Contents

| 1 | Introduction | 1 |
|---|---|-----|
| | I. An Introduction to the Membership of the European Union and Its | |
| | Member States in the WTO | 1 |
| | II. Preliminary Issues of the Joint Responsibility Regime Under | |
| | the WTO Agreement | 4 |
| | III. Introductory Case | 6 |
| | 1. Case Brief: EC – Asbestos | 6 |
| | 2. A Critical Assessment of EC – Asbestos | 10 |
| | a. A Latent Message of EC – Asbestos and Some Methodological | |
| | Issues | 10 |
| | b. The Missing Passive Legitimation Proceedings of the EU | |
| | at the EC – Asbestos | 12 |
| | c. The Relevance of the Division of Powers for the DSP | 14 |
| | d. The Causal Link Between the Disputed Measure and EU | 1.5 |
| | Legislation | 15 |
| | e. Justification of the Contested Measure from the EU | 17 |
| | f. Findings on the Contested Measure and Its Consequences g. Theoretical Implications of the Membership of the EU and Its | 19 |
| | Member States in the WTO: The 'Formal-Substantive' Gap | 19 |
| | h. From Answerability to Liability | 21 |
| | i. The Attribution of Liability and the Distribution of Burden | 41 |
| | for Violating WTO Disciplines | 22 |
| | j. Complying with the DSB Rulings or Recommendations | 25 |
| | IV. Concluding Remarks and the Structure of the Work | 27 |
| | References | 28 |
| _ | | |
| 2 | Perspectives from the International Law of Responsibility on the | |
| | Joint Responsibility Regime of the EU and Its Member States | 31 |
| | I. Introduction | 31 |
| | II. Theoretical Aspects of the International Law of Responsibility | 31 |
| | | |

xxiii

xxiv Contents

| 1. General Insights on International Responsibility | 31 |
|---|-----|
| 2. The Legal Definition and the Content of International | |
| Legal Responsibility | 33 |
| 3. The Nature of International Responsibility | 36 |
| III. International Responsibility According to legi generali | 40 |
| 1. The Internationally Wrongful Act and the Attribution | |
| of Conduct to States and International Organizations | 40 |
| 2. The Breach of International Obligations | 46 |
| 3. The Rules of Justification of the Internationally Wrongful Act | 48 |
| 4. The Content and Implementation of the Regime of International | |
| Responsibility | 49 |
| IV. General Rules of Joint Responsibility of States and International | |
| Organizations | 54 |
| 1. The Content of the Joint Responsibility Regime | 54 |
| 2. The Modes of Incurring Joint Responsibility | 55 |
| 3. The Sources of Joint Responsibility of International Organizations | |
| and Their Member States | 58 |
| a. Joint Responsibility for Acts Attributed to International | |
| Organizations | 60 |
| b. Joint Responsibility for Acts Attributed to Member States | 63 |
| 4. General Limitations on the Attribution of Joint Responsibility | 67 |
| 5. Division of Reparations in Joint Responsibility Regimes | 68 |
| 6. Indirect Devolution of Responsibility Among the Membership | |
| of the International Organization by Virtue of Vicarious | |
| Responsibility | 70 |
| V. International Legal Responsibility in the Context of lex specialis | |
| Regimes | 72 |
| 1. The WTO Agreement as lex specialis for the International Legal | |
| Responsibility | 73 |
| 2. The EU Legal Order as lex specialis for the International | |
| Responsibility | 79 |
| VI. Conclusion | 88 |
| References | 91 |
| | |
| International Responsibility in Mixed Agreements: The Case | 05 |
| of the WTO Agreement | 95 |
| I. Introduction | 95 |
| II. The Relevance of the Vertical Distribution of Powers for the | 07 |
| WTO Agreement | 97 |
| 1. Overview of the Structure of Powers in the EU Polity | 97 |
| 2. The Significance of the Exclusive Competence of Common | 101 |
| Commercial Policy for the WTO Membership | 101 |
| 3. Implications of the Distribution of Powers for the Joint | 104 |
| Membership in the WTO | 104 |

3

Contents xxv

| | III. The Effect of the WTO Agreement on the Legal Orders of EU | |
|---|--|------------|
| | and Its Member States | 114 |
| | 1. The Interpretation of Mixed Agreements from the ECJ | |
| | and Issues of Jurisdiction | 114 |
| | 2. The Effect of the WTO Agreement on the Legal Orders of the EU | |
| | and Its Member States | 119 |
| | 3. The Effect of the WTO Agreement in Light of the Challenges | |
| | of Legal Pluralism | 125 |
| | 4. The Consequences of the Denial of Direct Effect of the WTO Agreement | 126 |
| | IV. The Joint International Responsibility of the EU and Its Member | 120 |
| | States in the WTO Agreement | 130 |
| | V. Conclusions | 140 |
| | References | 142 |
| | | 1-12 |
| 4 | The Responsibility of the Union Polity in the WTO in Light of the | |
| | Constitutional Framework of Principles | 145 |
| | I. Introduction | 145 |
| | II. The Principle of the Rule of Law as a Premise for Justice and Unity in the Union | 147 |
| | III. The Unity of the EU Legal Order Through the Principle | 14/ |
| | of Effectiveness and the Predictions for the Joint Participation | |
| | in the DSP | 149 |
| | 1. The Relevance of the Principles of Primacy and Autonomous | 147 |
| | Legal Order for the Joint Membership of the EU and Its Member | |
| | States in the WTO Agreement | 152 |
| | 2. The Decision of the EU to Participate in the DSP in Light | |
| | of the Principles of Direct Effect and Direct Applicability | 156 |
| | 3. The Predictions of the Principles of Comprehensive Legal | |
| | Protection and State Liability for the Breach of WTO Obligations | |
| | from the Union Polity | 159 |
| | IV. The Predictions of the Principles of Political Organization for | |
| | the Normative Model of the Union Participation in the DSP | 164 |
| | 1. The Claim of Authority and the Principle of Dual Legitimacy | 165 |
| | 2. The Structural Compatibility and the Rejection of the | 166 |
| | Constitutional Homogeneity | 166 166 |
| | 4. The Principle of Loyalty as a Premise for Managing the Fallacies | 100 |
| | of the Joint Responsibility Regime | 168 |
| | a. Doctrinal Perspectives on the Principle of Loyalty | 169 |
| | b. The Legal Framework of the Principle of Loyalty | 173 |
| | c. The Principle of Loyalty in the ECJ Jurisprudence | 175 |
| | d. The Relevance of the Principle of Loyalty for the Fallacies | ~ |
| | of the Joint Responsibility Regime | 179 |

xxvi Contents

| | V. The Political Processes Under the Rule of Law Principle | |
|---|--|-------------|
| | and the Predictions for the Fallacies of the Joint Responsibility | 40. |
| | Regime | 186 |
| | for the EU and Its Member States | 187 |
| | 2. The Principle of Conferral and the Implied Powers Doctrine | 188 |
| | 3. The Federal Balance in the Union and Its Relevance | |
| | for the Membership of the EU and Its Member States in the WTO | 192 |
| | a. The Vertical Division of Powers | 193 |
| | b. Principles of Subsidiarity and Proportionality VI. Concluding Remarks: The Principle of Institutional Balance | 195 |
| | as a Premise for the Membership of the EU and Its Member States | |
| | in the WTO | 201 |
| | References | 207 |
| 5 | A Model for the Union Participation in the DSP and the Management | |
| | of the Responsibility Concerns | 211 |
| | I. Introduction | 211 |
| | II. The Management of the Problems of Mixity: A Focus on the | |
| | Consequences of the Joint Responsibility Regime | 212 |
| | III. Formalization Versus Flexibility of the Union Participation | |
| | in the DSP | 221 |
| | IV. The Premises of the Normative Model of the Union Participation | |
| | in the DSP | 223 |
| | 1. The Premises Related with the International Law | |
| | of Responsibility | 224 |
| | 2. The Premises Related with Mixed Agreements and Particularly | |
| | the WTO Agreement | 227 |
| | 3. The Premises of the Constitutional Framework of Principles | 229 |
| | V. The Modelling of a Normative Construction for the EU | 222 |
| | Participation in the DSP | 233 |
| | 1. General Remarks on the Normative Model | 234 |
| | a. The Formal Aspects of the Normative Model | 234 |
| | b. The Normative Choice of the Model | 238 239 |
| | c. The Reconceptualization of the Joint Responsibility Regime d. The Constitutional Value of the Model | 239 |
| | e. The Relation of the Model with the Current Practice | 241 |
| | 2. The Content of the Normative Model | 241 |
| | a. The Conditions and the Processes of the Union Participation | 242 |
| | in the DSP | 242 |
| | b. The Management of the Consequences of the Union | 242 |
| | Participation in the DSP | 255 |
| | VI. Concluding Remarks: The Normative Model in Light | 4 33 |
| | of the Principle of Transparency | 266 |
| | References | 269 |
| | | |

| Contents | xxvii |
|----------|-------|
| | |

| 6 | Summary and Conclusions | |
|----|-------------------------|-----|
| Bi | bliography | 281 |