

Book Reviews

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

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

Bernhard Graefrath

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

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

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

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

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

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

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

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