

Book Reviews

'it is difficult to understand how unification and diversity can be reconciled'.

Benedict Anderson has claimed that the media is an important power in creating an image of community. Vian Bakir argues that in the development of a European identity, the media will not be a useful tool as European media agencies are too nationalistic to be a uniting force.

If identity is not the unifying force, it could perhaps be economics. This book offers some cautionary views. Even with an economic goal, consensus has been difficult to build and the effects less than desirable. David Willis notes that the economic agendas of Western European countries have had detrimental effects on the economies of Eastern European countries. Xiudian Dai's investigation of the failure of the European telecommunications policy provides an excellent case study of how economic policies based on self-interest can be self-destructive.

The essays, though eclectic, pull together to show both the complexity and the emptiness of the phrase 'unity in diversity'.

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Malekian, Farhad. *The Monopolization of International Criminal Law in the United Nations. A Jurisprudential Approach*. (2nd ed.). Stockholm: Almqvist & Wiksell International/Uppsala University, 1995. Pp. xiii, 221. Index. \$68; £48.

With two ad hoc international criminal tribunals at work and a draft for a permanent international criminal court on the agenda, any publication on international criminal law is bound to attract attention. However, this essay, which claims to present 'a jurisprudential approach', does not actually deal with international criminal law. In essence, the author laments the 'legal and political defects in the Charter and practice' of the United Nations.

The author compiles an impressive number of cases which demonstrate that the Security Council actually adjudicates important cases of international criminal law, despite the fact that as a political organ it is neither competent nor an appropriate body for such

a function. The privileged position of the permanent members of the Security Council, which violates the principle of sovereign equality, and the impact of national interests in their decision-making processes is seen as a monopolization of international criminal law. Since all serious violations of international law by states, according to the author, are governed by international criminal law, the author can easily demonstrate that the decisions as well as the inactivities of the Security Council are not determined by legal considerations but are dominated by the political interests of permanent members. There is nothing new in this. But discussing it in a perspective of developing, applying or implementing international criminal law may have the healthy effect of warning states, and in particular governments of smaller states, against the danger of conferring on the Security Council a jurisdictional competence in connection with an international criminal court, which is what happened with the establishment of the Tribunal for the former Yugoslavia. What is even more dangerous is that the same mistake is imbedded in the ILC draft for a permanent international criminal court.

Unfortunately, the author's conceptualization of international criminal law is somewhat dispersive. It seems to cover crimes of individuals, organizations and states alike as well as most parts of international law, in particular the law of state responsibility. His interpretations are quite peculiar at times. Thus, when he concludes that under Chapter VII of the UN Charter 'the five permanent members of the Security Council not only have the power of decision on international criminal matters but are also the authoritative "international criminal tribunal" determining the precautionary punitive measures against a guilty party' (p. 102), he obviously takes the law of collective security as enforcement machinery of the system of international criminal law, complaining only of its political deformation and monopolization. However, he does not make a distinction between the law of state responsibility and collective security, an area of concern which has recently occupied the ILC in connection with determining legal competences in relation to international crimes of states and distinguishing compe-

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

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

Bernhard Graefrath

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

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

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

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

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

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

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

Bernhard Graefrath

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

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