

## BOOK REVIEWS

*Reparations for Child Victims of Armed Conflict: State of the Field and Current Challenges* by FRANCESCA CAPONE [Intersentia, Cambridge, 2017, xxxii + 276pp ISBN 978-1-78068-438-3, €65.00 (h/bk)]

The topic of this book may appear at first sight very specialized since it deals with a specific category of victims, children, whose rights are violated in the specific context of an armed conflict. However, its principal merit is precisely to fill a gap in existing literature by addressing the legal challenges posed by violations of children's rights in armed conflicts and by the dearth of adequate reparations mechanisms against a very broad background and to dwell in depth on these challenges both on the theoretical and normative level and on the practical side. The book offers indeed a thorough investigation of the current normative framework for reparations for child victims and of all relevant issues emerging at the implementation level, not only purely legal ones and not only those already addressed by most scholars, such as reparations for child soldiers. Moreover, the author proposes original and innovative solutions to improve existing reparations mechanisms and to foster the potential that different forms of reparations may develop.

In the first part of the book, the author analyses the current legal framework and identifies the shortcomings and the gaps that are still hindering the implementation of the rights of child victims to adequate, effective and prompt reparations. The analysis of the peculiar status of children as victims of armed conflict and the focus on the concept of vulnerability are enlightening (Chapters 1 and 2). Notwithstanding the specific necessities of children victims and the fact that the idea of individuals having a right to reparation is gaining momentum in the international community, available rules and mechanisms concerning the award of reparations are still vague and rudimentary and the obligations of States in this field very difficult to enforce. In addition, the book highlights the lack of binding documents imposing obligations to provide reparations to non-State actors, in particular to non-State armed groups that are responsible for many violations committed against children (and not only) in the context of non-international armed conflicts (Chapters 3 and 4).

In the second part of the book, the author offers a critical overview of existing judicial, 'quasi-judicial' and non-judicial mechanisms and scrutinizes the cases in which reparations were awarded both in international and regional settings. This section of the book portrays the merits and pitfalls of complaint mechanisms of UN treaty bodies, devoting specific attention to the *Third Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure*. It then delves into the rights of children to obtain reparations before ad hoc international criminal tribunals (ICTY and ICTR), mixed courts (the Special Court for Sierra Leone) and the International Criminal Court, including a detailed analysis of the decision on reparations in the *Lubanga* case (Chapter 5). It also assesses instruments available in the framework of the African and Inter-American human rights systems (Chapter 6). Eventually, non-judicial mechanisms are taken into account, including truth commissions, national reparation programmes, and disarmament, demobilization and reintegration programmes (Chapter 7).

In the concluding chapter (Chapter 8) Francesca Capone recaps the main problems emerging from the analysis: absence of binding rules to make non-State armed groups accountable, lack of enforcement mechanisms for IHL violations, paucity of procedures taking into account the specificity of child victims and aimed at addressing long-term consequences of violations perpetrated against children. In order to fill the void caused by the lack of rules imposing on non-State actors an obligation to provide reparations, the author suggests the adoption of an international binding instrument enshrining the principles laid down in the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (adopted in 2005 by the UN General Assembly) and including provisions designed to address the specific necessities of

children. The author also emphasizes the need to implement child-friendly procedures at the international, regional and domestic level, where ultimately most victims seek redress.

One of the virtues of the book is the careful examination of the innovative case-law of the Inter-American Court of Human Rights, that developed the notion of ‘aggravated responsibility’ for violations and crimes committed against the most vulnerable subjects, although not always being able to render it decisive when reparations were awarded. According to Capone, the notion of ‘aggravated responsibility’ (although not yet a consolidated legal principle) should be taken into account both when dealing with compensation for damages suffered by children and when adopting measures aimed at their rehabilitation and at ensuring guarantees of non-repetition.

The book definitely meets the expectation of the reader and represents a precious source of reference for lawyers and practitioners active in the field of children’s rights and working for their social reintegration after the war. Francesca Capone not only provides a comprehensive analysis of the topic and proposes solutions to improve existing reparations mechanisms, but she also succeeds in showing that one of the keys to moving forward is building on children’s capability to be actively involved in transitional justice processes.

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*Comparative Law in Practice: Contract Law in a Mid-Channel Jurisdiction* by DUNCAN FAIRGRIEVE [Hart Publishing, Oxford and Portland, OR, 2016, 208pp, ISBN 9781782257219, \$148 (h/bk)]

What Duncan Fairgrieve's book does particularly well is debunk the notion that ‘Jersey contract law is simply, in legal terms, a variant of English common law spoken with a slightly French accent’. It is shown by Fairgrieve—a distinguished scholar of comparative law, in particular English and French law—to be truly hybrid in nature, being a product of both the civil law and the common law. Through these sources combining has emerged a system that is not only distinctive but also a ‘striking example of comparative law in action’.

The book is composed of eight chapters. After briefly explaining the importance of comparative law and the book's scope in Chapter 1, Fairgrieve explores in Chapter 2 the history of the Jersey legal system and its sources of law. Two aspects of this chapter are of particular interest. The first is its description of the tension that has resulted from drawing upon both civil law and common law sources. The traditional influence of French law and citation of civil law writers, illustrated by Pothier having been cited in as many as half of all contract law cases since 1950, is juxtaposed with discussion of a recent tendency for the Jersey courts to draw more heavily upon English law. This tendency is attributed by Fairgrieve to the close cultural and economic ties between Jersey and the United Kingdom, as well as to members of the Jersey legal profession primarily being educated in English universities. It might be thought, at least at first glance, that the ‘cherry-picking approach’ that has emerged in Jersey would be a successful combination of the best features of English and French contract law. However, Fairgrieve argues persuasively (albeit disappointingly for comparative lawyers) that it has actually rendered Jersey contract law uncertain and complex, and lacking ‘the necessary coherence and clarity as to sources which is a fundamental requisite of a modern legal system’.

The second interesting aspect of Chapter 2 concerns what Fairgrieve describes as the mindset of Jersey lawyers. In his view, this mindset has been shaped by a number of distinctive factors including the multilayered, overlapping, and heterogeneous sources of Jersey law and their training as Jersey advocates and practice of Jersey customary law. By virtue of these factors, he explains that their outlook differs from ordinary common law practitioners. Their approach to precedent is notably more flexible than in England and (much more satisfyingly for comparative lawyers) judges resort to comparative law as part of their reasoning. The courts are also less

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