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## Book Reviews

Meron, Theodor. *War Crimes Law Comes of Age*. Oxford, New York: Oxford University Press, 1999. Pp. 310. £40.00

Both the substance and scope of international law were radically transformed in the twentieth century; and the laws of war were no exception. In the last decade, the pace of these changes has accelerated as the processes of formulating and implementing international norms have assumed an increasingly legal character. This legalization of international institutions generates more precise, obligatory prescriptions that are often interpreted and enforced by supranational, quasi-judicial bodies.<sup>1</sup> The trajectory of the laws of war, or international humanitarian law, over the century exhibits these developments and tensions. Professor Theodor Meron traces these developments in his magisterial compilation of essays, *War Crimes Law Comes of Age*.<sup>2</sup> He does not, however, assess the costs and benefits of this distinctive mode of institutionalization, nor does he grapple with the structural tensions inherent in the project of international law.

Substantial legalization of international institutions promises to strengthen the credibility of normative commitments, increase rates of compliance, and provide a highly rationalized mode of resolving disputes. The transformation of humanitarian norms from collective aspiration to 'hard law' also entails significant 'sovereignty costs', often concentrated in issue-areas that directly impact important national interests. International actors must, therefore, strive to fashion legal devices that maximize the putative benefits

while minimizing the costs of international legalization.

Professor Meron provides a compelling account of the evolution of humanitarian law. As Meron points out, the 'laws of war' have been transformed over the last century or so into 'humanitarian law'. That is, the principles of humanity have displaced notions of chivalry and state sovereignty as the organizing concepts in this area of law. The Lieber Code, inspired by the blood-drenched battlefields of the American Civil War, articulated humanitarian principles which served as the basis for a body of international law regulating the conduct of hostilities — known as 'Hague law' (Chapter 5). The Nuremberg Charter and the Genocide Convention attempted to fill significant gaps in formalized international law revealed by Nazi atrocities. In the aftermath of World War II, the international community also codified the 'Geneva law' protections for the victims of war, the sick, the wounded, prisoners, and civilians (Chapters 6–8). Following the widely publicized atrocities in Bosnia and Rwanda, the UN Security Council established ad hoc international criminal tribunals to punish individuals for serious violations of humanitarian law. These developments culminated in the fashioning of the Rome Statute establishing a permanent International Criminal Court to prosecute individuals for war crimes, genocide, and crimes against humanity.

These changes, Meron suggests, reflect shifts in the formulation and implementation of humanitarian law. First, the evolution of humanitarian law demonstrates an important shift from a system centred on inter-state interests to one centred on human rights. Meron points out that the principles of humanity have long played an important role in the laws of war (Chapters 1–4); and, indeed, he makes a compelling case that modern treaty law is merely a partial realization of

<sup>1</sup> See generally, 'Legalization and World Politics', 54 *Int'l. Org.* (2000) special issue 385.

<sup>2</sup> T. Meron, *War Crimes Law Comes of Age* (Oxford Univ. Press 1999).

these long-standing values.<sup>3</sup> Prior to the modern era, these values were, however, subordinated to the first principles of the law of war: state interests. Meron contends that fundamental changes in the nature of humanitarian law demonstrate the increasing importance of human rights concerns. He provides many interesting examples including the demise of *si omnes* clauses in humanitarian law treaties (at 247–248); and the humanitarian limitations on legitimate belligerent reprisals (at 176–183).

The second important shift documented by Meron is the emergence of international criminal tribunals. The evolution of these institutions, from Nuremberg to the Hague to Rome, illustrates that the mode of implementing humanitarian law has shifted from state-to-state diplomacy to individual criminal responsibility. These tribunals have also made significant contributions to the content of humanitarian law. Meron highlights two important examples: the emergence of rape as a crime in international humanitarian law (Chapter 11); and the increasing regulation of internal atrocities (Chapter 13).

The work's great strength is, indeed, its detailed explication of the doctrinal and institutional developments in the law of war since the American Civil War. Its weakness, on the other hand, is that it fails to evaluate these developments systematically. To be sure, Meron repeatedly suggests that the rise of 'humanitarian' law is a triumph. He does not, however, analyse whether these developments will make atrocities less likely or less frequent. Although this shortcoming does not detract from the importance of Meron's work,

it does reflect the unfortunate tendency of international lawyers to assume that international legalization of human rights norms will ameliorate human suffering. Yet this assumption remains unproven and largely unexamined. In this regard, Meron's analysis obscures, and perhaps avoids, the very debates that will determine the future of institutions such as the International Criminal Court. Does the transformation of aspirational human rights norms into 'hard law' improve human rights conditions? Do human rights principles provide a more effective normative basis for minimizing human suffering than state sovereignty or self-determination?

Unfortunately, Meron tacitly assumes that the answers to these questions is yes. The persistence of sovereignty as an organizing principle of world society; and the emergent opposition to all forms of international legalization will require more.<sup>4</sup> Despite substantial codification of international human rights norms, gross and systematic human rights abuses continue apace. Given this gap between normative commitments and actual state practice, the challenge is to fashion effective institutional arrangements — both international and domestic — to concretize and enforce these standards. Substantial legalization of international institutions promises to strengthen the credibility of normative commitments, increase rates of compliance, and provide a highly rationalized mode of resolving disputes. The transformation of human rights norms from collective aspiration to 'hard law' also entails significant 'sovereignty costs', often concentrated in issue-areas that directly impact important national interests. International lawyers must, therefore, articulate institutional arrangements that maximize the putative benefits while minimizing the costs of international legalization. Only then will the pursuit of transnational justice 'come of age'.

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<sup>3</sup> Exemplary in this regard is Meron's analysis of the humanitarian principles articulated in Shakespeare's writings. Meron concludes that 'Shakespeare's plays convey a message about international humanitarian law and our code of civilized behavior, in civil society as well as in war, that is more poignant, more powerful and more memorable than anything we can read in the language of international treaties or even customary law. Indeed, this message can still serve humankind as a model.' (at 120).

<sup>4</sup> For a thoughtful exploration of this theme, see Alvarez, *Multilateralism and its Discontents*, 11 *EJIL* (2000) 493.