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Author(s): Yoonie Kim and Paul R. Williams

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for finding state immunity to be inapplicable. She likewise seems to favor a cautious approach to further restrictions of state immunity in other contexts, with particular emphasis on awaiting a new international consensus before applying such restrictions in national legislation. All of this is consistent with her generally internationalist approach to such questions. Unstated, but important to an American lawyer or jurist, is that a need to await a clear international consensus could lead to the invalidation of a number of the innovations in the Foreign Sovereign Immunities Act. One need not agree with all of Fox's conclusions to find her book useful.

JOSEPH W. DELLAPENNA
Villanova University School of Law

Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR. By Lauri Mälksoo. Leiden, Boston: Martinus Nijhoff, 2003. Pp. xxxiv, 382. Index. \$190, €133.

The dissolution of the Soviet Union led to a profound political transformation in Central and Eastern Europe during the 1990s. The transformation raised numerous legal issues relating to state extinction, state continuity, and state succession. *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR*, by Lauri Mälksoo, undertakes a comprehensive analysis of one of the key aspects of the transformation: the preservation of the continuity of the international legal personalities of the Baltic states despite fifty years of Soviet annexation and occupation.

Mälksoo, a native Estonian who currently holds a lectureship in international and European Community Law at the University of Tartu, seeks to determine why and how the Baltic states were able to preserve their international legal personalities as states, and how relevant state practice associated with the case of the Baltic states has modified or evolved international law. Throughout his analysis, Mälksoo pays particular attention to the interplay between political factors and the development and application of international law. This relationship is particularly important in the case of the Baltic states, given the sparse legal precedent for maintaining state continuity during a fifty-year occupation.

The book, which Mälksoo originally defended as doctoral dissertation at the Faculty of Law of

the Humbolt University Berlin, is divided into three parts: part I (*Ex Injuria Ius Non Oritur*—illegal acts do not create law); part II (*Ex Factis Oritur Ius*—facts have a tendency to become law); and part III (Between Normativity and Power). Part I undertakes a detailed examination of both the international maxim that illegal acts do not create law and the legal arguments upon which the Baltic states relied to assert that their occupation and annexation were in fact illegal. Mälksoo sets up this analysis by undertaking a discussion of the conceptual ramifications of the traditional legal debate between state continuity and state absorption. He explores the changing status of statehood in contemporary international law and asks how the state continuity of illegally annexed states should be assessed in light of the changes and uncertainties surrounding the notion of statehood. After surveying the various legal bases for supporting a claim to continuity in the face of annexation, Mälksoo concludes that a mere claim of state identity will not automatically guarantee the preservation and recognition of that identity.

Mälksoo then enters into an expansive discussion of state continuity, identity, and extinction in international law in order to determine the exact mixture of law and political circumstances that could support a claim of continuity. As Mälksoo explains, international law traditionally distinguishes between the extinction of the former state and the absorption of its legal relations by the successor state, and the continuation of a state's international legal identity notwithstanding its physical absorption by another state. Mälksoo then ponders the reasons why the international community has recognized some states as continuing pre-annexation state identity (e.g., Albania, Austria, Czechoslovakia, and Ethiopia) and others as not continuing that identity (e.g., Algeria, Poland, and South Korea). He contends that key legal factors (e.g., the illegality of the annexation due to the unauthorized use of force) and certain third-party political acts (e.g., recognition of continuity by other states) preserved state identity in some cases and allowed it to lapse in others.

After isolating the variable of illegal annexation, Mälksoo seeks to detail its implications for the continuation of state personality. He notes that, in light of the illegal annexations in the cases of Albania, Austria, Czechoslovakia, and Ethiopia, many international legal scholars have relied upon the principle of *ex injuria ius non oritur* to assert that when a state is illegally annexed, it continues its international legal personality. However,

he also points out that other scholars dispute the consequences of the isolated application of *ex injuria ius non oritur*, in the Baltic case and, rather, point to the principle of *ex factis oritur ius* as the governing norm. At this point, Mälksoo declares his intention to ascertain which of these two principles governs questions of state continuity.

The remainder of part I examines the applicability of general concepts of international law, such as aggression, the illegality of annexation, prescription, occupation, and state continuity, to the facts in the case of the Baltic states. The main point of inquiry in chapters two through four is to clarify the nature of the legal fiction of continuing statehood that is used to sustain the international legal personalities of the Baltic states throughout the time of their occupation and annexation and, subsequently, to determine their legal right to continue their original international legal personalities.

Mälksoo asserts that the Baltic case illustrates the dilemma between the legal fiction of continuity and the practical reality that the Soviet Union fully occupied and administered the Baltic states. In particular, he delves into the questions of state responsibility during the period of "hibernation." For the Baltic states, Mälksoo asserts that their statehood is essentially based on the concept of legal continuity between the independent inter-war republics and the states that arose out of the disintegrated Soviet Union. The forcible incorporation of the Baltic states into the Soviet Union in 1940, on the basis of secret protocols to the Molotov-Ribbentrop Pact, is considered to have been an illegal act that consequently could not be legally effective to incorporate the Baltic states into the Soviet Union. Even though the Soviet Union occupied these countries for fifty years, Estonia, Latvia, and Lithuania continued to exist as subjects of international law. To support this contention, Mälksoo presents an array of normative evidence.

Mälksoo concludes that the critical element in the Baltic case was the illegality of annexation, based upon the illegal threat and use of force. He further concludes that the preservation of the legal personality of the Baltic states was enhanced by political factors such as the nonrecognition of the Soviet annexation by Western states, the resistance by the Baltic peoples to the Soviet regime, and the uninterrupted functioning of essential state organs in exile.

Part II of the book addresses the legal implications of the discrepancy between the legal status of the Baltic states and the fact that they were

highly unsuccessful in their attempts to restore pre-annexation legal rights and relationships. Mälksoo observes that, despite the fact that the Baltic states are recognized as continuing their pre-annexation international legal personalities, this continuity of state personality has not led to the continuation of all the major legal rights and responsibilities of the Baltic states. In particular, Mälksoo examines three issues where Baltic and Russian perspectives have conflicted most: citizenship matters, state borders, and Russian responsibility and liability for the illegal annexation of the Baltic states. The claims of the Baltic states on these three issues were met with mixed reactions, ambiguity, and reservations from the international community. As a result, the Baltic states have been unsuccessful in claiming *restitutio in integrum*, and the legal relations of the pre-annexation period have not been substantially restored. In Mälksoo's view, the determination of rights and relationships was made more on the basis of political factors, and less on sparse applicable law.

Mälksoo argues that the fundamental theoretical problems faced when attempting to resolve the discrepancy between the continuation of a state's legal personality and the denial of the continuation of its legal rights are whether and how to incorporate the influence of these political factors. Mälksoo submits that mainstream international legal scholarship has tended to ignore this dilemma but that various alternative schools of thought have more adeptly addressed the question. In an effort to canvass this scholarship, Mälksoo reviews the various publications that have relied upon the case of the Baltic states to test the limits between international legal theory and actual state practice. Mälksoo begins with a review of the realist critique of international law and then briefly turns to the New Haven approach and the New Stream school of thought. According to Mälksoo, contemporary state practice and the New Haven and New Stream schools of thought establish a legitimate basis for a certain degree of separation between the status and rights of a restored state. Mälksoo concludes with the finding that, as a result of the Baltic Cases, international law has evolved to the point where it differentiates between the continuity of legal status on one hand, and the continuity of legal rights and duties on the other.

Part III examines the impact of the Baltic Cases on the development of international law. Mälksoo concludes that recent developments in state practice seem to have taken a more normative approach,

confirming that the outcome of the Baltic case is not accidental or purely political fiction, and giving the upper hand to the principle of *ex injuria ius non oritur*.

Based on his evaluation of the circumstances of the annexations of East Timor and Kuwait, Mälksoo asserts that a state's international legal personality survives forcible annexation. Mälksoo is careful to note, however, that East Timor is not a case of preservation of statehood, since it was never a state, but he considers it a comparable case of illegal occupation. As such, Mälksoo argues that a customary international rule has developed, which preserves a state's legal personality notwithstanding an illegal annexation, a rule similar to the one preserving state continuity in cases of belligerent occupation.

Having concluded that a state's international legal personality generally survives illegal annexation, Mälksoo examines cases in which states' legal personalities were deemed not to have survived occupation by another state. He argues that state practice reveals that continuity claims alone, if not accepted by the international community, are not adequate to accord legal continuity. The illegality of annexation must be supported by a robustly presented continuity claim. Mälksoo highlights the case of Georgia, which advanced almost identical identity and continuity claims as the Baltic states did, although the international community did not support its claims.

Mälksoo, who minimizes the illegality of the Soviet invasion of Georgia, argues that the legality of the forcible seizure under international law appears to be a critical factor in why the international community acquiesced in the Soviet conquest of Georgia but not in the conquest of the Baltic states. Moreover, he asserts that the nonrecognition of Georgia's state continuity claim also rested on the brief period of Georgia's independence (1918–21), which seemed too limited to support international recognition of Georgia's state continuity. Apparently, Georgia's independence did not sufficiently solidify before annexation by the Soviet Union. Mälksoo concludes that the unsuccessful claim of Georgia demonstrates that the international community is willing to support state continuity only when supported by factors such as clear violations of the rule prohibiting the threat or use of force against another state, and subsequent nonrecognition of annexation.

Mälksoo then directly addresses the interplay between the principles of *ex injurius ius non oritur* and *ex factis oritur ius*. When confronted with vio-

lations of peremptory international law, Mälksoo notes that state practice has started to diverge from an unrestricted application of the latter principle. He cites South Rhodesia and South African Bantustans as examples: In each case, the impact of the factual circumstances was minimized because those circumstances were created through the violation of fundamental norms of international law. Mälksoo concludes with the observation that the primary dilemma for international law is created when a legal fiction has been adopted to preserve state continuity; the international community pressures the offending state to terminate the occupation, yet the annexation has been consolidated to the extent that nonrecognition has not brought about an end to the illegal situation. Under these circumstances, Mälksoo worries that the credibility and relevance of international law could be substantially undermined. To resolve this dilemma, he asserts that the principles of *ex injuria ius non oritur* and *ex factis oritur ius* should be perceived as both contradicting and complementing each other. On one hand, international law seeks to be normative and to distinguish between legal and illegal acts. On the other hand, the pursuit of normativity and justice in international law necessitates a balance between the two norms. In the end, law and state practice bend toward the desire not to permit illegal actions to create legal rights, and thus toward the principle of *ex injuria ius non oritur*.

While instances of state annexation are increasingly rare, *Illegal Annexation and State Continuity* offers valuable insight into both the legal basis for the finding that the Baltic states continued their international legal personalities, and the effects of this determination on the subsequent development of international law.

YOONIE KIM

Public International Law & Policy Group

PAUL R. WILLIAMS

American University

The Dark Side of Virtue: Reassessing International Humanitarianism. By David Kennedy. Princeton: Princeton University Press, 2004. Pp. xxvi, 357. Index. \$29.95.

David Kennedy of Harvard Law School has written in this work a provocative analysis of those who would better the lives of individuals through action in international relations. He uses the term "humanitarianism" in the broad sense