

Urfan Khaliq, *Ethical Dimensions of the Foreign Policy of the European Union. A Legal Appraisal*. Cambridge: Cambridge University Press, 2008. Pp. 544. £65. ISBN 9780521870757.

It is a perennial question what role law has to play in the conduct of foreign policy. Urfan Khaliq asks this question for the European Union (EU). The starting point of his analysis is the commitment of the EU to a certain set of 'ethical values', namely the promotion of human rights, the rule of law, and democracy. While these values are central to the identity of the EU (Article 6 of the Treaty Establishing the EU), it is open to debate whether they play an equally important role in the conduct of its foreign policy. Other studies have been devoted to this issue or have analysed the discrepancy between the way the constitutional principles of the EU apply internally and externally.<sup>1</sup> The monograph under review is not so much interested in a doctrinal assessment of these issues. Rather, Khaliq raises the point to what extent the foreign policy of the EU is conducted in a

coherent manner, whether it can fulfil its objectives, and, most importantly, what role international law in general and the internal law of the EU in particular has to play in this regard.

The emphasis of Khaliq's study lies in the field of development cooperation and on programmes of humanitarian aid. The book is very timely. After the end of the Cold War, western states enjoyed a virtual monopoly on giving development aid and imposing conditionality standards which suited their legal, political, and ideological preferences. Nowadays, however, China and Russia are increasingly active in this field. Iran or Saudi-Arabia, too, engage in development cooperation and humanitarian aid. It has been noted that these aid givers do not attach conditionality as the EU or other western actors do.<sup>2</sup> In light of this diversification of the 'market' for development cooperation, it becomes crucial for the EU and other actors to conduct their development cooperation policy in a most coherent manner. If it were conducted in an unsystematic way, the achievement of the declared policy goals would arguably be harder. What factor law could play in this regard is not entirely clear: whereas one could suspect law to have a beneficial effect on the coherence of a given policy, it could also constrain the ability of the EU to engage in a dialogue with receiving states if the law imposed conditions the receiving states were no longer willing to accept. Other authors have pointed to a certain ambivalence about the project of exporting the central values of the EU to the rest of the world: frequently, the 'dialogue' between the EU and aid-receiving states is less characterized by an open form of conversation but rather by the expectation that the receiving states will simply conform to European standards.<sup>3</sup>

<sup>1</sup> See, most recently, G. de Baere, *Constitutional Principles of EU External Relations* (2008).

<sup>2</sup> 'An (Iron) Fistful of Help', *The Economist*, 4 June 2009, available at [www.economist.com/world/international/displaystory.cfm?story\\_id=13799239](http://www.economist.com/world/international/displaystory.cfm?story_id=13799239) (last visited 29 July 2009).

<sup>3</sup> Leino, 'The Journey Towards All that is Good and Beautiful: Human Rights and "Common Values" as Guiding Principles of EU Foreign Relations Law', in M. Cremona and B. de Witte (eds), *EU Foreign Relations Law* (2008), at 259, 270.

Urfan Khaliq's study is full of insights with respect to all of these and a host of other questions. In the first two substantial chapters of the book, Khaliq approaches his topic from two different angles: in Chapter 2, Khaliq first presents the position various theories of international relations (IR) take with respect to the promotion of ethical values through foreign policy. Subsequently, the chapter delves into the field of international law and maps out the parameters states and other international actors have to take into account in this regard. More precisely, Khaliq discusses to what degree international law imposes limits on cooperation with states which engage in violations of international law and, conversely, to what degree international law requires active forms of cooperation in order to achieve certain goals. Khaliq describes the reduction of the notion 'domestic jurisdiction' in recent years. Among the contributing factors he sees the recognition of obligations *erga omnes* and the corresponding rights of responses of third states. He ascribes (at 42–45) particular significance to Article 41(1) of the 2001 ILC Articles on State Responsibility, with its obligation of cooperation to bring serious breaches of peremptory norms to an end. Khaliq is further of the view that Article 54 of the ILC Articles does not preclude countermeasures in the collective interest: states would simply have to 'ensure that in doing so they respect other principles of international law' (at 50). The following discussion on human rights obligations to promote development in third states is nuanced: whereas Khaliq holds that EU Member States have an obligation individually to provide development assistance to developing states, he admits that these obligations are not very clear in terms of their content (at 69). With respect to democracy and the rule of law, Khaliq holds that there are as of now no obligations to promote them in third states (at 76, 79). Chapter 3 then turns to the internal perspective of the EU and discusses the division of competences between EU, EC, and Member States as well as the multitude of instruments the EU and EC have at their disposal when acting externally. Khaliq's discussion is very useful as it clearly emerges that the overlap of

competing competences also leads to diverging institutional responsibilities. For example, the negotiation of economic partnership agreements with states from the Group of African and Caribbean States (ACP) has a strong impact on development issues. Nonetheless, these agreements are negotiated by the Directorate-General for Trade. The Directorate-General for Development has only a very limited say in this respect (at 137). Accordingly, one could speak of a kind of 'internal fragmentation' in the way in which the EU is acting on the external level. Similarly, the goal of poverty reduction can conflict with the wish to further good governance and the rule of law. Different policy objectives may thus stand in the way of an effective implementation of EC policy (at 122). Furthermore, the actual allocation of development aid by the Community, according to Khaliq, is inconsistent with the alleged EC objective to focus on Least Developed Countries (LDCs): in that the largest chunk of development aid goes to middle-income countries. Khaliq concludes, 'What seems clear . . . is that the Community budget continues to be spent in particular regions, usually for reasons related to geography and history, and not for the primary purpose of poverty reduction' (at 128). Khaliq's discussion of the evolution of EC competences in the field of promotion of ethical values abroad also shows that quite frequently this evolution was spurred by not entirely altruistic motives. With respect to the Community competence in food aid he reminds us that European food aid programmes started out as a way to export European agricultural surpluses to third world countries. At the time, in 1982, it was openly stated that the food aid programme was meant to help pull the EC out of recession (at 164–165). Originally, the competence for food aid programmes was thus logically rooted in the provisions on agricultural policy. Since 1996, the food aid programmes have then been based on the development cooperation provisions of the EC Treaty.

The bulk of the book is dedicated to several case studies. The discussion in Chapter 4 on EU/EC reactions to denials of democracy gives rise to mixed results. On the one hand, Khaliq

shows that the EU/EC responses to denials of democracy in Myanmar and Nigeria were not and are still not strong enough to compel an authoritarian regime to act in a particular way. This, in his view, is due, partly, to timid reactions of the EU/EC. Khaliq notes that even annulled elections, as in Myanmar in 1990, led to only limited action by the EC. Development cooperation was not seriously downscaled. More robust diplomatic interventions took place only after the Danish honorary consul died while being detained by the military junta in 1996. With respect to Pakistan, it is particularly noteworthy how the attitude of the EU/EC changed after 11 September 2001. Khaliq shows that 'before', a cooperation agreement between the EU and Pakistan was not signed because of the coming to power of the military regime of General Pervez Musharraf in October 1999 (at 219). A Council meeting on 8 and 9 October 2001 'completely reformulated policy towards Pakistan': the global coalition against terrorism required the Union to reconsider its priorities (at 233).

The Middle East Peace Process ('MEPP'), which is discussed in Chapter 5, constitutes a severe challenge to any principled foreign policy. The 1995 cooperation agreement between the EC and Israel does not have a focus on development cooperation but is mixed in nature and primarily concerned with expanding trade, services, and economic cooperation (at 275). The cooperation agreement between the Community and the Palestinian authority is the only such agreement between the EC and a non-state entity (at 305). The Palestinian authority is largely dependent on European aid, and the position of the EU/EC is thus much more powerful *vis-à-vis* the Palestinian authority than it is *vis-à-vis* Israel. To make matters more complicated, the implementation of these cooperation agreements with Israel and the Palestinian authority is inevitably tied up with the general role of the Union in the MEPP (for example, as a member of the 'Quartet') and, even more important, the different foreign policies of the EU Member States. The most influential among them, the United Kingdom, France, and Germany, all have, for different reasons, particular stakes

in the MEPP (at 279). In particular, Khaliq discusses three instances of Israeli practice which would, according to him, have required a reaction on the part of the EU: the military incursions in Jenin in 2002 and in Beit Hanoun in 2006 as well as the construction of the 'wall' or 'security barrier'. Khaliq holds that in all three situations Israeli violations of international law, especially international humanitarian law, would have justified a suspension of the agreement under the essential elements clause (at 336). Khaliq concludes that '[i]t is difficult to consider that any other state other than Israel . . . would be granted such latitude in this regard by the Union and its Member States' (*ibid.*). To be fair, Khaliq also notes that suspension of the agreement would be particularly difficult due to its mixed nature (at 339). Khaliq, however, also argues that the non-suspension so far may be detrimental in the future. He argues that Israel could rely on the argument of estoppel: future violations would need to be even more severe than the ones which have already occurred in order to justify a suspension of the agreement (at 342). With respect to cooperation with the Palestinian authorities, Khaliq is very critical about the way the EU dealt with the Palestinian elections in 2006 which resulted in a landslide victory for Hamas. The decision by the European Council of 10 April 2006 to stop all direct assistance to the Palestinian authority is viewed by Khaliq as a punishment of the Palestinian population 'for exercising their democratic rights and having the temerity to elect those standing on a political platform of which the Union did not approve' (at 381).

In the final substantive chapter, Khaliq discusses the humanitarian aid policy of the EU. By contrast to development cooperation, humanitarian aid focuses more on immediate relief from catastrophes. As a consequence, it should not be influenced by any other than humanitarian interests, notably not geopolitical considerations (at 404). These considerations usually find expression in the concept of the 'neutrality and impartiality' of humanitarian aid. Khaliq notes, however, that such neutrality may frequently be an illusion. Already by relieving warring factions to a conflict of

their own obligation to feed the population or to provide shelter, an aid-giver may be seen to contribute to the perpetuation of a conflict, and may thus be in violation of the principle of neutrality and impartiality (at 406). In addition, humanitarian aid objectives may become blurred with the more political goals of development cooperation (at 412). In practice, Khaliq shows, the distribution of humanitarian aid is heavily influenced by political considerations. It would not be possible otherwise to explain why Kosovo and Afghanistan, for example, received such disproportionately high amounts of humanitarian aid once the international community was engaged there in efforts of post-conflict reconciliation (at 429–431).

Khaliq's general conclusions are mixed: although EU/EC foreign policy lacks the necessary coherence in order to achieve its high-minded aims in terms of the promotion of ethical values, it does have some positive effects. In particular, Khaliq welcomes the influence the EU/EC has gained in the development of international law. By its recurrent practice to criticize violations of international law and to ask for respect for democracy, the rule of law, and good governance the Union has a formidable influence upon the development of new rules in this respect. However, Khaliq is also outspoken about double standards he sees at work. In his view they become most apparent with respect to the turnaround *vis-à-vis* Pakistan in 2001 and the troublesome policy towards Israel. The case studies show that EU/EC practice lives up only partially to the expectation that EU foreign policy is comprehensively regulated by legal considerations. Khaliq's analysis makes an important contribution to this discussion as it shows that also a 'community of law' such as the EU conducts its foreign policy like states do: international law certainly plays a role but it would stretch the analysis too far to attribute all decisions of foreign policy to considerations of law. In this respect, it could have been fruitful if Khaliq had revisited his initial discussion of IR theories at the end of his study. In the beginning, Khaliq distinguishes between classical, 'realist' approaches to foreign policy and more liberal tendencies which put greater emphasis

on the promotion of human rights abroad. In essence, he identifies EU foreign policy with the so-called 'English school' of IR, which posits that the protection of human rights 'will make an important contribution to both protecting national interests and . . . strengthening the pillars of an international order' (at 16). At the same time, the 'English school' does not negate the importance of national interests. It may thus indeed be an adequate theoretical explanation for the way the EU conducts its foreign policy. It would have been interesting to learn more about the detailed application of this theory to the subject matter of the book under review.

Other criticism has to be confined to details: with respect to the author's presentation of the general international law framework in Chapter 2 of the study, the present reviewer has found the discussion of the principle of non-intervention and the scope of domestic jurisdiction to be rather long. With respect to these questions, the legal debate appears to be more or less settled. In comparison, Khaliq's treatment of the controversial aspects of the law of state responsibility (especially the issue of countermeasures in the collective interest) remains somewhat sketchy. With respect to the case studies, his treatment of the MEPP is the most critical. While his account is generally well balanced, some questions remain open. In particular the argument that Israel is treated with more latitude than any other state is questionable. While this position is tenable though controversial, the better question would have been which other geopolitical situation would lend itself to a direct comparison with the protracted state of affairs in the Middle East.

However, these minor points should not deflect from the fact that Khaliq has written an impressive book. It is rich both in empirical detail and legal analysis. Khaliq has made a significant contribution to a most important discussion. The book is highly recommendable to any reader interested in the relationship between EU foreign policy and international law.

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