

Book Reviews

Giuseppe Nesi/ Luca Nogler/ Marco Pertile (eds): *Child Labour in a Globalized World*

Ashgate Publishing Limited, 2008, XXIV + 467 pages, ISBN 978-0-7546-7222-7

The problem of child labour is one of the most intractable problems of general international law in this millennium. Across all continents, but particularly South America, Asia and Africa millions of children are being forced to undertake work that is dangerous or likely to result in significant hazards to health; children are being forced to endure slavery or practices similar to slavery, including *inter alia* debt bondage, serfdom and forced or compulsory labour. It is plain that the evil of slavery still exists in sub-Saharan Africa, especially Niger and Mauritania and also in the Sudan. Practices akin to slavery are found in many parts of the world. Child prostitution and the use of children in pornography or for pornographic performances is now common place; to eradicate these forms of degradation requires international law to develop new techniques and create and build new partnerships and involvement with the civil society: the “world wide web”, where the use of children for pornographic purposes has reached epidemic proportions, is a lawless jungle that is seemingly impossible to control effectively. Trafficking of children for prostitution and sex across frontiers on all continents, including Europe is now controlled by international gangs whose tentacles spread also to use of children to traffic drugs. The use of child soldiers in non-international African conflicts (Liberia, Northern Uganda and the Democratic Republic of the Congo) is well documented.

In recent times, the debates on these and related issues and solutions to the multi-dimensional problems posed by these activities has attracted the attention of economists, social scientists, historians and now lawyers. The imperative to eradicate child labour has never been more urgent. Accordingly, the publication of this book comprising a series of

essays by a wide variety of international legal scholars and practitioners is both timely and most welcome. The time is ripe to give this matter the close attention of lawyers that it deserves. This book developed out of a research project launched in 2004 at the Department of Law at the University of Trento on “The supervisory System of the ILO and Child Labour”. The focus on the International Labour Organization (ILO) was obvious: it is the leading international player in setting standards and implementing them in the field of labour law, together with its technical cooperation activities. There are clearly other important players in this field and the synergies between these other actors and the ILO was an important research objective.

The carefully edited book is divided into four Parts: Part I covers the standard setting activities of the ILO; Part II deals with implementation and interaction with other international actors; Part III provides three case studies of Asia, Africa and South America; Part IV consists of an “Epilogue” authored by the very distinguished jurist, Sir Bob Hepple. In addition, there is an extremely valuable “Introduction” written by Marco Pertile. To try and weave together successfully the main strands of a book and to give focus and insightful direction to the whole project is by no means an easy task, but Pertile has achieved this admirably. Pertile highlights the three main multi-dimensional features of the research on child labour: “subjective multi-dimensionality”, “causal multi-dimensionality” and “multi-dimensionality of solutions”; the provision of this theoretical underpinning of the whole research project gives it sharp and adaptive focus. The text is accompanied by a “Preface”, various Tables, an appropriate Appendix, Bibliography and a very useful and clear Index.

The selection of materials for the different Parts is well judged and there is an obvious correlation and interaction between the different elements, together with a logical progression. Thus, the Chapters on Standard Setting in Part I comprise not only an overview of the ILO’s activities in the Eradication of Child Labour, but also the seminal Convention No. 138 (Limiting the Minimum Age), the ILO Declaration on Fundamental Principles and the Right to Work and the ground breaking Convention No. 182 and Recommendation No. 190 (Worst Forms of Child Labour); there also specific, strong and detailed expositions of the four worst forms of child labour dealt with by Convention No. 182: (1) “Slavery and Practices Similar to Slavery” (article 3 (a)); (2) “Prostitution, Pornography and Pornographic Performances” (article 3 (b)); (3) “Use of Children in Illicit Activities” (article 3 (c)); and, (4) “Hazardous Work” (article 3 (d)). The essays comprising this Part I expose in

great detail and with considerable analysis the ILO's performance as a standard setting agent in respect of these issues for the international community. The topics chosen are both apt and clearly rooted in a theoretical framework.

By contrast, Part II focuses on various international actors involved in the articulation and implementation of world wide child labour standards such as the work of the UN human rights treaty bodies (especially the Committee on the Rights of the Child); the World Bank, the EU (which has had child labour on its Agenda for a long time), and the WTO. These four actors are not the only ones to play a role in this dimension, but they are probably the leading contenders and thus merit special attention. In addition, Part II examines the effectiveness of two particular weapons that have been used in implementing child labour standards: "Criminal Law" and "Social Clauses", which are one of the most controversial yet important issues in international labour law in general and free trade agreements in particular. The authors of this Chapter (Fabio Pantano and Riccardo Salomone) make it clear that, although there is very little prospect of a "General Social Clause" in GATT, there has been a steady development of "Social Clause" practices and that references to fundamental labour rights are being incorporated into regional and bi-lateral arrangements with increasing frequency.

Part III of the book consists of a series of case studies of particular regions of the world: Africa, Asia and South America where violations of child labour standards are more plentiful and, when they occur, more egregious than elsewhere. The Chapters on Asia and Latin America are more generally "continental" in character, whereas the Chapter on Africa is concentrated on one particular country, Mali. In the context of this book, such a focus on one African country may well be justified, but in such a case the editors should have explained why the country of Mali had been singled out for particular attention. This reviewer could not find any principled justification for such a limitation.

The final Chapter of the book, the Epilogue by Bob Hepple, asks the question whether: "the Eradication of Child Labour is 'Within Reach'". Professor Hepple in his hugely authoritative and penetrating evaluation reckons that, despite all the achievements in the fight against child labour, these are not guaranteed and serious challenges remain. Professor Hepple singles out the following features: (1) the existence still of millions of child labourers; (2) reluctance of states to introduce a minimum wage for entry into employment; defective application of international standards and lack of effective enforcement of obligations

assumed; (3) lack of education opportunities-children in many countries are not getting to school; (4) poverty remains a root cause of child labour in developing countries; and (5) the rights of the child have not yet become embedded in the world trade systems. It is hard not to disagree with Bob Hepple in this evaluation. In conclusion, Professor Hepple outlines his alternative strategies.

This is a very impressively researched work. The editors have assembled a distinguished set of practitioners and scholars to shed light on the enormously complicated issue of child labour. The work will certainly contribute to the corpus of knowledge on the role of law in the fight to eradicate child labour. The book deserves to be read by all concerned in international labour law, children's rights generally and child labour specifically: academics, researchers, practitioners and policy-makers will benefit from a close study of this work.

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Janin Hunt/ André Kahlmeyer: Islamic Law

McFarland & Co. Inc., 2007, viii + 207 pages, ISBN 978-0-7864-2921-9

The book *Islamic Law* by Janin Hunt and André Kahlmeyer gives an introduction to Islamic Law aiming to encompass the whole history of the subject from the time of the prophet Mohammad to the present. Among the multitude of literature on Islamic Law the book is distinguished by its clear commitment to a general audience.

It is structured in nine Chapters (Fundamentals of Islam, Traditional *Sharia* Law, The *Sharia* and its Jurists, Ottoman Law in the Golden Age of the Empire, The *Sharia* under *Wahabi* Puritanism and IncurSIONS by the West, The *Sharia* and *Jihad*, The *Sharia* in the World Today, Islamic Banking and The Future of Islamic Law: Reform or Retrenchment?) and encompasses four appendices.

The appendices of the book focus on Al-Shafi'i's¹ views on legal knowledge, an overview of the different translations of the Arabic term *Jihad*, the present percentage of the Muslim population of selected

¹ *Al-Shafi'i* is a famous Islamic jurist and the founder of the *shafi* school of Sunni-Islamic law.

countries and a chronology reaching from the birth of the prophet Muhammad to the present.

The Chapters of the book are mostly arranged in the conventional and approved structure of other books on Islamic Law, i.e. a general introduction to the fundamental principles of Islam followed by an elaboration on the basics of traditional *Sharia*. The third Chapter is of particular interest as it provides an overview of the history of Islamic Law and its jurists in the course of which details of Islamic legal doctrine are highlighted. It is interesting that in this Chapter, different to other introductions to Islamic Law, not only the founders of the four orthodox Sunni schools of law and the largest *Shiite ḡafari* school are mentioned but also other *Sunni* and *Shiite* jurists and philosophers who influenced Islamic legal doctrine decisively.

One of these is *Shaybani*, who is of special interest to international law since he wrote the first comprehensive treatise on the legal relationship between Muslims and Non-Muslims in *Sunni* law. Therefore he is often referred to as “the Hugo Grotius of Islam” and the founder of “Islamic International Law”. However, the perception of the authors that Shaybani wrote an Islamic treatise on the law of nations must be rejected. Hans Kruse² and Hilman Krüger³ have proved convincingly that the elaborations of *Shaybani* cannot be referred to as international law, since the doctrines developed by *Shaybani* and his successors solely cover the relations between Muslims and Non-Muslims rather than between different states. Therefore they have much more in common with the Roman *ius gentium*, regulating the relations between Roman citizens and foreigners, than with international law. Islamic Law as described by *Shaybani* and his successors has never been a reflection of the factual international system encompassing different states and providing a legal framework for their mutual relationship but rather it was the internal law of the *umma*, i.e. the community of Muslims.⁴

In the fifth Chapter the book traces the history of Islamic Law from the decline of the Ottoman Empire until the first half of the twentieth century, thereby dealing with the emergence of *Wahabism*, as a form of Islamic-religious Puritanism on the Arabian Peninsula, the incursion of western legal thought into the legal systems of Islamic countries and reactions to it by Islamic jurists.

² H. Kruse, *Islamische Völkerrechtslehre*, 2nd edition, 1979.

³ H. Krüger, *Fetwa und Siyar*, 1978.

⁴ Cf. M. Khadduri, *War and Peace in the Law of Islam*, 1955, 45; cf. Krüger, see note 3, 34.

The remaining part of the book is less concerned with historical data than with the present role of Islamic Law and the possibilities for its reform. Of special interest is the Chapter “The *Sharia* and *Jihad*”, which provides an introduction to the currently much debated issue of the concept of *Jihad* and the one on Islamic banking.

Concerning the concept of *Jihad*, the authors provide an overview of the multitude of opinions of Islamic thinkers and activists on this topic. Thereby the reader is introduced to the many, sometimes diametrically opposed, interpretations of the subject, all of which claim to be based on Islamic Law and the *Sharia*.

With regard to Islamic banking, the book gives a brief but comprehensive overview of the topic. Islamic banking started in the 1970s and is distinguished by the rule that Islamic banks must adhere strictly to the *Sharia*. Therefore all these banks must have a *fatwa*⁵ approving their activities and most of them, additionally, have a *Sharia* board or *Sharia* advisors supervising their activities. In the opinion of the authors, the importance of Islamic banking will grow in the future. They base this assumption on the immense growth of this sector during the last decades (in mid 2004 the Islamic financial market comprised 265 banks with assets of more than 262 billion US\$ and investments of more than 400 billion US\$) and the ongoing trend among the world’s 1.5 billion Muslims to deposit their savings in Islamic banks. This assumption is supported by the fact that Islamic banks seem to have been affected less than other banks by the financial crisis of 2008. A reason for this phenomenon might be that due to the prohibition of interest in Islamic law, there has to be a real project behind each investment by an Islamic bank. Hence dealings with financial derivatives are prohibited according to Islamic Law.⁶

The book by Hunt and Kahlmeyer features an impressively comprehensive overview of Islamic Law which also encompasses current debates like the concept of *Jihad* and Islamic banking. Unfortunately

⁵ A *fatwa* is an advisory opinion of an Islamic jurist based on Islamic Law.

⁶ For further information on Islamic banking please refer to P. Rivlin, “The Development of Islamic Banking”, *Orient* 30 (2008), 4 et seq.; R. Wilson, “Development and Spread of Islamic Banking”, *ibid.*, 12 et seq.; V. Nienhaus, “Islamic Finance: From Opposition to Opportunity”, *ibid.*, 25 et seq.; A. Mohamed Naim, “Islamic Banking: An Alternative for Modern Banking Communities”, *ibid.*, 34 et seq.; K. Bälz, “Islamic Finance on the Rise: Recent Developments in Europe and the Middle East”, *ibid.*, 41 et seq.

this comprehensiveness, owing to the constricted size of a general introduction to Islamic Law, is not without problems. For instance, the elaborations about *Shiite* law in contrast to those about *Sunni* law, are very cursory and not without faults. Although this is quite usual for literature on Islamic Law in general (indeed the standard books by Coulson and Schacht on Islamic Law are also not very convincing in this regard) the perception raised by the authors in the introduction that *Shiite* Islam will gain increasing importance in the future allows the reader to expect more detailed information.

Hence, if the reader is really interested in *Shiite* law it will still be necessary to read a book focused on *Shiite* law.⁷ Nevertheless this critique should not detract from the overall value of the work. It gives a good and comprehensive overview of the very complex issue of Islamic Law including very current topics, without requiring prior knowledge. Therefore, the book provides useful information for the general audience.

This is in line with the intentions of the authors, since they state unequivocally that the book is not meant for a scientific audience but rather for readers who want to inform themselves in general about the topic without grappling with the minutia of scientific discussions.

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⁷ For instance M. Momen, *An Introduction to Shi'i Islam*, 1985.