Book Reviews

Starck, Dorothee, ***Die Rechtmässigkeit von UNO-Wirtschaftssanktionen in Anbetracht ihrer Auswirkungen auf die Zivilbevölkerung.*** Berlin: Duncker & Humblot, 2000. Pp. 473. Index. DM178, CHF133.50.

As the bibliography of this book attests, much has been published on sanctions in the last 10 years. With many political scientists and international affairs scholars equating sanctions with weapons of mass destruction or treating them as a new form of genocide, a solid scholarly work by an international lawyer is all the more to be welcomed, particularly one that is as thorough and systematic in its approach as this one.

In her investigation into the legality of United Nations' economic sanctions and their impact on civilian populations, the author first discusses the theoretical limits on and requirements of Security Council actions before studying empirical evidence from the field (Iraq and Yugoslavia) and, finally, measuring it against those limits. The conclusions take a middle-of-the-road position in that the author rejects arguments that sanctions are genocide, a failure to prevent genocide, a form of torture or inadmissible because counter to self-determination or development. But the findings are, nonetheless, highly critical of sanctions and, most especially, of the United Nations body decreeing them under Chapter VII.

It is particularly the *jus cogens* development of human rights law and humanitarian law which has created the restraints on economic sanctions which the Security Council has taken so little heed of. Under the first heading, it is largely the right to life and the prohibition on starving civilian populations when read together with the second one — humanitarian law principles of free passage (IV Geneva Convention, Article 23), the special protection of vital goods and systems (Protocol I, Article 54(2)) and assistance to populations in distress (Protocol I, Article 70) — that the Security Council sanctions practice is found to fall far short of contemporary *jus cogens* demands.

But it is in its treatment of the Security Council itself that the book shows how much things have changed since Hans Kelsen's day. Since that body is not representative of the membership, its interpretations of international law and the Charter do not constitute an *opinio juris* of its members, nor does large-scale acquiescence by those members have any customary law generative effects, and thus its sanctions are not entirely binding on members if they violate overriding requirements of international law and, in any case, should not be applied to other branches of the United Nations, the Red Cross/Red Crescent or NGOs with humanitarian functions. The attempts of the Council to introduce humanitarian mitigation into its measures have been inadequate at best, and in some respects have actually exacerbated the touchy legal situation where an organ of international governance of such high dignity starts violating basic *jus cogens* principles.

The basis for this position, ultimately more political than legal, is that blockade-running of humanitarian goods is less de-legitimising than Security Council actions which endanger the lives of civilian populations. There is also some discussion of mobilising other United Nations organs and systems as well as NGOs to contain the Security Council's intemperate activities as well as a recommendation that greater reliance on smart sanctions would eliminate these problems and restore Security Council legitimacy. In all this, the author, a legal rather than a political or diplomatic scholar, is aware of the constraints

that international law places on radical changes in the *status quo* as well as of the dangers of upsetting delicate balances.

The author feels that the Security Council's lack of regard for international law has done more damage in Iraq than it did in Yugoslavia. More critically, one can question the reliability of much of the empirical material cited, but this should not detract from the book's usefulness, for what we need in future cases is not more empirical data on undernourishment and mortality but better elaboration of the legal framework of Chapter VII measures.

The irrepressible ascendancy of soft law made the questions and answers of this book inevitable, and we should be grateful to the author for having worked them out with such system and clarity. But whether the insurgency of soft law against hard law in a case like this will be a corrective, a supplement or a replacement, and what new equilibrium will ultimately emerge, is a matter for the future to decide.

Transjuris eK, *Paul Conlon*
Munich

Evans, Carolyn, ***Freedom of Religion Under the European Convention on Human Rights.*** Oxford: Oxford University Press, 2001. Pp. 222.

Freedom of Religion Under the European Convention on Human Rights, recently published in OUP's *ECHR Series* (edited by Professor J.G. Merrills of Sheffield University) is an updated version of Carolyn Evans' DPhil dissertation completed in 1999 at Exeter College, University of Oxford. The author is currently Senior Fellow of the Faculty of Law at the University of Melbourne, Australia. Under the auspices of Professors Mark Janis and Guy Goodwin-Gill, Dr Evans has produced a well-researched and truly dense account of the status of the protection of what is often inaccurately described as the freedom of religion in the law of the European Convention on Human Rights (ECHR).

The United Kingdom's incorporation of (some parts of) the ECHR has rocketed the English-speaking legal market's demand of informative and informed treatises on the often hidden doctrinal treasures of ECHR law. It is a natural assumption to make, that the coming into force in October 2000 of the Human Rights Act 1998 has expedited OUP's publication of Ms Evans' book. British lawyers have rediscovered ECHR law as a useful tool in everyday legal strategy beyond the traditional mores of international human rights law. The demand for means of insight is voracious, not only relating to the law of the Human Rights Act 1998, but for general ECHR law as well. Few of the works now overflowing the British (and consequently other countries') market live up to minimum qualitative standards of expectation.

Dr Evans' book consists of nine chapters. It is rigidly structured in accordance with archetypal presentations of ECHR law. Thus, the treatise has a short Introduction in Chapter 1 outlining the scope of the book as well as giving a nutshell exposition of the anatomy of relevant ECHR law (the role of the supervisory organs, admissibility requirements, standing, etc.). Chapter 2, 'Towards a Theory of Freedom of Religion or Belief', fleshes out the normal justifications given for protection of freedom of religion (broadly defined). Chapter 3 gives an historical background to the drafting of what finally became the protection of religion now mainly based in Article 9 of the ECHR.

The author correctly mentions (p. 6) that freedom of religion broadly defined is protected in other ECHR provisions as well. Reference is made particularly to the accessory anti-discrimination clause in Article 14 of the ECHR and the state's obligation to respect the rights of parents to ensure education of their children in conformity with their own religion as set forth in Article 2, second sentence, of the First Protocol (pp. 5–6). The overlapping nature of ECHR rights provisions as to the protection of the different rights is also noted. The proper function of provisions such as Articles 8 (private life) and 11 (freedom of association and assembly) is not discussed. Perhaps painstakingly aware of the inherently pragmatist approach taken by the