humanitarian law is strong on international armed conflict (Geneva Conventions and Protocol I), it is weak on non-international armed conflict (Protocol II).

Anthony Cullen's monograph offers an excellent inquiry into many relevant aspects of the concept of non-international armed conflict that should be of interest to both the general and expert reader.

Wolfgang S. Heinz

German Institute for Human Rights/Free University Berlin
Email: heinz@institut-fuer-menschenrechte.de

doi:10.1093/ejil/chs094

Theodor Meron. ***The Making of International Criminal Justice. A View from the Bench***. Oxford: Oxford University Press, 2011. Pp. 336. £60.00. ISBN: 9780199608935.

'[T]here is no question that what we write and when we write can only be explained by our own life experiences' remarks the author in the lecture which forms the introduction to the present book (at 3). Few people are better placed to write on the past and present of international criminal justice than Theodor Meron. President of the International Criminal Tribunal for the Former Yugoslavia ('ICTY') on two occasions (from 2003 to 2005 and from 2011 to the present) and a former member of the US delegation to the Rome Conference held in 1998 to establish the International Criminal Court ('ICC'), Meron is a leading figure in international criminal justice and has played an integral part in its development.

It is the author's vast experience as an international judge which is crystallized and captured in this collection of speeches delivered during his tenure on the bench. Meron's motivation for publishing this collection is made clear at the outset, in the book's preface:

> [I]t is important, in promoting the universe of international criminal justice, to speak about our achievements, our challenges, and, yes, even our frustrations. It is this belief that has animated my decision to share a selection of my speeches in the present volume.

Introduction and epilogue aside, the book covers four main themes: first, humanitarian law and human rights law as evolving bodies of law; second, the rise of international criminal tribunals; third, international crimes and jurisprudence of international courts; and, fourth, responsibility and the role of the judge.

Aged nine years at the outbreak of the Second World War, the author's focus upon humanitarian law and its relationship with human rights law is perhaps unsurprising. As Meron himself acknowledges:

> [I]n many ways, the title of my book *Humanisation of International Law* could describe the overarching theme of my life's work … and my fervent desire to integrate these disciplines [at 14].

The impact of the terrible events of 1939–1945 upon the author and his work is plain:

> [T]he imprint of the war made me particularly interested in working in areas which could contribute to making atrocities impossible and avoiding the horrible chaos, the helplessness, and the loss of autonomy which I remembered so well … My World War II experience was never far away [at 4].

That work was not in vain; as the International Court of Justice articulated in its *Nuclear Weapons* Advisory Opinion, it is now accepted that the protection afforded by human rights law 'does not cease in times of war', except if lawfully derogated from.[1]

[1] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, at 240.

The second theme of the book, the rise of international criminal tribunals, is described by the author as 'the greatest change in international law over my lifetime' (at 75). It is hard to quarrel with that assessment. Indeed, while the establishment of international and hybrid criminal tribunals such as the Special Court for Sierra Leone or Special Tribunal for Lebanon may now seem like a routine reaction by the international community in response to atrocities – so routine, in fact, that David Scheffer, former US ambassador-at-large for war crimes, speaks of 'tribunal fatigue' – this is only a recent phenomenon, inspired and guided by the trailblazing ICTY and International Criminal Tribunal for Rwanda ('ICTR', together the 'Tribunals').

Meron describes the unconventional births of the Tribunals as a 'real experiment' (at 98), echoing Allison Danner's description of the Tribunals as 'twin petri dishes for the international criminal project writ large'.[2] As Meron explains, unlike the ICC, the Tribunals were not the product of conventional, extensive treaty negotiations. Instead, 'the Security Council was the legislature' (at 117) with the Tribunals established by Resolutions 827 (1993) and 955 (1994) respectively, passed under Chapter VII of the UN Charter to restore international peace and security. Uniquely then, in the absence of such treaty negotiations, it fell to the judges themselves to formulate the rules of procedure and evidence, as well as to conduct the business of judging.

In spite of these eccentricities, the author praises the work of the two Tribunals as 'remarkably successful' (at 109):

> The ad hoc Tribunals' achievements, grounded on customary law, are manifold. They have created a set of evidentiary and procedural rules that the Nuremberg tribunals did not bequeath, as well as a corpus of substantive law expressed in detailed jurisprudence and hundreds of judicial decisions. They have also enshrined individual criminal liability for an increasing number of norms previously only applied to states as a matter of civil responsibility. Most fundamentally, they have laid to rest the age-old question of whether international law really is law. The direct application of international law to individuals by international courts and tribunals leaves no doubts that it is [at 240].

Again, it would be hard to disagree with the author's glowing evaluation of what the Tribunals have achieved. However, as Meron recognizes, the *ad hoc* Tribunals were 'never intended to live forever' (at 126). The recent arrests of individuals such as Radovan Karadžić and Ratko Mladić may have prolonged the ICTY's completion strategy, but they only delay its demise. Thus, while the Tribunals may have played a pivotal role in the revival of international criminal justice, what about its future? Looking ahead, it is questionable how long is left before the international community's appetite for further *ac hoc* institutions is sated. Recent media reports, for example, suggest that the Extraordinary Chambers in the Courts of Cambodia are close to bankruptcy and that the benevolence of states may be waning in the fallout from the global financial crisis.[3]

For the reviewer, the most interesting and informative passages of this book are where Meron draws upon his first-hand experience as President of the ICTY to bring to life the inner workings of such tribunals and explain the practical challenges they have faced; or, alternatively, when providing his observations on the role of international courts and the judiciary. It is here that the value of this excellent insider account, written from the judicial perspective, is best realized.

Many of the practical challenges faced by the ICTY are perhaps familiar: the length and complexity of trials; a lack of police powers to investigate or apprehend; managing a defendant's right to self-representation (the failed trial of Slobodan Milošević demonstrates the difficulties).

[2] Danner, 'When Courts Make Law: How the International Criminal Tribunal Recast the Laws of War', 59 *Vanderbilt L Rev* (2006) 1, at 59.

[3] See 'Cambodia court hearing Khmer Rouge trials close to bankruptcy', *The Guardian*, 4 Dec. 2012, available at: www.guardian.co.uk/law/2012/dec/04/cambodia-khmer-rouge-court-bankruptcy.

Others possibly are less well-known: its unconventional method of creation (noted above); judges 'writing the rules' (at 117) and, as a problem peculiar to *ad hoc* tribunals, Meron has spoken of the 'inherent tension between helping staff find other employment and encouraging people to stay until the work of the Tribunal is complete'.[4]

As for the jurisprudence of international courts, Meron admits to 'never being much troubled' (at 234) by the possible fragmentation of international law, remarking that the proliferation of international courts and tribunals has seen us enter 'a new and dynamic stage in the development, interpretation and clarification of the law' (at 240). In this respect, the author describes the decision of the International Court of Justice in *Bosnia and Herzegovina v. Serbia and Montenegro*[5] as 'groundbreaking' in developing a 'synergy of cooperation between international courts and tribunals' (at 234). Still, this growing caseload and body of international judges has created difficulties as well as opportunities. Disqualification challenges by parties to the independence and impartiality of members of international courts and tribunals are, for example, an increasingly common phenomenon.[6] Meron rightly observes:

> The judges on these tribunals come from academic backgrounds or from careers in other sectors of public life, legal practice, or the judiciary, and they have usually been chosen precisely because of their expertise in international or criminal law, typically evidenced by a lengthy publication trail. So the fact that judges will have spoken or written on some of the issues that come before them … is to be expected … a judge's prior analysis of a legal problem in an academic context should not be an issue worthy of recusal – certainly not where the judge has the openness of mind to be willing to reconsider his or her prior position [at 263–264].

Nevertheless, the author also recognizes that 'drawing the line may be somewhat difficult' and that the issues of judicial bias and recusal are 'likely to recur' (at 263). Thus, as a 'workable rule', Meron suggests that a judge should recuse himself either upon a showing of actual bias or where there is an 'unacceptable appearance of bias', as evidenced by, *inter alia*, having a financial or proprietary interest in the outcome of a case, or if the circumstances would lead a reasonable observer, properly informed, reasonably to apprehend bias (at 262).

This excellent collection of speeches reflects the author's outstanding contribution to this field, encompassing both its historical and legal development. It should be essential reading for anyone who wishes to gain a better understanding of the making of international criminal justice.

Chris Stephen

Associate at Volterra Fietta
Email: c.g.stephen@alumni.lse.ac.uk

doi:10.1093/ejil/cht006

[4] See ICTY President's Address to the UN Security Council on the Completion Strategy, 7 Dec. 2011, available at: www.icty.org/x/file/Press/Statements%20and%20Speeches/President/111207_pdt_meron_un_sc_en.pdf.

[5] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro) (Merits) [2007] ICJ Rep 43.

[6] See, e.g., Reasoned Decision on Challenge (Christopher Greenwood Q.C.) in *Republic of Mauritius v. United Kingdom* (UNCLOS, Annex VII) of 30 Nov. 2011, available at: www.pca-cpa.org/showfile.asp?fil_id=1782.