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provisions of the Copyright, Designs and Patents Act ought to be amended and more might have been said about the potential impact of such reforms outside the context of multimedia, for example on the film and television industries within Europe. Yet these are minor criticisms. This is a fine book that highlights the ongoing complexity of the legal issues relating to multimedia as well as providing the clearest and most wide-ranging examination of these issues to date.

Michael Handler*

HUMAN RIGHTS CONDITIONALITY IN THE EU'S INTERNATIONAL AGREEMENTS by *Lorand Bartels* [Oxford: Oxford University Press. 2005. Iv + 270 pp. inc. index. Hard cover. ISBN 0-19-927719-2. £ 45.99]

EC law; Human rights; Treaties

Human rights clauses have always been a controversial and challenging issue in EU law. If one looks for an example of the clash between the original, (ostensibly) non-political inspiration of the EC, and its most recent tendency to play a role in international political dynamics, there could hardly be a better one. The practice of making the effect of commercial and economic agreements mainly dependent upon respect for human rights and democratic principles symbolically depicts the tension between the two souls of European integration: the functionalist conception of integration, in which the EU is steered clear of political temptations, and the creeping evolution of the EU towards an entity which espouses and defends universal principles throughout the world. In this context, human rights clauses serve precisely to bind these two conceptions by using the economic might of the EU as a tool for promoting compliance with human rights standards and the principle of democracy.

Also from a strict technical legal viewpoint, human rights clauses attract much interest. At the present stage of the European integration, the most critical question probably concerns the legal basis of the EC competence to include these clauses in agreements with third states. By linking the exercise of substantive EC policies to compliance with human rights and democracy principles, the EC ends up assuming a political role not easily reconciled with the aims assigned to it by the founding treaty. It sounds very odd indeed that an entity devoid of the power to undertake obligations to comply with human rights in discharging its functions, as stated by the ECJ in Opinion 2/94, has *par contre* the power to enter with third states into agreements which include such an obligation and to make the exercise of the entity's action conditional upon its faithful observance. Since human rights clauses are formally bilateral and establish obligations on both the EU and the third state concerned, it is very difficult to see the difference between obligations to observe human rights which flow from human rights conventions and obligations which flow from human rights clauses referring to human rights conventions and soft-law instruments.

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For all the reasons pointed out above, and maybe also for others, to deal with such an issue from a legal point of view represents a challenge not to be taken lightly. Indeed, it requires a great versatility in both the EU and the international legal categories and techniques and an equal political sensitivity. Not by chance, a great many of the numerous existing contributions do not really advance our understanding of the topic and do not stand up to close scrutiny. This is not what happens for the newly published book by Lorand Bartels, which stands out for not eschewing, but rather for courageously dealing with the theoretical and practical questions of conditionality. Even if that were the only merit of the book, one could commend him for offering a very detailed and critical account of these issues.

The beginning of the book gives the impression that one is in the presence of yet another survey of practice, though accurately gathered and nicely presented. It is from the second part where the author starts approaching the legal problems surrounding the operation of human rights clauses critically. The author convincingly argues that, generally, such clauses impose on the parties obligations which, in many respects, exceed those deriving from customary international law. The analysis is conducted with a variety of arguments and with command of sophisticated legal techniques. The inquiry straddles the interdisciplinary line separating EU law from international law, and reaches results which are often sustained by a persuasive line of argument and by constant reference to the practice. A possible criticism is the exceeding rigidity of the methodology employed. Whereas the arguments employed and the achievements of this part are fully correct in a static perspective, they seem to overlook the character of human rights clauses in their interplay with customary international law. The effect of such clauses may, in other words, be better captured in a dynamic perspective, where they not only refer to customary law as a static set of rules, but moreover feed back and contribute to its further development.

This part also contains a careful analysis of the procedures envisaged in human rights clauses (Ch. 5), and of substantive obligations under them (Ch.6). A specific criticism concerns some of the solutions put forward by the author. It is controversial, for instance, to claim that the right of a party to suspend or to terminate an agreement on the basis of a human right clause is significantly greater than the power of individual states to adopt countermeasures for a breach of human rights under customary international law. Methodologically, one could wonder whether human right clauses have the effect of creating new causes of action for breaches of human rights, or rather whether they reinforce and make more visible a right of action which already exists under customary international law. A more in-depth consideration of the mutual interrelations between custom and treaties on this point would have been opportune. As regards mixed agreements, one would have expected to find a more in-depth discussion of the interplay between the EU and its Member States as addressees of human rights clauses and as bearers of the powers conferred on them.

All in all, the analysis on this part is preparatory to a question which, in a certain sense, constitutes the core issue of the book, that concerning the competence of the EU to include human rights clauses in agreements concluded under the EC Treaty (TEC), which is dealt with in Ch.7.

That question is discussed with a variety of themes in respect of which there are few, if any, precedents in the legal literature. In the light of the conclusions reached on the nature and operation of human rights clauses, the author argues that only in some cases does the TEC afford a suitable legal basis for such clauses. Therefore, neither the TEC nor the TEU expressly grant a general power to include HR clauses in agreements concluded by the Community. The author then examines whether such a power can be construed as being impliedly bestowed upon the Community. He easily disposes of the idea that it is inherent in the duty imposed on the institutions to comply with human rights standards in discharging their functions. More consideration is given to the construction of human rights clauses as a functional power, implicitly vested in the Community in order to secure compliance with internal law and with binding international human rights law. However, this construction too is considered insufficient to grant a general power to the Community, mainly in consideration of the fact that the scope and the enforcement of certain human rights clauses might spill over into the substantive competence of the Community, thus creating an obligation for it to behave ultra vires.

In his conclusions, the author makes some recommendations which, in his view, may help (at least as a practical matter) to remedy some of the pitfalls of these strangely configured instruments and to bring the practice of human rights clauses within the scope of the Community's foreign power. Yet, the reader who patiently followed the author in wandering along the many theoretical and practical shortcomings of existing practice might have the impression that these remedies would not remedy much, and that more radical interventions are needed in order to make the *political* aspirations of the Community consistent with its *economic* inspirations.

If, in this respect, the reading of the book may induce a sense of dissatisfaction, this impression is overturned by the consideration of its many merits. This is, indeed, a major contribution which helps to break free of many myths and ideologies about the role of the EU as a defender of human rights. The book maintains a constant grip on the reality of what the EU is, instead of following the lines of idealistic misconceptions about what it might have been. It unfolds page after page with a line of arguments not easy to follow, but always measured and coherent. Not all of these arguments are convincing. Some would have probably deserved a more thorough discussion; others appear questionable from a substantive point of view. Beyond specific remarks, however, one cannot but conclude that we are in the presence of a complex and comprehensive legal analysis which unveils many aspects of an intractable issue. This book will certainly constitute an essential point of reference for future inquiries and reveals the qualities of a young but already mature scholar.

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UBIQUITOUS CITIZENS OF EUROPE: THE PARADIGM OF PARTIAL MIGRATION by *Oxana Golynker* [Antwerp: Intersentia. 2006. xxvii + 282 pp. inc. index. Soft cover. ISBN 90-5095-540-1. €67.50]

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