Let me start with this postulation: ‘The European Union is often considered and portrayed as a complex institutional structure, on which it is difficult to put a label.’¹ The EU’s relationship with international law is even more problematic—probably something for which there does not exist any label at all. The EU’s relationship with the European Convention on Human Rights continues to be at the forefront of this debate. A first note is that the European Convention on Human Rights² has been one of the core international successes—probably the most successful—in international human rights law and practice. Although originally designed to serve primarily as a benchmark of law, the Convention soon became a benchmark not merely of law, but also of practice. Due to its rapidly increasing legitimacy and mode of promotional growth, the Convention went on to become a system of law, and is now the most effective institutional framework for individual human rights protection in Europe and probably the world.³ With such bifurcated growth taking place, the Convention became a core instrument of democracy for most of the Western European nations, and an enlightenment method for the largest part of the nations that transformed from communism to democracy.

In its natural format, the Convention system was built to serve as an international-European instrument of human rights law merely for state parties. With Europe undergoing large reforms of common goals and institutional practices, most of the western European nations formed and acceded to a more or less a supranational organization, the European Union.⁴ As the latter undertook several reforms which changed its nature from a pure economic organization to an

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¹ van Rossem (2009), p. 223.
³ Accord: Helfer (1993), p. 133/4 (The Convention ‘is widely regarded as the most effective international instrument for the protection of individual rights.’).
⁴ This being a designation for the latest constitutional name of this Union.
organized political system, it necessitated to make its authority covered by human rights law limitations. While the EU gradually transformed into an organization of human rights as a means to keep its supreme law steady in the view of its Member States, the Convention system was somewhat being neglected and ruled out from the possibility to review the EU’s human rights performance. Callewaert rightly notes that the EU and ECHR systems have for a long time grown independently. The most rigid argument for this development was the legitimate fact that the EU was not a contracting party to the Convention and was not therefore obliged to submit to it, unless it saw itself bound by the functional succession of its Member States’ obligations. In terms of effective human rights protection, this has been especially problematic in some policy areas which have been an exclusive competence of the EU (e.g. competition policy) and where Member States have not participated in the implementation of that law (which certainly resulted in absolutely no external human rights control by Strasbourg).

With the EU increasing its state-like competences and body of human rights law, it became evident that there was an increasing need for the EU to accede to the Convention for two basic reasons: first, the political reason, to strengthen the Union’s legitimacy in terms of its international human rights obligations, and, second, the practical reason of equality—to give equal-footing to persons falling under the scope of jurisdiction of the EU to enjoy the same rights of standing before the Convention system with those persons in the Convention’s EU Member States, therefore making the European human rights landscape better unified.

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6 An example of functional succession may be found at: Court of Justice of EU, *International Fruit Company v Produktschap voor Groenten en Fruit*, Joined Cases 21 to 24/72 [1972] ECR 1219, para. 18; or, see also: Court of Justice of EU, *Defrenne v Sabena*, Case 43/75 [1976] ECR 455, para. 20; A general account on state succession in international law may be read at: Brownlie (2003), pp. 633 et seq.


8 See e.g.: Heringa and Verhey (2011), p. 31/2; See also: Tulkens (2013), p. 2 (‘As a result the 27 Member States of the Union, which, at the same time, are all parties to the Convention either have lost altogether their capacity to control decisions, hitherto belonging to their jurisdiction, or at least their jurisdictional freedom has been diminished.’).

9 Sera (1996), pp. 182 et seq; Although there is now a human rights instrument, the Charter of Fundamental Rights, explicit in the EU Treaties. See on this: García (2002), p. 500.

10 Groussot et al. (2011), p. 1/2; See also: Balfour (2007), p. 212; Odermatt (2014), p. 10; Gragl (2013), p. 93; Contra: Jacobs (2007) (‘...while widely regarded as valuable for political and symbolic reasons, will have rather limited concrete effects on the observance of human rights standards. The effects will be limited because the ECHR is already accepted as the fundamental standard of human rights protection in Europe...’).

11 Olsen (2009–2010), p. 65; Accord: Balfour (2007), p. 212, therefore removing the current difference in the interpretation of human rights that currently exists between the two courts; On the role that the Strasbourg Court has played in the ‘common understanding’ of human rights law in Europe, see e.g.: Helfer (1993), p. 143; Cf.: Busby and Zahn argue that in the field of social rights, there are rather huge discrepancies between the standards of Luxembourg and Strasbourg Court. They argue that it would be really hard to reconcile these two orders, and they propose that
Callewaert rightly notes that ‘a legal system which rejected external supervision of its compliance with human rights would be a legal order closed in on itself which, with no input from outside, would be in danger of fossilisation.’ While the primary goal was to neutralize criticisms on EU human rights face, the accession of the EU to the Convention became not merely a necessity, but also a complex task to be properly addressed. Accession being the core intention, there was the requirement to ensure that such accession will not hinder or impair any of the core functions or characteristics of the Union, either in terms of its relationship with the Member States’ legal orders or its relationship with international tribunals that may produce constitutional consequences for the Union’s external features. In addition, Gragl in this regard argues that accession will finally raise the question of who will be the last fundamental rights court in Europe: the Luxembourg or Strasbourg Court. Such question, in Gragl’s view, substantively demonstrates the conflict that exists between the effective human rights protection and EU law external autonomy.

It is important to point out that the EU’s special nature as a more-or-less supranational organization possessing internal obligations on human rights law—something not common for international organizations—preconditions the accession procedure and fields of law that need be regulated through it with several stipulations. Most of these stipulations would have to preserve the EU law’s distinguished feature—its internal and external autonomy. Although the preservation of EU law autonomy remained the core concern, there were other decidedly important problems that could raise tensions not only within the EU institutional...
balance but also in its internal and external constitutional relationships. One such issue is the share of the burden between the EU and its Member States when they have jointly contributed to a violation of the Convention, the establishment of such joint responsibility by the Convention system being another major dilemma in itself. Offering a favorable environment wherein the Strasbourg regime of law is not given the chance to compete with the Luxembourg Court, whereas the former does hold a normal external authority to protect human rights, was a further difficult assignment to be addressed. No one, therefore, may dispute the notable fact that accession will be a ‘highly exceptional development.’ However, to put it in Larsen’s words, ‘[t]he crucial question is who the “we” is in particular policy areas and what the content, qualities and aims of this “we” are.’

Therefore, tackling content and qualities of the accession process remains a core objective of this book.

The book is divided into four respective parts, altogether forming 12 chapters. In Part I, the book starts with a brief justification of the research questions raised here (Chap. 1), by delimiting not only the questions themselves but also the substance of the issues that will be analyzed. A very short note on the methodology follows afterwards, accompanied with a section on literature review. Chapter 2 tackles the EU as a human rights organization—from its inception—and the gradual development of its body of human rights law. This section includes an analysis of the inception of the EU human rights, and how it became embedded into a body of human rights law deriving not merely from its internal sources of law, but also from the Convention system. This part also analyzes the initial interaction between the two, the Strasbourg and Luxembourg regimes of law. Following this, the book examines the external outlook of EU law, namely the relationship between the Luxembourg Court and international courts—both from the perspective of their harmony but also ongoing and natural competition. A specific chapter on EU law autonomy follows the latter (Chap. 3). Chapter 4 introduces the Final Draft Accession Agreement (hereinafter referred to as DAA) of the EU to the European Convention on Human Rights, and introduces the core mechanisms that it establishes. At this point, the book also questions the extent of EU treaty-making powers in light of the accession to the Convention system, and examines the internal consequences that this process produces. In addition, a conceptual explanation on each of the key provisions of the Draft Accession Agreement is provided therein. The latter is followed by Chap. 5, which covers the status of the ECHR and DAA within the EU legal order. The co-respondent mechanism, its nature and legal construction, and the means and basis on which the two courts are meant to cooperate and compete are examined in Chap. 6. Chapter 7 examines the inter-party complaint mechanism after accession, and questions how the EU will be

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17 Cf.: Quirico (2010), p. 47, who instead proposes an informal dialogue between the two courts to prevent such potential conflicts.
settled into the new Convention environment for complaints between the contracting parties *inter se*. Following this, Chap. 8 examines the prior involvement review of the Luxembourg Court. This chapter also examines the implications in terms of the remedies as well as the likelihood that parties will access the Luxembourg and Strasbourg courts effectively. The latter is followed by Chap. 9 which tests the functionality and sustainability of using the co-respondent mechanism from the Strasbourg Court’s perspective. Chapter 10 examines the admissibility of EU-originated applications and potential exceptional scenarios that may appear from the Strasbourg Court’s point of view. Finally, in Chaps. 11 and 12 the book first examines the Luxembourg Court’s Opinion 2/13 and, thereafter, concludes with a summary of the core arguments put forth by presenting definite answers to the questions raised. Throughout the book, the principle of *dubia in meliorem partem interpretari debent* is applied as a means to offer reliable and consistent arguments.

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