

David O'Keeffe and Patrick Twomey (eds.), **Legal Issues of the Amsterdam Treaty**, Oxford and Portland: Hart Publishing (1999) at pp. 1–425 and i–xli.

This book is the follow-up to the 1994 *Legal Issues of the Maastricht Treaty* by the same editors. The general format and about half of the authors are also the same as five years earlier. And, as in 1994, the book is based in essence on papers presented at a conference held at King's College London under the auspices of the UK Association for European Law.

The section on constitutional issues is opened by Joseph Weiler's contribution entitled 'Amsterdam and the Quest for Constitutional Democracy'. Weiler is critical of the new Treaty, not so much because it did not really resolve the issues to be resolved before the next enlargement, but because it failed to make real steps towards more democratic accountability. In particular, he sees a need for reform in the current comitology system. He identifies the quest for non-contentious ratification as the chief reason for the absence of bolder reforms.

Stephen Weatherill's title concerning the provisions on closer co-operation in the Amsterdam Treaty needs little further explanation: 'If I'd Wanted You to Understand I Would Have Explained it Better'. Nevertheless, he sees the advantages of allowing simultaneous widening and deepening, even if there is a price to be paid as regards uniformity and transparency.

In the next contribution, Ian Ward writes about 'Amsterdam and the Continuing Search for Community'. He picks up on Weiler's criticism and admonishes that Amsterdam has done little, if anything, to promote the EU's (political) legitimacy. Ward sees an over reliance on law in the integration process and claims that with Amsterdam it has reached the limit of what law can do for integration. From now on, progress would depend on the development of a political morality with 'community' (that is inclusion and mutual respect) at its core.

Ward is followed by Laurence Gormley's 'Reflections on the Architecture of the European Union after the Treaty of Amsterdam'. Again critical, Gormley outlines the '*grandes lignes*' of the treaty and calls it a facelift rather than an edifice, minor works that have done nothing to strengthen the foundations.

Deidre Curtin from Utrecht is next. In her contribution on 'The Fundamental Principle of Open Decision-making and EU (Political) Citizenship', she responds to some of the earlier criticism by outlining the elements of individual and group participation in the EU's decision making system, such as public access to documents, and by drawing up a 'reform agenda' for widespread and effective participation of interested private actors in the policy making processes.

The section on constitutional issues is completed by Franklin Dehousse and his account of the inter-governmental conference (IGC) process. Dehousse was one of the negotiators for Belgium and provides inside knowledge, as well as suggestions for reform, on the treaty amendment procedure.

The second section of the book is quite short and deals with the institutions.

Anthony Arnall is first: 'Taming the Beast? The Amsterdam Treaty and the Court of Justice'. While Arnall finds steps 'in the right direction', he is overall rather critical of the reforms or rather the lack of them. In particular, the problem of the ever increasing case load has yet to be addressed seriously.

The part on the European Parliament is provided by Kieran Bradley and talks about 'Building Blocks and Stumbling Blocks'. In this text, Bradley traces Parliament's role in the system of checks and balances and the impact it has on democratic decision making. As is well-known, the beginnings were modest and it took a long time for Parliament to truly outgrow the role of a purely advisory assembly. The most positive changes are noted in the legislative procedures, where Parliament managed to increase its input via the co-operation and co-decision procedures. In contrast to this success story, Bradley describes Parliament's futile fight against comitology. Similarly, Parliament's own electoral procedure, and the inability of the Member States to date to agree to any of several proposals for a uniform approach tabled by Parliament over the years, is presented as a setback. Finally, Parliament's input in the IGC procedures leading to treaty reform has seen some, but hardly impressive, progress.

The third section of the book is devoted to internal market issues. Erika Szyszczak opens it with her text on 'The New Parameters of European Labour Law'. This is one of the few primarily positive articles about changes made at Amsterdam. Szyszczak places great hopes on the more wholistic approach, which now seems possible after the Social Policy Protocol and Agreement have been integrated into the main corpus of the Treaty in the new Title XI on Social Policy, Education, Vocational Training and Youth. She reads the new legal base in Article 137 as broader and clearer than old Articles 118 and 118a and welcomes the possibility of qualified majority voting.

In her complementary contribution on 'The Employment Title in the Amsterdam Treaty: A Multi-Language Legal Discourse', Silvana Sciarra first describes the genesis of this new chapter. In her substantive evaluation, Sciarra sees useful potential but lack of clarity and legal enforceability. In her view, the citizens and workers (and those seeking employment) are once more left 'looking around with many uncertainties in a very noisy Tower of Babel'.

'The Amsterdam Treaty: An Environmental Perspective' by Richard Macrory is next. 'Consolidation of existing themes rather than wholesale innovation' is his analysis in a nutshell. Prior to the IGC, the Commission had identified three priorities for reform of the treaty chapter on environment:

1. simplification of the decision making processes and more possibilities for qualified majority voting;
2. amendments in chapters on sectoral policies such as agriculture or transport in favour of environmental goals; and
3. an explicit right to a clean environment to be included in the Treaty.

As it is, only the first of these goals saw at least some progress.

Since the provisions on competition law in the treaties have remained largely

unchanged since their first adoption, Leo Flynn focuses on what he sees as a gradual shift in the position of competition law in the constitutional order of the EU in his piece on 'Competition Policy and Public Services in EC Law after the Maastricht and Amsterdam Treaties'. Flynn contrasts the ECJ's well-known case law on Article 86 (formerly Article 90) and contrasts it with the new Article 16. While the effects remain to be seen, this new provision could lead to a retransfer of authority over public services to the political actors.

The fourth section of the book deals with external relations. Alan Dashwood's text on the 'External Relations Provisions of the Amsterdam Treaty' gives a differentiated evaluation. On the one hand, the 'special machinery of the CFSP' was strengthened and possibilities for qualified majority voting were expanded under the TEU, even if at the price of what Dashwood calls a 'Luxembourg Compromise Mark II' (see Article 23 (2) of the TEU). On the other hand, Amsterdam has still not resolved the dichotomy between decision-making and mixed agreements in the areas of application of the ECT and has clearly failed to consolidate the various external powers of the Community.

Marise Cremona focuses on 'External Economic Relations and the Amsterdam Treaty'. She gives a very detailed account of the Community's powers under Article 133 (formerly Article 113) over time and criticises the new fifth paragraph as a half-hearted solution.

Dominic McGoldrick asks another important question: 'The European Union after Amsterdam: An Organisation with General Human Rights Competence?' However, after analysis of various aspects how human rights considerations have become relevant to EU affairs, such as membership requirements, internal and external competences, CFSP and JHA, he chooses to leave the question unanswered. Subsequent adoption of the EU's Charter of Fundamental Rights may still not have provided definite answers but a trend is clearly there.

The penultimate section of the book deals with the Area of Freedom, Security and Justice. It is opened by David O'Keeffe and his text entitled 'Can the Leopard Change its Spots? Visas, Immigration and Asylum following Amsterdam'. O'Keeffe puts the new Title IV into historic perspective and welcomes the progress made in respect to communitarization of much of the former third pillar. Seeing chances rather than solutions, he calls for re-enforcements beyond those that will follow automatically after the five year transition period. O'Keeffe reminds us that some guiding values have yet to be clarified, namely that a coherent immigration policy requires an unambiguous commitment to legitimacy, respect for human rights, as well as resources and mechanisms to integrate immigrants and refugees.

In the next contribution, Martin Hedemann-Robinson follows-up on O'Keeffe and examines specifically 'The Area of Freedom, Security and Justice with Regard to the UK, Ireland and Denmark: The 'Opt-in Opt-outs' Under the Treaty of Amsterdam'. This example of '*Europe à la carte*' or multiple speeds was the price that had to be paid for the integration of Schengen and the communitarization of those parts of the third pillar that affect the movement of persons. Sceptical of the growing complexity and heterogeneity of the EU, he sees the risk of a 'constitutional heart

attack' and expresses the hope that subsequent IGCs will provide for less fragmentation and inequity. In the face of further enlargement, his advice may be sound but futile.

Yet another aspect of the new Title VI is analyzed by Monica den Boer. In her article entitled 'An Area of Freedom, Security and Justice: Bogged Down by Compromise', she sees more unpredictability and less transparency and democracy after Amsterdam than ever before. Thus, from the point of view of decision drafting and decision making, she is much more critical of this reform than her predecessors in this book.

Fabio Evangelisti is a member of the Italian Parliament and the President of the Parliamentary Supervisory Commission on Enactment of the Schengen Agreement and Europol Convention. In his contribution on 'The Role of National Parliaments in the Creation of the Area of Freedom, Security and Justice: An Italian Point of View', he – predictably – criticises the virtual exclusion of the national and European parliaments from the development of the third pillar. Even as certain possibilities are now opening up, Evangelisti sees a reluctance on the side of parliamentarians to get involved, due to their widespread lack of competence in this highly technical and complex area.

Tamara Hervey provides the next contribution dealing with the need to address human fears and racial prejudices at a time of ever growing mobility and ever more pronounced distributive competition. 'Putting Europe's House in Order: Racism, Race Discrimination and Xenophobia after the Treaty of Amsterdam' is a first and detailed analysis of the new powers granted by Article 13 ECT for the combat against discrimination. As the EU is climbing faster up this ladder, Hervey calls for a wide ranging assessment of all EU policies to find out how the integration process affects those excluded because of race and how it may implicitly encourage racism. In this way the EU should ensure that its ladder is leaning on the right wall.

'Constructing a Secure Space: The Area of Freedom, Security and Justice' is the last contribution in this context. Patrick Twomey explains how the EU is shifting from merely providing a basket of rights to the europhiles towards a new emphasis on protection. However, Twomey does not welcome this shift. As long as stronger commitments to human rights and freedoms, as well as better transparency are missing, he sees more of a danger of 'law and order', embodied in 'security', and hardly any 'freedom' and 'justice' evidenced in the Treaty and its application to date.

Finally, the sixth section of the book looks closely at non-discrimination and nationality. Catherine Barnard opens this section with another look at 'Article 13', this time 'Through the Looking Glass of Union Citizenship'. She expresses her regrets over the implementation mechanism, which calls for unanimous voting in the Council and grants only non-binding consultation rights to the European Parliament, which has traditionally been a strong motor in the combat of discrimination. While it remains to be seen what will be done with this new legal basis, Barnard also reminds us that the provision cannot possibly replace a comprehensive – and binding – catalogue of human rights.

The very last article is contributed by Hans Ulrich Jessurun d'Oliveira and deals

with 'Nationality and the European Union after Amsterdam'. The author points out the various problems that arise from the fact that, on the one hand, nationality law is still considered part of the hard core of national sovereignty of all (Member) States and that, on the other hand, European citizenship is conditional upon nationality of Member States and most rights under the treaties are also still reserved to the nationals of these Member States. This dichotomy already leads to many forms of exclusion and can only but worsen with the accession of Central and Eastern European countries (CEECs), some of which have among their population large groups of stateless persons and persons with third country nationality. A solution, however, is not in sight as long as the Member States are unwilling to either give up some of their prerogatives in this field or to open up the rights under the European Treaties to include those who lawfully reside in the EU.

The book distinguishes itself not only by its virtually complete coverage of all interesting aspects of the Amsterdam Treaty but also by its very impressive list of contributors. The individual parts are kept short, to the point, and share a kind of constructive criticism. Many of the authors make concrete proposals for future reform, which deserve wider attention and discussion. The editors must be complemented and we can only hope that the 'Legal Issues of the Nice Treaty' are already in the making.

Frank Emmert