BOOK REVIEWS

The Relationship Between State and Individual Responsibility for International Crimes by Beatrice I Bonafè [Martinus Nijhoff Publishers, Leiden, 2009, 284 pp, ISBN 978-90-04-17331-6, $106 (h/bk)]

The regimes relating to aggravated State responsibility and individual criminal liability have received widespread attention over a number of years, resulting in the publication of a substantial body of academic literature. Whilst this work has largely displayed a tendency of treating the regimes of responsibility as separate from one another and, at most, merely acknowledged that there is an overlap between them, a growing international practice has begun to emerge which has considered the respective liability of both States and individuals for the commission of the same international crime. Recent attention has therefore turned to the important issue of whether one regime of international responsibility may have a role to play in the establishment of liability in the other. Bonafè's monograph is accordingly a timely and much welcomed publication, as it provides both a detailed assessment and systematic analysis of the relationship between aggravated State responsibility and individual criminal liability for international crimes.

The study divides itself into three parts. Part I comprises two introductory chapters which outline the general framework that is used to examine the various points of contact between the dual systems of responsibility. Integral to this framework is the identification of two opposing theoretical schemes which conceptually explain the relationship in an entirely different manner. These schemes are revisited throughout the study when discussing the problems found to exist in the case law. In addition, the terminology of the concepts used by the study are clarified in part I. At the outset Bonafè makes clear that the term 'international crimes' is used to refer to very serious breaches of customary international law which entail State responsibilty; it is employed, according to her, for reasons of simplicity and does not suggest that international law provides for a criminal regime of State responsibility (p 11).

Part II of the study evaluates the overlap between State and individual responsibility for international crimes found in international practice. Each chapter in this part provides a detailed consideration of the problematic issues surrounding the relationship between the two regimes of responsibility at the various points of contact.

Chapter 3 is concerned with the overlap between the dual systems of responsibility found in the material element of international crimes. The analysis here—like in all of the other chapters—is detailed, rigorous and well argued. However, the discussion may have benefited from the relationship between international crimes themselves being considered more fully and explained in certain places to support the conclusions drawn by the study. Thus, Bonafè contends that single acts of torture entail only individual criminal liability; however, when carried out in a widespread and systematic manner, they satisfy the seriousness requirement and thereby also entail aggravated State responsibility (pp 82 and 114). The finding that torture committed in this context may entail aggravated State responsibility should have been supplemented with an explanation on precisely how—if at all possible—this conduct was not to be regarded as a crime against humanity. The close relationship between these two crimes was indeed recognised by Bonafè when considering the categories of international crimes forming the basis of the study in the general framework outlined in part I (pp 29–31).

Continuing with the basic elements of liability for international crimes, Chapter 4 moves on to consider the issue of whether the dual systems of responsibility enjoy a relationship with regard to the psychological element of international crimes. Although controversy surrounds the existence of a requirement of fault for the establishment of State responsibility, certain international crimes must, by definition, be perpetrated with an intent to commit the impugned conduct. Bonafè accordingly explores recent international practice to determine whether the psychological element in the different regimes are either identical or different.

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Chapter 5 considers the overlap between defences under international criminal law and circumstances precluding wrongfulness under the law of State responsibility. It discusses whether the two are to be interpreted and applied in a consistent manner in so far as they overlap. In addition, the chapter explores the interesting question of whether a circumstance precluding wrongfulness may prevent an individual being held criminal liable in a situation where the State has not acted unlawfully. Chapter 6 analyses the specific modes of liability by which individual criminal liability is ascribed to the participants in collective criminality.

Finally, Chapter 7 examines the international bodies charged with establishing State and individual responsibility for international crimes and seeks to challenge the strict separation between them. Bonafè thus notes that the application of the rules on attribution found in the law of State responsibility by the international criminal tribunals provide a clear point of contact between the two systems of international responsibility (p 194). However, the precise closeness of this relationship must be called into questioned given that the ICJ and ICTY have both applied the rule on State attribution differently. One further connection between the international bodies in establishing responsibility discussed by Bonafè is the role of the Security Council in dealing with both State and international responsibility.

The concluding two chapters in part III provide a theoretical framework which attempts to explain the various points of contacts between the two regimes found in the international practice. Part III completes the study and makes the book work as a whole by drawing together all of the threads identified in the earlier analysis. By elaborating a general framework explaining the relationship between the two systems of responsibility which is based upon a meticulous examination of the international practice, Bonafè's work will no doubt be both heavily and widely referred to in the future. In particular, the study will be referred to for many years to come as the theoretical framework proposed by Bonafè is a flexible one that may take into account any future developments in this field.

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Evidence, Proof, and Fact-Finding in WTO Dispute Settlement by Michelle T Grando [Oxford University Press, Oxford, 2009, 350 pp, ISBN 978-0-19-957264-9; £70 (h/bk)]

The establishment of the World Trade Organization (WTO) in January 1995 accompanied an increase in the regulation of international trade. Inevitably, the number of disputes between the 153 members also increased. In his Foreword, William J Davey, a past Director of the Legal Affairs Division of the WTO, observed that civil and common law lawyers often experienced difficulties in communication, and, as Michelle T Grando illustrates, these difficulties are not necessarily solely because of language, but also as a result of the legal concepts, cultural norms and rules of evidence that divide jurisdictions across the world. Arguably, the central and most valuable aspect of this interesting text is the useful discussion of the theoretical issues of how fact-finding should be conducted and the burden of proof allocated. For this reason, the fact that the text is restricted to the WTO dispute settlement process should not inhibit the lawyer and legal scholar from including this book in their reading list.

The Dispute Resolution Body of the WTO does not contain many rules to guide panels in the process of fact-finding. Those rules that are set out are general in nature. This means that the panels and Appellate Body must deal with any questions that arise, case-by-case. In the light of this, the author sets out to determine the following:

i The extent to which panels and the Appellate Body have developed optimal rules to govern the process of fact-finding through existing jurisprudence and, to the extent that this has not been the case,
ii how that goal could be achieved.

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