

Recent Publications

Human Rights

Human Rights, Labor Rights, and International Trade: Law and Policy Perspectives. Edited by Lance A. Compa and Stephen F. Diamond. Philadelphia: University of Pennsylvania Press, 1996. Pp. 311. Price: \$39.95 (Hardcover). Reviewed by Lincoln Schlei.*

This volume includes thirteen papers updated from the March 1992 Symposium on Human Rights and Labor Rights: A New Look at Workers in the Global Economy, sponsored by the Orville H. Schell Center for International Human Rights at Yale Law School. The Symposium brought together scholars, activists, jurists, and corporate executives. Lance Compa and Stephen Diamond divide these pieces into three parts: Labor Rights and Human Rights, Labor Rights and Trade, and Litigating International Labor Rights. The authors hope to offer practical strategies for working in these fields as they become increasingly intertwined in the growing world order.

Part I focuses on the extent to which labor rights and human rights are united and the extent to which they are separate dialectics. David Montgomery discusses economic globalization and the effects of capital relocation. However, he also provides a history of past international labor relations, illustrating how international trade discourse has sometimes promoted the development of interstate recognition of human rights. Virginia Leary discusses recent developments in freedom of association, the right not to join an association, and the right to strike. She argues that workers' rights and social justice are as essential to maintaining peace as are democracy and human rights. Philip Alston criticizes U.S. "labor rights amendments" as "aggressive unilateralism," arguing that they run afoul of customary international law, specifically human rights law.

In part II, focusing on labor rights and trade, Stephen Herzberg argues that the U.S. amendments Alston reviles are linked to a larger trade union movement. He suggests that a more comprehensive strategy for improving labor rights and conditions is needed. Cecilia Green looks at corporations that set up labor-intensive work sites in the developing world—specifically, factory work relative to women workers in the Caribbean. She discusses the situation of female electronics and apparel workers and suggests ways to mitigate global male hegemony. R. Michael Gadbaw and Michael T. Medwig argue against aggressive policing of labor rights, contending it is counterproductive to investment and global economic growth. Daniel Ehrenberg develops a proposal for enforcing labor rights and standards through trade sanctions imposed by groups like the World Trade Organization. He argues for the characterization of labor rights violations as unfair trade practices and not as

* We mourn the passing of Lincoln Schlei who died on December 11, 1996. He had become a valued member of *The Yale Journal of International Law*. We join the Yale Law School in grieving.

violations of human rights. This would harness the self-interest of each state to advance labor standards. Lance Compa and Tashia Darricarrere discuss enforcement of labor standards through corporate codes of conduct, comparing government-initiated codes and privately drawn "sign-on" codes, such as the MacBride and Maquiladora codes, with internal corporate codes, such as the Levi Strauss Terms of Engagement and Reebok's Human Rights Production Standards. They argue that these codes must become more widespread. Finally, Stephen Diamond criticizes the recently negotiated labor side agreement to NAFTA, the North American Agreement of Labor Cooperation, arguing that the traditional political representatives of the trade unions will prove to be more effective in achieving the goals of the unions.

Part III discusses litigation in U.S. courts concerning workers' rights. These authors explain current trends in the first generation of such cases after the recent statutory developments. Terry Collingsworth discusses a case brought by the International Labor Rights Fund against the Bush administration for alleged selective enforcement of the labor rights amendment to the Generalized System of Preferences. He presents ideas for developing labor policy in all three branches of government. Frank Deale considers the first case brought in a U.S. court by a foreign trade union alleging violations of workers' rights. Emily Yozell discusses an action brought by Costa Rican farm workers who were rendered sterile by a pesticide outlawed in the United States. There, the plaintiffs defeated a defense of *forum non conveniens* before the Texas Supreme Court and recovered extensive damages. Yozell discusses the broader issue of representing working-class foreign clients in the U.S. legal system.

This collection provides a tool for current practitioners, policymakers, and activists in surveying current frameworks of international trade, human rights, and labor rights in the new global economy. With the quick pace of current market evolution, such pieces are helpful in clarifying what advances have been made and what progress is still needed. International trade has become a forum for labor issues in a human rights context, which hopefully will lead to a standardization of human dignity principles without stunting global market cooperation.

Indigenous Peoples in International Law. By S. James Anaya. Oxford: Oxford University Press, 1996. Pp. 267. Price: \$45.00 (Hardcover). Reviewed by Eric Wunderman.

While domestic policy has considered the proper balance between the rights of individuals as individuals and the rights of individuals as members of communities, much debate in international law has concerned the proper balance between the rights of ethnic minorities as autonomous groups and the rights of ethnic minorities as constituents of states. In *Indigenous Peoples in International Law*, James Anaya, a University of Iowa law professor specializing in international law, human rights law, and Native American rights law, demonstrates how the conception of such rights has evolved in international law.

Anaya divides his work into three sections. The first section addresses the development of these rights over time, starting with the questions regarding Native Americans that arose in the wake of colonization in the New World. This includes the early Naturist frame, which, Anaya claims, granted Native Americans rights based on their humanity that could be lost following a so called "just war," meaning a war premised on interference with the promulgation of European values. Next, Anaya explores the rise of the nation-state and the Law of Nations model, which granted rights to nations as sovereigns but required indigenous peoples to meet the model of the European nation-state to be granted these rights. During the period in which the Positivists dominated international law, this position was solidified, and it was argued that only sovereign nations had rights under international law. The next step, Anaya reports, was the trusteeship doctrine: colonial powers had a trusteeship over conquered peoples, an obligation to "civilize" them. The United Nations affirmed the sovereignty of member states in international law, but introduced the concepts of individual rights and the self-determination of peoples in the face of colonialism. The international human rights model extended individual rights and incorporated ideas of social, economic, and cultural rights. Finally, within the framework of existing nation states, Anaya dissects the trend toward an international norm recognizing the rights of indigenous peoples to self-determination.

In his second section, Anaya analyzes contemporary international norms that pertain to self-determination. He examines various conceptions of the term "people" and concludes that the principle of self-determination must allow for a variety of human associational patterns. He then looks at the meaning of self-determination, arguing that it must have both remedial aspects, decolonization, and substantive aspects. The latter includes the constitutive aspect, or the idea that governments should be guided by the people governed, and the ongoing aspect, or the idea that people under any government should be able to live freely on a continuing basis. Anaya then describes the norms that underlie these aspects of self-determination: nondiscrimination, cultural integrity, access to land and resources, social welfare and development, and self-government.

After explaining the normative grounds supporting self-determination for indigenous peoples, Anaya, in his third section, examines the pragmatic difficulties involved with implementing such norms. He argues that contemporary international law imposes a duty on states to recognize the rights of indigenous peoples. However, since different state organs have different areas of competence, such organs may fulfill this duty in different ways. Finally, Anaya explores the array of international institutions that are available to encourage states to comply with their duties to indigenous peoples.

Although Anaya's work is not lengthy, it conveys a lot of information. Despite Anaya's passionate embrace of the rights of indigenous peoples, he is able to explain historical positions antithetical to his own with scholarly detachment. Domestic debate about the rights of individuals and the rights of groups is not new. Anaya's exposition of the current state of international law makes clear the primacy given today to the right of self-determination of

indigenous peoples.

The Law of the European Convention on Human Rights. By David J. Harris, Michael O'Boyle, and Chris Warbrick. London: Butterworth, 1995. Price: \$51.00 (Hardcover). Pp. lix, 714. Reviewed by Guenther Auth.

The European Convention for the Protection of Human Rights and Fundamental Freedoms established the first regional system for the protection of human rights. The European Convention has produced the most effective regional system for the protection of human rights, surpassing even the U.N. system with which it overlaps. The Convention establishes judicial procedures and serves as the basis for decisions made by the European Court of Human Rights.

The three authors, professors at London, Harvard, and Durham, draw a contemporary picture of the European system for the protection of human rights. The authors begin their comprehensive guidance by providing a historical setting, placing the Convention in the context of other regional and global human rights instruments. They introduce the reader to the Convention's enforcement system and give an account of its scope and function. The main part of the book consists of a systematic explication of the substantive human rights provisions in section I of the Convention. The authors also discuss further rights contained in the First, Fourth, Sixth, and Seventh protocols to the Convention. The authors' sophisticated commentary on these rights surpasses mere textual interpretation. The authors refer to the difficulties facing both national courts and the European Court of Human Rights in applying the aforementioned rights with any great measure of consistency. They analyze where uneven application may result from one member state to another because of different legal systems, cultures, and conceptions within the respective member states. The authors also highlight the inherent complexities of the rights guaranteed by the Convention. In addition, the rights protect broad interests leaving much scope for interpretation by the Strasbourg authorities. Finally, the court must walk a tightrope to prevent states from infringing on the Convention's entitlements without antagonizing those states, because the Court also needs the states' assistance in protecting individuals. Both readers with a civil law background and those educated in the common law will find this part of the book highly useful. The authors offer a thorough interpretation of the Convention's provisions and illustrate them with cases that have been brought before the Commission.

Complementing its emphasis on the procedural dimension of the European human rights system, the book also focuses on the composition, role, and organization of the European Commission of Human Rights, the European Court of Human Rights, and the Committee of Ministers. In the process, the authors delineate the respective functions of these institutions. Subsequent chapters deal with determining the admissibility of an application and with reforming the Convention. The book concludes by offering the reader a number of valuable resources: a Table of Statutes, a Table of European

Legislation and International/U.N. Conventions, a Table of Cases from the European Court of Human Rights, and a Table of Cases from the European Commission of Human Rights, sorted both alphabetically and by case number.

Harris, O'Boyle, and Warbrick give comprehensive coverage to all vital aspects of the Convention's substantive human rights law. The interweaving of judgments handed down by the European Court of Human Rights and decisions made by the Commission results in both a profound exposition of the Convention's provisions and a valuable reference guide through relevant decisions. The book is meant to serve the needs of law students and practitioners. It is an elaborate and well-indexed guide through the complexities of the European Convention.

The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples. Edited by Mortimer Sellers. Oxford: Berg Press, 1996. Pp. xii, 340, Index. Price: \$45.95 (Hardcover), \$19.95 (Paperback). Reviewed by Guenther Auth.

The nexus of national sovereignty, international human rights law, and, above all, the principle of self-determination provides the backdrop for the contributions to Mortimer Seller's collection. Many states joined the United Nations as well as other important international organizations pursuant to some demonstrated exercise in self-determination. However, as with other human rights principles, the exercise of self-determination has been inconsistent and enforcement by the United Nations has been selective. Moreover, states have not adopted a consistent policy for recognizing communities who insist on their right to self-determination. Consistency and enforcement problems are also to be observed with respect to recognizing human rights and humanitarian law during armed conflicts.

The New World Order grew out of a workshop on International Organization Studies, held at Brown University in July 1994. It contains ten essays written by practitioners and academics in the fields of international relations and international law. The essayists are not concerned with the moral basis of international institutions. Such a task would require a determination of whether regular patterns of social interaction, as well as formal international organizations, are subsumed under the term "international institutions." Instead the book discusses and defines the proper role of national and international institutions in charge of promoting and implementing human rights and self-determination after the Cold War. Some of the essayists focus on the exercise of self-determination, minority rights, and humanitarian law in the context of armed conflict, while others look at them in the context of disappearing and newly emerging sovereign states. Overall, the book presents conceptual approaches to the principle of self-determination, complemented by essays about past and present practice in the broader field of human rights.

The first essay, *Human Rights and Self-Determination*, generally sets out the modern conflict between state sovereignty and self-determination of peoples. Other contributions, however, such as *Self-Determination and Secession in Islamic Thought*, reveal a contingent and culture-specific

understanding of the issues. The authors convincingly present their understanding of self-determination from their specific historiogenetic or sociocultural context. Still others concern practical questions and problems that arise from protecting human rights within the spheres of sovereign authority, e.g., *United Nations Peacekeeping Operations in Situations of Internal Conflict*. They evaluate contemporary trends aiming to promote humanitarian law.

A few contributors clarify some conceptual ambiguities regarding the principle of self-determination, while others set out the most crucial problems for multilateral protection of human rights in a world of sovereigns. All the contributors see the state both as an impediment and as a necessary tool to solve contemporary problems in the field of self-determination, human rights, and humanitarian law. Though these are not spectacular insights, *The New World Order* delivers vital information in a pleasing rainbow of perspectives, creating a stimulating overview of this pressing problem.

International Institutions

Principles of the Institutional Law of International Organizations. By C.F. Amerasinghe. London: Cambridge University Press, 1996. Pp. xxx, 519. Price: \$89.95 (Hardcover). Reviewed by Michael Dardzinski.

The author is the Executive Secretary and Director of the World Bank Administrative Tribunal and has taught and written on numerous international legal issues. In this book, he evaluates the legal aspects of institutional behavior in some of the major public international organizations. His main purpose is to elucidate for the academic, practitioner, and student the general principles of law that apply to the practices of international institutions. These principles are said to derive not only from a similarity in these institution's governing texts but also from a common evolution of rules flowing from conventional and customary international law and from the "mutual influencing of international organizations." Where there are, strictly speaking, no general principles, Amerasinghe compares the various institutional norms in the hope of illustrating emerging trends relative to uniform principles. The book is not a study of the workings of any single international organization, nor is it a detailed compilation of cases dealing with one area of international law. Instead, readers are offered a good sense of the norms that govern the institutional operations of major international organizations.

After a brief introduction that highlights the growing relevance of international organizations, Amerasinghe analyzes fourteen aspects of institutional operation and governance. He is comprehensive, looking at the interpretation of charters and treaties, the legal standing of international organizations, the character of their membership, the relationship between agencies within the organization, the legal authority of their acts generally, the liability of international organizations to third parties, employment relations between the organization and its employees, the organization's privileges and immunities, the method for resolving disputes between, inter alia, member

states of an organization, and dissolution and succession of organization. Each chapter begins with the presentation of general questions. Amerasinghe then discusses how different international institutions deal with the issue through an examination and comparison of their constitutional agreements, judicial decisions, and organizational practices.

His first chapter, "Interpretation of Texts," is divided into a section on the interpretation of constitutional texts and the interpretation of the decisions of different organs. He uses cases from organizations such as the United Nations, the International Labor Organization, and the International Bank for Reconstruction and Development. The chapter highlights who it is that actually does the interpreting: organizational tribunals, organizational plenary organs, state judicial bodies, or other international institutions such as the International Court of Justice. Amerasinghe's analysis of this process of interpretation reveals that the interpretive norm is not to use any one factor but involves the "natural and ordinary meaning of the text," the purpose of the text, the past practices of the organization, and general international experience.

Amerasinghe's subsequent chapters follow this same general outline. Each is filled with a detailed comparison of the practices of different major international organizations. The book analyzes over 350 cases culled from different tribunals. The amount of material covered is impressive. The analysis of these cases reveals the author to be a skilled practitioner and observer of the international legal experience. The book will serve as a valuable introductory tool to those interested in researching or working in international organizations. In a time when the number and reach of international organizations is growing, it provides an excellent baseline for assessing an organization against the norms of institutional governance.

The World Trade Organization: Implementing International Trade Norms. By Asif H. Qureshi. Manchester: Manchester University Press, 1996. Pp. xi, 260. Price: \$90.00 (Hardcover). Reviewed by Harry Jho.

International commerce is governed as much by law as it is by economics. Most of the world's trade since the Second World War has been administered by legal documents, first by the General Agreement on Tariffs and Trade (GATT), and today by its successor agreements under the umbrella of the World Trade Organization (WTO). Due in part to the GATT's institutional shortcomings, the negotiators of the Uruguay Round, the eighth round of GATT trade negotiations, drafted the WTO Code, which established the WTO in 1995. Since then, the WTO has taken on the task of addressing an ambitious agenda of new trade issues in addition to implementing the agreements of the Uruguay Round. While there has been a great deal written on the WTO from an economic perspective, the WTO's legal aspects have been largely ignored despite the centrality of these structuring agreements.

Asif Qureshi takes a first step toward addressing the legal aspects of the WTO in his book, *The World Trade Organization: Implementing International Trade Norms*. Qureshi's book is separated into three general parts. Part I

begins with an outline of the institutional structure of the WTO in chapter 1 and continues with a detailed discussion of the WTO Code in chapter 2. This chapter also reviews the agreements that arose from the Uruguay Round of trade negotiations, including the GATT 1994 and the General Agreement on Trade in Services.

Once he has introduced the provisions of the code, Qureshi presents the core of his book in part II, where he introduces and analyzes the techniques that the WTO can use to implement its code: methods of surveillance, supervision, dispute settlement, and enforcement. Qureshi pays special attention to dispute settlement and the Trade Policy Review Mechanism, which he discusses in chapters 5 and 6, respectively. He concludes this part with a chapter on the requirements for new members as they relate to the methods of implementation he has discussed.

Part III of the book focuses specifically on implementation as it relates to developing countries in chapter 8 and trade 'blocs' in chapter 9. Qureshi concludes the book with a chapter on the European Union's impact on the implementation process of the WTO. The book includes a comprehensive appendix, including a complete copy of the WTO Code and the provisions of all of the Uruguay Round agreements that he discusses in the book.

Despite its ambitions, Qureshi's book is more of an exposition of the elements of the WTO than a legal analysis of the organization. *The World Trade Organization: Implementing International Trade Norms* covers all of the provisions of the WTO Code. Qureshi's methodical treatment of the issues arising in relation to its implementation succeeds in providing the reader with a straightforward, highly accessible presentation. Those readers who are interested in an economic analysis or the historical background of the Uruguay Round and the WTO would be better served elsewhere. For those who are interested in exploring the institutional framework of the organization, this book will serve as a useful guide.

The United Nations in the New World Order: The World Organization at Fifty. Edited by Dimitris Bourantonis and Jarrod Wiener. New York: St. Martin's Press, 1996. Pp. ix, 211. Price: \$40.00 (Hardcover). Reviewed by Henry Fong.

The history of the United Nations teems with excitement, for the United Nations was involved in key global events in the last fifty years: the end of the Second World War, the creation of Israel, the Korean War, the Suez crisis, the Cuban missile crisis, the Six-Day War, the Persian Gulf War, and, more recently, the crises in Somalia and Bosnia. The United Nations' institutional role has not been lacking for drama either; indeed, the organization's fortunes have constantly ebbed and flowed since its birth. A half-century ago, the United Nations was created amid international idealism and high expectations that were quickly snuffed out by the onset of the Cold War. Nevertheless, the United Nations found its niche by becoming heavily involved in the troubles of Israel, Cyprus, and the Congo that concerned only the outer margins of the Cold War rivalry. By the end of the 1970s, however,

the fortunes of the United Nations had plummeted; a surge of new Third World member states engulfed it and, with Soviet acquiescence, limited the United Nations to being a divisive forum for anti-Western and anti-American invective. In recent years, fortunes and hopes once again rose as the Berlin Wall fell, the Cold War ended, and the U.N. Security Council helped turn back the Iraqi invasion of Kuwait. But the frustrations of Somalia and Bosnia dashed many of these hopes, and now, after its fiftieth anniversary, a mature and chastened United Nations must redefine its role in the new post-Cold War era. For most of its half-century of existence, the United Nations had operated within the practical parameters established by the bipolar tension of the Cold War, which imposed strict limits on the United Nations as a collective body. Now, for the first time, a new international system promises to shake up the United Nations.

Given that the United Nations is currently wrestling with its role in international politics and that the global system is still in flux, the formidable task of outlining the challenges facing the institution is both necessary and timely. In *The United Nations in the New World Order*, Dmitris Bourantonis and Jerrod Weiner undertake this task and succeed in placing the world organization within the chaotic context of the new global system. The authors of the articles in Bourantonis and Weiner's text seek both to describe various problems facing the United Nations as the organization tries to successfully adapt to the New World Order, and to suggest ways in which the United Nations can cope with the litany of problems presented by the post-Cold War world.

To varying extents, these authors do succeed in describing and organizing much of the chaos that surrounds the United Nations' new mission. Although no one can delineate a precise path, the authors do offer "navigation points" by illuminating many of the obstacles that the organization must overcome: the increasing tension between globalization and regionalization, the changing conceptions of global security, the potential loss of stability provided by the strongest member states, and the United Nations' own need to cope with its new global role and its ever-present budgetary woes through organizational reform. While the book does achieve its goal of erecting signposts for the United Nations in transition, it predicts a future of daunting challenges.

Lev Voronkov's *International Peace and Security: New Challenges to the United Nations* is a particularly strong and illustrative piece. While it displays some of the cautious optimism that the editors claim the book generally projects, the article illustrates the complexity and enervating nature of certain problems that have emerged in the aftermath of the Cold War. In his article, Voronkov asserts that the United Nations' new role depends in large part on how it adapts to the increasing tension between international globalization and regionalization—the results of which could frustrate or even threaten the maintenance of international peace. Voronkov argues that globalization and regionalization are not mutually exclusive and not detrimental to the global community if appropriately handled. Indeed, the trend toward regionalization seen in economic groupings such as the European Union, ASEAN, and NAFTA, and by security groupings such as the CSCE and NATO, is not necessarily harmful to global cooperation in the New World Order because

such regional arrangements can assist in promoting and implementing the United Nations' broader goals. The United Nations can successfully deal with this regionalization/globalization tension by implementing a strategy of globalization promoting political contact, collective security, and economic interdependence. But as Voronkov points out, in the New World Order, globalization increasingly involves a greater pooling of problems as the world community becomes a "global village." Overwhelming problems such as nuclear buildup, environmental degradation, nationalist conflict, and surging population growth will proliferate, requiring the global system to address these problems of common concern. Like many of the other articles in this text, Voronkov indicates that there are indeed pragmatic ways in which the United Nations can respond, adapt, and evolve in reaction to the myriad of problems presented by the New World Order. The authors convey a sense of frustration with the obstacles that the emerging international system will inevitably encounter.

The Law of Foreign Countries

The Arab-Israeli Accords: Legal Perspectives. Edited by Eugene Cotran and Chibli Mallat. London, Boston: Kluwer Law International, 1996. Pp. 303. Price: \$117.00 (Hardcover). Reviewed by Lawrence J. Small.

The Arab-Israeli Accords: Legal Perspectives provides insight into the peace process between Israel and the Palestinian people at a crucial time in the evolution of that process. The book's editors, Eugene Cotran and Chibli Mallat, are associated with Britain's School of Oriental and African Studies and serve as members of the Centre of Islamic and Middle Eastern Law. They have presented an admirably neutral and balanced book on an inflammatory topic. They divide the Arab-Israeli Oslo Accords into six topical headings and then include one essay presenting the "Israeli" perspective and another presenting the "Palestinian" perspective under each heading. Five of the six Israeli essays are from authors who teach at the Hebrew University in Jerusalem, while the sixth is from a scholar at the Law Library of Congress. The Palestinian perspective is presented by a more eclectic group of scholars, including some educated as barristers in Britain, a practitioner in the West Bank, and a professor at the Islamic University in Gaza.

The book begins with an analysis of history and law. The authors present the problems faced by both sides in finding a legal resolution to their difficulties. Israel had a democracy for its own affairs, and while it permitted Israeli Arabs to run for Knesset legislative seats, it had essentially governed the Palestinian Arabs, those living in territories captured in various wars, through military decrees. This system engendered in some Palestinians a distrust of the law as a means of dealing with the Israelis. Curiously, this argument for mistrust of Israel's legal promises ignores the fact that Palestinians do not claim Israel violated its own law. Rather, they merely claim that Palestinians objected to it. The other source of friction between Israel and Palestine grew out of their respective legal backgrounds. Israelis

inherited a common-law tradition from the British, since Israel was the United Nations' designated successor to the British Mandate. They view law as a slow process of accretion over time based on judicial precedent. Although the Palestinians also were subjects under the British Mandate, which ended in 1945, they had some recent experience as refugees in Egypt, Jordan, and Syria, which apply civil law—reasoning in the abstract and from first principles. The book argues that the two sides spent much time talking past each other in their initial negotiations until familiarity led them to a better understanding of the other's legal concerns.

Another section of the book explores the Accords' possible domestic ramifications. For many years in Israel, while all agreed on the need for harsh measures against actual terrorists, the Right had called for harsh measures against agitators of and inciters to violence, who were primarily Palestinian. At the time the book was written, the Right, while not calling for violence, was demonstrating against Palestinian sovereignty. When the security forces forcibly began to quell their agitation, the Right began calling for the protection of civil liberties and for the police restraint that had been long absent from their rhetoric. As a result, the essayists argue that the Accords might foster the formulation of a written Constitution, because Israel, like Britain, is one of the few democracies that does not function under a written document. The British influence was augmented by the fear of Israel's founders of carving in stone the delicate balance between religious and civil authorities. Many on the Left have attempted through the Israeli Knesset to pass Basic Laws on freedoms that the Israeli Supreme Court would then interpret as serving a fundamental law function—enshrining rights not subject to mere legislative overthrow. With the advent of the security concerns surrounding the Accords, the Right may be more amenable to joining a coalition to bring about such a change.

The domestic problem on the Palestinian side is different. The Palestinians already have a written document. The book reprints the Palestinian Basic Law for the National Authority in the Transitional Period, which enshrines many rights and provides for a democratic system of government. The challenge here, however, is in ensuring that the Palestinian National Authority actually adheres to it.

The book also touches upon the effects that the legal aspects of the Accords will have on economic relations between the two sides. Both sides agree that the Accords do not promote unity between Israel and the Palestinians. The Israeli author compares the situation of the European Union, and finds that unlike the European Union's rules, the Accord's legal rules will promote two separate systems instead of one unified entity. The Palestinian co-authors go even further, denigrating the economic agreements as an Israeli exercise of political power and an attempt to maintain Israel's current status as the dominant player in the relationship. Authors come to similar conclusions about the Accords and the allocation of water resources, which is a vital issue in the Middle East region. This issue goes beyond bilateral Israeli-Palestinian relations and involves other countries like Jordan and Syria. The Israeli author focuses on the need and hope for wise resource management so that all sides benefit equally and that the agreements prove

sustainable. The Palestinian author complains that the Accords give Israel an unfair advantage due to its pivotal control of the sources of the Jordan River, but does not offer a solution that would be more equitable and practicable.

The book suffers from some serious defects. The first concerns timing. Although the book was published in 1996, it derives from papers presented at a conference in London in December 1994. Their premises are based on the vision and philosophy of an Israeli Labour Government led by Prime Minister Rabin that has radically changed. The book thus provides a solid analysis of the legal theory behind the Accords and their potential effects in other spheres of life, but they can present no actual information about the results of the Accords. The book lacks perspective because it was published so soon after the events it discusses. Events have rendered many of the judgments in the book obsolete.

Second, although the book presents the two sides for each general issue addressed, the authors take no cognizance of each other. Each writes in a vacuum, and addresses the other side's argument only by happenstance. The book would have been much more effective if the editors had taken more effort to ensure the authors dealt more substantively with each other's arguments. Thus, the book lacks both timeliness and coherence.

Nevertheless, the articles provide insight into the mood of the legal community immediately after the signing of the Declaration of Principles on the White House lawn. This book also discusses the effects that the Accords might have on economic, social, and foreign relations. As many of the essayists acknowledge, the niceties of drawing up legal documents often give way, in implementation, to the realities of power politics in the region. The great difficulty still lies in getting all sides to adhere to the rule of law and to beat their swords into legal codes of conduct.

Politics and Justice in Russia: Major Trials of the Post-Stalin Era. By Donald D. Barry and Yuri Feofanov. New York: M.E. Sharp, 1996. Pp. xii, 345. Price: \$62.95 (Hardcover). Reviewed by Masato Hayakawa.

Politics and Justice in Russia, represents a unique collaboration between Donald D. Barry, an American political scientist, and Yuri Feofanov, a Russian journalist and former courtroom correspondent for *Izvestia*, the official Soviet newspaper. Most of the text was written by Feofanov. Barry served more as an editor than co-author; he translated Feofanov's text from Russian into English, added citations, and wrote brief introductions to each chapter that provide historical context and a synopsis of contemporary scholarship concerning a particular era of the Soviet-Russian justice system.

The book is organized chronologically, with sections divided according to the administrations of Soviet leaders. The book begins with a description of the "thaw" under Nikita Khrushchev and the relaxation of harsh societal controls imposed by Stalin. Feofanov adds his own personal recollections, mentioning that the appointment of Alexi Adzhubei, Khrushchev's son-in-law, as editor-in-chief of *Izvestia* resulted in new power for the press. He notes the freedom to write about topics previously considered taboo, including the

administration of justice. The inability to make formal complaints or appeals against the authorities, Feofanov suggests, resulted in the press acting as a substitute court of appeal during the Khrushchev period, with the press reviewing cases and sentences. Despite this newfound power, the press was still not allowed to criticize the system itself, merely the decisions in isolated cases.

Even this limited power was lost following the removal of Khrushchev and the rise of Leonid Brezhnev. Feofanov describes this period as one of "soft terror." The activities of dissidents and intellectuals replaced economic crimes as the prime concern of the legal system, and harsh penalties such as capital punishment were eschewed in favor of softer measures: exile and restrictions on mobility.

During Yuri Andropov's brief tenure, corruption among officials emerged as the main concern of the legal system. It was this unleashing of the legal system to regulate state and Party officials, Feofanov argues, that ultimately led to the collapse of the Soviet Union. Andropov's brief tenure as head of the Party was followed by the even shorter administration of Konstantin Chernenko, an old-guard reactionary whom Feofanov mentions only in passing.

In their section on Mikhail Gorbachev, Feofanov and Barry turn to a discussion of the effects that *glasnost* and the gradual collapse of the Soviet Union had on the legal system. For the first time in the book, non-political criminal cases are discussed. Feofanov argues that the removal of political influence from the legal system, rare in the pre-Gorbachev era, is necessary for true justice. Feofanov also investigates ethnic tension during the final days of the Soviet Union in the context of the trials of those who led local unrest in the non-Russian republics. Feofanov and Barry pay considerable attention to the rehabilitation of victims of the Stalinist Terror during the Gorbachev period. Despite the title of the book, Feofanov comments extensively on their trials during the Stalin period.

Feofanov and Barry close their book with a section on the post-Soviet Russian legal system. Feofanov comments on what he calls "Russia's Nuremberg," a trial before the Constitutional Court to determine the constitutionality of Boris Yeltsin's order banning the Communist Party. In this section, Feofanov also writes based on his experiences as a people's assessor, a citizen selected to serve a term as an aide to a judge in trials of original jurisdiction. Feofanov, in conclusion, argues strongly for more citizen participation in the judicial process, asserting that Russia needs to incorporate juries into its legal system to create an independent judiciary.

Although the book is organized chronologically, its coverage is quite uneven. Only one case each from the Khrushchev and Brezhnev eras is covered. The majority of the book is dedicated to the Gorbachev and post-Soviet periods. This unevenness may be a function of Feofanov's career in the courtroom. As Barry notes in his introduction, the greater restrictions on the press during the early years of Feofanov's career limited the cases that Feofanov could observe. Despite this uneven coverage, the cases selected are at least representative of what, in Feofanov's opinion, were the pressing legal issues and concerns under each Soviet leader. For example, the cases illustrate

the harsh penalties and economic crimes under Khrushchev and the crackdown on dissidents under Brezhnev.

The early chapters devoted to Khrushchev and Brezhnev have a confessional, repentant tone. Feofanov ashamedly admits that he was little more than a propagandist for an unjust system. In one particularly moving episode, he confesses that he stood helpless while a pair of currency exchangers were sentenced to death. In another case, he sadly confesses to writing prejudicial articles denouncing dissenters who were on trial. Feofanov, in hindsight, writes: "Regarding my personal culpability, I have written clearly enough: The verdict is guilty."

Feofanov's greatest regret is the absence of the rule of law throughout Soviet history. To Feofanov, even the power of the press during the Khrushchev period was a function of the power of an individual—Khrushchev's son-in-law—and not a systematic reform. In place of law, Feofanov suggests that the crux of the Soviet legal system was the personal power of party leaders, and that this concentration of power in the hands of individuals led to a system of arbitrary justice. This notion of arbitrary justice is a recurring theme throughout the book, beginning with a definition of "arbitrary" provided by the introduction. According to Feofanov, decisions subject to the whim of the leader was the hallmark of the Soviet legal system. The system was designed to combat dissent, not crime, and was based not upon law but upon the "legal affirmation of dogma." To break with this past, Feofanov advocates legal reform, emphasizing procedural safeguards to protect defendants and the use of the jury system to prevent official abuse of power. Feofanov looks to the American legal system for inspiration, approving even the dismissal of charges against apparently guilty defendants on procedural grounds.

Neither these suggestions for reform nor the analysis of Soviet legal history breaks new ground, but the insights of Feofanov, one of the most prominent legal correspondents of the day, provide valuable glimpses into the Soviet legal system from a first-hand observer. Those looking for a comprehensive scholarly work on the Soviet legal system may come away disappointed. The limited coverage of certain topics, along with the personal and confessional nature of the writing transform this book into a work of a different character. The book represents an interesting collection of reflections from a noted journalist as he comes to grips with both his own past and that of his country.

Rituals of Retribution: Capital Punishment in Germany 1600–1987. By Richard J. Evans. New York: Oxford University Press, 1996. Pp. xxxii, 1014. Price: \$65.00 (Hardcover). Reviewed by Nathan Limpert.

The legitimacy and utility of capital punishment have long been the source of great controversy in Germany and around the world. *Rituals of Retribution* provides the reader with a massive amount of factual and contextual material pertaining to executions in the various German states over the last four hundred years. The text is chronologically organized. Throughout his

chronicle of events, Richard Evans permits himself little editorializing on the moral questions arising from the imposition of death as a penalty. Instead, he allows the theologians, philosophers, monarchs, and politicians who decided these questions for Germany to explain their positions, quoting them at length throughout the book. He lets the voice of Germany speak.

By Evans's own admission, *Rituals of Retribution* is "theoretically as well as methodologically eclectic," which makes the study seem unfocused and disjointed at times. The introduction surveys previously advanced theories that attempt to explain the transformation of penal practices. Though skillfully addressed, these theories are not referred to again until the conclusion nearly nine hundred pages later. Also, digressions in Evans's historical narrative occur throughout the text. For example, the transition from part I to part II is interrupted by a fairly involved analysis of confessions and moral speeches delivered to the public at the executions of the period. Though these digressions help make this work a comprehensive reference, they tend to make Evans's narrative difficult to follow.

Part I describes the essentially religious character of executions in the seventeenth century and the secularizing influences of the Enlightenment that helped to transform them. Malefactors invariably confessed during the seventeenth century due to the spirited application of torture. After a confession was obtained, offenders were brought to the scaffold or place of execution amidst an elaborate religious procession in which the entire community was involved. Evans emphasizes the gruesome character of these executions with a liberal use of illustrations. He then describes efforts toward penal reform pursued by Enlightenment thinkers in the eighteenth century that resulted in the decline of torture and the elimination of methods of execution that caused more than a "rational" degree of pain.

Evans's theoretical eclecticism is evident in part II. He uses a construct of gender theory to explain the transformation of capital punishment in the early nineteenth century. Evans asserts that the authorities used capital punishment to maintain the social order. In his view, the absolutist authorities attempted to impose what they saw as a rational, "masculine" understanding of capital punishment upon a populace that was perceived as emotional and "feminine." Executions became decidedly less ritualized and religious in nature as monarchs attempted to employ capital punishment as a deterrent to crime and as a demonstration of state power. For fear that the "feminine" mob would be moved to sympathy by the plight of the malefactor and cause disturbances of the peace, executions began to be held in private. He supports this assertion with an impressive amount of statistical data compiled from various criminal archives. He offers an exhaustive statistical breakdown of condemnations versus executions in relation to various categories including social class, gender, offense committed, victim, and motive. Among other things, his data demonstrates that offenses showing a lack of respect for authority, such as the murder of a man by his wife, were more likely to result in an execution.

In parts III and IV Evans asserts the primacy of political events in shaping the debate over capital punishment that developed within the unified Germany from 1870 to 1933. He ties the popularity of execution with the fortunes of

its proponents and discusses some highly publicized trials that greatly affected popular opinion.

Part V addresses the problems presented by the mass exterminations carried out by the Third Reich under Adolf Hitler. Capital punishment was of central importance to the Nazi program for cleansing the race. Evans argues that by convincing Germans of the righteousness of capital punishment in advancing these racial goals, public acceptance of the atrocities of the period was advanced. Evans recognizes that the extra-judicial campaign of extermination directed against Jews and others falls outside the realm of capital punishment. Nevertheless, he points out that the German legal system did not merge with the apparatus of extermination but continued to deliver justice, however farcical, throughout the war. The Nazi judicial system employed executions to prevent "criminal elements" from reproducing or otherwise harming Germany; it was a surgical procedure in which ritual had no place. Evans demonstrates that the last vestiges of ritual, like the last meal, were finally dispensed with during this period.

Part IV concerns the abolition of capital punishment in both East and West Germany following the war. The thesis of this section is both ironic and persuasive. Evans argues that capital punishment was abolished in the West, in part, to spare the lives of those convicted of war crimes. Abolition in East Germany occurred much later, in response to a desire to appear no less "humanitarian" than West Germany. This section also contains a discussion of the East German use of "show trials" as propaganda.

The conclusion assesses the successes and failures of the theories described in the introduction in light of the discoveries made in the main body of the book. The theories of Michel Foucault and Norbert Elias are given particular attention in a wide-ranging discussion of punishment, cultural change, and German idiosyncrasy. The book also contains an impressive statistical appendix and an extensive, fifty-one page bibliography. Though tortuous and eclectic, *Rituals of Retribution* contains a wealth of material that would be an invaluable resource for anyone attempting to understand capital punishment as a social phenomenon, the vicissitudes of German cultural change, or the relation between capital punishment and the murderous actions of the Third Reich.

Natural Resources

Global Environmental Change and International Law: Prospects for Progress in the Legal Order. By Lynne M. Jurgielewicz. New York: University Press of America, 1996. Pp. xxi, 268. \$34.00 (Paperback). Reviewed by Michael Beckman.

In the last hundred years, the human population has tripled, the global economy has increased twenty-fold, and the consumption of fossil fuels has grown thirty-fold. Four-fifths of this tremendous increase has occurred since 1950, an exponential expansion that will only continue into the twenty-first century. This frenzied amplification of human activity across the planet has

impacted the environment in a multitude of disastrous ways, resulting, *inter alia*, in mass deforestation, the progressive elimination of biodiversity, and the proliferation of water and air pollution. In her book, Lynne Jurgielewicz focuses on two of the most global environmental threats, climactic change and ozone depletion, in order to address two questions: Can a fragmented system of over one hundred seventy sovereign states, multinational corporations, and nongovernmental organizations effectively deal with environmental transformations of planetary proportions? And if so, how?

Jurgielewicz answers that coordinating among these actors can be achieved through international regimes. She liberally crosses disciplinary boundaries to explore the application of international regime theory to international law. The book investigates numerous definitions of the term "international regime," but more or less consistently characterizes the term as the process by which diverse international actors mutually recognize the legal obligations entailed in dealing with specific global issues. As such, a regime tends to originate as a response to the wide spread perception of a particular crisis.

The book uses the twin potentially planetary crises of climactic change and ozone layer depletion to illustrate the role of regimes in the international legal order. Both cases exemplify the way in which international regimes solidify generally agreed upon obligations into more substantive international law. Jurgielewicz argues that merely studying the resulting obligations of international agreements, such as the Vienna Convention for the Protection of the Ozone Layer, does not reveal the underlying legal order. Instead, one should study the process by which shared expectations develop and transform into binding regulations. She repeatedly asserts throughout the book that the international legal order is a dynamic process rather than a static set of rules, with the implication that one cannot appreciate this fact without a knowledge of regime theory. However, it is not entirely clear that scholars of international law are as blind to the extra-legal factors that influence lawmaking, such as foreign policy, as the book would have the reader believe.

Global Environmental Change and International Law is a well documented and timely contribution to the fast growing field of international environmental law. The book is clearly organized into discrete sections for readers who may be only interested in one aspect or another of the discussion. It sometimes tends toward an overly encyclopedic or even dryly schematic presentation. This potential deficiency is mitigated, however, by a healthy peppering of folksy quotations drawn from sources as varied as Indiana Jones, Peggy Noonan, and the Old Testament. Anyone interested in the interdisciplinary intersections of law and international relations would do well to acquaint themselves with this work.

La Souverainete sur les Archipels Paracels et Spratleys. By Monique Chemillier-Gendreau. Paris: Editions L'Harmattan, 1996. Pp. 306. Price: \$42.00 (Paperback). Reviewed by Steve Carlson.

Located in the South China Sea, beyond the territorial limits of the

surrounding nations, the Paracel and Spratley Islands for centuries were avoided as a locus of shipwrecks and the violent tropical storms that caused them. Never inhabited, they were visited over the ages by fishermen. These two archipelagos are now coveted for their promise of mineral and biological wealth. Ever since the downfall of Imperial Japan, whose retreat from the South China Sea highlighted the strategic position of the Islands, neighboring nations have asserted their sovereignty over them, in order to assume control over fishing rights and potential petroleum reserves. Among the nations contending for sovereignty over the archipelagos, Vietnam maintains the most direct historical claim to the Islands. Its assertions are most strongly countered by those of China, which has militarily occupied the Islands since 1956. Taiwan, Malaysia, and the Philippines have also claimed sovereignty. *La Souverainete sur les Archipels Paracels et Spratleys*, describes the legal means for assessing the dispute, and the historical background necessary for its resolution.

International law is challenged to provide for the peaceful resolution of the present conflict. The absence of permanent inhabitants or major economic interests excluded the Paracel and Spratley Islands from the scrutiny of international diplomacy, and left the Islands outside the explicit sovereignty of surrounding nations, until the twentieth century. The determination of the sovereignty of uninhabited islands lies beyond the scope of maritime law; an appropriate measure to resolve which nation, or nations, should maintain claims to the Islands and their potential wealth, may be provided by an evaluation of each contending nation's historical claims to the Islands. Mere discovery of the Islands, or a simple declaration of control over them, does not suffice to attain sovereignty; rather, contending nations need to show continuous and systematic development of the Islands to substantiate their claims.

Vietnam holds the oldest, most direct claim to the Islands. As far back as the eighteenth century, the Annamite Empire that governed Vietnam sponsored two sea-going companies to recover goods from shipwrecks in the Islands. It is assumed that each company targeted one of the archipelagos, thus establishing an Annamite claim to both the Paracels and Spratleys. The Empire erected a stele (engraved pillar) and a temple on the Islands, and planted trees to mark the Islands for navigators. An eighteenth century Annamite map included the Islands within the territory of Annam. The French, who colonized Annam in 1884, preempted the Annamite's claims to the Islands and maintained a tenuous vigilance over the archipelagos throughout the Protectorate. However, the granting of Vietnam's independence in 1956 and the subsequent turmoil of its civil war allowed the historical claims to the Islands to lapse until Vietnam's post-war reunification in 1974.

China lacked concrete claims to the Islands prior to the twentieth century, when Japanese expansionism prompted it to open exploratory operations of its own. France's indifference to China's presence in the Islands encouraged China to assert sovereignty over the Paracels as early as 1909. Japan took much of the South China Sea during World War II, including the archipelagos. Japan's subsequent defeat and retreat created a vacuum that was left unresolved by post-war treaties. Upon France's final withdrawal from

Indochina, China's military overtook the eastern half of the Paracels in 1956, the western half in 1974, and the Spratleys in 1988. China has since fortified its garrisons on the Islands to bolster its claims of sovereignty.

China contends that its claims to sovereignty over the Islands are not based on military prowess but on historical fact. However, prior to the twentieth century, China publicly averred that it maintained no ties to the Islands, so as to not incur liability from shipwrecks in the archipelagos. More recently, China claims that North Vietnam, in 1958, ceded to it sovereignty over the Islands. This transfer of rights is void, however, because the demarcation between North and South Vietnam left the Islands under control of the latter.

The primary conflict, that between China and Vietnam, flared in 1974 and 1988, when Chinese forces overcame Vietnamese patrols. Both parties have since raised the stakes in the dispute by contracting with foreign oil companies to develop possible petroleum reserves. The potential for broadened hostilities is ripe, and international law must find a solution. Since neither China nor Vietnam are signatories to the jurisdiction clause of the International Court of Justice at the Hague, their submission to a decision issued by the Court would be voluntary. China maintains one judge on the Court, and is not opposed in principle to resolving the conflict at the Hague. It has made no attempt to do so because its nonmilitary claims to the Islands are tenuous and its recent advances violate the U.N. Charter, which does not recognize territorial gains by forceful conquest. Thus, it is unlikely that China will voluntarily submit itself to the International Court of Justice, the most appropriate institution for resolving the conflict.

The author asserts that an eventual resolution to the conflict with respect to the Paracels should be bipartisan, between China and Vietnam; the conflict over the Spratleys, which may be more pernicious due to the promise of petroleum reserves there, should be decided between China, Vietnam, Taiwan, Malaysia, and the Philippines, as each of these countries maintains claims to the archipelago. The mechanism for resolving the current dispute is unclear, however, as the issue lies beyond the scope of maritime laws and outside the jurisdiction of the International Court of Justice. Pressure is mounting to determine sovereignty over the Islands, as petroleum companies, eager to commence exploratory operations, are loathe to make large capital investments until the political situation calms. Absent intervention from international arbitrators, China maintains the upper hand in the dispute, because of its military presence in the Islands. China, whose policy of aggression may usurp Vietnam's historical claims to the Islands, stands to profit from the interstices of international law. This book competently and coherently offers key insights into a volatile and contemporary sovereignty dispute boiling in the South China Sea.

