



**INTERNATIONAL LAW AND HUMAN RIGHTS:  
NEW DEVELOPMENTS IN RESEARCH FROM THE  
EUROPEAN AND GENERAL PERSPECTIVE  
(SELECTED ISSUES)**

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**ABSTRACT:** The author discusses issues of legal and political doctrine how rights were used to challenge the state of affairs by individuals and groups who seek justice. The European perspective of human rights has been presented from legal and multidisciplinary perspective, as well as the ideas of home, human life and health in contemporary law and human rights. The author includes also issues on human rights protection in field operations and post-conflict situations, and international criminal justice.

**KEY WORDS:** International law, Human rights, Cultural difference, Discrimination and inequality, National minorities, Violence against children, Health care, Efficiency of justice.

### 1. Introduction

Human rights have been debated in public discourse to reshape both legal and political relations just earlier than as at the beginning of the twenty-first century. In legal doctrine have been explored how rights were used to challenge the state of affairs by individuals and groups who seek justice, and as the strategies devised to defy the rights established by those who wish to react the social and political order. Some books have bring a range of socio-legal perspectives to bear on how talk about rights are framed, used and exploited at local, national and international levels<sup>1</sup>. Have been discussed assumptions about the relationship between law, justice and politics in the conditions of modernity.

Some studies examine the legal, conceptual and practical questions relating to the international legal protection of economic, social and cultural rights<sup>2</sup>. Human rights have been discussed as obligations for states and non-state subjects in analyses of selected substantive rights as well as issues of justifiability of these rights in different contexts as within the United Nations,

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<sup>1</sup> See R. Banakar (ed.), *Rights in context. Law and Justice in latent modern Society*, Ashgate Publishing Group, Farnham, 2010.

<sup>2</sup> M. Ssenyonjo (ed.), *Economic, social and cultural rights*, Ashgate Publ., Farnham, 2011.

Europe, Inter-American, and African systems and also within the domestic systems.

After six decades the Universal Declaration of Human Rights (UDHR) have been discussed both the theory and practice of it, as well as the origins, concepts and implementation of this document, including the various global and regional mechanisms that it has influenced<sup>3</sup>. The development of international human rights over the last six decades reflects on different aspects of human rights law as considering and evaluating the developments and to identify relevant problems and perspectives for the continued positive future development of it.

Cultural difference has been studied as an international legal perspective of ethnic discrimination and in the nature and limits of judicial understanding. The issue of ethnic discrimination and inequality at the national and international levels as a kind of “culture clash” becomes more and more diverse<sup>4</sup>. There is a need for sustained philosophical exploration of the capacity of the modern liberal democratic legal system to understand the thought and practice of culturally different minorities who come before it as claimants, defendants or witnesses<sup>5</sup>. Also ethical and value questions have been posed by development theory, planning and practice for more ethical development policy and practice<sup>6</sup>.

In global mechanism of protection of human rights still acts the Human Rights Committee established under the International Covenant on Civil and Political Rights and operating a system of individual petitions under Optional Protocol to the Covenant /1976/, stands guardian over the rights and freedoms of the individual world-wide: This Covenant, as by December 2008, has been ratified or acceded to by 163 States, and 111 of these States were bound by the Optional Protocol. The core jurisprudence of the Committee is practical protection of human rights and fundamental freedoms, both in procedural and substantive matters. The Committee’s case law as living law - it puts a face to the victim, identifies concrete remedies and also problems of implementation. The Committee creates of new precedents in hundreds of individual cases and makes innovative ways of interpreting the covenant so as to give practical meaning to the protection of human rights<sup>7</sup>.

## 2. *The European perspective of human rights*

Constitutional evolution in Central and Eastern Europe and expansion contributes to integration in the European Union have support democracy and human rights protection<sup>8</sup>. Some new researches show a critical reflection of current legislative and jurisprudential developments in non discrimination law as

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<sup>3</sup> M. Baderin, M. Ssenyonjo (eds.), *International human rights law. Six decades after the UDHR and beyond*, Ashgate Publ., 2010.

<sup>4</sup> A.-M. Mooney Cotter, *Culture clash. An international legal perspective on ethnic discrimination*, Ashgate Publ., 2011.

<sup>5</sup> A.J. Connolly, *Cultural difference on trial. The nature and limits of judicial understanding. Applied legal philosophy*, Ashgate Publ., 2010.

<sup>6</sup> D. Gasper, A. Lera St. Clair (eds.), *Development ethics*, Ashgate Publ., 2010.

<sup>7</sup> J. Th. Möller, A. de Zayas, *United Nations Human Rights Committee Case Law 1977-2008. A Handbook*, N.P. Eggert Publisher, 2009.

<sup>8</sup> K. Topidi, A.H.E. Morava (eds.), *Constitutional evolution in Central and Eastern Europe. Expansion and integration in the EU. Studies in modern law and policy*, Ashgate Publ., 2010.

focusing on the European Union<sup>9</sup>. While investigating the triangle of racial, gender and disability discrimination this above work provides coherent coverage of the legal dimension of intersectionality in the EU's non discrimination regime.

The Northern European laws have been discussed as a system at the crossroads because a process embedded in the transnational personal, religious, communicative and economic relationship that mediate between international, national and local practices, their norms and values<sup>10</sup>. Activity of a variety of important contemporary subjects, as engaged with the nature of power and accommodated, were ignored or resisted by many various actors when transnational practices encounter national and local law. A critical assessment of the situation in Denmark, Finland and Sweden concerns activation policies and the protection of individual rights<sup>11</sup>. Research centers attention on the embedded nature of social policy within the broader legal system, looking at the significance of human rights within social welfare. Social policy goals and the protection of human rights shows how activation programmes in Denmark, Finland and Sweden put the rights of vulnerable people at risk but also show how this situation should be tackled. This experience is also important for countries like United Kingdom, where the legal protection of human rights is considerably weak than it is in the Scandinavian states.

Class discrimination has been discussed as an important global and European legal issue<sup>12</sup>. The issue of class discrimination and inequality show the role of education in bridging the class systems. The importance of education is not only a value for oneself but for future generations, impacting intergenerational mobility on the education and employment choices of offspring. Recent studies allow a better understanding of the issue of class discrimination and inequality, including the role of education in bridging the class systems, and the primary role of legislation, which has an impact on the court process. The two most important trade agreements - the North American Trade Agreement (NAFTA) and the European Union Treaty have been also discussed in a historical and compelling analysis of discrimination.

The role of linguistic diversity in Europe as a factor in democracy and legal processes has been studied recently<sup>13</sup>. The tensions and contradictions of European language laws and policy must be studied from a multi-disciplinary perspective. The question is: is it an obstacle to deliberate democracy and a hindrance to legal certainty and the possibility of uniform law or a cultural and economic asset and a prerequisite for the free movement of EU and other European states' citizens?

In contemporary Europe comes into existence also another problem: cultural diversity and law because of Muslim marriage cases in courts, in France and

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<sup>9</sup> D. Schiek, A. Lawson (eds.), *European Union non-discrimination law and intersectionality. Investigating the triangle of racial, gender and disability discrimination*, Ashgate, 2011.

<sup>10</sup> A. Hellum, S. Sardar Ali (eds.), *From transnational relations to transnational laws. Northern European laws at the crossroads. Law, Justice and Power*, Ashgate, 2011.

<sup>11</sup> P. Van Aerscht, *Activation policies and the protection of individual rights. A critical assessment of the situation in Denmark, Finland and Sweden*, Ashgate, 2011.

<sup>12</sup> A.-M. Mooney Cotter, *Class Act. An international legal perspective on class discrimination*, Ashgate, 2011.

<sup>13</sup> A. L. Kjaer, S. Adamo (eds.), *Linguistic diversity and European Democracy*, Ashgate, 2011.

Germany<sup>14</sup>. Marriage laws of Muslim countries differ widely, as do the relevant laws of the West host countries. The problem is of Mahr upon Muslim custom to Muslim women upon divorce.

The control of people smuggling and trafficking in the EU upon experiences from the UK and Italy has been studied as a comparative analysis of how British and Italian law has approached the issues<sup>15</sup>.

Council of Europe published as the 2<sup>nd</sup> edition (in 2008) a significant book on "Victims-Support and assistance".

The intergovernmental co-operation activities of the Steering Committee for Human Rights /CDDH/ of the Council of Europe have concentrated on developing normative instruments of which the most important has been Protocol No. 14 to the European Convention on Human Rights. It was a result of the ministerial Rome conference on human rights intensive works<sup>16</sup>.

The new edition of the report of the European Commission for the Efficiency of Justice /CEPEJ/ presents new data for 45 European states<sup>17</sup>. This comparative report provides key indicators including public spending on the judicial system, the legal aid system, the organization of jurisdictions, judicial personnel and also length of proceedings as an important factor of human rights protection.

For the Council of Europe the protection of national minorities is a core issue<sup>18</sup>. One of the major achievements in this field is the Framework Convention for the Protection of National Minorities, as entered in force on 1<sup>st</sup> February 1998. The legal protection of minorities has been developed by the Council of Europe, the United Nations, the OSCE and the European Union.

International justice for children have been in core of actions also by Council of Europe, as: eradicating violence against children, eliminating corporal punishment and as a positive approach to parenting in contemporary Europe.

In the book "International justice for children" edited by Council of Europe Publishing /2009/ have been discussed the principles of child-friendly justice at international level and as monitoring mechanisms and current systems of admissibility, determined how easy or difficult it is for children to gain access to them. This Council's of Europe publication also identifies the obstacles to be overcome and proposes concrete ways to remove them through specific recommendations to governments, international organizations and competent monitoring bodies.

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<sup>14</sup> P. Fournier, *Muslim marriage in Western courts. Lost in transplantation*, Ashgate, 2010; A. An-Na'im, M.A. Baderin, *Islam and human rights. Selected essays of... Collected essays in law*, Ashgate, 2010.

<sup>15</sup> M. Ventrella, *The control of people smuggling and trafficking in the EU. Experiences from UK and Italy*, Ashgate, 2010.

<sup>16</sup> Council of Europe, *Reforming the European Convention on human rights - A work in progress*, 2009. Have been also published by the Council of Europe: *Short guide to the European convention on human rights /2005/* and *Key case-law extracts European Court of Human Rights /2004/* by Gilles Dutertre.

<sup>17</sup> Council of Europe, *European judicial systems-Efficiency, and quality of justice*, 2008.

<sup>18</sup> Council of Europe, *Framework convention for the Protection of National Minorities-Collected texts /5<sup>th</sup> edition/*, 2008; G. Pentassuglia, *Minorities in international law*, Council of Europe Publishing, 2004; J.-P. Liégeois, *Roma in Europe*, Council of Europe Publishing 2008. The Roma form in Europe a community of some 8 million people, having the richness of culture and lifestyle and the strength of their identity, and they are rather a misunderstood people, isolated from the society by the negative stereotypes that surround them.

In other work by the Council of Europe Publishing: “Eradicating violence against children-Council of Europe actions” /2008/ as dedicated to millions of children still subjected to violence, have been discussed: children’s right violated in all European countries, corporal punishment, sexual abuse, the exploitation of children and other similar violations, and also have been provided insights into the processes that have led to its many conventions, recommendations and also decisions, programmes reports and specific publications.

In the book “Kid-Raise your hand against smacking” /2008/ has been presented a Council of Europe campaign launched in 2008 to eliminate corporal punishment of children. This kit will facilitate campaign activities throughout Europe. Have been issued some mix of publications and promotional material.

Among the books are: inter alia: Guidance for Europe's parliaments on law reform to eliminate corporal punishment of children: parenting in contemporary Europe as a positive approach; 7 good reasons for “Building a Europe for and with Children”.

### 3. *The ideas of home, human life and health in contemporary international law and human rights*

The idea of home in law inter alia explores an important set of legal and policy issues in area of the concepts of home and homelessness, taking this recently growing area of legal scholarship into the new issue of human rights and international law<sup>19</sup>. Have been examined across the fields of law, policy and housing rights different circumstances in which displacement and dispossession take place, taking into consideration how law and policy respond to such circumstances.

The right to life and the value of life as orientations in law, politics and ethics<sup>20</sup> have been discussed as key issues in a broad practical and theoretical context of issues of war, armed conflict, the death penalty, and various contemporary medico-legal scenarios.

Justice and morality in context of human suffering, natural law an international politics<sup>21</sup> as a subject of research helps to bridging the contending theories of natural law and international relations and to propose ‘relational ontology’ as the basis for rethinking an approach to international law and politics. Such a sample of a number of challenging and controversial ideas helps to study international law as well as international relations theory, political theory and philosophical ethics.

Health rights as a multidisciplinary studies examine ethical, legal and empirical questions regarding the human right health or health care<sup>22</sup>. Have been discussed: different obligations health rights entail for governments and other subjects; potentially conflict of these rights with other rights and values;

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<sup>19</sup> L. Fox O'Mahony, J.A. Sweeney (eds.), *The idea of home in law. Displacement and dispossession*, Ashgate, 2011.

<sup>20</sup> J. Yorke (ed.), *The right to life and value of life. Orientations in law, politics and ethics. Law, justice and power*, Ashgate, 2010.

<sup>21</sup> A. Russell Beattie, *Justice and morality. Human suffering, natural law and international politics. Ethics and global politics*, Ashgate, 2010.

<sup>22</sup> M.J. Selgelid (ed.), *Health rights*, Asgate, 2010.

and how cultural diversity bears of the formulation and implementation of health rights.

An innovative analytical study bringing together elusive data from 137 developing countries presents the issue of reproductive health and gender in equality to health – in context of method, measurement, and implications<sup>23</sup>.

An international legal analysis of maternity discrimination and inequality in the workforce have been presented in relation to the NAFTA and the European Union in context of the primary role of legislation and its impact on the court process at both national and international levels<sup>24</sup>.

Other issues in human rights protection is medical law and ethics relating to intellectually disabled persons<sup>25</sup>. Of significant value in this area are such legal instruments as the UN Convention on the right of persons with disabilities, the case law of the European Court of Human Rights, and other jurisprudential sources.

The new book addresses concern specific to the underserved and understudied population of three million gay and lesbian elders in United States<sup>26</sup>. A new understanding of the construction of sexuality and identity advocates new reforms designed to ensure equality and dignity in aging regardless of sexual orientation.

#### 4. *Human rights in field operations and international criminal justice*

During wartime sexualized violence perpetrated by men against women often was turned into an internationalized political issue<sup>27</sup>. The wartime rape as this issue- creating process was a marginal field until 1990s when rape suddenly emerged as an international security problem. The historical change in the politicization of rape as an international problem becomes transference of the expert authority gained by international women's organizations to intergovernmental agencies.

The human rights field operations<sup>28</sup> and the professional identity of the human rights field officer<sup>29</sup> have been discussed as a new ground and an insightful contribution to international human rights law.

There is a need to significantly improve understanding of the ways in which international criminal justice and its institutions deal with conflicts and post-conflict situations. As a needed contribution to such studies was politics of justice in post-Yugoslav states, with legal obligations derived from the

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<sup>23</sup> Guang-zhe Wang, *Reproductive health and gender equality. Method, measurement, and implications*, Ashgate, 2010.

<sup>24</sup> A.-M. Mooney Cotter, *Pregnant pause. An international legal analysis of maternity discrimination*, Ashgate 2010.

<sup>25</sup> A. Dimopoulos, *Issues in human rights protection of intellectual disabled persons. Medical law and ethics*, Ashgate 2010. See also: A.-M. Mooney Cotter, *Ask no questions. An international legal analysis on sexual orientation discrimination*, Ashgate, 2010.

<sup>26</sup> N.J. Knauer, *Gay and lesbian elders. History, law, and identity politics in the United States*, Ashgate, 2010.

<sup>27</sup> C. Harrington, *Politicization of sexual violence. From abolitionism to peacekeeping. Gender in a global/local world*, Ashgate, 2010.

<sup>28</sup> M. O'Flaherty (ed.), *The human rights field operation. Law, theory and practice*, Ashgate, 2007.

<sup>29</sup> M. O'Flaherty, G. Ulrich (eds.), *The professional identity of the human rights field officer*, Ashgate, 2010.

International Criminal Tribunal for the former Yugoslavia's /ICTY/ Statute<sup>30</sup>. The use of three models of compliance based on coercion, self-interest and norms helps to explore the domestic politics of war crimes indictments and efforts by external subjects such as European Union, the United States and the Tribunal itself to induce compliance outcomes.

An overview of the principal features of the legacy of international Tribunals and an assessment of their impact on the Criminal Court and on the review of the Rome Statute significant illustrates the foundation of a system of international criminal law and justice by using case studies<sup>31</sup>. Have been also provided advices for possible future developments in international criminal procedure and law.

A new study analyzes the position of the International Criminal Court in relation to national court system<sup>32</sup>, and also its relationship with the national courts under the complementarily mechanism, as much more complex in practice. Have been discussed possible solutions to overcome the gaps in law and practice in the jurisdictional relation.

Finally in this context recently have been studied also problems of international refugee law<sup>33</sup>, as dynamic and constantly evolving. This original set of principles, customary rules and values were firmly embedded in human rights framework as liable to change in the light of developments in, e.g. international humanitarian law, international criminal law, migration issues and new concepts of state participation and responsibility, as complementary areas of law.

In the broader context of justice, international law and global security have been discussed as the prism of just war from Asian and Western perspectives issues of legitimate use of military force<sup>34</sup>. Have been compared and assessed diverse Western, Islamic, Hindu and East Asian perspectives concerning the appropriate criteria that should govern the use of force and conduct of military operations.

In April 2008 has been convened in Tübingen /Germany/ symposium to discuss the upcoming Review Conference and the Future of the International Criminal Court as well as proposals for legislative or adjudicative reform<sup>35</sup>. The Review Conference of the Rome Statute as took place in 2010 presents the opportunity to reflect upon the Rome Statute and the future of International Criminal Court in general. The Review Conference calls upon state parties, the international criminal legal staff and scholars alike to identify un- or under determinate positive norms and regulations and to produce doctrinally sound and practically manageable international criminal law (in books and in action) be it within international criminal procedure, or be it within the interplay between national and international jurisdictions.

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<sup>30</sup> Ch. K. Lamont, *International criminal justice and the politics of compliance*, Ashgate, 2010.

<sup>31</sup> R. Bellelli (ed.), *International criminal justice. Law and practice from the Rome Statute to its review*, Ashgate, 2010.

<sup>32</sup> Nidal Nabil Jurdi, *The international Criminal Court and national courts. A contentious relationship. International and comparative criminal justice*, Ashgate, 2011.

<sup>33</sup> H. Lambert (ed.), *International refugee law. The library of essays in international law*, Ashgate 2010.

<sup>34</sup> H.M. Hensel (ed.), *The prism of just war. Asian and Western perspectives on the legitimate use of military force. Justice, international law and global security*, Ashgate 2010.

<sup>35</sup> Ch. Burchard, O. Triffterer, J. Vogell (eds.), *Review Conference and Future International Criminal Court*, Kluwer Law International. Co-publication with WK Germany, 2010.

## 5. Final remarks

Contemporary both legal and political doctrines analyzes also a cultural history of the global commons, connecting the logic of legal institutions governing global commons to colonial doctrines that dispossessed indigenous peoples of their land<sup>36</sup>. Global commons regimes might benefit from the cross-cultural logics found where indigenous peoples have gained recognition of their common tenure systems in Western courts. Such a new legally cunning and ethnographically plausible study presents a kind of program for establishing commons in the new spaces of neoliberal designs.

Another question is so called multijuralism, various types of its manifestations, causes, and consequences<sup>37</sup>. Exploration of this issue is rather broad one – from the harmonizing potential of international treaties to indigenous law and use of hard and soft pluralism. Exists also the external events which are not a part of the processes of multijural adjustment but which serve to influence these processes.

In contemporary international law a significant position has non-state actors as law-makers and law-takers<sup>38</sup>. The question is whether these different positions can or should be separated from each other. There is a need to gain new insights into general discourse on non-state subjects in international law. As a key concept in the debate are such issues as legal capacity and legal personality from different perspectives, also the multinational enterprises including.

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<sup>36</sup> K. Milun, *The political uncommons. The cross-cultural logic of the global commons*, Ashgate 2010.

<sup>37</sup> A Breton, A. Des Ormeaux, K. Pistor, P. Salmon (eds.). *Multijuralism. Manifestations, causes, and consequences*, Ashgate, 2000.

<sup>38</sup> M. Noortmann, C. Ryngaert (eds.), *Non-state actor dynamics in international law. From law-takers to law-makers. Non state actors in international law, politics and governance series*, Ashgate, 2010.



Part IV provides some general reflections on international environmental law and international human rights law in terms of analogous concepts, principles and systems. What similarities are there and what differences? Part V considers the progress made towards recognition of a "human right to the environment". Part VI considers how international environmental claims could be brought within the existing international human rights complaint systems. Part VII analyses the judgment of the European Court of Human Rights in the Lopez Ostra case (1994), the leading case on environmental claims to have.

Brill Research Perspectives in International Investment Law and Arbitration <https://brill.com/view/journals/rpia/rpia-overview.xml> Editors-in-Chief: Ian A. Laird, Borzu Sabahi Brill Research Perspectives in International Investment Law and Arbitration provides a systematic review of key topics in this increasingly important area of international law and practice. The claims raise a mix of public international law, private and public law, and public policy issues requiring an examination of the legitimacy of a government's exercise of its core functions including regulatory (involving taxation, health, and environment), administrative, and police powers and the balance of those against foreign investors' rights under the treaties. This research examines safety and health condition of the floriculture workers in and around Batu/Ziway. Results of qualitative data gathered indicate that the safety and health of workers in the study area are at risk. There are also some weaknesses from the government on implementing those laws made to protect and promote safety and health of workers. It avers that under the African human rights system, the existing rights such as the right to health and the right to development, if viewed from the perspective of the indivisibility of rights, provides for an implied right of children to sustainable development. In its first part, the book "Right to Environment: Experience of the Selected European