The World Court Reference Guide (1922 – 2000)
Judgments, Advisory Opinions and Orders of the Permanent Court of International Justice and the International Court of Justice

(Kluwer Law International, 2002, ISBN 90-411-1907-8)

African Yearbook of International Law (Vol. 10, 2002, published 2004): "essential purpose of this work is to give a comprehensive overview of all the contentious and advisory cases that have been dealt by (the PCIJ and the ICJ) ....provides precious information about the decisions in each particular case ... therefore an important and valuable research tool on the World Court's activities since its establishment ... the author has indeed patiently gone through all of the pronouncements of the Court in order to comprehensively list the case-law found therein ....this *vade mecum* will grately enhance researchers' efforts to locate these (legal) instruments in the judgments and opinions of the Court when they seek to understand why and how they have been referred to by the Court ...taken care to present the material in a simple, structured and user-friendly manner which further facilitates the task of any researcher ... meets all the main criteria of a standard reference guide and will serve various actors in the international legal community - judges, lawyers, governmental authorities, academics and historians - for many years to come ... would like to echo Judge Kooijmans's observations ...."a book which may be called monumental in more than one respect".

American Journal of International Law (vol. 97, 2003): "offers the serious researcher an interesting and potentially powerful tool. The *Guide* presents in an accessible way a mountain of "official" information (of the Courts)... presents the procedural history of each case clearly and consistently, making it easy to draw comparisons or connections ... these listings (*i.e.* members of litigation teams) offer an intriguing little window on the international lawyer's trade ... the admiring (or merely curious) can also use the *Guide* to plot points in the careers of many international legal notables ... the *Guide* could prove a valuable resource for planning and conducting study in many other areas ... could ease the planning and execution of many other interesting projects as well ...offers the serious researcher a detailed "roadmap" into the Courts' Reports ... somewhat unusual and specialised book that can serve as a potential powerful and efficient research aid ... book worth having for serious students of the two World Courts or of the process and procedures of international adjudication."

Asian Yearbook of International Law (volume 9, 2000, Published 2004): " a monumental work prepared with care and skill ... and a very useful tool for anyone interested in the work of the World Court ... provides a comprehensive overview of procedural aspects of the jurisprudence of both the PCIJ and the ICJ ...there is also a systematic reference to legal instruments, and the coverage of information on litigation teams ... fills an important gap in the reference materials for both the PCIJ and the ICJ ... an important reference tool for international and national judicial and quasi judicial bodies, legal advisors to government departments, and for other legal practitioners as well as for teachers of and researchers into international law ... very useful publication for any law library or a diplomatic office."

Annuaire Française de droit international (XLVIII - 2003, Publiée novembre 2003): "...est plus classique, ce qui n'enlève rien à son utilité ... d'un inventaire des 200 affaires contentieuses et consultatives soumises à la Cour de La Haye entre sa création et le 31 décembre 2000 ... conscients du temps et de la peine que (de guide) leur épargneront, tous les chercheurs et tous les praticiens voueront certainement une grande reconnaissance à ... auteur pour s'être livre a ces travaux de bénédictin. "

ASIL News Letter UN 21 Interest Group (Issue 27, January 2003): "... a rich indexing addition to the literature on the work product of the two World Courts ... provides novel form of access to ....judicial dispositions in one volume. The gap filled by this book includes not only the procedural history of each case, but the people associated with its evolution and disposition ....all in an intuitive format ... brilliantly conceived

research tool for any user in need of such detailed information ...thumbing through the Table of Contents and its Index quickly illustrates the utility of this handy reference guide to the work of the World Court (s). "

Shabtai Rosenne (Foreword): "… an overview of all the case load of the Permanent Court of International Justice and the present International Court of Justice since 1922, the author's contribution to the decade of international law … He so to speak 'photographs' the procedural history of each case from the institution of the proceedings to the final decision, indicating all the persons involved at each stage. This meets a gap in the reference materials for the International Court … . I often find it important to be able to see at a glance what a case was about, what the Court decided, and who were the personalities involved in every phase of a case, as judges and as agents and counsel. This book aims to meet that requirement … For the practitioner and for the student the most important parts of this book are the indexes to the Statute and the Rules of Court and the lists of treaties and other legal instruments cited … In this book Mr Patel decided to produce five separate indexes for the Rules of Court, for 1922-1931, 1931-1936, 1936-1946, 1946-1972 and 1972 to date. I agree with that approach which I think will be helpful to all who have need to refer to the Rules of Court at any given date."

Judge Kooijmans, ICJ (inaugural address, 25 September 2002): " … a book which may be called ***monumental*** in more than one respect. The new Oxford dictionary gives as the meaning of "monumental": great in importance, extent or size. The World Court Reference Guide is all three … it meets a gap in the reference materials for the International Court … And like other works of art this Reference Guide will withstand the years to come and shall be contemplated and scrutinised by a grateful public."

India and International Law volume 1
(Nijhoff Publishers, 2005, ISBN 90-04-14519-2)

American Society of International Law UN21 Newsletter (issue 34, February 2006)

"This collection of sixteen individually-authored essays by prominent scholars presents an in-depth analysis of India's role in the international community… would be an ideal addition to both personal and institutional libraries, concerned with providing the best resources in comparative and regional international legal analysis."

American Journal of International Law (vol. 101, number 2, July 2007)

"…the book advances an understanding of an Indian approach to international law. The approach includes a healthy scepticism of perceived Western norms, a respect for international negotiation and settlement, and an appreciation of international law's role in shaping certain domestic norms. And the approach reflects an idealism tempered by the reality that India has shed some of its postcolonial trappings."

Chinese Journal of International Law (vol. 2, July 2006)

"…The book is no doubt a useful reference tool to scholars, policy makers and practitioners…Such projects are of value both in promoting the penetration of international law into the domestic legal order and in promoting the role of the State involved in the international law-making process."

Cornell Law Review, (vol. 34, issue 3, 2006)

"…The publication of *India and International Law* is a welcome addition to the scant body of literature on state practice in the field of international law… a worthy contribution to the literature of state practice in the field of international law and is highly recommended as a new acquisition for any comprehensive collection of international and comparative law materials."

Leiden Journal of International Law (vol. 2, issue 2, 2007)

"*India and International* Law brings together a variety of perspectives and topics which reflects both the traditional Indian scholarly approach to 'India and international law' and the new zeal in the 'Indian perspectives' on international law….Another publication on India and international law is called for – perhaps a second volume which would complete the overview both with respect to content and with respect to the technical means which are necessary to turn both volumes into a 'useful reference tool'."

Yves Daudet, Secretary-General, Hague Academy of International Law

"...Il est cependant d'un intérêt certain pour celui qui veut apprécier le rôle et la place de l'Inde dans les relations juridiques internationales ce qui est assez mal connu en France et découvrir des noms de juristes de ce pays, trop souvent ignorés dans le nôtre. A cet égard, le livre rédigé en collaboration par B. Patel est très certainement intéressant et utile."

Bimal N. Patel, *Responsibility of International Organisations Towards Other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union (EU) and the International Atomic Energy Agency (IAEA)*. Eastern Book Company, 2013, 408 + viii pp., foreword, preface, table of cases, abbreviations, annexes. ISBN 9350289814

1. Responsibility of international organizations (IOs) is one of the most critical areas of international policy and law as well as research for their qualitative and quantitative growth. The law governing international organizations has rarely been studied systematically, but the situation changed when Dr. Bimal N. Patel's book, titled *Responsibility of International Organisations Towards Other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union (EU) and the International Atomic Energy Agency (IAEA)*, was published by the Eastern Book Company in 2013.

2. Chapter 1, "Overview: Responsibility of International Organasations Towards Other International Organisations: A Most Critical Guarantee for the Stability of Inter-Organisational Relationship", enumerates 18 kinds of needs for studying the law and practices of legal obligations between IOs, and surveys the literature and jurisprudence on the issues concerning the definition, nature, functions, evolution and role of IOs in international relations and international law. The author also introduces the central inquiry, scope and methodology of his research as well as the selection of organizations in this book and organization of this book.

3. Chapter 2 stresses the legal personality of international intergovernmental organizations. On the basis of an analysis of the concept of legal personality, international legal personality, the determination of the legal personality of an IO and the capability to bring claims of an IO, the author introduces V.S. Mani's five principal points to address the question of illegal acts of IOs and the International Law Commission's attempt to codify the IO responsibility. Then through the *International Tin Council* case, the author discusses the liability of IOs, lifting the organization's veil and claims between States only. Eventually this book presents a concrete assessment of legal personality of selected IOs such as United Nations, International Bank for Reconstruction and Development, North Atlantic Treaty Organization, Organization of African Unity, Organization of American States, International Atomic Energy Agency, International Monetary Fund, International Finance Corporation, Development Agency, Multilateral Investment Guarantee Agency, European Community and North Atlantic Fisheries Organization.

4. The focus of Chapter 3 is the objects and purposes of international intergovernmental organizations and the necessity of inter-organizational relations. Firstly, this chapter explores the relations between the United Nations and specialized agencies, as well as regional arrangements. Secondly, it briefly discusses the scope and limitation of the objects and purposes of IOs. Thirdly, it introduces the case law governing the interpretation of the statute of an IO. Fourthly, it discusses the relations between International Bank for Reconstruction and Development and United Nations. Fifthly, this chapter explores the legal provisions governing the relations between the European Community and other international organizations, such as the United Nations, General Agreement on Tariffs and Trade, World Trade Organization, International Labour Organisation and Food and Agriculture Organisation. Sixthly, it analyses the legal relations between the United Nations and regional organizations. I agree with the author that there is increasing importance of partnership between the United Nations and regional organizations (p. 91). Seventhly, through the Safeguards Agreement of 1973 and its implementation, it demonstrates the relations between International Atomic Energy Agency and the European Atomic Energy Community. Finally, it discusses legal basis and origin of the International Atomic Energy Agency's

relations with United Nations, specialized agencies and non-governmental organizations in the perspective of a functional necessity.

5. Chapter 4, with the name of "Laws Governing the Relations Between International Organisations", examines sources of law for determining the international obligation of IOs. The author identifies the said sources of law through general international law, customary international law, treaty law, Draft Articles on Responsibility of IO of the International Law Commission, general principles of law, the *International Tin Council* case in the UK, USA, Australia and New Zealand, and the teachings of highly qualified publicists. We hold the same views as the author that the relations between IOs are governed only by international law. However, IOs are not States, hence, the laws applicable to inter-State relations must be viewed accordingly (p. 140).

6. A detailed and thorough analysis of *inter se* obligations of IOs is provided in Chapter 5. The author examines such sources of acquiring inter-organizational obligations as treaty law, customary law, doctrine of supremacy of obligations under United Nations Charter and the principle of *jus cogens* and relationship agreements or arrangements by and between IOs. Then the author identifies the availability, nature and scope of the said relationship agreements. Subsequently the author deeply analyses the *inter se* obligations of IOs, including legal obligation, financial obligation, mutual cooperation and understanding, exchange of information, mutual reporting obligation, reciprocal representation and consideration of views. Later, the possible remedies in case of breach or non-fulfilment of the *inter se* obligations of IOs are examined. Finally, the author introduces the registration and amendment of the said relationship agreements.

7. Chapter 6 illustrates the implementation of *inter se* obligation in the perspective of theory and practice. In the sphere of theory, this chapter identifies such applicable laws as treaties, general principles, customs and teaching of highly qualified publicists to establish the obligations that IOs are obliged to observe. In the sphere of practice, this chapter analyses the mechanisms for IOs to implement their obligations, their internal procedures, the tools used to inform the policy-making organs and other IOs concerning the implementation of obligations and subsidiary arrangements to effect the obligation to implement the obligations.

8. In Chapter 7, titled "Settlement of Disputes: An Overview", the author examines the available corpus of laws such as article 33 of the United Nations Charter, article 34 of the Statute of International Court of Justice, the Vienna Convention on the Law of Treaties and the rule of local remedies, which give guidance for addressing inter-organizational disputes or legal questions. The author then examines the settlement of inter-organizational disputes in practice. Eventually, the author reaches the following conclusion: the damaged IO may choose to deal with the wrongdoing IO out of its own free will within the framework of special relations agreements. Despite a uniform lack of provision for the settlement of disputes, there is an implied obligation to consult or negotiate in order to settle any differences that may arise (p. 323).

9. The conclusions to this book are in contained in Chapter 8, which is divided into 5 sections. Section 1 offers an overview of the conclusions. The author holds that the increasing co-operation and relations among the IOs need to be governed by more explicit rules and principle. Section 2 provides concluding observations of various chapters and records findings in relation to hypotheses. The recommendations are given in Section 3, and short final remarks are provided in Section 4. Section 5 identifies possible principles and rules considered as basis for addressing the issues of inter-organizational responsibilities.

10. It is open to discussion whether general international law is still regarded as independent law governing the relations between international organizations other than customary international law, treaty law, general principles of law and teaching of a highly qualified publicist. The study on certain points may be extended. They include the scope and limitation of objects and purposes of IOs, final remarks in the conclusions to Chapter 8. It seems that the subsection titled "How to resolve breach of obligations between IOs" in Chapter 5 (p. 155) should be discussed in Chapter 7 of this book.

11. The author has reached the following important conclusions that made a very forceful impression on us. The examination of the entire regime of the legal obligations of IOs is helpful to our understanding if and how inter-organizational relations have contributed to the achievement of the object and purpose of IOs (p. 117). Without the joint efforts and co-operation, the United Nations and regional organizations would have been unable to play an effective role in solving various conflicts (p. 297). Each and every obligation undertaken contributes to the realization of a particular object and purpose (p. 326). The author has made such imperative suggestions as that the United Nations General Assembly should be called upon to adopt a resolution providing detailed guidelines to the IOs in their inter-organizational relations (p. 326), and that there is no need for a responsibility regime of IOs similar to State responsibility, for the problems arising from relations among IOs can be resolved through negotiation and mutual understanding rather than resorting to legal mechanisms (p. 346). The author's long experience of working with an IO has also immensely helped him in gaining a critical, yet realistic understanding of the inherent problems which IOs face. Such first-hand experience and his extensive knowledge, combined with his great passion for research enrich this book, which will benefit a lot of scholars and practitioners in their study of inter-organizational responsibilities or will help address issues in inter-organizational relations.

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Santiago Montt, *State Liability in Investment Treaty Arbitration-Global Constitutional and Administrative Law in the BIT Generation,* Hart Publishing, 2009, reprinted paperback 2012, 416, xlvii pp.; table of cases; table of legislation; table of international agreements and draft international agreements; bibliography; index, ISBN: 978-1-84113-856-5 (hardback), ISBN: 978-1-84946-213-6 (paperback)

1. When BITs proliferate and BIT dispute resolution by *ad hoc* international arbitral tribunals is common, questions arise whether the finding of state liability for acts against investors by arbitral tribunals is legitimate. The book analyzes the issue in a property, constitutional and administrative law perspective, examines the extent that state regulation may expropriate investment and what should be the fair, equitable and treatment (FET) compensation, and proposes a balance between property rights and state regulatory power under both domestic law and international law.

Bimal N. Patel

Responsibility of International Organisations towards other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union and the International Atomic Energy Agency

[Odpovědnost mezinárodních organizací ve vztahu k jiným mezinárodním organizacím: Právo a praxe Spojených národů, Světové banky, Evropské unie a Mezinárodní agentury pro atomovou energii]

Lucknow: Eastern Book Company, 2013, 408 pp.

The newly published book by Indian Professor Bimal N. Patel deals with the responsibility of international organizations. This is a topic which has attracted the intention of international lawyers during the past years.[1] Unlike other publications that focus on general issues of the responsibility of international organizations, documented mainly on cases of disputes between international organizations and States, or that provide reflection and comments on the 2011 Articles on the responsibility of international organizations, this book approaches the topic from a new, largely not yet researched petspective of the relations *inter se* among international organizations. This is an area the importance of which is growing as a result of the increasing number of IOs, but it has not been explored much even in the work of the International Law Commission. His long study is backed by extensive reference to the practice of international organizations as a source of law.

The content of the book reflects this approach. It is divided into seven substantive chapters and conclusions. The first chapter, called "Overview: Responsibility of International Organisations Towards Other International Organisations", has rather the function of an introduction. The author outlines the main questions, methods, a survey of literature and the scope of the research study. In particular, he explains the selection of four IOs, namely the IAEA, the United Nations, the International Bank for Reconstruction and Development and the European Union. Chapter 2 provides a description of the constitutive instruments, membership and main objectives of the international organizations under examination, including an analysis of their legal personality. Next, Chapter 3 analyses the objects and purposes of the UN, the IAEA, the IBRD and the EU (EC), as well as their legal relations with other international organizations. Chapter 4 focuses on rules which govern the relations between international organizations. They are mainly in the form of treaties but include also customary international law and general principles of law. Chapter 5 examines more specifically various sources of inter-organizational obligations and possible remedies in case of breach or non-fulfilment of the obligations. It involves the relationship and

[1] See e.g. M. Ragazzi (ed.), *Responsibility of International Organizations. Essays in Memory of Sir Ian Brownlie*. Leiden/Boston: Martinus Nijhof Publishers, 2013.

other kinds of agreements and arrangements between IOs. Chapter 6 then provides an illustration and analysis of the implementation of *inter se* obligations of the IOs.

Last but not the least, Chapter 7 addresses the issues of breach of obligations and the settlement of disputes between the IOs. Here the main problem is that most cooperation agreements of the IOs lack provisions on dispute settlement, because the IOs assume that their legal relations will be free of any disputes. The non-applicability of the advisory opinion procedure between IOs makes recourse to the International Court of Justice without practical significance. Arbitration clauses are possible but remain exceptional in agreements between IOs. However, as the author concludes, there is an implied obligation to consult or negotiate in order to settle any difference.

The book ends with very detailed conclusions (Chapter 8, pp. 325-354). They include, in particular, the proposal of a code of conduct or model rules which IOs should adhere to when they enter into relations with other IOs. As suggested by B.N. Patel, the rules should be adopted by the UN General Assembly or highest decision-making organs of the IOs in the form of a resolution (p. 350).

The monograph also includes standard annexes, such as a table of cases, abbreviations, bibliography, subject index, as well as Draft Articles on the Responsibility of International Organizations. From the formal point of view, I would point out that the reference to articles of the Treaty on EC is outdated and should be replaced, in the context of the Lisbon Treaty, by the respective provisions of the Treaty on Functioning of the EU.

To evaluate the substantive aspects of the book, I would like to commend Bimal Patel for his empirical and analytical approach to the responsibility of international organizations. His work stems from an in-depth, inside examination into the agreements and practice of the IOs, namely the selected four organizations.

At the same time, the book is a stimulating and, through its questions, thought provoking piece of work. On the one hand, the conclusions stress the importance of adoption of the coherent body of rules of the responsibility of IOs. On the other hand, they show that the breaches of obligations between IOs do not qualify "the need for evoking a legal framework such as one exists for the State responsibility".

Another statement which entails questions is that "the spread of IOs and the growing awareness of the potential risks arising from their activities will probably generate a trend towards the codification of existing responsibility rules and the formulation of new ones in international treaties." The author hopes that the 1972 Liability Treaty and 1982 Law of the Sea Convention provisions will ensue the trend. However, Article 304 of the UNCLOS is just a *pactum de contrahendo*. Article XXII of the 1972 Outer Space Liability Treaty only transposes the principles of liability of launching States to an international organization. This special treaty regime of international liability differs significantly from general secondary rules on responsibility of States and that of IOs.

On balance, the book did not clearly take position on the perspective of draft articles on the responsibility of international organizations, which provide rules applicable equally to relations between States and IOs and relations of organizations *inter se*. Does it mean that the general rules do not fit for the responsibility of international organizations towards other international organizations? It could be easily explained by reference to *lex specialis*. The question is whether the practice of the IOs allows discerning such special rules.

To conclude, the book of Professor Patel is a valuable contribution to the debate on the responsibility of IOs. Its originality and strong points are mainly in the empirical approach and detailed analysis of rules and practice of the selected organizations. The publication may be recommended to both scholars and practitioners of international law, as well as advanced students, who are working in the issues of responsibility and the law of international organizations.

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BOOK REVIEW

Bimal N. Patel, *Responsibility of International Organisations Towards Other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union and the International Atomic Energy Agency* (Eastern Book Company, Lucknow, 2013), pp. 408, Rs 1155, ISBN: 9350289814.

From its earliest years, the International Court of Justice (ICJ) has recognized that non-State actors animate the international law enterprise and do so in ways that are both consequential and perhaps irreversible. In its seminal *Reparation for Injuries Suffered in the Service of the United Nations (Reparation)* advisory opinion, for example, it made clear that the nature of international law's subjects reflects the requirements and "needs of the community."[1] At issue in *Reparation,* of course, was the question of the United Nations' international legal personality and capacity to bring a claim against a State for an internationally wrongful act. The ICJ held that the United Nations *as an international organisation* did have this capacity. The number of international organisations has increased substantially since the ICJ delivered *Reparation* in 1949.[2]

It is not the substantial increase in the number of international organisation as such, however, that has posed so many challenges to international law. Rather, it is the quintessence of international legal personality, that is, the bearing of rights and obligations, which has so urgently called for clarity. As bearers of rights and obligations, international organisations open themselves to international responsibility when they engage in internationally wrongful acts. The International Law Commission (ILC) addressed many aspects of the responsibility of international

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1 *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion),* ICJ Reports (1949), pp. 174-220 at p. 178. There is some debate as to whether "subject" is an appropriate term to use in these discussions. Now former International Court of Justice President Dame Rosalyn Higgins prefers the phrase "participant." *See* Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (1994), pp. 39-55. The International Law Commission (ILC) has used the term "person," which it describes as "any being, object, association or institution which the law endows with the capacity of acquiring rights and incurring duties." International Law Commission, Report on the Work of Its Fifty-Eighth Session (1 May to 9 June and 3 July to 11 August 2006), U.N. GAOR, 68, U.N. Doc. A/61/10 (Supp. No. 10).

2 *See* Jan Klabbers, "Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation," *Melbourne Journal of International Law,* vol. 14, iss. 1 (2013), pp. 149-70 at pp. 151-59. The ILC has defined an international organization as an "organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities. " International Law Commission, Responsibility of International Organizations: Texts and Titles of Draft Articles 1 to 67 Adopted by the Drafting Committee on Second Reading in 2011, U.N. GAOR, art. 2(a), U.N. Doc. A/CN.4/L.778 (2011).

organisations when it adopted its articles on the topic in 2011, but it did so as a general matter. Dr. Bimal N. Patel's *Responsibility of International Organisations Towards Other International Organisations: Law and Practice of the United Nations, the World Bank, the European Union and the International Atomic Energy Agency (Responsibility of International Organisations)* focuses specifically on the responsibility that international organisations owe *inter se* and assesses the sufficiency of the existing international law architecture in this area. As Judge Chittharanjan F. Amerasinghe, author of a key text on international institutional law,[3] puts it in his Foreword to *Responsibility of International Organisations,* Dr. Patel's work is a "welcome addition to international legal literature."

Chapter one of *Responsibility of International Organisations* introduces Dr. Patel's eight chapter study and identifies eighteen reasons that justify it. Some of these reasons are more developed than others, but they are all valid. They range from the need to address conflicts of jurisdiction and rectify coordination problems that international organisations experience *inter se* to a need to highlight the lack of a clear framework for dispute settlement and unrealised solidarity aspirations. Dr. Patel's approach is decidedly doctrinal in nature, with its roots in the accepted sources of law contained in Article 38 of the Statute of the ICJ. It is unfortunate, however, that, "[d]espite temptation, this work does not intend to offer a detail [sic] framework of the principles of international responsibility applicable to IOs as a result of the implementation of the regime of legal obligations between IOs" (21). Had it given into this temptation by producing a tightly-worded, clear set of model rules that would codify and progressively develop the law in this area, *Responsibility of International Organisations* would perhaps promise to make an even greater impact upon international law scholarship and practice.

Chapter two is the first substantive chapter in *Responsibility of International Organisations.* As one would expect, it begins with *Reparation* to provide *the* framework for assessing whether a putative subject of international law possesses international legal personality. Dr. Patel's understanding does not deviate in any significant respect from *Reparation,* and as he correctly puts it, "[w]ithout personality, IOs are no more than collections of members requiring rights, obligations and powers to be held and used in law by other members" (39). Just as the constitutive instrument of an international organisation provides the justificatory basis for international legal personality, so also does it serve to demarcate an international organisation's mandate and circumscribe its powers. Chapter two explores the international legal personality of a number of international organisations, not simply the four international organisations that the subtitle of Dr. Patel's work would suggest would be the object of study.[4] Although this broader

3 *See* C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (2d rev. ed., 2005).

4 One might have expected *Responsibility of International Organisations* to discuss the International Criminal Court (ICC), but there is no such discussion. On the ICC, from the perspective of international institutional law, see Klabbers, *note 2*, pp. 157-58.

exposure is instructive, it somewhat clouds the work's focus, and it should also be noted that Dr. Patel's conclusion in chapter two that the "legal personality of the EU is still not clear" (62) is belied by the fact that the Consolidated Version of the Treaty on European Union expressly recognises the European Union's international legal personality.[5]

To determine the intended function of an international organisation, its constitutive instrument must be interpreted in light of its object and purpose, with practice suggesting that the *leitmotiv* of interpretation is "effectiveness" (70). Chapter three examines the object and purpose of the United Nations, the World Bank, the European Union and the International Atomic Energy Agency, as well as the arrangements that these international organisations enter into with other international organisations. The sections in chapter three on regional arrangements (in the sense of Chapter VIII of the Charter of the United Nations)[6] are particularly strong, though the omission of the Libyan case in *Responsibility of International Organisations*, which involved the United Nations Security Council's authorisation in 2011 of "all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory,"[7] in a move that involved a central role for regional arrangements, is noticeable.

Chapter four is by far the shortest substantive chapter in *Responsibility of International Organisations.* It seeks to identify a bundle of tools that can assist in understanding the legal relationships that exist between international organisations. These tools include general international law, customary international law, international treaty law, the work of the ILC on the responsibility of international organisations, general principles of law and, since they have a "significant role in the development of new principles in international law and [. . .] frequently serve as a means for identification of the existing law" (138), the teachings of the most highly qualified publicists of the various nations.[8] Dr. Patel takes a flexible approach to when it can be said that an agreement concluded between international organisations has legal effect (see 123-27),[9] and this seems to be broadly in line

5 *See* Consolidated Version of the Treaty on European Union, *Official Journal of the European Union,* C 326, vol. 55 (2012), pp. 13-46 at p. 41, Article 47 ("The Union shall have legal personality").

6 *See* Charter of the United Nations, Articles 52-54. On Chapter VIII of the Charter of the United Nations, see Robert P. Barnidge, Jr., "The United Nations and the African Union: Assessing a Partnership for Peace in Darfur," *Journal of Conflict and Security Law,* vol. 14, iss. 1 (2009), pp. 93-113 at pp. 94-99.

7 Security Council Resolution 1973 (2011), para. 4, U.N. Doc. S/RES/1973.

8 *See* Amerasinghe, *note 3*, pp. 386-89 (highlighting the different forms of legal relationships between international organisations).

9 For example, Dr. Patel states that "[t]here must first of all be rights and obligations created under the agreement. On the other hand, the fact that such rights and duties may be imprecisely defined does not negative [sic] the legal character of the agreement" (126).

10 *See* Vienna Convention on the Law of Treaties Between States and International

with the definition of "treaty" contained in the Vienna Convention on the Law of Treaties Between States and International Organisations or Between International Organisations.[10] Indeed, in its 2011 *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, **the Special Tribunal for Lebanon also upheld the propriety of** flexibly approaching the legal effect of instruments concluded between actors other than States.[11]

"Inter-Se Obligations of International Organisations," the subsequent chapter in *Responsibility of International Organisations,* looks at the types of obligations that international organisations enter into *inter se.* Dr. Patel pays particular attention to the European Union, which he mistakenly refers to as the European Community, because its record of interacting with other international organisations is "most noteworthy and can provide [a] good framework to understand the overall question of acquisition and implementation of mutual obligations" (156). Chapter five, and *Responsibility of International Organisations* more generally, would have been strengthened had it discussed and analysed the string of *Kadi* decisions in recent years that have highlighted the unique relationship between the United Nations legal order and the European Union legal order.[12] Over fifty pages of chapter five cover fourteen different types of obligations that international organisations tend to owe *inter se.* These range from obligations of a financial nature and for mutual benefit to administrative, personnel and statistical matters. Chapter five acknowledges that cooperation between two or more international organisations might be so intense, or of such a nature, that it might itself give rise to the birth of a distinct international organisation. Such cooperative arrangements, as the ICJ recently noted, "are concluded for a variety of reasons. Each arrangement is distinct and has different characteristics."[13]

Chapter six examines international organisations' implementation of obligations *inter se,* from both theoretical and practical perspectives. It approaches these obligations through the prism of Article 38 of the ICJ Statute, though chapter six classes general principles of law as "secondary source[s] of international law" (253) when, of course, Article 38 acknowledges no such hierarchy between international treaty law, customary international law, and general principles of law. The first international organisation that chapter six focuses on is the International Atomic Energy Agency, and the increasing role that it has played in assisting the Security

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Organisations or Between International Organisations, Vienna, 21 March 1986, Article 2 (1) (a) (not yet in force).

11 *See Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging* (STL-11-01/I/AC/R176bis), Special Tribunal for Lebanon (2011), para. 26.

12 On *Kadi,* see Antonios Tzanakopoulos, "*Kadi* Showdown: Substantive Review of (UN) Sanctions by the ECJ," *EJIL:* Talk!, 19 July 2013, available at <http://www.ejiltalk.org/kadi-showdown>.

13 *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization Upon a Complaint Filed Against the International Fund for Agricultural Development (Advisory Opinion),* ICJ (2012), para. 60.

Council with respect to its "primary responsibility for the maintenance of international peace and security."[14] Dr. Patel's subsequent section looks at examples from practice of how the African Union, which *Responsibility of International Organisations* distractingly refers to as the Organisation of African Unity, and the Organisation of American States have interacted with the United Nations, in particular the Security Council, on issues of international peace and security; the North Atlantic Treaty Organisation and other international organisations are also examined. Overall, the sense from practice is that a number of international organisations interact *inter se* with vague constitutional authority for them to do so and that these interactions take place on an *ad hoc* basis. This shows that international organisations can "create innovative ways to codify their mutual rights and obligations, and thus, can complement [the] efforts of one another" (297), though this also problematizes the determination of internationally wrongful acts by international organisations in their relations *inter se.*

The final substantive chapter contemplates how disputes between international organisations are, and should be, settled. What forums exist, and does practice suggest that international organisations tend to prefer particular means of dispute settlement over others? Given the State-centric nature of the ICJ's jurisdiction in contentious cases and the fact that the Charter of the United Nations forecloses all but a few international organisations from requesting an advisory opinion,[15] it is perhaps not surprising that "IOs prefer primarily the less formal procedures available in dealing with the disputes" (321). By "less formal," Dr. Patel means diplomatic means of dispute settlement, which Sir Hersch Lauterpacht, writing in 1930, noted means effectively "substitut[ing] a series of attempts at settlement for a settlement proper."[16] Chapter seven notes that relationship agreements between international organisations do not always specify precise modalities for the settlement of disputes. This has the effect of *widening* the means of dispute settlement available to contending international organisations. In the absence of a *lex specialis,* the default rules for dispute settlement that chapter seven suggests in its concluding section resemble the default rules for dispute settlement for inter-State disputes.[17]

Dr. Patel's concluding chapter reiterates, in considerable detail, the problems that international organisations experience in their relations *inter se.* Two points are worth mentioning here. Firstly, there is the clear anxiety that the "international community cannot tolerate a situation in which IOs frequently violate the law without

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14 Charter, *note 6*, Article 24(1).

15 *See ibid.,* Article 96.

16 Hersch Lauterpacht, "The Absence of an International Legislature and the Compulsory Jurisdiction of International Tribunals," *British Yearbook of International Law,* vol. 11 (1930), pp. 134-57 at p. 138.

17 *See* Charter, *note 6*, Article 33(1). *See also* General Assembly Resolution 37/10 (1982), U.N. Doc. A/RES/37/10.

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providing remedies according to international law" (337). Articles 28-42 of the ILC's Articles on the Responsibility of International Organizations articulate clear consequences for international organisations when they commit internationally wrongful acts. What Dr. Patel suggests is the creation of an international court that would be able to adjudicate disputes between international organisations. If this suggestion were to be accepted, the modalities for such a (permanent, one would expect) international court would need to be negotiated by relevant stakeholders in what could very likely be a drawn-out and extended process. The second point from the concluding chapter that is worth mentioning here is the call for model rules that would guide international organisations in their relations *inter se.* This could be, in Dr. Patel's reckoning, in the form of either a soft law instrument or a hard law instrument. In truth, the precise form of such an instrument may be less relevant than the extent to which it would actually be able to clarify the law in this area and lead to more predictable outcomes for international organisations.

Although Dr. Patel does not give into the temptation, alluded to above, of producing a tightly-worded, clear set of model rules that would codify and progressively develop the law on the responsibility of international organisations *inter se,* he does leave the reader with a very valuable ten-point plan that could contribute to this (see 350-52). It is hoped that relevant stakeholders will seize upon this framework since, like *Responsibility of International Organisations* more generally, it can serve to clarify an area of international law that will only gain in importance in the future.

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Law of the Sea: International Tribunal for the Law of the Sea Jurisprudence, Case Commentary, Case-Law Digest and Reference Guide (1994-2014). By Bimal N. Patel, with Forewords by Judge Peter Tomka (ICJ) and Judge David Attard (ITLOS). Lucknow: Eastern Book Company, 2015. 418 pages.

In a time of increasing resort by states to international dispute settlement, the International Tribunal for the Law of the Sea (ITLOS) has become one of the preeminent institutions providing for the settlement of disputes between states. With a jurisdiction and jurisprudence extending from "prompt release" cases to provisional measures and maritime boundary delimitation as well as international fisheries and the international seabed, the Tribunal is having an important impact in the development of the law of the sea. The jurisprudence of the Tribunal has increased steadily and as in the case of all new judicial institutions, keeping track of decisions, categorizing them and putting them within a framework for further study and analysis is a challenge. In this regard, Professor Bimal Patel, an eminent international legal scholar at Gujurat National Law School, has provided a great service to the international law community with his *Case Commentary, Case-Law Digest and Reference Guide* to the jurisprudence of ITLOS.

The work, which covers all of the decisions of ITLOS from its inception to the "Ara Libertad" case in November 2012, is divided into four Parts.

Part I is a commentary on each of the cases, which gives an account of the facts and highlights the key legal contributions of the case.

Part II, which constitutes the major part of the work, provides a Digest of the Cases, fitting them into their subject areas and noting the legal principles discussed in the case in each area. From this one can obtain an insight into the diverse contribution to the development of the law of the sea made by the Tribunal.

Part III, which is the reference guide, is divided in two: A, deals with the cases before ITLOS, and B, deals with Advisory Opinions. This Part reviews the decisions already commented on in Part I, but in terms of their more formal aspects. For each case information is provided on the institution of proceedings, what is claimed, the number of

hearings, the orders made, the date of any judgments, the operative part of the judgment, the legal instruments referred to, a list of declarations made by judges, and of concurring and dissenting opinions, and a list of the representatives of the parties.

Part IV provides the basic texts of the Tribunal, its Statute, its Rules and their amendments, the Tribunal's resolution on its internal practice and it's Guidelines on the preparation and presentation of cases and the posting of bonds.

Professor Patel is no stranger to the production of case digests of this kind. As former ICJ President Judge Peter Tomka points out in his Foreword, Professor Patel had already produced reference guides for the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ). He has obviously given much thought to how to structure the material in the way it will be of use to students, scholars and practitioners.

The work provides an opportunity to reflect on the contribution of the Tribunal. Unlike a court of general jurisdiction, ITLOS has a jurisdiction that is quite specific in certain areas, in particular in relation to the "prompt release" of vessels. This is a relatively new concept that came into being with the 1982 United Nations Convention on the Law of the Sea. Professor Patel uses the now common abbreviation for the Convention of UNCLOS, a term that in the past was applied to the United Nations Conference on the Law of the Sea. Since the notion of "prompt release" was new, ITLOS had to elaborate its own jurisprudence on prompt release, including the posting of bonds on which the Tribunal has issued guidelines for states. The application of these rules by ITLOS has not been without controversy and there have been a significant number of dissents and separate opinions.

The Digest gives a useful insight into the range of issues dealt with by ITLOS in dealing with prompt release cases both specific to the prompt release issue and of more general application, such as the extent of the rights of a coastal state within its EEZ and the right of the flag state to bring claims on behalf of non-nationals who are on board

their vessels. Indeed, when one looks at the categories and sub categories of international law set out in the Digest, which include the high seas, nationality of ships, conservation and management of marine living resources, principles governing the "Area", and of course, maritime boundary delimitation, one sees the diversity of the contribution of the Tribunal. And within each area there are sub-categories, such as immunity of warships and the right of hot pursuit. In short, the work of ITLOS, rather than narrowly focused has become a significant part of the corpus of modern day public international law.

What is interesting is that "prompt release", which in its early years was the bread and butter of the Tribunal's work, is not listed in the Digest as a separate category. Instead it is treated as the principal topic under the headings of the High Seas, and Freedom of Navigation. No doubt some of the Tribunal members in those early years were somewhat frustrated at having to deal with such matters as the setting of bonds, and the proceeds from the sale of vessels and their catch, topics that did not fall within the purview of international lawyers in the past, but, as Professor Patel's work illustrates, in dealing with these topics the Tribunal was making an important contribution not only to the interpretation and application of specific provisions of the Convention, but also to international law more generally.

The involvement of ITLOS in deciding maritime boundary disputes was eagerly awaited. Would the Tribunal simply follow the jurisprudence that had been developed by the ICJ and arbitral tribunals or would it undertake a critical analysis of that jurisprudence and set its own path? ITLOS chose the former course largely endorsing the existing jurisprudence although making additional contributions to areas not yet dealt with by the ICJ. In particular it has made an important contribution on the delimitation of the continental shelf beyond 200 nautical miles and the "grey area" problem.[1]

[1] *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh in the Bay of Bengal (Bangladesh v. Myanmar*, Case No. 16 (2012).

The Tribunal has endorsed the articulation of the ICJ in the *Black Sea Case*[2] of the so-called "equidistance-relevant circumstances" method of delimitation, which entails a "three-stage" approach of first the drawing of an equidistance line; second, seeing if that line should be adjusted in the light of "relevant circumstances"; and third the determination of whether result is disproportionate – the "disproportionality" test. In doing so, the Tribunal simply adopted and maintained the intellectual and practical contradictions of this method, in particular the overlap in the application of the first and second stages – drawing a provisional equidistance line and then adapting it to reflect relevant circumstances.. It may be hoped that as the Tribunal deals with further maritime boundary cases it will give additional thought to coherency in the application of this method.

Any new international dispute settlement body is confronted by issues that are to a certain extent procedural in nature but are necessary preconditions to dealing with the substantive claims – is there a "dispute", is there jurisdiction, are the claims admissible, has there been an exhaustion of local remedies? ITLOS has engaged on all of these questions and a significant section of the Digest is devoted to them. The Tribunal has also had to deal with non-appearance of a party and the challenges this gives rise to ensuring equality between the parties.

An important part of the Tribunal's jurisdiction is considering applications for provisional measures, which raises its own questions of jurisdiction, as well as questions of harm and environmental impact, and the Digest identifies them all. The fact that ITLOS decides on provisional measures in respect of cases that are dealt with on the merits by an Annex 7 tribunal leaves open the possibility of inconsistency between the two dispute settlement bodies, illustrated in the *Southern Bluefin Tuna* cases.[3]

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[2] *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, 2009 ICJ Reports 61.
[3] *Southern Bluefin Tuna cases (New Zealand v. Japan (Australia v. Japan)* Provisional Measures, Cases No. 3 and 4 (1999); *Southern Bluefin Tuna (New Zealand v. Japan (Australia v. Japan)* Jurisdiction and Admissibility, 2000, XXIII RIAA 1.

Modelled on the Statute of the ICJ, the Statute of ITLOS also contains the power to give advisory opinions and the Tribunal has done so on two occasions – one by the Seabed Chamber in respect of the responsibility of states in sponsoring activities in the Area, and one by the Tribunal on the obligations of states in respect of illegal, unreported and unregulated (IUU) fishing. Unfortunately the Opinion of the Tribunal in respect of the latter request was delivered after the completion of the Digest. As a result, the Digest focuses on the Advisory Opinion of the Seabed Chamber.[4]

A final chapter of the Digest is headed "General", which deals with issues for which Professor Patel presumably could not find appropriate categories or would have resulted in a series of single category listings. This contains, however, some important sub-categories concerning the legal contributions of ITLOS. These include both procedural and substantive issues relating to treaties and their interpretation, obligations relating to due diligence and the precautionary approach, the relationship of treaties to domestic law and the concept of estoppel.

A digest is, of course, no substitute for reading the cases that are digested, but it does give guidance on where to look and what to look for. And, it provides a quick way of finding what has been said by the Tribunal in particular areas, and details such as who were the dissenting judges, or what were the claims and who were the counsel in a particular case, matters that would otherwise require more extensive research. A user can readily find what a case is all about and thus whether it should be considered further in researching a particular topic.

But, the Digest is more than this. Professor Patel has provided a ready insight into the jurisprudence of ITLOS and its contribution to international law and provided greater insight into the functioning of this dispute settlement institution. One appreciates from Professor Patel's work how much ITLOS has adopted and endorsed the jurisprudence of the ICJ throughout its decisions and not just in respect of maritime

[4] *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Case No. 21, Advisory Opinion of 2 April 2015

boundary delimitation. In this way, the Tribunal has contributed to avoiding fragmentation in key areas of international law, one of the matters on which Professor Patel hoped his work would throw light.[5] More generally this volume gives clear evidence that in its relatively short existence ITLO|S has established itself as an institution that has gained credibility and respect in international law and relations.

The Digest is well produced and carefully presented. It is a work of value to students, scholars and practitioners. It is easy to use and the categories generally can be followed and understood with facility. Perhaps the only lack is that of an index, which would greatly facilitate searching the Digest.

A final thought. A work of this nature needs continuous updating and another edition would be welcome before too long. Indeed Professor Patel describes this as a first edition. Where continuous updating is needed then an electronic form of this work would make considerable sense. Thus, an enterprising publisher would make it possible for Professor Patel to provide a searchable online publication of this work that could be updated regularly and would take Professor Patel's remarkable achievement with this book an important further step.

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[5] Introduction and Acknowledgements, p.XLVII

BOOK REVIEW:

LAW OF THE SEA: INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA JURISPRUDENCE: CASE COMMENTARY, CASE-LAW DIGEST AND REFERENCE GUIDE (1994-2014)

Bimal N. Patel

Ana Clara Abrantes Simões[1]

According to Malcolm Shaw, from a medium of communication to a vast reservoir of resources, the seas always performed important functions to the International Community. Through the years, this historical and actual relevance of the seas has stimulated the development of legal rules.

In 1982, after almost ten years of intense work and negotiation, it was edited a fundamental legal framework to the codification of the Law of the Sea, the 1982 United Nations on the Law of the Sea (UNCLOS). As affirmed by Professor Igor V. Karaman, in the prologue of his book 'Dispute Resolution in the Law of the Sea', "The 1982 United Nations Convention on the Law of the Sea has been frequently referred to as the 'constitution for the oceans' and as the most important event in the history of modern international law after the adoption of the Charter of the United Nations in 1945".

The UNCLOS has expressly announced the principles of the Law of the Sea – most of them had already been recognized by international customs - and established the International Tribunal for the Law of the Sea (ITLOS).

And, it is in this major institution established by the 1982 United Nations Convention on the Law of the Sea that Professor Bimal N. Patel focuses his brilliant and educational book, 'Law of the Sea. International Tribunal for the Law of the Sea Jurisprudence: Case Commentary, Case-Law Digest and Reference Guide (1994-2014)'.

Professor Bimal N. Patel offers, in his book, a path to a further study of the jurisprudence of the International Tribunal for the Law of the Sea.

This path is very well constructed through four, in fact five, main parts. The First Part presents a compilation with commentaries of the ITLOS's decisions, highlighting the most relevant points, regarding the Law of the Sea and the Tribunal's procedures that the judges addressed in each case. The Second Part provides case-law digest of the legal basis and sources of the Law of the Sea by the Tribunal's point of view which is reveled by the judicial pronouncements in the jurisprudence constructed

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by it through the years. The Third Part, which is divided in two (Cases and Advisory Opinions), systematically describes the history of each case and advisory opinions that has been dealt by the Tribunal. Finally, Part Four presents the basic texts that guide the Tribunal's work, e.g., the Statute of the International Tribunal for the Law of the Sea and the Rules of the International Tribunal for the Law of the Sea.