The Reinterpretation of TFEU Article 344 in *Opinion 2/13* and Its Potential Consequences

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A. Introduction

On 18 December 2014 the Court of Justice of the European Union (CJEU)[1] delivered *Opinion 2/13*[2] and stunned the legal world by declaring that the Draft Agreement on the Accession of the EU to the European Convention on Human Rights (the Accession Agreement)[3] was incompatible with the constituent treaties of the Union. Although some experts, admittedly, had been skeptical about certain aspects of Draft Accession Agreement,[4] no one seems to have expected an opinion so critical and uncompromising. The opinion has consequently received widespread disapproval in the EU legal blogosphere.[5]

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[1] References to the CJEU in the following also refer, where appropriate, to its predecessor, the Court of Justice of the European Communities.

[2] Opinion Pursuant to Article 218(11) TFEU, CJEU Case C-2/13 (Dec. 18, 2014), http://curia.europa.eu/ [hereinafter Opinion 2/13].

[3] Council of Europe, *Draft Agreement on the Accession of the EU to the European Convention on Human Rights*, FIFTH NEGOTIATION MEETING BETWEEN THE CDDH AD HOC NEGOTIATION GROUP & THE EUR. COMM'N ON THE ACCESSION OF THE EUR. UNION TO THE EUR. CONV. ON H.R. app. 1 (2013).

[4] *See* Tobias Lock, *Walking on a Tightrope: The Draft Accession Agreement and the Autonomy of the EU Legal Order*, 48 COMMON MKT. L. REV. 1025 (2011).

[5] *See, e.g.*, Tobias Lock, *Oops! We Did it Again – the CJEU's Opinion on EU Accession to the ECHR,* VERFASSUNGSBLOG (Dec. 18, 2014), http://www.verfassungsblog.de/en/oops-das-gutachten-des-eugh-zum-emrk-beitritt-der-eu/; Walther Michl, *Thou Shalt Have No Other Courts Before Me*, VERFASSUNGSBLOG (Dec. 23, 2014), http://www.verfassungsblog.de/en/thou-shalt-no-courts/; Stian Øby Johansen, Opinion 2/13*: A Bag of Coal From the CJEU,* ØBY-KANALEN (Jan. 10, 2015), https://obykanalen.wordpress.com/2015/01/10/opinion-213-a-bag-of-coal-from-the-cjeu/; Aidan O'Neill, Opinion 2/13 *on EU Accession to the ECHR: The CJEU as Humpty Dumpty*, EUTOPIALAW (Dec. 18, 2014), http://eutopialaw.com/2014/12/18/opinion-213-on-eu-accession-to-the-echr-the-cjeu-as-humpty-dumpty/; Steve Peers, *The CJEU and the EU's Accession to the ECHR: A Clear and Present Danger to Human Rights Protection*, EU LAW ANALYSIS (Dec. 18, 2014), http://eulawanalysis.blogspot.no/2014/12/the-cjeu-and-eus-accession-to-echr.html.

While there are many threads in *Opinion 2/13* that deserve critical analysis,[6] I will focus here only on one: The CJEU's interpretation and application of Article 344 of the Treaty on the Functioning of the European Union (TFEU)—one of the five separate grounds given for rejecting the Accession Agreement.[7] Specifically, I will compare the approach taken in *Opinion 2/13* with the approach of the CJEU in earlier case-law. I will argue that the reasoning and conclusion concerning TFEU Article 344 in *Opinion 2/13* is clearly at odds with this earlier case law, notably the leading *MOX Plant* case.[8] I will also demonstrate how the approach to the issue in *Opinion 2/13*—if it indeed reflects *lex lata*—seriously affects numerous treaties that the Union has already concluded.

B. TFEU Article 344 and Its Relevance for the EU's Accession to the ECHR

Although the Union has an obligation to accede to the European Convention on Human Rights (ECHR)[9] under Article 6(2) of the Treaty on European Union (TEU),[10] this obligation is not unconditional. Article 3 of Protocol (No. 8) to the constituent treaties of the Union,[11] which relates to TEU article 6(2), provides that "[n]othing in the [Accession Agreement] shall affect [TFEU] Article 344."[12] According to TFEU Article 344, "Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for [in the Treaties]."[13] This provision entails a grant of exclusive jurisdiction to the CJEU in inter-party cases that involve Union law. TFEU Article 344 may furthermore be understood as a specific expression of the member states' duty of loyalty under TEU Article 4(3).[14] More generally,

[6] As evidenced by the many and diverse contributions concerning *Opinion 2/13* in this issue of the German Law Journal.

[7] The other four reasons being that (1) the Accession Agreement is liable adversely to affect the specific characteristics and the autonomy of EU law, (2) the Accession Agreement does not lay down arrangements for the operation of the co-respondent mechanism that enable the specific characteristics of Union law to be preserved, (3) the Accession Agreement does not lay down arrangements for the prior involvement of the CJEU that enable the specific characteristics of Union law to be preserved, and (4) the Accession Agreement fails to have regard to the specific characteristics of Union law with regard to the judicial review of conduct on part of the EU under in Common Foreign and Security Policy matters. *See* Opinion 2/13 para. 258.

[8] Comm'n v. Ireland (MOX Plant), CJEU Case C-459/03, 2006 E.C.R. I-04635 [hereinafter MOX Plant].

[9] European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

[10] Consolidated Version of the Treaty on European Union, Oct. 26, 2012, 2012 O.J. (C 326) 13 [hereinafter TEU].

[11] Protocol No. 8 to the Treaty on European Union, Dec. 13 2007, 2012 O.J. (C 326) 273.

[12] *Id.*

[13] Consolidated Version of the Treaty on the Functioning of the European Union art. 344, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

[14] Opinion 2/13 at para. 202; MOX Plant at para. 169.

it may be understood as a manifestation of the principle that the EU is an autonomous legal system—which the CJEU sees as being among its core task to protect.[15] Similar provisions are also found in other international agreements, for example in ECHR article 55.

Whether an international agreement is incompatible with the constituent treaties because it threatens the autonomy of the EU legal system has been a recurring issue in CJEU case-law over the years.[16] While TFEU Article 344 is often mentioned in passing in the Court's autonomy jurisprudence,[17] it is rarely discussed at length. *Opinion 2/13* is thus one of the few cases in which the CJEU actually engages with TFEU Article 344, using fourteen paragraphs of its decision to interpret and apply it.[18] A prior exception to this trend of non-engagement is the grand chamber judgment in *MOX Plant*—the leading case on TFEU Article 344 before *Opinion 2/13*.

MOX Plant concerned a long-standing dispute between Ireland and the United Kingdom regarding the commissioning of a mixed oxide (MOX) plant at Sellafield, on the British coast of the Irish Sea.[19] The plant was designed to convert spent nuclear fuel into MOX, which can be used as fuel in light water nuclear reactors.[20] Because the United Kingdom did not have any nuclear reactors using MOX fuel at the time, the fuel was intended for export through the Irish Sea.[21] Ireland objected to the construction of the plant on several

[15] Opinion 2/13 at para. 201; *see also* the cases mentioned *infra* note 16.

[16] Notable examples include: Opinion Pursuant to Article 228(1) of the Draft Agreement Establishing a European Laying-up Fund for Inland Waterway Vessels, CJEU Case C-1/76, 1977 E.C.R. 741; Opinion Pursuant to Article 228(1) of the Draft Agreement Between the Community and the Countries of the European Free Trade Association Relating to the Creation of the European Economic Area (I), CJEU Case C-1/91, 1991 E.C.R. I-06079; Opinion Pursuant to Article 228(1) of the Draft Agreement Between the Community and the Countries of the European Free Trade Association Relating to the Creation of the European Economic Area (II), CJEU Case C-1/92 1992 E.C.R I-02821; Opinion Pursuant to Article 300(6) of the Proposed Agreement Between the European Community and Non-Member States on the Establishment of a European Common Aviation Area, CJEU Case C-1/00, 2002 E.C.R. I-03493; Opinion Pursuant to Article 218(11) TFEU Draft Agreement, Creation of a Unified Patent Litigation System, CJEU Case C-1/09, 2011 E.C.R. I-01137.

[17] *See, e.g.*, Opinion Pursuant to Article 228(1) of the Draft Agreement Between the Community and the Countries of the European Free Trade Association Relating to the Creation of the European Economic Area (I), CJEU Case C-1/91, 1991 E.C.R. I-06079, para. 85; Opinion Pursuant to Article 218(11) TFEU Draft Agreement, Creation of a Unified Patent Litigation System, CJEU Case C-1/09, 2011 E.C.R. I-01137, para. 63.

[18] Opinion 2/13 at paras. 201–14.

[19] Nico Schrijver, *The MOX Plant Case – A Litigation Saga Without a Pronouncement on the Merits*, *in* THE MOX PLANT CASE (IRELAND V. UNITED KINGDOM): RECORD OF THE PROCEEDINGS 2001-2008 1–18, 2 (Permanent Court of Arbitration ed., 2010).

[20] *Id.*; MOX Plant at para. 21.

[21] Schrijver, *supra* note 19, at 2.

occasions in the mid-to-late 1990s, claiming *inter alia* that the United Kingdom had failed to properly address the Plant's environmental consequences in the planning stages, and that the plant lacked economic justification as required under Union law.[22] In 2001, when the plant was about to become operational, Ireland initiated proceedings against the United Kingdom under both the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)[23] and the United Nations Convention on the Law of the Sea (UNCLOS).[24]

Because the UNCLOS is a so-called mixed agreement, to which both the Union itself and its member states are parties, the European Commission requested that Ireland provide documentation concerning the dispute—including its pleadings in the UNCLOS arbitration.[25] Then, having found that Ireland had failed to respect the CJEU's exclusive jurisdiction, the Commission brought an action against Ireland before the CJEU.[26] The CJEU concluded that Ireland had failed to fulfill its obligations under what is now TFEU Article 344 by instituting proceedings against the United Kingdom under the UNCLOS Part XV.[27]

Viewing *Opinion 2/13* in the light of *MOX Plant* is revealing because both cases concern mixed agreements with provisions on inter-party dispute resolution that have very similar features. Given the similarities, one would expect the CJEU to have employed conforming reasoning. However, as I will demonstrate below, the reasoning in the two cases cannot be reconciled. To show this as clearly as possible I will analyze how the CJEU interpreted and applied TFEU Article 344 in *Opinion 2/13* and distinguish this interpretation from the approach taken in *MOX Plant*.

C. Comparing the CJEU's Approach to TFEU Article 344 in *Opinion 2/13* and *MOX Plant*

In the relevant part of *Opinion 2/13*,[28] the CJEU first points out that "an international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the EU legal system," and that this principle "is notably enshrined in"

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[22] *Id.* at 2–3; MOX Plant at paras. 30–48.

[23] Convention for the Protection of the Marine Environment of the North-East Atlantic, Sept. 22, 1992, 32 I.L.M. 1069.

[24] United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter UNCLOS].

[25] Schrijver, *supra* note 19, at 10; MOX Plant at paras. 53–54.

[26] MOX Plant at paras. 55–57.

[27] *Id.* at para. 184.

[28] Opinion 2/13 at paras. 201–14.

TFEU Article 344.[29] In doing so, it refers *inter alia* to the *MOX Plant* case.[30] Second, the Court notes that it is precisely because of that case law Article 3 of Protocol (No. 8) was drafted so as to expressly provide that the Accession Agreement must not affect TFEU Article 344.[31] The Court then explains that the ECHR would form an integral part of Union law following accession, and, consequently, the CJEU would have exclusive jurisdiction over any dispute between member states—or between one or more member states and the Union itself—regarding compliance with the ECHR. At this point, *Opinion 2/13* seems to be well in line with *MOX Plant* and the text of Protocol (No. 8).[32]

The CJEU then goes on to apply this interpretation of TFEU Article 344 to the Accession Agreement, contrasting the Accession Agreement with the UNCLOS:

> Unlike the international convention at issue in the case giving rise to the judgment in [*MOX Plant* paras. 124–125], *which expressly provided that the system for the resolution of disputes set out in EU law must in principle take precedence over that established by that convention*, the procedure for the resolution of disputes provided for in Article 33 of the ECHR could apply to any Contracting Party and, therefore, also to disputes between the Member States, or between those Member States and the EU, even though it is EU law that is in issue.[33]

It is true—and not disputed—that ECHR article 33 makes it possible for EU member states to launch inter-party complaints against each other, or the Union itself, before the European Court of Human Rights (ECtHR). But is the italicized language, restating *MOX Plant* and distinguishing it from the case at hand, really accurate? Let us look at the two paragraphs in *MOX Plant* that the Court cites in support of its distinction:

> It should be stated at the outset that the [UNCLOS] precisely makes it possible to avoid such a breach of the Court's exclusive jurisdiction in such a way as to preserve the autonomy of the Community legal system.

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[29] *Id.* at para. 201.

[30] *Id.*

[31] *Id.* at para. 203.

[32] MOX Plant at para. 123.

[33] Opinion 2/13 at para. 205 (emphasis added).

> It follows from Article 282 of the [UNCLOS] that, as it provides for procedures resulting in binding decisions in respect of the resolution of disputes between Member States, the system for the resolution of disputes set out in the EC Treaty must in principle take precedence over that contained in Part XV of the [UNCLOS].[34]

The CJEU's restatement of these two paragraphs in *Opinion 2/13* underplays the fact that in *MOX Plant* it was considered sufficient that UNCLOS article 282 merely "makes it possible" to avoid a breach of the CJEU's exclusive jurisdiction.[35] That is the threshold for compliance with TFEU Article 344: Possibility of member state compliance. After all, as pointed out in *MOX Plant*, "it is between two Member States in regard to an alleged failure to comply with Community-law obligations resulting from" TFEU Article 344.[36] The provision is directed at the member states, instructing them what to do when faced with different possibilities as to where to file a dispute that concerns Union law. The fact that UNCLOS Article 282 goes even a bit further, providing that the dispute resolution mechanisms of the Union shall take precedence over those contained in Part XV the UNCLOS, was not a decisive factor in *MOX Plant*.[37] The CJEU should therefore only rely on TFEU Article 344 to block agreements that would establish a conflicting obligation of exclusive jurisdiction.[38]

In *Opinion 2/13* the CJEU engages in a surprising reinterpretation of *MOX Plant*. There is no ambiguity in the new and stricter threshold. After describing that the accession to the ECHR would allow for the possibility of EU member states filing complaints against each

[34] MOX Plant at paras. 124–25 (emphasis added).

[35] Repeated by the CJEU in MOX Plant at para. 132.

[36] MOX Plant at para. 128.

[37] It might even be argued that neither UNCLOS Article 282 fulfills this requirement, as the final subclause of that article provides that forms of dispute resolution other than those laid down in its Part XV shall be used only "unless the parties to the dispute otherwise agree." It is thus possible for two member states to together submit a case concerning both Union law and the UNCLOS to a dispute resolution mechanism established under UNCLOS Part XV. This would of course entail a breach of Union law, notably TFEU Article 344 and TEU article 4(3), but that would not preclude the jurisdiction of the chosen Part XV dispute resolution mechanism.

[38] Following accession there would potentially be such a conflict between ECHR Article 55 and TFEU Article 344. However, this conflict is solved by Article 5 of the Accession Agreement, *supra*, note 3, which vacates the obligation under ECHR Article 55. It provides that proceedings before the CJEU "shall be understood as constituting neither procedures of international investigation or settlement within the meaning of Article 35, paragraph 2.*b* of the [ECHR], nor means of dispute settlement within the meaning of Article 55 of the [ECHR]." *See also* Opinion 2/13 at paras. 206–07.

other, or the Union itself, it unequivocally states that "[t]he *very existence of such a possibility* undermines the requirement set out in Article 344 TFEU."[39] Furthermore:

> [T]he fact that Member States or the EU are able to submit an application to the ECtHR is liable in itself to undermine the objective of Article 344 TFEU and, moreover, goes against the very nature of EU law, which, . . . requires that relations between the Member States be governed by EU law to the exclusion, if EU law so requires, of any other law.[40]

As to how this alleged incompatibility between TFEU Article 344 and the Accession Agreement may be solved, the CJEU insists that "only the express exclusion of the ECtHR's jurisdiction under Article 33 of the ECHR over disputes between Member States or between Member States and the EU in relation to the application of the ECHR within the scope *ratione materiae* of EU law would be compatible with Article 344 TFEU."[41] By choosing not to follow an interpretation that would allow for agreements with dispute resolution provisions as long as they make it possible for the member states to comply with TFEU Article 344, as laid down in *MOX Plant*, the CJEU in *Opinion 2/13* constructs a stricter approach, whereby the member states cannot even be given a theoretical possibility of breaching TFEU Article 344.[42]

The difference between the two approaches cannot be explained by reference to the specific legal situation surrounding the Accession Agreement. Admittedly, in the operative part of *Opinion 2/13* the CJEU does not explicitly state that the Accession Agreement is incompatible with TFEU Article 344. Rather, it states that the Accession Agreement is incompatible with TEU Article 6(2) because it is "is liable to affect" TFEU Article 344.[43] This is, however, merely a linguistic nuance caused by the structure of *Opinion 2/13*. Read in context, it is clear that TFEU Article 344 is one of the five separate and independent reasons for why the CJEU rejects the Accession Agreement.[44] Moreover, It would not make sense if the savings clause in Article 3 of Protocol (No. 8) to the constituent treaties of the

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[39] Opinion 2/13 at para. 208 (emphasis added).

[40] *Id*. at para. 212.

[41] *Id*. at para. 213.

[42] This is not only a departure from the CJEU's earlier case-law, as just demonstrated, but also in clear contrast to the views of the General Advocate. *See* View of Advocate General Kokott at paras. 107–20, Opinion Procedure 2/13, CJEU Case C-2/13 (June 13, 2014), http://curia.europa.eu/.

[43] Opinion 2/13 at para. 258.

[44] *See supra* note 7 and accompanying text.

Union[45]—which should be interpreted in light of the Union's obligation to accede to the ECHR under TEU Article 6(2)—imposed a stricter test when assessing the conformity of the Accession Agreement with TFEU Article 344 than what would otherwise apply. Additionally, considering that only the submission of disputes to methods of settlement "other than those provided for therein" is forbidden, one might even argue that, due to TEU Article 6(2), submission of disputes to the ECtHR is indirectly provided for in the constituent treaties.

If anything, the specific legal circumstances of the Union's accession to the ECHR seem to point towards a less strict application of TFEU Article 344. The fact that the CJEU nevertheless used the opportunity in *Opinion 2/13* to set stricter limitations leaves us with the perception that the Court is reining in the member states—perhaps in an attempt to bolster its claim of being the one and only apex court of Europe.

D. Conclusion

I. Consequences of the Reinterpretation

There are many mixed agreements that provide for dispute resolution without the safeguards that the CJEU now suddenly requires. If the CJEU chooses to follow *Opinion 2/13* in future cases—which one would expect given the fact that it was handed down by the full court—many mixed agreements that are already in place must be considered incompatible with TFEU Article 344. One example is the OSPAR Convention mentioned above.[46] Other potential examples include the Aarhus Convention,[47] the Convention on the Transboundary Effects of Industrial Accidents,[48] the TIR Convention,[49] and the United Nations Convention Against Transnational Organized Crime.[50]

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[45] *See* Protocol No. 8 to the Treaty on European Union, Dec. 13 2007, 2012 O.J. (C 326) 273.

[46] *See* Convention for the Protection of the Marine Environment of the North-East Atlantic, Sept. 22, 1992, 32 I.L.M. 1069.

[47] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Jun. 25, 1998, 2162 U.N.T.S. 447. Article 16 contains an opt-in clause for compulsory dispute resolution, with the choice of either the ICJ or arbitration as the forum. Some EU member states have opted in.

[48] Convention on the Transboundary Effects of Industrial Accidents, Mar. 17, 1992, 2105 U.N.T.S. 457. Article 21 contains an opt-in clause for compulsory dispute resolution, with the choice of either the ICJ or arbitration as the forum. Some EU member states have opted in.

[49] Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, Nov. 14, 1975, 1079 U.N.T.S. 89. Article 57 contains a compulsory arbitration clause, albeit allowing for reservations. Many EU member states, though, are parties without reservations as to arbitration.

[50] United Nations Convention against Transnational Organized Crime, Sept. 29, 2003, 2225 U.N.T.S. 209. Article 35 contains a compulsory dispute resolution clause, with the choice of either the ICJ or arbitration as the forum.

These consequences were not unknown to the Court. In fact, AG Kokott explicitly warned against them in her View:

> [I]f the aim in the present case is to lay down an express rule on the inadmissibility of inter-State cases before the ECtHR and on the precedence of Article 344 TFEU as a prerequisite for the compatibility of the proposed accession agreement with EU primary law, this would implicitly mean that numerous international agreements which the EU has signed in the past are vitiated by a defect, because no such clauses are included in them.[51]

Despite the stern warning from the Advocate General, this is exactly what the CJEU has done in *Opinion 2/13*—without even referring to her opposing view.

As for the practical effects of the incompatibility of agreements already in place with TFEU Article 344, the conflict would not invalidate those agreements as a matter of public international law. Although the decisions of the Union to conclude those agreements would be *ultra vires*, the Union cannot rely on its own law as justification for not fulfilling those agreements.[52] The Union and the member states, though, would be under the obligation to terminate those agreements or, if possible, opt out of the conflicting dispute resolution mechanisms.[53]

II. How Can Incompatibility with TFEU Article 344 Be Avoided?

For the negotiators that will now attempt to amend the Accession Agreement to accommodate *Opinion 2/13*—provided that this is possible, or even desirable[54]—it should

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Reservations against this clause are allowed, but several EU member states are parties without reservation. The UNCLOS might also serve as an example. *See supra* note 38 and accompanying text.

[51] View of Advocate General Kokott, *supra* note 42, at para. 117 (emphasis added).

[52] This follows from customary international law, as codified in the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, UN Doc. A/CONF.129/15 art. 46 (Mar. 21, 1986) (not in force). *See also* European Parliament v. Council and Comm'n (Passenger Name Records), CJEU Joined Cases C-317/04 and C-318/04, 2006 E.C.R. I-04721, para. 73.

[53] See European Parliament v. Council and Comm'n (Passenger Name Records), CJEU Joined Cases C-317/04 and C-318/04, 2006 E.C.R. I-04721, paras. 71–74.

[54] Peers (*supra* note 5) argues that accession is not desirable under the conditions of *Opinion 2/13*. Besslink suggests that amending the constituent treaties of the Union would be the preferred solution. *See* Leonard F. M.

be relatively simple to avoid incompatibility with TFEU Article 344. The negotiators could simply follow the rather clear instruction of the CJEU to exclude intra-EU disputes from the jurisdiction of the ECtHR.[55] A paragraph along the following lines could be inserted at the end of ECHR Article 33: "Applications by an EU member state, or the European Union, alleging a breach of the Convention by another EU member state, or the European Union, are inadmissible."

In addition to being legally trivial, it should be politically possible to get the non-EU parties to the ECHR to accept such an amendment. This is because disputes between non-EU states and EU member states (or the Union itself) could still be brought before the ECtHR. Thus, non-EU member states have little to lose from an intra-EU exclusion. Moreover, there is precedence for including so-called "disconnection clauses" in treaties negotiated under the auspices of the Council of Europe.[56] Such clauses are even more extensive than the suggestion above, in that they exclude or limit the application of the entire treaty between the EU member states and the Union.

III. Outlook

The reinterpretation of TFEU Article 344 in *Opinion 2/13* is not critical to the process of EU accession to the ECHR. However, it is of significance to future negotiations of mixed agreements, and of critical and potentially devastating importance for many mixed agreements the Union has already concluded. We can only speculate whether the CJEU will adjust its approach—and thus reveal that its apparent reinterpretation of TFEU Article 344 in *Opinion 2/13* was just a means to reach the Court's ultimate goal of rejecting the Accession Agreement—or if it will confirm the change of course, forcing the Union and its member states to adapt.

Besslink, *Acceding to the ECHR Notwithstanding the Court of Justice Opinion 2/13,* VERFASSUNGSBLOG (Dec. 23, 2014), http://www.verfassungsblog.de/en/acceding-echr-notwithstanding-court-justice-opinion-213/.

[55] Opinion 2/13 at para. 213.

[56] For an overview of this practice, and a typology of "disconnection clauses", see Kamala Dawar, *Disconnection Clauses: An Inevitable Symptom of Regionalism?* (Online Proceedings of the Society of International Economic Law Working Paper No. 2010/11, 2010), http://papers.ssrn.com/abstract=1632433.