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Grega Pajnkihar, *State Succession to Responsibility for Internationally Wrongful Acts*, Brill-Nijhoff, Boston-Leiden: 2023, pp. xii + 389

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State succession and state responsibility are classic, core topics of public international law. In recent decades, they have also been the subject of codification work undertaken by the International Law Commission (ILC). In particular, at its 68th session (2016) the ILC included the topic "Succession of States in respect of State responsibility" in its long-term programme of work, and at its 69th session (2017) it appointed Mr Pavel Šturma as Special Rapporteur for the topic, who submitted five analytical reports during his mandate. These covered various aspects of state succession in secondary rights and obligations arising from internationally wrongful acts committed prior to the date of succession. In this way the ILC have attempted to address the old, contested question of whether new states are responsible for the wrongs committed by their predecessors. Today, this question has become truly topical in the context of the widely voiced demand for accountability for slavery, colonial exploitation, racism and grave human rights violations. Are all obligations and rights arising from the commission of internationally wrongful acts therefore subject to state succession? What about the "personal" nature of such obligations and rights and their alleged non-transferability?

Given recent developments in state practice and legal doctrine, the ILC has acknowledged that these obligations and rights may in fact be transferable. Whilst the content of the rules of international law in this regard is still debatable, it is increasingly recognised that both obligations and rights stemming from internationally wrongful acts committed by the predecessor state pass to its successor if a special link or connection can be established between the consequences of the wrongful act (i.e. injury) and the successor. Accordingly, the succession of states shall not affect the secondary rights and obligations of the internationally respon-

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sible state, irrespective of the injured state being replaced by its successor(s). In other words, the secondary obligations shall be owed to the successor state(s) if the wrongful act has consequences in its (their) respect. Furthermore, obligations and rights arising from internationally wrongful acts committed prior to the date of state succession that involve a plurality of injured states or the international community as a whole shall not cease by the fact of succession, and can be invoked by any state, even if not directly injured. This particularly concerns grave violations of international law – a breach of an obligation arising from a peremptory norm of general international law (*jus cogens*), including the prohibition of the use of force between states or of slavery, racial discrimination, torture and genocide, as well as peoples' right to self-determination.

The book under review, *State Succession to Responsibility for Internationally Wrongful Acts*, offers the first comprehensive analytical commentary to the aforementioned work of the ILC. It also constitutes one of the very few research monographs on the issue published to date.[1] The author, Grega Pajnkihar (PhD), is a professional diplomat of the Republic of Slovenia. He also served as a Fulbright Scholar at George Washington University in Washington D.C. During his career, he was actively engaged with state succession negotiations in the former Yugoslavia. The book is his revised doctoral thesis, which was defended at the University of Ljubljana in 2020.

In focussing on the ILC's ongoing work,[2] this monograph seeks to answer the fundamental research question of how succession to international responsibility fits into the theory and practice of the law on state succession. To this end, it first (Part 1) reconstructs the UN codification agenda in respect of state succession since the 1960s. Throughout the six chapters, key issues related to the nature of this area of international law are discussed, with a particular focus on cases of the continuation and rupture of international legal personality. Particularly noteworthy here is not only the analysis of sources of a doctrinal nature (with particular focus on works by the Institut de Droit International [IDI]), but also of well-researched international practice.

The author acknowledges that state succession constitutes one of the most complex, challenging and contested areas of international law. In fact, views that law on state succession lacks a consistent set of rules, or that state succession is more a matter of political considerations and dynamics than any legal principles, are not uncommon in the international law scholarship.[3] Unsurprisingly, such approaches

[1] At the time of the publication of this review, a second, expanded edition of the book in question has been published, which also covers the recent work of the ILC; *see* P. Dumberry, *State Succession to International Responsibility*, Brill/Nijhoff, Boston-Leiden: 2024.

[2] *See Succession of States in respect of State responsibility*, International Law Commission, available at: https://legal.un.org/ilc/summaries/3_5.shtml#a15 (accessed 30 August 2024).

[3] *See e.g.* A. Sarvarian, *Codifying the Law of State Succession: A Futile Endeavour?*, 27(3) European Journal of International Law 789 (2016), pp. 789–791.

stem from the experience of decolonisation, which profoundly affected this area of international law. In this latter regard, the core question referred to how the creation of a large number of completely new states would affect the global legal and economic order, particularly the protection of rights acquired during colonialism. Indeed, the establishment of a separate category of newly independent states and a separate legal regime for them has been much discussed and never fully accepted in state practice or legal scholarship.[4] The ILC's codification of succession of states in relation to treaties and economic issues (property, archives and debts) led to the adoption of the Vienna Convention on Succession of States in Respect of Treaties (VCSST)[5] and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (VCSSP).[6] None of them had entered into force at the time of decolonisation. Many provisions of these treaties were considered legal tools destined to achieve certain political goals once colonialism was over, thus belonging "more to the progressive development of law than to the codification of international law."[7] Due to this codification crisis the doctrine of state succession was "pronounced dead (or at least comatose) in the 1980s."[8] However, the author recalls that the fall of the Berlin Wall and the subsequent wave of territorial changes in Central and Eastern Europe gave new impetus to the law on state succession. Indeed, although the VCSST entered into force in 1996, the VCSSP never achieved ratification and yet has been instrumental in designing economic relations of successor states in the post-cold war reality. Moreover, the general definition of "succession of states", i.e. "the replacement of one state by another in the responsibility for the international relations of territory", provided by both treaties seems today to have been fully accepted by both legal scholarship and state practice. Thus, the author offers a detailed summary of rules on state succession in matters of treaties, archives, property and debts. He does not, however, strictly follow the typology of state succession offered by the two Vienna Conventions. Instead, he focusses on the aspects of continuity and identity of states involved in the process of state succession which underlie the core of the ILC's codification endeavour, concerned with the

[4] V.D. Degan, *Création et disparition de l'Etat* (*à la lumière du démembrement de trois fédérations multiethniques* en *Europe)*, 279 Recueils des Cours de l'Académie de Droit International de La Haye 195 (1999), pp. 298–299.

[5] Vienna Convention on Succession of States in Respect of Treaties (adopted 23 August 1978, entered into force 6 November 1996), 1946 UNTS 3.

[6] Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (adopted 8 April 1983, not in force), UN Doc A/CONF.117/14 (1983).

[7] *See* United Nations Conference on Succession of States in respect of State Property, Archives and Debts, 1 March–8 April 1983, UN Doc. A/CONF.117/*C*.1/SR.44.

[8] M. Koskenniemi, *Report of the Director of Studies of the English-Speaking Section of the Centre*, in: P.M. Eisemann, M. Koskenniemi (eds.), *La succession d'Etats: la codification à l'épreuve des faits*, The Hague Academy of International Law, Den Haag: 2000, p. 66.

legal nexus between territory and the pre-existing legal obligations related to it. In this regard, he explores the principle of "special connection", that is, depending on the matter of succession – e.g. territorial pertinence in the case of state archives – the link between the property and the territory, and between the treaty and the border.

In turn, Part 2 of the book deals with the law of state responsibility. The author skilfully analyses the ILC's parallel codification work in respect of state succession and state responsibility. He also explains how these two areas of international law are interlinked. Whilst referring to the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA),[9] he convincingly explains the differences between attribution of conduct and attribution of responsibility. The considerations regarding succession to responsibility for internationally wrongful acts committed by liberation (insurrectional) movements are particularly valuable due to its practical significance for the law of state succession. In this regard, the author rightly notes (Chapter 12) that whilst the insurgency itself is usually separate from the predecessor state, any acts occurring before the successor state comes into existence might be attributed to that state because of its special link with the insurrectional movement.

This part of the book also broadly deals with secondary rights of injured states, principally, the right to invoke responsibility and a (limited) right to take countermeasures. It also addresses the issues of the rights of states not directly injured to invoke responsibility of the state in the case of violations of international obligations that affect the international community as a whole.

The last part of the book (Part 3) debates how the ILC (and earlier, the IDI) has approached the relationship between normative contexts of state succussion and international responsibility. The author highlights the ILC's view that the object of succession is not international responsibility as such, but the rights and obligations arising therefrom. In other words, the object of succession is the rights and obligations deriving from the secondary rules of international responsibility, that is, secondary rights and obligations. Accordingly, the consequences of an internationally wrongful act do not cease or disappear just because of state succession; thus, the ILC rejects the traditional negative succession rule, which claimed that the obligations and rights arising from the commission of such an act were non-transmissible and non-enforceable.

In this regard, the author (Chapter 15), by referring the ILC's ongoing work, scrutinises four rules based on situating international responsibility within the framework of state succession, considering the ILC's codification works. According to the general rule, "[t]he rights and obligations arising from international responsi-

[9] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Supplement No. 10 (A/56/10), chp. IV.E.1.

bility remain with the internationally responsible State after the date of succession if it continues to exist, unless they are succeeded to by a successor State in accordance with special rules." The general rule is complemented by three specific principles.

The first special rule provides that a successor state having a special link to the matter of succession (injury) shall fully succeed to the secondary rights and obligations of reparations relating to that matter. Other secondary rights and obligations may only conditionally pass to the successor state as they usually remain entirely with the continuator state. Instead, specific rules two and three refer to the unification or incorporation and dissolution of the predecessor state, respectively. In the former case, the successor state succeeds to all the secondary rights and obligations of the predecessor state(s) stemming from internationally wrongful acts; in the latter one, the secondary rights and obligations of the predecessor are succeeded equitably by all successors, unless it is possible to establish a specific link (injury) with one of them.

The author concludes that although the codification of the law on state responsibility and on state succession has long been undertaken separately, today "it is not reasonable to interpret succession to international responsibility differently from other matters." Arguably, "[i]t is therefore appropriate to apply the rules applicable to succession in general to succession to the rights and obligations arising from international responsibility." This is an important statement, as the law on state succession shall indeed respond – so as to introduce order, justice and stability – to a rupture in international law relations of territory created by often violent, traumatic events.

Having said this, it should be noted that whilst the dogmatic analysis of international law rules deserves full appreciation, the monograph itself could benefit from some refinement and improvement. My main criticism relates to the detachment of this very well-crafted dogmatic analysis of the law from the broader geopolitical context. The work of the ILC has been undertaken in specific political, social and cultural circumstances, and perhaps it would be useful to broaden the analysis to include these elements and the wider background. The ground-breaking work by Matthew Craven can serve as a good example in this regard.[10] My second criticism relates to the internal construction of the book. It is divided into 15 very short chapters. In my opinion, it would have been more advantageous from the rhetorical point of view to reduce their number and to refine the flow of the analysis. However, these critical remarks do not change the unequivocally very positive opinion of this book, which in my view makes highly valuable reading for both scholars and practitioners of international law. Undoubtedly, it is now one of the key studies regarding the topic of state succession in respect of state responsibility.

[10] *See* M. Craven, *The Decolonization of International Law: State Succession and the Law of Treaties*, Oxford University Press, Oxford: 2007.