the EU should play within the WTO especially at the next round of negotiation is raised (this has since taken place at Doha, November 2001) and discussed although few concrete suggestions are made as to clear strategies that the EU should adopt. The divisive topics raging at present in this area are all identified and discussed although the role of the EU in linking its development and trade policies is unfortunately generally neglected, the WTO proving the more contentious issue and thereby stimulating the majority of comments. All participants appear keenly aware of the dangers in approaching the trade/development link in too simplistic a manner and of the balancing act involved in this delicate area of legal interaction.

## Conclusion

[34] *Stephan Hobe* in his conclusion to the submissions after summing up the main topics of discussion, acknowledged that development of the UN/EU relationship remains a very open issue. He also emphasised that much depended on the path that further integration would take. Europe may be more self-assured and more capable of acting in a wider range of areas but it needs greater co-ordination if it is to be an effective global player, and accepted as an equal partner by other states.

[35] This book succeeds in capturing in a relatively short number of pages, a collection of significant and very topical examples of both interaction and friction between the two organisations of the UN and the EU. Both organisations are usually looked upon in fundamentally different ways and are seen as fulfilling separate and very different functions.

This book questions those preconceptions of the UN and EU and alerts the reader to the challenges awaiting both organisations in a globalised 21st century. Information on a very wide range of topic is presented in a well-structured, comprehensive yet concise form.

[36] It is debatable however to what extent the submissions do little more than identify the key areas of tension and pose the obvious questions without actually proffering concrete possible answers or solutions. The discussions that follow each paper unfortunately seem to slip almost inevitably and rapidly in to debates about the general rather stale debates of shared competence and the need for international law and international trade law to adapt to changes in contemporary concerns. These are issues that have been already much discussed elsewhere. The new tensions and questions may be identified but the general themes of discussion and debate do not appear to move on to resolve them in any great depth. The question of "co-operation or competition?" may be the starting point for the conference, but it is rarely made clear on which side of this argument the participants stand.

[37] However a general consensus does emerge from the compilation that whether the relationship between the two organisations should develop down the co-operation route or the competition route, is a question that can only be answered given a sufficient passage of time. Only then will it be possible to assess accurately what kind of entity the UN must recognise in the EU.

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(1) Professor at the University of Cologne and Director of the Legal Centre for European and International Co-operation

(2) Professor at the Westphalia Wilhelms University of Münster, Germany.

(3) He explains in some detail the decision in the "Reparations Case", ICJ, Rep.1949, 174 ff

(4) ECJ 1994-I S. 5267

(5) Professor at the University of Saarbrücken, Germany.

(6) See, *supra* note 4.

(7) Trade law advisor at Baker & McKenzie, Brussels, European Law Centre.

(8) The nine principles are made up of two human rights commitments, the four core ILO labour standards and the three environmental principles of the Rio Declaration.

(9) Professor at the University of Frankfurt/Oder, Germany.

(10) Declaration at the WEU Ministerial conference of 22 July 1997.

(11) European Council statement, Cologne 3rd and 4th June 1999.

(12) European Council statement, Helsinki 10th and 11th December 1999.

(13) Head of the Department of defence and security issues in the German Federal Ministry of Defence.

(14) Dr., Consultant at the German Institute for Development Policy, Bonn.

(15) United Nations: A programme for Reform, Report of the Secretary General, New York 1997.

(16) Dr., Consultant at the Organisation for World Economy, Development and Ecology ,WEED, Bonn.

(17) "Aid that doesn't help", FINANCIAL TIMES, 23 June 2000.

(18) The European Community's Development Policy- Programme of Action, 6 November 2000.

(19) Head of UN Department at the German Ministry of Foreign Affairs, Berlin.