
Book Review

Watts, Arthur (ed.). **The International Law Commission 1949–1998**, 3 vols. Oxford, New York: Oxford University Press, 2000 (as set). Pp. 2186 (including indexes). £195, \$325.

The three volumes comprising this impressive collection cover the work of the International Law Commission in its first 50 years of existence, and include an introductory overview to its work as well as a special introduction to each of the topics dealt with by the Commission. In addition to the ILC proposals with commentaries, the volumes present the conventions eventually adopted, as well as a summarized history and a select bibliography for each of them. With the exception of the Introduction, all of this material can of course also be found in the Commission's *Yearbooks*. However, while the Commission has made every effort to make available its sets of articles and Commentaries, the presentation of its work to the interested public has left much to be desired, at least prior to the advent of the Internet.¹ It is only with the publication of the volumes under review that a comprehensive presentation of all the ILC's articles along with commentaries has come into being. In the past researchers had to consult the most recent ILC report to the General Assembly on a particular subject and then trace the relevant commentaries with the aid of the footnotes provided in the report. Moreover, smaller libraries could not afford to take out a subscription to the *Yearbook*. Although this set of

volumes is far from being economically priced, it is nonetheless more affordable than the *Yearbook*.

However, this set of volumes does more than give greater accessibility to ILC documents. It provides a general introduction to the work of the ILC, as well as introductory notes to each of the ILC proposals. These succinct notes offer an excellent impression of both the drafting history as well as the success or failure of these proposals. The first two volumes cover ILC proposals which resulted in the adoption of conventions by the General Assembly or multilateral Conferences, while the third contains those which did not. The volumes, however, lack a comparative chart to identify the articles of ILC proposals and those actually found in the respective conventions.

The decision on the part of the editor to include only projects completed by the Commission means that the Draft Articles on State Responsibility, adopted by the Commission on first reading in 1996² and subsequently adopted by the Drafting Committee on second reading,³ are not to be found in the volumes under review. As Sir Arthur does not fail to mention,⁴ the Draft Articles have nevertheless been affirmatively cited by the International Court of Justice.⁵ Consideration could well be

² Yearbook of the International Law Commission 1996, vol. II, Part 2, p. 58.

³ Draft articles provisionally adopted by the Drafting Committee on second reading, International Law Commission, Report on the work of its fifty-second session, General Assembly Official Records, Fifty-fifth Session, Supplement No. 10, UN Doc. A/55/10 (2000) [hereinafter: ILC report 2000], at 124, Appendix after para. 405.

⁴ Vol. 1, at 13.

⁵ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, p. 7, at 36 *et seq.*, paras. 50–53 and at 51, para. 79.

¹ Since, the ILC website, <http://www.un.org/law/ilc/index.htm> (last visited December 8, 2000), has become an invaluable research tool for all international lawyers interested in the latest developments of the work of the Commission.

given to publishing a fourth volume to examine this important project once it is completed, together with the related, but conceptually distinct, work on international liability for injurious consequences arising out of acts not prohibited by international law,⁶ and diplomatic protection.⁷ Instead, volume 3 also includes sets of articles which are, if anything, only of historical significance, such as the ILC project on most-favoured-nation clauses of 1978,⁸ and the ILC report on the availability of customary law of 1950.⁹ Nevertheless, their reproduction is to be welcomed because it enables a comprehensive assessment of the successes and failures of the Commission.

Sir Arthur's introduction to these volumes, as excellent and beautifully written as one might expect from this distinguished author, explicitly raises the question of the future of the Commission.¹⁰ These volumes, viewed together with the soon to be completed ILC project on state responsibility, provide impressive evidence of the success of the Commission in its work on the codification and progressive development¹¹ of the most fundamental topics of general international law — even though the outcome has not in every instance been a convention as widely ratified and recognized as *cum grano salis* reflecting customary law as in the case of the Vienna Conventions on Diplomatic and

Consular Relations and the Law of Treaties. Some of the topics currently dealt with or proposed for the Commission's future work,¹² such as the responsibility of international organizations or the guidelines on reservations to treaties, seem only to aim at filling *lacunae*;¹³ others, including the proposed study on risks ensuing from the fragmentation of international law,¹⁴ are of a completely different nature to any project undertaken by the ILC to date; and others again, such as topics concerning environmental and humanitarian issues,¹⁵ might be better dealt with in other fora. Nevertheless, one cannot but applaud Sir Arthur Watts when he emphasizes the positive role of a legal body of a general nature.¹⁶ Fragmentation is not only a question of subject-matter, but also of the people dealing with issues such as human rights or international trade law.

Nevertheless, it might well be necessary for the Commission to call upon international civil society and experts for specific subjects requiring technical expertise, such as for instance the topic of shared natural resources of states contained in the shortlist for the long-term programme of work.¹⁷ Similarly, the complete absence of women in the Commission is an issue requiring consideration. Although broadly content with the current working methods of the Commission, Sir Arthur seems to agree on the necessity to draw on experts in technical fields.¹⁸ Ultimately, however, the best test for the Commission will be the acceptance of its future work by the broadening international law-making audience. The Statute of the International Criminal Court is a case in point: on the one hand,

⁶ For the current state of the ILC deliberation on this subject, see B. Simma, 'The Work of the International Law Commission at Its 52nd Session (2000)', forthcoming in 69 *Nordic Journal of International Law* (2000), ch. VI and Annex V; ILC report 2000, *supra* note 3, at 273 *et seq.*, paras. 664–721 (also containing the text and the draft of a Convention on the prevention of significant transboundary harm referred to the Drafting Committee).

⁷ Simma, *supra* note 6, ch. III; ILC Report 2000, *supra* note 3, at 141 *et seq.*, paras 406–496.

⁸ Vol. III, at 1793 *et seq.*

⁹ *Ibid.*, at 2105 *et seq.*

¹⁰ Vol. I, at 6–7.

¹¹ As Sir Arthur aptly remarks, the line between codification, progressive development and even law-making is difficult, if not impossible to draw. Vol. I, at 7–9.

¹² See ILC Report 2000, *supra* note 3, at 290–292, paras. 726–733.

¹³ See *ibid.*, at 209 *et seq.*, paras 623–663; Simma, *supra* note 6, ch. V.

¹⁴ ILC Report 2000, *supra* note 3, at 292, paras 729, 731.

¹⁵ The Commission seems to acknowledge that, see *ibid.*, at 292, paras 732, 733.

¹⁶ Vol. I, at 20.

¹⁷ ILC Report 2000, *supra* note 3, at 292, para. 729. Vol. 1.

¹⁸ Vol. I, at 16.

the Commission's completion of its proposal in only four sessions demonstrated a remarkable efficiency, especially if compared to its usual speed. On the other hand, however, the outcome of its work seemed not to be quite in tune with the progressive attitude which, by

and large, prevailed at the Rome Conference. The jury is still out on whether the ILC experts or 'like-minded' experts and diplomats will be proven right at the end.

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