BOOK REVIEWS

Complicity and Its Limits in the Law of International Responsibility by VLADYSLAV LANOVOY [Hart, Oxford, 2016, 383pp, ISBN 978-1-78-225937-4, £69.99 (h/bk)]

Complicity under the law of international responsibility is a product of the international community's need to address factual breaches of international rules when they have occurred in the course of multifaceted, transnational interactions. The theory behind responsibility for complicity extends beyond the bilateral confines of inter-State relations to those where an array of actors have been involved in a wrong. This book builds on previous studies focussing on the subject of complicity in international law, providing a unique contribution to the literature. The author sets out to canvass a functional approach to the application of complicity in general international law by highlighting where the limits of the concept currently lie. The book achieves this goal whilst shedding light on the efficacy of international responsibility in dealing with the contemporary realities surrounding complicit conduct. Methodologically, the book takes a predominantly doctrinal approach, yet its content does not put legal positivism up on a pedestal. It encapsulates a refreshing balance between what the law is, and what it should be—or potentially could be. Substantively, the foundations of the study's logic are rooted in notions of achieving justice, striving for solidarity in today's world, and respecting, whilst protecting, the rule of law. The great merit of this monograph is its exposure of the shackles that prevent responsibility for complicity from being more frequently applied in practice. Lanovoy's line of argument challenges the reader throughout to envisage the true potential of a cohesive international legal order, with responsibility for complicity playing a crucial role in that system. Its Achilles heel lies in the final chapter, glazing over a particularly important issue attached to one of the book's core arguments (complicity as a basis of attribution of conduct): the current rules on attribution of conduct and their applicability to non-State actors under the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).

Regardless of whether one agrees with the author on substance, his arguments are cogently put forward. A subtle proposal that runs throughout the book is that ensuring responsibility for complicity is a way to safeguard, by way of incentive, the obligations borne by States and international organizations. More obvious submissions are that the distinction between primary and secondary rules is 'artificial' (74), or that a 'bilateral straightjacket' is placed on the law of international responsibility because of classical/traditional understandings of international law, thereby deteriorating the utility of complicity in practice (80 and 105). The book is sceptical (but respectful) of the state-to-state dynamic of international law.

The research raises provocative questions regarding international law and responsibility. 'Why is it appropriate to adopt a more stringent test of intention in the law of international responsibility where international criminal law is satisfied with knowledge?' (90). '[W]hy should the duty of non-assistance only attach to serious breaches of *jus cogens* and not *erga omnes* obligations?' (113). In answering these questions, the book unpacks a critique of the ILC framework of the rules on responsibility for complicity. It highlights that current judicial and quasi-judicial machinery are ill-equipped to deal with cases of complicity, prompting the assertion that '[s]ignificant structural adjustments are therefore required for the international dispute settlement mechanisms to be able to effectively implement responsibility for complicity in the commission of an internationally wrongful act' (7). Coming out in favour of the shared responsibility concept, the book attempts to confirm the existence of multiple attribution by close reference to the jurisprudence of international and regional courts and tribunals. The practical relevance of the book should not be understated. Its detailed analysis assists in teasing out matters of concern, such as apportioning responsibility for the implementation of a United Nations Security Council resolution that has resulted in numerous internationally wrongful acts.

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The book's major findings and conclusions are threefold. Firstly, responsibility for complicity is a meta-rule in the international legal order, in that it is a 'hybrid' of primary and secondary rules (11 and 338). Secondly, the opposability requirement (240–58) enshrined in the current framework 'is no more than a continuing rhetoric of restrictive consent-based vision of treaty relations transposed to the law of international responsibility' (339). The claim that 'knowledge' of the principal State's obligation, 'rather than a bond of obligation', ought to result in responsibility for complicity (244) goes against the grain of accepted thinking and the rule under Article 16(b) of the ARSIWA. Lastly, complicity being used as a basis for attribution of conduct, opposes a number of truths currently part of international responsibility as it applies to the private sphere. The book censures the test of 'effective control' for attribution purposes, demanding that attribution should apply more expansively. However, there are more tests than 'effective control' that can engage with non-State actors for the purposes of establishing State responsibility. Lack of attention is paid to the applicability of the other attribution tests that relate to non-State actors (307–19). Critiquing one rule does not automatically speak to the restrictive character of the others, or provide a comprehensive avenue for proposing an alternative test that—even the author concedes—is not *lex lata* (329). The book contends that the limitations of the attribution framework under the ARSIWA are 'artificially inculcated' *vis-à-vis* non-State actors (322). This assessment is questionable. Whether one finds these rules underdeveloped or not, the existing boundaries of attribution for the acts of non-State actors persist due to the present necessity of distinguishing between public and private conduct. With that said, the premise at the heart of this discourse (advocating for bolstering accountability) should be commended.

This book is likely to spark debate amongst professionals in both law and politics. It also offers a snippet of what the law in this area could look like in the future. The ideas contained in the book are a result of rigorous research, objectively applied and insightfully explained. *Complicity and Its Limits in the Law of International Responsibility* is a thought-provoking work that confronts a status quo permeating much of international law.

Richard Mackenzie-Gray Scott*

Prosecuting Maitime Piracy: Domestic Solutions to International Crimes, edited by MICHAEL P SCHARF, MICHAEL A NEWTON and MILENA STERIO [Cambridge University Press, New York, NY, 2015, 381pp, ISBN 978-1-107-44112-5 £29.99 (p/bk)]

Maritime piracy has been the subject of many recently published works, but this edited collection is designed to fill 'a very conspicuous gap' in the literature, as the editors labelled it, and concerns the prosecution of pirates. The book is an edited collection of the findings of the High-Level Piracy Working Group, which was convened at the request of Public International Law and Policy Group (PILPG) and was tasked with examining the numerous legal and practical challenges arising from prosecuting pirates. The members of the working group and authors of the book have been providing legal assistance to prosecuting States such as Kenya, the Seychelles and Mauritius, and working closely with those actively involved in modern piracy prosecutions, including the UN Office of Drugs and Crime (UNODC) and the UN Contact Group on Piracy. The insights gained by the authors are reflected in this collection through the presentation of empirical data and information not available to the wider public, making the book a significant contribution to the literature on modern piracy.

The book has four parts focusing on different stages of domestic prosecution, including the pursuit, apprehension, trial, punishment and detention of pirates. The first theme of the collection concerns the legal foundations of pirate prosecutions. Despite some overlaps, the first four chapters offer an in-depth analysis of the meaning of piracy and how pirates can be prosecuted according to

*PhD Candidate, School of Law, University of Nottingham, richard.scott@nottingham.ac.uk.

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