EDITORIAL

The focus of *The Cambridge Yearbook of European Legal Studies* will be on the Law of the European Union and of other European organisations, including the Council of Europe and its human rights jurisdiction; on the complex interactions between those supranational orders and the internal legal orders of European States; and on Comparative Law, as a source of inspiration for the solution of problems occurring at the European level. The issues covered will, in general, be ones that have attracted attention during the year preceding publication (in other words, the year for which the volume is dated). However, the *Yearbook* will not be exclusively directed toward topicality: it will include reflective pieces on matters of enduring interest, like those by Judge Rodriguez Iglesias and Mr Jean-Louis Dewost, in Chapters 1 and 2 of this Volume.

The *Yearbook* is edited within the Centre for European Legal Studies at Cambridge (CELS), and most contributions will either have been specially commissioned, or have originated as papers presented and debated at conferences or seminars, or developed within research projects, forming part of CELS' programme of activities. This, it is hoped, will give each annual volume a certain coherence, the choice of material reflecting a considered judgement as to the relative significance of the issues that have arisen during the year in question. There will also be opportunities for examining issues in the round, through the juxtaposition of conference papers relating to the same broad theme. The *Yearbook* should not be seen, however, as a CELS house journal. The Editors will be happy to receive suggestions for articles, or to consider finished pieces, of whatever provenance.

The general approach that we have described is illustrated by the contents of this first Volume of the *Yearbook*.

Every Volume will begin with the Mackenzie-Stuart Lecture, which has been established by the Faculty of Law at Cambridge in honour of Lord Mackenzie-Stuart, formerly President of the European Court of Justice. This is an annual guest lecture given by a figure of international standing. The present Volume contains the lectures given in 1997 and 1998 by, respectively, Judge Gil Carlos Rodriguez Iglesias, President of the European Court of Justice, and Mr Jean-Louis Dewost, the Director-General of the Legal Service of the European Commission. Judge Rodriguez Iglesias discusses the role of the general principles of law in the development of the Community's legal order. Far from reflecting any kind of "political" motive

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on the part of the judiciary, general principles represent an important expression of the convergence and interaction between the different legal systems of the Member States. Mr Dewost canvasses the challenges inherent in maintaining the Community's legal order in the light of the collapse of the Soviet Union (resulting in the emergence of a single super–power, the USA), and the phenomenon of globalisation. The Community provides a structure through which common values can be defended, which is buttressed, and not threatened, by the emergence of ostensibly decentralising influences such as the principle of subsidiarity.

The legal development at the front of most EU lawyers' minds during 1998 was, inevitably, the Treaty of Amsterdam, signed in October 1997. The ratification process has been slow, but mercifully free of the political controversy that surrounded the ratification of the Treaty on European Union, and the new Treaty is due to enter into force on 1 May 1999. Three of the articles in this Volume examine major legal reforms that the Amsterdam Treaty will bring. Alan Dashwood's analysis in Chapter 3, of "European Community Legislative Procedures after Amsterdam" is organised round the criticisms that have customarily been made of the old arrangements – that there was a democratic deficit, and that the procedures were too numerous and complicated. His conclusion is broadly optimistic: there has been progress towards a more rational and democratic system, although once again those negotiating the Treaty were unable to resist the temptation to invent new procedural variants. Jaap de Zwaan writes about the principal substantive change wrought by Amsterdam - the incorporation, into a new Title IV of Part Three of the EC Treaty, of powers in relation to the free movement of persons (including third country nationals) that were previously exercisable under the Schengen Agreement and/or Title VI of the TEU ("the Third Pillar"). His article, in Chapter 6, focuses on the complex opting-out and opting-in rules devised in order to meet concerns more particularly of the British and Danish governments resulting from the "communitarisation" of Schengen. Consideration is also given to the provisions relating to the Court of Justice in the new Title IV, which represent the first substantial encroachment on the uniformity of the Court's EC jurisdiction, and to the principle of flexibility, as it applies in the context of the authorisation of thirteen of the fifteen Member States to continue "closer cooperation" within the institutional and legal framework of the Union.

Lisa Waddington considers, in Chapter 9, the scope and effect of the new Article 13, introduced by Amsterdam into the EC Treaty. This gives the Council power to legislate against different forms of discrimination – on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation – but only "within the limits of the powers conferred by [the Treaty] upon the Community". Will it secure greater recognition of, or provide a firmer foundation for, fundamental social rights within the European Union?

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The last-mentioned article is one of three here presented, which originated as papers given at the CELS Conference on "*Grant*, *Marshall* and Beyond" in November 1998. The Conference was prompted by recent developments in the case law on sex discrimination. In Chapter 8, Catherine Barnard analyses, closely and critically, the judgement in *Grant* v. *South-West Trains* where the Court of Justice famously declined to treat discrimination on grounds of sex and of sexual orientation on a similar footing for the purposes of the equal pay provisions of Article 141 EC (Article 119). In Chapter 10, Sandra Fredman weighs up the theoretical objections that have been raised against affirmative action policies, and finds those objections wanting. In keeping with the *Yearbook's* openness to comparative method, the approach of the US Supreme Court in affirmative action cases is contrasted with that taken by the Court of Justice.

The potentiality of the comparative method in meeting the legal challenges of a continuously evolving polity is further demonstrated by John Spencer's article, found in Chapter 5, which is based on his experience as a member of the *Corpus Juris* project on the fight against budgetary fraud. The resignation *en masse* of the European Commission in March 1999, amidst allegations that responsibility for combating fraud and other abuses had not been taken seriously enough, underlines the urgency of bringing the project to practical fruition.

Interactions between the European and national orders are explored in articles by Stephanie Palmer and Tim Pratt. In Chapter 7, Stephanie Palmer, critically analyses the arrangements under the Human Rights Act for incorporating the European Convention on Human Rights into national law. Any truly radical transformation of the United Kingdom's constitution is, it seems, to be looked for, not in the Act itself, but in its interpretation and application by the courts. Tim Pratt's article, found in Chapter 11, on "The Role of National Parliaments in the Making of European Law", is the insider's view of an author who was formerly Counsel to the Speaker. His analysis brings home the contribution that can be made, through effective systems ensuring transparency and accountability at the national level, towards compensating for democratic deficit at the level of the Union.

Apart from the ratification of Amsterdam, the other great politico-legal issue of 1998 was the carrying forward of preparations for the commencement of the third stage of Economic and Monetary Union and the introduction of the single currency in January 1999. The article by John Usher, in Chapter 4, looks at the institutional arrangements for EMU, as an instance of the application of the flexibility principle, prefiguring its enshrinement as a general organising principle of the constitutional order by the Amsterdam Treaty. Documents referred to in Professor Usher's text are included in Appendices, for the convenience of readers.

The case law of the Court of Justice on the remedies available to individuals whose rights under the Treaty are violated either by a Community

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institution or by national authorities, took a significant turn, during 1998. These are analysed in detail by Cambridge graduate students in Chapters 12 and 13 of this Volume. Heather MacLeod–Kilmurray examines the *Stichting Greenpeace* case, in which both the Court of Justice and the Court of First Instance once more declined invitations to expand the restrictive rules on standing that operate in the context of applications for judicial review by private parties under Article 230 EC (Article 173). That was so despite the pressure on the Luxembourg courts to liberalise *locus standi* in proceedings, when private parties and environmental groups are seeking to bind Community institutions to their constitutional duty to be mindful of environmental ramifications in decision-making. The approach of the Court of Justice to environmental public interest standing is compared with that of the Federal Court of Canada. It will be seen that, even though the wording of the legal instrument governing standing before the Federal Court is almost identical to Article 230, the Federal Court has found no difficulty in taking a generous view in the context of environmental litigation. The contribution of Michael Dougan critically examines Court of Justice case law concerning charges levied unlawfully, and draws out some of the difficulties of continued adherence to the principle of national procedural autonomy, coupled with intimate case by case scrutiny by the Court of obstructive domestic rules. It is argued that legal certainty would be served by the Court's adoption of a simple rule requiring mandatory repayment by national authorities for charges levied in breach of Community law, in all cases where the Member State concerned would otherwise benefit from its own illegal conduct, and in which the trader would be deprived of benefits envisaged under the relevant Community rules.

A word needs to be said about the renumbering of the EC Treaty and the Treaty on European Union, which will follow the entry into force of the Treaty of Amsterdam. The new Article numbers are used throughout this Volume, with the old numbering mentioned in brackets the first time a provision is referred to in any particular Chapter.

Finally, heartfelt thanks are due to all of those who have worked so hard to launch *The Cambridge Yearbook of European Legal Studies*. We are especially grateful to Veronica Kendall who spent many hours formatting and amending contributions with all the dedication and efficiency on which we came to rely during her years as the Secretary/Administrator of CELS; and to her successor, Diane Abraham, and to Christine Thouroude, who helped to bring the project to successful fruition.

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