Book Reviews

Karen J. Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*, Oxford University Press: Oxford and New York 2001, pp. i-xxvi and 1-258

Karen J. Alter undertakes the very challenging mission of tracing the transformation of the European legal system from the creation of a very limited and weak European Court of Justice in 1951 to 'an international rule of law that actually works … where violations of the law are brought to court [and] where legal decisions are respected.' (p. 1)

The methodology applied in this study is very complex, but more significantly, it is very neutral and unbiased. The reader gets the impression that the author is examining the legal phenomenon of an integrating Europe under a microscope in a laboratory, striving for perfection. Any reservations that the applied method is nothing more than comparative political analysis can easily be disproven, since the value of this piece of work lies in its usefulness to both political scientists and lawyers. Even though the political science approach prevails, it is harmoniously complemented by legal aspects.

The book's vividness comes from involving real-life actors – there are countless references to interviews conducted between 1992 and 1995 with long-term participants in the process of the legal transformation of Europe. These elements are invaluable tools in understanding the extraordinary legal nature of the European Union.

Chapter One provides an overview of the gradual expansion of the Court's mandate, explaining the preliminary ruling mechanism as well as the importance of establishing the doctrines of direct effect and supremacy. The author emphasizes the significance of the involvement of private litigants and also recounts debates that went on when these doctrines were first introduced. Indeed, the road to supremacy has been rough. Chapter Two demonstrates a political science approach by describing the rivalry between the European Court of Justice and national judges in the frame of a comprehensive study of judicial interests.

Chapters Three and Four are dedicated to the in-depth analysis of the German and French legal integration through the lens of their respective legal traditions. This segment of the book deserves the highest praise because the reader is rewarded with a very accurate, clear and thorough depiction of doctrinal changes, landmark decisions and debates. The author classifies these developments into rounds of legal integration and provides very useful summary tables of achievements. Moreover, this impeccable analysis is remarkably condensed into only 120 pages.

Chapter Five deals with the provocative doctrinal precedents of the ECJ, which contributed to the establishment of the Court's present status. The reader also gets an insight into the reactions and behaviors of the national governments in gradually accepting the supremacy of European law.

Finally, Chapter Six summarizes the political process of the transformation of the European legal system and the emergence of an international rule of law in Europe, which also made the European Court of Justice a very influential legal body.

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In her conclusions, the author claims that being part of the decision-making process is a far easier way of promoting one's interests than boycotting European integration, since the expansion of EC authority seems to be persistent.

This book is very useful to both lawyers and political scientists in understanding the development and nature of the European legal order. A very sophisticated work with a great amount of valuable research.

Gabor Erdi

Bruno Simma (ed.). *The Charter of the United Nations: A Commentary*, 2nd ed., Oxford University Press: Oxford and New York 2002, 2 volumes, app. 2,000 pages

Antonio Cassese, Paola Gaeta and John R.W.D. Jones (eds.)., *The Rome Statute of the International Criminal Court*, Oxford University Press: Oxford and New York 2002, 3 volumes, app. 2,400 pages

In mid 2002, two massive commentaries were published on two vital international institutions, the United Nations and the newly created International Criminal Court. The commentaries are edited and written by a collection of prominent international law scholars, most hailing from Europe. That continent, after centuries of nationalism, tyranny, xenophobia, war, and despair, overcame its troubled past in the second half of the 20th century, and established a functioning union of nations, proving that cooperation and compromise can make everyone more prosperous and more secure. The 'old' European nations who were weaned on conflict have developed a surprising respect for international institutions. It is, thus, not surprising that European scholars have taken the lead in the 21st century in the examination and promotion of international law.

The first of these works deals with the nucleus of international institutions, the United Nations. The second edition of *The Charter of the United Nations: A Commentary*, is an update of a 1995 version, originally published in German. Therefore, many of the analyses are written by German-speaking scholars from Germany and Austria. The translations are excellent, however. The editor, Bruno Simma, is the German judge on the International Court of Justice in The Hague, since 6 February 2003.

The collapse of the Soviet Union and the end of the Cold War moved the United Nations from its peripheral position in international relations to its intended central role of maintaining international peace and security.

Nevertheless, in the Fall of 2002, the American President, George W. Bush, announced that the United Nations was facing irrelevance because it would not force Saddam Hussein to disarm. For six months the eyes of the public were focused on Security Council debates on whether Iraq complied with UN resolutions or not. 56% of Americans polled said they would support their President embarking on a war against Iraq, if the United Nations Security Council authorized the attack. 70% of the

British opposed a unilateral attack. Demonstrations conducted throughout cities of the world demanded 'No war!' These were no ordinary anti-war protests. The call for war was accompanied by a new proviso, 'No war, without the UN.'

As is well known, America went to war without authorization by the UN Security Council under Chapter VII of the Charter and against the wishes of many of its traditional allies. In Iraq, it found neither evidence of an involvement in the 9/11 attacks on the World Trade Center in New York, nor any weapons of mass destruction. Moreover, the American troops are finding it hard, if not impossible, to bring peace and order to Iraq, let alone democracy and prosperity. As a response, President Bush would now like to get the UN back into the game.

Irrelevance? To lawyers, politicians, and the general public, the United Nations and international law have never been so relevant. The United Nations has become the focus not only of scholars, but of the public, as the legitimate defender of peace and justice worldwide. It is significant, therefore, that this 2002 edition of *The Charter of the United Nations: A Commentary* has an updated discussion in Chapter Seven about the enforcement powers of the Security Council.

The analysis outlines the history of the use of force as authorized by the Security Council in the early 1990s. The Permanent Five of the Security Council clearly have grappled with the Council's new role of enforcing peace and dealing with the atrocities committed by tyrants. Thrilled at the prospect of finally being able to realize the goals of the founders, the Permanent Five in the early 90s took on Iraq and Somalia. Unable to agree on Yugoslavia, the UN fell back, as NATO took on the role of protecting Kosovo's Albanians. The fits and starts of a novice institution were to be expected. The Security Council is still attempting to find a workable role in peacekeeping. Where the conflict between the Five over the recent Iraq crisis will take the Council, is yet to be known. It may be that like the crisis in the Balkans in the mid 1990s, the United Nations will indeed have to come back after the fact, after the failure to compromise, and to take a role legitimatizing armed force, assuring disarmament and guaranteeing humanitarian needs. The United Nations and its Charter are a living growing entity in the international arena that must continue to stay relevant through each conflict, each success and, yes, each mistake.

The commentary's analysis of Article 29 and the powers of the Security Council to establish subsidiary organs will be the pages to turn when contemplating what role the UN may take at the end of the hostilities. This chapter looks at the use of UN peacekeeping forces, the establishment of the two international criminal tribunals of Yugoslavia and Rwanda and at the UN Compensation Commission. The author examines pertinent decisions from the International Court of Justice and the Tribunals to weigh the legitimacy or 'constitutionality' of the actions of subsidiary organs of the Security Council.

The second edition of *The Charter of the United Nations: A Commentary* is a serious legal analysis of the United Nations and its UN Charter. In the opening years of the 21st century, when the United Nations has reached out to realize its intended role as peace keeper, and has been called on to stem the tide of manmade humanitarian tragedies, this work will be important to legal scholars and practioners alike.

The two-volume commentary walks through the UN Charter, article by article. Each chapter, dedicated to an article of the Charter, is well organized and begins with a restatement of the article to be examined. Boxed below this is a table of contents of the chapter. Following the contents is a useful bibliography. Each commentary then begins with an overview of the article and a look at the history of the draft. Finally, the authors provide an in-depth and sentence-by-sentence analysis of the article, complete with examples of actions taken by the United Nations, and where appropriate, comments from other scholars.

Because of the ever more rapidly changing interpretations of the Charter, readers will occasionally have to resort to current periodicals for the latest information and discussion. However, for an outstanding and accessible overview of the UN Charter, Justice Simma's commentary is an important addition to the library of any scholar in international law or to any political scientist working in international relations and institutions. Unfortunately, as is too often the case, the price tag of £250 / US $375 will prevent many non-institutional customers from buying their own copies. Any hope of a paperback version?

Professor Cassese's three-volume commentary, *The Rome Statute of the International Criminal Court*, is a state-of-the-art look at international criminal law and its new forum for prosecutions. Published to coincide with the effective date of the International Criminal Court in July 2002, this work is an up-to-date analysis of the Court before its first cases reach the bench. At the time of writing this review, no prosecutor had yet been selected and the Court was not expected to try its first case until 2004. *The Rome Statute of the International Criminal Court* will be of interest to scholars and a handbook for practioners as the first defendants are indicted.

The international community considered the idea of a permanent court to prosecute war criminals at the time of the inception of the United Nations and the Genocide Convention (1948). Following in the footsteps of the post-World War II Nuremberg Trials, an international criminal court was expected to act as a permanent institution whose task it would be to try individuals, including political leaders, for the crimes that are the hallmark of tyrants – genocide, torture, war crimes, and crimes against humanity.

Due to the division that severed the wartime allies, the East and the West, the idea of an international court lay fallow on the chopping block of the UN's International Law Commission during the Cold War. As a result, the crimes of Pol Pot, Idi Amin, Saddam Hussein, Augusto Pinochet Ugarte went unexamined as well as unpunished. While some national courts and parliaments addressed crimes of corruption or embezzlement committed by leaders of former regimes, the mass atrocities of millions murdered, raped, starved and mutilated were committed with impunity. Few new regimes had the ability or the will to prosecute the crimes of their predecessors. Until 2001 and the indictment of Slobodan Milosevic before the International Criminal Tribunal of Yugoslavia, no standing leader in history had ever been indicted for war crimes or genocide.

The end of the Cold War was greeted with a spate of articles congratulating the 'new world order' and the victory of democracy. The emerging States arising from years of oppression in South America, Africa, and Eastern Europe assailed the

crimes of past leaders. However, to the horror of the international community, an outbreak of gruesome mass atrocities took place soon after the victory celebrations. The end of the Soviet Union, South American military juntas and South African apartheid was not the end of tyranny.

The Security Council took action to stop the national bloodbaths – placing embargoes and sanctions on the offending States and sending in peacekeeping troops. The Security Council threatened warring parties, warning them of their obligations under international humanitarian law and international criminal law. However, when all actions failed to stop or stem the killing, the revitalized Security Council of the 90s was unable to agree on the need or legality of humanitarian intervention in Rwanda and Yugoslavia. In Rwanda in 1994, the Hutus massacred 800,000 within four months. The deaths in Bosnia and Kosovo would reach 200,000. Shocked and diminished by its impotency, the Security Council voted to establish the first international criminal courts since Nuremberg.

The establishment of the International Criminal Tribunals of Yugoslavia and Rwanda opened the possibility for a re-examination of the role of the international community in international justice. In 1998, the UN Member States signed the Rome Statute creating the International Criminal Court. The Court was scheduled to become operational after 60 members ratified the Statute. The Statute was ratified in less than four years. The establishment of the International Criminal Court is *the* most significant achievement of the international community since the prohibition of the use of armed force by the UN Charter in 1945 and has the potential to become the most important global international human rights institution in history. Unfortunately, the euphoria felt by this accomplishment is greatly diminished by the refusal of the United States to take part in the process.

The American administrations generally have not been supportive of a permanent international court with jurisdiction to try American citizens. U.S. presidents have acquiesced to the lobby of conservative politicians who oppose encroachment on U.S. sovereignty. After being severely wounded by the 1986 defeat in the suit filed by Nicaragua against the Reagan administration in the International Court of Justice, successive presidents have refused to be exposed to liability in another international court. However, while the Clinton administration merely refused to participate in the Court, the Bush administration in 2002 initiated an active campaign to undermine both the Treaty and its Court. The present administration has 'unsigned' the Rome Statute (signed by President Clinton), threatened to end all UN peacekeeping operations if American troops are not awarded immunity and to cease military funding to participating members. In addition, America's considerable monetary and investigatory resources are being denied to the Court.

While examining these pre-operational scuffles over the Court, a look at Professor Cassese's commentary is most useful. The significant issues pertaining to this struggle between the United States and the members of the ICC include questions as to the limitation of the Court's jurisdiction, and the Court's jurisdiction over UN peacekeeping troops and the Security Council's Resolution 1422. The legality of Article 98 bilateral agreements signed between the United States and 24 States, obstructing extradition to the ICC, will certainly be a question for the Court. Squabbles over these questions have been debated before the Security Council and

the European Council and may eventually be addressed to the ICC itself or even to the old court of The Hague, the International Court of Justice. These issues that may be central to the future viability and effectiveness of the ICC have been dealt with in great detail in the book.

The *Rome Statute of the International Criminal Court* is not only a thorough analysis of the ICC and the Rome Statute, a worthwhile endeavor in itself, but is an exciting and interesting coverage of international criminal law. This three-volume collection examines the large body of case law developed from the Nuremberg and Tokyo trials to the International Criminal Tribunals. The work looks at the procedures utilized by past international criminal courts and suggests procedural pitfalls to be avoided by the ICC. The authors comment on the legislative and political history of the Court and discuss the established law and the ways that the Rome Statute has broken new ground. Especially useful to practioners and scholars, the commentary assesses the expected effectiveness of the Statute in enforcing international criminal law. The discussions comparing and contrasting the common law and the civil law treatment of criminal law and procedure are especially interesting and helpful. Conveniently, the third volume contains a copy of the Rome Statute, the Rules of Procedure and the Elements of Crimes.

The *Rome Statute of the International Criminal Court* is exceptionally well written, reflective of the clear and eloquent writing style of its editor, Antonio Cassese. Professor Cassese is editor-in-chief of the new Oxford University journal, *Journal of International Criminal Justice*, published since April 2003. A scholar and former head judge of the International Criminal Tribunal of Yugoslavia, Professor Cassese has brought with him into this project a very impressive selection of well-known international scholars, some being his own Italian protégés. The Italians, under Cassese's leadership, make up a growing circle of gifted scholars in the field of international criminal law. Again, as in Simma's UN Commentary, European scholars predominate, though a few American (two from the United States and one from Canada), Asian and African writers are also included. Many of the contributing scholars to this commentary have written articles and books addressing the development of international criminal justice and have followed the birth of the ICC since the mid 1990s.

Each scholar is given a byline and the first pages of the work list the authors and their accomplishments. The second section follows the useful European tradition of listing all cases and legislations under consideration – international, regional and national -- and their pages of referral. Each chapter is complete with footnotes and ends with an impressive bibliography – a gift to the researcher.

The *Rome Statute of the International Criminal Court* is the current bible for international criminal law. Last but not least, the chapters are very readable. Professor Cassese and his colleagues should be congratulated on their efforts to make international criminal law accessible to scholars and students. Unfortunately, another deep pocket is needed to pay for this collection or the digestion of these interesting readings will require the sedate surroundings of libraries.

Maureen B. Fitzmahan