Book Reviews

Paust, Bassiouini, Williams, Scharf, Gurulé, Zagaris (eds). ***International Criminal Law, Cases and Materials***, Durham: Carolina Academic Press, 1996. Pp. xiv, 1438, index.

The aim of the editors of this impressive collection of cases and materials amounting to more than 1,400 pages is to give an overall view of both international criminal law and transnational criminal law. The book is divided into four parts, with a total of 20 chapters. The first part deals with general notions of international criminal law (Chapters 1 to 3). These chapters briefly address the sources of international criminal law, criminal responsibility — be it of the individual, the state or legal persons — as well as the grounds upon which states may exercise jurisdiction in criminal matters of an international character or those presenting a degree of extraterritoriality.

Part II deals in more detail with the various components or facets of inter-state cooperation and assistance in criminal matters: competent national bodies (Chapter 4), mechanisms for the apprehension of suspects and accused persons located abroad (Chapter 5), the transfer of proceedings and prisoners as well as recognition and enforcement of foreign judgments (Chapter 6). Apart from a short section in Chapter 6 on the transfer of cases to the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, and to the future International Criminal Court, only Chapter 7 deals with common efforts to establish a purely international criminal justice system.

Part III presents a number of international crimes: offences against the peace (Chapter 8), war crimes (Chapter 9), crimes against humanity (Chapter 10), genocide (Chapter 11), human rights violations (Chapter 12), slave trade, slavery and other related practices (Chapter 13), terrorism (Chapter 14), piracy (Chapter 15), drug trafficking and related offences (Chapter 16), counterfeiting (Chapter 17) and transnational crimes (Chapter 18). Finally, Part IV (Chapters 19 and 20) gives a substantially more cursory treatment of frequently invoked defences: superior orders, duress, self-defence, mistake of fact, propriety under domestic law, *tu quoque*, *non bis in idem* and immunity.

Each chapter is a compilation of documents drawn from the writings of specialists and from national practice, whether executive, legislative or judicial. The emphasis in this context is on the practice of the United States and Canada. The texts of international instruments are sometimes appended. Certain chapters and sections present a brief introductory note by the editors, which refer to other sources including their own earlier writings. Some sections end with a series of questions and notes, clearly included as learning tools, and these also include some interesting documents. However, with no specific system of reference, this valuable information is somewhat difficult to locate. The same applies to a number of lengthy footnotes (see, for instance, the reference to the International Criminal Court at pages 7–9, note 3). Well detailed, the Table of Contents allows for rapid identification of themes and topics sought within the book. As to the index, which is of particular relevance in such a publication, it would have been preferable that the number of page references per entry be limited to the most pertinent passages in order to increase both utility and efficiency.

As to the subject of purely international criminal repression, the authors could have contemplated grouping together the documents concerning the transfer of proceedings to international criminal bodies (Chapter 6

section (3)(C)) with those of the chapter dealing with the international community's efforts in this regard (Chapter 7). It is furthermore regrettable that, given the timing of this collection, it did not include the important judicial decisions handed down by the *ad hoc* criminal tribunals for the former Yugoslavia and Rwanda, which in particular detail the constitutive elements of international crimes (*Prosecutor v. Tadić*, case no. IT-94–1-T, judgment of 7 May 1997; *Prosecutor v. Furundzija*, case no. IT-95–17/1, judgment of 10 December 1998; *Prosecutor v. Akayesu*, case no. ICTR-96–4-T, judgment of 2 September 1998), the nature of the relationship between international criminal bodies created under Chapter VII of the United Nations Charter and third parties (*Prosecutor v. Blaskić*, case no. IT-95–14-AR 108*bis*, judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997), the admissibility of defences based on duress or superior orders (*Prosecutor v. Erdemović*, case no. IT-96–22-A, judgment, 7 October 1997 (English version)) and the scope of command responsibility (*Prosecutor v. Mucic*, case no. IT-96–21-T, judgment of 17 November 1998).

Those interested in international criminal law cannot but applaud the course taken by the editors and hope that this compilation of cases and materials contributes to the *rapprochement* of international law and criminal law and, in the process, that it contributes towards the development of international criminal law.

International Labour Office — *Anne-Marie La Rosa*

Zanardi, Pierluigi Lamberti and Gabriella Venturini (eds). ***Crimini di guerra e competenza delle giurisdizioni nazionali***. Milan: Giuffré, 1998. Pp. xi + 326.

This collection of essays contains the lectures and addresses presented at a conference held at the University of Milano in honour of Professor Alessandro Migliazza, 15–17 May 1997. The conference examined the competence of national jurisdictions to prosecute individuals accused of war crimes. The book is divided into seven sections, each of which deals with different aspects of the issue. After a short introductory section, outlining the structure of the volume, Sections II and III look respectively at the instruments available for the prosecution of war crimes under international law and the issue of national implementing legislation. Sections IV and V analyse the relationship between international politics and war crimes, and investigate the role of NGOs in the diffusion and implementation of the law of war crimes. Section VI reproduces a round table discussion on the status of Italian legislation on war crimes and projects for reform. Finally, a documentary section contains various texts, namely, the relevant provisions of the Geneva Conventions and Additional Protocol I, the national laws on war crimes of several European states (Italy, Belgium, Spain, France), as well as Italian draft legislation which would bring the Italian legal order in line with international humanitarian law.

In Section II, Professor Condorelli outlines the general principles of international humanitarian law pertaining to war crimes as codified by the Geneva Conventions of 1949 and the Additional Protocols of 1977. He points to the existence of four main principles which give shape to the international system for the repression of war crimes.[1] In the final

[1] The first principle is enshrined in the obligation imposed on states to introduce legislation. As the rules on war crimes of the Geneva Conventions are not, according to Professor Condorelli, self-executing, this obligation implies a specific duty incumbent on national authorities to adapt in detail their national legislation to international humanitarian law. In this respect, the author also criticized the status of Italian law (reinforced by many other panelists during the conference). Another general principle is the obligation for national authorities to search for alleged war criminals. Professor Condorelli affirmed that this obligation extends to extra-territorial missions where states are entitled to legitimately exercise their authority in a foreign

part of his paper Professor Condorelli examines the distinction between 'grave breaches' and other 'serious violations' that are not characterized as 'grave breaches' pursuant to the provisions of the Geneva Conventions. He highlights the evolution of international customary law on war crimes committed in internal conflicts and the leading role played in this respect by the International Criminal Tribunal for the former Yugoslavia (and, namely, the decision on the interlocutory appeal on jurisdiction in the *Tadić* case, IT-94–1-AR72, 2 October 1995).

In this same section, Professor Flavia Lattanzi provides a comprehensive analysis of the relationship between international criminal courts and national jurisdictions. Professor Lattanzi, who was a member of the Italian delegation to the Rome Conference for the establishment of the ICC and who has extensively studied the issue of international criminal jurisdiction, underscores the relevance of the preventive function played by the international criminal jurisdiction. Indeed, she considers the prevention of war crimes as the main purpose for the creation of an international system of prosecution of war criminals. Professor Lattanzi shows, including through specific examples, how the existence of an international criminal court could enhance deterrence by allowing timely and immediate intervention for the prosecution of violations as soon as they occur, rather than after the conflict has been concluded. The argument, which is certainly of substance, shows its main weakness in the wake of the experience of the Yugoslav conflict, where the atrocities committed in Srebrenica actually occurred despite the existence of an international tribunal with jurisdiction over those crimes.

This section also contains a description of the efforts on the part of the International Red Cross to strengthen the system of prosecution of war crimes in order to develop respect for international humanitarian law. Written by Yves Sandoz, 'Directeur du droit international et de la doctrine' at the ICRC, this chapter argues that respect for the principles of humanity in armed conflicts can be mainly pursued by extending to internal armed conflicts those provisions that impose the obligation to punish certain acts which occur in the context of international armed conflicts.

The contribution by Professor Gaja brings this section to a close. The author expresses serious concern about the mechanism on the basis of which the principle of complementarity operates. In particular, he criticizes the criteria that the ICC should adopt to determine the situations over which it can exercise jurisdiction (inability or unwillingness of the national system to genuinely exercise jurisdiction). Professor Gaja highlights the risk of the Court remaining entangled in disputes with national authorities over the conditions under which those criteria are met. If that were the case, the Court would be obliged to 'accuse' national authorities of inadequacy in order to be able to exercise jurisdiction and, therefore, in all likelihood the authorities of the state concerned would not be willing to cooperate to the fullest extent with the Court. Finally, the author suggests different solutions to the problem. Principally, he submits that other criteria for deferral of a case from the national level to the jurisdiction of the Court could be added, such as connection to another case before the Court. In sum, Professor Gaja argues for more neutral criteria which would not create a climate of hostility between the ICC and national authorities. However, the example brought, i.e. the ICTY system, has shown that the cooperation of state authorities does not only depend on the grounds for deferral. As the author points out, the ICTY has always used the third criterion provided for by Rule 9 of its Rules of Procedure and Evidence: it has insisted on the fact that the issue was closely related to another investigation by the Tribunal. Nevertheless, the

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territory (express reference is made to the NATO troops in Bosnia Herzegovina). The other general principles of the system for the repression of war crimes are the obligation *aut dedere aut iudicare*, and the duty of states to cooperate with each other to prosecute war criminals (Art. 88 Additional Protocol I) in respect of 'grave breaches'.

authorities of the Federal Republic of Yugoslavia have repeatedly refused to cooperate.

Section III covers the problem of implementation, at the national level, of the system for punishment of war crimes outlined by the Geneva Conventions and Protocols. It includes two papers on the status of the Italian system. The first, by Professor Chiavario, discusses — from the perspective of criminal law and criminal procedure — the question of the values protected by the criminal provisions of international humanitarian law and problems relating to the activation of the jurisdiction of military tribunals in time of war: the functioning of military tribunals, under Italian law, is subject to a decision of the supreme commander. The second paper, by Professor Benvenuti, deals more specifically with the issue of how the relevant provisions of international humanitarian law have been implemented in Italy and the reforms presently being drafted. The author affirms that the need for the creation of the UN ad hoc tribunals and the establishment of the ICC is evidence that there is a substantial lack of enforcement at the national level of the norms concerning war crimes. Thus, Professor Benvenuti suggests that the primary role of international tribunals is to put national authorities under pressure, given that the general enforcement of international humanitarian law rests with national jurisdictions.

This section also contains an interesting contribution on various recent national statutes on war crimes. André Andries, from Belgium, deals with the problem of the general failure of states to enact an effective system of punishment for war crimes. He then presents the Belgian law on war crimes adopted on 16 June 1993. He argues that the will of the Belgian legislator to recognize specificity in the criminal provisions of international humanitarian law emerges in that the law is not an amendment to the criminal code or the military criminal code, but is rather a so-called special law (*loi spéciale*). Moreover, another element that proves the peculiar role attributed to these norms is the seriousness of the penalties attached to the commission of war crimes. The law also includes within its scope the commission of war crimes in internal conflicts. Finally, the author refers to the draftsmen's '*propos didactique*' (an educational purpose), which, in particular, emerges in that the law highlights the international character of these crimes. The situation of national implementation of international rules on war crimes in France is described by Professor Daillier. He describes the controversial role of the principle of universal jurisdiction, which is operational in France only with the agreement of the executive branch. Moreover, Professor Daillier emphasizes the recognition of a need for a national criminalization of acts defined by international law as war crimes. The author refers to the evolution of a general restrictive tendency to interpret international rules which criminalize certain acts. Finally, the last paper in this section, by Professor Perez Gonzalez, deals with the current situation of Spanish legislation. In Spain the obligation under international law to prosecute war criminals was partially fulfilled by the military criminal code; nevertheless there was a *lacuna* in general criminal law. It was therefore necessary to amend the criminal code, introducing norms that would criminalize the types of conduct proscribed by international humanitarian law. In contrast to the Belgian solution, the Spanish legislator decided to opt for an amendment to the criminal code. Thus, there is now a specific section of the Spanish criminal code that deals with war crimes. The section is called 'Crimes against the International Community' and includes war crimes and crimes against humanity. The double criminalization of certain conducts, both in the military code and in the general criminal code, is mainly due to the fact that the military legislation did not incorporate the liability of civilians who commit prohibited acts. Nevertheless, these parallel incriminations may create problems. These could be solved, according to Professor Perez Gonzalez, by suppressing the provisions of the military code and substituting them with a reference to the general system provided for in the criminal code. Lastly, although the criminal code affirms that there is no statute of limitation for

the crime of genocide, it does not provide the same for war crimes; according to the author this has been expressly avoided.

Section IV contains two papers on legal theory and political philosophy in relation to war crimes. Professor Santoro's paper, entitled 'Winners and Victors' Considerations on the Political Philosophy of War Crimes', constitutes an ultra-realist reading of the war crimes trials based on the assumption that the wrongfulness of acts qualified as war crimes depends upon the outcome of the conflict: the winner is right and *vae victis*. This approach is criticized by Antonio Intelisano, Chief Military Prosecutor in Rome (p. 246). The second paper, 'Order and Justice in the International System', by Professor Calzini, is an attempt to show that the globalization process shaping international relations leads, rather inevitably, to the creation of an international criminal jurisdiction. Contemporary international society is moving from a model based on competition and war towards a paradigm of cooperation. The author claims that there has been a shift from an anarchical society to a better organized and more integrated community. New tensions, however, are emerging. These are linked, on the one hand, to the increasing activism on the international political arena of states, such as Japan, India and China, and, on the other hand, to the rise of nationalism. Thus, the goal of cohesion pursued by the globalization process is challenged both by these emerging countries, which bring all the weight of their strong cultural roots to the international political scene, and by nationalist movements which tend to emphasize regional peculiarities rather than common traits.

Section V deals with the role of NGOs in pushing for the implementation of international humanitarian law. Professor Patrnogic, President of the *Institut international de droit humanitaire*, and Cristina Pellandini, legal adviser of the ICRC, explain the role played by leading NGOs in the field of international humanitarian law. They have the important functions of disseminating knowledge of the norms of the Geneva Conventions and Protocols and engaging in an ongoing dialogue with parties in conflict in an attempt to foster respect for these norms.

Section VI contains the texts of the numerous addresses made at a round table on the status of Italian law and the prospects for amendments. The crucial issue of the debate was certainly the absence — in Italy — of adequate legislation. This state of affairs was criticized for two main reasons: on the one hand, the difficulties of Italian jurisdictions to deal with cases of war crimes (cf., for instance, the address by Giuseppe Mazzi, judge for preliminary investigations at the Military Tribunal of Rome, p. 266 *et seq*., and the remarks by Professor Sacerdoti, p. 263 *et seq*.); on the other hand, for the negative impact that this situation would have created for Italy on the occasion of the Diplomatic Conference convened in Rome to establish the ICC (cf. the comments by Professor Treves, in which he also expressed the hope that the Diplomatic Conference on the establishment of the ICC would not adopt a minimalist attitude, p. 270 *et seq*.).

The discussion focused on the possibility for national judges to apply international norms in the absence of adequate national legislation to transform international obligations into national rules. Professor Sacerdoti was an isolated voice arguing in favour of direct application at least of certain rules, such as those regarding statutes of limitation in respect of prosecutions for war crimes. The conclusions of the conference were drawn by Professor Pocar, who highlighted the need for continuous cooperation between international organs and national authorities in protecting fundamental rights and in prosecuting war criminals. The real issue is to determine the respective spheres of competence of national and international authorities. Pocar underscored the need for national legislation on war crimes, in accordance with the principle of *nullum crimen sine lege*. He concluded with a warning against the risk that states may intend to establish the international criminal court in order to shun their obligations to enforce international law and to prosecute war criminals.

This book is extremely informative on

recent national legislation on war crimes and on the problems underlying the national implementation of international humanitarian law in respect of criminal acts. It contains a number of learned analyses concerning the interplay between the international system proscribing war crimes and the activation of national jurisdictions in prosecuting war criminals. There is also a firm assertion, repeated in almost every paper, of the need for national implementing legislation to give shape, at the national level, to the system of prosecution of acts in breach of international humanitarian law. In particular, most contributors strongly criticized the Italian legislation on war crimes as it currently stands.

The resulting overall picture is that of an international system for the prosecution of war crimes which is quite well developed, but which has not yet been fully implemented at the national level. At the same time, we can see that an attempt is also being made to strengthen the enforcement of this system through international adjudication — namely, the ICC. As Professor Pocar suggests in his concluding remarks, it is important to recall that the creation of an international organ does not *per se* relieve states of their obligations.

This collection of essays has the undeniable merit of focusing on a highly sensitive issue, providing the reader with interesting information on recent laws and draft legislation. A fundamental problem of international humanitarian law is clearly highlighted: the urgent need for national implementation of provisions on war crimes. However, one cannot fail to note the relatively limited scope of the comparative survey on national legislation, which presents the situation of only four Western European countries (Italy, Belgium, France and Spain). Furthermore, it is striking that the volume does not include any diverging opinions as to the fundamental tenet set out in the book; namely, that the role of international criminal jurisdiction is mainly to force municipal authorities to intervene at the national level. This is certainly a widespread opinion. However, other considerations that played a role in the establishment of international criminal tribunals could have been the subject of an interesting debate. One such possibility could have been the idea that the establishment of an international criminal court serves the need to foster an international stigmatization of certain particularly heinous crimes.

European University Institute *Salvatore Zappalà*

Ahmed Galal and Bernard Hoekman (eds). ***Regional Partners in Global Markets: Limits and Possibilities of the Euro-Med Agreements***. London: CEPR/ECES, 1997. Pp. 317.

This very well-edited book is made up of contributions presented at a conference organized in Cairo by the Egyptian Center for Economic Studies (ECES) in mid-1996. At that time negotiations between the EU and Egypt on a new association agreement under the umbrella of the new Euro-Mediterranean Partnership had just started. More than two years later these negotiations have not yet been concluded, basically because Egypt has found that the deal proposed by the EU is not such a good one. The latter is not offering any new real concessions in terms of market access for Egyptian agriculture. Tariff-free access for Egyptian industrial products was already guaranteed in the 1976 EC-Egypt cooperation agreement. Meanwhile, the EU expects Egypt to eliminate tariffs on industrial imports originating in the EU 'to comply with the WTO rules on FTAs'. The various authors of the papers for the ECES conference, particularly the non-Egyptian ones, stress that this would be good for the Egyptian economy (see e.g. the articles by Lawrence, Page and Underwood). It would help to 'anchor' trade and other economic reforms engaged by the Egyptian government in the last decade, it would push it to make more reforms and it would 'shake' the economy, provided that association implies so-called deep integration and not only tariff elimination. Not only that. Deep

integration, we are told, means that foreign investors will have many good new reasons to put their money in Egypt. The reader, however, gets the impression that, following the EU agreements with Tunisia and Morocco, there will not be deep integration because none of the partners is prepared for it. In particular, the EU is not proposing the kind of treatment offered to the CEECs (which will ultimately lead to membership) nor is there the kind of situation offered by the US to Mexico in the context of NAFTA. This is why a comparison with the latter case, as is undertaken by Francois in his paper, seems inappropriate. Neither can an analysis of the ASEAN and AFTA records presented by Dean De Rosa be of much help because the latter are agreements between developing countries, not of the North-South type. And, so, the only 'real' effects of all the new Euro-Med agreements might be confined to the neo-classic short-run static effects. In welfare terms, these might affect North African economies negatively or leave welfare pretty unaffected because, according to some of the authors in this volume, trade diversion effects might be non-negligible (see articles by Brown, Deardorff and Stern on Tunisia; and by Konan and Maskus). This is actually why the Egyptian government seems right in insisting that agriculture must be included in the free trade deal. It would be highly export-expanding for Egypt and trade-creating for the EU. But this implies that the EU must also 'shake' itself which, quite ironically, is a non-starter.

The last part of the book focuses on some specific Egyptian issues and economic sectors, such as its pharmaceutical industry and the financial service sector. Because of the limitations of the still unsigned agreement, the respective authors reach the conclusion that it is in fact not the new association agreement but other events, such as the application of the TRIPs agreement of the WTO, that will have an overriding effect on the economy. On the other hand, the very comprehensive overview of the textile case leaves some hope that the agreement might actually make a (positive) difference, although the authors (Kheir-El-Din and El-Sayed) assume that the EU will accept the cumulating effect of origin rules in order to reach that conclusion. A very interesting chapter by Diwan deals with expected changes in Egypt's income distribution deriving from the application of the EU-Egypt agreement. Linking these two things is a rather unusual, and thus refreshing, exercise. But as happens in other contributions, Diwan tends to forget in his projections that market access to the EU is not going to change much.

To sum up, we have here a volume which includes very solid, competent and serious research, in many cases using up-to-date quantitative techniques. To be commended in particular is both the overview and the concluding chapter written by Galal and Hoekman, which assist the reader very effectively in reaping the greatest benefit of the exercise. This volume shows that the new Euro-Med Agreements are not a panacea, but an opportunity for North African governments to take other steps that they should and would have to do anyway.

The Hebrew University *Alfred Tovias*

Dunér, Bertil (ed.). ***An End to Torture: Strategies for its Eradication***. London and New York: Zed Books, 1998. xii + 266 pp.

Dunér is a political scientist who directs a Human Rights Programme at the Swedish Institute of International Affairs. The book provides a useful and balanced snapshot of the current state of play in the struggle against torture. In terms of international law it includes a comprehensive but not especially insightful overview of existing law and procedures, written by a former Swedish member of the European Commission on Human Rights and the European Committee for the Prevention of Torture (Love Kellberg), and an up-to-date account of efforts to draft a UN protocol to establish an on-site inspection system somewhat similar to that created by the ECPT. The latter is written by Anne-Marie Pennegård, a Swedish diplomat who has played a key role in the drafting process.

The most interesting chapter is that by Lisa Kois, a consultant to the UN Special Rapporteur on Violence against Women. She adopts a feminist focus on the treatment of women as victims of torture, not only by the torturers themselves but by the police, by international law and by international procedures. Although much of the material is familiar, she uses it to build a compelling indictment of existing approaches. She takes particular issue with the reluctance to treat rape, even when inflicted by prison and security personnel, as torture. ' If the soles of her feet are beaten, ... [I]f she is given electric shocks, it will be called torture' (p. 91). But if a woman is raped, once or repeatedly, it is called rape and effectively downgraded as a crime and its investigation and punishment are weakened by being subjected to all of the flawed responses that still greet rape in most, if not all, legal systems. Kois is also strongly critical of the UN Special Rapporteur on Torture for assuming a 'fairly, albeit not wholly, gender insensitive perspective in his reports' (p. 100), and of the UN Committee against Torture for doing 'little to incorporate a gender perspective into its work' (p. 104). They are not alone, however. As extraordinary as it may seem, the UN Committee on the Elimination of Racial Discrimination maintained well into the late 1990s that its mandate did not justify its taking a gender perspective on the matters before it. The efforts of a minority to overturn this doctrine are only now bearing fruit.

The chapter by Dunér on non-state actors musters a great deal of interesting information, but fails to make much headway with the central question of how the international community should respond. Despite the magnitude of the problems that he identifies, he is reluctant to challenge the traditional international lawyers' analysis of the inappropriateness of treating any other actors on a par with states. That leads him to suggest, but without any enthusiasm, that the focus of UN debates on torture could be widened, provided that they are 'accompanied by a strong disclaimer to the effect that no juridical status whatsoever will [thereby] be conferred on rebels' (p. 124). His ultimate conclusion is that bilateral forums might be the best context in which to pursue the role of non-state actors, although his suggestion that the UN's chronic resource shortage is a strong reason for this approach is unconvincing. Moreover, bilateral contexts are, in many respects, precisely the place where references to the need for a balanced approach to violations by governments and rebel groups are least likely to be entertained with equanimity.

Consideration is also given to the role accorded to torture in foreign policy (Katarina Tomaševski), the relevance of truth commissions (Priscilla Hayner) and the role of NGOs (Rita Maran). The final two chapters provide a useful and provocative contrast. Manfred Nowak, a long-time participant in various international human rights efforts, ends with an unflattering assessment of the progress made in recent years and concludes that the real solution lies in efforts to instil a human rights culture in general and to promote greater respect for the dignity of detainees and others. Given recent trends in the treatment of detainees and offenders in Western countries in recent years, the battle is very far from being won. Inge Genefke, Secretary-General of the International Rehabilitation Council for Torture Victims, ends on a much more pragmatic note by calling for a major advocacy programme focusing on the extent and consequences of torture, the possibilities of rehabilitation, and prevention measures. While the title of the book talks of strategies for 'eradication', none of the contributors provides much ground for optimism on that score.

Philip Alston

Talmon, Stefan. ***Recognition of Governments in International Law: With Particular Reference to Governments in Exile***. Oxford: Clarendon Press, 1998. Pp. lxxii + 393, £50.

This book forms part of the series of Oxford Monographs in International Law under the general editorship of Professor Ian Brownlie.

Dr Talmon is to be congratulated on this valuable contribution to the ever-topical issue of recognition of governments in international law.

A few general comments on the subject-matter and method of study need to be made in order to demonstrate two aspects of Dr Talmon's understanding of the topic. First of all, Talmon's analysis of recognition of governments in international law informs the reader that there are cases in which this type of recognition has legal effects which differ from the recognition of states. Second, it is not the author's intention to discuss general rules and principles of international law regulating the recognition of governments, except where these may be identified on the basis of particular state practice. This approach reinforces the understanding that recognition may be an exercise of state discretion, especially with regard to the recognition of governments. At the same time, certain rules and principles have emerged through state practice and apply in cases which are referred to in this study on recognition of governments in international law. The strength of this study lies in its broad, almost exhaustive, collection of state practice, which serves as the main source for Talmon's synthesis of legal rules and principles relevant to the recognition of governments.

The author has divided his study into two parts. In Part I he examines the meaning of recognition of governments in international law. This he does by raising questions concerning the willingness of states to recognize governments (p. 12), whether states may refuse to recognize governments, and whether the opinion of states concerning the fact of existence of governments can be prescribed by, or should comply with, rules of international law (pp. 39–40). The author then proceeds with the examination of different variants of recognition of governments in international law, beginning with references to older examples and leading to more recent ones.

In what seems to be the main point of inquiry in Part I, Talmon questions whether the thesis that there no longer exists a distinction between *de jure* and *de facto* recognition of governments, or any other formal categorization of acts of recognition of governments in modern international law, is supported by state practice. For example, he identifies at least six different situations in relation to which the term '*de facto* government' has been used in state practice (p. 60). Different terms could be used by different states in similar circumstances. The obvious question is whether the various terms have correspondingly different legal and practical consequences or whether the same term, as used in different cases, has similar legal and practical effects in relation to the recognition of governments. Talmon concludes that the degree, form and consequences of recognition are to be determined by looking at the intention of each state rather than at the wording used – a conclusion which is certainly consistent with the pattern of international law process.

One of the examples which the author has studied is the recognition of the Estonian National Council in 1918 and the Latvian National Council in 1917 by the British Government as *de facto* governments of the territories identified at that moment as Estonia and Latvia respectively. The author argues that, despite the somewhat confusing language of these statements, they were intended to recognize the governmental authority of the two Councils and nothing more. Talmon explains his argument by referring, among other things, to the contemporary situation in the Baltic region, where Estonia and Latvia were battlefields for German and Soviet troops in 1918–1919 (pp. 69–71). It is worth noting that the British statements provoked similar interpretative confusion in the two Baltic states.

In further showing the possible distinction between *de jure* and *de facto* recognition of governments, the author distinguishes between four groups of cases: (a) secession, decolonization or partition of states, (b) annexation of states, (c) rival governments of the same state, and (d) effective governments of states. The introduction for each category begins with a summary of what seems to be the established state practice in that type of

case, which could thus be considered as forming the customary rule of international law, even if the author does not express it in such terms. For example, in the case of annexation of states, it is claimed that:

> As long as a government has not yet recognised the annexation of a State (i.e. the sovereignty of the annexing State over the annexed territory) it cannot recognise (*de jure*) the annexing State's government as the government of the annexed territory (p. 102).

This seems to be one of the rules which derives from the principle of *ex injuria jus non oritur*. Recognition of the annexation of a state is a matter which operates at another level and is subject to other rules of international law. It is, however, directly relevant to what happens to governments.

The situation in the Baltic states in 1990–1991 provides an interesting example of this type of case. It may be recalled that the three Baltic states adopted independence declarations in 1990, proclaiming either full independence, as in Lithuania's case, or independence following a period of transition, as occurred with Estonia and Latvia. Apart from the question whether these actions on the part of the Baltic states represent an example of secession or decolonization (the Baltic states asserted the continuity and identity of their states, based on the earlier violation of the rule prohibiting the use of force between states by the USSR), questions certainly arise here in relation to recognition of governments in international law.

It must be noted that the wording used in inter-state relations is often nuanced and even indeterminate, including for political reasons, which increases the difficulty of discovering what legal consequences may arise between the two states. It should be noted that it does not fall within Talmon's primary aims to provide an answer to the usual question whether recognition is constitutive or declaratory of a government. The answer to this question, if it can be answered at all, will only emerge from an inquiry into different cases of recognition and their legal and practical effects. In principle the question cannot be answered *a priori*.

This is an incomplete picture, however, because it raises the question whether everything done by states in recognizing governments is accepted in international law, thereby giving rise to legal consequences. This question is not the main subject-matter of the study, as identified by the author, but it is answered by implication when he discusses cases and draws upon rules and principles which have emerged through these practices.

In Part II, Dr Talmon examines the competence of governments-in-exile, as recognized by third states. This question is studied in relation to such matters as international representation, jurisdiction and privileges and immunities. Part II offers the reader a very thorough description and analysis of possible treaty-making capacity (pp. 117–136), maintenance of diplomatic relations (pp. 159–168), protection of property and nationals by governments-in-exile, as well as an analysis of the conditions under which these capacities may be exercised. A careful study of the practice makes one quite sceptical about the issue of state discretion in matters of recognition of governments in international law. After a thorough examination of cases, the author suggests that recognition of governments may be both legal and illegal (e.g. p. 123, p. 146). Recognition as international delict or an illegal act under international law (p. 273) raises the obvious question as to the nature of the consequences of such an act between the two states and/or *vis-à-vis* third states. This, however, is beyond the scope of Talmon's study, though it is certainly a topic which merits consideration and which could be linked with rules and principles discussed in relation to state responsibility.

Dr Talmon's study clearly shows that recognition of governments cannot be given consideration as one category. Each case may be different, making it difficult to identify discrete rules and their content. The traditional question whether recognition is 'constitutive' or 'declaratory' of a government appears superfluous, even invalid, when the issue is dealt with in the manner suggested by

Talmon. On the other hand, the very positivist approach to recognition of governments in international law, as undertaken by this author, does not preclude the ongoing debate concerning the existence of general rules and principles relevant to these matters, which may in turn lead to a certain presumption about the nature of recognition in particular cases.

Apart from its specific conclusions, the book is useful for its wealth of information, both historical and contemporary (including its Appendices). Given the limited recent research on recognition of governments, especially governments-in-exile, this volume certainly fills a gap in the literature, at least within the confines determined by the author. It provides an essential sourcebook for anyone attempting to answer more general questions as to the legal character of recognition, whether or not one accepts the answers the author himself provides.

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