Book Review

CRAWFORD, JAMES, *Brownlie's Principles of Public International Law*, 8th Edition (Oxford University Press, 2012). 888 pages; £44.99 (paperback).

Samuel Wordsworth QC*

1 Introduction

As Professor Warbrick noted at the official launch of the 8th edition of *Brownlie's Principles of Public International Law* in Cambridge last October (2012), reviews of textbooks are presumptuous and perhaps redundant affairs. That must be right. The users of the textbook—which in the case of Brownlie's will cover a range from students to courtrooms—will soon enough work out for themselves what the merits of the given textbook are. The minimal function that could be served by the review, which would be to say that the textbook would be best left on the bookshop shelf, is unlikely ever to operate when one comes to an 8th edition, and certainly not when the classic textbook of one great figure of the international law world is, following his tragic death, taken up by another great figure of that world.

In the case of this 8th edition of *Brownlie's Principles of Public International Law*, there is of course scope for important questions on whether or how a classic textbook can or should be passed on from one author to another.¹ However, these are questions that are unlikely to trouble most users of the book, who will be distant from its origins. For a while, students or legal practitioners may and indeed should wonder whether they are referring to the views of Sir Ian Brownlie or Professor Crawford when they cite this work, but in a broad brush way they are likely to consider that they are getting the best of both worlds, a conclusion that may also be derived from reading Professor Crawford's Preface. As explained there, despite the various changes, the text of the 8th edition is essentially Brownlie's, albeit that Professor Crawford has assumed ownership of the text. That may appear uncomfortable or contradictory at certain levels, but at

* Barrister, Essex Court Chambers, London; Visiting Professor, King's College London.

¹ See especially C Warbrick, 'Brownlie's Principles of Public International Law: An Assessment' (2000) 11 *EJIL* 621.

a pragmatic level the project has been very successful. And while the emphasis at the official launch was very much on the authorship of Sir Ian Brownlie and the preservation of his heritage—and correctly so—the day-to-day practitioner will welcome the fact that *Brownlie's Principles of Public International Law* has received a very positive and effective overhaul by an author of particular distinction.

2 A few highlights of the new edition

Brownlie's Principles of Public International Law now contains what it has always, and curiously, lacked—an introductory chapter. This is entirely consistent with the overall scheme of the book, which has always been to present international law as a system of law interacting in various ways with the domestic sphere. Indeed, it is notable that in the 1962 proposal for the very first edition of *Brownlie's Principles of Public International Law*, there was to be an introduction that would have touched on many of the themes in the short but highly informative chapter now drafted by Professor Crawford. This takes Keats ('On First Looking into Chapman's Homer') as a starting point to get across the central point that international law is a system of law, or rather laws, and that this is an exciting world for those who choose to inhabit it.² This is a message that, like this new Introduction and other user-friendly aspects of this new edition, will hopefully make *Brownlie's Principles of Public International Law* more accessible to those coming to international law for the first time, which is a pool of readers that extends well beyond first year undergraduates. And, for the first time, these readers will benefit from a consideration, albeit succinct, of international law as law.

The remainder of Part I, Preliminary Topics, covers the same themes of sources of law and the relations (now plural) of international and domestic law as in previous editions. A good example of the way these preliminary chapters have been brought up to date is the section (in Chapter 3) on 'International law in the common law tradition'. This develops the previous work of Brownlie in what has become an area of great importance in domestic courts, in circumstances where armed action in Iraq and Afghanistan and also detention and treatment at Guantanamo have led to numerous claims in English and other courts. The consideration of the application of treaties in English courts has been greatly expanded, while the question of what could be meant by 'incorporation'

² J Keats, 'On First Looking into Chapman's Homer' (1816): 'Then felt I like some watcher in the skies, When a new planet swims into his ken...'

of customary international law is now examined in detail with reference to the recent case law and the important scholarship of O'Keefe³ and Sales and Clement.⁴

These updates are from Crawford; they will be of great value to practitioners, and they fit readily within the scheme and also the spirit of the work devised by Brownlie. The same can be said for the largely new passages on non-justiciability and act of state (although given the pace of development in this area there are already further cases to be added and considered when it comes to the next edition),⁵ and also the very helpful new section on 'International law in the civil law tradition'. The reviewer is not aware of any other textbook source of an equivalent and useful overview of how customary international law and treaties are applied in the civil law tradition, and likewise whether or how the doctrine of non-justiciability applies.

The remainder of the book largely follows the general structure of the 7th edition, the changes including the helpful re-casting of the three chapters covering admissibility, dispute settlement and use of force into a new Part (Part XI) devoted to Disputes. This new Part is broader in scope, but at the same time more focused on the specific areas that are likely to be of interest to the contemporary reader. Thus, Chapter 31 on 'The Claims Process' leads straight into new sections offering a succinct distinction between the concepts of jurisdiction and admissibility and an up-to-date (if not uncritical) description of the approach of international tribunals to requirements such as the existence of a dispute and the obligation to negotiate or exchange views. A greater weight is placed on claims between states and private parties, and this is reflected all the more in the following chapter on judicial settlement. In previous editions, the equivalent chapter has been focused largely on the ICJ, but Professor Crawford has enlarged the scope to include new sections on dispute settlement under UNCLOS, the WTO mechanisms and investment treaty arbitration.

³ R O' Keefe, 'The Doctrine of Incorporation Revisited' (2008) 79 *BYIL* 7.

⁴ P Sales and J Clement, 'International Law in Domestic Courts: The Developing Framework' (2008) 124 *LQR* 388.

⁵ For e.g., on act of state, *Yukos Capital SARL v OJSC Rosneft Oil Co* [2012] EWCA Civ 855. With respect to the section on non-justiciability, it might also be thought that the reference to *R v Secretary of State for the Home Department, Ex parte Launder* [1997] 3 All ER 971, line of authorities pays insufficient weight to the views expressed by Lord Brown and others in *R (Corner House Research) v Serious Fraud Office* [2009] 1 AC 756, and taken up in e.g. *R (ICO Satellite Limited) v The Office of Communications* [2010] EWHC 2010 (Admin)—to the effect that it may be sufficient that a decision-maker comes to a tenable view when making an administrative decision by reference to an unincorporated treaty.

This is all to the good, and the new focus on investment treaty arbitration reflects its current importance to students and practitioners, and also picks up from the more developed sections on the relevant substantive protections that are to be found in what is now Chapter 28 (The International Minimum Standard: Persons and Property). To complete the Part, the Chapter on use of force has remained the same length, but now covers considerably more ground through cutting out most of the lengthy quotations from primary source material (all now readily accessible on the internet). This leaves more and welcome space for commentary and views, for example, on the legality of use of force in Iraq or self-defence against the attacks of non-state actors.

The Part on the Law of Responsibility (Part IX) has benefited from a thorough re-working to take account of the ever-wider acceptance of the International Law Commission's (ILC) 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) as *Brownlie's Principles of Public International Law* now invites us to call them—an acronym which seems unlikely to receive the same acclaim as the Articles themselves). Consistent with the scheme of the ILC's Articles, the question of attribution is dealt with largely up-front, and certain passages here could be approached as useful updates to the ILC's 2001 Commentaries, for example with respect to the passages on attribution of the acts of armed forces, which takes full account of recent cases at the International Court of Justice (ICJ), the European Court of Human Rights and domestic courts.⁶ One particularly useful feature of this Part is the revised section on peremptory norms, pointing to the ILC's 'authoritative synopsis' of their content, the ICJ's important observations on the need for consent to establish jurisdiction regardless of the character of a norm and, perhaps most important, confirming that Article 41 of the ILC's Articles on State Responsibility

⁶ See *Armed Activities on the Territory of the Congo (DRC v Uganda)*, Judgment, ICJ Reports 2005 p. 168; *Behrami and Behrami v France and Saramati v France, Germany and Norway* [GC], no. 71412/01 and no. 78166/01, Judgment 2 May 2007 and also *Case of Al Jedda v The United Kingdom* [GC], no. 27021/08, Judgment 7 July 2011; and the judgment of the Court of Appeal of The Hague in *Mustafić and Nuhanović v the State of the Netherlands* District Court The Hague, case nos. 265618 and 265615, Judgment 10 September 2008. Notably, Professor Crawford states his agreement with the conclusions in this last case that multiple entities may have effective control over forces, and that effective control by a state makes the conduct of these forces attributable to the state regardless of the legal form taken by the operation. Such reasoning, which appears consistent with the further work of the International Law Commission, will no doubt be deployed in future cases to support the contention that the European Court of Human Rights decision on attribution of acts to the UN in *Behrami and Saramati* should be confined to its own particular facts.

on consequences of a serious breach of a peremptory norm is 'probably as much progressive development as codification'.⁷

3 Conclusion

The two lines of Keats that now introduce *Brownlie's Principles of Public International Law* appear particularly apt, and not just as a means of suggesting to the new reader that there is scope for fascination in discovery of the world of international law. The inspiration behind Keat's sonnet was his discovery of a new take on the works of an old master—in the form of Chapman's 1616 translation of Homer—and Keat's verse shows just how productive such new takes may be.⁸ It is of course the case that *Brownlie's Principles of Public International Law* could have ended with the 7th edition, with this left 'to rust unburnished, not to shine in use'.⁹ It could likewise be said that there is now no dearth of good textbooks. But *Brownlie's Principles of Public International Law* has established itself as a book of real value and authority for students, academics and practitioners, and Professor Crawford's rigorous work preserves and, in this reviewer's opinion, extends the underlying quality of this classic work.

⁷ J Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012). See 598; cf 579, which seems less clear.

⁸ One might also note that the footnotes of the previous edition have benefited from the 'eagle eyes' of Professor Crawford and those who have assisted in the vital task of bringing these up to date. Keats use of the idiom in 'On First Looking into Chapman's Homer' was rather less prosaic, of course: 'Then felt I like some watcher of the skies, When a new planet swims into his ken; Or like stout Cortez when with eagle eyes He stared at the Pacific—and all his men Look'd at each other with a wild surmise— Silent, upon a peak in Darien.'

⁹ A Tennyson, 'Ulysses': 'How dull it is to pause, to make an end, To rust unburnished, not to shine in use!'