

RECENZIE

Internationalist Doctrines during the Years of Real Communism in Europe

Emmanuelle Jouannet and **Iulia Motoc** (eds), *Les Doctrines Internationalistes Durant les Années du Communisme Réel en Europe/ Internationalist Doctrines during the Years of Real Communism in Europe*, Paris: Société de Legislation Comparée. 2012. Pp. 567 pages. ISBN 978-2-36517-007-9.

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Announced from the outset by its authors, the volume under review aims to “bring a retrospective outlook on the legal internationalist doctrines which existed during the period of real communism in Europe since 1917 that are connected to Marxism.” (at 19) and to explore “the nature of the internationalist doctrines, the relationship between internationalists and the regimes in place, with real communism in the East, their utopia and their illusions, their capacity of criticism and demystification of the existing law and international relationships, but also their silences and connivances towards imperialist policies, wars of aggression and atrocious crimes committed by the powers in place during ... real communism in Europe” (at 19). The approach of the editors is an invitation for debate on how Western and Eastern Europe have positioned themselves not only with respect to the international law, but also intellectual-wise, to the question of internationalist doctrines derived from Marxism and communism.

The volume represents at the same time a (successful) attempt to bridge a common European vision of international law by using a dialectic approach which mirrors the Eastern and Western understandings of the major event in recent history that divided Europe at the end of the Second World War, namely the instauration of communism in the East. More precisely, the topic of the book - internationalist doctrines during the years of real communism in Europe- is constructed with respect to the East/West cleavage of relating to the topic “in the West as a contesting ideology and movement of emancipation, while in the East as the expression of real communism; in the West, as an opposing ideological movement to the external policies led by the power in place and to its vision of international law, while in the East as a legal internationalist tradition closely linked to the communist power itself. ... the cleavage, as presented between the East and the West, has been undeniably reproduced internally both in the East and West” (at 20).

Where do we come from? is the central question of the volume. To answer it, distinguished scholars analyzing the topic both from a West and East-European perspective

brought their insights to the debate. The volume is structured in a three-fold manner: first part tackles with the theoretic perspectives on communism; the second, deals with the ways in which the internationalist doctrines and communism have been internalized in the Western international law tradition; the third, to the way in which the Eastern tradition of international law has responded or better adapted to the internationalist doctrines and real communism.

The first part, referring the theoretical perspectives, is opened by the contributions of a series of intellectuals from the East. Thus, Iulia Motoc's article questions from the beginning if the West has the right to forget communism and what it meant for the Eastern Europe. On this base, the author demonstrates that the EU enlargement process to the East "has been one born out of historic necessities and still the change generated by the enlargement has not been well understood as the debate round this topic has been inconsistent" (at 38). Not understanding in the West the mutations produced during communism in the East by its practices of self-legitimation – the author mentions nationalism, consumerism and culturalism – may explain in a high extent the difficulties of the process of European integration for the Eastern European countries. Put in this context, the Eastern enlargement needs a shift of the debate from the simple mechanistic of the enlargement process towards the deeper level represented by values. Vladimir Tismaneanu's paper brings in discussion the evolution of the Marxist and Leninist ideologies in relation with the history of European communist regimes. This comprises three main phases. In first one, the ideology seeks to position itself as a virtual political religion. It is the immediate period after instauration of the communist regimes. The second phase, builds on the development of utopia like programs, soon demised as impossible by people (for instance by the events of 1956 in Hungary, 1968 in Prague etc). Finally, the ideology becomes a heresy, and is to be replaced as it happened in the movements of '89-'91 which led to the demise of communism in Eastern Europe. The relation communism-religion is being dealt by Lavinia Stan and Lucian Turcescu who are analyzing in their article the report between state and church during communism in the East. The authors compare the constitutional changes regarding the domain of religion and freedom of conscience in the European countries, including USSR, after the instauration of the communism. The authors detail the Albanese and Romanian cases by presenting the repressive model of state-church interaction for Albania and the collaborationist model for Romania. The topic of transnational justice with respect to inequities produced by the communist regimes against their citizens is approached by V. Milsuite in his article. Focusing on the cases of the Baltic countries- Estonia, Latvia and Lithuania – but not only, the author reviews the most important trial cases in which former communist countries have been sued in front of the ECHR for reparatory measures. Following the view from the East, the theoretical perspective is enriched by the contributions of a series of Western scholars as well. Carlos Miguel Herrera discusses the connection between public international right and leftwing juridical culture based on internationalist political and legal currents. The Marxist doctrine and implicitly its internationalist character have been used massively in the argumentation of the national liberation movement and anti-colonial fight. Monique Chemillier-Gendreau brings her contribution to the debate with her article referring to the evolution of international law and its leftist reshapes caused by movements of national

liberation. Chemillier-Gendreau emphasizes the change of meaning between the initial Marxist idea of 'state as oppressor' and thus, the concept of internationalism of the communist society for which the state is just a temporary phase, up to the point in which the state is 'captured' by the national colonial and neo-colonial discourses as a tool for reaching their aspiration. The last essay of the first part belongs to Anthony Chase. He offers an insightful perspective on the elements taken over from the Marxist theory and used by various American administrations when justifying policies like the war on terror by G. W. Bush, the interventions in Iraq and Afghanistan or even earlier in Vietnam, by the Kennedy administration. The argument of Chase builds on the thoughtful metaphor of the good and the bad communism, picked from Jean Luc Goddard's 1967 movie *Le Chinoise*. (at 204)

The second part of the book approaches the relation between international right in Western Europe and the internationalist doctrines, respectively communism. In this regard, Olivier Corten, starting from E. Jouannet's remark that "Jean Chaumont's juridical thought, marked by an intellectual structure closed to Marxism has laid a profound influence on an entire generation of internationalists both in France and abroad" (at 225), analyses the juridical thought of Jean Salmon, one of the most influential international law scholars in Belgium. Then, Ignacio de la Rassila del Moral's article discusses about the evolution of an international law tradition in Spain, starting with the years of the Franco war, and the influences of internationalist doctrines and communism on it. In turn, Jean-Pierre Colin describes in a manner evoking as well personal memories the famous debates and colloquies developed within the "School of Reims" and animated by Charles Chaumont in the 70s and the 80s. Emmanuele Jouannet proposes deciphering the proximity with Marxism of Charles Chaumont's juridical thought, one of the most important contributors to the development of international law in the 20th century in France and Europe. Last but not least, the two ending contributions of the second part of the book address the impact of communism and internationalist doctrines to the development of an international law tradition in Italy and Portugal. F. Francioni and F. Lenzerini address the development of a school of international law in Italy after World War II emphasizing the existence of the powerful communist Italian party and the influence of the internationalist doctrines (the most important communist party in the West until 1989). Their analysis follows historically the important events that involve the communist bloc during the cold war: Hungary 1956, the Cuban Missile Crisis in 1962, Prague 1968, the soviet invasion in Afghanistan in 1979 etc. and their reactions in the Italian publications of international law. In Portugal, J.M. Coelho analyses the relation between communism, internationalist doctrine and international law in the period of Salazar regime and immediately after. If in a first step, the communist elements are quasi-denied (as imposed by the dictatorial regime) and on the other side the international law area development is rather weak, things are changing rapidly after the regime change of 1974. The communist party's legitimacy is increased, after the underground opposition to the dictatorship. Nevertheless, concludes Coelho, the juridical internationalist thought in Portugal does not encompasses major elements of originality brought by the Portuguese communist party and actually copies the elements of the internationalist thought already existent in Western Europe after 1945.

The third part of the volume mirrors the East's view of the internationalist doctrines and, well understood, communism into the international law. Günter Frankenberg discusses the way by which the international law as domain re-developed in the German Democratic Republic at the beginning of the 60s in "the square" represented by the universities of Berlin, Halle, Jena and Leipzig and of its evolution in GDR until 1989. Following the directing line of the period, just like in all European communist countries, the domain followed quickly the distinction between "general democratic law" and "socialist international law". Intuitively, the first was referring to the relations between mainly the "imperialist states" (this is not to be understood in the sense that the socialist states were excluded) and named the standards of the UN Charter, the Universal Declaration of the Human Rights etc; the latter, was referring to the relations between the socialist states, finding ground in a series of treaties concluded between them. New concepts were introduced, such as the limited sovereignty doctrine, the doctrine of brotherly assistance between communist states etc. For instance, the doctrine of brotherly assistance was used to legitimate the soviet interventions in Hungary in 1956 or in Prague in 1968 (at 399-400). The article of the Estonian Lauri Malksoo describes the juridical thought of the soviet international law professor Abner Uustal. He activated as international law professor at the Tartu Univeristy, the oldest Estonian university and is considered the most important soviet Estonian internationalist of the communist period. Starting from the novel of J. Kross- "probably the only novel about an international law professor" (at 412-) who was the student of Uustal, the article refers to the juridical thought of Uustal as influenced by communism. Malksoo demonstrates that in general, Uustal's developments of international law served to justify the interests of the "ruling power", which was the USSR. In this respect, Malksoo cites the debate between Uustal and Arthur Taska, an exiled Estonian internationalist, about the Baltic being a "closed sea", argument that was defended by Uustal and that was obviously in favor of the soviet interest. The Hungarian case is debated by Peter Kovacs who addresses the way international law manuals in Hungary have reflected the Marxist teaching during the soviet period. As any country within communist bloc, the curricula reflected USSR's interests. For example, the sensitive 1956 episode of the Hungarian revolt was categorized as an unsuccessful attempt of the West to organize a counter- revolution in Hungary, therefore the need of a USSR intervention at the request of the Hungarian government. For all that, Kovacs considers that "unlike other countries in the empire" (at 450), the Hungarian school manuals have still kept a correct line on the relation ideology/science. The next article of William E. Butler discusses in a comparative way the Tsarist – Soviet practice regarding the international law of the sea. Butler's analysis focuses on the three naval law and practice manuals used by the soviets during the communist period- the Belli, Bahkov and Barabolia editions (at 463) and as well on the analysis of the records of the government meetings regarding the naval issues. The conclusion of Butler is that both during the Tsarist and the Soviet period, the law and practice regarding the sea have been in surprising accord with the existing international law. On top, between the Tsarist and Soviet periods the changes are minor. Analyzing also the soviet law, the contribution of Helena Hamant approaches the evolution of the concept of international law in the soviet doctrine, starting with 1917. The last

two articles of the section handle the relation between the internationalist doctrines and communism in Czechoslovakia- Pavel Sturma and Yugoslavia-Ivana Jelic. In the Czechoslovak case, the conclusion of the author “after analyzing the customary international law, principle of international law and, the so-called, socialist international law, is that the political and ideological orientation imposed by the soviet rule, though officially followed, had actually little influence on the theoretical disputes” (at 526). The Yugoslav case, in opposition with other communist states, was a special one argues Jelic. After 1945, the new regime installed by Tito broke any kind of continuity with the previous legal and social tradition represented by the Yugoslav Kingdom. But, at the same time “on the contrary to the other socialist states, there was neither a so-called Yugoslav doctrine of international law, nor its support to any of the socialist doctrines of the international law. In Yugoslavia it was considered that the international law cannot be divided and that is unique for all- this being the UN Charter principles and the general international law- and consequently that the prefix socialist would harm its essence.” (at 530)

The conclusion of the volume drawn by Iulia Motoc expresses the need of forging a common ground between the Eastern and Western European perspectives and traditions of international law with the purpose of creating a European vision. In this respect, the enquiry of the author leads clearly to building on the common roots of the European culture, represented by the Greek-Roman legacy. The Eastern-European tradition of international law during communism was one of “delegitimation” (at 549) in which the international law was considered as a simple tool, whose meaning changed depending on the context it was to justify, without any consistency. This tradition has been followed after the demise of the communism, by the major rupture between law and its actual application (at 550). On the other side, the Western European tradition laid on the fundamentals of fear against another European conflagration, federalism and constitutionalism. In order to create a unitary tradition of European international law, both West and East must take as point of departure assuming the *Other* as Friend (Friendship understood in the Aristotelian terms as *Virtue*, not *Pleasure* or *Utility*).

To sum up, I. Motoc and E. Jouannet have made a great contribution with this volume to the necessary debate not only about East /West relationship with the internationalist doctrines and European law, but also have touched the larger topic of the European construction. The book is insightful and worth reading, and a must have for all people interested to understand our European legacy as a whole.

Individual Contributions

Iulia Motoc, Law and Real Legitimacy in Eastern European Communism

Vladimir Tismaneanu, Dogma, Utopia, and Heresy: De-Radicalisation and Ideological Extinction of Leninist Regimes

Lavinia Stan and Lucian Turcescu, Church and State under Real Socialism

Cătălin SECĂREANU, Emmanuelle JOUANNET and Iulia MOTOC (eds), *Les Doctrines Internationalistes Durant les Années du Communisme Réel en Europe/ Internationalist Doctrines during the Years of Real Communism in Europe*

Vygante Milasiute, Hystory of the Communist Regime in the European Court of Human Rights Cases

Carlos Miguel Herrera, Droit international et culture de gauche dans le *Jus publicum europaeum*

Monique Chemillier-Gendreau, Marxisme, liberation nationale et evolution du droit international

Anthony Chase, Wind from the East

Olivier Corten, La diffusion d'un enseignement d'inspiration marxiste du droit international en Europe occidentale: l'exemple du Jean Salmon

Ignacio de la Rasilla del Moral, The Zero Years of Spanish International Law

Jean-Pierre Colin, Le ciel et l'enfer. A propos des colloque de Reims

Emmanuelle Jouannet, La pensee juridique de Charles Chaumont: force et faiblesses d'une pensee internationalist proche du marxisme

Francesco Francioni and Federico Lenzerini, Reflections on the Impact of Communism on Italian International Law Scholarship: 1945-1989

Jose Manuel Coelho, Les doctrines internationalistes et le communism au Portugal: de la dictature salazariste au regime democratique

Gunther Frankenberg, Little Red Ridding Hood and Other Tales from the East

Lauri Malksoo, The Life and Work of Abner Uustal (1915-1985), the Soviet Estonian Professor of International Law

Peter Kovacs, L'approche marxiste dans l'enseignement du droit international entee 1945 et 1989. Le cas de la Hongrie

William E. Butler, Russian and Soviet State Practice and the Law of the Sea: New Perspectives

Helene Hamant, La doctrine sovietique du droit international

Pavel Sturma, The Internationalist Doctrine and Communism in Czechoslovakia (1945-1989)

Ivana Jelic, The Internationalist Doctrine and Communism in Yugoslavia (1945-1989)

Iulia Motoc, Some Remarks on the Totalitarian Legacy in International Law: A European Vision

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