

Maurizio Ragazzi (ed.), *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie*, Martinus Nijhoff Publishers, 2013, pp. 469

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Ten months after a devastating earthquake in January 2010, a cholera outbreak took place in Haiti. As a result thousands of Haitians died and the disease spread to neighbouring countries. From the very beginning, the members of the United Nations peacekeeping operation who came from countries where cholera is an endemic disease (e.g. from Nepal) were blamed for the outbreak of the epidemic.¹ This hypothesis was confirmed by a report of the Independent Panel of four international experts formed by the Secretary-General of the United Nations. Nevertheless, the Panel underlined that the outbreak was not the fault of, nor the result of any deliberate action by any group or individual, but was caused by the confluence of circumstances.² Despite the calls some UN high representatives, including Navi Pillay, the High Commissioner for Human Rights,³ and lawsuits filed against the UN in national courts (e.g. in the US),⁴ the Organization has shielded itself from any responsibility by calling on its jurisdictional immunity, and apparently it excludes any possibility of paying compensation to the state or individuals affected.⁵ This case has shown that the issue of the responsibility of international organizations is not just a theoretical one, but has been incrementally attracting greater attention and has proved to be of great importance, especially if one has in mind the increasing role of international organizations in international relations and events. Since 1949, when the International Court of Justice issued an advisory opinion on reparation for injuries suffered in the service of the United Nations, no one has questioned the legal personality of IGOs (international governmental organisations). However, despite the fact that legal personality and legal responsibility are flip sides of the same coin, for years there was little discussion about the legal responsibility of international organizations (IOs), in part because of the lack of such a practice.

¹ R. Carroll, *Haitians turn on UN peacekeepers they blame for cholera outbreak*, The Guardian, 16 November 2010, available at: <http://www.theguardian.com/world/2010/nov/16/haiti-cholera-united-nations-peacekeepers> (accessed 25 March 2014)

² Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti, available at: <http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf> (accessed 25 March 2014).

³ T. Daniel, *UN Official Makes Rare Case For Compensation For Haiti Cholera Victims*, The Huffington Post, 8 October 2013, available at: http://www.huffingtonpost.com/2013/10/08/un-haiti-compensation-_n_4066697.html (accessed 25 March 2014).

⁴ Available at: <http://www.ijdh.org/wp-content/uploads/2013/10/Cholera-Complaint.pdf> (accessed 25 March 2014).

⁵ See Article 2, Convention on the Privileges and Immunities of the United Nations of 13 February 1946, 1 UNTS 15.

The International Law Commission (ILC) commenced its works on the issue of responsibility of international organizations⁶ only when it finished the *Articles on State Responsibility for Internationally Wrongful Acts* in 2001.⁷ After just a few years of work (i.e. much more quickly than its previous works on responsibility of states) the ILC concluded its work and the UN General Assembly in 2011 adopted resolution 66/100, in which it took note of the ILC's *Articles on the Responsibility of International Organizations* (hereafter Articles). These Articles have met with a mixed reaction and have provoked lively discussion, which has resulted in valuable publications. One of them is a book entitled *Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie*, edited by Maurizio Ragazzi and published in 2013 by Martinus Nijhoff Publishers. This publication is worthy of notice, especially because Ragazzi managed to collect essays from outstanding international jurists, including members of the ICJ's and ILC's "mafia" (as Alain Pellet, citing Ian Brownlie, described the "small world" of lawyers working within these institutions). As a consequence, among the authors contributing to this work we find current or former ICJ judges (Antônio Augusto Cançado Trindade, Kenneth Keith, John Dugard) and ILC members (Alain Pellet, Pemmaraju Sreenivasa, Pavel Šturma, Michael Wood, Chusei Yamada), along with other eminent scholars working for such international organizations as, e.g., the UN or the World Bank. As a result, the quality of the publication is remarkable and deserves to be noticed.

The book is divided into four parts, however as the editor rightly underlined in the preface, some texts on similar topics are put in different parts of the book, which can cause some confusion at times. The first part is entitled *Setting the Stage: International Organizations' Responsibility between Codification and Progressive Development*. It consists of five general introductory essays in which authors discuss, *inter alia*, the issue of the binding nature of *ius cogens* (Antônio Augusto Cançado Trindade), history of the works of the ILC on issues related with international organizations (Kenneth Keith), and the variety of final products in the works of the ILC (Sean D. Murphy). Alain Pellet reveals the way in which the final content of the most controversial norms was drafted and points out the main weaknesses of the ILC's articles. He underlines that the ILC did not pay sufficient attention to the special status of IOs. Furthermore Michael Wood tries to weigh the value of the Articles based on different measures.

The second part, entitled *Assessing the Commission's Approach: State Responsibility and Responsibility of International Organizations*, focuses on one of the most controversial issues related to the ILC's work on the Articles, i.e. a methodology adopted by Special Rapporteur Giorgio Gaja, who decided to rely (too strongly according to his critics) on the Articles on State Responsibility of 2001. Consequently, C.F. Amerasinghe, Dan Sarooshi, Chusei Yamada, Maurizio Arcari, and Vincent-Joël Proulx discuss the relationship between the Articles on State Responsibility and the Articles on IOs'

⁶ See recommendation of the Working-Group on the long-term programme of work of 2000 (A/55/10), and GA resolutions 55/152 of 12 December 2000, 56/82 of 12 December 2001 and 57/21 of 19 November 2002.

⁷ See GA resolution 56/83 of 12 December 2001.

Responsibility. Tullio Scovazzi extensively analyzes the *mutatis mutandi* technique used by the ILC. Some other methodological issues are discussed in this part as well, like the role of *lex specialis* (Kristen Boon) and the role of practice (Emmanuel Roucouas) in the codification of the responsibility of IOs. Arnold Pronto, in his essay on the scope of application of the Articles, combines a description of the extent of the Articles' application with a critical analysis of the working methods of the ILC.

International organizations differ widely among themselves because they have different mandates and functions. The strength of Ragazzi's book lies in showing different perspectives on the issue of international organizations' responsibility. The third part of the book – *Particular Perspectives: International Organizations and Other Entities*, is composed of chapters written from the perspective of the UN (Daphna Shruga), European Union (José Manuel Cortés Martín), World Health Organization (Gian Luca Burci, Clemens Feinäugle) and also International Financial Institutions (Laurence Boisson de Chazournes), including the International Monetary Fund (Ross Leckow, Erik Plith) and the World Bank (Maurizio Ragazzi). In addition to these chapters, the third part includes remarks written from the perspective of other participants in international relations i.e. The Holy See (Robert John Araujo) and the Quartet on the Middle East (John Dugard, Annemarieke Vermeer-Künzli). The essay on the Quartet is particularly interesting because the authors successfully apply the rules codified by the ILC to a specific entity such as the Quartet.

Part four, *Special Concerns: Selected Issues Regarding the Articles*, is devoted to the most critical issues related to RIO (responsibility of international organizations), i.e. the relationship between the responsibility of IOs and member states. In this part Sienho Yee demonstrates that the solution adopted in the ILC's proposition is at least immature, and indicates the main gaps in the system. Paolo Palchetti discusses the existence and scope of the obligation of member states to enable the organization to make reparations. Kazuhiro Nakatani focuses on the issue of the responsibility of member states for internationally wrongful acts of the organization, and Pavel Šturma, after summarizing the content of the ILC's articles referring to relation between the responsibility of an organization and its member states, uses the situation of the European Union and its member states as an example of a unique case. In a subsequent division, the problem of justiciability of disputes is discussed (Sergio Puig) and the (non) role of the International Court of Justice with reference to IOR is underlined, in combination with an analysis of all the ICJ's jurisprudence on international organizations (Hugh Thirlway). One of the most interesting chapters of the book are devoted to the possible application by states of countermeasures against IOs (Antonios Tzanakopoulos, Simone Vezzani). The authors indicate measures which can be undertaken by states in the event of an IO's commission of an internationally wrongful act. The last essays in this part of the book are focused on issues related to using the force authorized by an IO and its responsibility for actions of groups controlled by it (Blanca Montejo, P.S. Rao, Francesco Salerno). The appendixes attached to the publication are also very useful, and include the above-mentioned UN General Assembly resolution 66/100 and the ILC's General Commentary on the Articles.

Unfortunately, reading the book leaves a reader with a painful hunger for more. In the editor's preface it is underlined that the authors invited to the project were given a free choice of topics. As a result some essays cover overlapping issues (especially in the first and second parts), but this is not a disadvantage when one takes into account the great importance of the methodology of the ILC's work and the many controversies associated with it (although it must be admitted that the continuous repetitions of the same passage of the Gaja report could be perceived as annoying). The more important consequence of the approach taken by the editor are some remarkable lacunas, especially in the part devoted to the different perspectives on the ILC's Articles. There is no essay written from the point of view of regional organizations. The focus on solely universal organizations is hard to understand if we take into account the scope of application of the ILC's articles, which cover all types of international organizations. Nowadays even the United Nations, in order to achieve its main goal i.e. the preservation of international peace and security, relies heavily on regional organizations, hence their responsibility is deserving of more attention.⁸ The book touches upon the problem of the relationship between an organization and its member states, however it does not refer to relations between international organizations, especially in the case where one international organization (to which member states transferred some powers) delegates its functions to another IO. Only the article based on the ICJ's advisory opinion on the Global Mechanism (Silvestre J. Martha) describes the "complexification" of relations between different entities. We do not find in Ragazzi's publication the perspective of highly specialized organizations such as, e.g., international tribunals (some of which were established based on agreements between the UN and states, which would make this example especially interesting from the point of view of responsibility). Excluding the essay on the Quartet, there is no indication if the ILC's Articles can be useful for other entities similar to IOs (e.g. NGOs, international organs or movements), which are in the process of gaining legal personality or already have it (such as the International Committee of the Red Cross).

These gaps do not diminish the value of the book, but rather prove that we are suffering not only from a lack of the practice concerning IOs' responsibility, but also from the fact that there is still only a small amount of literature which touches upon all aspects and perspectives from which the ILC's Articles could be analyzed. Ragazzi's book should be treated as an invitation to further discussion on the responsibility of organizations and perhaps – as Judge Trindade mentioned in his essay – on the whole approach to the subjectivity of the "*ius gentium* of our times".

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⁸ See e.g. Security Council resolution 2033 of 12 January 2012.

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