PART TWO

INTERNATIONAL LAW WITHIN THE EU
CUSTOMARY INTERNATIONAL LAW IN THE EUROPEAN UNION

Alessandra Gianelli

1. The Silence of the Treaties with Regard to General International Law

The role and function of customary international law within the European Union (EU) legal system is still somewhat obscure. The Lisbon Treaty expresses a more general and clear ‘friendliness’ towards international law than was the case with the former Treaties. Article 3 (5) of the TEU states, among the goals of the EU, that “[i]n its relations with the wider world, the Union [...] shall contribute to [...] the strict observance and development of international law, including respect for the principles of the United Nations Charter”. The provision now explicitly allows for a general duty to respect international law, which had been affirmed by the European courts.¹ The provision goes indeed further, by assigning to the EU a role in the development of international law through the promotion of its own values. This last point is stressed in Article 21 (1) TEU, a general provision on EU’s external action, which holds the need to respect international law as one of the foundations for such action. This duty applies to all the institutions, political as well as judicial.

The explicit recognition of the duty does not appear, by itself, to be a major innovation. As the international personality of the EU, and formerly of the European Community, has become less and less controversial, so have the Union’s rights and duties towards third parties based not only on treaty law, but on customary law as well. Some problems may still arise concerning the identification of the specific customary rights and duties to be attributed to the Union. The solutions