

to Freeman's classic treatise. In addition, the book does not address developments under international human rights treaties in great detail or consider the extent to which procedural protections under these treaties have crystallized into customary international law.

The final chapter, entitled 'The Menace of Obscure Arbitrators', is a *'post scriptum'* – 'thoughts inspired by sidelong glances' (at 228) – on denial of justice in modern international law. Paulsson begins by noting the particular sensitivities about challenges to national justice, which 'strike at the heart of national pride' (at 228). As a result, denial of justice is a 'formidable test of commitment to the rule of international law' (at 228). Paulsson is highly critical of what he calls an uninformed 'neonationalist reaction' (at 232) to international adjudication as reflected in articles in the popular press and statements by NGOs and politicians. These critics suggest that any international adjudication of national measures is a violation of sovereignty. Paulsson views this simply as a negation of international law. Although supportive of the incremental reforms to the investor-state arbitration process, for example through greater transparency and access to *amici curiae*, he is sceptical of proposals for new types of appellate mechanisms for investment treaty awards and appears satisfied with existing corrective mechanisms. Paulsson is not convinced that appellate review of investment treaty arbitration would provide better or more consistent decisions and he contrasts highly fact-contingent investment arbitrations with disputes in the WTO state-to-state system. Paulsson also notes that even in the domestic sphere, it takes time to develop consistent jurisprudence and that investment state arbitration under investment treaties is in its infancy.

Paulsson's writing is clear, lucid and lively. The research and presentation of international authorities is meticulous and illuminating. Whether he is recounting the lynching of Italians in New Orleans by mobs in the 1800s or former Peruvian President Fujimori's attempts to manipulate Peru's Supreme Court, he brings the stories behind claims of

denial of justice to life. Paulsson's thesis that denial of justice is always procedural provides a principled basis for maintaining an international standard while at the same time accepting that 'the varieties of legal culture that enrich the world' (at 205) should be respected. This book is indispensable to those interested in the evolving law of international claims.

University of Victoria Andrew Newcombe

Email: newcombe@uvic.ca

doi: 10.1093/ejil/chl021

Roman Kwiecień, **Suwerenność państwa. Rekonstrukcja i znaczenie idei w prawie międzynarodowym**

(State Sovereignty. The Reconstruction and Meaning of the Notion in International Law), Kraków:

Kantor Wydawniczy Zakamycze, 2004.

Pp. 205. ISBN 83-7333-435-1

(published in Polish).

The book under review is the first monograph in Polish on state sovereignty from an international law perspective. This gap in the literature for the period following World War II until the change of political system in 1989 is understandable, given the strong ideological nature of the subject. However, after 1989 and despite some important studies, the absence of a comprehensive book-length treatment of the subject was noticeable. This was even more striking given the European Union accession process, as it was accompanied by a debate (predominantly political) between – generally speaking – those who viewed accession as a deadly danger for Polish sovereignty and those who treated sovereignty as a relic of the past. This discussion was not surprising, especially in a country which had only recently fully regained political independence. In such circumstances, the lack of an in-depth reflection from an international law perspective was more than evident. This volume by Roman Kwiecień, lecturer in international law at the Maria Curie-Skłodowska University of Lublin, definitely fills this gap, even though it does not focus on the context of Polish membership in the EU. The book, which results from

the author's extensive research, was awarded the Manfred Lachs Prize in January 2006 for the best international law book by a Polish author published in 2004 *ex aequo*.

The book opens with an introduction which presents state sovereignty as a methodological and epistemological problem. Its main thesis is that the notion of state sovereignty is fundamental for international law and its theory. As long as states – and in consequence international law – exist, state sovereignty remains its main regulatory mechanism. The author admits that this thesis is neither new nor revolutionary, but argues that it is worth considering again today at a time when there are important trends towards a questioning of the meaning and significance of state sovereignty. Advanced forms of state interdependence, for example, undoubtedly cause serious practical, as well as theoretical, problems. Nevertheless, the author stresses that a position which uncritically questions state sovereignty as being inadequate for modern international relations and international law is highly unsatisfactory.

The main body of the book is divided into two parts. Part One is devoted to the history of the idea of sovereignty in international law and its doctrine. Kwiecień starts by reviewing the development of the notion in a historical perspective, which strictly corresponds to the evolution of the international law system. Indeed, the development of international law may be seen as the process of progressive protection of state sovereignty through the gradual emergence of principles of international law, such as the principle of sovereign equality, which aimed at protecting statehood and is essential in this context.

The author critically presents three main doctrinal approaches to the notion of state sovereignty *vis-à-vis* international law within a philosophical perspective. He begins with an approach which he labels as the 'absolutization' of state sovereignty. This approach is based on the supposition that sovereignty excludes the subordination of states to international law and, in consequence, questions its binding force. The second approach is based on negation and abandonment of state sovereignty as a precondition for a coherent

theory of international law, one in which state sovereignty is replaced by the sovereignty of law. Finally, the author presents an approach which illustrates the immanent interrelation between state sovereignty and international law and perceives the former as the basis of the latter. This approach, inspired by a Kantian philosophy of law, is evidently shared by the author in further analysis.

Part Two, the essential part of the book, deals with the nature and significance of the notion of sovereignty in international law and its theory. It contains three chapters which deal respectively with an analysis of the notion itself; the idea of the indivisibility of state sovereignty in the context of its limitations and violations; and its role for international law justifications.

The author reviews the definition of state sovereignty as a notion without which the very existence of international law would not be possible. As such, state sovereignty is defined as the main regulatory notion of international law. In addition, the author defines state sovereignty not only negatively as non-subordination to any other subject, but also positively through the state's full capacity to perform legal actions, both internally and externally. Thus, a territorial entity is sovereign if it has this full capacity to act and, consequently, enjoys the status of a state under international law, even in the event that it is in a position of political dependence on other subjects, as was the case with Poland and the other states of the Soviet bloc prior to 1989. The change of political system in 1989 did not change Poland's status under international law. The author stresses that it is the formal attributes – through which states exercise their powers – which constitute the real sovereignty test and not a lack of actual political dependence. Yet, it should be noted that such a formalistic approach results in a significant gap between notions of legally understood sovereignty and politically understood independence. Furthermore, the author deals with the notion of a state's reserved domain (*domaine réservé*), which, according to the author, is determined by states' international obligations. He correctly claims that there exists only a negative relationship between

reserved domain and sovereignty, i.e. interference in a state's reserved domain constitutes a violation of its sovereignty.

Moreover, Kwiecień strongly advocates the indivisibility of state sovereignty. Thus, he critically refers to concepts of joint sovereignty in the territorial context (*condominium*) and the federal context, as well as to the doctrine of divisible sovereignty as regards the status of EU Member States. In the last case, the author persuasively claims that at present the EU does not have any sovereign rights as it does not have any objectives independent of the Member States (autonomous objectives). Further points are made separately with respect to the limitations and violations of state sovereignty. Although the author generally excludes limitations of sovereignty as the effect of undertaking international obligations, he accepts the exceptional existence of states with limited sovereignty. Such a position may cause some concerns as to its coherence, especially in the context of examples analysed further. The author divides limitations, which remain legal under international law, into two categories: those against the will of states and those in accordance with the will of states. The former category is exemplified firstly by sanctions imposed upon states (for example, those under Chapter VII of the United Nations Charter) and secondly by treaty regimes limiting states' legal capacity to determine their status under international law (for example, Germany before unification; Cyprus). The latter category applies mainly to protectorates and mini-states. Further, the author focuses on the influence of integration processes on the sovereignty of the states involved. Particular attention is devoted to integration within the EU. The author rejects the idea that sovereignty of the EU Member States is limited. This view is generally accepted in the Polish doctrine of international law. Kwiecień maintains that such an idea is based on ECJ jurisprudence, which defines sovereignty as the sum of state competences. The author rejects this definition and maintains that currently the EU constitutes only a supranational forum where Member States

jointly exercise their competences. What is decisive is that they preserve the competence of determining their competences (competence of competences) and consequently remain fully sovereign. As far as violations of state sovereignty are concerned, the author perceives the issue through violations of norms protecting sovereignty. It is a consequence of the fact that sovereignty itself is not a legal norm. By way of illustration, reference is made to the problems of violation of the non-intervention principle and legality of armed interventions, regrettably too succinctly.

The author also critically discusses the main philosophical doctrines which deal with the binding force of international law, as well as with the mutual relations of municipal and international law, both in the context of state sovereignty. In conclusion, he claims that the objective meaning of international law derives from states' awareness of the inviolability of their legal status as a common value demanding due protection. Thus, the basis of international law is a consequence of a common awareness of protection of the sovereignty of states. Inspiration in Kantian philosophy is explicitly invoked in this context.

The book opens with two quotations. One is by Louis Henkin, defining sovereignty as a bad word which has served terrible national mythologies and which often acts as a substitute for thought and precision. The other is by Stanisław E. Nahlik, stating that almost all the main principles and institutions of modern international law derive to some extent from, are based on or justified by the notion of state sovereignty. Both approaches are duly represented and analysed throughout the book, although there is no doubt that Kwiecień fully supports the Nahlik approach and eruditely presents various aspects of state sovereignty – remaining constant in its nature and complementary to international law – manifested in particular stages of the development of international law.

*Jagiellonian University, Michał Kowalski
Kraków, Poland*

Email: kowalsma@ists.pl

doi: 10.1093/ejil/chl022