

BOOK REVIEW

Nikolaos Lavranos, *Legal Interaction between Decisions of International Organizations and European Law*, Europa Law Publishing, Groningen/Amsterdam, 2004, XIV, 310.

Interference between the competence transferred to the EU/EC by the member states and powers exerted by other international organizations has been the object of extensive legal literature. Yet, not only have many aspects remained in the shade, but a comprehensive and systematic analysis of such interference is, to this reviewer's knowledge, still lacking. A good many reasons may account for this doctrinal hesitation.

First, the possibility of grouping decisions of international organizations (IOs) within a conceptually unitary legal category seems to be highly questionable. The difference, in nature and effect, among the various types of decisions of IOs is such that the very existence of this category is uncertain.

A second reason is probably to be found in the relationships between the activities of the EU/EC and those of other IOs, which appear, in turn, multifarious and do not easily fall into a single legal paradigm. The EU/EC is itself a member of a number of IOs, and in this role, it is addressed by decisions enacted by them. In some cases, however, it shares membership with its own member states, roughly in correspondence to the share of competence of either entity on the internal plane. In addition, the EU/EC can exercise its competence in order to secure compliance with decisions of IOs of which it is not a member. This situation is by no means exceptional. The most notable situation, but not the only existing one, is created by the decisions of the UN Security Council, the implementation of which may require the adoption of acts falling within the competence of the EC.

A third reason probably lies in the fact that the relations between European law and the law of IOs can be analysed from a number of legal perspectives. Under international law, the EC/EU is itself an IO established on the basis of a treaty. Therefore, inconsistencies between European law and decisions of IOs must be dealt with in the classical international legal framework as a relation between international norms that produce obligations that are inconsistent with each other. In the perspective created by the EU/EC treaty, decisions by IOs may constitute a source of European law, and could produce effects within the limits established by that treaty. The situation is even more complicated

if the interaction between European law and decisions by IOs is dealt with in the perspective of a national legal order, in which the two interacting bodies of law might, and often do, have a different legal force, a different nature and produce different legal effects.

In light of the difficulties highlighted above, this book, which has an aim of analysing the interference between decisions by IOs and EU law, deserves special respect. The simple fact that the author has tried to develop a systematic analysis of this multifaceted topic is the main, but certainly not the sole, merit of his work. Moreover, the book contains an all-embracing and updated account of the practice and of the relevant jurisprudence in this topic.

In spite of the broad wording of its title, a reading of the book reveals that the analysis of the relations between European law and decisions by IOs is developed from a very particular angle: the author purports to examine in which sense, and to what extent, the relationship between decisions of IOs and the legal order of the member states is affected by the interposition of community acts enacted with a view to implementing IO decisions. Therefore, the analysis is conducted with reference to the effect of EC acts implementing IO decisions in three member states: France, Germany and the Netherlands.

However, this choice appears not be immune from criticism. In all cases in which a decision of an IO is endorsed by an EC act, the relations that would otherwise exist between the IO decision and national law are inevitably altered. This alteration may be more or less perceptible, with regard to the difference in status ascribed to IO decisions by the EU/EC legal order and the legal order of the member state concerned. Moreover, it may entail delicate problems of co-ordination, in particular when an IO decision does not fall entirely, but only partly, within the competence of the EU/EC or the member state. However, it remains to be seen if the study of the innumerable questions arising from the implementation of IO decisions though EU/EC acts also presents, beyond the distinctive features of each case, common aspects that can justify a general approach.

The book is divided into five chapters. In all, the patient reader will find great reward by getting through the complex architecture of the analysis. The central part is formed by Chapters 3 and 4, which concern implementation of decisions taken by political bodies and the implementation of judicial and quasi-judicial organs, respectively. The structure of the analysis seems to be based on the assumption that decisions taken by political bodies contain further obligations for the member states. Therefore, these decisions must be kept distinct from judicial decisions, which would simply constitute a concretisation of obligations already contained in the founding treaty. In spite of its intuitiveness, this

distinction is not entirely persuasive. The line separating the two categories of obligation is by no means clear-cut, and it may not be easy, in particular cases, to determine if decisions of a certain body have political or judicial character. Moreover, the implication of such a distinction is unclear. Its utility appears theoretically questionable, as it does not take sufficiently into account that the effect produced by judicial decisions is legally autonomous, even if strictly connected to obligations contained in the founding treaty. One should expect that judicial decisions, by virtue of their simply upholding obligations that are already contained in the treaty, are accorded privileged treatment, in particular as regards direct effect and supremacy. However, as a reading of the book confirms, this impression does not find support in the jurisprudence of the ECJ, which notoriously denies automatic implementation of some judicial decisions, and admits that some decisions taken by political bodies may, albeit in certain circumstances, receive such privileged treatment.

The analysis concerning judicial and quasi-judicial decisions is led mainly by questions of implementation of decisions taken by WTO organs and by the European Court of Human Rights, two classes of cases which, albeit for different reasons, have been singled out in the jurisprudence of the ECJ as ones to which special principles apply. In particular, as regards the decisions of the European Court of Human Rights, the reasons that have pleaded for their inclusion in the analysis are unclear. It can hardly be maintained, indeed, that these decisions have binding effect in the EU/EC legal order and that the jurisprudence of the ECJ can be considered as a form of implementation of its decisions. The jurisprudence of the European Court of Human Rights abundantly proves that this Court considers the Member States of EU/EC as the sole addressees of its decisions, even in those cases in which a breach of the Convention can be traced back to an EC act. In order to challenge this assumption, a simple reference to the indirect effect produced by the ECHR in the EU/EC legal order is not sufficient. A more sophisticated analysis on the effect produced by the transfer of powers to the EU/EC on the subjective scope of the obligations assumed by the Member State when adhering to the ECHR, and on the degree of control exerted by the EU/EC on its Member States when the latter are bound to breach the Convention in order to implement EU/EC acts, appears inescapable.

All in all, despite its undeniable merits, this book appears, in the view of this reviewer, still to lie in the shadow line. It certainly constitutes a valuable contribution to the doctrinal debate in a difficult field, and is probably destined to be a work of reference for whomever wishes to enter it. It contains a great many interesting discussions about topical issues concerning the present status of the EU/EC in contemporary international law. However, both on account

of the lack of unity in the topic, and of the need to overcome a lot of complex theoretical questions that are sometimes eschewed, its results are sometimes scarcely convincing. After reading the book, one is left with the impression that its gifted author has not found an ideal testing ground for demonstrating all his legal talent.

ENZO CANNIZZARO
University of Macerata