Book review: Diritto internazionale-Problemi fondamentali by Tullio Treves [Giuffrè, Milano, 2005, 782 pp, ISBN 8814112967, €55 (p/bk)].

Marco Roscini

School of Law

This is a copy of a book review originally published in International and Comparative Law Quarterly, 57 (2). pp. 487-489, April 2008.

The theme of reciprocity of obligations (or lack thereof) and the position of third parties, as for example in the case of remedies for breach of norms *jus cogens,* is the general theme of the book. The author is a great supporter of third party countermeasures in cases of breaches of the norm of *jus cogens,* correctly observing that 'limiting the standing to take countermeasures to bilateral contexts is effectively to leave many breaches without redress.' (p 272).[3]

In Parts Three to Five of the book, the author presents an original and extremely valuable insight into the working of *jus cogens* within the framework of international organizations, international tribunals and national legal systems, which is supported by extensive research. The author is a supporter of the theory of 'full-fledged limitation on the action by the Security Council'; and he further observes that such a 'limitation shall have necessary consequences in terms of validity and interpretation of relevant measures: if one accepts the principle, one must accept its consequences' (p 484). Orakhelashvili acknowledges, however, that such a broad interpretation of the working of *jus cogens* within the structure of the Security Council has not as yet gained full acceptance. Equally interesting is the part on peremptory norms and international judicial jurisdiction, in which he examines such controversial issues as the consent to jurisdiction (and the related principle of *non ultra petita*) and its relation to obligations *erga omnes* and *actio popularis*, as well as norms *jus cogens* and standing to bring claims. He supports the view that, due to the special character of obligations *erga omnes*,[4] the

> court would be competent to admit an *actio popularis* in proceedings instituted on the basis of Optional Clause declarations under Article 36 (2) of its Statute. This provision, like declarations made pursuant to it, is drafted broadly, requiring no demonstration of individual State interest or prejudice (p 527).

This is a very far-reaching postulate. As to the interaction of the norms of *jus cogens* with national legal orders, the author is of the view that they are very well suited to 'receive' international law standards into national legal systems (p 575).

In conclusion, this book is an excellent and lasting contribution to the study of international law. The author admirably deals with this difficult subject-matter and presents a complete (if somewhat idealistic) analysis of the norms of *jus cogens*, based on meticulous research.

MALGOSIA FITZMAURICE*

Diritto internazionale—Problemi fondamentali by TULLIO TREVES [Giuffrè, Milano, 2005, 782 pp, ISBN 8814112967, €55 (p/bk)]

This book represents the continuation of the classic Italian treatise of international law first published by the late Mario Giuliano in two volumes in 1974 and later co-authored by Professor

[3] Orakhelashvili cites (on p 270) Akehurst as saying that 'it was open to States to take third-party countermeasures only on one of these three cases: in enforcement of judicial decisions; as the affected party to the treaty under Article 60 (2) of the Vienna Convention; or in response to the violation of rules prohibiting or regulating the use of force'. It would appear necessary to comment that Article 60 (2) of the VCLT—material breach, does not actually deal with countermeasures. As it was noted many times before and more recently by James Crawford: 'Countermeasures are to be clearly distinguished from the termination or suspension of treaty relations on account of the material breach by a treaty by another State, as provided for in Article 60 of the Vienna Convention on the Law of Treaties. Where a treaty is terminated or suspended in accordance with article 60, the substantive legal obligations of the States parties will be affected, but it is quite different from the question of responsibility that may have arisen from the breach' in J Crawford, *The International Law Commission's Article on State Responsibility. Introduction, Text and Commentaries* (CUP, Cambridge, 2002) 282.

[4] There are very strong views that this concept is 'overused' in international law and that its nature is unclear. See, eg, Separate Opinion of President of the International Court of Justice in the 2004 Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* in particular [2004] ICJ Reports 207, 216.

* Queen Mary, University of London.

doi:10.1017/S002058930800033X

Giuliano, Tullio Scovazzi and Tullio Treves. After the decision of Professor Scovazzi to draw up his own textbook, Professor Treves has been left the sole author of this textbook, from which generations of Italian university students have learnt what international law is about.

As the author acknowledges at the outset (p xiv), this book is far from being a mere update of the previous editions. After a comprehensive and detailed chapter on the history and fundamental principles of international law, the subjects of international law are examined. Two observations can be made on this point. First, a whole chapter is devoted to State succession, which marks a difference with most other textbooks. Secondly, although much of the analysis is focused on the primary subjects of international law, ie States, other subjects are also discussed, such as the Holy See, the Sovereign Order of Malta and, more importantly, governments in exile, peoples, insurgents and national liberation movements (with stimulating pages on the Polisario and on the Palestine Liberation Organization). International organizations are discussed in a separate chapter, which also includes a section on non-governmental organizations. As to individuals, the author first analyses the substantial and procedural rights conferred upon them by the most important international human rights instruments, and then examines the violations of the obligations directly imposed on individuals by international law, ie international crimes. Professor Treves notes that, at the end of the day, the international rules conferring rights and duties on individuals are still created by States. Therefore, should one consider the participation in the formation of international rules to be essential to acquire legal personality, individuals cannot yet be included among the subjects of international law. On the other hand, if one considers the granting of certain rights and the imposition of certain obligations on individuals by international law to be sufficient, then individuals might be entitled to a limited international personality (pp 190–91).

In the subsequent chapters, Professor Treves critically engages in a discussion of the sources of international law. The author does not reject the doctrine of the 'persistent objector' but reckons that its justification lies on a temporary and limited fragmentation of the international community (pp 233–35). If a State persistently rejects a customary rule during the process of its formation, the result is a special or local custom, created by and applicable to only a specific group of States, not including the persistent objector. Another possible explanation suggested by the author is that, when one or more States have acquiesced to the persistent objector's claims, there would be a (tacit) agreement limiting the subjective scope of application of the custom. The analysis of the law of treaties covers more than one hundred pages, of which those on the effects of treaties on third States are particularly noteworthy. It is also commendable that some usually neglected sources of international law are examined: in particular, the section on unilateral acts is hardly seen in Italian international law textbooks.

The chapter on the use of force is to be found between that dealing with the law of treaties and that on the law of State responsibility, although one would have probably expected to see the *jus ad bellum* discussed right after Chapter XII, which is dedicated to the peaceful settlement of international disputes. A specific chapter on the use of force is a significant and important addition to the previous edition of the textbook, which only contained a few pages on this issue in the section on general trends of the international community. The author examines the most recent cases of use of force and concludes that if claims of illegality are rather weak with regard to the 1991 Gulf War and the 2001 use of force against Afghanistan, they become difficult to dismiss in the case of the 1999 Operation 'Allied Force' against Yugoslavia and, even more, of the 2003 Operation 'Iraqi Freedom'. However, more than merely identifying breaches of international law or attempting to justify them, Professor Treves holds that the lawyer's task is to determine how to adapt the current norms to new situations and values, keeping in mind that the law necessarily implies the existence of clear rules and effective mechanisms to ensure their compliance (pp 470–71).

State responsibility is dealt with in Chapter XI. The author supports the deletion of the notion of 'international crimes' from the 2001 International Law Commission (ILC) Articles on State Responsibility (p 504). However, he also notes that the arguments in favour of and against 'international crimes' also apply to the concept of 'serious breaches of obligations under peremptory norms of general international law' now used in the ILC Articles. Furthermore, it is hard not to

agree with Professor Treves when he questions the feasibility and opportunity of introducing a distinction between serious and non-serious violations of *jus cogens* rules: indeed, it appears that seriousness characterizes by definition any violation of such fundamental and intransgressible norms.

The last chapter is dedicated to the implementation of international law in the Italian legal order and is without any doubt one of the highlights of the book. Some sections have been completely re-written to take into account Constitutional Law no 3 of 18 October 2001, which amended Article 117 of the Italian Constitution. There is controversy over whether the new version of this provision really confers constitutional rank in the hierarchy of Italian legal sources to treaties ratified by Italy. Professor Treves agrees with those who argue that no significant changes to the system of sources have been introduced by Law no 3/2001 and that constitutional challenges to national laws based on Article 117 (1) of the Constitution should be exceptional (pp 694–95).

Professor Treves's experience as a judge of the International Tribunal for the Law of the Sea since 1996 emerges throughout the work, where frequent references to the case law of the Tribunal and a detailed section devoted to its composition and functioning stimulate the student to get acquainted with the law of the sea. Furthermore, the author's many references to primary sources, often extensively quoted, make the textbook's approach refreshingly pragmatic. The indexes are detailed and useful, and so is the initial bibliographical note. The extensive footnote apparatus containing references to relevant literature and the final table of cases are also praiseworthy. However, a table of treaties and of national legislation probably would have been helpful for the reader.

To conclude, Professor Treves's treatise is a very learned but also very easily readable book that Italian-speaking students, academics and practitioners will not fail to appreciate. It is this reviewer's hope that an edition in English will make it accessible to a broader readership.

MARCO ROSCINI*

Comunità internazionale e obblighi «erga omnes» by PAOLO PICONE [Jovene, Napoli, 2006, 684 pp, ISBN 8824316018, €35 (p/bk)]

This book is a collection of essays written by Professor Picone since the early 1980s on the controversial issue of *erga omnes* obligations. The author's aim is to demonstrate that international law can be construed in a realistic way, which takes into account the role played by the great powers on the international scene. In his view, what we call the 'international community' is a social entity superior to individual States and the 'guardian' of the general interests of the prevailing socio-economic forces (p 143). Hence, if the international legal order is characterized by the formal (legal) equality of States, the international community, on the contrary, rests necessarily on disequality (pp 145–46).[1] Starting from this premise, the author points out that international law was initially aimed at merely regulating the coexistence of States, but has subsequently developed rules on the cooperation and eventually the interdependence among the different forces. This has led to the decline of the 'contractual' concept of international law in favour of a 'verticalisation' of the normative processes, most evidently shown by the appearance of the concept of *erga omnes* obligations. Such obligations, that impose a conduct enforceable by all States acting *uti universi*, imply that there are interests of the international community as a whole distinct from those of individual States. Professor Picone persuasively holds that *erga omnes* obligations and *jus cogens* provisions are not necessarily the same thing. Indeed, although

* Senior Lecturer in International Law, University of Westminster; Visiting Lecturer, King's College London and Queen Mary University of London.

[1] The author further distinguishes the international community as 'source' of law (defined only by the prevailing forces) and the international community as addressee of the law (composed, in this case, by all States): pp 44–45.

doi:10.1017/S0020589308000341