

*Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie* by MAURIZIO RAGAZZI [Martinus Nijhoff Publishers, Leiden, 2013, 470pp, ISBN: 978-90-04-25607-1, €129.21 (h/bk)]

As Ian Brownlie noted in his *State Responsibility* – Part I (1983), ‘the concept of responsibility is both very simple and yet sophisticated’. This observation is well illustrated by the topic of the responsibility of international organizations. While no one doubts that international organizations may be responsible for their wrongful acts, the details of that responsibility have been subject to intense debates for at least two decades. Most recently, these debates have found their expression in the drafting of the Articles on the Responsibility of International Organizations (ARIO), as adopted by the International Law Commission (ILC) in 2011. Against this background, it is fitting that Maurizio Ragazzi chose the topic of *Responsibility of International Organizations* to edit a collection of *Essays in Memory of Sir Ian Brownlie*. As with his *International Responsibility Today: Essays in Memory of Oscar Schachter* (2005), Ragazzi proved his instinct by identifying the need for the more extensive treatment of an important topic of international law.

The elaboration of the ARIO has led to an increasing number of publications on the responsibility of international organizations. In comparison to other works on the topic, the strength of *Responsibility of International Organizations* lies undoubtedly in the great diversity of both its authorship and content. Ragazzi has succeeded in bringing together distinguished contributors from the International Court of Justice (ICJ), the ILC, academia and different international organizations. Some of these contributors participated in drafting the ARIO, others shaped them through their comments, and yet others have applied them in legal practice. Although the contributors were free in choosing their topics, the 34 chapters contained in the edited volume treat the most central aspects of the ARIO and controversies related to the codification of rules and principles pertaining to the responsibility of international organizations.

Part One of the book addresses one of these major controversies, namely that of the mixture between codification and progressive development in drafting the ARIO. Antônio A Cançado Trindade and Kenneth Keith discuss the ARIO against the background of the ILC’s previous work on international organizations. Sean Murphy examines the question of ‘packaging’ of the outcome of the ILC’s work as ‘draft articles’. Since the ILC did not suggest packaging the ARIO as a convention, Michael Wood proposes several factors to assess to which extent the ARIO reflect customary international law. Alain Pellet observes that the ILC’s choice to draft the 2011 ARIO on the basis of the 2001 Articles on State Responsibility (ASR) may strengthen the overall system of international responsibility.

Indeed, the parallels between the ASR and ARIO constitute a second major source of controversy regarding the ARIO. Whereas CF Amerasinghe considers the close analogies between the ASR and ARIO as ‘acceptable and correct’ (76), both Chusei Yamada and Vincent-Joel Proulx question the necessity and appropriateness of adopting the ARIO in the first place. Dan Sarooshi observes a gap between the two parallel sets of Articles, which do not take sufficient account of the different degrees of conferrals of powers from States to international organizations. The fact that the parallel provisions in the ASR and the ARIO might not always have the same legal effects is illustrated by Maurizio Arcari’s discussion of the ‘without prejudice to the Charter of the United Nations’ provisions in both the ASR and ARIO. Although the ILC adopted many provisions *mutatis mutandis* from the ASR, Tullio Scovazzi argues that the ARIO also go beyond the ASR.

A third controversy in drafting the ARIO concerns the so-called rules of the organization, which are not considered equivalent to the internal law of the State. As discussed by Kristen Boon, many international organizations claim that their rules form *lex specialis* in relation to the general rules of international responsibility. Discussing the differences between ‘practice’, ‘established practice’ and ‘subsequent practice’ with regard to the rules of the organization, Emmanuel Roucouas contributes to clarifying the meaning of the rules of the organization. Moreover, Arnold Pronto reiterates that the ILC declined to equate the *lex specialis* rule with the principle of speciality (158). Delineating the scope of application of the ARIO, Pronto also emphasizes that the ARIO were never meant to deal with complex cases but rather with a model scenario.

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This observation is important in understanding the views by contributors from international organizations expressed in Part Three of the edited volume. International organizations have repeatedly criticized the ARIО for not reflecting their special rules and complex operations. Taking the perspective of the World Health Organization (WHO), Gian Luca Burci and Clemens Feinäugle examine the attribution of the conduct of UNAIDS to the WHO and the *lex specialis* nature of the International Health Regulations. Daphna Shraga analyses the interplay between UN practice and the formation of specific rules in the ARIО. She concludes that several provisions of the ARIО are not representative of UN practice. José Manuel Cortés Martín addresses the question whether the law of the European Union (EU) can be seen as *lex specialis* in relation to the ARIО. While recognizing the possibility of emerging EU *lex specialis*, he emphasizes that the allocation of responsibility between the EU and its Member States should not take place at the expense of third parties.

Shared responsibility also characterizes the ‘complex collaborative settings’ (223) of partnerships among international financial institutions, which are examined by Laurence Boisson de Chazournes. Ross Leckow and Erik Plith then offer some reflections on the ARIО from the perspective of two lawyers from the International Monetary Fund (IMF), while Maurizio Ragazzi explains the various informal contacts that shaped the World Bank’s comments on different versions of the ARIО. As a former legal counsel to the Holy See, Robert Araujo makes clear that the rule of law is an essential reason why international organizations should be held accountable for their wrongful conduct. In this regard, Rutsel Silvestre J Martha offers a critical discussion of the ICJ’s 2012 Advisory Opinion on the Global Mechanism in which the Court confirmed the jurisdiction of the ILO Administrative Tribunal over the International Fund for Agricultural Development (IFAD). Despite certain trends towards more accountability of international organizations, John Dugard and Annemarieke Vermeer-Künzli use the Middle East Quartet to illustrate that States and international organizations can effectively establish entities to avoid responsibility.

The controversial topic of member state responsibility is discussed in more detail in Part Four of the book on ‘Special Concerns’. In view of the protection of innocent third parties, Kazuhiro Nakatani argues that member states should be responsible if an organization has a small membership or limited resources. Paolo Palchetti explores the obligation of members to enable the organization to make reparation (Article 40 of the ARIО), while Pavel Šturma examines the provisions in the ARIО concerning the responsibility of an international organization/State in connection with the act of a State/international organization (Chapter IV of Part Two of the ARIО/Part Five of the ARIО). Finally, Sienho Yee criticizes the lack of an explicit provision on member state responsibility, but considers Articles 61 and 40 of the ARIО ‘a half-step forward in that direction’ (335).

A special concern with regard to the responsibility of international organizations is also the justiciability of disputes. This is why Sergio Puig advocates the establishment of ‘[n]ew(er), less formal and more adaptable mechanisms that go beyond traditional contentious proceedings’ (349). As Hugh Thirlway explains, the implementation of the ARIО will not have any direct impact on the work of the ICJ, which might still be faced with cases concerning international organizations, e.g. under its indispensable third parties rule. As an alternative to judicial remedies, Antonios Tzanakopoulos submits that member states can take countermeasures of disobedience in reaction to the wrongful acts of an international organization. In this context, Simone Vezzani wonders whether the ARIО’s limitations on taking such countermeasures are not too narrowly formulated.

The book also includes a number of contributions on the topic of use of force and peace operations, which received particular attention in drafting the ARIО. In this regard, Blanca Montejo argues that the ‘effective’ control test in Article 7 of the ARIО is relatively novel. Comparing it with different provisions in the ASR, she submits that the function of Article 7 of the ARIО is to determine to which entity a particular conduct is attributable. PS Rao then analyses the possible responsibility of the UN for authorizing the use of force on the basis of different peace operations, even if the UN does not exercise effective control. Lastly, Francesco

Salerno explores the conditions for the existence of an 'organic link' between the UN and 'Blue Helmets' contingents. He suggests that such an organic link exists also in situations where States retain disciplinary power and possibly even jurisdiction over their troops.

All in all, the various essays in memory of Sir Ian Brownlie are very well written and skilfully arranged. They provide the reader with unique insights into the drafting and reception of the ARIO by both expert practitioners and academics. While the views of the different contributors sometimes diverge considerably, they all agree on one fundamental issue: the ultimate value and success of the ARIO will be determined in future practice. As Leckow and Plith note in their chapter, 'the Commission has put in motion a body of critical thinking on the implications of the legal status of international organizations at a time when intergovernmental collaboration is growing in importance' (234). The *Essays in Memory of Sir Ian Brownlie* constitute an important part of this emerging body of critical thinking and will certainly contribute significantly to the further development of the law of international responsibility.

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*Corruption: Economic Analysis and International Law* by MARCO ARNONE and LEONARDO S BORLINI [Edward Elgar, Cheltenham, 2014, 672pp, ISBN 978-1-84-980266-6, £125.00 (h/bk)]

According to a recent research conducted by the World Economic Forum, 67 of 144 States have named corruption as one of the three major obstacles to doing business in their countries. Furthermore, it is estimated that the cost of corruption (in other words, losses caused by the spread of corruption) amounts to more than five per cent of world GDP (or \$2.6 trillion).

Although corruption 'has been 'ubiquitous' throughout human history and in all kinds of societies' (B Buchan and L Hill, *An Intellectual History of Political Corruption*, Palgrave Macmillan, 2014, at 1), there are many economic, cultural, social and even religious factors that still prevent the implementation of an effective global fight against corruption. The first anti-corruption convention at the supranational level was adopted by the European Union in 1997, closely followed by the 1999 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN 2003 Convention against Corruption.

The first merit of the late Marco Arnone and Leonardo Borlini book *Corruption: Economic Analysis and International Law* is the decision to investigate such a complex phenomenon focusing on the relationship between the economic aspect and the legal rules. As the authors note (19) 'attacking corruption with effective countermeasures requires understanding and targeting its key determinants'. In that perspective, the basic assumption of the book is that the connection of economic analysis with legal rules can shed light on one of the contemporary most sensitive and serious challenges to the rule of law and democratic society.

The book is composed of two parts. Part I, which is devoted to the economic analysis of corruption, is composed of three sections (for a total of seven chapters). In the first section (13–90) the authors investigate the effects of corruption at the micro- and macroeconomic level, as one of the most serious distortions of the competitive well-functioning of regulated markets and in terms of systemic costs caused in national economies. The second section (91–149) is on the impact of corruption on financial markets and instruments (an area that has until now only sporadically and unsystematically been explored by economic doctrine). To this end, the operation of politically connected firms in advanced economies has been taken into account (with a specific focus on the impact of corruption on shares' return for a sample of 1085 industrial companies belonging to the Eurozone countries in the period 1996–2006), as well as microfinance institutions in Asia, Africa and Latin America. Section 3 (153–79) closes the

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