

2006

Book Review of Non-State Actors and Human Rights

Michael Ashley Stein

Repository Citation

Stein, Michael Ashley, "Book Review of Non-State Actors and Human Rights" (2006). *Faculty Publications*. 1463.
<https://scholarship.law.wm.edu/facpubs/1463>

Copyright c 2006 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/facpubs>

Non-State Actors and Human Rights. Edited by PHILIP ALSTON. [Oxford: Oxford University Press, 2005. ix and 387 pp. Paperback £27.50. ISBN 0-19-927282-4.]

NON-STATE ACTORS AND HUMAN RIGHTS, the most recently issued edition in the "Collected Courses of the Academy of European Law" series, addresses the international entities cast together as "non-state actors" and their respective roles and potential for implementing human rights. Edited by the redoubtable Philip Alston, the collected essays are detailed and thoughtful, and provide an excellent overview of an under-theorised area within international law. The volume is logically organised into three parts. Following an introduction to the field in the first section, the subsequent two parts examine the roles of non-state actors played, respectively, by

non-governmental organisations and international organisations, and by corporations.

Written by the editor, Chapter One ("The 'Not-a-Cat' Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?") challenges as misleading the standard international law characterisation of influential and multinational organisations, including the World Bank and the International Monetary Fund, as (merely) non-state actors. It concludes with a brief exegesis of the remainder of the book. Chapter Two ("The Changing International Legal Framework for Dealing with Non-State Actors") by August Reinisch provides historical perspective into the evolving role of non-state actors as participants in developing and protecting human rights. Voluntary codes of conduct and the revival of extraterritoriality within domestic courts are two factors identified as driving this phenomenon.

Identifying criticisms directed at non-governmental organisations for their increased influence, Chapter Three ("The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?") defines these entities by their lack of governmental capacity. Acknowledging that non-governmental organisations have become increasingly important, Menno T. Kamminga nevertheless concludes that their status on the international level remains relatively weak. Chapter Four ("Economic, Social, and Cultural Human Rights and The International Monetary Fund") probes the ambiguous status and human rights obligations of non-state actors by examining the relationship between the powerful International Monetary Fund and the far-reaching International Covenant on Economic, Social, and Cultural Rights. The organisation's legal counsel, Francois Gianviti, strikes a balance by maintaining that as a non-state actor the entity is neither a party to nor bound by the treaty's mandates, while also conceding that broad circumstances exist wherein it can readily contribute to implementing the Covenant's aspirations.

Chapter Five ("Catching the Conscience of the King: Corporate Players on the International Stage") considers whether multinational corporations can be held criminally responsible for human rights violations. After assessing three distinct theories under which these charges might be brought, Celia Wells and Juanita Elias determine that present protections of corporate economic rights present a formidable challenge to such liability. Chapter Six ("Corporate Responsibility and the International Law of Human Rights: The New *Lex Mercatoria*") proffers an optimistic vision of corporate responsibility centred on the emergence of a modern *lex mercatoria*. In support of this assertion, Ralph G. Steinhardt maintains that four separate regimes—those of the market, domestic regulation, civil liability and international regulation—each promotes good business practices amongst corporations. Chapter Seven ("The Accountability of Multinationals for Human Rights Violations in European Law") addresses the mechanisms through which the European Union might hold multinational enterprises accountable for human rights violations. After a thorough analysis of competing concerns, Olivier De Schutter suggests that the European Union's experience creating socially responsible regimes, for example in South Africa, could lend itself equally well to matters of corporate governance. Finally, Chapter Eight ("Human Rights Responsibilities of Businesses as Non-State Actors") discusses the role of transnational corporations and human rights obligations from an

international law perspective. Referencing a United Nations soft law that one of the authors was instrumental in drafting, David Weissbrodt and Muria Kruger offer the draft "Norms" as a template for good corporate practice.

M.A. STEIN