BOOK REVIEWS

The Position of Heads of State and Senior Officials in International Law by Joanne Foakes [Oxford University Press, 2014, ISBN: 978-0-19-964028-7, 256pp, £95.00, (h/bk)]

The topic of this study has evolved with the modern State's need to standardize communications with neighbouring States in the light of the increasing expansion of international law into the protection of human rights and the prosecution of individuals for the commission of international crimes. The haphazard origins of the law relating to head of State and other senior officials is reflected in the source material. Unlike the 1961 and 1963 Vienna Conventions dealing with diplomats and consuls, only in the not-yet-in-force 2004 UN Convention on Jurisdictional Immunities of State and their Property is there an attempt by treaty to regulate the immunities enjoyed by a head of State (Articles 2.1(b)(ii) and (iv) and 3.(2)). In the main it is to diplomatic incidents arising from 24-hour palace scandals and resulting national court decisions, mainly of the United States, UK, France, Germany and Switzerland, to which one must look, to determine the extent to which an act performed by a State official may give rise to civil or criminal proceedings in national courts, constitute responsibility for a breach of international law for the State on whose behalf the official serves, or even in some circumstances afford the official an immunity independent of the State which he or she serves.

Joanna Foakes, a former Counsellor in the UK Foreign and Commonwealth Office, shows herself in this 200-page study well placed to chart the present evolving law relating to the topic, which she describes as 'often controversial and sometimes ill-defined rules of international law regarding treatment in foreign jurisdictions'. As well as close familiarity with the leading cases of the last 20 years—*Blaškić, Pinochet, Arrest Warrant, Ghadaffi, Sharon, Djibouti v France, Habré*—she draws support from the extensive archives of the FCO and illustrates by reference to less familiar examples such as Mary Queen of Scots, Napoleon in 1815, the German Kaiser 1919, General de Gaulle in 1940 when Marshal Pétain was still nominal Head of State in Vichy France, and the Nazi leaders at Nuremberg, and many others—to illustrate the evolving practice relating to the recognition or disregard of immunity of State officials and its distinction into status immunity *ratione personae* enjoyed by the Head of State when in office, or functional or subject matter immunity *ratione materiae* enjoyed by all grades of State official.

The book is divided into five chapters: the first entitled Overview and General Principles traces briefly the development of State immunity from an absolute to a restrictive doctrine, the codification in the Vienna Conventions of 1961 and 1963 of the law relating to diplomats and consuls, the less successful 1969 Convention on Special Missions and the not-yet-in-force 2004 UN Convention on Jurisdictional Immunities of the State. Chapter 2 follows dealing with Heads-of-State constitutional forms, their powers, recognition, privileges and immunities and extension to family and entourage. Chapter 3 in two parts, covers first the largely uncontroversial extension of Head of State immunity *ratione personae* to Head of Government and Foreign Minister and second the more controversial extension of this status immunity to other senior representatives of the State. Chapter 4 addresses the Position of Officials after Loss of Office which, after a rather sketchy explanation of why immunity works better to counter claims of civil rather than criminal liability in national law, explains the nature and extent of acts which qualify as official business to attract immunity *ratione materiae* even after the official has left office. Chapter 5 entitled the International Responsibility of Heads of State in the space of some 25 pages, conducts a rapid tour of the current position regarding the criminal jurisdiction over State officials of international tribunals. This may prove valuable in the light of the decision of the ILC Committee to exclude international criminal courts from its study into the immunity of State officials from foreign criminal jurisdiction, limiting it to the national courts of foreign States. After noting that the Articles 4 and 7 of the 2004 ILC Articles on State Responsibility apply to acts of a Head of State or of Government, the Nuremberg and Tokyo Tribunals, ICTY, the ICC, Sierra Leone and special courts are all briefly described in Chapter V. A brief reference casts

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doubt on the power of the SCSL to set aside the personal immunities of Taylor as an incumbent Head of State (204), but no reference is made, however, to the ICC Pre-Trial Chamber's ruling that ICC Statute Article 98(1) provides no bar to the requirement that a State Party comply with an arrest warrant issued by the ICC in accordance with UN Security Council reference against a serving Head of State (*Omar Al Bashir* ICC Pre-Trial Chamber I, 12 December 2011).

Whilst Foakes' review of the immunities with all their inconsistencies enjoyed by senior State officials well presents the current scene as viewed from the UK FCO, in the light of today's rapidly changing political scene a critical analysis drawing on academic writing and political comment would also have been useful to assess the continuing utility of the immunities described. Save for a note with regard to the conclusive nature of FCO certificates following the overthrow of the Libyan regime in 2011 (47), the core question whether parliament, the executive or the courts should determine which of competing foreign administrations should enjoy immunity for its officials is not discussed. Reference to Warbrick's work or Talmon's *Recognition of Governments in International Law* (1998) would have been useful here, particularly with regard to exiled governments. A more systematic analysis into subjective, material and temporal scope (ie by office, function and time) would have shortened the search through Chapters 3 and 4 as to what constitutes 'an act performed in an official capacity'. Other issues arise: Does the ICJ ruling in *Djibouti v France* exonerate a foreign State's mistreatment of a State official with regard to whose visit no express immunity has been requested? Do the *Arrest Warrant* and *Jurisdictional Immunities* decisions allowing imputability to the State at the procedural stage (Foakes, p.8) nonetheless extend a substantive defence relating to responsibility and liability beyond torture and enforced disappearance to genocide, war crimes and Crimes against humanity (10, 137,153)?. What is the situation in a federation as regards immunity extending to the Head of a federal unit or where the headship rotates as in Malaysia to a retired Head (see the cases of *Sultan of Pahang, Alamieyeseigha* (47–8) and the not-cited *Mellenger v New Brunswick* [1971]).

The closing date of the book's information, July 3013 inevitably means that some of the issues raised in the book are now resolved by the 2013 decisions of the ILC Committee. Thus the latest Draft confines immunity *ratione personae* to the 'troika' of Head of State, Head of Government and Foreign Minister indicating that the immunity of other departmental heads when visiting abroad may be adequately secured by express conferment of Special Mission status.

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The Liberal-Welfarist Law of Nations: A History of International Law by Emmanuelle Jouannet [Cambridge University Press, Cambridge, 2014, 318pp, ISBN 978-1-107-47094-1, £21.99 (p/bk)]

International law is at the heart of many of the most contentious issues in contemporary foreign relations—should the international community intervene more aggressively against ISIL? Should Palestine be recognized as a State? Are drone strikes a lawful tactic to use against suspected terrorists? Yet while international norms prominently shape diplomatic discourse, there is a growing disquiet that the discipline itself has lost its normative bearings: What is the point of international law? How did it come about? What purposes does it serve?

Emmanuelle Jouannet's *The Liberal-Welfarist Law of Nations: A History of International Law* addresses these portentous questions through a review of 'the history of the purposes of international law so as to take a fresh look at the point behind it all' (1). The book's thesis, in brief, is that since its emergence as an autonomous discipline in eighteenth-century Europe, international law has had two central purposes. One, its 'liberal purpose', aims to promote and protect the sovereignty of free and independent States. This purpose advances a State's freedom to choose its own ends, for 'independent self-determination' (33). International law's second, or

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