

Book review

***The Responsibility of International Organisations towards other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union and the International Atomic Energy Agency* by Bimal N Patel**

**Eastern Book Company (2013), 408 pages
(ISBN 9350289814)**

In this book Bimal N Patel confronts an important and topical issue of international law, namely the secondary rules of international law relating to responsibility of international organisations towards other international organisations. The adoption by the International Law Commission (hereafter the ILC or the Commission) of Draft Articles on State Responsibility in 2001¹ and the Draft Articles on the Responsibility of International Organisations ten years later² is a reflection of the importance of the secondary rules on responsibility in international law. International lawyers often focus on the primary rules (substantive rules such as the law on the use of force or international human rights law) but the secondary rules of international law (rules relating to, for example, responsibility and remedies) are essential to the proper functioning of any legal system, including international law. Patel's book, therefore, provides a welcome focus on the secondary rules.

The Draft Articles on State Responsibility, since their adoption, have been widely accepted and many provisions of the Draft Articles are regarded as a reflection of customary international law.³ While it may well be accepted that the rules of state responsibility can apply to international organisations, Patel correctly cautions against 'an automatic or sweeping transfer of the rules from the realm of State Responsibility to that of the responsibility of international organisations'.⁴ There is therefore a real need to study the

¹ See ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001)

² See ILC Draft Articles on the Responsibility of International Organisations (2011).

³ See for example, the International Court of Justice's reliance on the Draft Articles rules on attribution in *Armed activities on the territory of the Congo (Democratic Republic of the Congo v Uganda)* 2005 ICJ Reports, 168 at par. 168.

⁴ Patel at 5.

secondary rules of the responsibility of international organisations. Patel's study is therefore timely. Fortunately for Patel, the ILC had, two years prior to the publication of his book, adopted the Draft Articles on the Responsibility of International Organisations.

Patel's book is useful not only for its attempt to describe and analyse the rules relating to the responsibility of international organisations but it also provides a wealth of information on various international law issues, including various agreements between a number of international organisations. This aspect is particularly evident in Patel's consideration of the sources of the obligations between international organisations.⁵ While, the book could have gone beyond the agreements to consider the application of the agreements, this aspect of the book makes it a useful resource in the practice of international organisations. Many of these agreements are unlikely to be easily accessible and yet are so crucial to understanding both the primary and secondary rules of international law relating to international organisations.

The book's contribution to the responsibility of international organisations could have been enhanced by greater attention to the ILC's Draft Articles. As it is, scant mention is made of the ILC's Draft Articles on the Responsibility of International Organisations. In some instances, *it appears* almost as if the author is unaware of their existence – there are references to the ILC's work, but these are few, inconsistent and often in passing. Indeed, it appears from some parts of the book that the author completed the book before the finalisation by the Commission of the Draft Articles on the Responsibility of International Organisations. Pages 33 to 36 are dedicated to a discussion of the ILC's attempts to codify the responsibility of international organisations. This discussion recounts the history of the ILC's work on the Draft Articles but it seems to end at 2009. There are two observations that can be made about the decision. First, even if the book was completed prior to the completion of the ILC's work, one would have expected the Draft Articles adopted on first reading to have had a greater influence on the work. Second, given the importance of the ILC's work to the project, if the Draft Articles were finalised after the completion of the research but prior to the book's publication – the book was published two years after the ILC's Draft Articles were adopted – it would have been worth the author's while to hold off publication while incorporating the Draft Articles.

⁵ *Id* at 176.

Linked to the insufficient reliance on the ILC's Draft Articles is the book's inclination towards primary rules. While the book itself is promoted to be directed at the rules of responsibility, much of it appears directed at the primary rules. The rules of responsibility, such as the complex rules on attribution, grounds of justification and even the consequences of responsibility are hardly assessed. Linked to this, the author often strays into descriptions of general international law – by general international law, I mean general international law unrelated to the secondary rules on responsibility. Perhaps it is because of the cursory nature of the digressions into general international law, but very often the digressions contain statements that are, at best curious. Here are a few examples:

From pages 69 to 72, Patel discusses case law and, in particular, the role of *travaux préparatoires* in the interpretation of constituent treaties of international organisations. This discussion, however, never takes into account the general rule of treaty interpretation. At page 74, the author discusses an 'important legal question, namely, whether the [World] Bank must comply with UN resolutions and whether the Bank may comply'. It is not clear why these are legal questions at all, let alone important legal questions. Patel ultimately comes to the obviously correct conclusion, through a largely anecdotal assessment of the circumstances surrounding World Bank loans to South Africa. However, why this was an important legal question necessitating such lengthy treatment, is not clear. Moreover – and this is another shortcoming – it is not clear how this analysis relates to the secondary rules of responsibility at all. At page 123, the author makes the broad statement that there 'can be hardly any legal dispute that [the practices of international organisations] have hardened into law'. It is not clear whether all practices of international organisations qualify or whether there are any requirements. These are examples, but they are emblematic of the problems that can arise when an author of a focused book 'goes walkabout'.

These criticisms should not detract from the amount of research and the wealth of information contained in the book. They do however, take away from the obvious amount of work that has gone into a book about a very important subject. A book which hopefully, as the author suggests, will inspire further research into the subject.

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