The African Human Rights Law Journal is no doubt a valuable addition to the overall number of human rights journals in that it provides an innovative insight in typical African approaches to and typical African developments in human rights. It furthermore provides a wealth of information that is not easily accessible for academics outside Africa or that is at least not readily taken into account. Consequently, it is to be hoped that this journal will contribute to a greater visibility of human rights developments on the African continent as well as its influence on the international framework.

However, some contributions are not entirely unproblematic because they are over-positive about the protection of human rights in Africa in the sense that the problems are not enough acknowledged and/or because the reasoning and underlying research is too superficial, too shallow. Nevertheless, as will be underlined in the review of the distinctive articles, others are well researched and provide a balanced assessment.

The composition of the journal is nicely balanced indeed in that it contains several articles that have a double focus, namely international and African with a comparison of the two sets of standards, while others have a more outspoken African focus; either because they are dealing with specific African crisis situations and/or because they describe and assess the regional system of human rights and its development.

This number of the journal starts with an article focusing on the regional human rights convention (the Banjul Charter), which is followed by a broad evaluation of Africa’s contribution to the development of international human rights and humanitarian law. Two other articles have a specific focus in that they deal respectively with women’s rights and the position of child soldiers. The latter articles include comparisons between the international and the regional standards. Three other articles deal with specific human rights atrocities in Africa, more specifically in Rwanda and Sierra Leone, and the judicial reaction to these atrocities, some of which are national, others have an international impetus. Finally, one of the articles discusses certain electoral trends in African countries in the year 2000.

Rachel Murray gives in a well-structured article an over-view of the progress and problems of the African Charter on Human and Peoples’ Rights between 1987 and 2000. While also raising some of the difficulties facing the system, overall this article focuses on the positive features of the Charter and its implementation, which tends to result in an over-optimistic evaluation.
Murray acknowledges that for many years the Commission seems unwilling to focus on the more unusual aspects of the Charter, which is explained by the fact that there is little other international jurisprudence to be guided by. Recently however the Commission has been more willing to tackle some of the more unusual rights and the more controversial aspects of other rights. Regarding women’s rights, Murray justifiably highlights the appointment of a Special Rapporteur on Women’s Rights and the moves to adopt a Protocol on Women’s Rights. Existing concerns emphasised by Murray are the lack of independence and impartiality of the Commission, the lack of organisation at sessions, several factors hampering the effectiveness of the communication procedure, the lack of a constructive dialogue between the Commission and the state parties pertaining to the periodic reports. Murray goes on to point out the existence of certain potentially future positive influences pertaining to the increased role of national human rights institutions, the impending establishment of an African Court on Human and Peoples’ Rights, and the closer ties with and involvement of the Organization of African Unity (‘OAU’).

Frans Viljoen covers an extensive set of issues in his article on Africa’s contribution to the development of international human rights and humanitarian law, namely human rights generally, rights of the child, refugee law, protection of the environment, and several features of humanitarian law. Whereas it seems laudable to strive to completeness, maybe its more narrow focus would have allowed a more in depth analysis . . . .

The value of this article mainly lies in the fact that it reveals and gives extensive coverage of important developments regarding human rights in the African continent, which are little known internationally. Consequently it puts the African human rights agenda squarely on the agenda and induces international human rights experts to take the African human rights developments into account.

However, this article seems to be a prime example of an over-positive evaluation of Africa’s contribution to the renewal of international human rights law. Indeed, the African Charter on Human and Peoples’ Rights can be considered as a codification of all three generations of human rights and contains many unusual rights, which is laudable. Nevertheless, there is a huge problem of deficient (state) practice in that it deviates to a great extent to the standards of the convention, while the enforcement structures are up until now rather weak. In this respect it is also striking that no mention at all is made of the adoption of the protocol on an African Court on Human and Peoples’ Rights, whereas its actual establishment would arguably be important, not in the least because of its broad jurisdiction ratione materiae.

The African Charter on the Rights and Welfare of the Child does seem to constitute a meaningful improvement, compared to the UN Convention on the Rights of the Child (‘CRC’), in that the level of protection it sets is higher and that its supervisory body, the Committee of Experts, has a
broader mandate than the CRC Committee. Similarly, the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* is an important supplement to the UN Refugee Convention in that it provides for a more extensive refugee definition, which allows for many more factors to be invoked in seeking refugee status. Furthermore, the former has a more realistic approach in case of mass influx. It should also be highlighted that the OAU Refugee Convention is explicit about the obligation of states to grant asylum to refugees and places a duty on the country of origin in relation to returning refugees.

Several conventions pertaining to the protection of the environment were also adopted in Africa, like the *African Convention on the Conservation of Nature and Natural Resources* and the *Bamako Convention on the ban of the import into Africa and the control of transboundary movement and management of hazardous wastes within Africa*. However, the emphasis on Africa’s contribution regarding humanitarian law seems misplaced. First of all, the International Criminal Tribunal for Rwanda (‘ICTR’) was established by a UN Security Council Resolution and is thus not an African initiative. Indeed, its establishment and jurisprudence entailed important developments in humanitarian law but it would be far-fetched to ascribe this to Africa. Similarly, regarding mercenaries, whereas the first treaty dealing with mercenaries was indeed formulated at the level of the OAU, the *OAU Convention on the Elimination of Mercenarism in Africa*, and might have influenced international standards, it should not be forgotten that the African initiative here had little to do with human rights but rather with a fight against neo-colonialism.

Consequently, the African continent has undoubtedly contributed to the development of international human rights law. Nevertheless, Viljoen’s assessment would seem slightly over-positive.

**Martin Semalulu Nsibirwa** offers a thorough analysis of the *Draft Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women*. This well researched article provides a balanced analysis of the Draft Protocol. While it is undoubtedly especially important in a continent characterised by patriarchy and constitutes marked improvements regarding the African Charter, several difficult and contentious issues are highlighted. The problem of the practical enforcement is also adequately taken up and the potential impact of the African Court is pointed out, while it is acknowledged that the actual adoption of the Protocol as well as the coming into force of the protocol establishing the African Court might take a while.

It is important that following the Draft Protocol state parties have to embody the principle of equality between sexes in their national constitutions and legislative instruments and have to take positive action to achieve the principle of dignity and physical security. The most important contribution of this Draft Protocol is arguably its focus on harmful practices, like Female Genital Mutilation (‘FGM’), and its recognition of
the need to grant asylum to women who face the danger of these harmful practices. The Protocol also takes a strong stance on equality within the marriage while prohibiting child marriages and polygamy. However, especially the latter might cause difficulties in the adoption of the Protocol since several OAU member states have large populations whose religions or customary law has recognised this practice for centuries.

The over-view of the issues dealt with by the Protocol reveals that several rights are taken up that are not a particular problem for women, like economic and social welfare rights, protection of a healthy environment, etc. In this respect the author correctly points out that the Protocol ought not to be viewed as merely advancing the rights of women, but rather as advancing the interests of society in general (p. 49).

The author goes on to indicate certain problematic aspects of the Draft Protocol, like duplication with the African Charter on Human and Peoples’ Rights (it is indeed an obligation of state parties to the Charter to ensure that the rights set out are enjoyed by all individuals, also women), inconsistencies and over-ambitiousness.

It seems in any event correct to remark that the Draft Protocol is a good starting point for countries that want to address the problems facing women.

Kithure Kindiki focuses on the prosecution of perpetrators of the 1994 genocide in Rwanda by discussing its basis in international law and assessing its implications for the protection of human rights in Africa. Whereas Kindiki gives a good over-view of the relevant issues, certain inaccuracies and inconsistencies diminish the article’s quality while a lack of references goes hand in hand with a lack of truly in depth analysis and nuance. For example, there is not a single reference backing up the statement that the Rwandan Government played an important role in the establishment of the ICTR. This is problematic especially in view of the fact that Rwanda voted against UN Security Council Resolution 955.

What seems to be incontestable is that the Rwandan Government set in motion a process aimed at ensuring individual criminal responsibility for the perpetrators, in that it decided to supplement the work of the ICTR by prosecuting in the domestic courts of Rwanda in 1996. However, the justice process has remained a frustrating experience in these domestic courts, which lead to the suggestion for a gacaca system of justice. The latter would allow communities to judge the majority of the accused of lesser offences while addressing reconciliation objectives and involving the population in the disposition of justice.

The author discusses briefly (not always with the necessary nuances) the basis for prosecuting perpetrators of the crime of genocide in international law, *inter alia*, on the basis of the obligation under international law to punish international crimes. The prosecutions impact on the human rights protection in Africa in that it is underscored that impunity for gross violations of human rights will no longer be tolerated.
Idi T. Gaparayi also deals with the question of justice in the aftermath of genocide in Rwanda and more specifically focuses on the possible role of the gacaca tribunals by analysing the draft legislation on the gacaca tribunals. These gacaca tribunals are intended to create a process that shows similarities with the indigenous mechanism while incorporating the contemporary European system of justice. Their aim is to promote social reconstruction while expediting the trials of thousands of accused persons.

There would be gacaca tribunals at different levels and all but category one genocide cases would be tried by these tribunals. The specialised justice programme will rely on a system of plea agreement and a substantial reduction in sentence is provided for defendants who submit a guilty plea before prosecution.

The author identifies several defects of the draft gacaca law, like the lack of detailed provisions determining the essential elements of the crimes and the lack of jurisdiction for violations of common Article 3 and Geneva Additional Protocol II. Furthermore there might be reason for concern about the capacity of the proposed system to operate fairly and efficiently, *inter alia*, due to the minimal selection requirements for the members of the gacaca tribunals. The same concern of limited guarantees of fair trial could be raised at the appeal stage. The author correctly underlines that the description of the gacaca tribunals as a traditional system does not mean that international standards of fair trial can be set aside and consequently, a number of provisions of the draft gacaca legislation should be amended to conform to basic international standards of fair trial.

Prior to formulating his conclusion, Gaparayi discusses theories of social reconstruction and reconciliation as related to the prosecution of the perpetrators of genocide and the specific features of gacaca tribunals in this respect.

Whereas this article has some problems related to its structure, for example in that the conclusions at the end of sections do not always seem to flow logically from the preceding argumentation, it is well argued and well researched.

Abdul Tejan-Cole then continues with a serious and critical evaluation of the Special Court *in spe* for Sierra Leone in the aftermath of the peace accord to end the nineteen year civil war and the ongoing atrocities. This Special Court results from an agreement between the UN and the Government of Sierra Leone and is intended to prosecute persons most responsible for serious violations of international humanitarian law since 30 November 1996.

A thorough analysis of the main features of the proposed Special Court as to competence, subject matter jurisdiction, composition and structure, is followed by an enumeration of conceptual concerns about this proposed court. The latter include the intended primacy of the Special Court over the national courts and the possible frictions with the constitution, the limitation of powers of the Special Court to national courts, the *de facto*
grant of amnesty for acts committed between 23 March 1991 and October 1996 due to the temporal jurisdiction, the issue of prosecuting children, etc. The author also formulates possible alternatives for the envisaged Special Court which are skilfully developed and assessed. He concludes by calling on the Government of Sierra Leone and the UN to tackle the concerns raised and to develop a system attuned to the special situation of Sierra Leone, where the war is still ongoing, so as to provide justice for the victims.

Morne van der Linde’s assessment of the emerging electoral trends in the light of recent African elections can only be qualified as disappointing in that it is poorly researched and lacks in depth analysis. The elections in each of the 6 countries surveyed are dealt with in little more than one page, while no cross-country comparison and analytical assessment is made. Furthermore, the link between democratisation issues and human rights is also hardly developed. Consequently, the conclusion is shallow and does not contain any interesting statements.

Christine Jesseman’s article on the protection and participation rights of the child soldier with its African and global perspective, makes for a balanced, rich and well researched contribution. The focus of the article is on the alleged conflict between protection and participation rights of child soldiers, which it puts in perspective. However, the actual definition of “participation rights” only features in the last pages (p. 150 et seq.) while previously the exact meaning of that term remains unclear, inhibiting a good understanding of the discussion.

The article provides an interesting evaluation of the CRC, the Optional Protocol to the Children’s Convention on the Involvement of Children in Armed Conflicts, the African Children’s Charter, and the typical humanitarian law conventions. The overall problem seems to be that participation rights of children are not or hardly considered by these instruments, in that the socio-economic and political root causes of such participation are disregarded. The author concludes by pointing out that in order to provide for the exercise of participation rights and effective protection, it is essential that alternatives be provided to those children who are induced by circumstances to join armed forces.

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John Dugard is without doubt South Africa’s foremost international lawyer. He was a prolific writer on the subject of international law during a time when international law was a stepchild in the teaching of law at South African law schools and was equally neglected in practice under a system of government that went counter to modern developments in international law. Dugard was for many years professor in international law at the University of the Witwatersrand and now holds the prestigious position of professor in international law at Leiden University, as well as being the Special Rapporteur of the International Law Commission’s Project on State Responsibility.

South African textbooks on international law are rare. Hercules Booysen’s Volkereg was published in 1980, saw several editions and was prescribed at a number of Afrikaans language universities (though not at Dugard’s alma mater, the University of Stellenbosch). This work was, however, strongly intellectually biased in favour of the South African government of the time, attempting to provide a legal basis for its apartheid policy. Dugard’s opposing views were expressed in numerous articles in South African and international law journals and in his works like Human Rights and the South African Legal Order (1978). Often a lonely voice calling in the metaphorical desert of South African international law historical events served to prove the soundness of his judgment on modern developments in international law.

The first edition of International Law: A South African Perspective was published in 1994, at the time when South Africa’s international isolation of four decades came to an end. The second edition, published six years later, takes into account the international law-friendly final Constitution of 1996 as well as state practice that resulted from South Africa’s re-integration into the international community. It has therefore been substantially extended: it is about a hundred pages longer. Chapters on international criminal courts, international refugee law, international economic relations, and an appendix on the effect that collective non-recognition had on the question of statehood of the so-called “Bantustan” states on which the policy of apartheid was premised, have been added.

Dugard’s aim with this work is to, as the title indicates, give an overview of the general rules and principles of international law, focusing specifically on the South African manifestation thereof and South African state practice in this regard. The work consequently strongly focuses on South African legislation, judicial decisions, diplomatic practice, and literature. Dugard’s premise is that, despite the fact that international law has been treated with contempt by the government during the time of apartheid, often not being duly recognized by the courts and being neglected in the teaching of law, South Africa actually has a rich inter-
national law history, dating back to the Roman-Dutch origins of its legal system. The work is aimed at both law students and legal practitioners, but Dugard also hopes to reach a wider audience like diplomats and students of international politics.

The book follows an orthodox structure starting off with a chapter on the nature and history of international law. This chapter deals with traditional themes such as the difference between international law and municipal legal systems and the question of whether international law is really law. It then proceeds to give a short over-view of the history of international law and deals in an admirably clear and concise way with the natural law/positive law philosophical debate.

The second chapter, giving a historical introduction to international law in South Africa, firmly anchors the work on a South African foundation. It reminds the reader of the international law dimensions of South Africa’s Roman-Dutch legal tradition. As a country which had its fair share of wars and conflicts during its turbulent history, a theme in the book is the international law dimensions of conflict, notably that of the Anglo-Boer War at the beginning of the twentieth century, and that between the white minority government and the liberation movements towards its end. The footnotes of this chapter are rich in sources on South Africa’s international law history, which will prompt the interested reader to further research.

Especially noteworthy is the reference to early treaties that native chiefs entered into with Britain and the Boer republics, a dimension that certainly warrants more research. The chapter is concluded by an overview of the major cases in South Africa’s courts in which international law were applied, dating from the period before the Anglo-Boer War.

Chapter 3, on the sources of international law, deals in a very concise and lucid way with an issue that remains confusing to students and practitioners judging international law from the more ordered perspective of domestic law: the relationship between opinio iuris and usus and the role of General Assembly resolutions in establishing opinio iuris. The concepts of soft law, ius cogens, obligations erga omnes and the hierarchy of norms are succinctly summarized in a few short pages.

Chapter 4 deals with the place of international law in South African municipal law. Since the publication of the first edition of the work, the final South African Constitution entered into force in 1996, and this chapter, after a historical over-view, focuses in some detail on the substantial number of provisions in the Constitution dealing with international law.

Chapter 5 deals with states, including the questions of recognition and non-recognition. The traditional criteria for statehood as contained in the Montevideo Convention of 1933 is discussed, the requirement of capacity to enter into relations with other states justifying an analysis of the historical development of the South African constitutional position in this regard. A fifth non-Montevideo requirement, namely respect for human rights and self-determination, analyses these important post-World War II
developments. The cases of the South African Bantustans, Rhodesia, and the Turkish Republic of Northern Cyprus referred to in this section are again taken up in the discussion of the effect on statehood of collective non-recognition by the international community. The discussion of self-determination and secession refers to Section 235 of the South African Constitution, which makes reference to self-determination. The concept of self-determination was included as a last-minute concession to the Afrikaner right wing during the constitutional negotiations, and is in the South African context sometimes confused with that of the evolving regime of minority rights.

Within the context of this chapter reference to the international law status of Taiwan may have been useful: the structuring of relations with this entity after the ANC Government switched recognition to the PRC, are at present taxing minds within the Department of Foreign Affairs.

A short reference to the switching of recognition is made in the next chapter, dealing with the recognition of governments. This short chapter focuses on the general principles and South African practice in this regard. The practice of South African courts with regard to the effects of recognition in municipal law is dealt with in Chapter 7.

Territory and the doctrines relating thereto are the subjects discussed in Chapter 8. Specific reference is made to South African practice in this regard, namely the acquisition by means of occupation of two small islands in the Southern Atlantic, in order to set up meteorological stations, as well as to the status of Antarctica in South African law.

The title of Chapter 9 is “Jurisdiction, International Crimes and International Criminal Courts”. In a fairly short chapter a lucid over-view is given of the doctrines of jurisdiction, international crimes and the Nuremberg and Tokyo military tribunals, as well as of the criminal tribunals for Rwanda and the former Yugoslavia, while a passing reference is also made to the Rome Statute of the International Criminal Court (which was not yet finalised at the time of writing). It further discusses apartheid as an international crime and the evolving concept of universal jurisdiction.

The very important issue of extradition is the subject of Chapter 10. South Africa’s return to the international fold has resulted in a substantial increase in the number of extradition treaties and consequently extradition cases before the courts. This chapter will therefore be of special interest to practitioners.

Chapter 11 looks at sovereign as well as diplomatic and consular immunity, and the legislation in this regard, the Foreign States Immunities Act (1981) and the Diplomatic Immunities and Privileges Act (1989). The large influx of foreign diplomats to South Africa after 1994 ensures that these topics have also become of particular relevance to practitioners. The next chapter deals in some detail with state responsibility, while Chapter 13 gives an over-view of the major international instruments in the field of human rights and the influence of South Africa’s racial policies
on the development of international human rights law. The three regional systems as well as the impact of the international instruments and the new Constitution on South African law are also dealt with.

A valuable addition to the second edition is a chapter on refugees, written by Anton Katz, who practices as an advocate and is a noted South African authority in this field. South Africa is presently experiencing substantial problems with illegal immigration and refugees. The general principles and applicable South African legislation being discussed in Chapter 14 makes it a valuable addition to the second edition.

Chapters 15 and 16 deal with the law of the sea and air and space law respectively, linking international law to the applicable South African legislation. International environmental law is the subject of Chapter 17, which gives an overview of its general principles and the major international treaties regarding the environment. Chapter 18 deals with the important subject of treaties. The South African practice with regard to the interpretation of treaties is illustrated by means of its approach to the South West Africa cases, and South African and Namibian constitutional principles and judicial decisions are analysed in some detail in a section on the succession to treaties.

Another welcome addition is Chapter 19, on the legal regime of South Africa’s international economic relations, written by Daniel Bethlehem of the Lauterpacht Research Center for International Law at Cambridge University in the United Kingdom. Starting off with an overview of the main international organisations of an economic nature to which South Africa enjoys membership and the major multilateral and bilateral treaties it is party to, it then proceeds to give an overview of specific legal regimes, notably the regional regimes of the Southern African Customs Union, the Common Monetary Area, and the Southern African Development Community (‘SADC’). It then discusses the recently concluded Agreement on Trade, Development and Co-operation between the EC and South Africa, and also deals with the World Trade Organization and the fundamental principles of international trade. International trade law is quickly gaining importance in South Africa, and this chapter provides an introduction to a detailed and complex subject. The pace at which developments within the SADC are surging ahead and the current restructuring of the organization, aimed at making it more efficient and speeding up the economic and political integration of the region, may justify a special chapter on SADC in future editions.

Chapter 20, on international adjudication, focuses, after a brief historical overview of the subject, on the International Court of Justice (‘ICJ’). It analyses in some detail the South African involvement with the ICJ through the South West Africa cases, a subject on which the author is a noted authority. The chapter is concluded by an appendix giving a brief chronology of the South West Africa/Namibia issue.

Chapter 21 deals with the role of the United Nations in the maintenance of international peace. It analyses the powers of the General Assembly
(‘GA’), Security Council, and Secretary-General, dealing in some detail with South Africa’s exclusion from the GA during the 1970s and the body’s handling of South Africa’s racial policies. It proceeds with a discussion of the topic of UN peace-keeping forces (South Africa is at present contributing to the UN force in the Democratic Republic of the Congo) and the role of regional arrangements in achieving international peace and security. This chapter, which gives a clear and concise over-view of a subject that goes to the heart of multilateral diplomacy, will be of great value to diplomatic staff based at or dealing with the United Nations.

The subject matter of the next chapter is the use of force by states, probably the most controversial issue in contemporary international law after the forcible NATO intervention in Kosovo. It is a logically structured over-view of a topic that, as a result of its regular politicization by states, is not always being well delineated in academic works. Especially elucidating is Dugard’s handling of the circumstances in which the use of force will be allowed without UN authorization. The exceptions of anticipatory self-defence and hot pursuit were often used by the previous South African government to justify attacks on neighbouring states, while the South African military intervention in Lesotho in 1998 is discussed as a more recent expression of state practice in this regard. A section on developments with regard to wars of national liberation concludes the chapter, and is of special significance to southern Africa.

The substantive part of the work is concluded by Chapter 23, which gives an over-view of the general principles of humanitarian law and South African practice since the time of the Anglo-Boer War, and of special interest is the discussion of the treatment of members of the national liberation movements by the previous government. It further discusses the findings by the Truth and Reconciliation Commission regarding the conduct of the recent military conflicts in southern Africa.

The work is concluded by an appendix on the effect that collective non-recognition had on the international law status of the so-called “Bantu-stans”, a theme that was first explored in Chapter 5.

The table of contents and index are detailed and useful. A table of cases is divided into three sections, dealing respectively with the Permanent Court of International Justice and the ICJ, other international courts and tribunals and national courts. The book further contains a list of abbreviations and a table of statutes, but the list of authors of international law publications on South Africa included in the first edition has not been included in the second. Unfortunately it also lacks a bibliography, which would have increased the considerable value of the comprehensive number of references and footnotes. The work is produced to a high standard with a striking cover page.

Dugard has the gift to express complicated concepts in clear and concise language. His encyclopedic knowledge of the subject, and especially the way in which international law manifested in the southern African sub-continent over a period of three and a half centuries, is nothing but
inspiring, and produces many tributaries to the main stream that will be worthwhile to explore by the keen researcher. The work builds on the foundation laid by the first edition, which appeared at the time when international law came of age in South Africa. It will be valuable to a growing number of scholars, practitioners, diplomats, and researchers of international law and its close academic relation, international relations, both locally and abroad. It therefore achieves the aim that was set in the preface. South Africa is remarkably fortunate to have an international lawyer of John Dugard’s stature.

Andre Stemmet*


For those wishing to undertake a comparative study of the relationship between law and human rights in Africa, existing reference works suffer from a number of drawbacks. To the extent that they are up-to-date and comprehensive, such works are in the nature of collections of various national constitutions, such as Blaustein and Flanz’s Constitutions of Countries of the World and Reyntjens’ Constitutiones Africae. These deal with constitutions as a whole and do not focus on the protection of human rights, and as such they are too wide in scope for those who wish to concentrate on human rights law. Furthermore, such compilations also do not reproduce single, comprehensive and up-to-date versions of these constitutions, and it is for the reader to navigate through the various documents to find requested information. The introduction to the first volume of the Human Rights Law in Africa Series states that the Series is intended to make some contribution towards meeting the need for a “comprehensive – yet concise and up to date – guide on the subject, which could be relied upon by judges, legislatures, law reform commissions, diplomats and scholars to give them accurate information on the legal position as far as human rights in particular African countries is concerned.

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At the same time, such a guide should provide a bird’s-eye view of the situation on the continent as a whole, enabling the reader to identify the common values and general trends as far as African human rights law is concerned.”

Each of the first three volumes in the Series, Human Rights Law in Africa 1996, 1997 and 1998 is made up of three parts. Part One, “United Nations Human Rights Instruments in Africa”, contains a chart showing the ratifications status on United Nations Human Rights Treaties by African states as of 1 January of the year in the title. In the 1998 volume, Part One is entitled “The United Nations and Human Rights in Africa”, to reflect a number of significant changes. Firstly, the texts of reservations and interpretive declarations made by African states in respect of provisions in these treaties, as well as objections thereto, have been added. Secondly, a section on the International Criminal Tribunal for Rwanda (‘ICTR’) is included, containing the Statute of the Tribunal, its “Rules of Procedure and Evidence” of 1995 as amended in 1996 and 1997, and also the “Directive on the Assignment of Defence Counsel” of 1996 as amended in 1997. Thirdly and perhaps most significantly, the 1998 volume contains “overviews” by various commentators on the various subsections in the Part. The editor has thus taken an important step towards keeping the promise made in the introduction to the 1996 volume to the effect that in subsequent editions, “the information contained in this book will not only be updated, but commentary on legislation, judicial decisions and executive action in the field of human rights will be included, as well as some general information on the countries in question.”


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Part Three is entitled “Human Rights Laws of the Countries of Africa” in the 1997 and 1998 volumes, as distinct from the 1996 volume in which it was entitled “Human Rights Provisions of the Constitutions of African States”. The change in title is probably intended to reflect the change in the content of each volume, as the 1996 volume reproduces the pertinent parts of the written constitutions of African states. In the 1997 and 1998 volumes there is hardly any coverage in these volumes of human rights provisions other than those contained in the constitutions, and these volumes update the first volume where appropriate. However, both subsequent volumes contain useful background information on all African countries, including brief commentaries on the political and constitutional history of each country as well as useful bibliographies. In respect of twelve countries in southern Africa, the commentaries also include an overview of the human rights jurisprudence, and it is to be hoped that subsequent volumes will include such overviews in respect of other countries.

In the introduction to the 1996 and 1997 volumes, the author identifies a number of general and specific shortcomings of the Series. Some of the specific omissions identified in earlier volumes (such as the absence of any commentary in the 1996 volume) have been addressed in the subsequent ones, and where these are not addressed (for example, the lack of coverage of substantial commentary on the human rights systems of all countries), the editor undertakes to address them in later volumes, and invites contributions from commentators for coverage of a wider and more representative field. However, it appears to this reviewer that the manner in which the series has developed thus far could pose a problem, which is perhaps unavoidable given the nature and dimensions of the enterprise, in that it will be necessary to have a complete set of all the volumes in the Series. The difficulty lies in the fact that the cost of the volumes, which, it is to be noted, appears to be lower each time a new volume is produced, may well still probably place it beyond the reach of institutions and individual researchers in Africa, particularly if all the volumes are needed. Practical considerations allowing, the editor may come even closer to fulfilling the broader aim of providing a “comprehensive – yet concise and up to date – guide on the subject” by consolidating the information available thus far in these volumes in a single volume, perhaps in the same way as the editor intends to produce a French version of the first three volumes of the Series in consolidated form (see the “Introduction” to the 1998 volume). Or perhaps an index.

But these observations in no way diminish the magnitude of the achievements of the editor. There is no doubt that the Series fills a very important gap, and the wealth of information provided will ensure that it will quickly become an invaluable and indispensable research and reference tool for anyone working in the field of human rights protection in Africa. The editor is therefore to be warmly congratulated for providing such researchers with this luxury. The fact that the volumes reviewed here as
well as subsequent volumes will also be made available in French merely increases our already immense debt to the editor.

Abdul G. Koroma*


Just a few months ago, the scourge of landmines was at the centre of public opinion’s attention and on top of everyone’s agenda. Diplomats and politicians, journalists and NGO lobbyists, media icons and sport legends, landmine-producers-turned-landmine-removers and legal scholars – you name it – all were engrossed in the campaign to ban the most reproachable of these weapons, the anti-personnel landmine.1

If legal literature is a credible indicator of how topical certain international issues are, then one can only be worried by the lack of in-depth legal analysis following the adoption of the Ottawa Convention.2 The historic achievement of the Convention’s adoption seems to have lessened, rather than increased, the interest of legal scholars, and seemingly most of those interested in this humanitarian crisis, for that matter. Instead of delving into the accurate scrutiny of the new regime necessary to consolidate the achievements of the International Campaign to Ban Landmines,3 many have shifted towards other issues that have become more ‘trendy’, such as small weapons or child soldiers. The pursuit of opportunistic, rather than genuine, interest on the part of activists, academics and NGOs that need to ride ‘fashionable’ issues in order to secure the funding necessary for their survival, together with the ill-conceived belief that the adoption of a convention marks the solution of a problem (and, thus, justifies the move towards other issues that still demand a legal answer) can, perhaps, explain the volatile attention that surrounded the landmine crisis among legal scholars.

Therefore, the publication of The Banning of Anti-Personnel Landmines could not have been timelier. The book edited by Louis Maresca and Stuart

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1. Hereinafter ‘APM’.
3. Hereinafter ‘ICBL’.
Maslen is the first important post-Ottawa legal book on landmines and interrupts this trend of neglect. The editors’ stated object is “to facilitate research and reflection on the role of the ICRC in international efforts to respond to the landmines problem.” Since the inception of the ICBL, in fact, the ICRC has been at the forefront of the campaign’s diplomatic and legal efforts. As such, this compilation of documents contains a dependable, if somewhat incomplete, picture of the legal developments that have led to the ban on APMs. It comprises a collection of documents, reports, press releases, and articles which were previously available, hence its main merit is the organization of sources crucial for the understanding of the current regulatory regime within a single volume organized in chronological order.

The book is divided into three sections describing various stages of the development of the conventional norms applicable to landmines. The first section, opened by a very basic description of the legal principles governing weapons in general, addresses the years up to the adoption of the Conventional Weapons Convention; the second section covers the process of review of the C.C.W., culminating with the 1996 amendment of its Protocol II on mines, booby-traps and other devices; and the third section describes the “Ottawa Process” and its early aftermath. Each section, in turn, is divided into chapters focusing on individual conferences, meeting of experts, reports and other documents that represent the many steps towards the Ottawa Convention. At the beginning of the three sections and of most chapters, the editors have added an overview or a brief description that helps to contextualize the content of the pages that follow. A few articles provide a more in-depth commentary of specific conventions or ongoing negotiations.

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5. Maresca & Maslen, 3.


8. The book is opened with the foreword of two of the most influential diplomats involved in the Ottawa Process, Ambassador Jacob S. Selebi of South Africa and Ambassador Johan Molander of Sweden. The remarks by the latter constitute, arguably, the most objective and frank account of the Ottawa Convention to date.
This organic collection of documents, spanning almost half a century of direct involvement in international humanitarian law, is not simply a useful research tool. Illustrating the various stages of a legal evolution that culminated in one of the most advanced examples of international mobilization to date, The Banning of Anti-Personnel Landmines represents a telling testimony of the multifarious roles a critical IHL actor such as the ICRC has to play on today’s international stage in order to fulfil its mandate with efficacy.

The mere provision of humanitarian relief and the verification of the well-being of those not (or no longer) directly involved in hostilities is only one of the ICRC’s functions. A broad interpretation of its humanitarian mission has led the ICRC to undertake a much larger set of functions, in keeping with its proactive and creative tradition. It is the well-integrated interplay of its various roles that renders the ICRC indispensable in a way other humanitarian organizations have still to achieve.

The picture of the ICRC’s involvement in the landmine crisis that emerges from the collection edited by Maresca and Maslen highlights the Committee’s various roles. In this regard, instead of following the chronological order used by the editors, one could re-group the documents and articles reprinted in The Banning of Anti-Personnel Landmines, as is done below, in – at least – five categories, by reference to the kind of ICRC role of which they are the product.

1. **The ICRC as Sentinel, Muse and Provider of Medical Assistance**

As it emerges from several of the documents compiled by Maresca and Maslen, medical expertise – apart from being one of the reasons for the presence of ICRC personnel on the field – provided the inspiration to take action towards the strengthening of IHL’s norms on landmine warfare. As the sight of the horrors of Solferino’s battleground was a uniquely effective catalyst for Henry Dunant’s efforts that culminated with the establishment of the ICRC, the first-hand experience of the humanitarian

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10. See, e.g., the statement of the President of the ICRC at the United Nations International Meeting on Mine Clearance of 6 July 1995, reproduced in Maresca & Maslen, 349, at 350.
11. One of the few gaps of the book under review is the absence of an important report documenting a study carried out under the aegis of the ICRC and made possible thanks to the medical expertise that the Red Cross personnel has developed in the area of war injuries and documented in the ICRC’s wound database: R.M. Coupland (Ed.), The StrU.S. Project: Towards a Determination of Which Weapons Cause “Superfluous Injury or Unnecessary Suffering” (1997). Even though this study does not apply exclusively to landmine injuries it is a useful reference for anyone that is interested in determining whether landmines are incompatible with the customary prohibition to inflict superfluous injuries or unnecessary suffering. Before this study one had to resort to the dated information provided in the 1973 Geneva Experts Conference, reproduced in Maresca & Maslen, 20, 29.
missions in war-torn areas sparked the mobilization of the Committee, and other organizations, against landmines. The constant worsening of the landmine crisis in many regions (where at times mine victims accounted for up to one quarter of the casualties, heavily taxing the scant medical resources available in the field) and the evident shortcomings of the existing conventional norms led the ICRC to believe in a comprehensive ban as the only effective solution to the problem and to join the ICBL.

2. **The ICRC as Global Communicator**

Confronted by the disappointing results achieved during Protocol II’s review process, which fell short of a ban on APMs, and in sync with the ICBL’s decision to undertake an alternative negotiating path that bypassed the traditional arms control fora, the ICRC launched an unprecedented media campaign, announced at a press conference by its President. Press, radio, TV, famous personalities and direct action at the national level were all openly utilized in order to increase the visibility of the problem, generate and intensify repulsion against it as well as outrage for the unsatisfactory results of the ongoing negotiations. What better way to increase the pressure on governments and military? The strategy proved successful. The sudden death of one of the most popular anti-landmine personalities at the eve of the Oslo Conference, Lady Diana, provided the Campaign and the Conference with increased media attention.

The idea of resorting to public opinion’s awareness of a major humanitarian crisis in order to expedite the strengthening of IHL norms was as old as the Red Cross itself. The very establishment of the ICRC was made possible in part by the success and high circulation of “A Memory of Solferino”, Henry Dunant’s vivid recount of the horrific spectacle he witnessed on Solferino’s battleground. The indignation this book provoked throughout Europe contributed to the process that culminated with the establishment of the ICRC in 1863. In this respect, as in others, Henry Dunant was a forerunner of modern humanitarian activism. The novelty of the landmine media campaign – for which a major advertising company was hired – was its scale.

3. **The ICRC as Persuader**

In a sensitive area such as that of weapons, bans cannot be achieved by simply inciting public opinion to put pressure on governments and lawmakers. History does not offer a single instance of a ban on weapons considered crucial by the military. All the means of war proscribed up to that

12. See the statement reproduced in Maresca & Maslen, 404–406.
point either did not add any military advantage,\textsuperscript{13} could have adverse effects on friendly forces,\textsuperscript{14} conferred comparable benefits to each party to the conflict\textsuperscript{15} or were too new to be fully appreciated.\textsuperscript{16}

The ICRC, therefore, considered it necessary to engage the military in a dialogue over the real utility of landmines. To this end a study on landmines’ efficacy was commissioned to Patrick Blagden, a retired Brigadier-General with a large expertise in this field. In 1996 the report that would

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\item \textsuperscript{13} This is, for instance, the case of inflammable bullets. This ammunition had been originally conceived to destroy enemy supplies of munitions; see P. Boissier, From Solferino to Tsushima – History of the International Committee of the Red Cross 226 (1985). Later they were modified so to explode also upon impact with the human body. The International Military Commission that drafted the St. Petersburg Declaration found it possible to ban this last kind of bullet since “[i]t did not consider the new rifle bullet […] sufficiently enhanced in military utility to render it indispensable.” F. Kalshoven, Arms, Armaments and International Law, 191 Recueil des Cours 208 (1985). The same holds true for dum-dum bullets: like any projectile, each dum-dum bullet could disable only one enemy soldier. The additional suffering or increased risk of death did not provide any additional military advantage big enough to justify its employment. “[Dum-dum bullets] cause ravages far graver than those normally caused by an ordinary bullet, and which are not in effect necessary to put an adversary hors de combat”, F. Kalshoven, Constraints on the Waging of War 30 (1987).
\item \textsuperscript{14} With regard to the use of gas as a weapon, it has been noted that “[n]ations had never used gas shells in combat for fear that their harmful effects could not be directed exclusively at the enemy. […] [T]he U.S. military delegate openly ridiculed banning a weapon for so-called humanitarian reasons before its value could be fully tested on the field.” C. Jochnick & R. Normand, The Legitimation of Violence, A Critical History of the Laws of War, 35 Harv. Int’l L.J. 49, at 73 (1994). See also W.J. Fenrick, New Developments in the Law Concerning the Use of Conventional Weapons in Armed Conflicts, 19 Can. Y.B. Int’l L. 229, at 235 (1981).
\item \textsuperscript{15} Again with regard to gas, Fenrick observed: [i]t is probable that gas was not used in World War II because both sides to the conflict were equipped to use the weapon and, therefore, neither side wanted to expose its forces to retaliatory action of its opponents. In other words, voluntary abstention was beneficial to both sides even in a total war. […] Rules of war that do not benefit both sides to a conflict will often be disregarded by a party who would be adversely affected by compliance.
\item \textsuperscript{16} This may be the case of aerial warfare’s early phases: [t]he five-year moratorium on balloon-launched munitions, which several delegations supported with great humanitarian flourishes, appears to contradict the general rule that considerations of humanity were subordinated to military interests. Nevertheless, the delegates understood the ban to operate only against non-dirigible balloons, which had proven useless for military purposes. The developing technology of motorized aircraft, set to revolutionize warfare and terrorize civilians, was exempt from the limitation. Even with this exemption, delegates from the stronger powers rejected Russia’s proposal for a permanent ban on the grounds that the free balloon might eventually acquire military utility.
\end{itemize}

Jochnick & Normand, supra note 14, at 73–74. Explicit prohibitions of specific weapons did not prevent their use when evolution in technology and military doctrine demonstrated their utility. With regard respectively to the projectiles prohibited by the St. Petersburg Declaration and to aerial bombardment, Kalshoven underlined that:
sensibly contribute to shape the public debate, “Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines”, was published together with its endorsement and conclusions written by a group of international military commanders. The preparation and publication of the report was an astute strategic step in the battle against pro-landmine advocates. It is significant that, just a few months earlier, one of the most prominent legal functionaries of the ICRC, citing an earlier report, still reaffirmed the military utility of landmines. The “Friend or Foe?” report, on the contrary (and – one could say – unsurprisingly, considering the function of this study in the ICBL’s strategy) reached the opposite conclusion that landmines had a utility far smaller than traditionally believed, and certainly outweighed by the humanitarian costs of their use.

Even before the “Friend or Foe?” report it would have been difficult to deny that the humanitarian costs provoked by the virtually everlasting nature of landmines outweighed their military utility. The study, however, highlighted and stressed the fact that such utility was much smaller than traditionally thought; with this move the ICRC rightly hoped to affect the debate with the military. The display of savvy in this circumstance is particularly remarkable: knowing that the use of landmines had never been analysed in depth, the ICRC certainly realized that, by publishing the first comprehensive evaluation of mines’ utility, it would irrevocably mould the future of the debate on landmines. Like a snowball, the number of references, and citations, from the report increased exponentially; it became much more difficult for the military to defend a weapon depicted

both for anti-aircraft, air-to-air and air-to-ground purposes light explosives or incendiary projectiles below 400 grammes weight were indispensable. Later on, similar developments occurred with respect to armoured vehicles. For all these purposes, projectiles of the incriminated class were therefore developed and accepted worldwide, thus considerably undermining the rule of 1868. Probably the only remnant of the one-time sweeping ban is a prohibition to use such projectiles against human beings. [...] Subsequent practice shows that although the discharge of projectiles from balloons never developed into an important technique of war, the opposite is true of the ‘other new’ methods of a similar nature; aerial bombardment became one of the ‘new methods’ that perhaps more than anything else has changed the face of war.

Arms, Armaments and International Law, supra note 13, at 223.

17. Unfortunately, the book under review contains only the executive summary of the report. Considering the importance of this study in the framework of the ban campaign, all the data, details and case studies it contains would have been of extreme interest for any research on landmines. The report is, however, available on line from the ICRC’s website at http://www.icrc.org/icrceng.nsf/5845147e46836989c12561740044f7/9e7f0db680b63733412562f0038107f?Open Document. The editors have probably decided to include only the executive summary to avoid the additional thickening of an already voluminous collection of documents (670 pages), by omitting parts of the report which have no strictly legal content.


as less effective than they originally claimed in the face of a public opinion which, in the meanwhile, had been mobilized and become outraged by the effects of landmine warfare.20

The ICRC exerted its role as persuader not only in the field of military knowledge, but also in the legal realm, constantly pressing to achieve the most far-reaching advances in the negotiated texts. Rather than confining itself to acknowledge that the ban was dictated by a pragmatic policy argument,21 namely the greater efficacy and simplicity to operate and monitor a total prohibition rather than a set of complicated restrictions, the ICRC affirmed that it was also landmine’s inherent illegality that demanded a comprehensive ban. As several of the documents collected by Maresca and Maslen show,22 the ICRC has often done so without explaining why, under IHL, that was the only correct conclusion.23

20. This was true in those states where landmines had traditionally been part of the arsenals without having a current vital function. States like the USA, China, India or the Russian Federation, with a military un-persuaded by the assertion of landmines’ inefficacy, simply stayed out of the ban process.

21. This argument is put forthright in the statement of the President of the ICRC at the 1996 International Strategy Conference towards a Global Ban on Anti-Personnel Mines. In recounting the Committee’s involvement with the landmine crisis he stated that

[b]y early 1994 we were convinced that anti-personnel mines were too cheap, too small and too difficult to use according to the complex rules of the 1980 UN Convention. At that point we publicly stated our view that these mines are an indiscriminate weapon and that the only effective solution would be an absolute prohibition on their production, transfer and use.

Maresca & Maslen, 474. The affirmation of landmines’ indiscriminate nature because of their cheapness, smallness and operational incompatibility with the C.C.W. is a non sequitur; it tells more about the shortcomings of the Convention than about the impossibility to use landmines according to international law. This, however, was the only strategic position, which, at that point in time, the ICRC could have realistically been expected to maintain in keeping with its goal to restrict the future use of landmines. If the ICRC had not tried to convince the international community that landmines were inherently illegal (and that therefore it was absolutely impossible to use them in accordance to international law), the only alternative would have been to further improve Protocol II. This option, however, was not viable – at least in the near future – since the Review Conference had finished just five months earlier, and with disappointing results for the ban movement.

Interestingly, when few days later the President of the ICRC took the floor in front of the First Committee of the United Nations General Assembly, he used a more moderate language claiming that, as shown by the “Friend or Foe?” report, “the use of antipersonnel landmines in accordance with law and doctrine is difficult, if not impossible, even for modern professional armies. This shows that the indiscriminate effects of landmines cannot be contained in most cases.” Maresca & Maslen, 490 (emphasis added). Nowhere in the statement are landmines defined as inherently illegal, not even where, after inviting the General Assembly to adopt “the strongest possible resolution”, id., he lists a series of fundamental points that such resolution should contain. As a result, Resolution 51/45S (10 December 1996) does not declare landmines inherently illegal. On the contrary, from both the ICRC President’s statement and from the resolution of the General Assembly one can infer that the pursuit of a ban treaty is a policy decision.

22. See supra note 21; see also the statement of the ICRC in the debate on landmines held within the Angolan Parliament, reproduced in Maresca & Maslen, 534, 537.

23. See, e.g., the Statement of the President of the ICRC at the 1996 International Strategy Conference held in Ottawa in 1996, reproduced in Maresca & Maslen 474, 476.
The intent to contribute to the development of a customary norm that bans landmines as inherently illegal and, as such, binding also upon states not party to the Ottawa Convention is evident.

Despite what is often claimed, landmines are not necessarily indiscriminate and their military advantage is not always disproportionately small when compared to the humanitarian costs; their use often is. The fact that it may be practically difficult to use them in accordance with international law does not mean that it is absolutely impossible to do so. Even though it may have happened rarely, mines can be laid with all the necessary precautions and removed after they become unnecessary. A stronger argument in favour of the inherent illegality of landmines is that they provoke superfluous injuries and unnecessary suffering. The difficulty in determining with precision what is superfluous and unnecessary, however, renders the applicability of this principle to landmines still disputed, as the analysis of the negotiations that led to the adoption of the Ottawa Convention shows.

The persuasive impact of the ICRC’s stance seems to have been greater on the few legal scholars that have devoted attention to this subject and that have often analysed it with the fervour of the activist rather than the detachment of the academic.

Just like a trainer that encourages a great prospect by convincing her/him that she/he already is the best athlete in her/his sport, the ICRC tells the international community that IHL is much better than most of the times it actually is. If the athlete will really become the best in that sport it will be also thanks to the encouragement and benevolent aggrandizement performed by the trainer; similarly, if IHL will become much more developed


25. The so-called first Austrian draft – not reproduced in the book under review but reproduced in the CD Rom published by the Canadian Government, Ban Landmines – The Ottawa Process and the International Movement to Ban Landmines (1997) – stated in Art. 3(1), that:

(Emphasis added.) The final text of the Ottawa Convention, on the contrary, does not contain this reference to APM’s inherently illegal nature, and the ICRC did not criticize this change in the Comments on the Third Austrian Draft of the Convention on the Prohibition of Anti-Personnel Mines, Maresca & Maslen, 548–553; the third Austrian draft constituted the basis for the language currently contained in the Ottawa Convention.

it will be also thanks to the ICRC’s role as persuader. However, at the time in which the words of the trainer and those of the ICRC are spoken or written they cannot be relied on to get a picture of the current situation that goes beyond an aspiration, well-grounded as it may be.

4. THE ICRC AS CATALYST AND IHL CONSULTANT

Since its inception, the ICRC has actively participated in the process of codification and development of IHL. Many of its studies or preparatory reports have paved the way to more productive conferences. This has also been the case with regard to landmine regulation. In turn, the process of revision of the legal regime on landmines was facilitated by the persuasion exerted by the ICRC on public opinion, governments and military.

The role of catalyst is also performed by the ICRC in another, more subtle, way. In several circumstances its experts are invited as observers and are requested by delegates to prepare in-depth studies and proposals that will then constitute a basis for the debate. The importance of this function goes well beyond the mere provision of know-how or the development of proposals. The position as a party external to the decision-making process and with a large expertise renders the ICRC the ideal partner that progressive delegations can resort to in order to bring into the debate proposals that would be more difficult to accept if formulated directly by state representatives. The discussion of a report prepared by the ICRC clearly provides to the debate a point of departure that may lead to a sensible advancement of IHL. In these situations, the ICRC acts similarly to those expensive consultancy companies hired by big corporations to recommend decisions that they would not be able to make autonomously without alienating the sympathy of employees, unions or shareholders. Neither the submissions by the ICRC nor those by consultants are binding; yet they exert an extremely strong influence on the choices made by, respectively, conferences and corporations, thanks to the externalisation of the responsibility in the decision-making process to outside ‘impartial’ experts. Both conferences and corporations could have come up with solutions similar to those put forth by the ICRC or a consultancy company, but they would have had a much harder job in getting them approved.

All of this is possible for the ICRC, more than for other humanitarian organizations, because of the authoritative status it has built over the years.

27. See, e.g., the chapter that the editors have dedicated to Expert Contributions to the Diplomatic Conference for the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1973–1976), the Montreux Symposium (1993), the ICRC Report for the Review Conference of the C.C.W. (1994), as well as the various working papers and proposals submitted at various stages of the negotiations.
28. See, e.g., supra note 18.
through its activities and through the independence with which it has carried out its mandate. Unlike consultancy companies, however, the ICRC cannot be considered as being completely impartial, since it is institutionally involved in the advancement of IHL.

5. **The ICRC as Guarantor of the International Community**

Thanks to its continuous presence on the field in mine-affected areas, the ICRC, like other anti-landmine organizations, can perform another function that is relevant for the successful reduction of the landmine crisis. The ICRC can monitor, and contribute to, the level of implementation of the norms on landmines. Moreover, it can directly contribute to the reduction of the negative impact of these weapons with direct assistance to the victims, as explicitly recognized by Article 6(3) of the Ottawa Convention.

Like the wheels of a sophisticated mechanism, the various roles of the ICRC are deeply interrelated and the efficacy of their action can be ensured only by a well-coordinated strategy: the care for the victims of armed conflicts requires not only field-assistance to wounded civilians and combatants, but also the establishment of restrictions to prevent or, at least, ‘humanize’ conflicts; to strengthen these safeguards, it is necessary to move both military and public opinion; to succeed in this task, new legal and technical solutions must be devised; the credibility of such solutions depends on the authoritative and independent character of the ICRC, which is reaffirmed through self-referential reminders to the world about the crucial nature of the ICRC’s work and through a demanding work of persuasion of governments, military and public opinion; to ensure that these solutions become concrete, a complicated work of preparation of diplomatic conferences must be carried out to crystallize the advances made into legal norms. If successful, this effort needs to be reinforced by a campaign of ratification and, after the entry into force of the convention, by a stern monitoring of its implementation.

In such integrated mechanism, legal discourse is nothing more than a device that the ICRC has resorted to, quite successfully, for fulfilling its mandate. One cannot wish enough that this legal discourse persuades state representatives; much less so that legal scholars acritically endorse it as it has happened in the case of landmines.

In conclusion, *The Banning of Anti-Personnel Landmines* is not only a welcome addition to legal literature on landmines, and one that will hopefully mark the beginning of a series of in-depth surveys of this weapon’s legal regime, but also a significant ‘case study’ of the role of the ICRC in today’s international scenario.

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29. See, e.g., the Address by the President of the ICRC at the Zagreb Regional Conference on Landmines reproduced in Maresca & Maslen, 645–649.
The documents and articles collected in this volume were previously available. At a time when on-line resources have still to catch-up with older documents, a collection of reports and articles like this proves particularly valuable because it simplifies the job of researching some of the older sources, like the reports of Experts that paved the way to the adoption of the C.C.W. The editors have carefully selected the documents and edited their content. They have shortened some documents keeping only the parts relevant for a legal research on landmines, even though in a few cases they could have kept more. These, however, are venial imperfections of an otherwise valuable book.

As such, this compilation of materials on landmines is in turn another product of the ICRC’s role of global communicator, persuader, catalyst and IHL consultant. The lack of a comparable collection detailing the work of hundreds of NGOs coordinated under the ICBL, however, should not make us disregard that they provided a contribution to the achievement of the ban that was decisive but also more difficult to document. If the Ottawa Convention is now in force, it is thanks to the integrated efforts of a traditional IHL actor as the ICRC and of the intricate maze of NGOs that are claiming a larger role on the international stage.

Luigi Santosuosso*


For years since the establishment of the United Nations, the democratic legitimacy of its member states received only cursory attention because the prevailing norm was that of state equality which excluded any evaluation of the domestic political process. This book embarks on a thorough investigation of the United Nations practice to prove that since the early

30. Maresca & Maslen, Part 1, Chapter 3.
31. For instance, as mentioned before, supra note 17, it would have been useful to reproduce the whole “Friend or Foe?” report. Similarly, it would have been useful to keep the report of the Working Sub-Group on General and Legal Questions contained in the 1976 Lugano Experts Conference. The editing of the documents reproduced in the book was certainly necessary to contain the number of pages of the book. However, the lack of the parts that are not reproduced makes it difficult to contextualize some of the events that are documented, like – for instance – in the case of the 1980 Conference that led to the adoption of the C.C.W.: the reader that does not have access to the rest of the Conference’s documents may find it difficult to realize that the unsatisfactory regime devised for landmines resulted from the fact that the main focus of the negotiations was on the regulation of incendiary weapons, not on that of landmines. This, however, is an imperfection inherent in all collections of edited documents.

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1990s, the international order became infused with ideas, initiatives, and practices which contribute to the crystallisation of a democratic principle. This normative change is not confined to criticism and approbation of undemocratic domestic practices but more decisively it includes assistance to traumatised societies in (re)establishing democratic ways of life. Professor Sicilianos’ book is well researched and impressive in its analysis of events, documents and institutional practices which assist him in tracing the changing paradigms in international law and politics. Another pervasive characteristic of the book is the zest, enthusiasm, and passion of the author which is transmuted to the reader as a feeling of optimism for a more democratic world.

The book is divided into two parts. The first part traces the development of the democratic norm from the early days of assumed parity between political regimes to the practice of regional systems such as the Council of Europe, the Organization of American States, the Conference on Security and Co-operation in Europe/Organization for Security and Co-operation in Europe (‘CSCE/OSCE’), or the EU which were more vociferous and active in this field. The author then discusses how this practice has affected the jurisprudence of the United Nations evidenced in the plethora of resolutions and initiatives in this field. The defining events were the re-evaluation of the internal bearing of the right to self-determination and the rediscovery of the democratic clause contained in the Universal Declaration of Human Rights (‘UDHR’). At the same time, the United Nations revisited its policies which are now premised on the interdependence between peace, democracy, and development and between democracy, human rights, and good governance.

The second part deals with the practice of democracy as effectuated by the United Nations, looking at actions whose aim is to foster or restore democracy. These may take the form of electoral assistance, condemnation or sanctions against dictatorial regimes, or even military interference since the nature of a threat to peace and security has changed. Then the author discusses the new generation of multifaceted peace-keeping operations which include state democratisation by reinstating human rights, democratic practices, and the rule of law.

Having said that, what is missing from this extremely engaging book is a theoretical foundation. Theory is suppressed by evidence and this has left a feeling of unfulfilled expectations. Admittedly there are various and varied theories about democracy and thus the author subscribes to the ‘neutral’ view that since democracy may take many forms, promoting any particular view may destroy the aim of democratisation. Such position is unattainable. The democratisation praxis reflects a particular concept of democracy and this is fully demonstrated when the author discusses its operationalisation by the UN. It is the view of the present reviewer that a theoretical discussion would have integrated into a coherent whole the empirical evidence. For instance, the author presents the UN practice in the field of human rights or the rule of law and concludes with a quote
from Boutros-Boutros Ghali’s address to the Vienna Conference in 1993 attacking state sovereignty. However, the verity of such statements depends on a previous exploration of the theoretical link between democracy, sovereignty, human rights (civil and political only?), or the rule of law.

Another limitation is that the book focuses almost exclusively on UN documents and the work of the former Secretary-General Boutros-Boutros Ghali, who also wrote the preface to the book. I have the feeling that we get a rather sanitised view of an inherently undemocratic and power tormented organisation. Concerning the United Nations’ operations, their successes or failures should also have been assessed and evaluated; in particular whether they facilitated any societal change instead of building another bureaucracy. I am rather sceptical as to whether the United Nations’ prescriptions are a panacea for all emergencies. The looming fragility of the Kosovo case is because the same extremists who are responsible for the previous disruption control the new machinery devised by the United Nations which now needs to placate them to avoid their wrath. Thus, social healing is delayed or postponed.

All having been said, the book provides a valuable and elaborate analysis of the practice of the United Nations or regional organisations for the democratisation of states and constitutes an indispensable reading for those interested in this field.

Nicholas Tsagourias*


Most English language writing on the law dealing with religious freedom deals with either the international or European dimension, or with that of a particular Anglo-saxon country. Many national perspectives remain therefore unaccessible to the growing international audience interested in this complex topic. Especially in the European context, with its European Court of Human Rights and the Court of Justice of the European Union increasingly playing the role of a European Supreme or Constitutional Court, it is important that as many scholars have access to the legal standards in other countries. The internationalist tendency to seek the common standard can be counterbalanced and enriched by a comparativist project to seek the differences. It is therefore good to see an English language publication describing the Greek legal perspective on religious freedom, in both national, European, and international law, to enrich the dominant per-

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spectives offered from Strasbourg, Brussels, and the other European capitals.

The book starts with an introduction describing the legal and political cornerstone of religious freedom in Greece: The relations between the state and the Church. This historically founded special relation is important knowledge to understand why certain conflicts arise, and others do not, in Greek religious life.

In Part I a description follows of the status of the ‘citizen and believer’ under Greek law, with chapters on national, constitutional, and administrative law, dealing with, *inter alia*, the controversial aspects of conscientious objectors in military service and the prohibition of proselytism, and the establishment of churches and places of worship. There are chapters on civil law and also penal law, and a chapter on the Greek obligations under international law protecting human rights. Part II focuses on the status of the Muslim minority in Greece, starting with the Lausanne Treaty of 1923, and topics such as Muslim education, the institution of the Muftis and the freedom of expression. Part III shortly describes the particular status of Mount Athos, with the particular provision under the Treaty of Amsterdam. In an extensive appendix the book reproduces all the relevant provisions of the laws and treaties that have been referred to and of other international legal materials which may be relevant to readers.

This book gives comprehensive access to Greek legislation concerning religious freedom, and as such will be of interest to human rights lawyers, comparative lawyers and other international, and European lawyers dealing with the topic.

Juan M. Amaya-Castro


If international criminal law is an underdeveloped body of law, then its component related to the defence of accused is probably the weakest limb. Devoting attention to the defence of persons accused of genocide and crimes against humanity is not very popular. Those who do are at risk of being associated with the criminals themselves and with the atrocities those criminals have committed. In addition, the voice of the defence is usually not represented in the fora that draft instruments of international criminal law.

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In this light it is not surprising that the Statutes of the International Criminal Tribunal for the former Yugoslavia and Rwanda (‘ICTY’ and ‘ICTR’) contain only few references to defence-related issues. The same is true of the Rome Statute of the International Criminal Court (‘ICC’).

One voice that has from an early stage been calling for more attention for an organized, professional defence before the ICC is that of the International Criminal Defence Attorneys Association (‘ICDAA’), created in 1997 by a number of international criminal law practitioners and academics. The Association’s goal is to ensure “a full, fair and well-organized defence in the proceedings of the ad hoc Tribunals and the future ICC.” The ICDAA has suggested two options for achieving an organized defence before the ICC. These two options are in its view not mutually exclusive. One option is the establishment of an independent bar association of international criminal lawyers; the other is the establishment of a permanent and independent “Office of the Defence” attached to the ICC.

In June 1998, the Association submitted a proposal for the creation of such an “Office of the Defence” to the Rome Conference negotiating the ICC Statute. The proposal was picked up only after the Rome Conference by a number of governments during the Preparatory Commission (‘Prepcom’) meetings following the Rome Conference, in the context of the drafting of the ICC’s Rules of Procedure and Evidence. At the first session of the Prepcom in February 1999, France tabled a proposal to establish an Office of the Defence as an entity independent of the Court and comprising a representative of each state party. The Office would be empowered to, *inter alia*, address recommendations to the Registry and the Presidency on defence-related issues, as well as receive complaints concerning professional misconduct by defence counsel. The French proposal was replaced by another proposal by France, Germany, Canada, and The Netherlands calling for a defence unit to be established as part of the ICC registry. Many delegations in the Prepcom opposed the proposals for an office or unit for the defence. They pointed to text of the ICC Statute that does not explicitly provide for such an office or unit and were also concerned that such an office would put a heavy financial burden on the states parties to the Rome Statute.

At this stage of the discussions, on 1–2 November 1999, the ICDAA in cooperation with Leiden University, Erasmus University Rotterdam, and with a subvention from the Dutch Ministry of Justice organized a conference to further the discussion on the issue of an ICC Office of the Defence. The book *An Independent Defence Before the International Criminal Court*, edited by Hans Bevers and Chantal Joubert, contains the proceedings of this Conference. The different contributions give a wide range of perspectives on problems and opportunities relating to the defence before the ICC. This is the result of the varying background of the contributors as defence counsel, academic, negotiator in the Preparatory Commission or Registrar of the ICTY. Only one voice is notably absent in this book, namely that of the judges of the international tribunals. This does not mean
that they are not concerned with defence-related issues, as is clear from the address by Judge May of the ICTY to the Preparatory Commission in March 2000. In this address he stated that it might be appropriate for the ICC Rules to provide for an association of defence counsel. One is left to wonder why no ICTY judge attended the ICDAA Conference if this is the judges’ point of view.

These particular Conference proceedings are not in-depth academic treatises. A reader that is looking for the latter should not turn to this book. However, the reader that wants to be pointed towards the legal issues surrounding the defence before the ICC will certainly find it useful. The reviewer found that three issues in particular were brought to the fore by the different contributions.

The first is the difficulties posed by the procedural system of the ICC. A number of speakers pointed out that the collection and presentation of evidence before the ICC draws heavily on the adversarial system of criminal procedure and less on the inquisitorial system. As Klip and Strijards point out in their contributions, the former system is based on a criminal procedure between two parties whose opportunity to present their side of the case should be equal from a functional, procedural, as well as organizational angle. Yet while the ICC Statute in many provisions provides for the organization and powers of the Prosecution, the Defence is an “organizational nowhere.”

The second issue is the role of money in international criminal justice. Strijards mentions that one of the main reasons delegations in the Prepcom opposed an Office of the Defence was that such an office would entail a considerable amount of money to be pledged without control by the states parties to the Statute. Many states appear to support dispensing international justice as long as it comes cheap. The ad hoc Tribunals operate under strict financial constraints, and one of the principal difficulties to be overcome in establishing a hybrid national/international court in Sierra Leone has been how to finance such a court. Apparently money is also a major issue in respect of the ICC.

The third striking point is the role of non-governmental organizations (‘NGOs’) in the ICC process. The important part played by NGOs during the drafting of the Rome Statute is well known. The fact that the ICDAA proposal was adopted by governments in the Prepcom, demonstrates that NGOs continue to play a role in post-Rome Conference developments.

Apart from the papers presented at the Conference the book also contains a summary of the discussions at the Conference, as well as an article describing the developments in the Prepcom after the Conference and the texts of the principal Prepcom documents relating to the Office of the Defence. The latter make it clear that the idea and organizational make-up of an Office of the Defence continued to arouse discussion in the Prepcom after the ICDAA Conference. Rule 20 (entitled “Responsibilities of the Registrar relating to the rights of the defence”) as finally adopted by the Prepcom in June 2000 does not provide for an indepen-
dent Office of the Defence, nor explicitly for a defence unit within the ICC Registry. It states that the ICC Registrar “shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute.” The Rule also provides that the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties. Although the Rule as it is formulated underlines the necessity of some form of organizational footing for defence counsel within the ICC as well as the value of some sort of international bar association, it is ambiguous on precisely how this should be achieved. From this the reader could conclude that the ICDAA only partly succeeded in bringing across its point at the 1–2 November Conference. A more optimistic conclusion would be that much is left to the initiative of defence counsel themselves, including building an “independent representative body of counsel or legal associations.” Although in her contribution Elise Groulx, President of the ICDAA, points out that it is difficult to organize the notorious individualists that defence lawyers are, this book may help to create more interest and support for such a body.

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