Book Reviews

Hirsch, Moshe. *The Responsibility of International Organizations toward Third Parties: Some Basic Principles*. Dordrecht: Martinus Nijhoff, 1995. Pp xvi, 220.

The emergence of international organizations has presented international lawyers with some complex puzzles. As the collapse of the International Tin Council in the 1980s demonstrated, the question of the international legal responsibility of international organizations has particularly required further study.

Moshe Hirsch's study *The Responsibility of International Organizations toward Third Parties: Some Basic Principles* is a brave attempt to deal with a complex legal problem. Although the book has great merit, it is not an unqualified success. Ostensibly dealing with the question of the responsibility of international organizations, the study is in actual fact much more an examination of the responsibility of their members. As such, it hardly lives up to the promise of its title.

Still, Hirsch's chapter on the *lex lata* regarding the responsibility of member states is a gem. Lucidly and elegantly, Hirsch provides an in-depth analysis of treaties and other sources, case law, state practice, and doctrine, and carefully concludes that contemporary international law 'points to responsibility of the members of international organizations' (p. 148).

How this responsibility operates, however, remains an open question. Is it concurrent with the responsibility of the organization itself? Is the responsibility indirectly incurred, or rather secondarily? In his fifth chapter, Hirsch attempts to answer these questions, sketching various possible alternative regimes and distinguishing between voluntary and non-voluntary third parties (the latter are presumably victims of torts committed by organizations). Voluntary third parties, Hirsch proposes, should be subject to a regime of indirect responsibility. If the organization incurs responsibility, it is under a legal duty to make its members comply. In the absence thereof, the injured third party may enforce members' obligations toward the organization. With respect to non-voluntary third parties, however, a regime of secondary responsibility is proposed. If the organization fails to provide remedies, non-voluntary third parties may eventually proceed against the members.

Hirsch bases his proposals on the balancing of interests of the organization with those of third parties. However, this dichotomy is not without its problems. Although international law can be said to be largely the result of structural tension between the interests of sovereign states and those of the international community at large, it is doubtful whether this model can simply be transposed to questions concerning the legal position of international organizations. Hirsch neglects the fact that the emergence of international organizations added not just a new (type of) subject to international law, but rather added a whole new dimension. Consequently, the simple 'state versus community' dichotomy (transposed to an 'international organization versus third state' dichotomy) is by no means a sufficient tool for the analysis of problems of international organizations. A balancing of factors, as advocated by Hirsch, should have included the interests of the international community as well as those of the member states of organizations.

As a result, his defense of the interests of international organizations leads at times to puzzling statements. While there may be some truth in Hirsch's proposition that international organizations generally contribute to human welfare, this can hardly be a reason to deny remedies to injured third parties. Yet, this is precisely what would happen in certain (extreme) cases. Third parties could fall victim to a need to enable international organizations to prosper.

Furthermore, Hirsch fails to clarify why, in cases where residuary responsibility of the member states is envisaged, this responsibility also extends to those member states which were outvoted when the organization prepared or committed its wrongful act. In theory, this could perhaps be justified by ar-

guing that membership necessarily entails residuary responsibility. Unfortunately, however, Hirsch barely addresses the issue.

Apart from not quite living up to its title and the use of a less than fully convincing theoretical framework, Hirsch's study suffers from some additional defects. The international legal personality of international organizations is, for instance, simply 'presumed' (p. 10, n. 50). Whether organizations need to have a distinct will is a question that remains unaddressed. And most curiously, the chapter ostensibly devoted to breaches of international law by organizations (Ch. 2) does nothing of the kind; Hirsch analyses the possible sources of international obligations of international organizations, but does not examine 'breach' itself. The pertinent rules on the breach of the treaty are not even mentioned.

Surprisingly, although Hirsch's study is vulnerable to criticism both on theoretical and methodological grounds, it is a quite valuable study. In spite of the flaws noted above, the subsequent analysis is convincing on most counts, and, as mentioned, the chapter on *lex lata* with respect to responsibility of member states for acts attributable to international organizations is a gem. Moreover, the proposals Hirsch makes *de lege ferenda* appear quite reasonable as far as the results are concerned.

Moshe Hirsch's study does not solve all the riddles relating to the responsibility of international organizations. It does, however, provide fertile soil for further debate and study, and presents some useful suggestions regarding urgent practical problems. These facts alone suffice to make it an important contribution to the international legal literature.

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Collins, Lawrence, *et al.* (eds.). *Dicey and Morris on the Conflict of Laws* (2 vols.). London: Sweet & Maxwell, 1993. Pp. xix, 1602. Index. $469.50.

The leading treatise on the English conflict of laws is now in its twelfth edition, issued in 1993 and updated by cumulative annual supplements. The 1996 Supplement marks the centenary year of the publication of the first edition by Albert Venn Dicey. Through the contributions of its successive editors, particularly John Morris who revived the text after a half-century and is now identified as its co-author, this treatise has remained authoritative in England and influential throughout the common law world. The twelfth edition of *Dicey and Morris*, the second to be edited by Lawrence Collins and a team of specialist editors, continues to provide a clear and comprehensive statement of the laws in this technical area. In the first volume, Part 1 discusses a number of 'Preliminary Matters': the nature and scope of the subject, characterization, the incidental question, the time factor, *renvoi*, exclusion of foreign law, and domicile and residence. Part 2 concentrates on procedural questions, while Part 3 covers issues of jurisdiction and recognition and enforcement of foreign judgments, including arbitration and arbitral awards. Volume 2 primarily addresses choice of law issues in family law (including significant statutory revisions enacted since the eleventh edition), property (including succession and trusts), corporations, insolvency, contract, restitution and tort. The volume concludes with rules concerning foreign currency obligations.

Dicey and Morris focuses on the doctrine of the current law of England as manifested in judicial decisions and statutes. The doctrinal orientation is reflected in the continued use of Dicey's original format of Rules (black-letter statements of doctrine drawn from statutes and cases), Comments (elaborations and discussions of Rules), and Illustrations (mostly capsule summaries of decided cases). The editors provide limited treatment of general theories of the conflict of laws, interdisciplinary approaches and the broader political, economic or social context of rules. Such matters are generally left to scholarly discussion outside the text, selectively referenced in the notes. Sustained critique and reform proposals are typically limited to those situations where judicial decisions and statutes have left the law ambiguous.

Notwithstanding its doctrinal orientation, the twelfth edition provides much evidence