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2012

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CONTENTS

ARTICLES

Wojciech Sadurski

Democratic Legitimacy of the European Union: A Diagnosis and Some Modest Proposals9

Roman Kwiecień

Does the State Still Matter? Sovereignty, Legitimacy and International Law45

Anna Wyrozumska

Execution on an Embassy Bank Account75

Malgorzata Fitzmaurice

Some Reflections on Legal and Philosophical Foundations of International Environmental Law89

Susana Camargo Vieira

Governance, Good Governance, Earth System Governance... and International Law111

Alice de Jonge

What Are the Principles of International Law Applicable to the Resolution of Sovereign Debt Crises?129

Mia Swart

The Lubanga Reparations Decision: A Missed Opportunity?169

Adam Bodnar, Irmina Pacho

Targeted Killings (Drone Strikes) and the European Convention on Human Rights.....189

Aleksandra Dłubak

Problems Surrounding Arrest Warrants Issued by the International Criminal Court: A Decade of Judicial Practice209

Maurizio Arcari Limits to Security Council Powers under the UN Charter and Issues of Charter Interpretation.....	239
Natividad Fernández Sola The European Union as a Regional Organization within the Meaning of the UN Charter.....	259
Dagmar Richter Judicial Review of Security Council Decisions – A Modern Vision of the Administration of Justice?.....	271
Pavel Šturma Does the Rule of Law also Apply to the Security Council? Limiting Its Powers by Way of Responsibility and Accountability	299
Andreas Zimmermann The Security Council and the Obligation to Prevent Genocide and War Crimes	307
POLISH PRACTICE IN INTERNATIONAL LAW	315
Oktawian Kuc <i>Krstić Case</i> Continued	315
Amicus curiae briefs in <i>Janowiec and Others v. Russia</i>	325
BOOK REVIEWS	401
POLISH BIBLIOGRAPHY OF INTERNATIONAL AND EUROPEAN LAW 2012	427

M. Arcari, L. Balmond (eds.), *La Gouvernance globale face aux défis de la sécurité collective. Global Governance and the Challenges of Collective Security*, Editoriale Scientifica, 2012, pp. 430

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This book is the result of a study undertaken by mainly French and Italian scholars within the cooperation framework of the University of Milano-Bicocca and University Nice Sophia Antipolis. Its aim is to present a comprehensive overview of various problems connected with the efforts to assure collective security in the context of global governance. The fifteen academics who make contributions provide a broad presentation of various issues connected with those two ever expanding fields of interest (i.e. global governance and collective security), both in terms of public international law and European Union law.

The book opens with two essays setting forth the convergences and divergences of the two central notions of the volume. While an essay by Louis Balmond on *Gouvernance globale et sécurité collective. Les profils d'une convergence* (pp. 3-22) is describing the links between the notion of global governance and collective security, the following text by Maurizio Arcari describes the main elements of dissonance between the two analyzed issues (*Gouvernance globale et sécurité collective. Quelques éléments de dissonance*, pp. 23-47). Louis Balmond's work explains the shift from the universality of collective security to its globalization in the activities of the United Nations (pp. 4-5). He identifies the growing convergence of both the objectives of global governance and collective security (i.e. they both concentrate on the protection of individual security rather than just states, and both analyze the problem of maintenance of global peace, pp. 6 and seq.), as well as of the instruments of those two policies (regional cooperation based on networks is necessary for securing structural peace; joint action in the creation of *ad hoc* security areas, pp. 9-11). Maurizio Arcari underlines the use of a very broad approach in the UN to the maintenance of global peace, covering several questions linked with collective security (pp. 26-27) and the making of the Security Council into "un maître de la gouvernance mondiale" (p. 28). However this grasp for extended competences is questioned even within the Council itself (p. 29), for several reasons, characterized by Arcari with reference to three groups of dissonances: the material scope of collective security, the institutional operation of this security, and finally the operational issues involved in its implementation.

Next, Nicola Ferri's text on *The United Nations in Global Governance* (pp. 49-68) describes how the concept of global governance was introduced into the work of the UN and its continuing relevance for this international organization. While exposing the lack of a standard definition of governance, Ferri states that "the concept of governance embodies the ultimate evolution of international cooperation in a world characterized by the reconstruction of power of modern nations and where multilateralism is challenged

by globalization” (p. 52). She finds that because of the fragmentation of international law, the present “sectoral approach to global challenges,” which she describes in more detail, is advisable at this stage (p. 66).

Claudio Matera’s essay on *The European Union Area of Freedom, Security and Justice and the Fight against New Security Threats. New Trends and Old Constitutional Challenges* dwells on the EU’s different instruments to fight new threats to security in the area of Freedom, Security and Justice (pp. 69-87). Matera mainly underlines the difficulty in finding and using a proper legal basis for actions undertaken by the EU, focusing his examples on the international agreements that touch upon security issues. In his opinion, the complexity of the EU’s legal system concerning external relations might “jeopardise the effectiveness” of EU actions (p. 86). Further on Alessandro Bufalini analyses the phenomenon of cyber warfare in light of the international rules forbidding the use of force (*Les cyber-guerres à la lumière des règles internationales sur l’interdiction du recours à la force*, pp. 89-109). He gives an interesting overview of different cases where a state’s internet sites were attacked to an extent that allowed for the supposition that the attacks were inspired by another state (pp. 92-95). Bufalini underlines that different qualifications can be given to cyber attacks – they can either be treated as a use of force, as *jus in bello* or *jus ad bellum* (pp. 97-98). He also underscores the problem of identifying the subject to whom such acts can be attributed (p. 104). In the next essay Paul Bourgues analyses the role of the European Union and global governance in the fight against weapons of mass destruction (*Union Européenne et gouvernance globale dans le domaine de la lutte contre les armes de destruction massive*, pp. 111-136). He concentrates on explaining how the EU aims at universalizing the principal conventions on the control over weapons of mass destruction in its relations with third countries. Kmar Ben Youssef, in a presentation on international cooperation and the execution of Resolution 1373 (2001) on the fight against terrorism (pp. 137-147) underlines the obligatory character of this resolution as a normative act containing general and abstract norms (pp. 141-142). Continuing this same topical line, Luca Pantaleo examines the protection of fundamental rights of defense in the application of intelligent sanctions, as applied by the Security Council of the United Nations since 1990 (*La protection des droits fondamentaux de la défense dans l’application des mesures ciblées. L’apport des juridictions à la gouvernance des problèmes sécuritaires*, pp. 149-176). Interestingly, the author analyses different national jurisprudence on this issue, mainly focusing on the key significance, for the right of defense, of the underlying reasons of a decision to include someone in the list of persons allegedly supporting terrorism (p. 154). Pantaleo exposes as well the same problems – albeit in judicial reactions which initially differed – towards persons included on various lists of individuals (e.g. the list of persons supposed to support the regime in Myanmar) created by the Security Council (pp. 160 and seq.). He also underlines the penal character of intelligent sanctions in light of the ECtHR’s criteria established in *Engel v Netherlands* (p. 165) and describes the constitutional development within the Security Council, including the introduction and evolution of the Ombudsman dealing with matters regarding persons targeted by

the intelligent sanctions systems (especially with respect to Resolution 1989 (2011), p. 170). He is of the opinion that this development might be due, at least in part, to the influence exercised by those national jurisdictions which were highly critical of the lack of legal protection of persons affected by the intelligent sanctions. He calls it an “effet boomerang”, i.e. national values copied into the UN system (p. 176).

Next H el ene Tudela describes the changes in the operation of Interpol arising from the fight against terrorism (*Le r ole d'Interpol dans la lutte contre le terrorisme*, pp. 177-211). She underlines the initial resistance of this organization to engage in the fight because of its principle of neutrality, included in its Statute (p. 181). Tudela describes the gradual development of an international strategy towards the fight against terrorism (p. 186).

Alfredo Terrasi in his text on *Information Exchange and Data Protection in Security Matters. The Legal Framework in the European Union and in the Relationship between the EU and the US*, (pp. 213-246) explains how the international exchange of personal data has increased over the last decade for law enforcement reasons, and particularly for the prevention of transnational crimes. Interestingly, the “adequate protection principle” is visible in both the OECD and UN Guidelines and in the Council of Europe’s Conventions. Further he analyses the PNR and SWIFT agreements between the US and EU, exposing their weaknesses as far as adequate protection is concerned.

In the next essay, Kiara Neri examines the regionalization of collective security at sea (*La regionalization de la s ecurit  collective en mer*, pp. 247-269). She starts by drawing attention at the fact that there is an increase in illicit activities conducted on the seas, which can pose threats to the liberty and security of navigation, while at the same time there are no equivalent and efficient legal instruments to re-establish such security. For this reason Neri finds that the best option to combat the new challenges to security at sea is regionalization (pp. 249, 258 and seq.).

Federica Cristani touches upon the highly actual topic of the economic crisis in her essay: *The UN Security Council Facing Financial and Economic Crises and the Role of the International Economic Organizations* (pp. 272-306). More precisely she presents the question of “economic” intervention by the Security Council within the framework of the collective security system under Chapter VII of the Charter. She explains different types of economic measures adopted by the Security Council (economic sanctions, economic reconstruction of war-torn territories, cooperation with other international economic organizations) and describes the case by case approach of the Security Council to the question of cooperation with and between the different actors involved.

Eve Tourny, in her text: *La gouvernance financi re internationale face aux paradis fiscaux* (pp. 307-331) contrasts the notion of global governance, which as she argues is based on the principle of transparency, with the phenomenon of fiscal paradises. She underlines that there is no definition of fiscal paradises in international law (p. 315) and perceives the declared fight against this phenomena by international instruments as illusory and ineffective.

The last two essays concern international sanitary security. Christophe Colette analyses the links of this aspect of security with existing international security issues (*La contribution de la sécurité sanitaire internationale à la sécurité internationale*, pp. 333-387). Daria Klimova el Moukahal mainly analyses the role of the European Union in the maintenance of sanitary security (*Le rôle de l'UE dans la gouvernance globale de la sécurité sanitaire. L'apport de ses litiges commerciaux internationaux*, pp. 389-430). Klimova el Moukahal interestingly describes the EU as being a “*leader rebelle*,” using both international arbitration and negotiations as a tool to influence the evolution of the existing legal norms (pp. 411 and seq.).

In summary, *La Gouvernance globale face aux défis de la sécurité collective. Global governance and the challenges of collective security* is a novel and comprehensive overview of various new developments in public international law, touching upon issues of both global governance and collective security.

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