Book Reviews

Jean Combacau/ Serge Sur, Droit International Public

L.G.D.J. Montchrestien, 5th edition, 2001, 743 pages (+ 67 pages Index)

Since 1993, the year of its first edition, the textbook "*Droit International Public*" by Professors Jean Combacau and Serge Sur has constituted a prerequisite for students and academics of Public International Law, one of the most ambitious contemporary presentations in this field. Mainly, the book aims to introduce French students to the world of international law after their first degree, it goes, however, far beyond an introduction. It also presents insight into the positivist school of French lawyers. This dogmatic approach becomes apparent in the general structure of the book.

The first chapter (*Les relations internationales et le droit*, pp. 1 - 40) deals with the articulation between international relations and law. The definition of international law as a regulating system of inter-states relations is clarified at a very early point in the book. The authors try to establish the character of international law as a legal order. In the first part they attempt to distinguish international law from neighbouring fields of international relations, as for example transnational law.

The authors establish that international law constitutes a full legal system/order, even if it is not conceived in terms of hierarchy, but set up in an anarchical fashion. The legal system at the international level is not comparable with any national order; due to the sovereign equality of the subjects, the mechanism is essentially different for the devising of norms as opposed to the elaboration of laws in national legal systems. For the authors, the foundation of international obligations are - at the end - the acceptation and the will of the state. This volontaristic view presented is a concept pursued in the following eleven chapters.

The second chapter (*Eléments de formation du droit international*, pp. 41 - 113) focuses on the elements of formation of international law comprising one section on the origin of the binding character of inter-

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national law which is the "engagement" of the state. Then, Sur, author of the second chapter, exposes the sources of international law. The author not only introduces the reader to technical knowledge but emphasizes early in the book the crucial issues as well as theoretical problems with regard to the formation of international obligations, placing particular emphasis on the generally hazy - zones caused by the "mystical" appearance of customary law.

The third chapter (*Droit international des traités*, pp.113-164) deals in a very comprehensive way with the law of international treaties. After the exposé of the formal and material conditions, Sur insists on the technique of reservation to treaties without however citing the *Belilos*-case of the ECHR, which is indispensable in this regard. After this overview on the birth of a treaty, the author presents the entry into force, the modification and termination of a treaty. The second part deals with the legal validity and value of treaty-law (*pacta sunt servanda* and *ius cogens* concepts). Sur criticizes the formulation of article 53 of the Vienna Convention on the Law of Treaties with arguments that may explain the refusal of France to ratify the Convention. In a very short final section of this chapter, Sur exposes the general principles of the relation between treaties and customary norms.

In the next chapter (*Techniques de mise en œuvre du Droit international*, pp. 165 - 222) on the mechanisms of implementation, Sur examines the "realization" of international law: first of all the interpretation, which is a prerequisite for the enforcement of any obligation. The author points out that the interpretation of a rule can contradict the original will of the authors but should not lead to any formation of new obligations. Interpretation only constitutes a crystallization of a preexisting sense of an obligation, even if the historical interpretation is not the unique one.

The application of international law within the national legal order, is essential for the effectiveness of the international legal system, but according to Sur, the concepts of monism and dualism are not sufficient to analyze the positive law. In a very detailed way, Sur exposes the implementation of international law into the French legal order. In comparison with similar textbooks of international law, this section covers considerable scope. In the third section of the chapter, Sur examines in general terms the conditions and procedures for the respect, the violation and the application of international obligations; in a second step he introduces the verification and monitoring-measures, before finally analyzing the general rules on counter-measures. In this respect, it would be profitable to cite the Gabčikovo-Nagymaros case of the ICJ,

from the 25 September 1997, making reference to the regime of countermeasures.

Chapter five (*L'Etat en droit international*, pp. 223 - 307) written by Combacau, focuses on the international legal statute of the state, before exposing the "elements" of a state (equality, immunity, sovereignty) in a very comprehensive way. Only then Combacau turns to the constitutive elements of the state, on which most textbooks begin. The fourth part of this chapter concerns the dissolution, succession and disappearance of states.

In the sixth chapter (*Les sujets internes en droit international public*, pp. 307 - 396) Combacau envisages the statute of individuals and legal private persons in international law. In a second step, he examines the different issues of nationality; its attribution, recognition and the consequences of the affiliation by nationality link. The third section, analyzes in a rather restricted way the competencies of the state and its jurisdiction on nationals and non-nationals. The last section, finally deals with international rules concerning individuals and private legal persons, the mechanisms of protection of human rights covered in only eight pages.

In the subsequent chapter (*Statut et condition internationale des espaces*, pp. 397 - 443) Combacau offers a typology of the notion of space and the elements of attribution of space to international or national titles as well as the general principles ruling the delimitation and claims of territories and space. After this analysis, Combacau states the effects of territorial titles, the powers of the state within its territory, obligations and duties of the state vis-à-vis third states and changes in territorial matters (succession, transfer).

Chapter eight (*Régimes internationaux de l'utilisation des espaces*, pp. 445 - 516) describes in detail the rules of international space, which is not subject to territorial sovereignty of any state. Insisting on the diversity of international regimes and their essentially functional character, Sur tries to find a general description of the concept of international spaces. After this successful attempt, he exposes some different regimes of international space as well as the problems raised by them. The last section deals with the recently developed rules on the protection of the environment, which Sur considers to be at a rather "embryônic" state.

The chapter on state responsibility (*Responsabilité internationale de l'Etat*, pp. 517 - 554) is of special interest not only since the close of the work on state responsibility by the ILC in January 2002. Combacau's premise is, that state responsibility only comprises responsibility be-

tween states, therefore relations between individuals and states are excluded. Firstly, Combacau examines the nature of state responsibility, its "consistence". He especially insists on the theoretical basis and issues of the work of the ILC. It is however regrettable that the present edition of the textbook has obviously been completed before the work of the ILC has been concluded. In a second step, Combacau describes the pre-conditions of state responsibility including the damage suffered by the state. At a first and superficial glance, this perspective is in contradiction with the work of the ILC. Article 1 of the ILC's Draft reads as follows: "Every internationally wrongful act of a state entails the international responsibility of that state." No mention is made of any damage as a condition of state responsibility. Combacau is fully aware of this apparent contradiction, but as the condition for the "*mise en œuvre*" of state responsibility, the damage remains essential, it is the basis of the legal interest, and therefore, Combacau's approach seems justified. In a last step, Combacau exposes the condition of imputability and international wrongfulness in a very classical structure.

The next chapter (*Droit du contentieux international*, pp. 555 - 614) focuses on international litigation commencing with a definition of legal disputes in order to present their resolution mechanisms, both the diplomatic and the judicial angles. The second section deals exclusively with the judicial enforcement of the law.

In a preliminary section, the subsequent chapter (*Droit de la paix et de la sécurité internationales*, pp. 615 - 702) presents the relationship between peace, security and international law. According to Sur, international law regulates the use of force rather than prohibiting it. As the use of force and armed conflicts are frequent in inter-state relations, international law reflects the consciousness of the necessity of rules of war, regulating and limiting the consequences of the use of force. The second part of the Chapter presents the United Nations' action and institutional structure. In general terms, Sur then describes the international humanitarian law; only a very brief part is devoted to international criminal law, the repressive aspect of humanitarian law. To a considerable extent, Sur analyzes the measures and procedures of arms control, verification and disarmament.

The last chapter (*Droit des organisations internationales*, pp. 703 - 744) on the law of international organizations, by both co-authors, aims at a general presentation of the emergence of international organizations and their various forms of functioning. The last section is devoted to the general structures; membership, organs and voting procedures of

international organizations, with a special emphasis on the United Nations system.

It is important to underline the very comprehensive bibliography at the beginning of the book, pp. XV to XXVI) which is supplemented by a more specialized bibliography at the end of each chapter. The index of jurisprudence and documents is also exhaustive, although there is only little human rights jurisprudence.

The reader may also hope that the next edition of the textbook will more duly reflect the recent and consistent developments of international criminal law.

Summing up, this textbook remains one of the richest and most profitable sources for students and academics in the field of Public International Law. One cannot deny that Combacau and Sur impress by virtue of their stringent way of discussion and analysis; this textbook constitutes more than an adequate introduction to international law and provides a very solid basis for further reflection.

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Alexandros Kolliopoulos: La Commission d'indemnisation des Nations Unies et le droit de la responsabilité internationale

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Kolliopoulos' book *"La Commission d'indemnisation des Nations Unies et le droit de la responsabilité internationale"* represents an ambitious effort to bring the work of the United Nations Compensation Commission (UNCC) into context with the law of state responsibility. This approach may seem surprising at the first glance, but the law of state responsibility is not restricted to inter-state relations. It is entirely acceptable that it can, in specific cases, include the regulation of legal relations between states and individuals or private legal persons, although the ILC articles on state responsibility do not refer to these kinds of relations. A more serious objection could be that the law of state responsibility exclusively deals with disputes of reparation whereas the Security Council resolution 687 of 1991 establishing the UNCC forms part of the sanction system of Chapter VII of the UN Charter. However, the author affirms that the Commission treats reparation or compensation issues and does not assume a punitive character in a strict sense. Therefore it is legitimate to place the UNCC within the

system of state responsibility. This is also consistent with the "decisions" of the UNCC which remains a strictly compensatory body and has not, for instance, agreed to bestow punitive damages.

However, it is useful to distinguish between the law of the United Nations and the law of state responsibility. On the one hand there is the system of the Charter logically constructed in terms of the maintenance of international peace and security, while on the other hand there is the system of state responsibility, established within the logical system of reparation of damages caused by an internationally wrongful act.

The book is framed by a dynamic and concise plan which comprises two main parts, as usually requested for a French thesis. The first part of the thesis (*La centralisation du contentieux de réparation*) deals with the analysis of the Security Councils' action and the legal nature of the UNCC as an institution. It describes the establishment of the UNCC in the type of measures taken by the UN Security Council under Chapter VII of the Charter. According to the author, the means of state responsibility are entirely enabled to ensure the function of Chapter VII, which means that state responsibility serves the function of maintaining or restoring peace, and at the same time the Security Council fulfils a role of a "guardian of legality" in the international system, a role that is usually attributed to the mechanisms of state responsibility.

Within his first Section (*Le fondement juridique de l'action du Conseil de Securité*) the author analyzes the role of reparation within the concept of maintaining peace in the Security Councils' practice and finally comes to the conclusion that the restoration of legality by means of reparation is integrated in an extension of the sanction-concept in the recent practice of the Security Council and may play a decisive role in the maintenance of peace.

Then under the heading *L'action réparatoire et les pouvoirs du Conseil de Securité*, Kolliopoulos examines the legality of the action of the Security Council. The author comes to the conclusion that the establishment of the responsibility of Iraq by a resolution of the Security Council is in no way external to the powers given to the Security Council by the Charter and that this "para-judicial" role is in conformity with the spirit of the Charter. In other words, the Security Council is, in the same terms as any international judge or arbitrator, enabled to regulate the consequences of an internationally wrongful act, once the existence of a wrongful act has been recognized. However, the complete role of a judge is not granted to the Security Council itself to the extent that the resolution of a dispute has been delegated to a subsidiary organ, the UNCC. The Security Council has not assigned itself

the role of a judicial body, nor has it explicitly established such an institution. However, the UNCC, as a subsidiary body fulfils the classical functions of a judicial body in the context of state responsibility, which are the so-called powers of adjudication. This power is subjected to the rules of general international law, according to the author.

In the second section of the first part (*La maîtrise du contentieux*), Kolliopoulos analyzes the practice of the UNCC with a view to decentralized dispute settlements. Following the examination of the non-contradictory procedure before the Commission, the author then raises the question whether the UNCC could be called a judicial body and examines whether the Commission complies with the criteria of the judicial function as defined by international law. For the purpose of legal qualification, the author uses formal and substantive criteria and comes to the conclusion that the Commission does not correspond to these criteria, thus denying by this conclusion a character of international jurisdiction to the UNCC.

The second part of the thesis (*Le traitement de la responsabilté irakienne*) comprises a thorough analysis of the rules on state responsibility as interpreted and put into practice by the Commission. In order to establish the notion of legal interest employed by the Commission in its decisions, Kolliopoulos emphasizes the very special character of the Commission which is also based on the acceptance of claims by private persons.

Even if they are presented by their national state, the direct benefit of the fund is allocated to the claimants and is not - as in the law of diplomatic protection - left to the state. The author analyzes whether the procedural notion of legal interest, as applied by the UNCC, affects the substantive content of international law. In particular, he points out that the law of state responsibility has trespassed upon inter-states relations, because the individuals are no longer obliged to pass by the mechanism of diplomatic protection. This theory is of special interest because of its dynamic and progressive perspective on international law. In this context, the brilliant thesis of Kolliopoulos is of highly dogmatic value, even if the reader remains sceptical of the inclusion of private claims in the law of state responsibility. It reforms the classical approach to international law so far as private persons can become subjects of international law and particularly subjects of the *jus ad bellum* and the *jus in bello*, at least the direct beneficiaries of the primary rule and of the secondary rule, the obligation to repair. These changes have, according to the author, influenced the primary rules, the substantial obligations.

Under *La substance de la responsabilité* the author deals with the substantive content of the responsibility of Iraq. The first step is to determine on which foundation the obligation to repair can be based, i. e. to determine the specific international obligation breached by Iraq. He comes to the conclusion that the interdiction of aggression is the pertinent primary rule. For the first time, an act of aggression results in detailed mechanisms of extensive reparation, i.e. mechanisms regulating all consequences of an aggressive act, including damages suffered by individuals. The UNCC also regards the damages suffered by the *état de fait* of the occupation as direct and therefore reparable damages, as mentioned in the Resolution 687 of 1991.

In the last chapter of his work, Kolliopoulos qualifies the degree of responsibility and by a stringent argumentation he qualifies the acts of Iraq as an "international crime", a term which has been deleted from the ILC' s articles on state responsibility but which has not completely disappeared from the law of state responsibility. Especially the *mise en œuvre* of the responsibility for "crime" by the Security Council offers some very interesting perspectives in terms of responsibility for crimes; the classical area of collective security being expanded.

The UNCC may serve as an appropriate answer to those who demand a specific treatment of "international crimes" within the system of state responsibility. It constitutes a reparation system and can, due to its singularity, be interpreted as a kind of sanction, founded however on the idea of pure reparation. The UNCC does not possess a repressive character by nature but it ensures an effective way to reparation for those who have most suffered from the breach of international law by Iraq. Additionally, the effective reparation of every single victim of grave breaches may be regarded as the "smartest sanction" conceivable.

As the author has established, the Commission of the *Villa la Pelouse* in Geneva, represents more than a new subsidiary organ of the UN Security Council among others; its very specific structure and its hybrid function make this Commission seem like a "chimera", a metaphor used by the supervisor of the thesis, Professor P.-M. Dupuy, in the foreword. It was therefore necessary, that, after more than ten years of activity, one tries to replace the UNCC in a more global context - in the context of the law of state responsibility. Alexandros Kolliopoulos has done just this in a convincing and comprehensive way; the fact that the thesis has been awarded the Guggenheim thesis prize 2002 by the University of Geneva also reflects the high academic value of the book.

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