

# Noteworthy New Titles

## AIDS

*International Law & AIDS: International Responses, Current Issues, and Future Directions.* Edited by Lawrence Gostin and Lane Porter. ABA Section of International Law and Practice: Washington, 1992. Pp. ix, 386. Price: \$45.00 (Paperback). Reviewed by Linda Richichi.

As this review is being written, one and a half million people are dying of AIDS. According to World Health Organization (WHO) estimates, 40 million people will be infected with the HIV virus by the year 2000. This disease, called a "pandemic" because of its global reach, threatens more than the lives of its victims; it threatens the political, economic, and social health of the peoples of the world. The global response to AIDS has taken forms that reveal conflicting emotions: fear, blame, hope, and compassion. Lawrence Gostin and Lane Porter, both Executive Directors of the American Society of Law, Medicine & Ethics, gather in this volume articles that provide a survey of these global responses, with special emphasis on the issues of public health, international travel, and human rights.

*International Law & AIDS* begins with an overview of international legal responses to AIDS, citing specific reporting and testing statutes across the globe. Part I provides a comprehensive summary of the law as of 1992. The benefits of this discussion will inevitably diminish over time, especially because the AIDS crisis demands rapid responses to new medical and political developments. Some of the factual questions about HIV transmission (e.g., infection through breast milk) that were unanswered at the time of publication have since been resolved. Still, a discussion of legislative responses to AIDS lays the foundation for the later, more policy-oriented essays.

This book provides a useful survey of the ways WHO and individual states have responded to AIDS, often revealing the conflicts between national policies and WHO's appeals against HIV discrimination. For example, states have barred HIV+ persons from immigrating or obtaining asylum, and have refused to allow those found with AZT in their luggage to travel abroad. The editors justly criticize the policies of the United States and other nations restricting immigration and travel.

Part III discusses human rights and AIDS, focusing on AIDS in the workplace. The authors argue cogently against widespread mandatory testing for AIDS, and in favor of education about transmission of the disease, as well as "protection of the privacy and dignity of infected workers." Part IV

discusses special populations affected by the HIV virus. Unfortunately, this section consists of only one article, which discusses drug addicts and clean needle programs. Part IV thus seems incomplete, and would have benefited from a discussion of other special populations, such as infants born with HIV.

Almost a third of the book consists of appendices of international documents, including U.N. General Assembly and WHO pronouncements on AIDS.

Gostin and Porter have drawn together a collection of informative and persuasive writings on how the world should (and should not) confront HIV. Human rights advocates, policy-makers, and scholars will find it a valuable resource for developing an aggressive yet compassionate response to AIDS.

### Comparative Law

*An Introduction to the Legal System of the People's Republic of China.* By Albert Hung-Yee Chen. Singapore: Butterworths Asia, 1992. Pp. xii, 291. Price: £47.00 (Paperback). Reviewed by Wesley Hsu.

Albert Hung-Yee Chen, a solicitor of the Supreme Court of Hong Kong and a senior lecturer in law at the University of Hong Kong, attempts, in less than three hundred pages, to describe historical influences on the legal system of the People's Republic of China (PRC), the formal structure of the system, and its function in practice. The author succeeds, providing a concise glimpse of a legal system that to an outsider may look like it functions without rhyme or reason.

Chen begins with Confucianism, which has had a profound effect on all levels of Chinese culture. He notes that, because Confucianism emphasizes mediation, Chinese culture has frowned upon Western concepts of adversarial litigation. The work proceeds with an account of the Communist Revolution of 1949, the Anti-Rightist movement in the 1950s, and the Cultural Revolution of the 1960s. Chen argues that these events figure prominently in the underdeveloped nature of the Chinese legal system.

Next, the work examines actual Chinese legal instruments. Sources of law in the PRC include the Constitution and regulations promulgated by the Local People's Congresses. A study of Chinese legal culture, however, would be incomplete without a study of the disparity between paper and practice in the PRC. Therefore, Chen examines the actual hierarchy of legal norms in the PRC, and identifies the locus of real power within the Chinese system at the upper echelons of the CCP rather than at the state. Overall, this section of the work provides a true-to-life overview of lawmaking in the PRC.

Finally, Chen analyzes Chinese legal institutions and the substance of the laws they enforce. He examines the constraints judges face in the Chinese

legal system. Each judge faces review from his peers, the president of the local court, a local review board, and the appellate courts. Members of the judiciary consult with each other on almost every decision. Unlike American judicial opinions, Chinese opinions provide very little analysis and detail of the decisionmaking process. Chen also examines the role of public and private lawyers within the Communist system. In the conclusion, Chen surveys the content of the PRC's criminal, civil, economic, and administrative laws.

The author packs extensive research into this small volume. He uses a detached style, which allows him to talk about the CCP's influence on the legal system and the system's extreme politicization without unwarranted references to Western ideas of individuality and judicial independence. The end result is a clear picture of Chinese legal norms. Because Chen covers so much ground in his work, it probably will only provide a few new details for a legal scholar who reads Chinese and studies the Chinese legal system. As one of an extremely small number of books that discusses the modern Chinese legal system in English, however, Chen's work should provide interesting and important reading for anyone else within the legal community interested in the workings of the PRC's unique "Socialist Legality."

## Criminal Law

*The Protective Principle of International Criminal Jurisdiction.* By Iain Cameron. Brookfield: Dartmouth Publishing Co., 1994. Pp. xvi, 395. Price: \$59.95 (Hardcover). Reviewed by Victoria Fishman.

According to Iain Cameron, Senior Lecturer of Law at Sweden's Uppsala University, scholars face an inherent danger of "falling between two stools" while examining the protective principle of jurisdiction, because it belongs to both criminal law and public international law. His new book on the protective principle is important precisely because it bridges the gap between the two fields that contribute to the emerging discipline of international criminal law.

The author acknowledges that the practitioners of these two fields differ in their approach to the subject of jurisdiction. International lawyers focus on conflict avoidance and maintenance of friendly relations between states. Thus, according to Cameron, they approach jurisdiction from a restrictive point of view. Criminal lawyers, on the other hand, tend to view jurisdiction more expansively because of their concerns in law enforcement. The author considers himself a member of the former, the international school, and thus proceeds under this caveat.

In its first two chapters, the book provides a comprehensive treatment of the protective principle by placing it in the context of other jurisdictional

theories such as territoriality, active and passive personality, and universalism. The protective principle of jurisdiction, which was applied as early as the fourteenth century by northern Italian city-states, allows a state to exercise extraterritorial jurisdiction over an offender if his crime threatens the state's national security or endangers the function of the sovereign. Chapter two of the book explores the reasons for such exercises of power, as well as the history of the protective principle, its dominant characteristics, and interrelationship with other jurisdictional theories.

The next four chapters analyze in detail the application of the protective principle in Sweden, Denmark, Norway, the United States, and the United Kingdom. The bulk of this comparative analysis concerns Sweden and the United States. Cameron notes that, while academics and practitioners in the United States and United Kingdom have long neglected the subject of international criminal law, Scandinavian jurisprudence in this area is well developed and documented. His knowledge of Scandinavian languages and legal sources makes him well qualified to examine this jurisprudence.

The last two chapters, which partly draw on the above case studies and partly on additional legal materials and doctrines, explore the limitations of and possible controls on the protective principle. The author concludes with some general guidelines to avert possible future abuses of the protective principle. First, the type of interests covered by the protective principle should be limited to where a state is a direct object of a crime. Second, states should define their extraterritorial jurisdiction in advance rather than on a case-by-case basis. Third, states should require that each prosecution under the protective principle be approved by the state's chief public prosecutor and that the conduct be criminal in the state of which the offender is a citizen as well as in the adversely affected state. Fourth, if the offender has already been punished for his or her conduct in another state, the time already served in prison should be deducted from the new sentence.

Finally, the book includes an extensive bibliography of treaties, U.N. General Assembly resolutions, international and domestic case law, and scholarly articles on the protective principle. The book should prove informative and beneficial to practitioners and legislators of criminal law as well as scholars of both international and criminal law.

*Aviation Terrorism*. By Jin-Tai Choi. New York: St. Martin's Press, 1994. Pp. xiii, 255. Price: \$69.95 (Hardcover). Reviewed by Douglas L. Stevick.

Jin-Tai Choi, an officer in the South Korean Navy, specializes in terrorism studies. In this volume, he analyzes the history of acts of violence against civilian aircraft, passengers, and airline facilities.

Choi comprehensively documents the incidence of the many forms of aviation terrorism in all regions of the world. Acts of aviation terrorism, especially hijackings, began to occur with frequency at the outset of the Cold War, when anti-Communist dissidents hijacked commercial flights from the Eastern Bloc to Western Europe. Nevertheless, the international community took only minimal security precautions until 1968. In that year, the number of incidents of aviation terrorism, particularly hijackings of flights between the United States and Cuba, exploded. Palestinian terrorists also began to use the hijacking of Israeli and Western aircraft for political ends. This tactic was soon embraced by alienated and fringe political groups around the globe. Because of the rash of terrorist incidents in the years following 1968, most governments began systematically to screen passengers and luggage for arms and bombs.

Despite the adoption of these security measures, however, civil aviation remains vulnerable to politically motivated terrorism, as Choi demonstrates with an analysis of the 1985 hijacking of TWA Flight 847. The world public simply will not tolerate the time delays and invasion of privacy that accompany the nearly flawless security measures of the Israeli airline El Al. The inadequate security precautions at airports in less developed countries strikes Choi as an especially weak link in the international civil aviation network. He recommends multilateral aid and training for those nations.

Choi also criticizes Western governments for merely reacting to, rather than preempting, new forms of aviation terrorism. Tragedies such as the sabotage bombing of Pan Am Flight 103 over Lockerbie demonstrate that governments must devote more resources to developing means for detecting devices such as sophisticated reassembleable electronic bombs and odorless, vaporless plastic explosives. Indeed, the emergence of sabotage bombing in the mid-1980s illustrates the need for proactive policies: aviation terrorists will devise new techniques successfully to circumvent anti-terrorist measures. For example, Choi regards missile attacks against civil aircraft, whether by states or terrorists, as the principal danger to civil aviation in the future, given improved airport security precautions. Accordingly, his call for preemptive measures to neutralize such emerging forms of aviation terrorism is timely.

*Betrayal: The Untold Story of the Kurt Waldheim Investigation and Cover Up.*

By Eli M. Rosenbaum with William Hoffer. New York: St. Martin's Press, 1993. Pp. 576. Price: \$25.95 (Hardcover). Reviewed by Craig D. Margolis.

Few espionage novels achieve the level of suspense and intrigue that Eli Rosenbaum imparts to this true-to-life account of the exposure of Kurt Waldheim's Nazi past. A former U.N. Secretary-General, Waldheim once claimed the mantle of the "chief human rights officer of the planet Earth." Campaigning under the slogan of "an Austrian the World Trusts," Waldheim was the clear favorite in, and eventual winner of, the 1986 elections for the Austrian presidency. During that campaign, Eli Rosenbaum, chief counsel to the World Jewish Congress, began investigating Waldheim's mysterious wartime past.

Rosenbaum's discovery would shock the world. While a young intelligence officer serving in the *Wehrmacht*, Waldheim took part in a litany of Nazi war crimes. Until Rosenbaum's investigation, no one knew that Waldheim served in a unit that slaughtered hundreds, if not thousands, of civilians and partisans throughout the Balkans. Waldheim also participated, at least indirectly, in the forced deportation of the Salonika Jewish community from Greece to Auschwitz. Indeed, he appeared in lists of war criminals suspected of murder that were compiled immediately after the war by the U.N. War Crimes Commission and the U.S. army. *Betrayal* describes and documents volumes of evidence, captured Nazi records, U.N. war crimes investigations, witness reports, and historical accounts, that refute Waldheim's protestations of innocence. It portrays Waldheim's metamorphosis from elder statesman to pariah, now looked upon with contempt by much of the international community.

Rosenbaum is well acquainted with the investigation of suspected war criminals. Currently, he is acting director and principal deputy director of the U.S. Justice Department's Office of Special Investigations — the government's task force charged with investigating and prosecuting Nazi war criminals. Accordingly, Rosenbaum brings a wealth of knowledge and expertise to this subject. He develops the case against Waldheim with a prosecutor's painstaking attention to detail.

War crimes again plague the former Yugoslavia, one of the regions in which Waldheim operated during World War II, and once more the international community remains hesitant to acknowledge its human rights responsibilities. This book documents one human rights advocate's struggle to force world condemnation of a war criminal. For those who believe that war crimes issues remain as relevant today as they were fifty years ago, *Betrayal* is an important and inspiring work.

## Development

*Transition to Market: Studies in Fiscal Reform.* Edited by Vito Tanzi. Washington: International Monetary Fund, 1993. Pp. ix, 373. Price: \$30.00 (Paperback). Reviewed by James J. Holt.

This volume, edited by Vito Tanzi, Director of Fiscal Affairs at the International Monetary Fund (IMF), consists mainly of case studies of developing countries' fiscal reforms. Prepared largely by IMF employees, including economists and staff members of Fiscal Affairs and other departments, these studies aim to provide information, accumulated in the course of the IMF's work, that has not previously been widely available.

The book consists of four parts. Part I deals with fiscal reform in Central and Eastern Europe. It includes chapters on such topics as tax reform in Romania and general fiscal reform in Hungary and Poland. Part II addresses more specific issues in the region, such as intergovernmental fiscal relations in Yugoslavia and the realized net present value of the Soviet Union. Parts III and IV concern fiscal reform in Asia and Africa, respectively, dealing with such topics as the weakening of fiscal control through reform in China and the national approach taken in reforming the Algerian tax system. The first chapter offers an introductory exposition of public finance and financial markets in the development process.

Although necessarily somewhat technical, the studies are generally well written. The work should serve as a valuable resource for those working on issues of economic development.

## Environmental Law

*The Marine Environment and Sustainable Development: Law, Policy, and Science.* Edited by Alastair Couper and Edgar Gold. Hawaii: Law of the Sea Institute, 1993. Pp. xi, 688. Price: \$58.00 (Hardcover). Reviewed by Jerry Speir.

This book comprises the Proceedings of the Twenty-fifth Annual Conference of the Law of the Sea Institute, held August 6-9, 1991, in Malmö, Sweden. It was compiled by Alastair Couper of the Department of Maritime Studies at the University of Wales and Edgar Gold of the Oceans Institute of Canada. As the proceedings of a conference, the book suffers some of the inevitable weaknesses of such an undertaking, but it also possesses some unusual strengths. Also, because it took two years to produce, some of its materials appear dated. Its opening pages, for example, look forward to the 1992 Earth Summit in Rio, raising hopes for comprehensive action that we

now know to have been roundly dashed. The reader will be rewarded for looking beyond these superficialities, however. The fact that Rio itself was less than expected does not mean that the issues raised here have lost their relevance. And conference papers, when good, focus issues and clarify the state of debate in ways that scholarly articles, with their greater room to roam, often fail to do. Also, conferences like this one provide a forum for voices that are generally not part of the typical scholarly debate — at least as that debate is carried on in law journals.

One of the strengths of this particular collection, in fact, is the variety of its voices. Participants include government ministers; U.N. representatives; representatives from various nongovernmental organizations and science and policy institutes, including the Russian Academy of Sciences, the Soviet Maritime Law Association, and the Chinese Institute for Ocean Development Strategy; a representative of the U.S. Navy Judge Advocate General Corps; a Harbor Master; and a commercial fisherman — as well as the expected complement of law professors.

The book (following the style of the conference) is structured as a series of seven panels; each begins with two or three formal papers, which are then followed by two or three formal commentaries, which in turn are followed by open discussions. It is in some of these discussions, in fact, where issues are best clarified — and where the reading is most interesting. The panels are titled as follows: The Marine Environment and Sustainable Development, Sustainable Development in Ocean Fisheries, Sustainable Development and Non-Living Resources, Hazardous Cargoes at Sea, Flag State and Port State Policies, An Evaluation of the Regional Seas Approach, and Sustainable Development and Future Marine Education and Training. Although the book lacks the cohesiveness of a “normal book,” it nevertheless manages to convey a powerful message, namely: the Law of the Sea is a massive and complex subject, and the world is still a long way from operating under a comprehensive and coordinated regime.

The book should attract two types of readers. First, for the specialist — in marine fisheries, or hazardous wastes, or transportation issues, for example — it offers broadening insights into other elements of the larger picture of marine environment issues. For the novice, it offers a concise primer on the key issues of particular specialties. A reader who is not a specialist in marine fisheries, for example, may not be aware that annual fish catches are nearing what “informed scientists consider the limits of world production.” The Chinese participant offers the uninitiated a concise and thorough history of offshore oil and gas contracts between developing countries and international oil companies — although one is left wondering what, exactly, this has to do with *sustainable* development.

A former Assistant Secretary-General of the International Maritime Organization (IMO) provides a helpful compilation of data on sources of

maritime pollution and surveys the existing rules and regulations under the IMO, arguing that "more attention should be paid to the [their] effective implementation." Another participant surveys the world of emergency response to maritime pollution incidents.

The book ends with an address by Lewis Alexander, one of the founders of the Law of the Sea Institute. In reflecting on the Institute's twenty-five years, he necessarily (and usefully) provides the parallel history of the negotiation and development of what became the 1982 Law of the Sea Convention, a convention that appears finally to be on the verge of coming into force. If Alexander fairly represents the views of the Institute, however, one comes away impressed that the Institute, among other things, harbors "dreams of a complex ocean mining system, and of a widely-accepted treaty in force" to administer it. And one continues to wonder exactly what that has to do with *sustainable* development.

Generally, then, in its title the book promises somewhat more than it delivers. Although occasional lip service is paid to "sustainable development," the only consensus appears to be that there is no agreement about what the phrase means. In terms of renewable resources (like fisheries), it appears to mean something like "maximum sustainable yield." In terms of non-renewable resources (like deep seabed minerals), it appears to mean something like "ecologically sound management," in other words, exploitation with minimum short-term damage. Readers must look elsewhere for systematic treatment of issues concerning sustainable development.

Still the book exhibits wide-ranging erudition. It both edifies and even, occasionally, entertains — as, for example, in the discussion that focuses on the apparent contradiction between simultaneously opposing the dumping of human feces into the sea, on the one hand, and favoring the multiplication of the whale population on the other, considering "that human feces are almost identical in composition and in their interaction with the ocean to whale feces."

## Foreign Policy

*The U.S. Constitution and the Power to Go to War: Historical and Current Perspectives.* Edited by Gary M. Stern and Morton H. Halperin. Westport, CT: Greenwood Press, 1994. Pp. 208. Price: \$55.00 (Hardcover). Reviewed by Dhananjai Shivakumar.

The Gulf War presented a novel case for American war-powers analysts: the first post-Cold War conflict involving the overt commitment of large numbers of American troops, in which key players (including President Bush) claimed that U.N. Security Council approval could serve as adequate

justification for unilateral military action by the executive branch. What meaning does the Declaration of War Clause of the U.S. Constitution have in cases of United Nations-sanctioned involvement? And is the Cold War disregard for Congress' constitutional role in declaring war particularly untenable today, given the absence of a Soviet Union perceived as bent on world domination?

Ideally suited for an introductory course on war powers, this collection of essays addresses these questions, presenting the contours of the war-powers debate in light of current geo-political realities. The ten short papers in this collection were prepared by American law professors and national security experts for a Center for National Security Studies (CNSS) conference on "Constitutional Government and Military Intervention after the Cold War," held at the Georgetown University Law Center in September 1992. Gary M. Stern, Research Associate at the CNSS, and Morton H. Halperin, Senior Associate at the Carnegie Endowment and Chairman of the advisory board of the CNSS, edited this collection and themselves participated in the conference. The conference participants sought to reexamine the constitutional, statutory, and international legal constraints on executive power.

Each paper addresses one type of constraint on executive war-making — constitutional, statutory, United Nations-related, judicial, or treaty-based. With one exception, the authors do not attempt to challenge one another. The editors themselves stress a deep consensus among the various papers in this collection. The underlying consensus view attacks President Bush's contention — which echoed President Truman's rhetoric at the start of the Korean War — that United Nations-sanctioned wars should be considered "police actions," and hence do not require a prior congressional declaration of war or subsequent congressional involvement under the War Powers Resolution. All the papers support a resurgence of congressional involvement in initiating offensive attacks, for reasons of legality and, inseparably, legitimacy, although they also accept short-term, unilateral presidential power to repel attack and to deal with sudden emergencies.

Particularly prescient, in the post-Cold War context, is an article by Jane Stromseth, Associate Professor of Law at Georgetown University, that reviews models of executive-legislative interaction in cases of U.N. peacekeeping actions. Stromseth argues that Congress should set clear limits on presidential power in integrating American military force into U.N. peacekeeping actions. Building on the purposes of the U.N. Participation Act, Stromseth suggests that Congress should pass a law setting the terms of a limited force that it would permit the President to use, for a period of time, in concert with Security Council actions taken under Article 42 of the U.N. Charter. Stromseth proposes a contractual model of the separation of war powers as a solution to the grandstanding that has so often failed to meet the standards of the U.S. Constitution and the War Powers Resolution.

On the whole, this collection of essays presents its recommendations for future presidential and congressional cooperation, for obedience to international law, and for expanded judicial involvement, in a manner that is short on detail and long on hope. Nevertheless, the collection succeeds as a clear and concise introduction, with a fine balance of history and theory, to the most important topics in the analysis of war powers today. It is ideal for students and accessible to the general reader.

## Human Rights

*International Human Rights*. By Jack Donnelly. Boulder: Westview Press, 1993. Pp. xvi, 206. Price: \$13.95 (Paperback). Reviewed by James Wilets.

Jack Donnelly, in this recent addition to the Dilemmas in World Politics series from Westview Press, provides an eminently readable, basic introduction to international human rights theory and the role of human rights in international relations. Donnelly, a professor of international relations at the University of Denver, is well qualified to write on the subject: he authored *The Concept of Human Rights* and *Universal Human Rights in Theory and Practice*, edited the *International Handbook of Human Rights* with Rhoda Howard, and wrote numerous articles on various aspects of human rights.

His most recent book, *International Human Rights*, begins with a discussion of the role of human rights in world politics, progresses to a discussion of theories of human rights, and then shifts to a discussion of the human rights abuses during the 1970s and 1980s in the countries of the southern cone of South America. He then examines the multilateral politics of human rights and concludes in the last two chapters with discussions of human rights and foreign policy in a post-Cold War world. Donnelly liberally sprinkles the book with tables and illustrations. A table of acronyms helps the reader to traverse the acronymic nightmare of human rights practice. The author also provides an appendix with the Universal Declaration of Human Rights and a series of discussion questions for each chapter.

Donnelly provides a refreshingly coherent overview of the "multilateral politics of human rights," i.e., the international mechanisms for enforcing human rights and the principal multilateral instruments enumerating those rights. The author effectively conveys the practical impact of these procedures instead of losing himself in the minutiae of the procedures.

Consistent with his position as one of the leading thinkers on human rights, Donnelly stresses some ideas that merit consideration. He argues persuasively that democracy and human rights are not synonymous. In fact, respect for human rights frequently consists of protecting the rights of the

individual against the political "rights" of the majority. Donnelly suggests three levels of progress towards respect for human rights: liberalization, democracy, and, finally, establishment of a rights-protective regime. The author observes that the completion of one level of development does not necessarily lead to the next level. He notes, further, that outside actors usually have little or negligible influence over the progression from one level to the next, although they have had considerable "success" in causing regression, as exemplified by the United States's intervention in Central America and the Soviet Union's intervention in Eastern Europe.

The author proposes four criteria that a state should consider in identifying appropriate cases for human rights intervention: the severity of human rights violations, progress the country has made in addressing its human rights problems, the likely effects of intervention on the domestic policies of the violating country, and the responsibility of the intervenor in creating the human rights problem. The author notes that the last two criteria could provide a coherent justification for the United States to focus on the human rights abuses of countries that are likely to be responsive to U.S. pressure.

The reader should be aware of one error. At one point, Donnelly suggests that *jus cogens* is a different source of international law from customary international law and states that it is either of "lesser importance" than customary law or treaties or its "status is a matter of controversy." In fact, the Vienna Convention on the Law of Treaties states in Article 64, "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates." *Jus cogens* is not generally considered to be conceptually separate from customary law, but rather is custom that has become so accepted by the world's nations as to be peremptory in effect.

Nevertheless, this problem is an exception to the rule. The book provides a valuable overview of, and original insights into, an increasingly complex and important area of international law. In summary, this book provides a good introduction to international human rights for a college-level course. Its lack of focus on any particular aspect of international human rights would, however, render it a problematic choice as a primary textbook for a law school course on international human rights.

*Reconceiving Reality: Women and International Law*. Edited by Dorinda G. Dallmeyer. Washington, D.C.: The American Society of International Law, 1993. Pp. iii, 276. Price: \$18 (Paperback). Reviewed by Jesselyn A. Brown.

Dorinda Dallmeyer, editor of this timely collection of essays, is Research Director of the Dean Rusk Center for International and Comparative Law at the University of Georgia. At the American Society of International Law's Annual Meeting in April 1993, the Women in International Law Interest Group (WILIG) presented a day-long program examining three issues: the current state of feminist analysis of international law, the public/private distinction and its impact on women, and feminist approaches to war and peace. The papers presented at the WILIG conference evolved into the chapters comprising this groundbreaking book. Contributions from Catharine MacKinnon, Frances Olsen, and J. Ann Tickner summarize, connect, and provide commentary on the other pieces in each of the three main sections.

Contemporary critical perspectives on international relations have only now begun to look at issues of gender. Hilary Charlesworth, a pioneer of feminist analysis in international law, proposes that the field is fundamentally masculine and operates as a men's club. However, she rejects the tempting separatist impulse to develop a specialized women's branch of international law, realizing that this would leave the underlying discipline and its institutions unchanged. For similar reasons, Moira McConnell also rejects a separatist strategy that keeps women at the margins. The prevailing message of these essays is that if women want to change the system, they must move from the margins into the center of society. This is a theme and call to action that runs throughout the book.

Barbara Stark answers this call by advocating the U.S. ratification of the International Covenant on Economic, Social and Cultural Rights. She views this agreement as a postmodern feminist text for American women because of the unique way that it privileges women over men. By ratifying the covenant, a state recognizes the rights of every human being to be nurtured (fed, clothed, housed, healed, and educated), thus re-situating the debate over what has historically constituted women's work. The covenant elevates women's nurturing work to the status of protected rights.

On a more global scale, Judith Gail Gardam suggests that feminists should study the law of armed conflict in order to address various issues ranging from the participation of women in the military to the use of rape in warfare. Examining the Gulf conflict and recent events in the former Yugoslavia, she explains that the two most widely disregarded prohibitions in the law of armed conflict relate to indiscriminate bombardment and rape — both of which claim women as the primary victims. Like Gardam's documentary, Christine Chinkin's essay on peace and force carefully emphasizes that rape and the

abuse of women in armed conflict has a long history. Chinkin employs a broader definition of security that includes protection against structural violence, citing examples of the sexual persecution of women in Kuwait, Somalia, Peru, Liberia, and Burma.

In two of the book's most provocative essays, Catharine MacKinnon and Rebecca Cook confront the most widely reported instance of rape in war: the systematic violation of Bosnian and Croatian women at the hands of the Serbian forces. MacKinnon demands the recognition of rape as a form of postmodern genocide, while consistently reminding the reader that rape is also a reality of women's everyday lives. She condemns the official military policy of ethnic rape as well as the failure of states to fulfill their obligations under international instruments guaranteeing women's human rights. Cook also examines mass sexual atrocities in Bosnia and eloquently argues that women's human rights warrant defense when their violation originates in private action, not just state action. International human rights law, according to Cook, should require a state to exercise due diligence to prevent the use of its territory by private actors in ways that cause harm not only in other states, but within the state itself.

While Cook maneuvers creatively within the public/private distinction, Shelley Wright, Karen Engle, and Frances Olsen critique the public/private dichotomy as a gendered construct. Wright lays out the problem of how public international law, through its privileging of the state, buries the claims of women, children, and others relegated to the private sphere. Engle looks at the advantages and disadvantages of various critiques of the public/private distinction, and argues in favor of collapsing the public/private divide so as not to place women's issues outside the scope of international law. Olsen reminds us, however, that international law *already* excludes women's issues and that such an admission does not preclude using international law to benefit women.

In seeking an alternative to the traditional public/private ideology, Robin Teske takes an interdisciplinary approach to power that draws on feminism, physics, ecology, and chaos theories. She seeks to expand the definition of power to include "power-to," rather than merely "power-over," for a view of power-as-process that emphasizes community, connections, and networks and deemphasizes control, domination, and autonomy. Insofar as she believes that feminists have a lot to offer in helping to broaden our definition of power, her argument for interconnection and the role of women in bringing this about remains vulnerable to charges of biological essentialism. While finding alternatives to the dominator model of power is a notable goal, it must be achieved in a way that does not reinforce stereotypes about women as selfless rather than self-interested, cooperative rather than competitive, nonlinear rather than hierarchical, and caretakers rather than dictators.

The disciplines of international law and international relations have been

undeniably male-dominated and inattentive to gender issues and feminist perspectives — an omission that these valuable contributions start to remedy. Situating women in the international legal order is crucial. However, at times a few of the essays lapse dangerously into separate-spheres ideology, reinforcing stereotypes that traditionally have justified the disparate societal roles assigned to men and women. Still, this book remains of great value. Readers can look forward to a day when such insightful essays will no longer be compartmentalized into a treatise on *Women and International Law*, but rather will take their place in more general discussions of international humanitarian and human rights issues.

### International Adjudication

*Equity and International Law: A Legal Realist Approach to International Decisionmaking.* By Christopher R. Rossi. Irvington, N.Y.: Transnational Publishers, 1993. Pp. 309. Price: \$85.00 (Hardcover). Reviewed by Scott Voelz.

Is the law simply a conglomeration of rules that, as strictly interpreted by decisionmakers, gives rise to an obvious judgment, or are decisionmakers imbued with a discretionary power that colors their opinions with a sense of fairness and justice? Christopher R. Rossi, an assistant professor of international politics and American foreign policy at American University, clearly believes that rules, although important, cannot foresee every situation, and hence do not provide a complete system of law. Thus, in order to compensate for the generality inherent in the law, decisionmakers must look to equity. Rossi, in this well-researched book, examines the emergence of equity as a source of international law, and attempts to justify its use in the face of criticism from several schools of legal thought. Although largely successful, the author is hampered by the ambiguity inherent in any discussion of equity in international law. This ambiguity arises in part, Rossi believes, because modern international law draws on a variety of national systems, each with its own definition of equity and equitable principles.

Consequently, before examining the role that equity currently plays in international law, the author devotes the first section of his book to earlier views of equity. Rossi shows that the nature of equity, and its place in relation to law, has concerned scholars since Aristotle. Some, from the naturalist perspective, view law as a universal, rationally explainable system in which equity functions simply as an extension of natural law. Others see equity as a corrective force to change decisions that under law could cause injustice and, in that sense, as separate from the legal structure. As Rossi points out, however, either view allows the decisionmaker a degree of discretion that

disturbs many theorists who prefer a more rule-based system. These theorists succeeded in omitting any reference to equity in the statutes of the Permanent Court of International Justice and of its successor, the International Court of Justice (ICJ).

Rossi points out that the ICJ, despite criticism from some legal scholars, began to inject equity concerns into its decisionmaking process soon after the court's establishment. He argues that this was inevitable because equity considerations can never be excised from the implied interpretative powers of decisionmakers. Without such powers, judges would have to rely upon inapplicable or incomplete rules or engage in "discretionary incantations" that would undermine the participants' confidence in the ICJ as an institution. More important, the author argues that the absence of equity may not be a desirable outcome in the international arena. As an example, Rossi chooses one of the most contentious areas of international adjudication, that of maritime boundaries. This subject took on additional importance as scientists discovered the wealth of resources found on and below the seabed. Developing nations clamored for a share of the wealth, and it is in this context that ICJ began to invoke equitable principles. Critics objected that the judges were moving toward a wholly discretionary jurisprudence, which would lead to a form of distributive justice. Rossi, in response, states that reliance on equitable principles in this area is desirable because it moves the court towards an adjudicatory system that recognizes that the facts of each case are influenced by geographical realities that make each solution unique. This structure, the author argues, allows needed flexibility in determining the disposition of scarce resources.

Although somewhat dense at times, Rossi's work nonetheless clearly demonstrates both the inevitability and necessity of including equitable principles when fashioning decisions affecting states' relations in an ever-changing world.

## International Order

*The Walls Came Tumbling Down.* By Gale Stokes. New York: Oxford, 1993.  
Pp. 319. Price: \$25.00 (Hardcover). Reviewed by James J. Holt.

In this work Gale Stokes, a professor of history at Rice University, offers a cogent account of the struggle for democracy in Eastern Europe. By exploring the political and economic evolution of the region's formerly Communist countries, he shows how the 1968 invasion of Czechoslovakia and the crushing of the Prague Spring resulted in widespread disillusionment, and ultimately, in the revolutions of 1989.

The work begins with a discussion of the origins and initial forced

suppression of the Polish Solidarity movement. According to Professor Stokes, this movement was sparked by an increasingly pervasive conviction that Communism was unreformable. Solidarity became the first example of nonsocialist political opposition since the birth of the Communist states in Eastern Europe. The book then proceeds with historical accounts of the former Communist regimes in Bulgaria, Czechoslovakia, East Germany, Romania, and Hungary. In narrating the developments that led to the deterioration and downfall of each of these Communist states, Professor Stokes provides a clear picture of the individuals involved and of the economic and political conditions that prevailed. Further, he ties subsequent events in these countries to the changes that were underway in the Soviet Union.

The book next focuses on the resurgence of Solidarity in Poland, and the process by which a pluralist government was formed. The author also examines the revolutions of 1989, the democratic, pluralist governments that resulted, and the conditions and forces that prevail in the region today. He closes the work with a discussion of the origins of the current war in Yugoslavia and a short evaluation of the future possibilities for the new Eastern European states.

Professor Stokes' book is a comprehensive account of the events in Eastern Europe of the last quarter century. It should prove valuable to anyone interested in the history of that region.

### International Organizations

*International Organization in the Modern World: The Regional & the Global Process.* By Paul Taylor. London: Pinter Publishers, 1993. Pp. iv, 262. Price: \$59.00 (Hardcover). Reviewed by Aaron Xavier Fellmeth.

This book followed a critical review of an article the author had published in the journal *International Organization*. The reviewer had claimed that no general theory of international organization existed, and Paul Taylor apparently wrote this book to show that if there was none before, there is one now. The book was intended to be a political discussion of the trends of "consociation" and "symbiosis" in international organization, concentrating particularly on the internal politics of the European Community and the United Nations. It does not provide, as the title might suggest, an analytical description of international organization from either an historical or a broad perspective.

Written for that class of political theorists who already have an opinion about Mitrany's functionalism and who regularly find themselves consulting the *Africa South of the Sahara Yearbook*, this volume argues that international

organization, after having reached a plateau in the early 1980s, is expanding on a regional level but static on a global level. Taylor predicts that "functional regions will emerge increasingly clearly in particular territories over the next few decades and that their members will more frequently act together in dealings with other states." Taylor, as Senior Lecturer in International Relations at the London School of Economics specializing in the European Community and the United Nations, seems well qualified to hypothesize about this form of international organization.

Taylor's work does not dwell upon his thesis very extensively; the book is long on narrative and short on global analysis. Part I defines regionalism and posits that it explains the contemporary organization of states better than other competing theories, notably "sectoralism." Part II begins the book's extensive chronicling of international events, using the European Community as an example of what Taylor claims to be the ever-growing regime of regional interaction. The first half of Part II mostly concerns Margaret Thatcher's antics to derail cooperation among the other European countries without getting Britain expelled from the European Community. The second half of Part II discusses how neither the Single European Act nor the Maastricht Agreement changed the basic legal and constitutional character of the national sovereignty of the signatory states. International organization, Taylor argues, is to be characterized by consociation (cooperation) and symbiosis (the transfer of some of a government's domestic hegemony to international organizations in exchange for the benefits of global cooperation via that organization). He claims that the two patterns of interaction are linked.

In Part III, Taylor describes the various attempts of U.N. members, in particular the United States, to eliminate the United Nations' alleged bureaucracy and inefficiency. Part IV explores the United Nations' efforts at population control and its success in advancing national efforts at internal regulation, as well as the rather limited military role of the United Nations in the war with Iraq earlier this decade. Taylor characterizes this effort, however, as an unprecedented example of global military cooperation. He here argues that the U.N. system of military command needs reform along more activist lines.

Taylor's book presents a fairly interesting and journalistic account of recent developments in the European Union and United Nations, and provides evidence to support the rather unsurprising thesis that the increasing level of international cooperation has required states to give up some of their control over domestic affairs.

## Peacekeeping

*Humanitarian Actions in Times of War.* By Larry Minear and Thomas G. Weiss. Boulder: Lynne Rienner Publishers, Inc., 1993. Pp. 120. \$8.95. (Paperback). Reviewed by Gayton P. Gomez.

In recent years, widespread conflict has increased both the need for humanitarian activity and the difficulty of providing it. Aid personnel have been harassed, threatened, and killed for attempting to aid civilian populations. This handbook offers practical, yet creative, approaches to the complex challenges facing humanitarian personnel in times of conflict. The authors, Larry Minear and Thomas G. Weiss, co-direct the Humanitarianism and War Project, a three-year initiative conducted by Brown University's Watson Institute for International Studies and the Refugee Policy Group. Using the findings of the Humanitarianism and War Project, the authors base their ideas on the recent experiences of personnel from U.N. agencies, the Red Cross and Red Crescent, governments, and private aid groups.

The book first discusses the principles that provide the framework for humanitarian activity. The second section discusses policy guidelines to implement these principles. Finally, the book considers how the principles and policy guidelines can form the basis for a code of conduct for personnel operating in war zones. The authors stress that agencies must work together in a non-partisan manner to provide the most effective appropriate relief. They also discuss the importance of respecting local custom and sovereign authority in the conflict area and the desirability of enlisting local personnel.

The book focuses on the special problems associated with humanitarian action in areas of conflict. For example, combatants will often use force to prevent aid from reaching the opposing side, even at the expense of aid reaching their own people. In addition, the authors discuss the problems involved when humanitarian agencies try to change harmful government policies that contribute to the distress the agencies are attempting to alleviate.

The authors offer strategies designed to provide the most effective aid to the greatest possible number of people in conflict areas and prevent suffering in the future, not merely to act as a band-aid for the present. *Humanitarian Actions in Times of War* provides important guidance for the increasingly difficult problems facing aid personnel in modern conflicts.

*Keeping the Peace: The United Nations and the Maintenance of International Peace and Security.* By N.D. White. Manchester and New York: Manchester University Press, 1993. Pp. xi, 267. Price: \$69.95 (Hardcover), \$24.95 (Paperback). Reviewed by Bardo Fassbender.

In this book, Nigel White, Lecturer in Law at the University of Nottingham, England, presents a useful overview of almost fifty years of U.N. efforts to restore and maintain international peace. The book, an enlarged and revised edition of the author's 1990 work *The United Nations and the Maintenance of International Peace and Security*, consists of three parts. Part I addresses the Security Council, Part II the General Assembly, and Part III U.N. peacekeeping operations.

It is not difficult to criticize such organization for its formalism. But the arrangement fits well with the introductory character of the work: it builds on the general structure of the United Nations, which is familiar to students of international law and international relations. The assignment of approximately the same space to each of the three parts misleadingly suggests, however, that the organs and functions are equally important.

The book's character is mainly descriptive. It gives an account of how the United Nations has responded to various threats to international peace and security — from the Korean War to the civil strife in Somalia — and how the U.N. organs interpreted and applied the respective provisions of the Charter in the course of these events. Accordingly, the author draws mainly on Security Council and General Assembly resolutions, whereas he rather rarely refers to scholarly works. The book clearly has been written by a lawyer; the interpretation of the Charter, and the delimitation of the competencies between the Security Council and the General Assembly figure prominently in the text. At the same time, the author does not neglect the political circumstances behind the United Nations' actions.

The third part of the book gives an impressively long list of peacekeeping operations. There they are again, the acronyms which, for a while, filled the newspapers, and then were lost from view. (To many readers it will come as a surprise that, for instance, the U.N. Truce Supervision Organization in Palestine (UNTSO) and the U.N. Military Observer Group in India and Pakistan (UNMOGIP), both established in 1949, are still functioning.) But the author remains largely silent on the many cases in which the United Nations has done no more than issue a few belated resolutions, or has been speechless altogether, disappointing the hopes raised by the lofty language of the U.N. Charter.

The author completed his book in September 1992, when the end of the Cold War and the successful campaign against Iraq's aggression seemed to promise the United Nations, for the first time in its history, a bright future. "Instead of paralysis in the Security Council and rhetoric in the General

Assembly, we have an active Council and a less antagonistic Assembly,” the author states in the preface of his book. But alas, this optimism did not last. It was buried by the events in Somalia, Haiti, and Yugoslavia — names that have become short forms for what many regard as the United Nations’ failure to safeguard peace and human rights in the post–Cold War world. It is now hard to imagine that in future editions any of the three parts of the book will be expanded with chapters relating U.N. successes. Both the Security Council and the General Assembly carry the burden of a past era and of antagonisms which have become meaningless. In their present state, both can hardly meet the challenges of the twenty-first century. And the concept of peacekeeping (invented as a means to ease and file away relatively minor conflicts in which neither of the two major powers was genuinely interested) clearly is not suitable for confronting the newly unleashed forces of radical nationalism and tribalism.

White’s unpretentious summary of U.N. resolutions and operations reads like a farewell to a play that is over. We hope in vain for a performance that eventually would realize the authors’ original intention. What we see, instead, are actors who have forgotten their part or who want to play a different one; other players whose costumes have come to look ridiculous; elderly stars who refuse to make room for the younger; young actors who, though capable, prefer to stay backstage; others yet who overestimate their importance; and an audience that, somewhat understandably, has lost all interest in the show a long time ago. Whether the theater will survive we do not know.

## Trade

*Measuring the Costs of Protection.* By Gary Clyde Hufbauer and Kimberly Ann Elliott. Washington, D.C.: Institute for International Economics, 1994. Pp. ix, 125. Price: \$15.95. (Paperback). Reviewed by Jaideep P. Reddy.

Gary Clyde Hufbauer is a senior fellow at the Institute for International Economics, who specializes in international trade, investment, and tax issues. Kimberly Ann Elliott is a research associate at the institute. Their book provides a quantitative analysis of the welfare effects of import protection. It opens with a thumbnail sketch of the history of U.S. protectionism, in particular its last ten years. The book then discusses specific techniques of protectionism.

For the most part, the authors limit their quantitative study to industries with a domestic market of at least \$1 billion and potential imports (without protectionist trade barriers) of approximately \$100 million or more. The authors find that the United States loses \$70 billion worth of consumer surplus

every year and suffers a net national welfare loss of \$11 billion because of tariffs and quantitative restrictions on imports. They then conduct an industry-by-industry analysis of the effects of protectionist measures as measured by the model. The authors highlight the textile and apparel sectors, which accounted for 30% of the potential consumer surplus gain, but downplay the consumer surplus effects of agricultural protectionist measures.

This book, although extremely technical, provides a student of international trade and domestic economic policy with interesting data and analysis of protectionist measures.

*Trade and Migration: NAFTA and Agriculture.* By Philip L. Martin. Washington, D.C.: Institute for International Economics, 1993. Pp. ix, 176. Price: \$15.00. (Paperback). Reviewed by Natalie G. Coburn.

The North American Free Trade Agreement, or NAFTA, has stirred significant controversy. The release of *Trade and Migration: NAFTA and Agriculture* in October 1993 was timed to coincide with the debate surrounding its congressional approval. The work is the Institute's third book specifically addressing NAFTA and the 38th publication in its Policy Analyses in International Economics series. The author, Philip Martin, an agricultural economist at the University of California at Davis, provides a highly detailed study of the relationship between NAFTA and migration from Mexico. Martin describes NAFTA as the first concerted attempt to substitute a trade-and-investment linkage between the United States and Mexico for a migration linkage. He predicts that, while NAFTA will likely increase Mexican migration to the United States in the 1990s, it could substantially reduce long-term migration.

The author extensively reviews existing studies on migration to support his conclusion that an increase in Mexican migration, or a "hump," likely will occur for several years after NAFTA implementation. The trade agreement could accelerate the loss of rural jobs in Mexico, where 28 million people have per capita incomes of one-third the national average of \$2,700. Martin projects that the trade agreement could add to internal migration pressures, as more workers move to the border region to find employment with the expanding *maquiladora* industry. This presence of internal migrants so near the U.S. border in turn might further increase "stepping-stone" migration northward. NAFTA also will not immediately affect the continued demand in the U.S. market for Mexican workers. These factors could prompt a relatively small annual migration increase of perhaps 10%, amounting to roughly 30,000 additional arrivals each year. The author posits that such a short-term increase under NAFTA is a manageable, and necessary, trade-off for expanded economic opportunities.

The author argues forcefully, however, that NAFTA likely will significantly reduce migration over the next two decades by stimulating economic development and job growth in Mexico. Moreover, he contends that the agreement could set the stage over the long-term for eliminating the influx of Mexican illegal aliens. By reducing push and pull factors for migrants, and by disrupting the existing infrastructure linking migrants to U.S. jobs, NAFTA could prove to be an effective counterforce. The author recommends that the United States and Mexico better coordinate their respective law enforcement activities to achieve such reduction. To buttress his argument on reduced migration, the author contrasts projected post-NAFTA trends with possible scenarios were NAFTA not approved. He hypothesizes that migration, both legal and illegal, would continue on its current upward trend. At present, about 200,000 to 300,000 Mexicans settle in the United States every year.

Under NAFTA, Martin notes that some regions in the United States will be further burdened by additional migrants during the next few years. Although the migrants often pay federal taxes, state and local governments receive no funds to offset the increased demands on services. To alleviate this disparate impact, the author recommends the creation of a migration adjustment assistance program, analogous to the Trade Adjustment Assistance Program. Such aid would help prevent both anti-NAFTA and anti-immigrant sentiments from emerging.

*Trade and Migration* is a worthwhile contribution to the NAFTA literature and one of few studies focusing on migration. It is a thoughtful analysis of NAFTA's potential impact on this phenomenon. More broadly, it serves as an excellent case study of the relationship between economic development and cross-border immigration trends.

