Book Reviews


This book deals with an important dimension of the EU’s activities in the framework of the Common Foreign and Security Policy (CFSP), in particular of the European Security and Defence Policy (ESDP) namely with the assessment of these activities from the perspective of international law, an issue that is very often neglected in the EU literature. The first three chapters of Part I describe the development, the present situation and structure of the ESDP and the 22 operations carried out hitherto by the EU including their mandate (on the basis of joint operations), legal status, applicable law (in particular that resulting from SOFA’s) and the participation of third states. As far as EULEX is concerned it could have been emphasized that the transfer of authority from the UN to the EU caused quite a lot of headaches in New York due to the fact that the EU did not care very much about the need to comply with existing Security Council resolutions that had provided only for UNMIK and not for any other administration. It needed a lot of goodwill from the side of the UN to accept the transfer of authority. Chapter four that makes an attempt to draw certain conclusions already raises certain questions: The author quite rightly refers to the divergence of terminology between that of the UN and that of the EU, since for instance the term ‘peace-making’ has a different meaning in both organizations. However, the integration of the WEU into the EU was not that easy as the author states since the integration of certain institutes of the WEU (such as the Satellite centre) was difficult to reconcile with the wording of the Amsterdam treaty. With regard to the neutral states within the EU, the author reaches the correct conclusion that until now the operations of the EU did not raise problems for their status.

But this book suffers from one inevitable problem: it was mainly written before Lisbon came into force so that the Lisbon version could only be referred to marginally. This deficiency (for which the author is not responsible) is the more regrettable since the Lisbon Treaty substantially changed the structure of the CFSP. Thus, the author did not yet have the possibility to reflect the real content of article 42 so that he could not distinguish between the common defence in article 42(1) and the collective self-defence in article 42(7) EUT (Lisbon version). These two concepts are not identical insofar as common defence envisages a centralized defence with the involvement of the institutions of the EU whereas...
collective self-defence means a decentralized defence that does not envision the involvement of EU bodies.

Part II deals with the general question as to whether international organizations are bound by international law. The author starts with the discussion of the legal personality; in his view the OSCE already constitutes an international organization and enjoys legal personality, a view that is shared by other authors as well. He derives this conclusion in particular from the treaty-making power. This way of thinking presupposes first the qualification of an international instrument as a treaty under international law in order to derive therefrom the legal personality. However, whether or not an instrument can be called an international treaty is not easy to define and requires also a look at the legal nature of the parties. With regard to the OSCE it must not be lost sight of the fact that it was not established by a treaty what reflects the intention of the participating states not to create a subject under international law. The famous agreement between the OSCE and FRY received its authority not from its legal nature, but from the endorsement by the Security Council. In any case, the OSCE has until now not yet obtained this status since negotiations are still being conducted with this purpose. In contrast, the author’s conclusion that the EU enjoyed legal personality already prior to the Lisbon Treaty does not raise any doubts and Article 24 of the pre-Lisbon Treaty of the EU endowed the EU with a real treaty-making capacity. However, although the opposability of this legal nature to all states is uncontested, the extent of its responsibility is not that clear as it can be argued with the author that it extends only to the treaties concluded by it (p. 359) or goes beyond encompassing all activities within its competences. When discussing the extent up to which international organizations are bound by international law, the author addresses different aspects, including the issue of privileges and immunities enjoyed by them, their internal legal order, their agreements, the obligations imposed on them by their constitutions, or even by agreements concluded by the member states (a particular feature of the EU). The author correctly concludes that in particular the issue of responsibility under general international law still raises complex problems that have not yet been resolved, irrespective of the efforts of the ILC to come to grips with them.

The third part is focused on the definition of the applicable international law on ESDP operations, starting with the discussion of the applicability of the law of armed conflicts, which seems rather excluded in view of the fact that the EU generally is not engaging as a combating force through its ESDP operations in such conflicts. Likewise, the placement of such troops on foreign territory does amount to occupation. As to the question whether an authorization by the Security Council overrides other obligations the author comes to a positive answer without, however, discussing this also complex dogmatic issue in detail. In the author’s view, member states become responsible also for their voting pattern