Part VI
– Review of Hungarian scholarly literature

Tamás Molnár and Ramses A. Wessel, Interactions Between EU Law and International Law: Juxtaposed Perspectives (Book Review)

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1. Introduction

Interactions Between EU Law and International Law is co-authored by Tamás Molnár and Ramses A. Wessel. Tamás Molnár is Legal Research Officer at the EU Agency for Fundamental Rights and Lecturer at Corvinus University of Budapest, Hungary.[1] Ramses A. Wessel is Professor of European Law and Head of the Department of European and Economic Law at the University of Groningen, the Netherlands.

Both authors are recognized experts in the law and practice of the ever-expanding field of EU external relations law, where international law and EU law are set to meet and interact. For this reason alone, the co-authors are a perfect fit for the present exploration of the multi-layered interrelationship between international law and EU law. Yet, there is something even more intriguing about this author pairing. Each of the co-authors has strong roots in both the international law and the EU law communities,[2] and this is re-

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2 *See e.g.* their engagement with the European Society of International Law (ESIL), and, in particular, its interest group 'The EU as a Global Actor'.

flected in their approaches to their topic of common interest, as they move between international law and EU law perspectives, never losing sight of the other. By teaming up and putting on both sets of 'lenses', Molnár and Wessel are a living example of what they hope to achieve with this book: to initiate a constructive dialogue across – artificial – disciplinary divides for the advancement of the study of the interactions between international law and EU law.

In their book, Molnár and Wessel have skillfully crafted 10 harmonious chapters to cover the broad topic of interactions between international law and EU law. Each chapter could be read in isolation and still enrich the reader. However, the reader should be encouraged to follow the thoughtful sequence of chapters for an enlightening tour d'horizon of the two-way process of interactions between two legal orders. Whether one belongs to the international law or EU law camp, this enjoyable read will invigorate everyone with its wealth of insights.

2. Juxtaposing Perspectives: Need, Value and USP

It may not come as a surprise that a book which focuses on the interactions between international law and EU law takes as its starting point the claim for 'EU autonomy'. After all, the (now) CJEU's famous assertion that the founding Treaties have created a new legal order[3] – as Molnár and Wessel go on to show – laid the 'necessary' foundation for its conceptual separation from the international legal order.[4] What began with *van Gend en Loos* is thus the very reason for the need to investigate how the separate legal orders interact.[5] However, Molnár and Wessel direct our attention to the (even) broader consequences that follow from an autonomous EU legal order.

Molnár and Wessel highlight how the separation of EU law from international law, as established by the Court, explains why international law and EU law have become separate fields of study.[6] This is a fact that we may simply accept. Yet, its repercussions are particularly visible in the study of the EU's engagement with the international plane, where each field applies

3 Judgment of 5 February 1963, *Case C-26/62, Van Gend en Loos,* ECLI:EU:C:1963:1.
4 Tamás Molnár & Ramses A Wessel, *Interactions Between EU Law and International Law: Juxtaposed Perspectives,* Edward Elgar, Cheltenham, 2024, p. 57.
5 Id. p. 260.
6 Id. p. 11.

its own perspective and narrative to what are essentially questions of shared interest, be it the participation of the EU in international law-making efforts or the EU's international responsibility for internationally wrongful acts. However, the "picture is so complex that a single narrative can hardly capture it",[7] so that the picture remains blurred.[8]

In their book, Molnár and Wessel seek to provide a compelling counterexample to the usual practice by taking both an international law and an EU law perspective on the complex interplay between the two separate legal orders. Molnár and Wessel do not present these perspectives in isolation, but juxtapose them. By juxtaposing perspectives, the co-authors are able to direct our focus to real – as opposed to perceived – differences between the two legal orders, and also draw our attention to parallels and commonalities as a basis for mutual learning. Thus, as also Jan Klabbers highlights in his foreword,[9] the book's presentation of a juxtaposed perspective sets it apart from competing titles and thus provides a unique selling proposition (USP). In this way, the co-authors offer not just another book on the EU's external relations, but a stimulating, fresh approach to the legal theoretical conundrums that, in the words of one of the co-authors, "keep many scholars off the streets" these days.[10]

3. The Power of a Shift of Perspective(s)

While Molnár and Wessel use both an international law and an EU law perspective throughout the book, they make a conscious choice to use general international law as the starting point for each analysis.[11] This choice has its doctrinal justification in the fact that the EU is still an international law experiment[12] – a fact often forgotten in the 'EU bubble'. Readers, such as the present reviewer, who have been 'raised' primarily in an EU law mindset are thus challenged to leave their default position and take a different perspective on familiar issues. However, it is clear that accepting this challenge and

7 Id. p. 266.
8 Id.
9 Id. p. viii.
10 Id. p. 1.
11 Id. p. 2. This is done by conceiving consecutive chapters, *e.g.* Chapters 2 and 3, or by switching perspectives within an individual chapter, *e.g.* Chapter 4.
12 Bruno de Witte, 'The European Union as an International Legal Experiment', *in* Grainne de Búrca & Joseph H.H. Weiler (eds.), *The Worlds of European Constitutionalism,* Cambridge University Press, Cambridge, 2011, pp. 19–56.

making this shift in perspective is a powerful way of identifying blind spots. A particularly illustrative example of this is the co-authors' examination of the intra-EU responsibility of EU Member States in Chapter 8. Taking international law as their point of departure, Molnár and Wessel show that Article 55 on the Responsibility of States for Internationally Wrongful Acts (hereinafter: ARSIWA) does not apply when dealing with the consequences of internationally wrongful acts of Member States in their intra-EU relations.[13] Although its logic differs from international law,[14] the EU infringement procedure in particular would provide a specialized rule of state responsibility to compel Member States to comply with EU law.[15] However, Molnár and Wessel entertain the idea whether, should this 'EU machinery' fail, recourse to general rules of state responsibility would be allowed.[16] The co-authors point to two "theoretical scenarios" in which the general rules of state responsibility as codified in the ARSIWA could play a residual role.[17] One of them, however, namely the continuous violation of EU law by a Member State, does not seem too theoretical anymore in today's rule of law crisis. The residual use of the general law of state responsibility could thus assist with ensuring the effectiveness of EU law where it cannot ensure it itself – to the benefit of EU law.

Naturally, readers identifying primarily as international lawyers will feel at home with Molnár and Wessel's approach of starting from the vantagepoint of general international law. However, as each topic is eventually addressed from the perspective of EU law, these readers will still face the same challenge to their default perspective – and will ideally find it equally useful. Chapter 7, in which Molnár and Wessel examine the international responsibility of the EU, serves as a vivid example of this assessment. Here, the co-authors acknowledge that from the vantagepoint of international law the EU is just another international organization, and therefore responsible for its internationally wrongful acts.[18] However, the composite structure of the EU and its unique division of competences would make it difficult to attribute a specific act to the EU based on the traditional effective control test.[19] Turning smoothly to the perspective of EU law, Molnár and Wessel specifically

13 Molnár & Wessel 2024, p. 200 ff.
14 Id. p. 205.
15 Id. p. 205 ff.
16 Id. p. 214 ff.
17 Id. p. 218.
18 Id. p. 176 f.
19 Id. p. 179.

point to military and civilian missions in the framework of the Common Security and Defense Policy (CSDP) and EU-coordinated cross-border missions as a specificity of the EU legal system that is not taken into account by international law,[20] thus risking a responsibility gap with respect to violations of international human rights and humanitarian law. The co-authors therefore propose a solution in which the EU would act as a 'portal' for all questions concerning accountability and responsibility.[21] Such a solution may be one of the rare cases where it is the international legal order that – rightly – demands EU exceptionalism.

4. Past and Future Flexibility – on both Sides

From the outset, Molnár and Wessel make it clear that they understand interactions as a two-way process, not a one-way street. While this understanding underpins their entire analysis, its significance becomes particularly apparent when the co-authors explore the influence of the EU and EU law on international law. While such influence depends on the EU's possibilities to participate in international efforts, these possibilities are not determined solely by EU law. The EU Treaties may provide the EU with objectives, procedures and institutions to this effect.[22] Ultimately, however, it depends on the willingness of international partners to accommodate the EU as a non-state actor and, in particular, its needs and wishes, which it derives from its special features, whether claimed or real. And there is change on the horizon.

The co-authors note that, in the past, the EU has succeeded in "forcing the international legal order to accept it as a new and relevant legal entity and to adapt its rules accordingly".[23] The composite nature of the EU is an illustrative example of this. This special feature of the EU, resulting from the division of competences between the EU and its Member States,[24] has led to special international rules, including the so-called REIO clauses, which relate exclusively to Regional Economic Integration Organizations, effectively, the EU.[25] However, such EU-friendly treatment no longer seems to be the

20 Id. p. 188.
21 Id. p. 197 f.
22 Id. p. 134 ff.
23 Id. p. 173.
24 *See* Chapter 4.
25 Id. p. 151.

default position at the international level.[26] Instead, the claim for the autonomy of the EU legal order and the judge-made requirements for its protection seem to have an increasingly constraining effect on the EU in its international relations.[27] In this respect, Molnár and Wessel aptly observe that "the global system is not made for composite entities that continue to claim legal autonomy and exceptionalism".[28] To do so was "certainly not helpful to convince international partners of its valuable contribution to world society".[29]

As in any good relationship, Molnár and Wessel see a need for more flexibility on both sides.[30] However, they stress that such flexibility is a real necessity for the EU, which otherwise risks seeing its own objectives remain an illusion. Accordingly, the co-authors see particular potential in "a less dogmatic approach by the CJEU" with regard to the EU's autonomy, which would "allow the EU to fulfill its brief to participate in the international legal order".[31] Undoubtedly, such a less dogmatic approach should still be based on strong doctrinal structures.

5. Keep Putting Theories to the Test

Not satisfied with examining the rules, theories and concepts governing the interactions between international law and EU law in the Abstract, Molnár and Wessel put them to the test. To do so, the co-authors use two deliberately different fields of law. On the one hand, the field of international dispute settlement mechanisms (IDS) offers insights into procedural and perhaps even institutional interactions.[32] The topical field of migration and refugee law, on the other hand, allows for a sector-specific examination of interactions, especially substantive interactions, which are indeed manifold.[33] In addition to providing a valuable illustration of the earlier, more conceptual analysis, it is this second case study that leads the co-authors to an equally important and perhaps humbling discovery: the reality in this policy field

26 *See* to this effect, in particular, the case study of the EU's participation in international dispute settlement systems: Id. p. 242 ff.
27 Id. p. 139.
28 Id. p. 103.
29 Id. p. 263.
30 Id. p. 262.
31 Id. p. 257.
32 Id. p. 242 ff.
33 Id. p. 233 ff.

"does not fully reflect the grand theories that describe the relationship between international law and EU law".[34] Molnár and Wessel see this as clear evidence that more sector-specific research is needed, as well as a feedback loop between such thematic research and the more conceptual research, in order to further develop the general and Abstract design of the relationship between international law and EU law.[35] Such a feedback loop seems indeed to be missing at the moment. Their call should therefore be taken as an open invitation to join forces: Studying interactions between international law and EU law is not the sole task of a selected few, but feeds on the insights of many. It is ultimately, as the authors show with their case studies and their book, a collaborative project. However, the need for collaboration does not stop there.

Commendably, the co-authors also use their case studies to highlight the value of interdisciplinary research, which is, unfortunately, still rare in the legal sector. Having identified contradictory patterns in the CJEU's migration case law in terms of its openness towards international hard and soft law instruments,[36] they point to the possibility that these instruments may still have influenced the judges' decision-making and decision.[37] However, such insights are not accessible through the legal methodological toolbox alone. Thus, the co-authors recognize a particular need for further legal sociological research to help us understand attitudes and approaches that pervade legal acts and *(quasi)* judicial decisions,[38] whether at the EU or the international level. This goes to show just how diverse the study of the interactions between international law is, or should be.

6. Conclusion: Continued Interactions between Law – and Lawyers

Molnár and Wessel did not set themselves an easy task. Yet, as they indicate in their book, what is easy is not always interesting.[39] By not shying away from a difficult task, they have given us the gift of a truly remarkable book that will have a lasting impact on the study of the fascinating phenomenon of interactions between international law and EU law – a phenomenon, which is here to stay.

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34 Id. p. 242.
35 Id.
36 Id. p. 236 f.
37 Id. p. 237.
38 Id. p. 237.
39 Id. p. 1.

The co-authors show true skill in tackling with ease their vast and complex topic. With an elegant sequence of chapters, assisted by careful transitions between perspectives, the co-authors take the reader on a journey through these complexities – without denying these difficulties. With an impressive command of the every-growing body of (case) law and honest appreciation for the work of their colleagues Molnár and Wessel manage to make incisive observations that offer meaningful insights for seasoned experts while remaining accessible to new members of the club, whatever their home discipline. The result is a truly unique appraisal of the multifaceted topic of interactions between international law and EU law.

With their timely book, Molnár and Wessel have unraveled the potential of bridging the disciplinary divide in the study of an exciting phenomenon and its future development. They provide us with concrete ideas as well as fresh inspiration for tapping into this potential, and for continuing the conversation in order to establish – ideally – a lasting dialogue as we meet on and off the streets. In this and many other ways, Molnár and Wessel have done the community a great service.