

The Causes of War: Volume I: 3000 BCE to 1000 CE

BY ALEXANDER GILLESPIE

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Much effort in international law over the last century has gone into reducing the incidence of war, the *jus ad bello*,¹ or at least ameliorating its effects, the *jus in bello*.² It is an arguable point as to how effective this effort has been. Large scale loss of life and cruelty still go on and humanity continues to be revolted by it.³ If warfare is so common and so revolting, it begs the question, why does it continue? Why is humanity so incapable of preventing it? What causes humanity to repeat cycles of behaviour that lead to war? There is no known period of recorded human history that has been free of war. As much as international lawyers focus on the efforts made in the last 100 years to control war, it appears profoundly worthwhile to examine the causes of war across the span of history. At the same time, such an undertaking seems so vast as to be unachievable. The triumph of Gillespie's work is to have made this task achievable and to bring a mass of sources into a single analytical whole.

Gillespie's *The Causes of War* is not without limitations but it is an intriguing, impressive and profound contribution to scholarship. If international law is a guide, humanity's affliction by war appears to be a source of fundamental and virtually universal concern. Gillespie's analysis of the causes of war can do much to inform our understanding of it.

The central premise of *The Causes of War* is that, in the period up to 1000 CE, there are consistent factors leading to war which transcend time and space. These concern the dynamic nature of empires, in that they are always in a state of either growth or decline, the pressures of large scale migration, the inherently unstable nature of autocratic political models and the influence of religious belief. Its conclusion is that:⁴

... in the overwhelming majority of the wars in the period covered by this book, the control and/or ownership of resources was the motivation. Whilst countless scholars throughout the period of this work detested the idea of warfare being driven by these base considerations of material (or social) wealth, the fact is that winning wars brought an ability to harness and control resources that losing wars did not.

- 1 *General Treaty for the Renunciation of War as an Instrument of National Policy*, 2137 LNTS 59 *Charter of the United Nations*, art 2(4); *Resolution RC/Res. 6 Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression*, adopted by consensus 11 June 2010.
- 2 For example, Geneva Conventions I - IV, 75 UNTS 31, 85, 135, 287 (opened for signature 12 August 1949, entered into force 21 October 1950).
- 3 See for example Stephen Castle "Kerry Joins Envoys to Deplore Sexual Violence in War", *New York Times* (New York, 13 June 2014) at A3; *In Washington*, State Department spokesperson Jen Psaki said that the U.S. could not confirm reports of the massacres but called the claim by ISIS "horrificing and a true depiction of the bloodlust that these terrorists represent": Ali Nabhan, "Militants Claim Photos Show Mass Executions in Iraq", *The Wall Street Journal* (online ed, New York, 15 June 2014).
- 4 Alexander Gillespie *The Causes of War* (Hart Publishing, Oxford, 2013) at 239.

Despite this primary consideration, it was rare to find justifications for war based purely on material or social reward. This was implicit in all of the other four themes that I have identified ...

The Causes of War is the first volume of a projected four volume series on the causes of war up to the present day.⁵ It follows a three volume series by Gillespie titled *A History of the Laws of War*.⁶

Volume I of *The Causes of War* is in six parts. The introduction relates a Sunday afternoon conversation between Gillespie and his mother on whether humanity had made progress or not.⁷ The point to which Gillespie is working over the projected four volumes is that, where progress has occurred, the causes of war have changed for the better since the Enlightenment. To establish this however he had to establish what the causes of war have been prior to that time.⁸ Part II addresses the formation of empires across the known world, including India, China, the Middle East, Greece, Rome and Europe. Part III then addresses the influence of migratory peoples in each of these places. Part IV considers the influence of political structures, addressing each of the geographical areas but focusing most on Greece and Rome. Part V addresses the influence of religion upon wars in each of the geographical areas, while also considering Christianity and Islam more particularly. The conclusion draws each of the parts together, summarising them to some extent while also making larger points.

The book is amply footnoted, referring to the key surviving treaty documents, and related negotiating material, as well as the work of leading historians of each period, usually in English translation. Subject to some comments below, Gillespie's writing is a pleasure to read. It is both lucid and detailed.

There are two aspects of this book which detract from its remarkable achievement to some extent. The first is the quality of the proofreading. Most notably in Part II, but also throughout the book, there is inconsistent spelling, misspelling and there are other typographical errors.

The second issue is the descriptive and apparently repetitive quality of some parts of the book, which relates to the nature of the material. The long accounts of wars of conquest, civil wars, usurpations and societal collapses has a repetitive quality as the events seem the same despite the names and places being different. This is part of the point of the book but it can make for difficult reading in places.

As to the strengths of this book, there are many. The most obvious is its scale and vision. The marshalling of 4000 years of human history into a single analytical whole is quite remarkable. It is satisfying to complete reading the book and absorb this sense of perspective. The analysis is also effective. The four themes identified – empires, migratory peoples, politics and religion – all underlain by a desire for wealth, is persuasive.

5 At 1.

6 Alexander Gillespie *A History of the Laws of War* (Hart Publishing, Oxford and Portland, 2011) at vols 1-3.

7 Gillespie, above n 4 at 1.

8 At 1.

The most effective part of the book is that on religion. There is much more analysis here as each major religious influence had quite different origins and philosophical premises. This part does not lend itself to a recitation of similar events with different names and places. It is thought provoking that, despite this, and even in those religions which eschewed war and violence, temporal rulers found theological justifications for war. In addition, increasingly through the time period, war came to be seen in religious terms.

The Causes of War raises many more issues and questions than can be dealt with here. It has made a deep impression on the writer of this review. It raises profound questions about whether humanity is now more able to avoid the calamity of war and why or why not. The remaining three volumes are awaited with anticipation.

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The Law of the Sea and the Polar Regions

EDITED BY ERIK J MOLENAAR, ALEX G OUDE ELFERINK AND DONALD R
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Martinus Nijhoff, 2013, 432 pp. ISBN: 9789004255203. USD 215.00]

Whilst there has been something of an explosion in the number of academic volumes attending to public international law, politics and policy in the polar regions over the past decade, much less by way of specialist examination of law of the sea and Polar interactions has been evident. Most of what has appeared has been narrowly thematic and Arctic-specific (Nordquist, Moore and Skaridov's 2005 *International Energy Policy, the Arctic and the Law of the Sea*; Nordquist, Heidar and Moore's 2010 *Changes in the Arctic Environment and the Law of the Sea*; Hønneland's *Arctic Politics, The Law of the Sea and Russian Identity* spring to mind). For Antarctica, one has to go back to 1992 and Joyner's *Antarctica and the Law of the Sea*. Bi-polar examinations, after Theutenberg's foundational 1984 *Evolution of the Law of the Sea: A Study of Resources and Strategy with Special regard to the Polar Areas*, really only commenced with Alex Oude Elferink and Donald Rothwell's *Law of the Sea and Polar Maritime Delimitation and Jurisdiction* of 2001.

The present volume, *The Law of the Sea and the Polar Regions*, which sees Erik Molenaar join Oude Elferink and Rothwell on the editorial team, builds on the 2001 collection, with a focus now on the interaction between the global and regional regimes. So, there is both continuity and new departures in this volume. Thematically the new volume, in its 17 chapters, is far broader in coverage than its predecessor, although the collection's coherence is greatly aided by the editors' decision to pose four questions for their authors' consideration as they compiled their individual chapters (p viii):

- (1) How do global institutional frameworks erected by the LOSC apply?
- (2) How do *other* global institutional frameworks (ie IMO, IWC) impact on regional cooperation?
- (3) What are the consequences of the application of multilateral instruments with a marine focus in their application to the Polar Regions?
- (4) To what extent has the law of the sea in the Polar Regions been impacted by basic principles of international environmental law?

At the start of the volume, in their consideration of "The Regional Implementation of the Law of the Sea and the Polar Regions", the editors pose for themselves the question of focus: "why the Polar Regions?" (p 7). They go on to answer this question by reference to climatological and ecological similarities, "rapid development of regional cooperation [in the Arctic]", cooperation in the Antarctic around the Antarctic Treaty and the peculiarities of the jurisdictional system, and because the Polar Regions "offer two idiosyncratic examples of regional cooperation" (p 8).

After a consideration of the two regional regimes (Shirley Scott and Betsy Baker for the Antarctic and Arctic respectively), all the hot-button issues currently in play in the Arctic and Antarctic get an airing in this volume, often with an author essentially pairing each theme for the Arctic and Antarctic. The coverage extends across: the outer continental shelf (Oude Elferink), environmental assessment (Robin Warner), marine protected areas (Suzanne Lalonde, Karen Scott), marine mammals (Nigel Banks, Joanna Mossop), migratory species (Arie Trouwborst), fisheries management (Erik Molenaar, Andrew Serdy), polar shipping (Laura Boone), marine research (Yoshinobu Takei, René Lefeber) and maritime security (Donald Rothwell). Aside from its value for international lawyers in the various sub-specialist areas covered, and in its avowed aims in relation to assessing regional/global interaction (and bi-polar comparison), the volume as a whole is a first rate primer for policy-makers, and scholars or students from other disciplines, who need to understand the current debates around the polar seas. It is impossible to do justice to the coverage of these chapters in a brief review.

In their concluding chapter, "Interactions between Global and Regional Regimes: Trends and Prospects", the editors suggest that the law of the sea and the Polar Regions are in a "dynamic state of interaction" and that the latter provides "one of the most significant global examples of interaction between global and regional law of the sea regimes" (p 389). With Antarctica, as they say, this goes back to the adoption of the 1959 Antarctic Treaty; in the Arctic they see the interaction commencing as recently as 1991, with the Arctic Environmental Protection Strategy. Overall, the international regime for the Arctic remains "much more fragmented" than that covering the Antarctic (p 400). The editors' comparison of the two polar regions leads them to suggest "little interaction between the regulatory responses developed in the two polar regions" (p 410) aside from the issues of shipping and the ongoing Polar Code development under IMO auspices. Indeed, drawing on the evidence of the contributors' chapters, they identify "a significant difference between the two polar regions as regards the regulation of specific activities" (p 412). However, implementing Article 76 of LOSC has required coordination by coastal states in both the Arctic and Antarctic (their standing as coastal states of course contested in the latter region) so in this sense there were commonalities in the nature of the interaction between the global and regional/national levels across the polar regions (p 412). Molenaar, Rothwell and Oude Elferink see "little likelihood of a convergence of the basic legal underpinnings of the cooperative regimes in the polar regions" although, they suggest, the Arctic Council and subsidiary bodies may, like the various components of the Antarctic Treaty System, have a "potential for contributing to a cross-sectoral approach" to Arctic marine regulation (p 415).

Finally, the editors consider what lessons the Polar Regions might provide for other regions. Their answer seems, frankly, to be 'not very much' – beyond providing "building blocks" for other regional regimes which include "marine areas beyond national jurisdiction" (p 416).

The chapters of *The Law of the Sea and the Polar Regions* are uniformly strong. This is in itself a rare event in such collections (and ordinarily presents delicate issues of discretion for reviewers who tend to know the players across such specialised intellectual communities!). The editors and contributors should take pride in this; the volume is very fine. One quibble would be the relatively restricted (largely European and Australasian) geographical spread of the contributors. More substantively, this reviewer wonders whether despite the manifest differences between the two regions and the restricted influence of each upon the other, there is a rather significant commonality. As the world leaves the world-order of the Cold-War era behind it, is there not a growing sense that in both regions the current jurisdictional arrangements are now geopolitically discriminatory so far as the interests of emerging states are concerned?

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Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa

BY JOHN HATCHARD

[Cheltenham: Edward Elgar, 2014, xx + 381pp. ISBN: 978 1 781004364. USD 90]

John Hatchard is well known as an expert on law in Africa, on transnational criminal law and in particular on the law of suppression of corruption. John has published heavily in these areas, and in particular is co-author of the magnificent *Corruption and the Misuse of Public Office* published by Oxford University Publishing (OUP) in 2011. In *Combating Corruption* his subject is devoted to his second home – Africa.

This volume is not just a technical exposition of the comparative and international law relating to corruption in Africa, although it contains in-depth analysis of all of the major anti-corruption treaties that apply in Africa. It is an exposition of a full-scale anti-corruption programme built around international legal frameworks from the OECD Convention to the FATF Regulations, but relying to a very large extent on domestic law and political willingness to engage in such a programme.

It begins with a recount of the many reasons why corruption is a problem generally and in Africa in particular. Exploring the yin and the yang of this notoriously elusive subject, the author sets out both why corruption is so attractive to those who benefit both personally or through family, clan, ethnic, tribal or political ties, and why it is such a general evil. His familiarity with the subject matter is obvious. He explains (at pp 16-17), for example, various rationales for the growth in corruption in the post-colonial period – the structural depredations of colonialism itself, the government heavy nature of post-colonial African societies, centralisation under neo-colonial constitutional models of power in the hands of executives, or the African crisis in leadership. But this analysis, although intriguing, is not his goal – good governance is the outcome towards which the book strives, and he is clear that in this regard ‘political will’ is fundamental (p 28). The book is particularly strong on specific domestic examples drawn from across Africa to support his case. Peppered with minor examples of case law, legislation and institutional practice, every so often the author includes a larger case study to illustrate a point in greater depth. As an example of active political will where there is a genuine commitment towards anti-corruption at the highest political levels he relies, for example, on the pursuit by Lesotho of the major crimes of corruption carried out during the tendering process for the Lesotho Highlands Water project (p 29). He uses this example for various other purposes through the book.

The book covers a range of specific topics which Hatchard considers essential building blocks of good governance. In part 3 on preventive measures he includes the necessity of a code of conduct for holders of public office. But not content to simply advert to one, Hatchard spells out exactly what

should go into such a code from declarations of interest (p 39) to the penalties for breach (p 58). When examining the thorny question of the financing of elections he gives us another very interesting case study, this time of the shortcomings when it comes to rights to information of Tanzania's Election Expenses Act 2010. His message is simple – it is not enough to enact a law – it has to be followed up by institutional development.

Part 4 of the book shifts its focus to 'when things go wrong'. In this section the author deals with perhaps the most difficult of colonial legal legacies – the immunity of presidents and other public officials (p 78 ff). The practical nature of the book is illustrated once again by the detailed comparative exposition of the law on addressing integrity problems in the public service. Space precludes massive analysis, but he picks out the most important issues from the scope of the conduct required for abuse of office, the *mens rea*, possibilities of reversing onus and so forth, (p 89 ff).

The quite modern notion of corruption as a human rights, and in particular as a constitutional rights, problem is explored in Part 5 of the book. This draws attention to one of the underlying themes of the book which is that the looting of state assets is an issue which affects the individual human rights of those for whom roads, hospitals and schools are not built because public funds have been stolen (p 110). Perhaps the most important legal effect of this approach is that it bypasses the discretion to prosecute vesting in state officials (who may be unwilling to prosecute) and brings the victims as legitimate participants into the litigation (p 112). The author is evenhanded though – he explores various rights arguments that may be used to defend allegations of corruption such as rights to privacy.

In the critical issue of investigating and prosecuting corruption related offences (Part 6) the author covers a broad range of relevant issues. He is not naive – he recognises that one way in which the political will can ebb away from anti-corruption prosecutions is through the effluxion of time when judicial interventions or requests to foreign authorities for evidence located abroad hold up investigations (pp 151-152). He is alive to malign influence on the discretion of Attorneys General in regard to initiating and sustaining investigations. One of the most interesting provisions of the many small examples in the book is section 64(3) in the Constitution of Sierra Leone which removes that discretion entirely but only for corruption offences. Other sections deal with the institutional hierarchy of a modern anti-corruption system – anti-corruption bodies (Part 7) and judicial independence (Part 8) (the impact of the Kenyan 'Integrity and Anti-Corruption Committee' which identified 18 out of 36 Kenyan High Court Judges and 82 out of 254 Kenyan Magistrates as corrupt was particularly sobering).

In Part 9 Hatchard brings in the other players – in this case the private sector which instigates much of public sector corruption for its own profitable ends. His discussion ranges from the gentle persuasion of standard setting to the forceful persuasion of prosecution for bribing foreign public officials. The prosecution of Acres International by Lesotho is telling because of the manifest

difficulties involved in getting information from foreign bank accounts critical for the case (p 251). The case illustrates that corruption in Africa has strong links to the rest of the world. One is left wondering why despite undertaking general obligations to suppress corruption in various multilateral conventions, foreign prosecutorial authorities apart perhaps from those in the United States, do very little on their own prerogative in such cases.

In the final two technical parts (Parts 10 and 11), the author discusses the legal questions that surround actions consequent to corruption, to wit, money laundering, the pursuit of investigations with a transnational element through legal assistance from foreign states, and asset forfeiture. These areas of law are highly technical and he can do little more than skim the surface here but the explanations spell out the essence of these different crimes and legal procedures, as well as the more practical matters of how to actually go about making a request for assistance from a foreign executive authority. The solution based focus of the book is indicated once again by the reference to using civil suits as an alternative if criminal processes fail.

Part 12 functions as a conclusion and Hatchard uses it to reiterate many of his key themes. This is an experience from both bad and good practices. It is openly programmatic in nature. Yet even if one finds the didactic message difficult, the examples it gives illustrate that a battle is being fought in Africa by Africans over the prevention and suppression of corruption, and the law is playing a significant role in that regard. As the author says “things have changed and are changing”. Well written and the outcome of the kind of knowledge that can only arise from a lifetime of involvement in the subject matter, John Hatchard’s book is an outstanding guide to the changes that have been made and to the changes to come in the fight against corruption in Africa.

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