

is much more to be written, for example, about the negotiations at the London conference, where the counts were created, and about the intelligence war between the Allies at Nuremberg, tantalizingly hinted at in some documents already available. In the meantime, each new generation of researchers will re-evaluate the tribunal in the light of their own times, as interest in international criminal justice ebbs and flows. One may therefore be tempted to ask: what is Nuremberg's lasting legacy? To which the reply must surely be (to quote the famous aphorism on the French revolution): 'it's too early to tell.'

Kirsten Sellars[✉]

Visiting Faculty, Gujarat National Law University, India

Email: kirsten.sellars@btinternet.com

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Martina Buscemi, Nicole Lazzerini, Laura Magi and Deborah Russo (eds). **Legal Sources in Business and Human Rights: Evolving Dynamics in International and European Law**. Leiden and Boston: Brill Nijhoff, 2020. Pp. 339. €138.00. ISBN: 9789004401174

Business and human rights as a field of research requires a considerable array of knowledge far beyond international and domestic human rights law. These include domestic corporate law, public international law, domestic tort and contract law, international investment law, constitutional law, international humanitarian law, domestic and international criminal law, European Union (EU) law, domestic and international environmental law, international institutions law, comparative law and private international law as well as business management, business ethics, financial decision-making and organizational studies. Thus, business and human rights is a field that is exciting and dynamic and that also makes conceptual and applied research in it very demanding.

This book engages with many of these areas of law, directly or indirectly. It even adds more by including a chapter on financial security and markets law. The overall aim is to analyse the field of business and human rights law from a particular focus – the theory of sources of international and European law – and the aim of the skilled editors is to 'to explain how and to what extent the evolving dynamics of the normative process in the respective fields of analysis affect the legal sources of international and EU law in relation to B&HRs [business and human rights]' (at 2). The three 'dynamics' affecting these legal sources are: the extent to which international legal obligations are binding on corporations; the participation of corporations in international law-making processes; and the strengthening of soft law regulation to form normative standards. Accordingly, the editors seek to explain, within the book, the effects of alternative processes of regulation on the traditional state-only sources and

‘whether the regulations stemming from such new law-making processes effectively protect human rights against corporations’ abuses’ (at 7).

The book arose out of a research project at the University of Florence, where three of the four editors work (the fourth being in Milan) for young researchers of international and European law, under the encouraging guidance of Angelica Bonfanti. There are 15 chapters, including an introduction and a conclusion, all of which are written by people who have studied or worked in Italy. While there are occasional references to Italian jurisprudence, and, undoubtedly, some influences of the great Italian jurists in approaches taken, the focus of the chapters is on European and international issues. All the authors, and the editors, are in the early stages of their academic careers (in law or political science), and the majority of them are women. To create this book by impressive new scholars is a tremendous achievement.

Part 1 of the book seeks to evaluate whether the developments in business and human rights, international investment law and other areas suggest that there may be international obligations directly binding on corporations. The first chapter, by Ludovica Chiussi, examines a number of areas of law to chart the evolution of the key notion of human rights due diligence to be (nearly) a norm of international law. Marco Fasciglione takes another step in analysing whether the draft business and human rights treaty is a source of obligations on companies. He provides a strong and persuasive conceptual argument for why corporations can have direct international obligations and then concludes that the current treaty draft does not take this approach, due to the strength of the states that did not want to reduce their traditional state-only powers. In the third chapter, Giovanni Zarra considers the extent to which international investment treaties can be a source of human rights obligations on corporations. He draws on a range of case law and concepts to offer a coherent argument that investors are not immune from being subjects of international law. The fourth chapter, by Andrea Spagnolo, is innovative in its consideration of the usefulness of global administrative law as a means to consider business and human rights developments, especially in relation to social changes in the international community. He reaches the conclusion that ‘the potential of international law to influence the conduct of multinational corporations ... should contribute to the evolutive understanding of international law rather than fuelling the centrifugal forces that push it to the margins of the debate’ (at 92). The final chapter in this part is by Monica Parodi and reviews the role of the EU Charter of Fundamental Rights as a source of judicially enforceable obligations on corporations.¹ She thoughtfully reviews the case law and the horizontal effect of the Charter and shows that the decisions are, on balance, pro-business, especially in those cases where a company alleges a violation of its right to conduct business resulting from national rules on the market made by member states. She does indicate though that, more recently, the balance in the decisions has been in favour of an individual’s human rights in claims against companies.

¹ Charter of Fundamental Rights of the European Union, OJ 2012 C 326/02.

Part 2 considers corporations as international lawmakers. It begins with a chapter by Diego Mauri, in which he argues cleverly, through the use of specific examples in practice, that corporations are direct participants in indirect law-making (such as by self-regulation) and indirect participants in direct law-making (such as in their contributions to the processes of drafting business and human rights international instruments). He concludes that the practice shows that, while states are predominant in international law-making, they are not the exclusive lawmakers. This leads neatly to a very insightful consideration of multi-stakeholder initiatives (MSI) in the chapter by Enzamaría Tramontana. MSIs are generally governance mechanisms in which a combination of states, corporations and civil society work together in relation to a particular sector or issue, with the aim of standard setting to address human rights impacts of corporate activities. They can be seen as a form of international regulation. The author balances well the positive aspects of MSIs with areas of concern to see how this regulation can operate short of being binding law. The last chapter in this part is by Elena Carponelli, in which she explores the important role of corporations in setting international standards in artificial intelligence tools. She shows how international law is currently limited in its ability to regulate this area, due to issues of sovereignty, so that corporations are contributing significantly to the development of a potential normative framework, such as it is, through their own self-regulation and practices. The chapters in this part indicate that corporations are contributing to international standards setting and law-making processes, including voluntary self-regulation, in the field of business and human rights and are thus participants in international law-making.

The final part examines the issue about the legal effects of soft law in business and human rights regulation, especially in terms of how that law is incorporated or acted upon in the domestic legal systems. This is a particularly important discussion in the case of business and human rights because some of the major international instruments in this field, such as the UN Guiding Principles on Business and Human Rights 2011 (UNGPs), are not legally binding in international law.² Marta Bordignon authors the first chapter in this part with a deeply knowledgeable consideration of the legal value of state's national actions plans (which arose after the UNGPs). She draws on a clear understanding of international legal concepts and constitutional applications to show the potential value of these plans and their current severe limitations. This is followed by an excellent chapter by Chiara Macchi and Claire Bright, which reviews the implementation in domestic law of the vital element of the UNGPs, being human rights due diligence. The authors show a complete understanding of the concepts involved and a full awareness of the detail of the various legislations. They draw all this together to conclude wisely that '[t]he UNGPs, as an authoritative soft law instrument, have great potential to spur a process of legal incrementalism capable of translating the principles into hard law, as shown through the piece of human rights due diligence legislation adopted – or being discussed – since 2011 both at domestic

² Guiding Principles on Business and Human Rights, implementing the United Nations 'Protect, Respect and Remedy' Framework, Doc A/HRC/17/31 (2011).

and at the regional level' (at 240). The third chapter in this part, by Francesco Luigi Gatta, considers the increasing role of EU legislation in this area. He carefully considers the various EU competences and regulations. This forms a valuable introduction to the EU's decision – made subsequent to the publication of the book – to draft legislation on mandatory human rights and environmental due diligence for corporations. Edoardo Alberto Rossi reviews the important issue of public procurement in the next chapter, by considering the EU law and cases in this area. He notes the disappointing lack of clear commitments by the EU and member states to ensure that public procurement criteria restrict access to those corporations that cannot show that they are not causing or contributing to human rights impacts or are not linked to them by their business relationships. The final chapter in this part, by Jacopo Alberti, looks at an entirely new area of the European Security and Markets Authority and its role in regulating corporate activity. This is interesting and is based on an empirical study, though it is disappointing that it does not make enough links to the business and human rights field.

Overall, the book offers a clear analysis of an evolution in international and European law in the sources of international law. This includes the movement towards some international legal obligations on corporations, the increasing role of corporations in direct and indirect international law-making and the importance of corporations in the influence of soft law regulation towards having legal effects. As Angelica Bonfanti notes in her thoughtful concluding chapter: '[T]he authors have touched upon legal phenomena that can be summarized as follows: the "multi-stakeholder" nature of the law-making process and the hybridization of legal sources; the evolving subjectivity of multinational corporations and its relevance to the development of a corresponding legal regime; the "hardening" of soft law; and the introduction of new hard law' (at 332–333). This extensive coverage is a significant achievement within this one book and provides a very well-founded challenge to the traditional state-based legal system, especially at a time when the draft business and human rights treaty seems to have many indicators of reasserting that traditional system.

Indeed, the issues that the book considers offer challenges to international lawyers across Europe. The existence of five chapters that deal with the practical legal application of applying international law to corporations, as if that is an appropriate starting point, is not what many international lawyers used to believe. It is, in my view, a necessary and refreshing engagement with these issues, which observes the reality of how international law affects all of us and not just a few. These chapters are enhanced by the chapters that follow, as they assume that it is the usual approach to consider how companies develop international law, and analyse the ways in which they do so – an outrageous stance possibly for traditional international lawyers but resonant to so many new scholars as they question the orthodoxy of state consent to every element of international law, from artificial intelligence to security.

While much of the final set of chapters focuses necessarily on some legal developments in Europe, it is unsurprising since this is where there have been the most developments of legal regulation in the business and human rights field. However, as the business and human rights treaty debates show, the dialogue is both resistance to, and

reliant on, rule-of-law states, especially within Europe, to bring some evidence as to whether legislation in this field can operate effectively. It is also relevant to note how many corporations support such legislation to enable a harmonized, clear and certain market for them, even with the consequent oversight of their activities that impact on human rights and the environment. There is, perhaps, too little reflection in the book on the possible resistance to these views by positivist international lawyers, yet the arguments made here are compelling. They cannot be ignored as international law moves forward in this century.

This is a high-quality book, which has been expertly edited, as evidenced in the coherence of structure and the approach of each of the chapters. While not every chapter deals explicitly with the concepts of sources of international and European law, they all offer an intelligent, insightful and analytical approach in clarifying key developments in the business and human rights field within the framework of international and European law. The chapters can also be read separately to enhance the understanding of specific issues. With its breadth of coverage, high level of analysis and general coherence in approach, this edited collection is an excellent addition to the literature on business and human rights.

Robert McCorquodale

*Professor of International Law and Human Rights
University of Nottingham, United Kingdom
Email: Robert.McCorquodale@nottingham.ac.uk*

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Alex Jeffrey. ***The Edge of Law: Legal Geographies of a War Crimes Court.*** Cambridge: Cambridge University Press, 2019. Pp. 230. £85. \$88 (ebook). ISBN: 9781108186018.

1 Introduction

‘Where is the law?’ is one of the most common and unbearable questions that is regularly asked of any international law scholar who ventures into critical or theoretical approaches to our discipline. It is also a question that many who talk about the law as such, rather than individual legal provisions, will recognize or may have posed at some point. It is often an easy question to ask but one that perhaps says rather more about the state of the intentions of the questioner than the scholar or the work to which the question was applied.

As someone who has been asked this question before, I found myself querying this exact issue as I read *The Edge of Law*. I was more than a little disconcerted at first, given my propensity for and belief in disciplines as open and big tents. Yet, situating