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Transition from Illegal Regimes under International Law

Yaël Ronen analyses the international legal ramifications of illegal regimes, namely illegal annexations of territory or illegal claims of statehood, with reference to the stage of transition from an illegal regime to a lawful one. Six case studies (Namibia, Zimbabwe, the Baltic states, the South African Bantustans, East Timor and northern Cyprus) are used to explore the tension between the invalidity of the illegal regimes' acts and their effectiveness, with respect to the international relations of such territories, their domestic legal systems, the status of settlers, and land transfers. Relying heavily on primary and previously unconsidered sources, Dr Ronen focuses on the international legal constraints on the post-transition regime's policy, particularly in the context of international human rights law.

YAËL RONEN is Senior Lecturer at Sha'arei Mishpat Law College, Israel, and a former diplomat in the Israeli Foreign Service. Her areas of expertise are statehood and territorial status, international human rights law, humanitarian law and international criminal law. She is also editor of the *Israel Law Review*.

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Abbreviations

ACHR	American Convention on Human Rights
ANC	African National Congress
Annan Plan	Draft Comprehensive Settlement of the Cyprus Problem
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CMATS	Certain Maritime Arrangements in the Timor Sea
Codesa	Convention for a Democratic South Africa
CRC	Convention on the Rights of the Child
CSCE	Commission on Security and Cooperation in Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
FAO	Food and Agriculture Organization
Fretilin	Frente Revolucionária de Timor Leste Independente
HCNM	High Commissioner on National Minorities of the CSCE
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Social, Economic and Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
ILO	International Labour Organization
IPC	Immovable Property Commission

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X LIST OF ABBREVIATIONS

ITU	International Telecommunications Union
IUA	International Unitization Agreement
JDA	Joint Development Agreement
MPNF	Multi-party Negotiation Forum
OAU	Organization of African Unity
PACE	Parliamentary Assembly of the Council of Europe
PCIJ	Permanent Court of International Justice
PF	Patriotic Front
SPSC	Special Panel for Serious Crimes
SWAPO	South West African People's Organization
TBVC	Transkei, Bophuthatswana, Venda, Ciskei
TFSC	Turkish Federated State of Cyprus
TGT	Timor Gap Treaty
TRNC	Turkish Republic of Northern Cyprus
TST	Timor Sea Treaty
UCR	United Cyprus Republic
UDHR	Universal Declaration of Human Rights
UDI	Unilateral Declaration of Independence
UDT	União Democrática de Timor
UNCLOS	United Nations Convention on the Law of the Sea
UNCN	United Nations Council for Namibia
UNGA	United Nations General Assembly
UNIN	United Nations Institute for Namibia
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council
UNTAET	United Nations Transitional Administration in East Timor
VCLT	Vienna Convention on the Law of Treaties
VCSPAD	Vienna Convention on Succession of States in Respect of State Property, Archives and Debts
VCST	Vienna Convention on Succession of States in Respect of Treaties
ZANU	Zimbabwe African National Union
ZAPU	Zimbabwe African People's Union

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Chapter 6 draws on my article 'The Status of Settlers Implanted under an Illegal Regime under International Law', (2009) 80 *British Yearbook of International Law* 194–263.

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Foreword

Dr Ronen's book deals with an important modern topic – how to move from an unlawful regime on the outer in international society to a secure, recognized society – normally a state member of the United Nations and of other international organizations. How to transition?

This is, of course, not just an issue of conflict management (though it is that), and the study is not just a detailed description of particular instances of transition (though it is that). For the focus of study raises the old question of the relationship between two broad elements underpinning international law, legality and effectiveness, as expressed in a discrete category of situations: transition from illegal territorial regimes under international law. Dr Ronen examines how the tension between the two elements informs the policy of post-transition regimes, in particular the extent to which they attempt to reverse the factual situation created by the preceding regime, and the extent to which they succeed, in light of the legal and political constraints in which they operate. These include the need to take account of the interests of third parties, as well as of international human rights law. On the basis of doctrinal analysis and a thorough review of practice, her study seeks to contribute towards a response to the more general question: how, and to what extent, the transition from an unlawful regime is substantively different from the 'ordinary case' of succession of states; and, further, whether the obligation of non-recognition is an effective tool of international legal enforcement.

Specifically she examines six instances of transition following lengthy periods of non-recognition of illegal regimes: the Baltic States, Rhodesia (Zimbabwe), Namibia, the Bantustans, Timor-Leste and the Turkish Republic of Northern Cyprus. In Chapters 1–3 she lays the background, recounting the legal history of the process of transition in the various cases, and examining the evolving doctrine of non-recognition, which

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has served as the basis for identifying the legal situation facing the post-transition regime in each territory considered. Then, in Chapters 4–6, she addresses the issues thematically: treaty relations, domestic law in general, the status of settlers, and land rights.

Both on the inter-state and on the domestic level, reversion by the post-transition regime to the *status quo ante* has proven difficult and has rarely led to a reversal of acts already carried out by the illegal regime. Political and legal considerations have combined to induce post-transition regimes to maintain existing practices. Thus the illegality of a previous regime does not automatically lead to the invalidity of all its acts and their consequences. Non-recognition, both as a legal obligation and as a policy choice, is subject to major exceptions for the protection of individuals and third parties. As the book shows, international human rights law has been influential here; indeed, its effect may be that non-recognition will become a tool applicable almost exclusively in inter-state relations. To that extent, emergence from an illegal regime is not very different from emergence from a legal regime which has adopted a clean-slate policy. The power of non-recognition as a means of enforcing international law is limited. If it fails politically to induce an illegal regime to revert to legality, it also does not preserve the legal freedom of action of the post-transition regime. When all is said and done, non-recognition has proved to be a weaker tool of international law enforcement than many of us had hoped. But the fact is that – given the comparative poverty of the toolbox – it is one of the few things available.

This is a steely-eyed work of realism – one written by a young scholar who cares as much about truth-telling as she does about the integrity of international law. It is a further contribution to the profession – building on her collaboration with the late Shabtai Rosenne in his magisterial fourth edition on the International Court of Justice. It underlines Dr Ronen's potential as a significant Israeli scholar of the next generation.

James Crawford
Lauterpacht Centre for International Law
University of Cambridge

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