PART ONE

GENERAL ISSUES: MONISM, DUALISM AND THE EUROPEAN LEGAL ORDER
RECONSIDERING THE RELATIONSHIP BETWEEN INTERNATIONAL AND EU LAW: TOWARDS A CONTENT-BASED APPROACH?

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1. NEW APPROACHES TO THE DIVIDE BETWEEN LEGAL ORDERS

The relationship between international and national law enjoys renewed attention in the study of legal theory and doctrine. Over the past decade, international legal scholars seem to have become aware of the influence of ‘globalization’ and ‘internationalization’ on the way they traditionally perceived the delimitation of their field of study from domestic law (as national lawyers increasingly noticed the difficulty to hold on to a pure domestic approach).1 In a recent volume on the topic, Nijman and Nollkaemper pointed to three developments which may have triggered the placing on the agenda of the topic: 1. The emergence of a set of international values (related to the rule of law and human rights) that underlies policies of states, international organizations, and non-governmental organizations and that straddles the boundaries of the national and the international domain; 2. The dispersion of sources of authority away from the state in both vertical (sharing of sovereign functions) and horizontal directions (involvement of private actors); and 3. A process of deformalisation in which the relative role of international law as formal institution compared to other forms of normativity relevant to governance of international affairs seems to decline.2 However, this does not explain why these developments (as true as they may be) emerged; in other words, what triggered the emergence of a set of international values, a dispersion of sources of authority and a process of deformalisation? It seems

* The author wishes to thank Jan Willem van Rossem for his useful comments on an earlier draft of this contribution.
1 Either out of conceptual necessity or due to pressure by their universities to produce ‘international’ publications.