4. See Chapter 7, entitled ‘The Clash of Interests in Diplomatic Protection’, for the argument, but it returns in the Conclusion and of course in Chapter 11 on the exhaustion of local remedies.

5. Local Remedies, supra n. 3, pp. 56-64.


7. He introduces the argument to show that the procedures in a BIT will apply as lex specialis with regard to diplomatic protection. If we accept this argument, however, it means that the law on diplomatic protection will not develop in this direction, because it will remain lex generalis to be overruled by lex specialis.

8. Unless the previous edition is better on this point than the most recent one, but that should then be explained.

9. Diallo case, supra n. 6. Since the author does refer to this case on other occasions (e.g., p. 18), we may presume he is familiar with the case.


11. This is different in his earlier work. For instance, in his book on local remedies, supra n. 3, p. 50, fn. 26, the author criticizes Dugard’s First Report for lack of clarity.

12. This also applies to the footnotes, which repeat the author’s argument with Cançado Trindade and the accusation of ‘obsessions’ of the latter.

13. These are the words used by Oxford University Press describing the aim of the Monographs Series, as can be found inside the book and on the back cover.

14. In fact, one of the books relied on frequently is F. Dunn, supra n. 1. This book was written in 1930.


19. This is something the author admits on p. 35. However, this remark does not return in the chapter discussing the influence of BITs on diplomatic protection.

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Non-State Actors and Terrorism seeks to examine the development of the due diligence principle in international law and then apply it to the context of modern terrorism. In
his introduction, Barnidge Jr suggests that the erosion of the Westphalian conception of sovereignty, and the increasing role of non-state actors in international affairs, entail significant consequences for the traditional law of state responsibility (p. 4). His book investigates non-state actors and state responsibility from an under-explored perspective. Rather than directing his study to questions of when the acts of non-state actors are attributable to the state, Barnidge Jr examines the behaviour of the state itself. His aim is to understand in what circumstances a state may attract responsibility for its failure to exercise due diligence in attempting to prevent the illegal acts of non-state actors.

The first substantive chapter is a discussion of attempts to define terrorism in international law. This discussion is imperative, Barnidge Jr suggests, because it remains an ‘essential starting point and precondition’ that ‘international action against terrorism must ground itself in a definitional framework with respect to each alleged act of terrorism’ (p. 15). This high-altitude survey of treaties, customary international law and general principles concludes that an adequate definition of terrorism does not yet exist; nevertheless, Barnidge Jr illuminates the political gridlock that has obstructed attempts to formulate an acceptable definition.

Chapter 3 turns to the amplitude of the due diligence principle and examines its application across various fields of international law. After identifying different models of responsibility, Barnidge Jr concludes that international law ‘implicates elements of both fault-based responsibility and objective responsibility’ (p. 61). As Barnidge Jr rightly notes, however, the International Law Commission’s (ILC’s) Articles on State Responsibility adopted in 2001 deliberately leave to the relevant primary rules questions of whether fault or culpability are involved (p. 67). Whether a state has satisfied a standard of due diligence is a question to be examined under the relevant primary rule; hence the importance of examining how the due diligence principle has been deployed in different areas of international law.

Barnidge Jr surveys a great deal of material on injury to aliens, environmental law, and human rights law. Much of this material serves to reinforce his basic point that the due diligence principles focuses on the acts and omissions of the state, rather than the actions of the private actor, in determining whether the state’s responsibility is engaged. Barnidge Jr traces the early formulations of this principle by the United States/Mexico General Claims Commission and its development of the ‘nonrepression’ doctrine, which explicitly acknowledged the wrong committed by the state itself in failing to prevent or address the wrong committed against foreign nationals (pp. 72-73).

From more recent jurisprudence, Barnidge Jr surveys the Trail Smelter arbitration; the Corfu Channel case; the Lac Lanoux arbitration; the Hostages case; various ICSID decisions; and the Armed Activities case. He seems to suggest that the obligation of prevention outlined in the Trail Smelter case is more severe than the due diligence principle and that the case ‘supports a regime of responsibility based other than on fault’. Unfortunately, however, the discussion here is opaque and it is not clear whether he views the decision as a development of the due diligence principle or as standing for a different rule altogether (pp. 82-83).