

(The multilateral 2003 Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, which contains similar features, was concluded after the publication of the second edition here in question.)

As was noted above, the updating of the first edition focuses on and is restricted to the exercise of the right of hot pursuit in the international law of the sea. This is to be regretted as the original text also covered pursuit on land and under international air law. Here too there have been developments of interest and importance since 1969. For instance, the provisions in the 1990 Schengen Convention on border controls governing both pursuit over land frontiers and cross-border observation have generated a growing academic literature. Schengen has, in this respect, also stimulated similar practice elsewhere as with the treaty between Liechtenstein, Switzerland and Austria on the collaboration of police and customs authorities across national borders.

For these reasons it is regrettable that the decision was taken not to produce a comprehensive and orthodox second edition: one that would have done full justice to the original. It is an opportunity missed.

*School of Law
University of Edinburgh*

Bill Gilmore

Liesbeth Zegveld. *The Accountability of Armed Opposition Groups in International Law*. Cambridge: Cambridge University Press, 2002. Pp. 260. ISBN 0 521 81130 9.

With the growth of internal political violence and the increasing salience of transnational non-state violence, the question of the limits of legally acceptable behaviour of armed opposition groups (AOG) has gained considerable significance. Prior to the publication of Liesbeth Zegveld's monography, no single book-length treatment of the question existed. Thus, this publication is particularly welcome. Dr Zegveld, currently a lawyer with the

Amsterdam-based firm of Böhler Franken Koppe de Feijter, originally undertook this work as a Ph.D. thesis at the University of Rotterdam.

It is worth noting Dr. Zegveld's sagacity in referring to the object of her study as 'armed opposition groups', thereby avoiding the numerous definitional controversies attached to other more loaded denominations. Zegveld's study is perhaps most notable, however, for using what might be called a 'subject-based' perspective with her topic and thus distinguishing herself from the traditional approach of humanitarian law which, in contrast, starts from the standpoint of warvictims in need of protection. In doing so, she pays heed to an important intellectual stream in international affairs which seeks to counter the paucity of mechanisms to enforce restraints on violence by reconceptualizing the victims' rights into doctrines of responsibility projected onto a larger set of actors through functional analyses, i.e., by analogizing their role and capacity to those, better regulated in international law, of states. This alternative approach is a welcome initiative and may indirectly revitalize the protection that international humanitarian law seeks to ensure and bridge gaps between ostentatious normative standards and actual implementation mechanisms. In her effort to appraise the activities of AOGs, Zegveld weaves a legal regime from three threads: international humanitarian law, international criminal law, and international human rights law.

Taking such an approach means that two sets of problems must be confronted. The first type of problem — what Zegveld refers to as the normative gap — requires overcoming a series of conceptual difficulties related to the identification of behavioural rules applicable to the activities of AOGs. First, non-state actors are for the most part and for obvious reasons not party to international conventions. Arguments for deriving obligations on a conventional basis will thus run the risk of being weak, given the challenge by AOGs to the very authority that formally undertook such obligations. Recourse to customary international law becomes almost indispensable

able. When envisaging the framework relating to international humanitarian law, for instance, Zegveld relies mostly on the customary value of Common Article 3 of the 1949 Geneva Conventions and of Additional Protocol II to provide standards of conduct opposable to AOGs. In doing so, she espouses what is now a very classical move in international humanitarian law, namely, looking at the black letter law for the identification and formulation of standards, and falling back on customary law to set the scope of their application.

Second, beyond the difficulties associated with finding an appropriate theory of sources to fit the peculiarities of AOGs, the tailoring of some obligations to the nature of AOGs proves a delicate task. There may be no particular conceptual difficulties involved in saying that AOGs should protect civilians, or distinguish between civilians and military targets in attacks. Nor is it particularly problematic to consider that AOGs should ensure a certain minimal treatment for prisoners of war. However, as Zegveld rightly points out, difficulties arise because, in spite of the desirability of burdening them with obligations similar to those of states, AOGs cannot be expected to take on obligations for which they do not have the capacity or are otherwise unsuited. A measure of adaptation rather than automatic projection is therefore a necessary step if one is to extend state obligations to AOGs by analogy.

Two separate sub-issues seem to be involved here. First, imposing particular obligations on AOGs regardless of their ability to carry out specific tasks prescribed by international law is not likely to constitute any form of improvement. For example, the author recognizes explicitly that the provisions of the Geneva Conventions concerning the trial of war prisoners are difficult to apply to non-state actors. There is a subtle tension involved here: on the one hand, one would not want to leave AOGs in a legal vacuum were they to undertake the task of judging prisoners; on the other hand, would one want to particularly encourage them to do something for which they are hardly suited? This

concern to tailor obligations to the actual capacities of AOGs is a recurring theme in Zegveld's book, which demonstrates her willingness to anchor her mostly normatively derived standards in concrete conditions. Second, assuming that AOGs do have obligations, what is their nature? Are they obligations to respect or to ensure? The answer to that question, it seems, depends on which body of law one is referring to. Zegveld acknowledges the prevailing reluctance to extend human rights treaty obligations to AOGs. Consequently, she introduces a distinction between human right violations and human right abuses. She refrains, however, from inquiring into the implications of the distinction. One wonders whether, absent an international legal obligation to positively uphold or to negatively preserve such rights, abuses of human rights nonetheless entail legal consequences (for instance through the application of abuse of right/power doctrines). Within the framework of international humanitarian law, Zegveld takes the opposite route, as she tries to narrow the conceptual barrier between the activities of states and those of AOGs. She criticizes the distinction generally maintained regarding AOG activities between obligations to respect given standards and obligations to ensure respect for those standards, arguing that AOGs are thereby treated more like individuals than as entities possessing larger organizational capacities (e.g. military discipline). Finally, as far as international criminal law is concerned, its relevance may be precisely that, in setting and enforcing standards towards individuals, it is remarkably neutral on the question of whether these individuals otherwise belong to a state or non-state group, making it potentially a powerful force in shaping the AOG regime.

The second set of issues that Zegveld tackles concerns the locus of responsibility for violations of the rules governing the conduct of AOGs, i.e. the accountability gap in her lexicon. This question can be thought of as the process of operationalization of the substantive obligations imposed on AOGs. Zegveld examines this question by focusing in turn on

group leaders, AOGs and states. Some of the developments in these chapters repeat the obvious, while others launch fascinating forays into barely explored territory.

The chapter on group leaders, which focuses on the relaxation of the distinction between state agents and members of AOGs, will not bring much to the international lawyer familiar with the field, apart from an interesting discussion of the application of command responsibility to AOG leaders in the context of civil wars. More interesting and unusual is Zegveld's idea of using the theory of state responsibility in relation to acts of AOGs. Zegveld's idea here is to sanction state violations of human rights law through its failure to take adequate measures to ensure that AOGs do not violate human rights. In the absence of effective governmental control over the territory in which an AOG operates, Zegveld argues that a state's responsibility would not be engaged on the ground of temporary impossibility of the operation of the treaty, suspension of the treaty or the triggering of the institution of *force majeure*. But Zegveld maintains that if the state retains a measure of control, such form of responsibility is possible, even though no international body has yet ruled to that effect. Under such framework, a state would incur the obligation to protect civilians physically from AOGs, the obligation to take protective legislative measures, and the obligation to prosecute acts of AOGs prohibited under applicable treaties. Zegveld posits the existence of a standard of due diligence to measure obligation compliance, which takes into account the availability of means, and the foreseeability of harm. While the idea of state responsibility for failure to take measures against AOG acts presents a theoretical interest, it is worth noting that it could lead to tribunals second-guessing state authorities on very sensitive questions, a task one might think they were not ideally positioned to perform.

Perhaps 'the most challenging level of accountability', however, according to the author herself, is that of AOGs *qua* groups. In examining this issue, Zegveld departs from her otherwise non-committal definition of AOGs,

and insists on a criterion of minimal organizational capacity of the group as a precondition for the opening of discussions of its accountability. She logically argues that the threshold of organization and capacity should be higher when accountability pertains to human rights regimes, where positive and extensive obligations are at stake, than to the field of humanitarian law. More problematic is the question of the remaining conceptual lacuna in international law when it comes to attributing acts to AOGs: Who are the members of the group and what are the circumstances in which acts by those people can engage the responsibility of the group as such? The situation of an AOG taking over a government is addressed straightforwardly in Article 15 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts, with the imputability of the acts of the AOG to the state. While it bridges the accountability gap — subject to issues of timing, this mechanism still falls short of a theory of AOG responsibility, particularly if the AOG has not overtaken a government. The author suggests building a theory of attribution based on effective control of the groups rather than on presumptions, as is the case for states. That she does not herself suggest a more elaborate or fleshed-out theory of attribution, however, remains a notable shortcoming of the book. Finally, there is the hybrid case of the formation of a government of national reconciliation, rallied by former AOGs or their members. In such circumstances, Zegveld suggests that triggering the mechanism of Article 15 might not be appropriate, as it might jeopardize domestic peace. She does not explore, however, the idea, far-fetched yet akin to that of group responsibility, that violations committed by AOGs be sanctioned against the patrimony of a dissolved AOG, or against an entity that would have succeeded the AOG, a political party having joined the governmental coalition for instance.

Overall, Liesbeth Zegveld's book certainly brings a significant and most welcome contribution to a field that had so far been neglected. The important activities of international

agencies and tribunals throughout the 1990s generated a relatively abundant jurisprudential output which needed to be distilled, and no doubt gave Dr Zegveld sufficient material to work from. Still, there is an undeniable limitation in a study focusing on legal restraints in civil wars that does not take account of the activities of domestic tribunals and adjudicative mechanisms. These are no doubt relevant to the issue of AOG accountability, at least as a form of state practice if not as a source of exposition of international law.

Otherwise, the strength of Dr. Zegveld's study is that it systematizes the topic coherently and presents a generally convincing case for the constructive extension of behavioural legal limitations to AOGs and for the development of complementary forms of accountability to sanction violations of those norms. Indeed, the author is keen on suggesting ways to fill gaps, thereby expressing the *en puissance* completeness of the international legal system. Throughout the book, Zegveld's main concern is for the recognition of the actual social existence of AOGs in international affairs and consequently for the development of forms of responsibility attaching and specific to them. Her attempt to appraise the commission of war-related atrocities through lenses other than those of fashionable international criminal law is welcome and provides a denser approach to the problem. In a rare insight on how recourse to some solutions may thwart others, the author opines that the trend toward individual responsibility through criminalization might impede the elaboration of group accountability doctrines by dissociating individuals from groups.

Zegveld's effort to further push the fences of responsibility should only be seen as the starting point of a desirable movement reaching a wider range of actors loosely involved in patterns of organized violence. For those interested in constraining such actors, Dr. Zegveld's book proves a precious and insightful reading.

Robert Dufresne

JSD Candidate
New York University

William E. Butler. *The Law of Treaties in Russia and the Commonwealth of Independent States. Text and Commentary*. Cambridge: Cambridge University Press. 2002. Pp. 548, hardback.

Since the dissolution of the USSR, 12 newly independent republics have confronted the challenge of returning to the international community along the path of the rule of law and democracy, both of which had been absent in this region for 70 years. To this end, they founded the Commonwealth of Independent States (CIS) in late 1991. The organizational structure of the CIS was supposed to assist its member states in forming their own modern legal systems. A key issue in this context has been which approach these states should adopt in coping with the exigencies of treaty-making. Indeed, the 1995 Russian Federation (RF) law links international treaties directly with the creation of a rule-of-law state, which is a standard laid down in the 1993 Constitution of the RF.

The volume under review is the first of its kind in English to attempt a survey of the treaty practice of these states. It contains a comparative commentary on the laws of the 12 member states of the Commonwealth of Independent States, including the Russian Federation, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The author presents an article-by-article commentary on the prevailing Law on International Treaties of the Russian Federation adopted in 1995 and compares it with the laws of other CIS countries.

William Butler has practised and taught law in Russia for more than 15 years. He has published and translated many books on the Russian legal system. This volume originated as part of the Lauterpacht Lectures delivered at Cambridge University in 1991. Much of the material was also used in a special course on the Law on International Treaties taught at the Moscow School of Social and Economic Sciences of the Russian-British postgraduate university since 1995.