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Ian Brownlie, *Principles of Public International Law, 7th edition*

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The late Professor Sir Ian Brownlie was one of the well-known figures of public international law. Apart from his academic career, predominantly in the University of Oxford, he was a practicing barrister from the mid 1960s and has appeared before numerous international tribunals, including the International Court of Justice, the European Court of Human Rights and the European Court of Justice. He was also a member of the International Law Commission for eleven years, until his resignation in 2008 and he has functioned as the Special Rapporteur on the effects of armed conflict on treaties. His major written contributions in public international law include the *International Law and the Use of Force by States*, published in 1963 and the *Principles of Public International Law*, first published in 1966 and now in its 7th edition. The last book has been translated in five other languages and enjoys, therefore, a large dissemination around the globe, rendering it "virtually synonymous with the "Western" approach to international law"[1].

The book is divided in 8 parts and 33 different chapters, relative to the sources of international law, the relation with municipal law, the subjects of international law, statehood, recognition of states and governments, territorial sovereignty, the creation and transfer of territorial sovereignty, the status of territory, the law of the sea,

common amenities and co-operation in the use of resources, legal aspects of the protection of the environment, sovereignty and equality of states, jurisdictional competence, privileges and immunities of foreign states, diplomatic and consular relations, reservations from territorial sovereignty, the relations of nationality, corporations and specific assets, responsibility of states, admissibility of state claims, the system of multilateral public order (illegality and *jus cogens*), injuries to persons and property of aliens of state territory, protection of individuals and groups (human rights and self-determination), international criminal justice, law of treaties, other transactions including agency and representation, state succession, other causes of transmission of rights and duties, international organizations, judicial settlement of international disputes and the use or threat of force by states. Obviously the arrangement of the book is more or less traditional, but at the time of its first publication it was judged as a sort of deconstruction for numerous concepts used in international law[2] and was described as anti-theoretical.[3] The author also rejects in principle the policy approach to international law, although acknowledging its possible impact. Unlike its contemporaries,[4] Brownlie did not devote an introductory part of the book to explain whether (and why) international law is law. In the course of years several topics that were absent from previous editions, such as diplomatic privileges and immunities, state succession and the use of force, were included.[5] It was one of the first general manuals to include chapters on human rights, the use of resources and the protection of the environment. A difference with other current general international law manuals is the lack of (specific) treatment for the United Nations organisation and international economic law. In light of the power structures in international relations, such omissions appear significant. There is also no discourse on international humanitarian law- seemingly the author has resisted the general trend of the last 15 years, while a few chapters (e.g. on international criminal justice) offer only the very basic information. Generally speaking though, the book exceeds the measure of a general introduction and it is not advised for undergraduates who did not have any previous contact with public international law.[6]

Its almost comprehensive character becomes obvious also from the fact that in comparison with contemporary general international law books, it is probably the second largest in number of pages. The plethora of references throughout the book is particularly important to the learned reader, giving him/her the opportunity to pursue the discussed topics further. These references include state practice and judgements or decisions from international tribunals (although sometimes they appear to be outdated), thus making it useful for practitioners as well. The book does not only reflect western approaches; understandably though, the writer has paid particular attention to the practice of the United Kingdom (e.g. in the incorporation of international law to municipal law, the practice of governmental recognition, universal jurisdiction and so on) and "the practice of states outside the Anglo-American legal tradition …… is treated somewhat less thoroughly"[7].

Obviously a book with such a large breadth of subjects could attract a large variety of comments with regard to its substantive contents. Instead the author of this review would prefer to focus on some points where Sir Ian Brownlie deviates from the orthodoxy of international law. On the value of judicial decisions as a source of international law, he doubts their subsidiary character according to article 38.1d of the Statute of the International Court of Justice (p. 19).[8] The author differentiates between universal jurisdiction and state jurisdiction for crimes under international law (pp.

305-7), while in matters of state responsibility for the acts of individuals or groups, he does not even mention the possibility that the *Tadic* decision[9] could have an impact, although even the International Law Commission's Draft Articles on State Responsibility have left this window open.[10] His comment that "[t]he literature of human rights tends to neglect the role of customary law" (p. 563) is partially true; in reality, literature tends to simplified conclusions on the existence and extent of human rights customary rules without a persuasive or comprehensive discourse and (supportive) evidence, while the actual practice of states tends to be supplanted by the practice of international tribunals or organs of international organizations.[11] His evaluation of the International Criminal Tribunal for the former Yugoslavia might come as a surprise for those who were not familiar with the international relations of that period (p. 604):

> "[i]n the case of ICTY the creation of the Tribunal was associated with a specialized political campaign to destabilize the multi-ethnic State of Yugoslavia, with the ultimate aim of bringing about 'regime change' in Serbia".

On matters of state succession the author supports the non-transmissibility of treaties in state succession (p. 661), while he dismisses the distinction between secession and dissolution of federations and unions as unacceptable, "both as a proposition of law and as a matter of principle" (p. 662). He also rejects the specialty of objective regimes and localized treaties (p. 662), while noting (p. 668) the difficulty to explain legally how the Federal Republic of Yugoslavia has been prevented to exercise its rights as a UN member without affecting its status as a party to the Statute of the International Court of Justice. As regards the use of force in international relations, Professor Brownlie continued to stand critical towards any expansion to the exceptions, including forcible protection to protect nationals (p. 740), humanitarian intervention (pp. 742-745) and the "forcible measures to occlude sources of terrorism" (pp. 745-6).[12] This is certainly a non-western approach. It is consequently expected to avoid any discussion or reference to the responsibility to protect.

For a non-English student who has spent his under-graduate years away from the institutions of Great Britain, Brownlie's *Principles of Public International Law* is the leading general international law manual in English[13] and probably one of "the best single-volume discourse in the field".[14] As Vaughan Lowe notes,[15] only

> "[a] few have sufficient familiarity with the whole canvas of international law to give them confidence in describing the current state of ….principles [of international law]".

In light of the author's value and the repeated editions (and translations) of this book, it is not immaterial to state that

> "this work has established itself as a true "source of international law", within the meaning of Article 38 (1) (d) of the Statute of the International Court of Justice".[16]

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[1] Lowe, V. (1991) 'Publication Review' 107 *Law Quarterly Review* 513. Yet this should not over-emphasized as in certain topics such as the use of force, the author appears to be at odds with certain western approaches.

[2] This is partly obvious in the treatment of state responsibility.
[3] Elman, S. (1967) 'Books' *Israel Law Review* 602. See also Warbrick, C. (2000) '*Brownlie's* Principles of Public International Law: *An Assesement*' 11 *European Journal of International Law* 633 ff.
[4] About the place of the book's first edition in (British) general international law scholarship, see Warbrick, C. (2000) '*Brownlie's* Principles of Public International Law: *An Assesement*' 11 *European Journal of International Law* 623 ff.
[5] The chapter on the threat and use of force has been added only in the previous edition.
[6] Granger, C. (1967) 'Book Reviews' 5 *Canadian Yearbook of International Law* 364, Greenwood, Ch. (1991) 'Book Reviews' 50 *Cambridge Law Journal* 196 and Warbrick, C. (2000) '*Brownlie's* Principles of Public International Law: *An Assesement*' 11 *European Journal of International Law*, 632.
[7] Weiss, F. (1983) 'Reviews' 46 *Modern Law Review* 675.
[8] See also Warbrick, C. (2000) '*Brownlie's* Principles of Public International Law: *An Assesement*' 11 *European Journal of International Law* 636.
[9] *Prosecutor* v. *Duško Tadic*, International Tribunal for the Former Yugoslavia, Case IT-94-1-A, Judgement, 15 July 1999, par. 131.
[10] Annex to General Assembly resolution 56/83 of 12 December 2001, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, article 8.
[11] A similar criticism was addressed to Sir Brownlie for his first edition of the book, see Head, I. (1966-7) 'Book Reviews' 22 *International Journal* 322.
[12] In fact it is himself noting in the preface that 'the recent episodes of unilateralism have usually involved law-breaking rather than the development of the law, and it is inappropriate to appear to characterise law-breaking actions as 'precedents' or 'practice''.
[13] See also a similar characterization by Weiss, F. (1983) 'Reviews' 46 *Modern Law Review* 675.
[14] Moore, A.L. (1981) 'Book Reviews' 15 *International Lawyer* 751.
[15] Lowe, V. (1991) 'Publication Review' 107 *Law Quarterly Review* 514.
[16] Bowring, B., Times Higher Education, 26 February 2009.