INTRODUCTION: INTERNATIONAL LAW AS LAW
OF THE EUROPEAN UNION

For decades the relationship between international law and the law of the European Union has been and to some extent still remains quite an esoteric issue. In comparison to the flourishing studies on the role of the EC/EU as an actor in international relations, the effect of international law within the Union’s domestic order receives far less attention. The reason probably lies in the common belief that the legal regime established by the founding treaties, and refined through the case law of the ECJ, is definitely settled and exhaustively covers the full range of problems concerning the process of implementation and the domestic status of international law.

Yet, new challenges have shaken the foundations of this apparently solid edifice. Not so long ago the communis opinio among scholars viewed the European legal order as inspired by a monist philosophy in its relations with international law. After Kadi, however, it has been more frequently argued that the European order is rapidly moving towards a radical dualism. Yet, it remains uncertain whether the relationship between the EU and international law can actually be understood on the basis of this binary contrast or whether we should look for alternatives on a much more complex continuum.

This scholarly uncertainty illustrates the more general difficulty of identifying the philosophy of the Union in relation to international law. The ambiguity lies in its claim to be an open society, which aims to play an increasingly active role in the global legal order, while simultaneously presenting itself as an isolated monad, safeguarding the autonomy of its domestic system of values.

The fundamental question about the role of the Union in international law serves as the impetus for the present book. Prompted by the desire of a group of scholars to reappraise the legal foundations of the relation between European law and international law, the aim of this book is twofold: to reconsider the theoretical framework of this relation and to deal with some complex issues originating from the indeterminacy and from the evolving character of the governing law.

With this idea in mind, a workshop was convened in Rome, in May 2008, under the joint auspices of the University ‘La Sapienza’ and the
University Panthéon-Assas, Paris 2. Some of the papers presented at this workshop formed the basis for the current volume, which focuses on the question, “To what extent can international law (still) be regarded as law of the European Union?” To answer, we attempted to cover the main areas in which this relationship represents itself, and we invited established academics to deal with the proposed topics. As a part of the same research project, another workshop, focused on the relationship between the ECJ and other international judges, was held in Paris in December 2010. This part of the project was coordinated by Prof. Joe Verhoeven and we look back at a fruitful cooperation with him. The proceedings of that workshop will be published in a forthcoming book, and it is our hope that these two books will offer a comprehensive analysis of this complex yet fascinating topic.

The present book has three aims. The first aim is to reassess the conceptual framework of the relation between the international and the domestic legal world. More than one century separates us from the time of the first great theoretical elaborations on monism and dualism. After such a long period, which included scholarly, almost theological, controversies about the nature of the relations among legal orders, the dispute finally seems to be settled. Today, an increasing number of scholars seem to maintain that these two comprehensive schemes constitute mental prototypes rather than useful tools for analysis. Yet, the problem remains how to reconcile the tendency of modern legal orders to embrace universal values with the need to safeguard fundamental domestic values. What is at stake in this balancing act is precisely the conception of international law. From an outward perspective, international law is seen as the legal expression of common values of mankind, which are to prevail over parochial values of the single legal order. From an inward perspective, domestic legal orders are seen as the realm of democracy and the rule of law, whose positive values are to prevail over the brutal reality of the international arena, dominated by the notion of *raison d’Etat*.

The second aim is to revisit the content and function of the Union’s constitutional rules concerning its relation with international law and its ability to respond to contemporary challenges. Notoriously, the EU legal order is more open to the influence of international law than some other systems. According to Article 216 (2) TFEU, agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. Classic ECJ case law reinforces