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THE LAW OF INTERNATIONAL RESPONSIBILITY

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Preface

When the International Law Commission was established in 1948, to 'encourage the progressive development of international law and its codification',[1] one of the first 14 topics selected by the Commission for codification was 'State responsibility'.[2] At the time it was not surprising that an examination of the law of responsibility would be limited to States: although there had been some suggestion in the inter-war period that the League of Nations could be a *sui generis* international person,[3] the opening of the international legal system to inter-governmental organizations was not definitely affirmed until the 1949 Advisory Opinion of the International Court of Justice in the *Reparations* case,[4] and later still in respect of other natural and legal persons. Hersch Lauterpacht, one of the first and most fervent advocates for recognition of individuals as subjects of international law,[5] was still able to write in 1947 that '[a]s a rule, the subjects of the rights and duties arising from the Law of Nations are States solely and exclusively.'[6] On this prevailing view, codification of the law of State responsibility would cover the field of international responsibility entirely.

At the start of the 21st century a rather different picture has emerged. The international legal system, although principally controlled by States, now encompasses a broad range of actors and may directly regulate not only relations between States, but relations between States and individuals, between inter-governmental organizations and individuals, between States and corporations, between inter-governmental organizations and non-governmental organizations. It seems that there is no natural or legal person beyond the reach of international law, if only to be the subject of a single right or injunction. When the ILC brought its codification of the law of State responsibility to a close in 2001, it had already commenced work on diplomatic protection, concerned with the invocation of responsibility in respect of injury to nationals. A year later it commenced work on responsibility of international organizations. Other projects have dealt with other aspects of international responsibility, including its two projects on 'liability' in respect of trans-boundary harm. To speak of international responsibility is to speak of all such relations.

This collection seeks to cover this field of international responsibility; it serves not only as a critique of the ILC's Articles on State responsibility (2001), on diplomatic protection (2006) and on responsibility of international organizations (adopted in 2009 on first reading), but it examines many aspects of international responsibility which may arise in a multifaceted international legal system. It also includes a review of the rules applying to liability for activities which are not as such prohibited under international law but which may entail special consequences both on the ground of prevention and of

[1] Art 1(3), United Nations Charter. [2] *ILC Yearbook 1949*, 281.

[3] A McNair, *Oppenheim's International Law, Volume I* (4th edn, London, Longmans, 1928), 133–134.

[4] *Reparations for Injuries Suffered in the Services of the United Nations, Advisory Opinion, ICJ Reports 1949*, p 174.

[5] See eg H Lauterpacht, *An International Bill of the Rights of Man* (New York, Columbia University Press, 1945).

[6] H Lauterpacht (ed), *International Law: A Treatise, by L. Oppenheim* (6th edn, London, Longmans, 1947), 19 (§13).

compensation. These rules have also been progressively developed by the ILC under the English rubric of 'liability'; in all other official languages of the United Nations they are covered under the same wording as the consequences for wrongful acts (eg *responsabilité*, *responsabilidad*).

Part I of this book provides an introduction to the topic, covering issues relating to the definition of responsibility, the system of responsibility and the distinction between primary and secondary rules. Part II examines the development of the law on international responsibility and its relationship with other areas of law, including emerging areas of soft law, and municipal legal systems. Part III sets out the sources of international responsibility: the concept of an internationally wrongful act and the notion of responsibility in the absence of an internationally wrongful act. Part IV examines the content of international responsibility, from the general regime to the regime for grave breaches of obligations arising under peremptory norms, to specific regimes in respect of human rights, the WTO, environmental law, European community law and others. It also covers regimes of liability in the absence of an internationally wrongful act, including treaty-based regimes and environmental regimes as well as circumstances precluding wrongfulness. Part V deals with implementation of responsibility by States, international organizations and other entities. It covers modalities for the implementation of international responsibility and countermeasures.

These subjects are evidently wide in scope, and many of them remain controversial. Different contributors to this volume take different approaches to responsibility and to the ILC's work; thus what appears here is a range of views, sometimes conflicting. Within the confines of a single house-style, the individual authors of course speak for themselves. The book aims for a relatively comprehensive coverage, and in consequence an overall critique of the current international law and practice of responsibility; it does not present an overall conclusion.

* * *

The publication of this volume marks the end of a long bilingual project which was first envisioned in the immediate aftermath of the ILC's adoption of the Articles on State Responsibility in 2001 (here abbreviated as ARSIWA). Parallel versions of the book are being published in French by Pedone and in English by OUP; the French version under the care of the Centre for International Law at the University of Paris X (Nanterre) under the directorship of Alain Pellet; the English version under the care of the Lauterpacht Centre for International Law (Director: James Crawford). Due to differences in editorial style and linguistic tradition, the two versions differ in detail.

Concerning the English version, editorial assistance has been provided by a number of research associates of the Lauterpacht Centre, including in particular Merel Alstein, Stephanie Ierino, Jonathan Ketcheson, Dr Tom Grant, Kylie Evans, and Federica Paddeu. Mr Arnoldo Brenes, Dr Douglas Guilfoyle, and Dr Monique Sasson kindly provided expert assistance in the editing of specialized chapters. But thanks are due above all to Dr Kate Parlett for her meticulous attention to detail and perseverance over the course of the work; and to Affef Ben Mansour of CEDIN for her patience and skill in coordinating the French end of the joint project. The editors would also like to thank John Louth of Oxford University Press for his commitment to the project, and to Merel Alstein, Ceri Warner, Beth Cousins and Benjamin Roberts for their assistance in the final stages of the process.

About two-thirds of the contributions were originally written in French; a mountainous task of translation ensued. Thanks are due to Dr Sonia Rolland, Alex Campbell, Melissa

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