

on Human Rights has been used by victims of industrial pollution.¹¹

While directing principles certainly appear to allow much leeway in their interpretation, traditional legal rules may not be as monolithic as de Sadeleer suggests. His view of legal rules is clearly grounded in a civil law system, where the application of codes and laws is indeed often pictured as a rigid and systematic process. However, common law systems, with their focus on case-law, put the facts and circumstances of each case at the centre of the analysis and seek to balance the multiple legal rules that could apply, with an acute awareness of the grey areas surrounding each applicable rule. Similarly, public international law is hardly a forum where even 'hard law' obligations are applied strictly and mechanically. Thus, directing principles may be particularly helpful in shaping and interpreting international law, not so much because they bring an unprecedented avenue for flexibility, but rather because they reflect essential features of the international legal system.

When examining the characteristics of directing principles and their place in post-modern law, de Sadeleer finds that their legal status depends on the type of instruments in which they are embodied. In hard law instruments, directing principles will tend to have an interpretative value and may be precursors to treaty law or customary law. In soft law instru-

ments, their status will depend on the type of treaty, whether the principles are found in the preamble or in substantive provisions, and whether their formulation suggests that states intend to be bound by them or whether they merely express a general (political) aspiration. This analysis reaches beyond the case-studies of the precautionary, preventive and polluter-pays principles, and may find applications in the evaluation of other principles, within and outside international environmental law.

This book is a valuable contribution to the debate surrounding environmental principles and their application. It opens new avenues for reflection on evolving international norms.

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Finnemore, Martha. ***The Purpose of Intervention, Changing Beliefs about the Use of Force***. Ithaca and London: Cornell University Press, 2004. Pp. 184. \$17.95. ISBN: 0-8014-8959-8.

The Purpose of Intervention by Martha Finnemore, a political scientist at George Washington University, is a pleasure to read for an international lawyer. International lawyers, however, are not Finnemore's primary audience. The main purpose of her book is rather to persuade her American-style political scientist colleagues to adopt broader and more constructivist approaches for the interpretation of changes in states' behaviour with respect to military interventions.

* This review was written in a personal capacity. The views expressed do not necessarily reflect those of the court.

¹¹ *Lopez Ostra v Spain*, 20 EHRR (1994) 277, at paras. 44, 51, 58; *Guerra v Italy*, 26 EHRR (1998) 357, at paras. 57, 60. In these cases, industrial pollution and the government's failure either to prevent or abate such pollution were found to interfere with the right of enjoyment of family life by the claimants and to intrude into the privacy of their homes.

Her general claim is that the so-called realist or neo-realist schools, by identifying certain aspects of material ‘power’, ‘interests’, and ‘systems’ as the determining factors for military intervention, overlook or underestimate softer factors, such as international institutions and law, professions and epistemic communities, social movements, persuasion and communicative action, ‘affective mechanisms such as liking and empathy’, and finally, ‘social influence plus internalization’. While this approach as such is not entirely new, Finnemore undertakes to demonstrate her point by analysing three types of military intervention in their historical development: interventions to collect debts, humanitarian interventions, and interventions for the purpose of preserving international order.

The chapter on ‘Sovereign Default and Military Intervention’ is, at first sight, the most persuasive example for her claim. It is indeed difficult to evidence significant changes in material interests, power relations or systemic constraints between 1902–1904 – the time of the famous intervention by Germany and Britain in Venezuela and its blessing by an arbitral tribunal – and 1907, when the Drago-Porter Convention was signed, according to which states agreed to outlaw forcible debt collection without previous resort to arbitration. Instead, Finnemore points at Drago’s assertive reinterpretation of the rules on sovereign equality and at Root’s skilful diplomatic support and his belief in arbitration. She also picks up on the fact that the negotiators of the Convention were lawyers, indeed that the importance of lawyers in international affairs was on the rise at the time. The relevance of all these factors is entirely plausible. A possible critique would not so much

come from narrow-minded ‘realist’ theories, but rather from a broader-minded realism which merges into contextualism: perhaps the only reason debt collection was outlawed at the time was the shared understanding of the nations participating at the Second Hague Peace Conference that forcible debt collection was a minor issue which could be used to symbolically demonstrate a commitment to peacefulness in an atmosphere that was already charged with the threat of a great war.

In the chapter on ‘Changing Norms of Humanitarian Intervention’, Finnemore again persuasively demonstrates the weakness of ‘realist’ or ‘neo-liberal’ schools in explaining why states intervene militarily for humanitarian purposes. It is again difficult to find plausible economic, military or political reasons (in the narrow sense) for many humanitarian interventions, from the earliest (Greece) to the latest (Somalia, Kosovo). The author eventually moves away from interpreting humanitarian interventions as single events and focuses instead on the ‘other sweeping changes in the normative fabric that have taken place over the past two centuries’. She thus identifies the process leading to the abolition of ‘slavery, colonialism, but also the rising political participation generally at all levels and in most parts of the world’. These shifts do probably account for the way in which the initial impulse to ‘save Christians’ transformed itself into the moral command to save all humans without distinction. But Finnemore’s explanation as to why humanitarian intervention was rarely practised during the greater part of the 20th century, and why it came back with so much more force in the 1990s, is less plausible. Is

it really sufficient to say that in the meantime a norm had emerged which only permitted multilateral humanitarian interventions? Here again one must ask whether the author has sufficiently broadened her perspective to take a contextualist realism into account: Is it possible that humanitarian intervention is a comparatively minor issue in international affairs, which only surfaces when the risk of political and military complications with other countries is low? This would explain why humanitarian interventions played an occasional role during the 19th century and since the end of the 20th century, but not as long as world wars had cast their shadows.

The last and most general chapter of Finnemore's book, 'Intervention and International Order', takes greater account of such contextual realist elements. The stated goal is to challenge 'theories that have dominated U.S. scholarship for several decades'. These theories have attempted 'to understand the patterns created by different distributions of power among states'. Finnemore plausibly argues that the concept of a 'system' whose function it is to preserve international order is not a natural result of a certain distribution of forces but rather a specific European idea which became

accepted in a certain historical situation. It is indeed the interpretation of material facts by the participants which results in a 'system', that is a body of rules which they take for granted. Thus, the rules of the Concert of Europe can better be explained by the common interpretation of the French Revolution and its effects rather than by a significant change of material capabilities of the relevant actors. The shorter parts on the spheres of influence system of the Cold War and on the unnamed 'Current System' also rightly emphasize the historically contingent factors which give these systems their specific flavour.

Political scientists like Martha Finnemore are natural allies for lawyers. Lawyers also see rules emerge from a shared understanding of context. Their problem is how to bring about such a shared understanding. This is particularly difficult in times of crisis. Unexpected situations provoke new interpretations. Finnemore provides excellent illustrations and explanations for the emergence of new shared understandings from both a historical and a political science perspective.

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