BOOK REVIEW


One sometimes wonder whether schools of architecture hand out doctorates for those gifted students who can show that it is mathematically possible to build an impossible building (something à la Escher, e.g.), even if everyone concerned realizes that in practice, such a building could never be built, and the resulting building – if at all possible – would be unlivable at any rate. Or one wonders whether medical schools would award doctorates to students who demonstrate, on paper, that it might be possible for a person to live without a heart or a soul, even though few think this is desirable and most will realize that in the real world, a person without a heart or a soul will not have much of a life nor, possibly, be very nice to hang out with.¹

Antonios Tzanakopoulos, a lecturer in international law at University College London, has written the international law equivalent of such a study, building a technically highly skillful and airtight argument (within its own four corners) which is bound not to find much real life application and, if it does, might turn out not to work at any rate. What sets him apart from other lawyers who made this type of argument in the past is that to some extent, his scenario has actually already come to true: Tzanakopoulos provides the first book-length justification, on the basis of international law, for the famous (or infamous) decision of the Court of Justice of the

¹ Then again, economists do this all the time, building premise upon premise to demonstrate that in some parallel universe, far removed from anything remotely resembling any really existing world, it may well hold true that if P-1, P-2, P-3 plus P-n, then Q.
European Union (CJEU) in the *Kadi* case. That case was decided, for better or worse, by the EU’s Court ignoring the international law elements pertinent to the case and finding a justification purely on the basis of EU law: an EU Regulation implementing a Security Council resolution had to be (partly) annulled because the implementing EU Regulation violated EU-protected human rights. The judgment was always vulnerable to the critique that in doing so, the CJEU magically conjured up a world without the UN, without the Security Council, without Article 103 of the Charter, and without resulting legal dilemmas for the EU member states.

Tzanakopoulos’ study now aims to fill the gap by providing the international law argument why local courts may be justified in disobeying the Security Council. In a nutshell, his argument goes like this. The Security Council is bound to respect the UN Charter and, quite possibly, generally international law. If it adopts resolutions which fail to do so, it acts unlawfully, and its member states (and for all practical purposes the EU and other international organizations as well) are justified in taking counter-measures. These counter-measures may well take the form of disobedience. Hence, if the Council violates the Charter, the member states are allowed to disobey the Council’s commands.

Tzanakopoulos is a gifted lawyer, and realizes that in order to make the argument, he has to work hard on the foundations, and he does so by introducing a host of premises. Thus, he makes clear that in some cases, the UN is to be blamed for acts by the Council or the implementing acts by member states: the rules of attribution therefore merit discussion. This serves to allocate responsibility under international law, on the theory (or so it seems) that the Council itself could not be held responsible for lack of international legal personality. To get his argument going, he must also somehow make the case that when the Council acts wrongfully, all UN member states are to be regarded as sufficiently injured to take counter-measures. And he then has

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3) Elsewhere Tzanakopoulos presents his argument as grounded in state practice rather than being normative in nature but, as this review will suggest, that particular claim is not very plausible: there is little practice to begin with, and what little there is does not amount to the sort of civil disobedience he advocates. Tzanakopoulos’ practice claim is made in the discussion dedicated to his study on the blog of the European Journal of International Law, EJIL:Talk!, discussing with E. de Wet, M. Happold and M. Milanovic. EJIL:Talk!; available at <www.ejiltalk.org/>, 18 September 2011.