

BOOK REVIEWS

Cases and Materials on International Law by Professor D. J. Harris (4th ed. Sweet & Maxwell, London, 1991) pages v-xlviii, 1-1017, index 1019-1040. Price \$80.50 (soft cover). ISBN 0 421 37480 2 (soft cover).

There never was going to be a right time for Professor D. J. Harris to publish the fourth edition of his impressive text *Cases and Materials on International Law*. He refrained from doing so for as long as possible and when his revised manuscript finally was submitted the tumultuous changes in world events swept past him blindly. The manuscript must have been submitted not long before Iraq invaded Kuwait because Harris was able to include¹ a brief eight-page appendix covering all the Security Council Resolutions concerning the hostilities up to and including Resolution 688 (3 April 1991) in which Iraq was condemned for 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas ...'. The 159 members of the United Nations listed in Appendix II have increased to 175.² And lastly but perhaps mostly importantly for future developments and directions in international law, the U.S.S.R. is no longer.

But these are perhaps pedantic observations in light of Harris's extremely comprehensive text and his accessible and readily understandable style, both of which remain intact. The first eight chapters and chapter 10 are largely unchanged apart from the replacing of outdated case excerpts and article extracts with more recent examples. This updating is also reflected in the footnoting. Specific issues of international law that were once of particular importance have now been deleted or reduced to a mere mention in accordance with a decline in their relevance, e.g. the Mandated and Trust Territories section found in Chapter 4 (on 'Personality'). Conversely, more attention has been given to issues that have become increasingly important, e.g. the Antarctic Treaty and the 1988 Convention of the Regulation of Antarctic Mineral Resources Activities in Chapter 5 (on 'Territory'). As well, the flurry of cases that arose in the 1980s as a consequence of the 1978 Iranian Revolution is mirrored in a much expanded Chapter 8 ('State Responsibility'). Finally, changes to Chapter 7 ('The Law of the Sea') reflect various developments in the law of the sea following the adoption of the 1982 Convention. These changes are basically cosmetic.

¹ Harris acknowledged his publishers in the text's preface for this: Harris, D. J., *Cases and Materials on International Law* (4th ed. 1991) v.

² Seven states joined the United Nations in September 1991 and another nine joined in February 1992.

The most significant changes in Harris's text are in Chapter 9 ('Human Rights'). The European Convention on Human Rights, the core of this chapter in previous editions, has been dispensed with and replaced by the Universal Declaration on Human Rights. Harris's reasons for this are not modest. He observes that the jurisprudence covering the European Convention on Human Rights, is now so extensive that the convention is best considered in specialist books³ — he is co-author of one of those books.⁴

The chapter also includes extracts of other human rights instruments including, *inter alia*, the International Covenant on Civil and Political Rights 1966, the International Convention on the Elimination of All Forms of Racial Discrimination 1966, the American Convention on Human Rights 1969 and the African Charter on Human Rights and Peoples' Rights 1981.

While Harris is certainly far less Eurocentric in this chapter than in previous editions he still displays a preference for European examples and the bulk of new additions derive from the Americas. Examples from Africa are glaringly few while those from Asia are noticeable for their absence. This is perhaps due to the fact that more States in Europe and the Americas are parties to the relevant human rights treaties than those in Africa or the Asian region but Harris makes no attempt to discuss this disparity.

Harris does examine the disparities between the 'North' (developed world) and the 'South' (developing world) and the dissatisfaction with the international legal *status quo* expressed by the South, but fails to include any specific extracts of articles written by a jurist from the developing world to represent this view.⁵ In this way Harris manages to circumvent the political concerns that are so intricately intertwined with international issues. This avoidance of politics is a serious shortcoming given the rising importance of the current philosophical debate in international law focusing on the politics/law dichotomy.⁶ However he does venture into some contentious political waters when he reflects upon the 1986 Declaration on the Right to Development which he describes as a 'controversial but important example of a claimed "third generation" or "solidarity" human right'.⁷ But he limits this venture to the not-so-risky shallows of the safe liberal viewpoint in his preference for the 'balanced view' of James Crawford on the topic as opposed to the more conservative views of Paul Sieghart; conspicuously absent is the view of the keenest proponents of the right to development.

But these accommodating attempts fall far short of considering the views of half the global population with the 1953 Convention on the Political Rights of

³ Harris, *op. cit.* n. 1, 601.

⁴ Bailey, S. H., Harris, D. J. and Jones, B. L., *Civil Liberties: Cases and Materials* (3rd ed. 1991).

⁵ For a good example of the 'South's' view, see: Bedjaoui, M., 'Poverty of the International Order' in Falk, R. and Black C. (eds), *The Future of International Legal Orders: Trends and Patterns* (1969) 152.

⁶ For some detailed analyses of this area see, amongst others: Koskeniemi, M., *From Apology to Utopia: The Structure of International Legal Argument* (1989); Kennedy, D., 'The Sources of International Law' (1987) 2 *American University Journal of International Law and Policy* 1; Purvis, N., 'Critical Legal Studies in Public International Law' (1991) 32 *Harvard International Law Journal* 81.

⁷ Harris, *op. cit.* n. 1, 692.

Women and the 1979 Convention on the Elimination of Discrimination Against Women receiving only scant mention.⁸ Likewise in his praise for the increasingly global focus given to human rights, which in Africa culminated in the 1981 African Charter on Human Rights and Peoples' Rights, there is no reference to the subsequent detriment often suffered by women due to androcentric formulations and interpretations of rights.⁹

Certainly the changes Harris has made to Chapter 9 are welcome. The new edition reflects international law more adequately in the global sense rather than the previous relatively narrow European version of human rights. Further it highlights some areas, such as the right to development, which will be of increasing importance during this decade and into the next century, especially if action remains delayed.¹⁰

Chapters 11 (on 'The Use of Force') and 12 (on 'Arbitration and Judicial Settlement of Disputes') have been substantially amended following the famous, to some infamous, *Nicaragua Case*.¹¹ The *Nicaragua Case (Merits)* dominates Chapter 11 with an impressive number of paragraphs extracted to cover the topic comprehensively. Harris discusses, *inter alia*, the transformation of Article 2(4) of the UN Charter to customary international law, the threat of force, collective self-defence against an armed attack, the principle of non-intervention and indirect use of force. Brief mention is also made of humanitarian intervention as grounds for the use of force, with extracts from the UK Foreign Policy Document No. 148 included, but this principle is readily dismissed with the observation that '[i]f a right of humanitarian intervention . . . did exist before 1945, the current reluctance of states to rely upon it suggests it has not survived Article 2(4), UN Charter'.¹² This view strongly reflects the prevailing realist approach to international law. The remaining segment of the chapter is more or less unaltered.

The *Nicaragua Case (Jurisdiction and Admissibility)*¹³ is discussed in Chapter 12 with the paragraphs extracted focusing on the ambiguity of Nicaragua's 1929 Declaration accepting the Optional Clause of the then Permanent Court of International Justice and the corresponding 'right' of the U.S. to disregard its own six month notice clause.

In both these chapters the *Nicaragua Case* is an important addition with far-reaching consequences, but the political ramifications arising out of this case are ignored by Harris. It is at this point one must ask two questions. Is there room for politics in an international law text book? And, does excluding politics undermine the validity of that text? Neither question is easy to answer.

⁸ *Ibid.* 604. For an insightful view on the controversy surrounding CEDAW, see: Clark, B., 'The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women' (1991) 85 *American Journal of International Law* 281.

⁹ For a detailed examination of this 'oversight', see: Charlesworth, H., Chinkin, C. and Wright, S., 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.

¹⁰ As is likely to be the case given the priority given to assisting Eastern European states at the expense of the increasingly neglected lesser developed countries.

¹¹ *Nicaragua Case (Case concerning Military and Paramilitary Activities in and against Nicaragua): (Jurisdiction and Admissibility)* (1984) I.C.J.R. 392; (*Merits*) (1986) I.C.J.R. 14.

¹² Harris, *op. cit.* n. 1, 873.

¹³ (1984) I.C.J.R. 392.

Harris has been adroit in avoiding political issues by placing the materials to be studied largely in a vacuum. In Chapter 12 after the extract of the *Nicaragua Case* he states simply that '[i]n 1985, the U.S. terminated its optional clause declaration'¹⁴ but does not discuss the possible repercussions of such a move. Despite avoiding overt politics, Harris has always adopted an underlying theme sympathetic to what Prosper Weil disparagingly refers to as the 'higher moral "values"'¹⁵ of international law accepting the UN Charter as not 'only a treaty'¹⁶ but as a premise upon which state interrelationships are established. This tension perhaps reflects the schism between naturalist and realist discourse.

But politics can never be excluded especially when one considers the enormous changes it has wrought over the past decade. Even when writing apparently 'neutrally' Harris does so from a western, capitalist-oriented perspective which is inherently political. While it is arguable that this then justifies the inclusion of differing political perspectives to counterbalance the not-so-subtle political bent of the text, one is then confronted with the more practical problem of sheer volume. Harris's text is more than 1000 pages long — a most forbidding size — and to add much more would make the text too cumbersome and too intimidating. Time perhaps for it to become two volumes?

Harris presents his usual comprehensive and well selected collection of materials from which a student can draw the information she or he wants and/or needs. The surrounding and intertwined politics can easily be incorporated into the material either within the lectures or by the individual student *but it can never be ignored.*

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¹⁴ Harris, *op. cit.* n. 1, 950.

¹⁵ Weil, P., 'Towards Relative Normativity in International Law' (1983) 77 *American Journal of International Law* 413, 422.

¹⁶ *Ibid.* 425.

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