

Recent Publications

The New Public Order

Powerless by Design: The Age of the International Community. By Michel Feher. Durham, NC: Public Planet Books, 2000. Pp. 167. Price: \$15.95 (Paperback). Reviewed by David Marcus.

Making sense of world politics during the Cold War was a comparatively easy task. The comprehensible bipolar world created an epistemological order that allowed policymakers and their critics to frame their recommendations or critiques in a consistent discourse. While Western governments invoked the specter of global communism and its threat to freedom to justify intervention in Nicaragua and support of Mobutu in Zaire, their leftist critics consistently deplored their hypocritical coddling of right-wing despots or their neo-imperialism. The collapse of one of the poles in 1989 took with it the interpretative heuristic of the Cold War. The result has been a decade during which policymakers and commentators, deprived of their easy-to-use language of the Cold War, have struggled to articulate a discourse and recommend a policy that can make sense of the tragedies of the 1990s in a consistent and ideologically-motivated manner.

In his original, tightly-argued essay, Michel Feher, a founding editor at Zone Books, describes the ideological confusion of the decade and the difficulties it presented to Western governments in formulating a consistent response to regional conflict. Feher claims that out of the Cold War a new world order dominated by the West—which he calls the “international community”—emerged. This international community had nothing less than “the gradual conversion of all nations to the democratic rule of law and hence the reconciliation of every government’s claim to national sovereignty with the humanitarian aspirations of people it governs” (p. 37) as its central tenet. Summarized briefly, Feher’s essay argues that this international community believed in the ineluctable progression of societies towards the rule of law, democracy, and respect for human rights. Therefore, any challenge to this teleology would be denied ideological content and be viewed as the pathological survival of premodern ethnic conflict, to be eradicated by mediation, education, and ultimately reconciliation. Motivated in part by a reluctance to be forced to intervene meaningfully in regional conflicts and in part by a myopic refusal to recognize the political and ideological rather than cultural and ethnic nature of these conflicts, the international community’s weak and misguided responses to criminal regimes merely exacerbated the problems they were supposed to solve.

In the chapter entitled “A New Doctrine,” Feher describes the doctrine of the international community. Driven by an insistence that the Cold War meant the triumph of a universalist consensus on human rights and democracy, the international community understood all regional conflicts as ethnic or tribal conflagrations rather than as manifestations of the political

machinations of actors like Milosevic and Habyarimana. As such, the sides to these conflicts were neither virtuous nor evil, just retrograde and in need of a good lesson in liberal democracy. The only real sides were “the side of peace, represented by the leaders of the major Western powers . . . and the side of war, composed of all the local factions, regardless of their alleged motives for fighting” (p. 47). By interpreting conflicts in this manner and therefore refusing to judge the participants, the international community created for itself an excuse for not taking sides and intervening militarily. Instead, the doctrine of the international community responded to these conflicts by (1) bringing humanitarian aid to civilian victims, who, regardless of their supposed ethnic allegiances, were equally deserving of assistance; (2) mediating in an impartial manner between the sides; (3) convincing the warring parties to establish the rule of law; and (4) promoting reconciliation by holding perpetrators individually accountable and resisting the attribution of collective guilt.

The next chapter, “A Radical Critique,” demonstrates the shortcomings of the doctrine of the international community with references to the Balkans and Rwanda. Feher points out four flaws in the doctrine: the premise that these conflicts were apolitical and exclusively cultural was false, the falsification was deliberate as a means of excusing the international community from having to intervene, the policies it did adopt purposefully aimed to demonstrate the cultural nature of these conflicts, and its strategy actually produced ethnic conflict. The Yugoslav example illustrates the perniciousness of the approach. The avowedly neutral stance the doctrine insisted on led to the purposeful weakening of UNPROFOR, which in turn facilitated tragedies like Srebrenica. From the Bosnian Muslim perspective, their abandonment by the international community taught them that in the future they could only rely on themselves—“on the solidarity of the Muslim community and the strengthening of their Muslim identity” (p. 100)—and therefore “thanks to the policies pursued by Western democracies since 1991, there was a good chance that, next time around, the war in Bosnia would really look like an ethnic conflict.” Similarly, policies taken with regards to the Rwandan Patriotic Front that liberated Rwanda led to “the polarization of central Africa along ‘ethnic lines’” (p. 109).

Framing these two chapters, which compose the bulk of the book, are chapters describing the challenge posed by the Kosovo conflict to the international community. Feher describes how Milosevic’s failure to embrace the mediation offered by the international community at Rambouillet exposed the international community’s doctrine for what it was—a quixotic assumption that the instigators of these conflicts could be educated rather than treated as political enemies. Forced to acknowledge Milosevic as a political actor, the international community reluctantly abandoned persuasion through mediation for military intervention. Feher also describes the confusion Kosovo presented critics of the international community. Radical leftists, represented in Feher’s essay by *The Nation*, criticized Operation Allied Force as an example of the West’s imperialistic tendencies, but in so doing they left unacknowledged the genocidal implications of ignoring Serb aggression,

making isolationist arguments identical to the radical right. Feher deftly describes the odd position that the Kosovo intervention put these critics in and the contradictions of their critiques of NATO actions.

Feher's essay is well argued and carefully thought-out. However, it is unsatisfying in several respects. First, as a research tool, the essay is of limited value. Feher rarely supports his arguments with examples, and when he does, the examples are overly general. His footnotes are frustratingly sparse. Second, the essay insinuates that the doctrine of the international community was a deliberate effort to try to make sense of an international order bereft of its Cold War categories. Although he admits that the doctrine evolved out of "a mix of trials and errors, hasty decisions, and hindsight rationalizations" (p. 42), Feher presents the doctrine as if Western governments had actually spelled it out in advance, and then made policy decisions according to its dictates. His argument would have been more convincing had he admitted that the weakness of responses to Rwanda and Bosnia were rooted more in ideological confusion and isolationism than a purposeful doctrine. Finally, Feher opens his essay with a tantalizing chapter called "A Puzzling Chiasma," in which he describes how Western governments and their critics made opposing arguments with regards to Bosnia in 1995, but both reversed themselves with regards to Kosovo in 1999. While the rest of the essay does an excellent job illustrating why Western governments—the international community—made the arguments it did, the essay only revisits the critics of Western policy in a cursory way at the very end.

Ultimately Feher's essay is a good read. It provides a good attempt to make sense of the epistemological confusion in the international world left by the Cold War.

War Crimes and Humanitarian Intervention

Genocide in International Law. By William A. Schabas. Cambridge: Cambridge University Press, 2000. Pp. xvi, 624. Price: \$59.95 (Paperback). Reviewed by Jenia A. Iontcheva.

In 1948 the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. While the Convention was a foundational document for the human rights revolution in international law, during the Cold War its value remained largely symbolic. It was only with the fall of the Iron Curtain that the Genocide Convention was again seen as a document capable of providing the firm textual foundation needed for a nascent practice of international criminal law. As atrocities in Rwanda, Yugoslavia, and Sierra Leone and the rise of neo-Nazism and Holocaust denials stirred global debates about the meaning, prevention and punishment of genocide, legal scholars and practitioners turned to the Convention's text for insight and guidance.

In his most recent work, William Schabas responds to these events by offering a thorough and methodical analysis of the development of the law on genocide. Schabas's close scrutiny of the extensive drafting records of the

Genocide Convention is certain to delight judges and commentators who rely on history as an aid to construing legal texts. The author's greatest contribution, however, is his dynamic interpretation of the historical narrative in view of contemporary legal developments and debates. The most up-to-date treatise on the subject of genocide, Schabas's work is bound to influence judicial opinions and academic research on international criminal law, and it may even inspire further codification initiatives.

The first two chapters of *Genocide in International Law* are devoted to the origins of the legal prohibition of genocide and to the drafting history of the Convention. Aiming to provide an historical context for these legal developments, the author sifts through international law expert reports and through the lengthy debates surrounding the preparation of the Convention and develops an impressive record of primary sources that will be of great service to practitioners and scholars.

Chapter 3 is perhaps the most provocative chapter, as in it Schabas addresses the Convention's hotly debated definition of protected groups. Contrary to most scholars, the author opposes any broadening of the definition to include political groups or social groups defined on the basis of sexuality, gender, or mental and physical ability. He maintains that such an extension would be inconsistent with the drafters' intent and would trivialize the concept of genocide, the symbolic significance of which is intimately tied to the condemnation of the ethnic and racial hatred that fueled the Holocaust (pp. 114, 133).

Chapters 4 and 5 discuss the basic elements of the offense of genocide—the physical act and the mental state of the offender. As Schabas notes, the contours of these elements have proven to be controversial. For example, assaults on a group's culture, language, and religious and cultural institutions, while a common element of both the Holocaust and subsequent persecutions, have not been criminalized. Schabas's response to this omission, however, is different from his response to the exclusion of political groups. He recognizes that both exclusions were a political compromise designed to ensure ratification, yet he regrets the exclusion of cultural genocide, while supporting the narrow definition of protected groups. This different treatment is related to two considerations that inform Schabas's arguments throughout the book. First, the original definition of genocide, conceived in direct response to the Holocaust, includes cultural genocide, but not the destruction of political or social groups (p. 113). Second, other international law principles—in particular those that deal with crimes against humanity—now adequately protect political groups from severe persecutions (p. 150), but not from cultural assaults (p. 547). Even if these distinctions are consistent with an originalist understanding of genocide, most modern interpreters, while supporting an extension of punishable acts to cover cultural genocide, would likely contest Schabas's claim that political persecutions such as the massacres committed by the Khmer Rouge in Cambodia could not be classified as genocide.

The requirement of specific intent imposed by the Convention has also stirred controversy. Schabas argues that the specific intent element is an

essential characteristic of genocide and should not be tampered with—as some commentators have suggested—to create forms of “negligent” genocide. On the other hand, he welcomes a variation on the concept of superior responsibility for genocide (an evidentiary presumption by which a commander is deemed to have participated in genocide if his subordinates committed the crime) (p. 313), despite the fact that it is not fully consistent with the specific intent requirement (p. 305).

In Chapters 5 and 6, the author discusses “other acts” of genocide, focusing on preparatory acts, such as incitement and hate propaganda, and on complicity, which is closely related to the concept of command responsibility discussed above. Schabas argues that it would be desirable to extend the prohibition on preparatory acts in order to enhance the Convention’s preventive function (p. 257). Indeed, he devotes the entirety of Chapter 10 to the duty to prevent genocide and on the implications that such a duty may have for interpretations of preparatory acts of genocide and for the law of humanitarian intervention.

The duty to prevent genocide is one of the larger questions of interpretation of the Convention to which Schabas turns in the later chapters. These questions include the Convention’s jurisdictional and extradition requirements, the responsibilities it imposes on states, and the relationship between its provisions and treaty law. In particular, the author laments the absence from the Convention of universal jurisdiction and of a clear duty to extradite.

In conclusion, Schabas acknowledges that the Genocide Convention’s “balance sheet is inadequate” and that many of its provisions are unclear or outdated (p. 549). He proposes the creation of a reporting mechanism to establish state practice that would aid interpretation of the Convention’s provisions. Schabas also makes a more far-reaching proposal, arguing for a dramatic shift in interpreting the Convention’s essential purpose. He urges that, rather than focusing on prosecution and enlarging the scope of the definition of genocide, international lawyers should focus on extending the scope of the obligations of State parties that flow from prevention. Pointing to an example from recent history, the author notes that such obligations would have required the international community to intervene in order to prevent the genocide in Rwanda. Staking a provocative position after a thorough and meticulous discussion of the Convention’s history and provisions, *Genocide in International Law* is certain to stir debate and to make a lasting contribution to international law scholarship.

The Kosovo Tragedy: The Human Rights Dimensions. Edited by Ken Booth. London: Frank Cass Publishers, 2001. Pp. xii, 386. Price: \$24.50 (Paperback). Reviewed by Willow D. Crystal.

The essays assembled by Ken Booth in *The Kosovo Tragedy: The Human Rights Dimensions* attempt to parse the events and choices leading up to the Kosovo crisis of 1999, and to identify the consequences, both local and

international, of what has problematically been termed NATO's "humanitarian intervention." Seeking to decipher the significance of the Kosovo controversy, Booth and his fellow contributors sift through historical antecedents, political pressures, and legal arguments related to the recent events in Kosovo. In this fashion, they conduct a series of inquiries into the legitimacy and lawfulness of the intervention, and then consider the implications of the intense global involvement in the Kosovo conflict and in Kosovo's subsequent reconstruction.

Booth, the E. H. Carr Professor of International Politics and Head of the Department of International Politics at the University of Wales, Aberystwyth, organizes his book in six parts. The first five parts comprise essays, and the last part provides relevant documentary supplements related to the Kosovo conflict. Part One, "Perspectives," uses the recent events in Kosovo to illustrate and problematize the application of three emotionally and legally loaded concepts: genocide, ethnic cleansing, and rape in the context of warfare. The contribution by Tim Dunne and Daniela Krosiak takes on the first of these contentious categories, tracing the evolution of the term "genocide" since its invention in 1944 through a series of "restrictionist" and "expansionist" debates over the scale of the acts involved, the identity of the victim-group, and the intent of the perpetrator. Dunne and Krosiak conclude that while the campaign of violence against the Kosovar Albanians may not be best described as genocide, the work of the International Criminal Tribunals for the former Yugoslavia and for Rwanda has lent much legal force and clarity to the term.

Carrie Booth Walling's essay explores the history, psychological underpinnings, and politics of the term "ethnic cleansing" recently popularized by media accounts of the Balkan conflicts. Less than a century ago, ethnic cleansing was still viewed as a viable tool for state-building and an answer to potential problems of international peace and security. Even today, Walling points out, the term continues to function in the ambiguous, extra-legal gap created between the "political ideal of the homogenous sovereign state and the principle of national self-determination" (p. 64). Caroline Kennedy-Pipe and Penny Stanley provide the final contribution to this Part with their descriptive survey of the use of rape in the context of armed conflict and their brief outline of lessons gleaned from the problems of proving and punishing rape in the Balkans.

The next three Parts adopt a roughly chronological structure to frame a more specific discussion of the Kosovo conflict. Part Two, "Prologue," begins with Marianne Hanson's critical assessment of the Bosnian reconstruction since the signing of the Dayton Peace Accords in 1995. Alex J. Bellamy focuses his contribution on a consideration of the "trajectory of decline in the value of human life in Kosovo between 1974 and 1999" (p. 122); while he never fully explains his methodology of valuation, his piece provides a rich overview of the stages and changes leading up to the events of 1999. William G. Walker, Head of the OSCE's Kosovo Verification Mission from 1998 to 1999, concludes this Part with a description of the challenges faced by the

Mission, a discussion of the Mission's accomplishments and failings, and a brief list of lessons learned.

Nicholas J. Wheeler's excellent essay begins Part Three, "War," by articulating three models of humanitarian intervention—the posse, the vigilante, and the norm entrepreneur—and applying each model in turn to NATO's bombing of Kosovo and the legal and moral justifications raised on its behalf. Wheeler develops this framework in order to evaluate the legality, legitimacy, and limited implications of NATO's actions, and of unilateral humanitarian intervention in general. Jim Whitman's contribution argues that NATO's response to the Kosovar refugee crisis "was animated less by human rights principles than by a concern to contain the refugees within the region" (p. 164), and that due to the blurring of strategic and humanitarian aims, NATO's intervention will likely have detrimental long-term consequences for the rights of refugees and for the work of the U.N. High Commissioner for Refugees.

Hilaire McCoubrey considers the legality under international law of NATO's tactical mode of conduct, and specifically its use of air strikes during the Kosovo intervention. Drawing on a variety of *jus in bello* and *jus ad bellum* norms and perspectives, McCoubrey amply illustrates that the legality of NATO's air campaign is a separate question from that of the application of international humanitarian norms and the decision to intervene at all, and that this question of tactics raises serious concerns about target selection, so-called collateral damage, and the problematic revival of "just war" rhetoric. Finally, Marc Weller's commentary on the International Criminal Tribunal for the former Yugoslavia demonstrates the degree to which the Tribunal's formal indictment of top-ranking political and military officials in Milosevic's regime retroactively transformed the nature of NATO's use of force and altered NATO's strategic trajectory, as well as the important, catalytic role played by the Tribunal in an emerging international constitutional order.

Eric Herring opens Part Four, "Aftermath," by asserting that the purpose of war should be to secure a better peace, and by asking whether NATO's actions against Serbia will have such a result for Kosovo. Herring explores both the pro-war and anti-war narratives, and concludes that NATO's war failed to produce a better peace since "NATO embodies and produces ethnic, state-centric politics" (p. 242). In the next selection, Ian R. Mitchell contemplates whether the act of holding elections in Kosovo under unpropitious conditions will help or hinder human rights goals. Mitchell finds that the debates over elections and over democratization or democracy in general are intricately linked to the question of Kosovo's sovereignty and cannot be fully resolved until the tensions between the international management and the local leadership of Kosovo are resolved. Jasmina Husanovic offers the final essay in this Part, framing her contribution as a moral and political "anatomy lesson" (p. 263) aimed at unpacking the post-conflict trends and forces that are undermining the prospect of a multi-ethnic Kosovo. She provides a guardedly optimistic vision of the development of a politics of responsibility and the abandonment of an ideology of victimization.

Booth presents Part Five as a “Forum” oriented toward answering the question: “Is Humanitarian War a Contradiction in Terms?” (p. 281). While Chris Brown asserts in response that war is simply not a humane activity, he goes on to conclude that NATO’s acts were politically and morally defensible in a difficult situation. Melanie McDonagh posits that the NATO intervention was just because it was grounded in a just cause, but she questions whether Kosovo does or will enjoy a just peace. John Stremlau’s contribution provides a welcome shift in perspective by assessing the NATO intervention through the lens of the South African experience and by highlighting both the double standard evident in NATO’s actions performed in the name of promoting human security in Kosovo and NATO’s selective inattention to armed conflicts elsewhere. Colin S. Gray enumerates and applies five tenets of classical realism to wars of humanitarian intervention and to Kosovo in particular, cautioning that “polity Boy Scouts acting in world politics with pure hearts and sophisticated weapons are more likely to do harm than good” (p. 306). Tarak Barkawi deftly explores the “problematic link between military means and humanitarian ends” (p. 307), and Ken Booth offers up a top-ten list of the flaws of just wars, concluding that it is simply a mistake to consider any war just. He uses this list to support his claim that “militarised humanitarianism” (p. 314) will delay the construction of a universal human rights culture. Finally, Richard Falk provides an analysis of the complex motives behind the post-Cold War humanitarian impulse, observing that only those interventions whose motives are substantially mixed are likely to receive adequate resources from the international community.

Booth’s collection provides a wealth of perspectives on the recent Kosovo conflict—many of them accompanied by valuable data, framed by personal experience, or couched in solid substantive analysis—that articulate the contradictions and conundrums of NATO’s actions. Booth and his colleagues, however, seem intent on performing a semiotic operation, on isolating the “symbolic meaning or meanings of ‘Kosovo’” (p. 20) and of such terms as “humanitarian intervention” and “just war,” without much apparent self-awareness of the problematic, privileged, and rather rhetorical nature of their endeavor. Notwithstanding talk of exportable meaning, very little mention is made of implications of the Kosovo experience for conflicts elsewhere. The collection’s format, while ideal for the inclusion of multiple viewpoints, produces a whole that is somewhat disconnected and at times risks redundancy. Finally, the welcome haste with which the collection was published is unfortunately evident in the text’s peppering of editorial oversights and typographic errors. Despite these shortcomings, however, *The Kosovo Tragedy: The Human Rights Dimensions* remains an important work, and a testament both to the complexity of the Kosovo controversy and of the project of promoting and protecting human rights in general.

Stay the Hand of Vengeance: the Politics of War Crimes Tribunals. By Gary Jonathan Bass. Princeton: Princeton University Press, 2000. Pp. 402. Price: \$29.95 (Hardcover). Reviewed by Daniel Reich.

Although war crimes tribunals are currently the focus of much attention, Gary Jonathan Bass's *Stay the Hand of Vengeance* stands out from recent scholarship both in its focus on the early roots of the modern war crimes tribunal, and in its focus on the political rather than the legal considerations which underpin the formation of such a tribunal. While Bass impressively covers the history of five war crimes tribunals, the real achievement of this book is its synthesis of the lessons learned from these assorted case studies into a conceptual framework for analyzing how politics affect war crimes tribunals generally. In Chapter 1, Bass presents several themes of the book, among them "legalism," which he defines as a "fixation on process, a sense that international trials must be conducted roughly according to well-established domestic practice—not just rule-following, but rule following when it comes to war criminals" (p. 20). Legalism, he explains, is a concept limited in application to a select group of liberal states. As such, "the serious pursuit of international justice rests on principled legalist beliefs held by only a few liberal governments" (p. 8). The story of war crimes tribunals, then, is about the power of legalist ideas in liberal states, and the constant tension in even the most liberal states between idealism and *realpolitik*.

Bass's discussion of the power of legalist ideas lays the basis for his analysis of what he calls "the politics of war crimes tribunals" (p. 28). This analysis consists of five propositions. First, only liberal states translate legalist principles into war crimes policy. Second, even the most liberal states are more concerned with protecting their own soldiers than with protecting the lives of victimized populations. Third, liberal states are generally, though not always, more likely to prosecute war crimes perpetrated against their own citizens than those committed against foreigners. Fourth, liberal states are much more likely to support war crimes tribunals in those cases where public opinion has been outraged. Fifth, in contemporary efforts to establish war crimes tribunals, NGOs can play an important role in galvanizing public support.

The bulk of the book, consisting of Chapters 2-6, is devoted to further development of the themes laid out in Chapter 1 through a series of historical case studies: the decision not to try Napoleon and his followers after France's defeat in the Hundred Days' War, the aborted attempt to try German war criminals in the aftermath of the First World War, the failed effort to prosecute some of the Young Turks who perpetrated the Armenian genocide, the successful prosecution of German war criminals at Nuremberg after the Second World War, and the current prosecutions of alleged war criminals before the International Criminal Tribunal for the Former Yugoslavia. Bass points to the "Napoleonic precedent" as a distinctly non-legalist one in which the British used "extralegal means to get rid of an enemy" (p. 38). The precedent Bass refers to was the decision by Britain and Prussia, in 1815, to banish Napoleon to the island of St. Helena. The British did not even consider trying Napoleon in an international tribunal, and thus Bass declares it a "far cry from Nuremberg" (p. 37), or even from British efforts to bring Wilhelm II to justice after World War I. Nevertheless, Bass uses this example to show the

difference between illiberal Prussia's call for summary execution and liberal Britain's more restrained call for banishment. Bass uses this example to argue that while the British felt compelled to punish Napoleon because of public outrage, British politicians revealed an embryonic notion of legalism in their refusal to execute the self-proclaimed Emperor of France.

Bass's other two pre-Nuremberg examples, the tribunals set up at Leipzig and Constantinople, date to the aftermath of the First World War. The Leipzig trials were an attempt to put Germans on trial for aggression and other war crimes committed during the Great War. The push for trials of German war criminals was led by Britain and France, who sought vengeance within the constraints of what their legalist ideals would allow, and thus sought to bring German leaders and soldiers, including Chancellor Wilhelm II himself, before a war crimes tribunal. However, efforts to bring him before such a tribunal were frustrated when Holland granted Wilhelm asylum. Moreover, the Allies' efforts to bring other German leaders and soldiers to justice were thwarted by Germany's refusal to cooperate. In the end, the Allies gave up on their hope for an international tribunal and agreed to let a German court in Leipzig conduct some trials, but the court only issued acquittals or light sentences. The lesson learned from Leipzig, Bass concludes, is that the liberal states are selfish, for they only focus on war crimes committed against their own citizens, and they are reluctant to risk soldiers in order to pursue war criminals.

While the Leipzig trials fell far short of the example Nuremberg would set, Constantinople is eulogized by Bass as the "Nuremberg that failed" (p. 106). The Constantinople tribunal was an Ottoman court set up in 1919, in response to the urging of the British, in which important leaders from the wartime Ottoman government were to be tried for war crimes and for the 1915 Armenian genocide. The Constantinople tribunal failed when Turkish Nationalists took several British soldiers hostage, offering to exchange them for the Turkish war crimes suspects in British custody. Confronted with the choice of pursuing a legalist ideal or protecting its soldiers, Britain opted for the latter. Britain's obsession with protecting its own is of course one of the obvious lessons Bass draws from Constantinople. But beyond that, Bass also shows that Britain's prosecution of the Turks began out of self-serving motivations, for the British were initially mostly concerned with trying the Ottomans for crimes committed against British soldiers. It was only later that the prosecution of crimes committed against the Armenians was added.

Despite its self-serving roots, the Constantinople tribunal evolved into an instrument of universalism and legalist idealism. In one of the most interesting vignettes in this book, Bass traces the origin of the term "crimes against humanity" to a public denunciation of the Armenian massacres drafted by the Russian foreign minister Sazonov in 1915. Though this phrase would come to represent the highest of universalist legalist principles, it is notable that Sazonov's original draft denounced "fresh crimes committed by Turkey against Christianity and civilization" (p. 116). Only after the British expressed opposition to this phrasing did Sazonov come up with the alternative "crimes against humanity and civilization."

The Nuremberg trials are, of course, the model which modern-day tribunals hope to emulate. Despite the great reverence for Nuremberg in modern scholarship, Bass chooses to put the Nazi war crimes trials in perspective by focusing on two elements that are often forgotten. First, Bass reminds us that the trials were anything but assured after the Allied victory. Even after intense debates between Treasury Secretary Henry Morgenthau, Jr., who called for harsh punishment of the Nazis without trials, and Secretary of War Henry Stimson, who advocated the legalist approach finally adopted in Nuremberg, Roosevelt was very close to adopting Morgenthau's approach, an approach which had the support of a majority of the American public. It was only after the Morgenthau Plan was rejected for other reasons that Roosevelt embraced Stimson's proposal for the establishment of a war crimes tribunal. The second aspect of Nuremberg that Bass brings to our attention is that Nuremberg was initially much like the Constantinople trials in that the United States initially pushed for the trials as a self-serving project to punish Nazis for crimes of aggression against the Allies. Only later did the Nuremberg trials come to include crimes associated with the Holocaust—the aspect of Nuremberg for which the tribunal is mostly remembered today. Thus, Bass explains, the prosecution of the Nazis was for the war first, and for the Holocaust second. Despite Nuremberg's self-serving origins, Bass still heralds Nuremberg as "legalism's greatest moment of glory" (p. 203).

The discussion of Nuremberg and its precursors lays the groundwork for an analysis of how politics impacts modern war crimes tribunals. Chapter 6 stands apart from the four case studies that precede it, for this chapter deals with the Hague tribunal created to adjudicate war crimes that took place in the Former Yugoslavia. After giving an overview of the Hague tribunal's evolution, Bass adopts the conventional view that while the tribunal has come a long way, it still has a long way to go. The author presents this case differently than the previous four. In the preceding case studies, the author focused mostly on policy debates within the various governments that pushed for creation of the tribunals and did not devote much attention to the workings of the tribunals themselves. In this chapter, Bass's primary emphasis is on the detailed workings of the tribunal itself, and how the tribunal was impacted by political decisions made in the United States and Britain.

Chapter 7 synthesizes the theoretical framework of the first chapter with the five case studies in order to emphasize the power of selfishness in liberal states' war crimes policies, while at the same time praising liberal states for their general, if not constant, adherence to legalist ideals. Chapter 8, entitled "Epilogue: Do War Crimes Tribunals Work?" serves as a modern guide to the politics of war crimes tribunals, drawing on lessons of the past to answer the question in the chapter's title. Bass acknowledges that the validity of most liberal arguments in favor of war crimes tribunals is ambiguous—these arguments are that war crimes tribunals help secure peace, by purging threatening enemy leaders, by deterring future war criminals, by rehabilitating former enemy countries, and by placing blame for atrocities on individuals rather than on entire populations. The author agrees with the liberal argument that such tribunals serve a very important purpose in creating a record

establishing the truth about wartime atrocities. On a cautionary note, however, Bass warns that war crimes tribunals may foment a nationalist backlash by the group whose members are being prosecuted. Finally, Bass concludes that while war crimes tribunals may be imperfect, they do work better than any of the alternatives devised to date.

Stay the Hand of Vengeance, though not strictly a book about international law, is a welcome addition to international legal scholarship, providing the first comprehensive historical account of how politics plays into the establishment of war crimes tribunals. Bass offers a well-written and thoughtful account of the evolution of the modern war crimes tribunal. Aside from his elegant and thoughtful prose, it is also a pleasure to refer back to the book's voluminous endnotes. The strongest sections of the book are those covering the banishment of Napoleon to St. Helena and the attempts to seek justice at Leipzig, Constantinople, and Nuremberg. The Hague section, while providing a useful overview of the evolution of the International Criminal Tribunal for the former Yugoslavia, would have benefited from more extensive analysis similar to that presented in the earlier sections. Further, the author might have included a chapter on the Rwanda tribunal rather than just incorporating passing references to it throughout the book. Nevertheless, Bass has made a significant contribution to the scholarship on war crimes tribunals not to be overlooked by students of international affairs.

Globalization and Rights

Citizenship and Migration: Globalization and the Politics of Belonging. By Stephen Castles & Alastair Davidson. New York: Routledge, 2000. Pp. xiii, 258. Price: \$22.99 (Paperback). Reviewed by Umut Ergun.

In *Citizenship and Migration*, co-authors Stephen Castles and Alastair Davidson set out to achieve three objectives: first, to problematize the idea of citizenship as a form of political belonging conditioned on cultural and/or ethnic unity; second, to discredit assimilationist approaches to immigration; and third, to urge "a radical rethinking of citizenship rights" (p. ix) that begins by severing the notion of citizenship from that of membership in a nation. They argue that nothing short of such revision will do if we want to accommodate, both in theory and in practice, the contemporary realities of accelerated globalization and mass migration. These realities include the porousness of borders and the supplanting of protectionist economies and homogeneous peoples by free trade agreements and multicultural populations.

Chapter 1 lays out the authors' basic concerns. Castles and Davidson then go on to provide a sustained interdisciplinary survey of citizenship as it has been theorized and practiced since the Enlightenment and the early beginnings of the nation-state. Chapter 2 takes the reader from the early notions of city-state membership in ancient Greece, past the multi-ethnic practices of the Roman Empire, through the Enlightenment ideal of a "social contract" with its *consenting* citizen, to the *active* citizen of the welfare state. While the consenting citizen could claim only negative liberties, the active

citizen also possesses socio-economic entitlements meant to empower him for democratic participation. This theoretical overview of types of political and cultural membership is complemented by Chapter 3, which traces the empirical history of population movements, with particular emphasis on the latter half of the twentieth century.

This historical treatment is enriched, in turn, by a psycho-sociological account of the formation, marginalization, and political mobilization of immigrant communities and ethnic minorities in Chapters 3-6. Chapter 6 analyzes the dynamics of such mobilization, through examples such as Europe's increasingly populous and visible Muslim communities (for example, Algerians in France and Turks in Germany). The authors point out the connections between ethnic segregation and disempowerment on the one hand, and the tendency of minority members to gravitate towards radical politics (such as Islamic fundamentalism) on the other. The lesson is that exclusionary and assimilationist policies heighten tensions that more inclusionary but still multicultural approaches on the part of the receiving or "host" population might have diffused. The attempt to obliterate difference leads to a backlash in the form of radical politics.

As they survey immigration and citizenship policies across the globe in Chapter 4, Castles and Davidson usefully identify different categories of countries: white settler nations (such as the United States and Australia), post-war guest-worker importers (such as Germany and Sweden), former colonial powers (such as France and Great Britain), and new immigration countries (that is, countries that have been the target of immigration waves in the 70's and 80's, such as Spain, Italy, Greece, the oil-producing nations of the Middle East, and Asian tigers such as Singapore). The purposes for which different countries open their borders to immigrants affect the prospects those immigrants have of acquiring citizenship rights and other civil and political liberties. For example, the settler nations and former colonial powers have tended to encourage cultural assimilation, with the promise of citizenship as a reward for success. By contrast, guest-worker importers in both postwar Europe and the contemporary Middle East and Asia have typically tried to foreclose any future possibility of citizenship and socio-political integration to immigrants, treating the immigrant minorities instead as a kind of temporary aberration to be shipped back once the labor needs for which they have been imported no longer exist.

Germany and other post-war importers of guest workers in Europe have, of course, discovered the impracticability of such exclusionary policies. They have watched as questions about the citizenship rights of first- and second-generation immigrants have become significant factors in national political discourse, capable of affecting the outcomes of elections. This is largely a result of the embarrassing reality of millions of second-generation immigrants, who until 2000 were deprived of the rights of citizenship despite being born and raised in Germany with German as their first language. Thus Germany, a bastion of *ius sanguinis* (predicating citizenship on descent from a German national), has had to relax its allegiance to this principle. Conversely, France, traditionally characterized by a republican commitment to the principle of *ius*

solis (predicating citizenship on birth in the country's territory), has responded to a rising wave of anti-immigrant national sentiment by throwing roadblocks in the way of citizenship for children of immigrants born on French soil, with its 1993 passage of the *Loi Pasqua* (though this was largely reversed in 1998).

This book's extensive and up-to-date discussions of the German and French experiences with immigration and citizenship rights are just two examples out of many. Castles and Davidson also provide well-informed surveys of formal citizenship policies and of the contemporary politics of immigrants' rights in numerous other North American, European, and Asian countries, in the process highlighting the increasing presence of ethnic and cultural minorities as forces to be reckoned with in the political life of nations. Further, in Chapter 7 Castles and Davidson supply the reader with an informative analysis of an incipient form of *transnational* citizenship arising in regional economies. The Maastricht Treaty of 1991 has created the phenomenon of EU citizenship, marked by a distinct bundle of rights grafted onto national citizenship in member states, and supported by supranational political and legal institutions capable of trumping their national counterparts. Of course, the emergence of this new form of citizenship does not affect the fundamental problematic with which this book is concerned, namely the plight of the millions of non-EU nationals living as disenfranchised permanent immigrants in Europe. Nonetheless, the authors present an interesting analysis of this new arrangement as a kind of guide to the future possibility of supranational citizenship.

The authors emphasize that the formal and/or *de facto* disenfranchisement of those who lack citizenship rights, social entitlements, and cultural freedom in the countries where they permanently live and work is an embarrassment to the ethos of democracy and human rights often espoused by receiving countries. Correcting this disjunction is also increasingly a pragmatic necessity, as groups of immigrants gather political force through community formation and business entrepreneurship. In this respect, the authors perhaps understate the extent to which immigrant communities have time and demographics on their side, though a glimmer of optimism may be extracted from their observation that "[h]alf a century of large-scale immigration . . . is leading to a grudging realization that people of diverse ethnocultural backgrounds are there for good, and that there is no real alternative to incorporating them as citizens" (p. 100). In their concluding chapter, Castles and Davidson address the question of precisely how such incorporation is to take place. Their suggestion that residence, not territorial birth or blood ties, should be the basis of citizenship is attractive, but needs to be developed in further detail. Similarly, they do not sufficiently develop their suggestion that democratic welfare states might wish to recognize differentiated rights for historically underprivileged or culturally oppressed populations, nor do they discuss in detail their vision of how to create global community that is comfortable with ethnocultural difference. In contrast to the richness of detail to be found in this book's earlier chapters, these later suggestions are somewhat unsatisfying. This is understandable given the relatively uncharted nature of this territory. The rest of the book, however,

gives political theorists, social scientists, lawyers, and the general reader a wealth of detail from across a wide range of time, space, and disciplines, in a compact and well-organized form that is sure to spur the growth of new ideas.

The Tiananmen Papers. Edited by Andrew J. Nathan and Perry Link. New York: Public Affairs, 2001. Pp. xlv, 513. Price: \$30.00 (Hardcover). Reviewed by Daniel E. Ho.

Tiananmen Square, the world's largest public space, commands a special place in Chinese history, and in 1989 students gathered there to mourn the death of the former Chinese Communist Party ("CCP") general secretary, Hu Yaobang, in what became a showdown against government corruption that ended when the government decided to clear the square by force. This decision is the subject of *The Tiananmen Papers*, a compilation of alleged internal documents of the CCP recording the dynamics of the party leadership in dealing with the student movement. While several accounts of the student movement have been published, this collection is the first to present the political struggle from *within* the CCP and may therefore be of tremendous value to Sinologists and international law scholars.

The Tiananmen Papers presents an array of never before seen primary documents, whose authenticity remains controversial. These documents range from reports of party agencies such as the provincial State Security Ministry and Central Military Commission ("CMC"), to minutes of the Politburo Standing Committee ("PBSC"), and to transcripts of private, highly sensitive conversations between top leaders such as Deng Xiaoping (who by 1989 formally only retained the title of CMC chairman) and Yang Shangkun (then President of the People's Republic of China ("PRC")).

The book begins with a preface by the compiler "Zhang Liang," the pseudonym of the person who smuggled the documents out of China. Zhang, a purported witness to and participant in the events, claims to represent moderates within the CCP favoring more rapid change. The collection first outlines the social conditions preceding the crisis, particularly rising inflation, crime, and government corruption resulting from the deregulation of price controls in the 1980s. It then proceeds chronologically, tracing the steps of the student movement from the reactions to the death of Hu Yaobang, a popular pro-reform leader, through the night of June 4th, when the People's Army took Tiananmen Square by force. The events are reported through the eyes of government agencies, with helpful biographies and comments by the editors and the compiler that help readers unfamiliar with modern Chinese history put the documents into context.

Hu Yaobang had been dismissed as Party general secretary in 1987 for failing sufficiently to oppose "bourgeois liberalization." On April 15, his death by heart attack sparked marches by students that quickly transformed into protests against corruption and calls for freedom of the press and political reform. The students' decision to boycott classes and form the independent Autonomous Federation of Students provoked a harsh government response in

an April 26 editorial that charged the student movement with being “turmoil” aiming to reject the CCP and the socialist system (p. 76). The hunger strikes by the students to reverse the April 26th editorial and their decision to make Tiananmen Square their headquarters reminded some government officials of the lawlessness of the Cultural Revolution. While students protested for the rule of law, officials came to perceive the movement as a breach of law—particularly as the government faced the pressure of an impending state visit by Mikhail Gorbachev.

The documents also describe the rise of Jiang Zemin from the position of Shanghai’s General Secretary to China’s President and General Secretary of the Communist Party, as well as the fall of the moderate Zhao Ziyang, then Party general secretary—who remains under house arrest today. In meetings and speeches, Zhao emphasized “democracy and law” (most notably at a speech delivered to the Board of the Asian Development Bank) as an approach to quell the crisis, but he was ultimately blamed with supporting turmoil and splitting the party. Jiang, on the other hand, who had quickly disbanded and reformed the management of Shanghai’s *World Economic Herald* after it espoused pro-reform views, commanded great respect from the conservative party Elders.

By far the most compelling section of the documents consists of descriptions of meetings of the PBSC (China’s highest governing body consisting of five members) to discuss the decision to implement martial law. Zhao vehemently opposed martial law, and the PBSC split in a 2-1-2 vote, leaving the eight Elders, an extra-constitutional body under the leadership of Deng, to make the final decision to declare martial law. The documents also provide the government perspective on the crackdown of June 4th, although ministry reports describing “pools of blood” and streets “shrouded in a deadly silence” (pp. 374-75) seem uncharacteristically favorable to the students. The official line remains that domestic and foreign enemies who were scheming to overthrow the PRC manipulated students and workers. In the aftermath, Deng himself outlined the need to take measures to stave off further social unrest in addresses to the party leadership calling on them first, to draft association and press laws conducive to the maintenance of social stability and second, to pursue deeper liberalization and “political education.”

In an insightful afterward, Orville Schell contemplates the difficulty of verification of these documents, given the fact that the PRC remains a closed society with few mechanisms by which to verify facts. He also provides thoughtful examples of previously forged documents “leaked” from China, but nevertheless concludes that the documents in question are “largely credible” (p. 470). However, there remains considerable controversy regarding the authenticity of the papers. The PRC claims that the collection is a Western attempt to distort facts and has suggested that it is entirely fabricated. While it appears that the collected papers are largely authentic, the credibility of the more sensitive documents may be confirmed only by the passage of time and the opening of the PRC.

If the papers accurately reflect the thought of the PRC leadership at the time, several implications follow. First, the division between the older

hardliners and the younger moderates, most importantly Zhao, was much more pronounced than previously thought. This may be of importance to China scholars signaling potential volatility of the PRC policy in the immediate future, as generational changes inevitably occur in the CCP. Second, the documents may potentially facilitate a reversal of the Chinese verdict and result in the proclaiming of the student protests as a patriotic act rather than an act of “counterrevolutionary” turmoil. Additionally, while Deng ultimately cleared the decision to declare martial law, the papers implicate Li Peng as manipulating information so as to encourage military deployment. Lastly, the leadership also felt considerable external pressures in opposition to a harsh crackdown—intensified especially by the presence of the international media in Beijing to cover the Gorbachev visit.

China might have looked very different, as Nathan notes, if the internal party disagreements had not led the PBSC to defer to the Elders regarding the martial law decision. As the complete non-edited version of the documents becomes available through non-official channels on the Chinese mainland, *The Tiananmen Papers* may gain greater significance to China’s own internal development. Accordingly, this collection will speak to not only to human rights advocates and Sinologists but also to a more general audience interested in this critical period of Chinese history and in China’s future development.

Bounds of Justice. By Onora O’Neill. Cambridge: Cambridge University Press, 2000. Pp. ix, 203. Price: \$19.95 (Paperback). Reviewed by Michelle Cormier.

In her extensive and influential writings, Onora O’Neill, Principal of Newnham College, Cambridge, has used Kant’s moral philosophy to offer fresh accounts of justice and other aspects of ethics. In particular, she has expounded on the importance of obligations over rights, on gender issues, and on “transnational justice” (p. 115). O’Neill believes much of the existing body of political and moral philosophy commonly known as “Kantian” is misnamed because it downplays Kant’s dedication to principles that can be universally adopted, instead emphasizing duties and moral imperatives. Although liberal political philosophy has identified “Kantianism” as rights-based, thereby de-emphasizing obligation, virtue, and need, O’Neill feels that these three neglected considerations are key to a cosmopolitan Kantian approach, and constantly incorporates them into her work.

Bounds of Justice is a collection of ten of O’Neill’s essays, fluidly interweaving two limiting considerations of justice—the philosophical and the political. The author supports a universal maxim of duty, drawing on Kant’s concepts of the categorical imperative and the formula of the “end in itself.” At the core of her vision is a rational autonomous agent, an entity with the “specific, coherent, and reasoned” capability to use her “capacity ‘to work independently of determination by alien causes’” (p. 42). O’Neill argues that the most effective and important way to develop a just and good society is to

enhance people's autonomy universally, not by granting more independence or freedom, but rather by reducing vulnerability.

The first six essays are dedicated to O'Neill's exploration of reason, action, autonomy, obligations, gender, and coercion—all in relation to justice. Her first essay establishes the method of reasoning to be used in her questioning. She exposes the shortcomings of commitment- and norm-based practical reasoning and argues for action-based practical reasoning that is widely accessible and acceptable, and thus potentially applicable on a global scale. Referring back to action-based critical reasoning, O'Neill's second essay examines autonomy and autonomous action in context together with rationality, coherence, and morality. O'Neill explains that true Kantian autonomy is the "capacity to adopt principles that *can* be universally adopted . . . and the rejection of principles that *cannot* be universally adopted" (p. 43). Her next essay focuses on the guiding role of principles upon action; the problems and dilemmas that arise when principles collide with judgment; and the universalist philosophical and institutional steps that might be taken to prevent or soften the collision, while considering the needs and obligations of the global actors involved.

In her fourth essay, the author declares in terms borrowed from Kant himself that "the plan of reason is that there be some plan" (p. 76), and explains why this plan ought to require the validation of universally adoptable principles as authoritative. O'Neill's fifth essay, aptly titled "Which are the offers *you* can't refuse?," explores coercion, echoing back to the nature of acceptance and introducing the notions of virtue and integrity. O'Neill ponders the widespread, well-hidden, and sometime inextricable nature of coercion and its effects on autonomy, identity, universal applicability, and justice. She concludes that one way to avoid the odious and destructive consequences of coercion is to restrict the powers of the strong. However, her more interesting suggestion is to strengthen the weak—to diminish the vulnerability of those most easily coerced—through laws and regulations that aim to equalize power and position. The last essay of the first part explores the relationship between rights and obligations, focusing on the importance of rights over obligations and relating this focus to women's rights and gender issues.

Drawing on the philosophical framework laid out in the first part of the book, O'Neill turns in the second part to political and institutional considerations of justice. She expounds upon the nature of transnational economic justice and the difficulty of determining who the arbiters of transnational economic justice are and/or should be. She revisits vulnerability, coercion, and the unequal distribution of power, specifically in relation to the position of women. She ponders the problem of the limited and limiting nature of sovereignty and proffers the solution of redefining institutions along non-territorial boundaries. Over the course of these four essays, O'Neill employs the Kantian project of universalizability, envisioning wide-reaching reforms that spread responsibility between several institutions and that emphasize the distribution and definition of rights and obligations. She further develops the dynamic at the heart of the book: namely, that the requisite arrangements are

those to which “a plurality of interacting agents with finite capacities *could consent*” (p. 162), and that for these arrangements to be truly just, any and all (but especially the vulnerable) of these agents must be free “to refuse or renegotiate alterable aspects of the roles and tasks assigned to them” (p. 163).

With this collection of essays, O’Neill endeavors to delineate a “reasonable form of universalism for ethics and politics” (p. 3) to help define justice in a world with increasingly porous boundaries. A universally diminished level of vulnerability allows a heightened capacity for autonomous action. This, in turn, allows the identification of a maxim of duty, requiring only the “rejection of maxims of action which could not be adopted by all” (p. 47). This maxim necessarily fosters adoption of laws that are “self-imposable for a plurality” and that lay the groundwork for achieving “morally acceptable action and exemplify[ing] Kantian autonomy” (p. 47). This chain culminates in an “*institutional cosmopolitanism*” (p. 201), in which institutions respect and recognize cosmopolitan obligations and promote autonomy through regulations.

Bounds of Justice is a broad-reaching and thought-provoking work that presents a compelling conglomerate image of the definition, pursuit, and maintenance of justice. The scope of this volume ranges from the philosophy of Plato, Mill, and Kant, to the political power-struggles between peoples, institutions, and nations, all the while remaining clear and accessible to the reader. Whether taken as a whole or separately, these essays comprise a valuable and timely resource for philosophers, critical race and gender theorists, and international scholars, as well as for any reader contemplating global justice.

Globalizing Concern for Women’s Human Rights. By Diana G. Zoelle. New York: St. Martin’s Press, 2000. Pp. ix, 169. Price: \$49.95 (Hardcover).
Reviewed by Li He.

In the wake of revolutionary changes in the landscape of women’s liberation in the last century, the international community has recognized the importance of international cooperation. On December 18, 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the first international convention to address the human rights of women in a comprehensive manner. However, although none of the articles of CEDAW are inconsistent with the ideals of freedom and equality upon which the United States was founded, the United States has refused to ratify CEDAW for over a decade. Given its liberal democratic tradition, this non-ratification may appear to be an anomaly, but Diana G. Zoelle argues that it is not.

In *Globalizing Concern for Women’s Human Rights*, Zoelle looks at the institutional structures and cultural dynamics that have obstructed U.S. ratification against a larger global context. Unlike some feminist works that focus on the more explicit exclusion and oppression of women by states, this study examines the subtle dynamics and characteristics inherent in the

sociopolitical, economic, and legal systems of the United States in a gender-sensitive manner.

The book is divided into five chapters. Chapter 1 challenges the American commitment to women's rights by arguing that the United States fails to live up to the fundamental principles and premises of its own democratic system. The author begins by delineating the evolution of civil rights in the United States since the Declaration of Independence and then focuses on current legislation concerning human and civil rights. Despite the fact that the inequality between men and women is more pronounced in many other countries than it is in the United States, the author notes that "[t]he advancements that women have enjoyed under [U.S.] case law . . . have not come without some negative effects" (p. 27). Therefore, the author concludes, when the assumptions of liberalism and the reality of the U.S. system are juxtaposed, "it is evident that theory and practice diverge greatly" (p. 28).

Chapter 2 focuses on a close reading of CEDAW. Two major international treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), fail to penetrate substantially the boundaries of the private realm where women are located in virtually every society. The function of CEDAW is therefore all the more critical and essential. Drawing upon textual, legal, and sociological analysis, Chapter 2 includes a comprehensive discussion of how the protective measures contained in CEDAW extend beyond civil and political rights by incorporating the demand that states assume responsibility for economic, cultural, and social conditions that directly affect women.

In Chapter 3, Zoelle explores the complexities of international and state resistance to globalizing concern for women's human rights. Do women all over the world share one universal and easily identified identity? If not, how should we deal with the societal and cultural differences among jurisdictions and sovereignties in terms of the human rights of women? To unpack these questions, the first part of this chapter identifies various types of deep structural resistance to the improvement of women's human rights. Challenging essentialist perceptions of gender roles, the author argues that "[d]eny[ing] difference is not the answer" because "it is not difference that must be eradicated but the attendant asymmetry in power arrangements" (p. 64). The secondary focus of Chapter 3 is to explore the lack of female representation in U.N. bodies. Extending the analysis to the international sphere, Zoelle suggests that women's lack of representation in U.N. bodies reflects the patriarchal traditions of most member states.

After providing a general overview of women's international human rights, Zoelle, in Chapter 4, turns to what she terms the "Schizophrenic State" (p. 73), which refers to the ambivalent attitude of the United States towards international human rights treaties in general. In the first part of Chapter 4, the author attributes the U.S. failure to uphold its global responsibilities to two distinct yet related historical dynamics: "(1) Cold War priorities and (2) the interaction of U.S. elitism and a peculiar form of isolationism" (pp. 74-75).

Therefore, in terms of the incorporation of international treaties within the U.S. system, neither Congress nor the courts have accomplished much.

Chapter 5 concludes by bringing together the arguments of earlier chapters, focusing on limitations for women within the liberal democratic system exemplified by the United States. As the only superpower in the landscape of contemporary international relations, Zoelle points out, the United States has failed to live up to its own claims of liberalism. Historically, the American tradition of liberal democracy was founded upon the supremacy of white, male value systems. Notwithstanding the efforts that have been made to safeguard women's human rights, the improvements are limited because "the 'idea' of human rights supercedes and displaces the 'idea' of civil rights" (p. 123). Consequently, Zoelle argues that "[r]atification of CEDAW is an opportunity to claim the fundamental, ideological premises of liberalism for women" (p. 123). Confronting the claims that redressing women's unequal status will pose a fundamental threat to the stability of the state, the welfare of its children, and the values embodied in the nuclear family, Zoelle maintains that "if commitment to liberal ideals is a primary goal of the state, then adherence to the basic precepts of liberalism is a requirement for the realization of that goal" (p. 124).

Globalizing Concern for Women's Human Rights succeeds in providing dual perspectives (U.S. and international) on contemporary issues regarding women's rights and liberalism. Additionally, Zoelle's interdisciplinary approach ensures that the reader will find this book informative and comprehensive. The question it leaves for future analysis is how to design a practical and effective mechanism to enhance women's rights in the United States even in the absence of CEDAW.

Treaty-Making and Codification

Multilateral Treaty-Making: The Current Status of Challenges to and Reforms Needed in the Internal Legislative Process. Edited by Vera Gowlland-Debbas. The Hague: Martinus Nijhoff Publishers, 2000. Pp. vii, 144. Price: \$59.00 (Paperback). Reviewed by Adam I. Muchmore.

The international treaty has come a long way since the conference of Westphalia. The process of treaty-making itself has become more important as it has become more complicated. On the one hand, ever-growing areas of regulatory concerns are proving impossible to address within the confines of the traditional nation-state. On the other, massive decolonization at the end of the twentieth century has left behind a multiplicity of nation-states at vastly different stages of economic development, making it difficult to reach consensus on even the most basic issues.

These were some of the concerns addressed at Forum Geneva, a program organized jointly in the spring of 1998 by the American Society of International Law and the Graduate Institute of International Studies in Geneva. This book, a compilation of papers from the forum, is organized to respond to four basic questions. (1) What is the role of multilateral treaties in

the formation of international law? (2) What is the role of non-state actors in the negotiation of these treaties? (3) What, if anything, is different about treaties that serve the “public interest”? (4) How are multilateral treaties actually implemented at the domestic and international level?

As might be guessed from these questions, the subject matter of the collection is very much procedural. Vera Gowlland-Debbas begins by explaining that the forum focuses on “the impact of social change on the rules relating to forms and procedures of treaty-making” (p. 2). The participants address content only to the extent that it governs the process by which treaties are made. These issues of international procedure are particularly important in the area of codification. Since the work of the codifier—rarely a politically neutral task—often touches closely on delicate aspects of national sovereignty, its legitimacy can depend upon the procedures by which it takes place. Examining the role of the International Law Commission in this codification process, Alain Pellet argues that many of those who question the utility of the Commission misunderstand it as an institution. Rejecting the proposition that the Commission is no longer suited to the evolving needs of the international community, he argues instead that it should be understood as fulfilling a basic, but essentially conservative, need—helping to clarify, through codification, the “legal basis in which international society is rooted” (p. 22).

One of the most hotly contested procedural issues in the field of international law is also one of the most fundamental—exactly what type of entity should be considered a “subject” of international law? In his study of the multinational corporation, Peter Malanczuk rejects the idea that special “internalized contracts” (p. 58) with a sovereign state can make a corporation a subject of international law, even in a partial or limited sense. As to their role in treaty-making, he argues that while most companies prefer to avoid the actual treaty negotiation process and instead “operate within the existing system (or non-system) as profitably as possible” (p. 66), they nonetheless have a significant and growing capability to influence the formation and implementation of treaties, primarily through their lobbying activities within individual states.

The relationship between a treaty’s content and the procedural rules involved in its adoption are also important. In other words, are there certain special types of treaties that defy the normal rules by virtue of their subject matter? Bruno Simma answers this question in the negative in regard to the area of human rights treaty-making. Suggesting that an explicit exit option would make states more likely to ratify (and less likely to submit reservations to) treaties in this field, he concludes that these instruments, while different from other multilateral treaties, “do not constitute ‘self-contained regimes’ decoupled from the general law of treaties and State responsibility” (p. 87). For environmental treaties, however, Catherine Redgwell’s argument is more equivocal. Considering the developing nature of scientific knowledge in this area, she argues that it is “premature, and possibly even undesirable, to suggest that environmental treaty-making has engendered new rules of treaty law applicable only in this sphere” (p. 107). She also makes a more radical

argument—that instead of creating a self-contained regime for the implementation of environmental treaties, the innovations developed for these special cases should be seen as part of the general law of treaties. Since the special procedures often advocated for these treaties can be less than respectful of traditional state sovereignty, implementation of this proposal would certainly shake up some of the cozier relationships of the current international order. Yet, if this idea is to be taken seriously, it requires more than the brief allusion she grants it at the end of her essay.

So what actually happens to a treaty once the diplomats finish their work? On the domestic level, it depends to a large degree on each country's constitutional structure. Worried about the reluctance of many states to honor fully treaties made by their executives, Walter Kälin argues that, out of respect for international law, states should postpone ratification of treaties when they foresee themselves being incapable of producing the necessary domestic consensus for the treaty's support. Implying, however that this is at best a temporary solution, Kälin goes on to suggest that that the "exclusion of parliaments from treaty-making no longer corresponds with the realities of today's international relations" (p. 128). Georges Abi-Saab then pulls the disparate pieces together with an essay touching briefly on each of the separate themes addressed. Noting that "the State is in the process of transmutation—its pores are widening to allow for more intensive interaction with the environment" (p. 142), he seems to suggest that our view of the state's role in the international system must also change. He concludes with a plea not for pure monism, but instead for "a system of conscious transformation of international norms into municipal law . . . not necessarily dualist in nature but inspired from federalism" (p. 142). Such a system would ensure the accurate and effective application of multilateral treaties at the domestic level.

On the whole, the book is a serious and useful examination of the multilateral treaty-making process. It is not, however, without its flaws. The discontinuity in style among the various contributions is distracting. Heavily footnoted, scholarly works are presented alongside others which provide less support for their claims, relying instead on whatever personal authority the author's name and reputation may lend. Several papers also have the problem—all too familiar in international law—of immersing the reader in an alphabet soup of undefined acronyms, intelligible only to the initiated few.

Despite these minor shortcomings, those who work in the international field should find this book both enjoyable and enlightening. For the rapidly changing world of multilateral negotiations, Gowlland-Debbas has assembled a timely and intriguing collection of essays on some of the most vexing topics in international law.

State Succession: Codification Tested Against the Facts. Edited by Pierre Michael Eisemann and Martti Koskenniemi. Boston: Martinus Nijhoff, 2000. Pp. xxxix, 1012. Price: \$233.00 (Hardcover). Reviewed by Charles Ching.

Despite the seemingly unstoppable rush toward globalization, sovereign nation-states remain the primary actors in modern international affairs. As independent actors, states take on bilateral and multilateral obligations to other states, international organizations, and even private parties. Changes in the legal status of a single state, therefore, affect the entire international community by creating uncertainties over the validity of that state's preexisting legal commitments. The past decade has witnessed many such transformations—for example, the disintegration of the Soviet Union and Yugoslavia, the reunification of formerly divided Germany and Yemen, and the division of Czechoslovakia. To understand the legal significance of these changes, the Academy Centre for Studies and Research in International Law and International Relations dedicated its yearly session in 1996 to discussions on the topic of state succession. The final product is a comprehensive collection of essays by international legal scholars in English and French that, as its title suggests, provides a wide-ranging analysis of how international legal treaties and principles have affected the treatment of territories that experienced fundamental changes in political status during the late 1980s and the first half of the 1990s.

Unlike legal scholars examining state succession immediately after the decolonization wave of the 1960s, those in the post-Cold War era do not have to begin from scratch. Consequently, they tend to pick two formal international treaties—the 1978 Convention on Succession of States in Respect of Treaties and the 1983 Convention on Succession of States in Respect of State Property, Archives and Debts—as the starting-point for their analyses. This is somewhat troubling, since the 1978 Convention did not take effect until 1996, and the 1983 Convention “has not yet entered into force and it seems unlikely that it ever will” (p. 90). Although editor Martti Koskeniemi defends such use by claiming that “recent practice seems to underwrite” the view that the 1978 Convention is “expressive of international custom” (p. 69), such reasoning appears inadequate for justifying ex-post examinations of events to which the Conventions were formally inapplicable.

Despite this methodological problem, contributors to this volume use the Conventions as a prism through which to analyze status changes. They examine the legal implications of changes in the status of individual states in relation to a number of issues, including membership in the United Nations and other international organizations, prior obligations as parties in multilateral and bilateral treaties, territorial boundary modifications, and the identity and rights of private persons. To test the significance of the Conventions and the supposed international legal norms embodied therein, the contributors draw on recent status-transition cases and analyze their results.

For example, Article 4 of the 1978 Convention qualifies this treaty's applicability to constituent instruments of international organizations by explicitly deferring to the rules of individual organizations in determining the membership of successor states. According to the International Law Commission, which drafted the Convention, this is intended to preserve the established principle that new states are not entitled to automatic succession to

organizational memberships “simply by reason of the fact that at the date of the succession its territory was subject to the [constituent] treaty and within the ambit of the organization” (p. 189). Barring special circumstances, new states must obtain membership by applying for admission. However, as Konrad G. Bühler points out, international norms or even specific organizational rules are not the main factors in determining the membership status of a successor state. Rather, membership hinges on whether the particular organization, as well as the international community at large, considers the specific state to be a continuing international person from its predecessor or predecessors. Each change is dealt with pragmatically on a case-by-case basis. Thus a united Yemen, as a fusion of two continuing international persons into a single entity, assumed an existing membership in the United Nations and most related agencies in 1990, even though, from a legal perspective, the unification symbolized the creation of a new sovereign state through the extinction of two former personalities. Similarly, Russia assumed international organization memberships previously held by the Soviet Union, including permanent U.N. Security Council representation, partly because most countries and organizations accepted it as the continuing state of its disintegrated predecessor. While these examples appear to contradict the principle of non-succession of organization memberships espoused by the International Law Commission, they do reveal how international law on state succession leaves membership decisions to “the organizations concerned, which are free to choose—within the interpretative framework of their constitutions—between the options of succession or non-succession to membership” (p. 322).

The applicability of the Conventions on state succession is also challenged through an examination of state actions with respect to multilateral and bilateral treaty obligations. Here the authors emphasize that the wide range of special circumstances associated with each status change once again undermine the importance of any codified or customary international law to actual practice. Although successor states generally accept continuity of treaty obligations after status changes as a measure to preserve international stability, numerous exceptions—based, for example, on the nature and application of the specific treaties involved, the type of status change undergone by the successor state, and diplomatic situations—make continuity unworkable as a reliable rule. The newly independent states of the former Yugoslavia, for example, diverged in their adoption of the treaty obligations of their common predecessor: Croatia proclaimed general continuity but selectively excluded certain agreements, while Serbia-Montenegro attempted to characterize itself as identical to the Socialist Federal Republic of Yugoslavia, a move that was categorically rejected by the international community. No bright-line rule can adequately encompass such diverse practices.

Studies of the impact of state succession on territorial boundaries and on the rights of private individuals contained in this volume again confirm the relative nature of each individual case. They also highlight the problems with assuming that the applicable legal rules are in fact accepted and adhered to by

the international community during status transitions. The frequency with which boundary disputes accompany status transitions, such as after Eritrea's independence from Ethiopia, demonstrate how bilateral agreements, not to mention international legal rules, are often ineffective in creating boundaries that are satisfactory to parties with conflicting claims. As for private rights, Maria Isabel Torres Cazorla's examination of recent state succession cases results in the conclusion that "[o]nly a case by case analysis . . . will provide a full picture of the impact that State succession may have on the rights of private persons" (p. 715), and that ad hoc agreements among affected states may have greater effectiveness in resolving private rights issues. Again, given the broad array of factors involved in problems associated with state succession, pragmatic approaches targeting specific cases appear to be more promising in bringing about resolutions to conflict than do bright-line rules.

So what do all these subject-matter analyses and case studies tell us about the legal ramifications of state successions and status changes? *State Succession: Codification Tested Against the Facts* highlights some practical difficulties hindering any efforts to establish an all-encompassing yet workable set of formal international laws governing state succession. It presents a clear and multi-faceted picture of the confusing and indeterminate state of international legal rules in this area. It is in this role of empirical documentation that *State Succession* is of the greatest value to international legal theorists and practitioners alike.

Given significant variation in the circumstances and practices of individual states regarding state succession, any hard and fast legal rule purporting universal applicability is bound to receive little actual acceptance—especially from states preferring flexible rules that may promote self-serving purposes. Thus Yolanda Gamarra correctly states that "[t]he complexity and diversity of situations is the most significant obstacle in establishing and evaluating the content of the rules governing State succession" (p. 434). The failure of the 1978 and 1983 Conventions on state succession not only exemplifies such difficulties, but it also reveals how pragmatism, now more than ever, remains a force that drives international legal affairs.

International Commercial Arbitration

International Chamber of Commerce Arbitration, Third Edition. By W. Laurence Craig, William W. Park, and Jan Paulsson. Dobbs Ferry, N.Y.: Oceana Publications, Inc. Pp. xvi, 952. Price: \$155.00 (Hardcover). Reviewed by Steven Hill.

The International Chamber of Commerce (ICC), based in Paris, is arguably the world's preeminent international arbitral institution. Craig, Park and Paulsson's comprehensive volume, although not an official ICC publication, has become the authoritative guide to ICC arbitration and an invaluable resource to arbitration practitioners. The 1990s saw many changes in the landscape of ICC arbitration, including the adoption of new ICC

arbitration rules in 1998 and a number of new national arbitration laws and national court decisions over the course of the decade. As a result of these developments, it was high time for an update of the 1990 edition. Indeed, since the 1998 rules, readers have had to make do with the authors' slim *Annotated Guide to the 1998 ICC Arbitration Rules with Commentary* (Oceana, 1998), which provides only barebones commentary on new features in the 1998 Rules. The much-awaited third edition of Craig, Park, and Paulsson fills this void.

The authors are high-profile members of the international arbitration bar. Craig heads the arbitration practice at Coudert Frères in Paris and has served on the ICC Court of Arbitration and the commission that produced the revised 1998 rules. Paulsson has a prominent practice in international commercial arbitration and public international law based at Freshfields in Paris. Park, a professor at Boston University and of counsel at Ropes & Gray, is the author of several respected academic works on arbitration. The authors' wealth of experience is reflected in all aspects of this book.

The volume begins with an overview of ICC arbitration. The authors lay out the general characteristics of typical disputes submitted to ICC arbitration, including statistics about typical parties, subject matter, trends in choosing venue and arbitrators, and the length of the proceedings. They then provide an overview of the organizational framework within which ICC arbitration takes place, briefly explaining the role of the ICC and its national committees, the Secretariat, the ICC Court, and the arbitrators themselves. This part concludes with a discussion of costs. While many works on arbitration exhibit an almost missionary zeal about the cost advantages of arbitration, the authors address complaints by practitioners that ICC arbitration is too costly and review some reform proposals.

Part II deals extensively with the jurisdictional basis for arbitration: the agreement to arbitrate. Since a poorly drafted arbitration clause can foil the intention of the parties to submit their dispute to binding arbitration and can lead to protracted litigation before the arbitral tribunal and any number of national courts, avoiding the so-called "pathological" clause is crucial. The authors review the case law in all major jurisdictions relating to the validity and obligatory nature of the agreement to arbitrate. They then provide a very useful catalog of elements to be considered in drafting an arbitration clause, categorized as indispensable elements, generally recommended additional elements, occasionally useful elements, and, perhaps most importantly, pathological elements to be avoided. This section will be useful not only to ICC practitioners but also to any lawyer who needs to draft an arbitration clause.

The bulk of the book (Parts III and IV) is devoted to a step-by-step examination of the process of ICC arbitration. It includes sections on bringing arbitration under the rules; arbitral jurisdiction; constituting the arbitral tribunal and determining the place of arbitration; arbitrator disqualification or incapacity; the advance to cover costs; the terms of reference; the rules governing the proceedings; the choice of substantive law; the possibility of *amiable composition* or decisions *ex aequo et bono*; the arbitral award; the

ICC Court's role in scrutinizing draft awards; the determination of costs; and the entering of effect of the award. The authors also discuss the approach of ICC arbitrators to fact-finding, which can differ dramatically from national court proceedings; the use of written proof and arguments; procedures at hearings; and potential fact-finding and interlocutory measures ordered by arbitrators. Recourse to ancillary proceedings in national courts to obtain injunctions, attachments, court-ordered discovery, or other interlocutory relief is also discussed. In each section the authors review the pertinent ICC rule, the case law that has developed around that rule, and the potential pitfalls associated with each step of the process.

Part V provides an overview of the impact of national law on international arbitration. The authors note that national arbitration law most often affects ICC arbitration in connection with the validity of the agreement to arbitrate, the arbitrability of different subject matter areas, compliance with certain preconditions to arbitration in some jurisdictions, interim measures, and review of awards at the time of enforcement. They examine the crucial importance of the law of the place of arbitration or *lex arbitri*, which in some cases prescribes mandatory norms with which arbitral proceedings within that jurisdiction must comply. Consideration is given to the controversial matter of the role of national courts in the review and potential annulment of awards both at the place of arbitration and in jurisdictions where enforcement of the award is sought. The authors also examine the role of national courts in reviewing arbitral jurisdiction and treat the concepts of *compétence-compétence* and separability of the arbitration clause. This section is useful because it provides a very concise summary of all of the hot-button issues in the jurisprudence and academic discourse on international arbitration.

After reviewing the role of national law in general, the book provides concise overviews of national arbitration law in England (including the new Arbitration Act of 1996), France, Hong Kong, Switzerland, the United States, as well as under the UNCITRAL Model Law. Each section reviews the statutory framework, the agreement to arbitrate, interlocutory matters, and the review of awards. An unfortunate casualty of the third edition was that the section on Swedish law in previous editions was eliminated.

Part VI reviews a number of trends in international commercial arbitration. These include the use of *lex mercatoria*; the use of arbitration in state contracts (particularly special issues involved in arbitrating disputes between developing country governments and companies from the developing world); developments under the New York Convention of 1958 (the treaty that provides for the recognition and enforcement of agreements to arbitrate and arbitral awards); and the growing use of additional dispute resolution mechanisms such as conciliation and other specialized services, all of which the ICC now provides. These topics apply to all international arbitration under the rules of any institution, and the discussion here provides a very useful synthesis of the extensive literature on each subject.

The volume ends with appendices that include extensive statistics on various features of ICC arbitration as well as copies of the rules for all of the services provided by the ICC. The subject index is a handy guide to locating

the authors' discussion of topics that sometimes are repeated or elaborated in different sections of this vast work. Overall, the new third edition of Craig, Park, and Paulsson reestablishes this already classic work as the preeminent reference guide to the law and practice of ICC arbitration. It will become a well-used part of every arbitration practitioner's desk library.

