Human Rights and International Humanitarian Law: Challenges Ahead

Norman Weiß and Andreas Zimmermann (editors)

Edward Elgar Publishing, 2022, pp 292, ISBN 9781839108266

In today's increasingly multipolar and illiberal world order, *Human Rights and International Humanitarian Law*, edited by Norman Weiß and Andreas Zimmermann, presents a topical and varied analysis of the interplay between the titular 'distinct, yet closely interrelated, fields of international law'.[1] Including the editors' introductory remarks, the volume contains 12 essays from a diverse range of relevant scholars and practitioners. It aims to be 'inclusive' and welcomes contributions from 'all perspectives in legal scholarship'.[2] Accordingly, the book does not purport to provide a cohesive thesis. Instead, it seeks to canvas the interaction between the two fields of law in four parts.

Part I focuses on the interaction between international human rights law ('IHRL') and international humanitarian law ('IHL') during ongoing situations of armed conflict. The first two chapters focus on non-state armed groups: Møgster considers states' responsibility for providing arms while Niya examines the protections IHRL and IHL offer to members of these organisations. The final chapter in this part discusses the role that the United Nations High Commissioner for Refugees ought to play in protecting refugees during situations of armed conflict.

The second part presents two views on the extraterritorial application of IHRL. Both chapters consider the power to derogate within IHRL treaties but take contrasting approaches. Wiesener presents three interpretative models of derogation '[i]n order to overcome the apparent strictures of derogation clauses', arguing that a narrow approach would prevent states from responding to 'genuine emergencies during their military operations abroad.[3] By contrast, Wiczanowska argues that the European Court of Human Rights ('ECtHR') should instead be more strict in its interpretation

[1] Norman Weiß and Andreas Zimmermann (eds), *Human Rights and International Humanitarian Law: Challenges Ahead* (Edward Elgar Publishing, 2022) The eBook version is priced from £20/$26 from eBook vendors while in print the book can be ordered from the Edward Elgar Publishing website.
[2] Weiß and Zimmermann (n 1) series introduction.
[3] Ibid 93–4.

of the relevant derogation clause, arguing that the Court's current approach contradicts the plain meaning of the text.[4]

Part III's contributions focus on the post-conflict period. The chapters discuss a diverse range of topics, including intersectional approaches to reconciliation, the merit of the International Criminal Court's ('ICC') efforts to eradicate impunity in Africa, and lessons IHL can draw from IHRL when approaching the compensation of victims in armed conflict. The final part features two new approaches that may aid in the reform of IHL and IHRL: the increasing use of the inter-state complaints procedure within the *International Convention on the Elimination of All Forms of Racial Discrimination*,[5] and jurisprudential recognition of the similarities between Islamic legal scholarship and IHL.

As alluded to above, the disparate nature of the contributions simultaneously strengthens and detracts from the text. On the one hand, the individual contributions are well-reasoned, engaging, and present novel perspectives on well-explored issues. In particular, the juxtaposition of Wiesener and Wiczanowska's contradictory perspectives in Part II ought to be praised, as together, they provide a fascinating overview of the debate. However, prospective readers are advised that the diversity of these contributions results in the volume lacking a unifying argument. This fact is particularly apparent during the final two chapters, which consider potential reforms to IHL and IHRL that do not relate to the issues explored in prior parts. However, Weiß and Zimmerman do not purport to provide a singular thesis, and this lack of cohesion does not detract from the comprehensive analysis presented in the individual chapters.

Further, unfortunately, this edition of the text features several errors that distract, and, at times, detract from the analysis. While some of these errors are superficial,[6] two are more concerning. First, when summarising Møgster's chapter, the editors state that 'unlike human rights treaties' the Geneva Conventions include obligations 'to ensure respect' for provisions.[7] However, Møgster argues the exact opposite; he correctly observes that '[s]imilar obligations to respect and *ensure* are included in

[4] Ibid 110.
[5] Opened for signature 21 December 1965, 660 UNTS 210 (entered into force 4 January 1969).
[6] See, eg, Weiß and Zimmermann (n 1) 26, 37, 49, where the acronym 'NSAG', rather than 'ANSA' is incorrectly used.
[7] Ibid 19.

human rights treaties',[8] and devotes a considerable proportion of his analysis to exploring these exact obligations. Second, when outlining the principle of complementarity within international criminal law, Sithebe argues that the ICC can only proceed where domestic courts are 'unwilling *and* unable to prosecute',[9] rather than 'unwilling *or* unable',[10] the correct test. This apparent misreading of the complementarity principle detracts from the author's conclusion that 'the Rome Statute per Article 17 provides a stringent threshold before the ICC can assume jurisdiction over that of domestic courts'.[11]

However, aside from these specific areas, Weiß and Zimmermann's volume presents a compelling and thoughtful overview of the relationship between IHRL and IHL. While the sheer variety of its contributions has its detriments and the text would benefit from further revisions, the quality of the individual chapters ensures that Weiß and Zimmerman's text is a valuable contribution to the well-explored field of comparative analysis between human rights and international humanitarian law.

Finlay McKeown[*]

[8] Ibid 14 (emphasis added). See, eg, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171.

[9] Weiß and Zimmermann (n 1) 167 (emphasis altered).

[10] See *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 17(1) (emphasis added). See also *Prosecutor v Gaddafi and Al-Senussi (Decision on the Admissibility of the Case Against Saif Al-Islam Gaddafi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/11, 31 May 2013) 89–90, where the Court relied on Libya's *inability* to prosecute Gaddafi to determine that it did not need to rule on whether Libya was *unwilling* to do so. This directly implies that Libya's inability alone satisfies the complementarity test of article 17(1).

[11] Weiß and Zimmermann (n 1) 174 (emphasis omitted).

[*] BA/LLB (Hons I) (University of Tasmania); Co-Editor of the *University of Tasmania Law Review* for 2023.