After more than a century of debate, the effect of international law within internal legal orders still remains one of the most fascinating topics for international lawyers. It touches upon grandiose issues such as the unity of the legal experience and the diversity of its individual components. Yet, in spite of the intellectual efforts of generations of scholars, it still appears fraught with mysteries from both theoretical and practical viewpoints.

In the preceding Chapter, the adequacy of the two contradictory theories of monism and dualism was widely discussed, with particular reference to the effect of international law within the European legal order. Even in general terms, the idea of developing a coherent and all-embracing theoretical model, capable of explaining all the complexities and the infinite theoretical and practical issues arising from this troubled relationship seems more and more questionable. To contemporary eyes, this idea seems but the relic of a different era.

In the present paper, neither the adequacy of monism or dualism nor the existence of an alternative model will be discussed in full. The aim of this paper is more modest by far. I propose to analyse the process of transformation which led the European legal order from the approach originally adopted, deeply influenced by monist theories, to a new approach which, for brevity, will be referred to as ‘neo-monism’. In this approach, which does not yet have the dignity of a full-fledged legal doctrine, notions and techniques of monism are employed not so much in order to secure compliance with international engagements...
but rather to enhance the autonomy of the internal legal experience vis-à-vis international law.

In the first part of the paper, an attempt will be made to set out the steps of this process of transformation, mainly through an analysis of the case law of the European Court of Justice (ECJ). In the second part, the systemic implication of this approach will be examined with a view to seeing whether we are merely in the presence of a distorted use of legal notions and concepts, or whether this approach might open a new direction for legal research.

2. The Effect of International Agreements within the European Legal Order: A General Appraisal

It is a common assumption that international law enjoys a privileged status within the European legal order. According to Article 216 (2), of the Treaty on the Functioning of the European Union (‘TFEU’), which substantially reproduces a provision present in the original 1957 Treaty on the European Community (‘TEC’), “agreements concluded by the Union are binding upon the institutions of the Union and on its Member States”.2

In the prevailing view of scholars, and in the case law of the ECJ, Article 216 (2) expresses the general philosophy of the European legal order, which is deeply inspired by a monist conception: international law is part of European Union law without need for any special act of incorporation, and it prevails over inconsistent European legislation.3 Direct effect and supremacy of international law within domestic law are the traditional hallmarks of the classical monist theories.

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