

Marcin Kałduński, *Zasada dobrej wiary w prawie międzynarodowym* [Principle of Good Faith in International Law], Toruń 2017, pp. 500

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The sources of international law recently became of great interest among international legal scholars. Bodies such as the Institut de Droit International, International Law Association and International Law Commission have devoted detailed and comprehensive studies to customary law and unilateral acts, amongst others. Interestingly, none of these institutions have analysed position the or role of the general principles of law within international law.

Polish scholars have not paid a great deal of attention to the theoretical problems of international law, including – in particular – the general principles of law (which have to be distinguished from the general principles of international law). Publications concerning these topics are most welcome. Marcin Kałduński belongs to a narrow circle of Polish international lawyers who are interested in issues covering the theory of international law. His recent book discusses one of the most important problems of general principles, that is good faith. The idea for this book was ambitious, as the notion and legal status of good faith as an international legal norm were unclear, and existing publications presented more questions than answers.

The work of the author – being the result of several years of studies – is well-balanced and covers the many-sided aspects of international law. The main idea behind the book is the principle of good faith as a “meta-principle” [or principle on principles] constituting a basis for many other principles of law applicable in international law. This concept is unclear, nor does it clarify what a normative function of good faith is. According

to the author, it does not serve in and of itself as a basis of international legal decisions. On the other hand, it is a source of other principles of various status: general principles, customary rules or treaty regulations. The author does not give a clear answer as to whether we can refer to good faith as a customary norm and base our decision on it? Is Kałduński's conclusion correct in the light of the ICJ advisory opinion on *nuclear tests*, in which the Court invoked good faith as a basis of the binding force of certain categories of international legal norms. Is such an approach right with respect to sources other than unilateral acts? The relationship between different sources of international law against the backdrop of good faith has been discussed by the author in Chapter Two; however, corresponding issues are covered in Chapter Four, dedicated to so-called positive principle of good faith. Kałduński discusses here a number of various, specific principles (like *pacta sunt servanda*, *acta* [or rather *obligationes*] *sunt servanda[e]*, estoppel, and acquiescence. His findings amount to a thesis that good faith is the basis of all of them, strengthening state obligations and emphasising an important moral element in international law. We particularly appreciate reference to the principle of confidence, adapted to international law from German administrative law, which is extremely useful in an international context, although not very popular and often neglected by international lawyers.

The positive aspect of good faith is confronted with the negative one. In that context, good faith constitutes an obstacle for international legal claims which could be classified as unfair or unjustified. This relates in particular to the prohibition of abuse of rights and to a clean hands doctrine. Both issues have not been analysed in Polish international legal writing, and their legal nature and meaning is unclear. The same is true with respect to an evaluation of both the principles referred to. In our opinion, they are far from being universally accepted in universal international law, even if Kałduński makes important efforts to convince us to the contrary.

We have to stress the extremely interesting considerations concerning the role of good faith in the law of treaties. That respective part of the book is undoubtedly the strongest, and also uncontroversial. It goes beyond the traditional approach to good faith as a basis of the performance and execution of international agreements. The scope of the application of good faith proposed by the author covers, amongst others, premises of the invalidity of treaties, *clausula rebus sic stantibus*, rules governing the conduct of parties in the phase of negotiations (like the question of an obligation of parties to reach an agreement, rejected by international practice), and obligations of parties in the period between the signing and

entry into force of a treaty. Some of the views of Kałduński may be disputable, including for example the role of good faith as a regulator of the conclusion or expiration of treaties (we disagree with the view on the leading role of good faith with that respect), or the validity of the obligation to negotiate in good faith (Kałduński suggests that it does not exist, which in our view deprives negotiations of any sense, akin to the negation of the principle of *pacta sunt servanda*).

After read the book by Dr. Kałduński it is hard not to believe that good faith is the basis of all obligations of all subjects of international law. On the other hand, current regulation of international responsibility for breaches of international obligations also require cooperation of states in good faith (although this aspect does not appear in the monograph).

We need to emphasise the great erudition of Dr. Kałduński who has analysed the (vast) bulk of jurisprudence of international courts and arbitral tribunals directly and indirectly when referring to good faith. He has not only probably read all relevant publications on the topic, but also engaged in polemic with other authors. Such an approach has caused some difficulties, as on the one hand Kałduński seems fascinated by some views, which he accepts or rejects to a wide extent, while only mentions others in passing. The author's methodology is extremely solid, the language precise, although the style is sometimes difficult as the author intended to communicate to his readers all possible information and reflections.

It is our firm conviction that the monograph by Dr. Marcin Kałduński fills – at least partially – an important gap in Polish international legal writing, and we strongly recommend it as set reading for anybody interested in the theory of international law.

Władysław Czapliński*

* Professor, Director of the Institute of Legal Studies of the Polish Academy of Sciences, Head of the Academic Group for European Union Law. Contact with author: wczaplinski@uw.edu.pl