

Protecting Liberty in an Age of Terror By PHILIP B HEYMANN and JULIETTE N KAYYEM [MIT Press Cambridge, Massachusetts, London 2005 194pp ISBN 0262582570 £12.95/\$20]

Human Rights in the 'War on Terror' Edited by RICHARD ASHBY WILSON [Cambridge University Press Cambridge 2005 347pp ISBN 0521618339 £17.99]

Despite the overlap of the subject-matter of these two books, their approach to and their method of treatment of their subjects could not be more different. Both deal with civil liberties and counter-terrorism measures, but that is where their similarity ends.

Protecting Liberty in an Age of Terror is a set of recommendations directed to the US Government for balancing the values of liberty and security.¹ Thus it seeks to demonstrate that it is possible to fight terrorism while at the same time protecting civil liberties, examining such areas as coercive interrogation, indefinite detention, targeted killings and surveillance. Its recommendations are detailed and structured on questions considered 'fundamental to U.S. democracy'.² The book claims to examine 'fundamental changes in domestic and international laws' since 9/11 yet it focuses predominantly on domestic US law.³ The discussions of international law are sparse and inadequate. For instance, in relation to coercive interrogations the authors proclaim, 'no other set of specific rules and procedures regarding highly coercive interrogations, not forbidden by the UN Convention against Torture or the Geneva Convention, exist',⁴ thus ignoring Article 7 of the ICCPR.⁵ Moreover, in relation to targeted killings outside a designated zone of active combat, the authors argue that when counter-terrorism cooperation is not forthcoming the 'United States could invade the country with a military force large enough and willing to stay long enough to destroy the terrorist or change the regime'.⁶ The only apparent limitation to this highly contentious proposition is that militarily it 'costs lives and is quite expensive' and legally 'it creates the kinds of problems under international law that were present in debates leading up to the war in Iraq'.⁷ Notwithstanding its shortcoming in relations to matters of international law, the book offers many thoughtful and pragmatic suggestions, although mostly from a US perspective, to important problems faced by the US and other countries in similar situations.

Human Rights in the 'War on Terror' is the outcome of the Inaugural Conference of the Human Rights Institute of the University of Connecticut, held on 9–11 September 2004. It contains 16 essays dealing with a wide range of issues concerning human rights and security. Most of the contributions deal directly with the values of human rights and security, which according to Fernando R Teson are not antithetical.⁸ This is a belief shared by many of the authors who argue that restrictions on liberty can only ever be justified if they are needed to preserve liberty itself, thus reflecting the opinion that liberty is the ultimate justification of government. Many contributions posit a credibility problem with the current US Administration tarnishing the whole human rights project, to such an extent that the terms 'democracy' and 'human rights' are increasingly associated in many parts of the world with 'American willingness to impose our government's will by its superior force'.⁹ Despite setbacks, which are richly illustrated throughout the book, most of the contributors do not diagnose the end of the human rights era, although Richard Falk predicts a less optimistic outcome.¹⁰ The contributions mostly focus on the situation in the United States and the impact of the US Patriot Act, but many of the arguments are easily transferable

¹ The book is similar to the Long-Term Legal Strategy Project published in 2004, available at: <www.mipt.org/Long-Term-Legal-Strategy.asp>

² p 5.

³ p 2.

⁴ p 31.

⁵ International Covenant on Civil and Political Rights (1966), ratified by the United States on 18th June 1992, although with a reservation to Article 7.

⁶ p 63. Emphasis added.

⁷ *ibid.*

⁸ F Teson 'Liberal Security' 59.

⁹ A Neier 'How not to Promote Democracy and Human Rights' 139–140.

¹⁰ R Falk 'Human Rights, A Descending Spiral' 256.

elsewhere. A significant contribution made by the collection, most clearly provided by David Luban, is a rejection of the argument that there is a 'trade-off' between liberty and security.¹¹ Moreover, as is illustrated by Neil Hicks, counter-terrorism measures not only impact on individuals living in 'liberal' States but also encourage widespread repressive policies elsewhere.¹² Two essays discuss whether the war in Iraq could be viewed as a 'humanitarian intervention' but both fail to take into account the questionable legal entitlement to take such action.¹³ Nor is the fact that the human rights argument was introduced as a later rationalization of the legality of the war, as is pointed by the editor himself, satisfactorily dealt with.¹⁴ There are many noteworthy contributions within this volume that would be of value to anyone who is interested in the subject.

JACQUES HARTMANN
doi: 10.1093/iclq/lei144

Non-Governmental Organisations in International Law By ANNA-KARIN LINDBLOM [CUP Cambridge 2005 xv-xxii + 523pp ISBN 13 978-0-521-85088-9 + 10 0-521-85088-6 (H/bk) £65.00]

This book is a comprehensive examination of the legal status of non-governmental organizations (NGOs) in different areas of international law. It makes a valuable contribution to considerations of the wider political and legal implications of NGO involvement in the international legal arena.

The author explores the legitimacy of international law and its relation to the legal status of NGOs in the broader context of contemporary legal and social theories. She finds three flaws in the international legal system: the democracy deficit, the weakening of the state due to globalization, and the transformation of means for shaping identities in a globalized society represented in the concept of international 'civil society'. From studies of four Euro-American conceptualizations of the legitimacy of international law regarding individuals and civil society, she selects Jürgen Habermas' proceduralist paradigm. Habermas' discourse-theoretical view requires the assent of all possibly affected persons, in a discursive process, and legally constituted legislation. Lindblom argues that NGOs can strengthen the legitimacy of international law by making international fora more transparent, expanding participation in dialogue within international governmental organizations (IGOs) and acting as conduits of information and expertise between these fora and the wider public.

Most legal scholars agree that NGOs do not have international legal personality (ILP). Lindblom argues that ideas of ILP and 'subjects' of international law are ambiguous and circular and therefore not useful concepts to describe the roles and status of NGOs. Instead, she focuses on empirical realities, using neutral language for determining NGOs' actual legal 'status'. She surveys possibilities available to NGOs to act within the international legal system: (1) rights and obligations under international and regional treaties, other instruments and voluntary 'codes of conduct'; (2) standing before international and regional judicial and quasi-judicial bodies; (3) non-party participation in international and regional proceedings as *amicus curiae*, victim's counsel, expert witness, or direct; (4) cooperation with IGOs in consultative relationships and as 'participants' and proposals by the Panel of Eminent Persons on Civil Society and UN Relationships; (5) participation in international conferences, particularly the Rome Conference which created the Statute of the International Criminal Court; and (6) agreements with IGOs intended to be legally binding under international law. Lindblom argues that the international legal status of NGOs is the

¹¹ D Luban 'Eight Fallacies About Liberty and Security' 248–257.

¹² N Hicks 'The Impact of Counter Terror on the Promotion and Protection of Human Rights: A Global Perspective' 209–224.

¹³ T Cushman 'The Human Rights Case for the War In Iraq' 78–107 and K Roth 'War in Iraq: Not a Humanitarian Intervention' 143–156.

¹⁴ R Ashby 'Human Rights in the "War on Terror"' 11.