

NOTES BIBLIOGRAPHIQUES

Stefan TALMON, *Kollektive Nichtanerkennung illegaler Staaten – Grundlagen und Rechtsfolgen einer international koordinierten Sanktion, dargestellt am Beispiel der Türkischen Republik Nord-Zypern*, *Jus Publicum* 154, Mohr Siebeck, Tübingen 2006, pp. xxxix + 1052.

Ask any law student: Recognition of States is admittedly one of the most difficult topics of Public International Law – not less so because it comprises a complex mixture of law and fact, much like the subject of international legal personality in general¹. It is this subject of recognition, or rather *non-recognition* (which is claimed to be of a different legal nature than the simple lack of recognition, pp. 214 *et seq.*) that Talmon has decided to examine in impressive detail in this voluminous study of more than a thousand pages.

One might be justified in claiming that interest in the subject has faded in the last two decades, after the dissolution of the Soviet Union and the Socialist Yugoslavia in the early nineties. Yet there are two reasons why Talmon's study is a particularly useful (and needed) contribution to international legal scholarship. It is not only that forthcoming developments, for example with respect to Kosovo, may put the issue back in focus. Much more importantly, a study as detailed and

extensive as the one at hand almost reads as a textbook on Public International Law, revealing the significant tangents of the question of recognition into almost every area of general international law, from treaties to bilateral relations, to standing, to international responsibility.

To elaborate on the underlying reasons for the foregoing statements, a more structured overview of the book is required. Talmon states clearly in his introduction that he has set off to determine the legal basis and the legal consequences of the 'legal weapon' of non-recognition as it is employed by the organized community of States (*Staatengemeinschaft*, also the "international community of States as a whole"² or "international community as a whole"³) (pp. 1-2), and to distil the customary obligation for collective non-recognition (p. 5). This is done on the example of the "Turkish Republic of Northern Cyprus", the longest surviving collectively non-recognized State. The example of Northern Cyprus is particularly pertinent precisely because it constitutes a "pure" case of non-recognition – in the sense that no other sanctions have been taken against the relevant entity (p. 3).

Despite its length, the text is simply structured in three main parts: the historical context (part one); the legal basis

² See Article 53 VCLT.

³ See para. 18 of the ILC Commentary to Article 25 of the Articles on the Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10 (2001) 204.

¹ Cf. C.H.M. Waldock, *General Course on Public International Law*, 106 *RdC* 1962, 5, 146.

(part two); and the legal consequences of non-recognition (part three).

The first part gives an extensive historical overview of both the case of Northern Cyprus (Chapter 1), and other precedents of collective non-recognition, such as Manchukuo, Southern Rhodesia, and the South African Homeland States (*Bantustans*) (Chapter 2). The setting of the historical framework is rich in references to practice, in particular US, UK, and German responses to the relevant situations, as well as reactions by other States and international organizations. The treatment of the events leading up to the current situation in Northern Cyprus is cautious and impressively objective, in keeping with the high quality of scholarship that characterizes the whole study, and includes numerous and weighted references to sources from all parties involved. This is in itself a significant achievement.

The second part of the study deals with the legal basis of collective non-recognition. Chapter 3 in particular discusses the legal nature of non-recognition as different from a simple lack of recognition. This is exemplified by demonstrating the inadequacy of the two traditional theories on recognition, the constitutive and the declaratory theory, to explain non-recognition satisfactorily, even if for different reasons (pp. 217-218 and 258-259). This neatly leads into Talmon's central argument that non-recognition is a collective (or "third-party") countermeasure in response to a violation of international law (pp. 282 *et seq.*). This argument, whose merit is difficult to deny, is made with the same lucidity as in a recent article by the same author in English – thus allowing for an important part of the study to be accessible to the non-German-speaking audience⁴.

⁴ See S. Talmon, *The Constitutive versus the Declaratory Theory of Recognition: tertium non datur?*, *BYIL* 2004, 101.

Chapter 5 deals with the legal significance of a call for non-recognition by the United Nations. After establishing the competence of the Assembly and the Council to call for non-recognition under the Charter, Talmon goes on to discuss the legal effects of such a call (pp. 318 *et seq.*). In finding that the UN call cannot, in and of itself, establish an international obligation of non-recognition, the author seeks to ground such an obligation, among others, in customary international law (pp. 337 *et seq.*). He then concludes that the call by the UN, though not binding, functions as a device for the coordination of the fulfilment of individual States' duties. It is difficult to take issue with this insightful construction of practice.

The third and final part of the book, and the more extensive one, covering almost 500 pages, is an exhaustive discussion of all possible legal consequences of non-recognition with respect to treaties and unilateral acts (Chapter 5); standing before national and international courts (Chapter 6); membership and representation in international organizations (Chapter 7); bilateral relations (Chapter 8); economic development (Chapter 9); postal and telecommunications (Chapter 10); sea and air traffic (Chapter 11); and finally international responsibility for wrongful acts taking place in the territory of the non-recognized entity (Chapter 12).

Although it would not be possible to discuss all these multi-faceted issues within the contours of this review, it is worth stressing the depth and significance of Talmon's research, which is brought together in a manner that reveals the true reach of the question of non-recognition. As already stressed by way of introduction, it is this part that clearly demonstrates the interconnection between various areas of international law usually treated in splendid isolation. The book (and its author) distinguish themselves on a number of

levels; however, even if that latter-mentioned trait was to be the only one worth mentioning, the book would still be an invaluable contribution to scholarship for that reason alone. When this is coupled with the deep theoretical argument of part two and the sober appreciation of the general framework in part one, it becomes evident that the study at hand is a rare example of meticulous research, high synthetic ability, commitment to scholarship, awareness of the delicate nature of the example chosen, and – most importantly – a wide, but decidedly legal, perspective.

M. GAVOUNELI

Ludwig KRÄMER (ed.), *European Environmental Law*, The International Library of Environmental Law and Policy, Ashgate, Dartmouth 2003, pp. xvi + 508.

Le droit de l'environnement occupe une place importante dans l'ordre juridique communautaire. Développé progressivement à partir des années '70 et consolidé pendant les années '80 et '90, il couvre aujourd'hui presque tous les aspects de l'environnement: l'eau, l'air, les produits, le bruit, les habitats, les déchets mais aussi les changements climatiques, les transports et l'énergie.

L'influence de ce corps normatif sur les États membres varie d'un pays à l'autre. En ce qui concerne la Grèce, par exemple, il est estimé que 80 pour cent du droit interne de l'environnement tire ses origines du droit communautaire de l'environnement. Ce qui est d'un intérêt considérable pour les dix nouveaux membres de l'Union Européenne, mais aussi pour les pays candidats qui sont tenus d'incorporer cet acquis communautaire dans leur ordre juridique interne. De plus, il est à noter que l'Union Européenne joue un rôle considérable dans les négociations internationales en matière d'environnement, comme le

témoigne l'entrée en vigueur du protocole de Kyoto en février 2005, après de longs et difficiles débats dirigés principalement par l'Union.

L'ouvrage édité par Ludwig Krämer, Professeur de droit et ex-directeur du service juridique de la DG XI de la Commission Européenne, réunit dix-neuf contributions qui couvrent une période de vingt ans, pendant lesquels la politique et le droit communautaires de l'environnement se sont progressivement développés.

L'ouvrage est divisé en trois parties qui traitent des principales caractéristiques du droit communautaire de l'environnement. La première partie (*Europeanization of Environmental Law and Policy*) explore le transfert progressif vers la Communauté des compétences nationales en matière d'environnement. A la différence d'autres organisations qualifiées de coopération, la Communauté européenne, organisation d'intégration, bénéficie de véritables transferts de compétences qui lui permettent d'adopter des instruments juridiquement obligatoires pour ses membres. Dans ce contexte, les analyses portent sur le développement de la politique et du droit communautaires de l'environnement (E. Rehbinder, R. Stewart), l'incorporation de l'action communautaire de l'environnement dans l'Acte Unique (D. Vandermeersch), l'influence des organisations environnementales sur l'élaboration des textes (Ph. Sands), l'impact de la politique communautaire de l'environnement sur l'administration publique au Royaume-Uni (D. Osborn), la portée et le contenu du principe de subsidiarité (K. Lenaerts), le rôle de la société civile (R. Marcory) et les moyens d'amélioration de l'administration communautaire (G. Winter).

La deuxième partie (*Application and Enforcement of European Environmental Law*) examine les mécanismes mis en œuvre par la Communauté pour surveiller l'application du droit de

l'environnement. Le système est doté de mécanismes tout à fait originaux. La mise en œuvre de la réglementation environnementale est assurée non seulement au niveau national mais aussi au niveau supra-national. Il existe, en effet, un mécanisme de contrôle et de sanction assuré par la Commission Européenne, laquelle dispose de moyens tant formels qu'informels. En cas d'infraction par un État membre, constatée grâce aux informations fournies par les États, à la suite de plaintes individuelles ou d'enquêtes menées par elle-même, la Commission peut entamer une procédure pouvant aboutir à la saisine de la Cour de Justice. Le traité de Maastricht de 1992 a renforcé ce mécanisme, en prévoyant que si l'État condamné pour violation du droit communautaire n'a pas pris les mesures prévues dans l'arrêt de la Cour, la Commission peut saisir de nouveau la Cour, en demandant le paiement d'une somme forfaitaire ou d'une astreinte. Face à un tel système de contrôle rigoureux, les États membres ne peuvent que se conformer, même avec retard, à leurs obligations.

Les analyses contenues dans cette deuxième partie portent sur l'application des directives et la question de leur effet direct (L. Krämer), sur les difficultés rencontrées par les États membres pour se conformer à la législation communautaire (K. Collins, D. Earnshaw et P. Pagh), sur les caractéristiques du mécanisme communautaire d'application du droit (R. Marcory) puis, plus concrètement, sur le rôle de la Commission (R. Williams) et de la Cour de Justice (D. Wyatt).

La troisième partie de l'ouvrage (Improving Environmental Standards in Europe) est consacrée à l'étude de la valeur ajoutée de la réglementation communautaire en matière d'environnement. Sont ainsi passés en revue tour à tour la directive dite 'Seveso' (A. Sheehan), la directive sur les études d'impact (N. Haigh), la régle-

mentation concernant les déchets (J. Jans), la directive sur les oiseaux sauvages (W. Wils) et la politique concernant l'aménagement du territoire (K. Deketelaere). Par la suite, L. Krämer fait un bilan des trente dernières années de la politique et du droit communautaires de l'environnement et conclut sur les perspectives d'avenir.

L'ensemble des textes proposés dans cet ouvrage, dont on peut en souligner la cohérence et l'unité, constitue une contribution importante à la fois à l'étude du droit communautaire de l'environnement et au débat sur l'avenir de la sécurité environnementale en Europe et dans le monde.

E. DOUSSIS

Brian OREND, *The Morality of War*, Broadview Press, Peterborough, Ontario 2006, pp. 289.

It is certain that Brian Orend's *Morality of War* conduces significantly to the current academic discourse over the use of force in international relations, which has incrementally come to the fore lately with the 'war on terror' and the Iraqi invasion. It is a comprehensive introduction to the morality of war and to the just war theory combining a broad historical survey with deep conceptual analysis and a plethora of case studies. Moreover, the author brings the just war debate fully into the 21st century and discusses thoroughly all the recent cases involving the use of force. A very important innovation of his work is the addition of the *jus post bellum* as a third tenet of a comprehensive just war (*bellum justum*) following the *jus ad bellum* and *jus in bello*. However, it should be stressed at the outset that the present work is not and never intended to be a legal treatise of the use of force in the international legal order, which entails that there are certain loopholes in the legal account of the

present topic as well as that the relevant international law is treated as a secondary factor of the whole thesis, in the sense that it seems to be circumvented or even forgotten at certain points in order to facilitate the just war theory argument.

As far as the structure of the book is concerned, it is noteworthy that the author selects rather unusually first to propound his just war thesis and after to evaluate and militate against the other alternatives, namely realism and pacifism, while the other way around might have proven to be more convincing, since his theory would have more sensibly occupied the middle ground after having discarded both the above extreme doctrines. Instead, the author proceeds as follows: after a short and concise introduction, the first part revolves around the just war theory and international law and dissects the three tenets of a *bellum justum* according to the author, which are the well-known to all international lawyers *jus ad bellum*, *jus in bello* and the new-fangled *jus post bellum*. In examining all these parts of just war, special reference is made to the current problems of asymmetrical threats, like terrorism, coercive regime change (cf. Afghanistan, Iraq) and so on and so forth. Having argued extensively in favor of the just war theory, the author devotes the second and shorter part to the assessment and consequently rejection of the two main rivals of just war theory, realism and pacifism, before drawing his rather terse conclusions.

Turning our focus from the structure to the substance of the present work, it should be stated what is meant by just war theory. In the words of the author, '[j]ust war theory is a connected body of ideas and values which considers when war can be ethically justified; it offers a set of moral rules which societies should follow during the beginning, middle and end of war' (p.4). According to him, just war theory's core

proposition, uniting all its theorists, is that sometimes, it is at least morally permissible for a political community to go to war (p.31). Nonetheless, it is not a pro-war theory; on the contrary, the goal of just war theory is to restrain both the incidence and destructiveness of war, i.e. to delineate both the ethics of *jus ad bellum* and *jus in bello*, which according to the preponderant view amongst just war theorists, not to mention, international lawyers, are separable in so far as the legality or justness of each of them is concerned. Here, Orend deviates fully and asserts that not only the two aforementioned categories but also *jus post bellum*, i.e. justice during the termination phase of the war are intertwined to each other and they all would determine collectively the justice of a given war. This contention, whatever its merits in the ambit of just war theory, is on unstable legal ground, since, on the one hand, there is a clear distinction between the legal assessment of *jus ad bellum* and *jus in bello* and on the other, the *post bellum* period is either regulated by the law of occupation or it is an issue within the purview of United Nations under the legal mantle of a peace-keeping/peace-building operation and under no circumstances is decisive of the legality of the use of force at the first place.

As far as the *jus ad bellum* is concerned, Orend predicates that any State, seeking to go to war against any other State, must show that its resort to armed force fulfils each of the following six rules: just cause, right intention, and public declaration by a proper authority, last resort, probability of success and proportionality. Failure to fulfill even one of rule renders the resort to force unjust, and thus subject to criticism, resistance and punishment. The above rules seem reasonable and they encapsulate in one way or another the fundamental prerequisites of necessity and proportionality envisaged in international law. However, the author steps

on a slippery slope when he advances his account of minimally just political communities and its repercussions. He argues that 'the main purpose of the state, in our era, is to do its part in realizing the human rights of its people. That's the state's *raison d'être* and that's the foundation of a minimally just political community'. From that premise it follows that the latter must, first, be recognized as legitimate by its own people and most of the international community, second, it must avoid violating the rights of other legitimate states and lastly, it must make every reasonable effort at satisfying the human rights of its citizens. As a consequence, regimes which fail the above conditions are not legitimate and thus have no State rights, including the right not to be attacked and overthrown. Hence, in his view, Saddam's regime, for example, had no right not to be attacked and this holds true also in other similar cases of armed humanitarian intervention and pro-democratic intervention. With regard to Iraqi invasion, this is the only plausible justification according to his account of just war theory and not the preemptive self-defense or the implicit authorization argument put forward by the States involved. Last but not least, he seems to countenance the justice of the war in Afghanistan as well as the necessity of counter-terror operations in similar cases, while he is critical against the sheer preemptive self-defense predicated by Bush Administration.

Leaving the quarters of *jus ad bellum* and entering the domain of *jus in bello*, the author reiterates again his conviction that 'the three just war categories must morally be linked, with the *jus ad bellum* setting the tone for all that follows' (p. 105), in the sense that an unjust resort to force will naturally be followed by violations of humanitarian law and by an unjust peace settlement and vice versa. He distinguishes between external and internal *jus in bello*

rules. The external rules concern how a State, in the midst of war, should conduct itself regarding the enemy State and its civilians, while the internal rules concern how the same State should treat its own citizens, be they soldiers or civilians. As regards the former, he discusses in detail issues like prisoners of war, proportionality, reprisals, prohibited weapons, collateral damages, which he designates as doctrine of double effect and so on and so forth. The most interesting part, though is the account of the latter, i.e. the internal rules, which he considers of particular importance in respect of the responsibility of a State vis-à-vis its citizens during wartime. They ultimately boil down to the need to realize their human rights as best as can reasonably be expected. However noble and just this need seems to be, he falls short of making any allusion to the derogation clauses of many human right instruments in this regard and of discussing in more detail the human rights that should not be curtailed.

Lastly, Orend devotes a whole chapter in the consideration of the supreme emergencies, namely the cases which allows a country victimized by aggression to set aside the rules of *jus in bello* and fight however it wants. According to the author, 'even though it is nowhere written into international law, the supreme emergency exemption has high profile support, including luminaries as Churchill, Rawls and Walzer' (p. 140). After considering a number of options, he concludes that violating *jus in bello* in crisis remains morally wrong but might nevertheless be excused on grounds of duress and tragedy. Suffice to note from the viewpoint of international law that with regard to fundamental rules of humanitarian law, which constitute peremptory norms of the international community, no plea of necessity or duress is plausible to preclude the wrongfulness of the State concerned.

The last chapters of the first part are attributed to the assessment of the *jus post bellum*, which has already been mentioned. In a nutshell, he asserts that a State in the war termination phase ought to be guided by certain norms, like proportionality and publicity of the peace settlement, the vindication of the rights injured by the war, compensation, rehabilitation, and punishment of the criminals and so on and so forth. In addition he cites the 1991 Persian Gulf War as a failure of *jus post bellum*, while he considers that the regime changes following the World War II were a successful recipe for the emergence of democratic political communities. With regard to the coercive regime change in Iraq (2003), the author is in accord in principle, yet critical of many actions on the part of United States. While a detailed assessment of the *jus post bellum* part is beyond the bounds of the present review, suffice to allude for our purposes to the above-mentioned remarks in this respect as well as to stress that it seems rather unreasonable to expect that a State in self-defense would be required to abide by all these rules after averting an aggression. The responsibility of the State concerned ends when the application of international humanitarian law (or human rights law) ceases and then it is often the Security Council which steps in with peace-building and lately with 'international territorial administration' measures (*cf.* Kosovo, East Timor).

The second part of the book under review pertains to the other two main alternatives to the just war theory, namely realism and pacifism. Apart from the doubts expressed above concerning the structural choice of the author, the analysis in this part of the book is satisfactory, in the sense that it does both fully present the above doctrinal streams and artfully highlight the differences between them and the just war theory. He concludes by elevating the latter as the middle-ground option

between the two extremes, i.e. as the better and more prudential option.

To recapitulate, it is definitely a work with numerous merits, which would make the reader comprehend fully the just war theory and espouse it in certain aspects. Nevertheless, it is not devoid of flaws and inaccuracies, especially if it is assessed with the exclusive lens of the relevant international law. This must be, however, the curse of any book concerning such a controversial and highly contested issue, as the morality of war in the 21st century.

E. PAPASTAVRIDIS