BOOK REVIEWS

State Responsibility for Transboundary Air Pollution in International Law, by Phoebe Okowa, Oxford University Press, Oxford, 2000, ISBN 0-19-826097-0, 318 pp., UK£65 (hardback).

This book is the revised text of the author's doctoral thesis, written under the supervision of Professor Ian Brownlie, and published as part of the Oxford Monographs in International Law series. The aim of the book is to remedy the defaulting of current materials to explicitly address the legal implications of transboundary air pollution, especially in regard to the applicability of existing norms of state responsibility, the difficulties surrounding the proof of causality, and the determination of appropriate remedies.

The study underpins a number of important conclusions relating to the obstacles states may face when seeking compliance with international air pollution obligations. A first problem identified by the author is that the main treaties regulating transboundary air pollution often lack specificity. Moreover, the generality of provisions, qualified compliance, and claw-back clauses not only limit the scope of external scrutiny, but make it difficult to monitor state compliance. This is obviously the result of international standards being the product of a bargaining process rather than an appropriate response to a serious problem identified on the strength of scientific evidence (p. 257). Secondly, procedural safeguards have not attained the status of customary law, and in instances where such safeguards have made it into treaty law they still provide a weak form of protection. This the author ascribes to the fact that treaty provisions "do not contain inescapable requirements that proposed activities should be enjoined if they entail a serious risk of transboundary harm; nor that a state proposing the conduct of an activity that entails serious transboundary harm should take specific measures for the protection of its potential victims" (p. 258). Thirdly, state responsibility for damage resulting from radioactive communication lacks a precise basis and operates retrospectively in any event, leaving prevention of injury insufficiently covered by existing norms, a problem which is enhanced by the reluctance of international tribunals to grant injunctions in the absence of an express power to do so. The remedy, the author argues, is to make express provision for compulsory dispute settlement in treaty regimes and to include a clear statement of principles that will permit international tribunals to order injunctions (p. 259).

Another obstacle, which relates to the unique feature of transboundary air pollution obligations, is the multi-lateral, as opposed to bilateral, fusion of relationships which causes all state parties to either become victims or sources of transboundary air pollution. A state bringing an action will therefore lay itself open to claims from other states, which explains the reluctance of states to initiate claims. The conspicuous absence of state

14 Leiden Journal of International Law 477–493 (2001)

claims in the aftermath of the Chernobyl accident is a case in point. Although proof of causality could have presented a legal obstacle in some cases, the author draws our attention to the larger picture of political expediency, the dictates of which may offer some explanation for the absence of claims, rather than the absence or laxity of normative standards. Thus, political reasons to be considered, included the need to secure Soviet co-operation in proposed multi-lateral treaty arrangements, which could have been undermined by legal claims, and the danger of setting examples for claims by states who themselves possessed nuclear reactors (pp. 126–127).

These and other conclusions and proposals are arrived at through an analysis of the factual background of the specific forms of harm against which the legal rules operate (Chapter 1); followed by an exposition of the treaty regime regulating transboundary air pollution (Chapter 2); the applicability of general international law norms, concepts and principles (Chapters 3 and 4); the procedural obligations of states (Chapter 5); the principles of state responsibility (Chapter 6); judicial remedies (Chapter 7); and non-judicial methods of supervision and enforcement (Chapter 8).

Of notable importance is the explanation in Chapters 3 and 4 of the role general principles of international law, including customary law, could play in remedying shortcomings in the treaty regime on state responsibility for transboundary air pollution. Apart from the discussion on territorial sovereignty and its embodiment of state rights and duties, the real significance of these chapters stems from the treatment of the concept of strict liability with reference to the due diligence requirement (p. 77 *et seq.*). The usefulness of this part is enhanced by an exposition of the influence emerging principles in the field of environmental protection could have on the interpretation of the due diligence obligation of states. Sustainable development is one such emerging principle. In this regard, the author points out that measures to protect the environment cannot be divorced from issues of state capacity and other developmental concerns, with the result that protective measures cannot be absolute and that a certain amount of transboundary pollution will have to be tolerated by the victim state if the latter has responded properly within the confines of its ability (p. 84). Other emerging principles are the principle of precaution and the duty to carry out environmental impact assessments. As the author noted, the taking of precautionary measures may include impact assessments before a state embarks on an activity that may lead to serious transboundary harm (p. 85). Whatever the approach, the requirement of precautionary measures can affect the position of a party as illustrated by the 1995 *Nuclear Tests* cases and the 1997 *Gabčikovo-Nagymaros* case. According to the author, "the evidence of state practice nevertheless supports the view that the conduct of an appropriate environmental impact assessment, or an equivalent mechanism, will in most cases be an important means of discharging the *due diligence* obligations imposed on states" (pp. 87–88).

What is also pointed out is the link between impact assessments and the duty to notify. If a state uncovers the potential harmful effects of a proposed activity through an environmental impact assessment, the information contained in the results of the assessment ought to be made available to any state that could be a potential victim of the harm. The obligation to notify

> requires the source state to inform the state that might be affected of any activity on its territory (either planned or actual) which it considers dangerous, and to provide that state with all the necessary information relating to the nature of the activity, the risks that it entails, as well as the injury it may cause. This is to enable the potentially affected state to make its own evaluation of the situation. The notification is also intended to provide the parties with an opportunity for finding an amicable solution to the problems raised, taking into account the interests of both the source state and the affected state. (p. 136)

Another issue, of special interest from the point of view of legal responsibility, is the test of causality. This matter is discussed in some detail in Chapter 6, based on decisions of international tribunals as well as municipal courts. The first test of causality is objective and depends on the existence of a proximate link between the harm done and the delictual conduct. The second test is subjective and involves "a factual appreciation of the situation, as well as a policy choice as to which of the consequences of a defendant's act should attract responsibility." As such the element of the foreseeability of the harm comes into play (pp. 180–181). The author highlights two problems that arise in the determination of the cause/effect relationship. Firstly, scientific uncertainty, the cumulative effect of pollution processes at different times and places, and the complicated atmospheric processes pollutants undergo, make it difficult to determine causality and foreseeability. This is even more so in the case of nuclear pollution which is further complicated by the latency of radioactive harm, the uncertainties surrounding radiation-induced injuries and the indirect ways in which contamination can occur (p. 185). A second problem involves the apportionment of responsibility. Basically, the question here is whether states should be held responsible for their relative contribution to the delictual harm, or should any one be held jointly and severally responsible for the whole loss?

Instead of allowing evidentiary difficulties to preclude legal responsibility, the author, invoking decisions by national courts, argues for tribunals to act upon "probable and inferential evidence" as well as "direct and positive proof" (p. 187). Especially in view of the problems posed by long-range pollution, courts should "take a broad view of causation, and in principle a state should be held responsible if on the facts it can be established that its conduct materially contributed to the damage suffered by the plaintiff, even if other factors and causal agents also entered into the equation" (p. 188). Although the apportionment of responsibility between several contributing actors will usually depend on the facts, the

author is of the opinion that the above approach is equally applicable in questions of apportionment.

These and other thought-provoking matters make Phoebe Okowa's book a commendable and well-researched contribution to the thorny issue of state responsibility for transboundary air pollution. The informative quality of the book is further enhanced by extensive footnote material and explanatory notes and tables listing case law, treaties, and statutes. Apart from providing a clear and very readable account of the current legal position and emerging developments, scholars interested in the topic will also find enough and interesting material for further investigation and research.

*Hennie Strydom**

Corso di diritto internazionale. Parte I. Caratteri generali ed evoluzione della comunità internazionale, by Tullio Scovazzi, Giuffrè Editore, Milano, 2000, ISBN 88-14-08319-3, x and 203 pp., ITL 28.000.

Years after having been, together with Professor Tullio Treves, co-editor of the last edition of Professor Giuliano's treatise Diritto internazionale,[1] a popular textbook of public international law, Professor Scovazzi has finalised the first part of his plan of drawing up a text on his course of international law at the University of Milano-Bicocca.

The book consists of two chapters devoted to "The origins and evolution of the international community" and to "International peace and security" respectively. In the author's intentions, further parts on the subjects of international law, the sources of international law, international responsibility, and the relationship between domestic and international law will follow.

If the present book differs from the above-mentioned co-edited work in several respects (first and foremost, in dimensions and structure), the Italian student familiar with the latter will find in *Corso di diritto internazionale. Parte I. Caratteri generali ed evoluzione della comunità internazionale*, some of the main features of the revised version of Professor Giuliano's treatise: the plain and straightforward language, the frequent recourse to sources and state practice, long passages of which are directly quoted, and clean and sharp opinions expressed. The outcome is a very easy-readable book, which students will not fail to appreciate.

The author's methodological and didactic views are clearly set out in the preamble (at v–vi) and in the section devoted to "Outlines on the method followed" (at 1–4).

---

* Professor of Public International Law, University of the Free State, South Africa.

1. M. Giuliano, T. Scovazzi & T. Treves, Diritto internazionale, Parte generale (3rd ed.), Vol. II (2nd ed.) (1983–1991).

The main difficulty of the international legal profession, *i.e.*, the need to deal with a largely unstructured and unpublished subject, is indicated by the author at the outset. The absence of an international legislator and of a uniform and structured system of sources, together with the customary nature of most of the norms, force the international lawyer to deal with a huge quantity of heterogeneous and often ambiguous elements of the practice: governmental statements, diplomatic correspondence, instructions given to states' representatives by their respective governments, national and international case law, domestic legal systems, international organizations' resolutions, juristic opinions, etc.

Overwhelmed by this plethora of data, in order to determine the existence of a customary norm, the international lawyer must start his analysis by observing the only undeniable element at his disposal, that is the manifestation of the rule in the context of international relations. A rule being aimed at governing the conduct of the actors of a certain community, the author argues, cannot by definition remain hidden or unspoken. However, the simple outward behaviour of international subjects is not sufficient in this respect: the observation of the external conduct of states does not assume any specific legal meaning unless supported by an explanation of the underlying reasons.

In other words, between the two traditional elements of international custom, *i.e.*, the material repetition of a certain conduct in the framework of international relations (*diuturnitas*), and the conviction of its legal or social necessity (*opinio iuris sive necessitatis*), Professor Scovazzi seems to be inclined to think that the latter prevails, or rather that the latter is the necessary pre-condition of the former.

Hence, the international legal profession consists of searching, analysing, and classifying the statements of the actors of the international arena (states and other subjects of international law), though disorganised and incoherent they may be. It appears impossible, and maybe not useful either, to take into account all available elements of the practice: the analysis is therefore based on a selection of significant data. If one cannot but agree on the necessity of selecting useful data of the practice, Professor Scovazzi's choices in this respect are usually convincing and never banal.

Several other methodological choices are noteworthy, especially if observed in the context of the tradition of Italian literature of international law: quoting the position of states through the exact words used by their representatives, resorting to the original language of statements, judgments, sources, etc. (the author takes this opportunity to suggest that a reform of the Italian university system should provide the compulsory teaching of a foreign language, the lack of which indeed represents a serious flaw), and a very limited use of international law doctrines and of academic theories.

In other words, Professor Scovazzi regards the method followed as a 'descriptive' one, where however the description of cases is not inserted

in the context of pre-determined theoretical schemes. The similarities between two cases cannot, in his opinion, be regarded as the confirmation of a certain theory or of the existence of a certain norm. Differences between cases do not jeopardise the system: simply, the system itself does not exist.

As already mentioned, Chapter I deals with the origins and evolution of the international community. References to the historical evolution of international relations and sources are not presented solely for the sake of historical interest: they are rather meant as a means to understand the main features of the contemporary international community. One may mention the example of the principle of sovereign equality of states, now embodied in Article 2(1) of the UN Charter, whose origins are to be found in the progressive establishment of an international community composed of independent states.

Among the main features of the contemporary international community and of its law, the book focuses on the evolution and proliferation of international organizations, on economic and social development, on environmental protection, and on the establishment of legal mechanisms for the protection of human rights. A relatively long portion of the chapter is devoted to individual criminal responsibility: reference is made to the various milestones of the almost century-long evolution, from the early attempts to have Kaiser William II tried by the allied powers, after World War I, to the recent adoption of the Convention for the establishment of the International Criminal Court in 1998.

Chapter II deals with international peace and security. This topic, which, in most courses and textbooks of public international law, usually follows a disquisition on the sources,[2] clearly plays, in Professor Scovazzi's overall plan, a crucial role. This impression is strengthened by the frequent references, already in the preamble, to NATO's military operation against Yugoslavia in 1999. The author goes back to the NATO military campaign in a section at the very end of the book. One may even be inclined to think that the he was prompted to finalise this work by the urgent need to express his views on this episode. The chapter examines the general prohibition of the use of force in international relations, the United Nations collective security system, and the variations thereof adopted in practice (peacekeeping operations and the Security Council's authorisations to states and international organizations to resort to force), self-defence, the notion of

2. To confine the reference to Italian literature of public international law, Giuliano, Scovazzi, & Treves, *id.*, do not even deal with the use of force and international peace and security specifically. In their *parte generale*, only a few pages are devoted to this matter when dealing with the general trends of the international community; *id.*, Parte generale, at 52–61); B. Conforti, Diritto internazionale (5th ed., 1997), another very popular Italian textbook, analyses international peace and security only after the sections on sources, contents of international law, and relationships between international and domestic legal systems, in the context of a section devoted to the consequences of the violations of international law.

humanitarian intervention, disarmament, and legality of the use of nuclear weapons under contemporary humanitarian law.

The reader's attention is drawn in particular to the harsh pages the author devotes to the Alliance Strategic Concept adopted by the NATO Washington summit of April 1999 (pp. 163–166). The ambiguity of the text and the somewhat enigmatic legal nature of the statements contained in the Alliance Strategic Concept are the main target of Professor Scovazzi's criticism: it is not clear, the author argues, to what extent the general principles of international law governing the use of force, including those contained in the NATO treaty itself, are now superseded in view of the Alliance Strategic Concept. Critical and ironical observations are devoted in particular to the so-called 'Non-articles theory,' according to which one may wonder whether each article of an international treaty is coupled with a 'non-article' which allows states do what the 'article' forbids.

The chapter concludes with a section with the significant title '*Quia sum leo*.' In these pages, the scholar's disappointment clearly emerges in his conclusion on the present status of the international legal order. The starting point is represented by one of the classical questions in the literature of public international law: is the international legal system genuinely *normative*? The book offers two alternative answers. The choice depends on the notion of 'legal order' adopted. If by that terminology one means a body of rules generally complied with by a certain community, one may conclude that the requirement is largely met in the international community, where violations, though blatant and sensational they may be, are the exception. If, on the other hand, 'legal order' means a body of organs and procedures which ensures that the rule of law be respected, the answer cannot but be in the negative. The reasons for such pessimism are of course not to be found solely in the attitude of the NATO powers on the occasion of the Kosovo crisis, but Professor Scovazzi concludes that this episode played a crucial role in this respect. Ten states assumed the right to act on behalf of an 'international community' composed of more than 180 states, and to use force in violation of general international law and of the UN Charter. NATO's bombs cast serious doubts on the solidity of the international legal order. Previous cases of violation of the prohibition to resort to armed force in the international relations were usually justified by the states responsible through reference to exceptions provided by the system itself (alleged self-defence, alleged authorisation by the Security Council, alleged consent of the injured state, etc.). In the case of the military intervention against Yugoslavia, no serious justification based on existing general rules of the blatant violation of the most fundamental norms was even attempted. The intervening states were not authorised by the UN Security Council, and the action was justified on the basis of an alleged right of humanitarian intervention, the existence of which the author clearly disregards (in particular at 172–177).

As a result of the role assumed by NATO in the recent conflict, the

whole system built after World War II through the United Nations and the principle of the Charter's priority were seriously damaged. The confidence in a system based on the supremacy of the rule of law, and not on violence, was irreparably put into jeopardy. A regional organization has replaced the United Nations as the institution responsible for international peace and security.

Despite this gloomy scenario, the overall conclusion is however not an entirely pessimistic one. According to Professor Scovazzi, the near future will show whether anarchy shall prevail, or whether this trend will be inverted in the name of the principles of certainty in international legal relations and peaceful resolution of international disputes. The conclusion is not a utopian one either: if the UN will resume its central role, the appropriate political and legal remedies for cases in which the Security Council is unable or unwilling to intervene will have to be found. Otherwise, "bombers would become much more useful than collections of rules; lawyers would find a more profitable job in praising generals; and all Latin expressions common in the legal language could be replaced by one: *quia sum leo*" (p. 203).

Despite Professor Scovazzi's statement that, in view of the above-mentioned observations, no worse moment could be found for assessing the general trends of international law, one has the feeling that, on the contrary, the publication is timely and welcome. To begin with, it seems to meet the goals set out at the very beginning, as well as the law student's need of a light, readable and, last but not least, inexpensive textbook. The dimensions of the book (203 pages) do not of course allow an in-depth analysis of any of the topics dealt with, and reading of this book requires supplement by more specific materials. The text nevertheless contains a short but comprehensive description of the main characteristics and trends of the contemporary international legal order. Furthermore, these recent developments, though problematic in several respects, sound like a confirmation of the author's relativistic methodological attitude. Finally, if one considers that the international rule of law, as a result of such momentous developments, appears today weaker and more uncertain, there is probably no more appropriate moment to express one's opinion as clearly as possible.

The relativistic approach which is at the core of the book is perhaps disappointing for those who seek in legal literature the systematic assessment of a coherent body of norms or the exposition of a general theory. It is however stimulating if one regards international law as a process, and each case as a step of the process, which could subsequently and abruptly change direction: *ius in infinitum decurrit*.

*Andrea Carlevaris**

* Ph.D., University of Rome 'La Sapienza', Italy; Counsel, International Chamber of Commerce, International Court of Arbitration, Paris, France; Attorney at law, Rome, Italy.

https://doi.org/10.1017/S0922156501220251 Published online by Cambridge University Press

The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements, by G.R. Watson, Oxford University Press, Oxford, 2000, ISBN 0-19-829891-9, 429 pp. incl. appendices, bibliography and index, UK£45.00/US$72.00.

The remarkable series of developments between a succession of Israeli governments and the Palestine Liberation Organization – and the subordinate Palestinian Authority ('PA') – over the better part of the past decade has been, quite predictably, the subject of numerous books aiming to summarize, interpret, and analyse the implications of the decisions taken by the main actors. Most of these works have tended to recapitulate the political course of action of the so-called 'peace process,' essentially comprising the gradual transfer of power from Israelis to Palestinians in the West Bank and Gaza Strip in exchange for security guarantees with a view towards the establishment of a series of final status negotiations between the parties. Perhaps as a result of the extreme polarization of the conflict, the lively criticism which often accompanies academic reporting on the subject often finds authors, explicitly or inadvertently, siding with one party or the other in the course of their analysis. Thus, the attempt by Professor Geoffrey R. Watson of the Catholic University of America to analyse the conflict from neither the Palestinian nor the Israeli perspective, but from the perspective of a 'dispassionate legal analysis' (p. viii) is welcomed, as it offers a greater possibility for analytical impartiality, in that *what has been agreed to* is being considered instead of the more subjective *how the parties decided to agree*. In this way, Watson's book is the next natural step in the process of compiling and distilling the history of the Israeli-Palestinian conflict on the basis of documents concluded by political actors.[1]

Watson's work marks a point of departure from previous works on the conflict, in that he considers the Oslo Accords legally binding on the parties. He determines this using roughly the same analytical framework concerning the Vienna Convention on the Law of Treaties as was employed in his 1998 article in the Catholic University Law Review.[2] Essentially, the legal argument of Watson's book (detailed in Chapter 5) is that the Oslo Accords are most likely neither treaties under the terms of the Vienna Convention, nor binding through other traditional legal means (*e.g.*, exchange of unilateral declarations, codification of customary law, etc.). However, he asserts that there exists a modern customary law of interna-

1. Perhaps the most significant prior work employing a similar methodology, which compiles sources dating from 1896–1995 (and, therefore, the beginning of the Oslo process), is B. Reich, Arab-Israeli Conflict and Conciliation: A Documentary History (1995).
2. G.R. Watson, *The Fundamental Agreement Between the Holy See and the State of Israel: A Third Anniversary Perspective*, 47 Cath. ULR 497 (1998). Watson concludes that the Vienna Convention should govern implementation of the 1994 Fundamental Agreement between the Holy See and the State of Israel.

tional agreements, guided by the terms of the Vienna Convention, to which the Oslo Accords are party. This serves to thereby make the Oslo Accords legally binding international agreements, and thereby further making the Oslo process 'irreversable.'

The book was written before the emergence of three significant changes in the political landscape governing the conflict: first, the Palestinian uprising which began during the autumn of 2000, including the deadliest Palestinian attack in four years in February 2001; second, the February 2001 election of hard-line conservative Ariel Sharon in Israel; and finally, the simultaneous shifts in US policy in the region under the Bush Administration.

Thus, through the prism of the current *politique*, Watson's conclusions about the irreversibility of the Oslo process seem rather open to discussion as being premature or perhaps excessively utopian. Nevertheless, the book, which is intended for both lawyers and non-lawyers alike, provides a well-researched and coherent factual analysis of the Oslo process, incorporating both theoretical observations and practical perspective. The book is comprised of five parts, beginning with a concise historical background (pp. 1–53) and the development of the thesis that the Accords are legally binding (pp. 55–102). It then goes further in the next two parts to analyse both Israeli and Palestinian compliance with the Accords (pp. 103–199 and pp. 202–263, respectively), concluding generally that both sides have regularly violated the Accords, but not to the extent to invalidate the obligations derived from them. The book closes (pp. 266–311) by looking forward to what legal issues might arise as a result of permanent status negotiations in view of the Sharm el-Sheikh Memorandum of September 1999 which aimed for a final settlement by the end of 2000.

The path to arriving at the Oslo Accords is succinctly reviewed in the Chapter 1, and Chapter 2 highlights the main provisions of the Accords, which include the declaration of principles regarding Israeli 'redeployment' from the Gaza Strip and Jericho and the establishment of a Palestinian civil authority (Oslo I and the Gaza-Jericho Agreement) and the interim agreement on the methods of implementation of those principles (Oslo II), including the stalled redeployment from Hebron through the Hebron Protocol.

In considering the binding nature of the Accords – which was never made 'entirely clear' by the parties (p. 58) – the third chapter is devoted to considering whether the Accords are treaties. Watson states that, because of the lack of effective control and capacity to enter into international relations by the Palestinians, "it is doubtful that there is a 'State of Palestine'" (p. 60), thereby implying the Accords do not fall within the definition of a treaty in the Vienna Convention on the Law of Treaties, which he criticises for its narrow definition of treaty-making capacity. Nevertheless, he posits that the Accords could be binding under the customary law of treaties, and that the declaration of principles in Oslo I "does evince most of the characteristics of a binding treaty under the

Vienna Convention" (p. 67), and regarding Oslo II "the Interim Agreement is a treaty in almost every sense of the Vienna Convention – except that it is not an agreement between states" (p. 72). In Chapter 4, Watson, in considering other theories of obligation, determines that it would be difficult to consider the Accords to be an exchange of binding declarations, as unilateral promises between a state and a sub-state entity would probably not be binding under international law. It would also be difficult to consider that the Oslo Accords codify or create customary international law. Watson explicitly rejects the notion that the Wye River Memorandum and the Sharm el-Sheikh Memorandum are 'soft law,' as the parties intended to be legally bound by concluding in each agreement that they "would enter into force." Watson concludes that as the Accords "clearly evince an intent to impose mutual legal obligations" (p. 101), they are legally-binding international agreements.

The book then turns to questions of compliance with the terms of the Accords. Israel's main obligation from the Accords was to 'redeploy' from the West Bank and Gaza. Throughout Chapter 6, Watson demonstrates that the Accords clearly place limited obligations on Israel to transfer some territory to Palestinian jurisdiction. Israel began this process, guided by the vague terms of the Interim Protocol, from early 1996. The first test of the process was the year-long suspension by Israel of redeployment from Hebron due to Palestinian non-compliance with terms of the Accords. This dispute culminated in a negotiated arrangement, the Hebron Protocol, and the eventual Israeli redeployment out of Hebron. Even as further agreements at Wye River and Sharm el-Sheikh slightly clarified the Interim Agreement to guide, *inter alia*, future redeployments, Israel invoked reciprocity in claiming that Palestinian violations of the terms of the Interim Agreement justified its suspension. Watson reasonably concludes that the extent of the breach of the Accords by the Palestinians determines the legal standard to judge the Israeli suspensions, that the scope of Palestinian breaches is difficult to judge but that Israel is bound to continue good-faith negotiations, and that it is thus likely that Israel continues to be obliged to redeploy. He criticises the Netanyahu government's assertion that Israel was free to determine the terms of redeployment, stating that redeployment means withdrawal, rather than reshuffling, of forces.

Netanyahu's policies regarding Israeli settlements in Palestinian areas are further criticised in Chapter 7, focusing particularly on the Har Homa housing project for Jews in East Jerusalem initiated by the Israeli government in early 1997. Palestinians claimed a violation of the Accords in that such actions prejudiced the final status talks on Jerusalem. Watson, whilst giving treatment to Israeli's argument that private settlement is permissible under Article 49 of the Fourth Geneva Convention, concludes that the Accords impose some restrictions on new Israeli settlements. He further considers, in Chapter 8 (entitled "Passages, Ports, and Economic Issues"), a number of more particular aspects of the peace process. The

terms of the Accords compel Israel to allow "safe passage" between the West Bank and Gaza Strip, as well as for the establishment of air- and seaports at Gaza. The details of the implementation, negotiated by the parties for more than four years, are of particular interest as they give practical effect to the self-determination of the Palestinian people. The reader is given insight into the process of the transfer of sovereignty, from the dismay felt by the Netanyahu government that the Gaza airport was built large enough to land jumbo jets, to aspects of including 'invisible' Israeli supervision of the Palestinian controls of passages between the West Bank and Gaza. Of specific interest is the treatment of Israel's closures of Palestinian areas as a result of security concerns, and the correspondingly negative economic effects inflicted on the Palestinian population. Watson states that Israel's decision to withhold funding for the PA as a result of Palestinian suicide bombings was 'plainly inconsistent' (p. 167) with its obligations under the Paris Protocol, but that otherwise most of the joint obligations on both sides have been fulfilled.

Human rights obligations for Israel and the PA, in spite of their limited provisions in the Oslo Accords (consisting primarily of a general statement stating the parties must pay 'due regard' to human rights norms and principles), are treated in Chapters 9 and 13, respectively. In view of the complexity of the situation on the ground, the extensive treatment of the subject is greatly welcomed. Watson states that the level of Israeli redeployment determines the law to be applied, whether that is international human rights law, international humanitarian law, or both. He then presents a *résumé* of the situation regarding extrajudicial killing, torture, arbitrary arrest or detention, housing demolitions, freedom of speech, press and movement, religious freedom, prisoner release, women's rights, and non-discrimination in assessing Israel's compliance with its human rights obligations, and performs a similar analysis for the PA. His conclusion is less than sanguine in that Israel's overall record is 'mixed' (p. 197), while the PA's human rights record 'falls woefully short' (p. 253) of the rather ambiguous mark set by the Accords.

Palestinian obligations under the terms of the Accords are chiefly related to the employment of security measures to prevent terrorism and other violence. After considering in Chapter 10 that the Palestinian National Charter was amended in 1998 to invalidate sections which refer to the destruction of Israel, Watson saves the bulk of his analysis in Chapter 11 for the issues fleshed out in the drafting of the Hebron Protocol. In considering the joint obligation on security co-operation, Watson notes that levels of compliance were mixed. On the one hand, following a series of terrorist activities in the spring of 1996, the PA responded with a series of arrests. But the situation deteriorated dramatically following Netanyahu's election in the summer of 1996, only to stabilize somewhat after the Clinton administration-led agreements at Wye and Sharm el-Sheikh, leading to the conclusion that the Palestinians are in "substantial (though not perfect) compliance" (p. 217) with their obligations. The

PA has been much less successful in the suppression of hostile propaganda by private parties, however. Watson's reporting on Palestinian obligations regarding the combatting and punishment of terrorist organizations, at a mere four pages, is insufficient in spite of the admitted difficulty in linking terrorist activities to acts of state (or, 'state,' as it were). Nevertheless, and in spite of subsequent developments, one would have surely expected a greater depth of analysis in this regard. He concludes his analysis in considering that the PA's refusal to extradite any Palestinians to Israel goes beyond the provisions of the Accords, and that the PA has a record of non-compliance with security-related provisions of the Accords stemming "from a lack of capacity or will to comply" (p. 236). In view of Watson's conclusion in Chapter 12 that "the PA appears to have exceeded some of the Accords' restrictions on Palestinian self-government" (p. 250), another fundamental principle of the Accords does seem to be breached by the PA, although perhaps with a measure of tolerance by the Israelis. Watson's supposition that the PA's justification of breaches of the Accords through reciprocity were disproportionate countermeasures compared to those of Israel does seem quite reasonable, and given the improvement in levels of compliance on both sides, Watson offers a general conclusion: "As of [January 2000], it appears that neither party has a basis for termination of the Accords" (p. 262).

Under that framework, it would be quite logical to begin to look ahead to the permanent status issues outlined in the Oslo Accords: Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with other neighbours, and "other issues of common interest" (more specifically, the thorny issues of Palestinian statehood and regional water rights). Watson does this with a sharp intellect in Chapter 14, generally addressing theoretical observations such as the role of the "right of peoples to self-determination" and the more practical aspects of sovereignty transfer (particularly concerning the complicated Jerusalem question), population realignments, and Israeli settlements in "Palestinian lands," using general principles of public international law as his baseline unit of analysis: a "common language for discussion" (p. 307).

My first instinct in reading this Chapter and the brief conclusion in Chapter 15 was to think that this approach is surely to be welcomed as a forward-looking 'inevitability' of sorts, as almost all conflicts are 'resolved' through negotiated arrangements taken at the highest political levels.[3] Even in spite of the recent political developments, it does seem sensible that whenever peace talks might resume, "the parties are not likely to throw [the Oslo Accords] out and start over" (p. ix). What is less clear, however, is the extent to which international law would compel them to

3. Indeed, this reality manifested itself as one of Sharon's surprise first actions as Prime Minister was to write to Arafat to consider the possibility of a return to negotiations following a cessation of violence. *See*, *e.g.*, Deutsche Presse-Agentur, *Sharon Hoping for Early Meeting with Arafat*, 9 March 2001, available on LEXIS.

do so, or would penalize them for deviating from previously-negotiated texts. The question would then be drawn to the nexus between the possibility, on the one hand, of one party (or both parties) terminating Oslo obligations, and the possibility, on the other, that the Oslo Accords have created an obligation for both parties to continue negotiations as a result of the Accords.

The volatility of the situation on the ground at present – and the actions of the political actors governing the process – presents the uncomfortable reality that although peace may indeed have been a "live possibility" (p. x) in January 2000 (when the work on the book was completed), this differs from stating that peace (or, more specifically, peace as envisioned by the Oslo Accords) is an inevitability. The legally-binding nature of the specific provisions of the Accords, then, could face a challenge, particularly through the invocation of a fundamental change of circumstances (*viz.* Article 62 of the Vienna Convention on the Law of Treaties) or a material breach of substantive provisions of the Accords (*viz.* Article 60 of the Vienna Convention). Thus, even if one accepts the emergence of a customary international law of international agreements that is broader *vis-à-vis* its applicability towards non-state actors than the narrow focus of the Vienna Convention on the Law of Treaties (yet guided by its provisions); and that the Accords are subject to this law, one would tend to wonder how the provisions of the Accords could be enforced, or even, perhaps, if this would be the wisest course of action to follow. Non-compliance with the provisions of an international agreement by a party to that agreement usually engages legal responsibility, thereby giving credence to claims for judicial remedies or for reparation. But should the Israeli-Palestinian situation deteriorate to such a point where it is clear that both sides to the Accords are regularly in substantive breach of their obligations, it is difficult to see what legal authority could, in practical terms, remedy the situation. This is simply because only the parties to the conflict themselves can, in the final analysis, decide definitively to abandon the military option.

Perhaps it would be more accurate to say, then, that *under all circumstances* the parties to the conflict are bound by general international law, including international human rights and humanitarian law, and more specifically, it is likely that there exists an obligation to continue good-faith negotiations. The full effects of the changes in Israeli and American political leadership following the return to overt hostilities in autumn 2000 remain to be seen, but it is impossible to deny that these developments are highly significant and could well send further negotiations in a different direction. The sense of ripeness by the Israelis and Palestinians to attempt culmination of the process with a permanent status negotiation phase may well have evaporated in the near-term (indeed, if it ever truly existed at all). This implies that, should that ripeness be cultivated in the future, the end result could reflect a reality different from that of the provisions of the Oslo Accords.

Nevertheless, in the final analysis, Watson's book is a thoughtful and resourceful contribution to the literature on the situation in the Middle East, with a comprehensive 19-page bibliography, seven maps, and a useful 84-page appendix reproducing the text of the documents comprising the Oslo Accords. His conscious decision to advocate the role of international law in the process is a useful attempt to expand the frontiers of international law. The book will undoubtedly be a welcome library addition for scholars and researchers on international law, international conflict resolution, and the Israeli-Palestinian peace process, but its price may prohibit its accessibility to the casual reader.

*Nicholas Hansen**

The International Covenant on Civil and Political Rights – Cases, Materials, and Commentary, by S. Joseph, J. Schultz and M. Castan, Oxford University Press, Oxford, 2000, ISBN 0-19-826774-6, xxxvi and 745 pp., UK£75.

All states that have ratified UN human rights instruments, such as the International Covenant on Civil and Political Rights ('ICCPR'), are accountable to the independent 'treaty bodies' through the reporting system. In addition, some states have recognised the competence of the Human Rights Committee ('HRC'), the Committee on the Elimination of all Forms of Racial Discrimination ('CERD'), and the Committee Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment ('CAT'), to consider complaints made by individuals that their rights have been violated. In nearly thirty years of operation these treaty bodies have developed a significant jurisprudence. This jurisprudence consists of three constituent elements. Firstly, the Concluding Comments prepared in response to each State Report. Secondly, the views expressed in individual cases decided by the HRC and other committees. And finally, the General Comments on specific provisions of the Covenant. This book brings together all three elements of the jurisprudence of the Human Rights Committee, the monitoring body established under the ICCPR, in the discussion of each separate right. Furthermore, the book draws together the jurisprudence of different treaty bodies on certain identical rights for comparison and comment. An example of this is the treatment of the right to participate in the conduct of public affairs on terms of equality by the HRC and by Committee for the Elimination of Discrimination Against Women and their different approaches to systematic discrimination.

The book is divided into three parts. The introductory part provides an

* Ph.D. candidate in Public International Law, Leiden University, The Netherlands.

overview of the ICCPR, its relationship with domestic law, the functioning of the Human Rights Committee (the reporting system, interstate complaints and individual communications under the First Optional Protocol), and some general doctrines, such as interpretation methods, the role of precedent, positive obligations, horizontal effect, the limitation of ICCPR rights, etc. This introduction is rather elementary. Issues like positive obligations and cultural and economic relativism are dealt with in a very broad manner. In addition, the strong emphasis on basic texts is perhaps not so much justified in this part of the book. The elaboration of these doctrines in academic literature is only referred to in the footnotes.

The second part of the book focuses on admissibility: the *ratione temporis* rule, the victim requirement, exhaustion of domestic remedies, territorial and jurisdictional limits and consideration under another international procedure.

The third part of the book deals with the substantive articles of the ICCPR. In view of the fact that a disproportionate number of communications have concerned a handful of states and a narrow range of subject matters, the Chapters on Articles 7, 9, 10, and 14 ICCPR (freedom from torture and the right to humane treatment, freedom from arbitrary detention, and the right to a fair trial) are substantially more elaborate than some of the other chapters.

The various Chapters incorporate excerpts from decisions under the First Optional Protocol, as well as relevant General Comments and Concluding Comments on state parties. Decisions under other United Nations treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, are also included to highlight complementary UN human rights jurisprudence. However, the interpretation of the various civil and political rights could also be helped by (more elaborate) references to the case-law of the European Court of Human Rights, a more developed supervisory mechanism, and some specialized UN documents, such as the United Nations Principles on the Independence of the Judiciary, etc.

The law, as stated in the book, is correct as at 1 January 2000, though some material produced after that date is also included. In particular, General Comment 28 on Equality between Men and Women is included as an Addendum towards the end. Interesting is that the authors have chosen to provide an additional service to their readers by making updates of the material accessible via the publisher's website.

In addition, Elizabeth Evatt (member of the UN Human Rights Committee) wrote a foreword stressing the need to support the work of the treaty bodies by action at domestic level, especially in view of the weaknesses of the international supervisory mechanism. If domestic courts, legal practitioners, and human rights advocates were fully aware of the obligations that their states have undertaken, and how those obligations are interpreted and applied by the independent monitoring bodies, they might be able to press for an effective implementation. She underlines the importance of information as a weapon in the struggle for human rights,

which brings us to the aim of the book. The aim, according to the foreword, of this book is to bring "the work of the Human Rights Committee and the other United Nations treaty bodies to a wider audience." This aim is achieved by a comprehensive book that collects and orders a huge quantity of information and facilitates access to the *acquis* of the ICCPR. This is also ensured by the fact that the book is comprehensively indexed and cross-referenced.

So, expect an abundance of cases and materials; do not expect too much commentary. Expect facts; do not expect a new philosophical approach to international law. Expect a book for legal practitioners, not so much for academic scholars (unless they have to prepare a lecture!). And in view of the aim of the book, as mentioned above, that is not meant to be a critical note. The approach – a combination of on the one hand a collection of integral citations from basic texts and cases and on the other hand references to critical analysis of the materials provided – made me think of Craig and De Búrca's *EC Law*. Although, admittedly, Paul Craig and Gráinne de Búrca included slightly more vision and personal analysis in their book, they succeeded in placing the case law of the European Court of Justice within a conceptual, political and institutional context; something that is lacking in this ICCPR-equivalent.

The authors, Sarah Joseph, Jenny Schultz and Melissa Castan, are (senior) lecturers in law at Monash University (Melbourne, Australia) and members of the Castan Centre for Human Rights Law. This Centre was established in 2000 and the book can be seen as the first major project of the Centre.

On the whole, the book is most certainly a valuable contribution for those who need easy access to the *acquis* of the ICCPR and the Human Rights Committee. Equally, the book is a valuable contribution to the few comprehensive handbooks (such as Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, 1993) on the interpretation of civil and political rights by UN human rights treaty bodies.

*Martin Kuijer**

* Lecturer in Public International Law, Leiden University, The Netherlands.