

## Book Reviews

tences of the Security Council from the adjudication of international crimes.

The author concedes that for international criminal law to become really effective a modification of the UN Charter would be necessary.

*Bernhard Graefrath*

Malekian, Farhad. *The Concept of Islamic International Criminal Law. A Comparative Study*. London, Dordrecht, Boston: Graham & Trotman/Martinus Nijhoff, 1994. Pp. xii, 210. Index. \$97; £58.

In this volume Malekian uses his broad notion of international criminal law to undertake a comparison with the concept of Islamic international criminal law and tries to convince the reader that there are 'principally very minor differences indeed between the two legal systems.' (p. xiii) He argues that conflicts and differences between the two systems are not ones of principle '... but political, ideological, procedural and more importantly ... a result of specific interpretations' (p. xiii).

However, it is actually the extremely broad margin left for interpretation which often provokes questions whether the definitions of criminal acts are sufficiently precise and unambiguously determined by law. The author himself feels obliged to underline that 'the book purely represents certain basic principles of Islamic law in different states' (p. xiv). Thus, how minor the differences are in the final score remains an open question.

Since the main sources of Islamic international criminal law are the Qur'an, the Sunnah or the traditions of the Prophet and the orthodox practice of the early Caliphs, even common principles like *nullum crimen sine lege* and *nulla poena sine lege* are interpreted in very different ways. For example, juridical analogy is not only allowed but is considered to constitute a subsidiary source of Islamic international criminal law (p. 34). Its rules, based on the universality of divine law, must be respected by all individuals, organizations and states and do not need to be ratified in relations between states

(p. 180). For many, this alone constitutes a major difference between the two systems.

Malekian emphasizes the flexibility of Islamic international criminal law, and notes the common elements in ethics as well as in the definition of specific international crimes and the similarity in the list of international crimes in order to contribute to mutual understanding and to reduce international conflicts. Even discussing the different Islamic system of punishment, with its variety of corporal penalties, he stresses its 'flexible character' and its capacity to 'adapt itself to the theory of punishments in modern criminal justice systems' (p. 44).

However, particularly in criminal law certainty in legality (*Rechtssicherheit*), stability of rules and consensus between states may be better served by less flexibility, and fewer possibilities of interpretation. Further, a comparative study may more efficiently achieve its purpose by clearly pointing to the differences in approach and definitions of the two systems than by painting such a rosy picture of convergence.

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O'Flaherty, Michael, and Liz Heffernan. *International Covenant on Civil and Political Rights: International Human Rights Law in Ireland*. Dublin: Brehon Publishing, 1995. Pp. xxvii, 206. Index.

Ireland ratified the International Covenant on Civil and Political Rights in 1989. Since the state's inception, its external political profile has been characterized by a rhetorical commitment to rights protection and an activist position on human rights concerns in its membership of international and regional human rights organizations. External rhetoric stood in marked contrast to internal constitutional arrangements, whose effect was to stymie the rights of minorities, rigidify a relationship between church and state and suppress due process rights under the cloak of a permanent emergency. O'Flaherty and Heffernan's book comes at a critical juncture, where it is possible to evaluate whether Ireland's ratification of the Covenant is merely a means of receiving easy accolades

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for an empty gesture, or the product of genuine self-analysis and internationalization.

The book offers a useful insight into the process whereby Ireland has moved towards integrating itself more centrally into the international human rights community. However, it lacks systematic treatment of the unique problems that have undermined rights protection in the Irish jurisdiction, with scant historical or political analysis within which to contextualize the state position. Chapter 1 engages in a succinct and informative introduction to the Covenant and its implementation mechanisms. Chapter 2 is central to the project of the book, outlining both the structure of legal protection for human rights in Ireland and the compatibility of the legal order with the rights enumerated in the Covenant.

While the authors identify the rights protected by the Irish Constitution, they do not elucidate upon the many rights-based controversies that have dogged the unique conception of rights related to family life, marriage, education, the status of the Catholic Church, limitations upon freedom of expression and the right to jury trial in the jurisdiction.

What makes the Irish experience unique to many observers is the negotiation inherent in a tradition-based society with formal godly-based values, coming to terms with a culture of non-discrimination and formal equality. The lack of this dimension means that the analysis loses depth and fails to reflect upon the singularity of the Irish rights experience.

While Chapter 2 acknowledges that the Irish Constitution allows for derogation from constitutional protection of rights, the consequences for Irish legal culture of a 55-year permanent emergency is not explored. One of the difficulties in evaluating the use of emergency powers in the Irish Republic has been the use of the ordinary criminal process of the state to absorb and normalize draconian measures designed to limit the exercise of individual rights. Thus, meaningful ratification of the Covenant would require a root and branch examination of the state's legal structure to ensure that substance and not showmanship is the end sought by endorsement of the Covenant.

The book offers a welcome insight into Ireland's first reporting exercise to the Human Rights Committee. For the uninitiated, detailed accounts of the workings of the Optional Protocol and its comparative European Convention mechanisms are provided. The information will be of particular relevance to NGOs and those actively engaged in the human rights field in Ireland. Overall, the book provides a useful snapshot of an Irish embrace of the Covenant on Civil and Political Rights. Its failure to provide a more comprehensive critique of the rights debate in the jurisdiction is its primary limitation, allowing no insight into the long-term reception that absorption of the Covenant may have on domestic law and policy.

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Petersmann, Ernst-Ulrich. *International and European Trade and Environmental Law after the Uruguay Round*. London, The Hague, Boston: Kluwer Law International, 1995. Pp. xiv, 161. Index. Dfl 122; £45; \$78.

This book, based partly on lectures given at the 1993 Academy of European Law of the European University Institute (Florence), is an excellent and well-documented guide to the difficult interface of trade law and environmental law. The book deals with a sensitive subject, at times highly publicized due to flare-ups of tension between environmental groups and the international trade community. At face value, there is indeed scope for a great deal of tension between the policies of liberalizing international trade and the policies of protecting the environment. Put most bluntly – and it must be said that debates in this area are too often blunt and rhetorical – environmental groups claim that trade liberalization is almost by definition negative for the environment, and it has been very difficult for the international trade community to rebut that allegation.

Petersmann's overall aim in discussing the structure of international and European law on trade and environment is apparently to defuse this tension. His basic claim is that international trade policies and environ-