Book Reviews

L. Condorelli, A.-M. La Rosa, and S. Scherrer (eds). ***Les Nations Unies et le droit international humanitaire : Actes du Colloque International à l'occasion du 50e anniversaire de l'ONU***. Paris: Pedone, 1996.

This volume is a record of a three-day colloquium held in October 1995, jointly organized by the law faculty of the University of Geneva, the United Nations and the International Red Cross, and involving some 250 participants. It is an awkward mix of bilingual (French and English) riches, consisting of formal diplomatic speeches by high-level public officials, 15 thought-provoking academic papers by an impressive collection of eminent scholars and practitioners, more open-ended '*debats*' among the participants, and reflective 'conclusions' by Dietrich Schindler, Georges Abi-Saab, Theodor Meron and Luigi Condorelli. After a formal opening plenary, the symposium was organized around three substantive sessions, the first describing the United Nations' role in the elaboration of international humanitarian law, the second canvassing the UN's implementation efforts, and the third addressing the extent to which UN forces are bound by that law. As Abi-Saab notes in his conclusion to the second session, this effort to compartmentalize what are in reality inextricably linked issues does not wholly succeed and results in some duplication of substantive coverage. Nonetheless, the '*debats*' and 'conclusions' serve as useful bridges between the substantive papers and provide opportunities for synthesis. The result is an impressive survey of the United Nations' many achievements and even greater challenges with respect to international humanitarian law at the closing of the millennium.

In the opening introductory session, Cronelio Sommaruga, President of the International Committee of the Red Cross (ICRC), outlines what becomes a persistent theme for other participants. Sommaruga argues that the UN and the Red Cross each have distinctive roles and that it remains essential for the latter to maintain its neutrality as independent, apolitical guardian of the norms of international humanitarian law. Ralph Zacklin, from the UN Office of the Legal Counsel, develops this point further, suggesting that the UN has not been (and perhaps cannot be expected to be) equally adept as codifier, executor and subject of international humanitarian law. Zacklin points out that the UN, established to eradicate war, is the wrong place in which to seek the codification of the laws of war and that it is fortunate that the Red Cross provided the politically sheltered forum from which the four Geneva Conventions emerged. Although Zacklin surveys the normative impact of relevant General Assembly resolutions, he implies (as does Yves Sandoz) that the UN has had the greatest normative impact on humanitarian law through the indirect consequences of Security Council enforcement actions, including most recently, that organ's creation of ad hoc international war crimes tribunals.

In the first substantive session, Eric David, Mahnoush H. Arsanjani, Laurence Boisson de Chazournes, and Christian Dominicé outline other ways that UN bodies (from the General Assembly through the International Court of Justice (ICJ)) are today elaborating humanitarian law. The sheer abundance of examples of institutional practice that they present suggests that, however 'indirect', the normative consequences of UN actions, even when these do not purport to be normative, are substantial and hard to ignore. Each of the essays in this section are illuminating case studies of modern institutional law-making. Nonetheless, several of these essays cast doubt

on the ultimate value of the UN's normative impact. Arsanjani's contribution, describing the UN's efforts to protect its own blue helmets, the many reasons why UN personnel come under threat, and the distinct problems of UN military operations, also outlines the numerous ambiguities of its newly (and all too quickly) adopted Convention on the Safety of UN and Associated Personnel. Arsanjani concludes that this UN Convention may provide no more than a psychological shield, in the sense of morale booster, for UN personnel and she evinces considerable doubts about whether the possible incompatibilities between the Convention and existing international humanitarian law were properly considered. Her sobering essay will suggest to some readers that the negotiation of future treaties relating to humanitarian law should remain within Red Cross fora whenever possible. Similarly, Chazournes' (and later Hans-Peter Gasser's) critical examination of the normative impact of relevant Security Council resolutions regarding Somalia and the former Yugoslavia is not likely to please those who believe that humanitarian law's continuing legitimacy requires systematical, unconditional and even-handed application. Finally, Christian Dominicé's argument that Article 103 of the UN Charter does not entitle the Security Council to override 'fundamental principles of humanity' reflected in international humanitarian law only raises concerns about whether the present Security Council agrees with his premises. Some might suggest that the Security Council, despite its humanitarian exceptions to its various sanctions regimes, has thus far demonstrated relatively little sensitivity to these principles, given the impact of its sanctions on innocent civilians within targeted countries and its passivity in the face of, for example, the Rwandan genocide of 1994.

The second session contains surveys of the diverse ways that the UN serves as a humanitarian law enforcement agency (especially through its role in peacekeeping). These essays, by Michael Bothe, Antonio Cassese, Laïty Kama, Hans-Peter Gasser, and Mario Bettati, are more positive in tone and are especially laudatory about the contributions to the progressive development of humanitarian law being made by the UN's ad hoc international criminal tribunals for the former Yugoslavia and Rwanda. Bothe provides a comprehensive survey of the 'enforcement' efforts of distinct UN organs, from the ICJ through the Security Council, indicating the ways that such efforts promote the principles and purposes of the United Nations. It falls to Cassese and Kama, judges at the Yugoslav and Rwanda tribunals respectively, to make the not entirely convincing case that while neither tribunal is empowered to make new law (since this would violate the *nullum crimen* principle), both entities are nonetheless legitimately developing the law in 'controversial' areas. Cassese surveys several areas of international humanitarian law where the Appellate Chamber of the Yugoslav tribunal has rendered, in his words, 'legal findings that could be regarded, at least in some respects, as not fully consonant with the view upheld by the majority of the legal literature' (p. 235).

These judges' positive views of the role and impact of their respective tribunals echo the sentiments of many other participants here, including Zacklin, Gasser and Abi-Saab, and this reader at least wishes that participants had more thoroughly and critically examined the contributions of these tribunals, especially where, as in Rwanda, there is a simultaneous attempt to conduct national criminal prosecutions. While it is undoubtedly true that the existence of these tribunals has boosted the visibility of international humanitarian law, the contribution that they have made to the affirmation of the national rule of law within Rwanda (for example) is not obvious.[1] Given the fact that the first trial at the Yugoslav tribunal involved a fairly low-level perpetrator, it is striking that no participant

[1] For an interesting discussion of the 'anomalies of inversion' that may result when international prosecutions are accorded 'primacy' over national proceedings, see, e.g., Morris, 'The Trials of Concurrent Jurisdiction: The Case of Rwanda', 7 *Duke Journal of Comp. & Int'l L.* (1997) 319.

challenged Cassese's affirmation that the mission of these tribunals is to punish the 'grand' criminals emerging from recent conflicts (p. 304). Given such developments as South Africa's Truth and Reconciliation Commission, it seems odd that most participants here were content to *presume* that criminal punishment of war criminals is vital to national reconciliation. One wishes that the symposium had elicited some sparks of disagreement about what are, upon reflection, deeply contentious issues.

During this second session, Gasser, legal adviser to the Red Cross, returns to the theme of the 'complementarity' between the 'political' Security Council and the 'neutral' Red Cross. Like others before him, Gasser presents the strong case in favour of continued independence and autonomy for the Red Cross. Interestingly, he reads Security Council decisions addressed to his organization, as in connection with the former Yugoslavia, not as inappropriate attempts to subordinate the Red Cross to UN authority, but as 'appeals — welcome appeals — to the parties to an armed conflict to comply with their obligations under international humanitarian law, including obligations toward the ICRC and its delegates' (p. 279). Whether this is an objective reading of those resolutions or of the Security Council's contemporaneous intent — as opposed to the pious hopes of a vitally interested partisan — is left to the reader.

The third session, consisting of essays by Daphna Shraga, Jean De Courten, Claude Emanuelli and Françoise Hampson, canvasses the extent to which the UN itself is bound by international humanitarian law. Shraga, from the UN's office of legal counsel, presents a historical overview of the increasingly defunct distinction between peacekeeping and peace enforcement and concisely summarizes familiar debates over the applicability of international humanitarian law to each, indicating, for example, the problems that emerge for the application of traditional humanitarian law from UN command and control and the difficulties inherent to the proper categorization of conflicts ('international' or internal) in which the UN becomes involved. Shraga lays out the UN's current position with respect to the inapplicability of certain portions of humanitarian law, noting, for example, that the UN is in no sense an 'occupying power' administering enemy territory (p. 326). For their part, Emanuelli and Hampson present the general arguments in favour of applying humanitarian law to UN forces; they canvass the specific rules and principles that ought to be applicable depending on the nature of the particular UN operation. In his conclusions to this section, Theodore Meron is critical of the UN's existing approach to international humanitarian law (whereby UN forces are said to adhere only to the 'principles and spirit' of that law). Meron argues that 'there is a growing consensus on the proposition that the United Nations must comply or try to ensure compliance with international humanitarian law in all cases of use of armed force in armed conflicts, whether by military formations acting under United Nations control or authorized by the United Nations' (p. 444). To this end, he, along with Abi-Saab, propose that the UN announce instead that it adheres '*mutatis mutandis*' to the principal conventions and protocols.

Although the essays in this collection provide a useful compendium of the state of the law on this rapidly developing topic, non-specialists might be a bit disappointed by the relatively narrow approach taken. Few participants mention, much less analyse, the possibility of overlap (or conflict) between the issues addressed and human rights regimes, for example. Yet narrowness has its own rewards. For readers of such classic works in the field as Derek Bowett's *United Nations Forces* (whose conclusions as to the applicability of humanitarian law to UN forces are similar to Meron's), this volume serves notice of how far the UN has come in a relatively short period of time. And despite the inevitable shortcomings of the multi-authored symposium format, this collection of essays manages to present a consistent narrative. It tells the fascinating story of how one intergovernmental organization, established to ban war, came to realize that it needed to regulate it and

how another non-governmental organization, long involved in a lonely struggle to defend the integrity of international humanitarian law, now wrestles with 'complementarity'.

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Tully, James. ***Strange Multiplicity: Constitutionalism in an Age of Diversity***. Cambridge: Cambridge University Press, 1995.

James Tully states what he calls the 'impasse' of contemporary constitutionalism in the following terms: 'How can the proponents of recognition bring forth their claims in a public forum in which their cultures have been excluded and demeaned for centuries?' (p. 56). But this impasse, Tully argues throughout his book, is an 'illusion' (p. 57) — premised upon the theoretically naive and historically inaccurate presumption that constitutionalism is essentially and exclusively modern. And it is somewhat against its characterization as 'imperial' (p. 37), as 'a European monolith, imposed from the centre on to the periphery without any change or interaction' (p. 38), that Tully seeks to recover the 'intercultural' (p. 37) and 'dialogic' (p. 183) resources of what he calls 'the hidden language' of an 'ancient' or 'common law' constitutional tradition (p. 57). Reconceptualizing constitutionalism as 'a composite of [these] two dissimilar languages' (p. 31), his argument, therefore, is that constitutionalism is an 'assemblage of languages ... composed of complex sites of interaction and struggle, both within Europe and with non-European peoples and cultures' (p. 38).

The language of constitutionalism may, after Wittgenstein, be considered as something like 'an ancient city: a maze of little streets and squares, of old and new houses, and of houses with additions from various periods; and this surrounded by a multitude of new boroughs with straight and regular streets and uniform houses' (p. 103). And, eliciting the charm of this constitutional city, Tully claims that '[t]his hidden constitutional language can be reconstructed to change our vision of a constitution and dissolve the impasse' (p. 57). It is in accordance with this re-vision, therefore, that Tully offers the characterization of constitutionalism as 'a form of accommodation of cultural diversity' (p. 30): such that, his argument concludes, 'people reach agreement on a constitution by means of an intercultural dialogue in which their culturally distinct ways of speaking and acting are mutually recognised' (p. 29).

Despite Tully's usefully direct approach to 'one of the most difficult and pressing questions of our political era' (p. 1), his argument exhibits a fundamental paradox. He replaces an account of the absence (silence) of multiple constitutional traditions with an account of their presence (voice). But as such, and as I will indicate, it is in his apparent inability to conceive of any other possibility that his argument negates any reason for — or, indeed, any possibility of — that contemporary politics of cultural recognition which is his explicit concern.

Tully's interest is not in the history of a constitutional monologue, but rather in a monologic history of constitutionalism. It is this *vision* of history, he argues, which is 'restricted' in the sense that it 'forgets', 'ignores' or 'misinterprets' what is here revisioned as the history of an 'assemblage of languages' (p. 38) or, indeed, of 'a "common" intercultural language' (p. 57). Tully's argument, therefore, is that constitutionalism has always contained, and so *already* contains, other voices. Consistently, then, he asserts that cultural diversity is 'here and now in every society' (p. 11). Or, again: 'The reason it is possible to understand one another in intercultural conversations is because this is what we do all the time in culturally diverse societies to some extent' (p. 133).

Tully's argument, in this respect, proceeds on the basis of a more or less anthropological critique of the 'separation, boundedness and internal uniformity' of cultures (p. 10). Cultures are, rather, 'overlapping, interactive and internally negotiated' (p. 10). They are 'densely interdependent in their formation

and identity', such that, he argues: 'The modern age is inter-cultural rather than multi-cultural' (p. 11).

Tully's critique of the naivety of an essential cultural separation — and thus his contentions that constitutionalism cannot be considered as exclusively European and, correlatively, that claims to recognition cannot be considered to come from cultures that are incommensurably 'other' (p. 10) — is doubtlessly important. As this historical vision fails to see/hear any resistance so, as Tully points out, it can only 'accept the very self-image the most chauvinistic imperial theorists of modern constitutionalism sought to uphold' (p. 38). But as Tully enforces a distinction between the illusion of cultural separation/constitutional monologue and the reality of cultural relation/constitutional dialogue, the logic of his argument becomes clear. Tully does not dissolve the impasse of constitutionalism. He disregards it.

Tully reduces imperialism entirely to a vision of history; as though this vision would only need to be re-visioned in order to do away with imperialism altogether. Consider, for example, his rather odd complaint against the 'imperiousness' of those '[m]any communitarian and critical theorists': 'When they ask the crucial question of "whose justice?" and "which rationality?" the answers are always the same: some European, male traditions of interpretation set within the stages of European history; never a dialogue' (p. 97). Whilst one might support the contention that such accounts are exaggerated, perhaps even implausible, it is not, of course, clear that redescribing imperialism as a dialogue is any less implausible or, indeed, any less naive or illusory.

One might, indeed, want to resist — and in the name of resistance — that monologic history and its foundation upon the self-sufficiency of culture, which Tully himself contests. But, of course, dialogue is not the only manner in which cultures relate.

In the invocation of 'cultural interaction and conflict, however unequal it may have been' (p. 38), Tully seems to offer the possibility of a more viable account. But, in a decisive theoretical gesture, he states the following: '[i]f one ... language or tradition gained ascendancy in a constitutional negotiation, it would cease to be a dialogue at all. It would be a ... monologue' (p. 57). Tully has already distinguished cultural interaction from the 'restricted vision' of a non-interactive and monologic constitutionalism. But it is as he reduces all unequal cultural interaction to this monologism, that it too is consigned to the 'restricted vision' of imperialism's illusory self-image. This, then, is the obvious consequence: if all cultural interaction is dialogic and all dialogue is egalitarian, then Tully has excluded the possibility of any unequal cultural interaction altogether.

As imperialism is conjured away so, for Tully, cultural interaction becomes an unqualified good. Cultural identity is relational to the extent, Tully says, that '[t]he loss or assimilation of any of the other cultures is experienced as an impoverishment of one's own identity' (p. 205). Or, again: '[o]ne's own identity as a citizen is inseparable from a shared history with other citizens who are irreducibly different; whose cultures have interacted with and enriched one's own' (p. 205).

This interaction, then, is affirmed to the extent that it is cultural diversity, rather than the diversity of cultures, which becomes the focus of Tully's argument. Indicatively, then, his concern with the 'situation of a constitutional dialogue of people who are already constituted in various ways' (p. 55) appears not to be with the multiplicity of claims to cultural recognition, but with claims to something like a recognition of cultural multiplicity. As if, and this is the clarification he offers, such claims were only to 'the constitutional right to speak and act politically in intercultural ways' (p. 55). Tully displaces that diversity which is *his* concern onto those peoples whom he comes to regard, not as demanding to have their cultures recognized, but as seeking the opportunity to 'discuss' their 'constitutional identities' (p. 55). It is here, of course — in this strained multiplicity — that Tully's inability to account for a

contemporary politics of cultural recognition becomes discernible.

Culture, Tully tells us, is internally negotiated. It 'is always different from itself, as well as from others' (p. 45). But, despite his consistent opposition of the 'flexibility' of culture to its 'stability' (p. 38), one is left wondering (not simply) what (but how) culture might *be* if it were not at least less different from itself than it is from others. Amidst the mutually enriching interaction of cultures, one is, then, left wondering, not only what might cause one to claim recognition for one's culture but, in respect of what such claims might be made at all.

As Tully himself points out, claims to cultural recognition are consistently manifest as claims to 'self-rule' (p. 6). But presumably against a cultural interaction which is evidently not so enriching as Tully supposes — he can provide no account of this 'self' that it might claim, or that it might want to claim, the right to rule, precisely, 'itself'.

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István, Ábel, Pierre L. Siklos, and István P. Székely. ***Money and Finance in the Transition to a Market Economy***. Cheltenham, UK, Northampton, USA: Edward Elgar Publishing Limited, 1998. Pp. 211. Index. $80.

Money and Finance in the Transition to a Market Economy represents one of the first and few attempts to analyse the role of finance in transitional economies. As the authors state themselves, this is an extremely difficult task, especially given that the financial data available to the contributors is largely unreliable or doubtful. The material has not been reviewed by external analysts.

The book is structured in such a way that the reader can follow the historical evolution of the market system in the former state-planned economy countries. The first chapter deals mostly with the problems of state withdrawal from the management of the economy and the influence of such self-restriction on the financial system of a country. The second chapter considers the problems caused by such state retreat from management and administrative positions, namely the deteriorating liquidity of the businesses and its impact on monetary policy. Logically, the malfunctioning of the financial markets results in the phenomenon called a credit crunch, which the authors examine in the third chapter. One of the reasons for the financial distress in which the former communist countries found themselves is the prematurity of the law, including the law of property. The fourth chapter examines the various limitations imposed by the socialist system on property and ties this to an analysis of bankruptcy practices of the Central and Eastern European countries. Since the household represents a major part of the market, the authors' focus in the fifth chapter is on the opportunities and behavioural patterns of households in the transition economies. Among other things, the households' investing power and preferences are questioned from the point of view of market efficiency and the country's growth potential. Chapters 6–8 analyse the banking sector of transitional economies. These chapters consider the role of financial intermediaries in the restructuring of the economy of the Central and Eastern European countries, bad loans inherited by state-owned financial institutions, banking reform, and its impact on overall macroeconomic conditions. Further, the authors consider the role of the Central Bank in the evolving markets' financial systems and the extent of their independence from the state. The final chapter, Chapter 10, summarizes to some extent the preceding analysis and presents various opinions as to the possible transition scenarios and the basics of such economic transformation. Here the authors consider the extent to which a premature financial system, at the early stages of its evolution and transformation to market, should be exposed to market risks and vulnerability.

One of the tools utilized by the authors is retrospective analysis: they present the facts

on the system's composition and its main functioning patterns before the introduction of the reforms. For example, the discussion of state desertion is preceded by an analysis of financial data pertaining to GDP and government expenditures in the pre-reform era. There the authors analyse the reasons for the appearance of bad loans on the balance sheet of government-owned banks, subsidy relations established between the banks and industries, the quality of the banks' portfolios in general, high-risk aversion of the 'commercial banks in a rather primitive state' (p. 12), and tie this analysis to the weak and vulnerable position of the banks during the reformation. Another example is the authors' discussion of the effectiveness of the market and creditors' protection through the mechanisms of liquidation or reorganization. During the first half of the 1980s, according to the authors, only seven state enterprises, chosen at random, were liquidated (p. 73). That, *inter alia*, was one of the reasons why subsequent bankruptcy of insolvent enterprises was not pursued vigorously and why the laws proved to be insufficient to 'bridge the gap between the need for a well functioning capital market and the mere reality of a very underdeveloped financial system' (p. 74).

The analysis largely depends on facts and figures from one particular country — Hungary. Though some chapters contain data from Czechoslovakia, Bulgaria and Poland, the analysis or conclusions in most chapters are based on Hungarian sources: see, for example, conclusions to Chapter 5, 'Changing Structure of Household Portfolios in Emerging Market Economies' — this chapter was originally written as an article on the Hungarian experience. Chapter 2, 'Constraints on Enterprise Liquidity and Their Impact on Monetary Policy', is also based on a Hungarian article, 'Constraints on Enterprise Liquidity and its Impact on the Monetary Sector in Hungary' (p. 31). See also financial data on bad loans in Chapter 7: the authors base their exploration of the bad loan problem in transitional economies on pre-1993 Hungarian data (see also pp. 128–143).

Extensive research has been conducted to compare the experiences of Hungary and the G-7 countries in regulating the banking sector (Chapter 8). The chapter explores the most recent data on Hungary, USA, Germany and, to some extent, the Czech Republic, Poland and Greece.

The authors consider the changes in the financial system in connection with household portfolios, enterprise liquidity and within the international context. Therefore, the aim of the book is to provide a broad overview of the problems and difficulties of altering the command system, turning it into a market system. The role of the state and central bank is also considered, though in respect of the latter the authors limit themselves only to the issues of independence of this institution and pay almost no attention to the role of the central bank in regulating the economy and the activities of other banks and financial institutions. The authors also avoid analysis of the securities market and the role of a governmental agency similar to the US SEC.

The authors do not always analyse the actual events or practices of the emerging markets. For example, in Chapter 4, which deals with bankruptcy, only seven abstracts (less than two pages) deal with the liquidation and reorganization practices of the emerging markets. The authors excessively cite US bankruptcy laws, introduce a highly theoretical overview of the problem and eventually deal with the emerging market enterprise insolvency only to a small degree. This is true with regard to other material as well: the authors excessively include basic theoretical fundamentals of economic analysis, which makes the book akin to a textbook for college students and not a problem-pointing and analysing directory for professionals (see, for example, pp. 19–21, 25–26, 73–75, 62–71, 146–149, 164–168, 177–184, 188–190). In addition to that, the authors do not always separate the actual and estimated data while putting both into tables (see, for example, Table 2.2, p. 24; Table 3.1, pp. 38–39).

This reflects the main drawback of the book: it is composed of a number of articles written at different times and with different motives. While the authors acknowledge this, it hardly

improves the logic of the book, which remains a fragmented compilation of separate writings. The manifestation of this compilation without a significant transformation into one logical narration is shown through the problem of bad loans. The authors thoroughly analyse this problem in Chapter 1, where they also introduce the problem of state desertion; they then come back to the issue of bad loans in Chapter 7. The reason for such repetition is simple: the first chapter was written as an article for *Acta Oeconomica*, and the material for Chapter 7 was originally presented at the Conference on Bad Enterprise Debts in Central and Eastern Europe (Budapest). Basic analysis of bad loans again appears in Chapter 6.

Similarly, the authors did not sufficiently update these separate articles to a single level of internally interrelated parts. Articles which had been written prior to other articles 'stand out' in the overall text. For example, Chapter 3, 'Fiscal and Monetary Policies in the Transition: Searching for the Credit Crunch', is largely based on a 1993 article; thus, the history of pre-1992 reforms occupies 17 pages (pp. 40–56) whilst the post-1992 story filters through two abstracts (p. 56). Chapter 5 contains only data from 1970–1990, whilst the authors claim that 'the composition of financial wealth holdings has changed significantly' (and the whole chapter, as the name suggests, is aimed at changing portfolio structure in emerging markets); no evidence in this respect is presented (p. 91). See also the financial data of Chapter 6. Authors' references and citations are unfortunately not reliable. They are often too broad (e.g., 'Sources: National Bank of Hungary, Monthly report various issues', p. 134), not sufficiently definite and precise (e.g., 'Based on data from OECD Main Economic Indicators, various issues', p. 59), unsupported (e.g., 'Source: I. Abel', p. 142), or completely missing (see the references to Chapter 4).

Finally, each chapter has its own short summary, but a conclusion for the entire analysis is missing. Instead, in Chapter 10, 'Stabilization and Convertibility in the Transition: The Legacies of the Twin Deficits', the authors spend two pages analysing Hungarian macroeconomic policy experience of the 1980s (pp. 184–186). The book actually represents a set of separate readings on the experience of the Hungarian (and to some extent other countries') financial systems of the late 1980s to the early 1990s. It represents a fairly broad grasp of the early stages of transformation and might be helpful for analysts interested in an initiation into the transition of the financial systems of Central and Eastern European countries towards the market.

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Evans, Malcolm (ed.). ***Remedies in International Law: The Institutional Dilemma***. Oxford: Hart Publishing, 1998. £35.

As international instruments proliferate, the remedies available to states for breach of international obligations and the number of institutions offering fora for the granting of such remedies has expanded. Today, the International Court of Justice (ICJ) is no longer alone in providing a forum for the granting of remedies. Different trade, environmental, or law of the sea regimes, for example, have expanded the range of options available to aggrieved states. Yet, with this expansion comes new problems, tensions and questions. For example, will a given institutional option actually be effective? Is the proliferation of procedures and mechanisms necessarily a good thing? What happens if different institutions offer diverging jurisprudence? Which factors determine the choice of one forum over another?

Evolving out of the papers and presentations given at the Fourth EC/International Law Forum hosted by the Law Department at Bristol University in May 1997, *Remedies in International Law* is a collection of essays by leading international jurists on the remedies available to states in international law and the issues 'flowing from the multiplicity of procedures and mechanisms' (p. viii). Discussions go beyond the examination of traditional institutions such as the ICJ to more recent

institutional arrangements such as that under the Convention on the Law of the Sea and to alternative dispute resolution mechanisms.

Divided into 13 chapters, the book covers a wide range of topics, including the International Court of Justice (Chapters 1–3), the Law of the Sea Convention (Chapters 4–5), alternative dispute resolution mechanisms (Chapters 6–8), the Gatt/WTO settlement system (Chapter 9), and environmental dispute settlement (Chapter 10). The last three chapters take on much broader issues. Chapter 11 examines 'International Wrongs and National Jurisdiction', while Chapters 12 and 13 explore issues pertaining to the European Union.

The book kicks off with a piece entitled 'Remedies and the International Court of Justice: An Introduction', in which Judge Rosalyn Higgins sets out to identify 'the advantages and disadvantages of recourse to the International Court of Justice'. This she does from a practitioner's perspective, taking the reader through the work of the ICJ from the time a case first comes in, to the distribution of work amongst the judges, up to its final resolution, thereby providing a valuable insider account of the procedure of the ICJ. Malcolm Shaw's piece is also on the ICJ. Like Higgins, his is also from a practical perspective, 'from the point of view of a potential client', but with emphasis on 'contentious cases'. He offers factors that the potential client must weigh up in deciding whether to have recourse to the ICJ. John Merrill also examines the ICJ, but from a narrower perspective. His focus is on specific aspects of the Court's incidental powers, such as the power to order provisional (interim) measures under Article 41of the ICJ Statute, its intervention powers under Articles 62 and 63, and the power of interpretation and revision of judgment under Articles 60 and 61.

The International Tribunal for the Law of the Sea (ITLOS) 'represents the first worldwide court set up specifically to deal with a major part of international law since the establishment of the International Court of Justice 50 years ago' (p. 82). David Anderson and Robin Churchill examine, in different pieces (Chapters 4 and 5), new institutional arrangements under the 1982 UN Convention on the Law of the Sea. Both focus on the ITLOS. However, while Anderson examines the establishment, jurisdiction, rules of procedure and judicial policy of the Tribunal, Churchill provides the context within which the Tribunal was established and offers an examination of alternative fora to the Tribunal both within and outside the framework of the Convention.

The popularity of non-judicial means of dispute resolution is one that has extended beyond the domestic plane. Increasingly, alternative dispute resolution mechanisms present new options for states wishing to avoid the institutional mechanisms for whatever reason. Chapters 6–9 explore the increasing popularity of ADR processes at the international level. David Anderson discusses the advantages of negotiation over other means of settling disputes and its use in international affairs today. This is followed by a very interesting piece, 'Alternative Dispute Resolution under International Law', in which Christine Chinkin discusses the development and use of alternative dispute resolution mechanisms in international affairs. She focuses, particularly, on three institutional contexts where negotiating dispute resolution processes have been adopted and adapted: institutional regimes for treaty compliance with emphasis on the fields of environment protection and human rights; inspection panels of the international financial institutions; and the good offices of the Secretary-General. Michael Furmston explores in Chapter 9 the tendencies towards uniformity in arbitral practice in the international sphere. By focusing on how efforts towards harmonization 'have been received and reconciled within the domestic law of England and Wales', he raises important points for consideration at the international level.

Bernhard Jensen's piece is an exploration of the development of the GATT/WTO dispute settlement system from an essentially negotiation mechanism to the quasi-judicial body it is today. In 'Environmental Dispute Settlement: Some Reflections on Recent Developments',

Phoebe N. Okowa assesses 'the extent to which environmental disputes raise discrete issues or problems for adjudicatory methods of dispute settlement that exist in the international system' (p. 152). Building on that, she makes a strong case for 'specialised forums staffed with the requisite expertise'.

The final three chapters explore much broader issues. The central question Malcolm Evans raises in Chapter 11 is 'whether there is a danger in individual responsibility under international law being used — *de facto*, if not *de iure* — as a cloak behind which the responsibility of state can shelter' (p. 173). His uneasiness with what he sees as the tendency to transfer responsibility from the state to the individual is also because, he would argue, it calls into question the basic understanding of what international law is about. He concludes that 'where individual and state responsibility co-exist . . . the efficacy of international law as a body of law is not enhanced — and indeed may be undermined, if the individual becomes the focus of attention to the exclusion of the State' (p. 173). In Chapter 12, Nanette Neuwahl engages the same issue laid out by Malcolm Evans in Chapter 11, but with a focus on the European Union. In other words, does individual responsibility operate as a cloak behind which Member States hide? Contrary to Evans, she concludes in the negative: 'within the EC Context the movements which Evans suggests are detectable on the international level do not really apply' (p. 195). Neuwahl's piece also examines the relationship between Member State responsibility and EC or EU responsibility, both on the international plane and within the Union. In the final chapter, William Robinson evaluates, through an examination of case law of the European Court of Justice, the relationship of Community law with international and national law. He concludes that 'there remains significant scope for clarification of the Community's international law obligations within the Community legal order' (p. 226).

Regrettably, *Remedies in International Law's* approach is very statist and, thus, offers no guidance whatsoever to those individuals and non-state groups seeking remedy in international law. Anyone harbouring any hope that some of the options currently available to states may soon be open to individuals and groups will be very disappointed. Judge Higgins, for instance, is of the view that there are 'real practical problems' (p. 1) with the idea of amending the Statute of the ICJ to give individuals standing before the Court. Malcolm Evans argues that 'there is a need to scrutinise the new orthodoxy that the rise of the individual within the international system is an unqualified good' (p. 175), while Shaw, in his piece on the ICJ, expressly avoids 'matters that may require major constitutional changes, such as the question of *locus standi* before the court of individuals and international organizations'. In the exceptional cases where individuals and non-state interests are recognized, Chinkin warns, and rightly so, that 'the procedures may hold out greater promise for involvement than in fact occurs' (p. 140).

Furthermore, perhaps because most of the contributors are legal scholars or jurists involved in the work of the different international institutions and mechanisms they are discussing, their approach is highly depoliticized.[2] The 'real' experiences, frustrations, disappointments and hopes of states with the procedures and mechanisms examined are, unfortunately, absent. The question whether some of the options currently open to states are illusory thus remains to be answered. One is therefore bound to agree with Christine Chinkin that the vitality of international lawyers in designing innovative dispute resolution processes may 'obscure real substantive conflict that continues even while the procedures are identified and agreed' (p. 139).

Nonetheless, *Remedies in International Law* offers practical insight into the range of options open to states seeking remedies for breach of an international obligation and the tensions and new questions that are raised by

[2] Indeed, the EC/International Law Forum, from which the book originated, had decided 'not to take a prescriptive view of what might be deemed a "remedy" ' (p. vii).

the proliferation of procedures and mechanisms. Perhaps the greatest strength of the book lies in the fact that the contributors (for example, Judge Rosalyn Higgins of the ICJ and Judge David Anderson of the ITLOS) have been or are currently involved in the work of the institutions they are discussing.

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Davidson, Scott. ***The Inter-American Human Rights System***. Aldershot, UK, Brookfield, VT: Ashgate Publishing Company, 1997. Pp. xviii, 381. Index. $76.95.

The Organization of American States (OAS) has 'spawned a sophisticated human rights system in the post World War Two period which has demonstrated the capacity to evolve to meet the changing circumstances of the hemisphere' (p. vii). Nevertheless, it is striking how few studies have been published in English about the functioning, the procedures and the case law of the inter-American system for the promotion and protection of human rights. After Medina[3] and Buergenthal *et al.*,[4] published more than 10 years ago, no other comprehensive study on the inter-American system has been produced in the English language. Scott Davidson's book comes to fill this gap.[5]

In a very well-documented book, Scott Davidson, Associate Professor of Law at the University of Canterbury, portrays the many complexities of the inter-American system. The structure of the book is similar to many books on the European system of human rights. The introductory chapter begins with the history of the system. The succeeding chapters describe the Inter-American Commission on Human Rights (the Commission) and the Inter-American Court of Human Rights (the Court) and the procedure before both organs. The book also includes a complete study of the rights protected under the system. In each of the chapters, Davidson explains, mostly based on official documents of the Organization of American States and on the Annual Reports of the Commission and the Court, how the system evolved from 'an inauspicious beginning' with a very weak Commission created in 1959 to a highly specialized and complex system in the 1990s, with a mixture of diplomatic and juridical activities in the field. An accurate description of the OAS human rights system is not an easy work to accomplish, but Davidson shows a deep understanding of the system.

It is difficult to understand a system where there are three different kinds of obligations on states and two supervisory bodies with different jurisdictions. Currently, there are three mechanisms within the OAS for the protection of human rights in the Americas. The Commission monitors compliance with treaty obligations for the 25 states parties to the American Convention on Human Rights (the Convention).[6] The Commission also monitors compliance for the 10 member states that are not yet parties to the Convention by applying the American Declaration of

[3] C. Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System* (1988).

[4] T. Buergenthal, R. Norris and D. Shelton, *Protecting Human Rights in the Americas: Selected Problems* (1986).

[5] The only exception is the recent volume, D. J. Harris and S. Livingstone (eds), *The Inter-American System of Human Rights* (1998).

[6] Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

the Rights and Duties of Man.[7] The Court monitors compliance under the Convention for the 17 states parties to the Convention that have also recognized the compulsory jurisdiction of the Court pursuant to Article 62 of the Convention.[8] Davidson carefully and clearly explains these complexities, showing the problems arising from this mixed system.

Probably because Davidson's intention is to 'provide an introductory and reasonably readable account of the institutions, processes and jurisprudence of the inter-American human rights system', the reader finishes the book with the feeling that something was left by the wayside. The reader feels that he/she has not obtained a complete picture of the system. Davidson does not pay enough attention to some important mechanisms that are crucial to the work of the inter-American system. For instance, the role of country reports and on-site visits, the two principal tools developed by the Commission to deal with widespread human rights violations, receive only marginal attention in the book (pp. 112–117).[9] Another important tool, precautionary and provisional measures that allow the Commission and the Court to intervene in urgent cases to protect the life or physical integrity of victims under threat,[10] only receive a few pages of comments (pp. 139–141). One reason for this gap in the analysis is that none of these tools is present in the European counterpart to the inter-American system. Country reports and on-site visits are not powers granted to the European Court of Human Rights or the European Commission. The use of provisional measures is also underdeveloped in the European system.[11] I would suggest that the principal problem in Davidson's text is his tendency to view the inter-American system with European eyes, using the European system as a model.

[7] Antigua and Barbuda, Bahamas, Belize, Canada, Guyana, St Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and US. In other words, only common law, English-speaking countries are still reluctant to become full participants in the inter-American human rights system. The 10th country which has not yet ratified the Convention is Cuba. Resolution VI of the Eighth Consultative Meeting of Ministers of Foreign Affairs (1962) excluded 'the present government of Cuba from participation in the inter-American system'.

[8] Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela. After the publication of Davidson's book, Mexico and Brazil accepted the contentious jurisdiction of the Court. The Dominican Republic announced recently its intention to accept the Court's contentious jurisdiction. That will mean that all of the Latin American countries will be under the jurisdiction of the Inter-American Court.

[9] See generally, Vargas Carreño, 'Las observaciones in loco practicadas por la Comisión Interamericana de Derechos Humanos', in *Derechos Humanos en las Américas* (1984) 290; see also Medina Quiroga, *supra* note 3.

[10] For the practice of the inter-American bodies see *Corte Interamericana de Derechos Humanos, Medidas Provisionales, Compendio: 1987–1996* Series E. No. 1 (1996) (listing all the provisional measures requested by the Inter-American Court between 1987 and 1996). See also Annual Report of the Inter-American Commission on Human Rights 1997, OEA/Ser.L/V/II.98 Doc. 7 rev. April 13, 1998, Original: Spanish, at 39 (describing the precautionary measures granted or extended by the Commission in 1997 involving 15 countries) and at 881 (mentioning the 10 cases regarding three countries where the Commission requested that the Court adopt provisional measures).

[11] Cf. *European Court of Human Rights, Cruz Varas and others v. Sweden*, Judgment of 20 March 1991, Publications ECHR, Series A vol. 201 (stating that the interim measures are not binding to states parties) with Article 64.2 of the American Convention on Human Rights (granting the power to the Inter-American Court to adopt provisional measures to avoid irreparable damage to persons). See Padilla, 'Provisional Measures under the American Convention on Human Rights', in *Liber Amicorum Héctor Fix-Zamudio* (1998) 1189.

Another related shortcoming of Davidson's book is his completely decontextualized approach. The inter-American system for much of its history has exercised its mandate over societies confronted with gross and systematic violations of human rights, where the judges have often been killed, threatened, intimidated, corrupted or remained virtually impotent toward military authorities. The inter-American bodies, the Commission and the Court, have rarely been able to rely on the findings of fact of national judicial organs or on the good-faith cooperation of defendant governments.[12] Generally, the political organs of the OAS, the General Assembly and the Permanent Council have not supported the work of the Commission and the Court. Rarely, if ever, have these political bodies tried to enforce the recommendations of the Commission or the judgments of the Court. It follows from the differences in political context between Europe and the Americas that any attempt to comprehend the inter-American system must take into account the hostile environment in which it operates.

Nevertheless, Davidson's book will be a necessary starting point for any research on the inter-American human rights system. It will help the researcher to understand the machinery of the system and will open the door to ideas about the successes and failures of the regional system. Finally, at a time when the regional system is experiencing a crisis of identity about its role, its objectives and its future,[13] Davidson's book will serve as a 'useful reminder to lawyers that much may be accomplished by legal creativity tempered by a sense of political realism' (p. vii).

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[12] For instance, on one occasion, Judge Buergenthal qualified the conduct of the Peruvian Government as 'an abuse of the judicial process'. He found the petitions of Peru 'ill founded and trivial ... whose sole purpose can only be to disrupt and delay the orderly and timely completion in the machinery established of the proceedings'. Inter-American Court of Human Rights, Case *Neira Alegría et al.*, Requests for Revision and Interpretation of the Judgment of 11 December 1991 on the Preliminary Objections, Order of 3 July 1992, Declaration by Judge Thomas Buergenthal.

[13] Méndez and Cox, 'Prologue', in J. Méndez and F. Cox (eds), *El Futuro del Sistema Interamericano de Protección de los Derechos Humanos* (1998), at 9.

Sabel, Robbie. ***Procedures at International Conferences.*** Cambridge: Cambridge University Press, 1997. Pp. xxix, 438. $110.

This is not a book that will set the scholarly world on fire. The subject-matter with which it deals — the rules of procedure at international conferences — often seems dull when examined in the abstract, divorced from the sometimes highly charged political background in which disputes about the rules can arise. (Indeed, the author's habit of citing instances of disputes without giving details of what was at issue, in the rather bloodless fashion of the UN Secretariat's *Repertory of the Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*, aggravates the problem.) On the other hand, the matter is of considerable practical importance to all those who represent their governments at international conferences, and those who comment on their doings — political scientists as well as international lawyers. The topic has received relatively little systematic and comprehensive treatment, and the author, an Israeli government lawyer and diplomat, is to be warmly congratulated for providing one. The main topics of the study — for instance, credentials, the appointment and powers of the conference bureau, proposals and amendments — are clearly and accurately described and analysed. There is little to find fault with either here or in the presentation: it is indeed refreshing to be able to report that this reviewer found only one spelling mistake (the name of Warbrick at p. 425).

It is when the author passes from describing and analysing what is done to assessing its juridical significance — when, in other words, he seeks to move from the normal to the normative — that he moves onto more dangerous ground. In Chapter 3 he considers the obligation of delegates to comply with the rules of procedure adopted by the conference. Having (rightly) rejected the idea that there is some sort of treaty nexus or analogue, he comes to the conclusion that the obligation is one of customary law, supported by practice and *opinio juris*. It seems to this reviewer that this is putting the matter unnecessarily high, amongst other things undertaking an unnecessarily heavy burden of proof. If a legal basis for the obligation is needed, estoppel is a better explanation. Those who vote in favour of adopting the rules are clearly saying (albeit tacitly) that they will comply with them, and there is plainly reliance by the other participants. Even those voting against or abstaining may easily be said to be estopped from breaking the rules so long as they continue to participate in the conference rather than exercising their undisputed right to withdraw. But in any case, it may be asked whether an explanation in terms of *legal* obligation is necessary, or the only possible one. First, it should be recalled that diplomats (perhaps above all others) are expected to behave in a 'proper' manner. If they behave improperly, this can constitute a violation of a social (professional) norm and thus attract condemnation even without the need to invoke the law. Secondly, there are some 'rules' which are not normative. For instance, there are 'instrumental rules' — recipes which tell us how we need to proceed if we are to achieve our objectives, without in any way imposing an obligation on us. Thus, to say 'to make a bread-and-butter pudding you have to get some bread and butter' is not a deontic statement: nor is it to say 'if you want to cross a busy road safely, you should not proceed when the traffic lights are red'. If a participant at an international conference breaks the agreed rules, he or she may well find the microphone switched off, or other similar steps may be taken which will prevent the achievement of his or her goals. This does not prove that the delegate had a legal obligation to comply.

Rather similar considerations apply to procedure before the rules are adopted, and to *lacunae*, matters considered in Chapter 22 and the Conclusions. The author argues that many of the rules of procedure are norms of customary law (though not all of them, and though there is also the 'let-out', even the customary obligation is only one of *ius dispositivum*).[14] He is here undertaking a heavy 'burden of proof' and it is not at all clear that he has discharged it. As indicated above in connection with Chapter 3, there may be other and better explanations. Thus the need for credentials or for a presiding officer even before the rules of procedure are formally adopted could be said to be instrumental rules. Without credentials, there could be a problem of unauthorized participants or of genuine representatives being unable to commit their governments; and without a president (even temporary), the conference could easily fail to get started. Furthermore, to establish the existence of a rule of customary law it is not enough to show that there are 'precedents' and that those who diverge from them are criticized for doing so: violators of mere rules of 'good form' could also fall into this category without it amounting to a breach of customary law. According to the traditional analysis, there would need to be practice accompanied by a belief in the *legally* obligatory character of the norm in question. The author deploys little evidence that delegates regard the precedents

[14] In Chapter 23, he also submits, perhaps somewhat tentatively, that 'rules of procedure which suppress or seriously restrict the right of an individual State to express its opinion and present its proposals would be a violation of general principles of law' recognized by civilized nations (cf. Article 38(1)(c) of the Statute of the International Court of Justice). This may perhaps be so, but the analysis is too brief (about three pages) and too many questions are begged about normativity and about the meaning of the expression 'general principles of law recognized by civilized nations' for the argument to be regarded as in any way conclusive.

as *legally* obligatory. In the case of *lacunae* (at any rate), there is a further possible explanation which he ignores. Suppose, for instance, that a rule is adopted at the conference that amendments are to be voted on before the main proposal, but no rule is expressly adopted about amendments to amendments or about the order in which they are to be taken. There is, nevertheless, a rich and fairly consistent set of precedents. It is, in this reviewer's submission, not necessary to postulate a rule of customary law to explain why the precedents should be followed. An alternative explanation would be a linguistic one, as follows. Notions like 'amendment' or 'president of the conference' are not (entirely) self-explanatory. They derive their full meaning from the context in which they are used and from practices concerning them. Thus, unless the conference decides to the contrary, the use of these terms *connotes* the consistent understanding of the international community in relation to such matters. This is less a question of *obligation* than of *meaning and implication*. The objection might perhaps be made to the present submission that the line between customary obligation and customary meaning is a fine, or even a vague one. That may be so — it is in the nature of customary rules to be *informal* and not to be easily susceptible of formal tests in the way that legislation or treaties are.[15] Nevertheless, it is worth trying to maintain the distinction where possible, if only to avoid the dangers of a sort of 'normative inflation', where regular conduct is too lightly assumed to generate a customary norm.

However, these questions of the legal character of rules, though intellectually more interesting, form only a small part of the book. Even if reservations are possible here, it must be emphasized once again that the work as a whole is reliable and clear, and Ambassador Sabel has performed a valuable service to the international community in writing it.

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[15] See, e.g., this reviewer's 1996 Hague Academy lectures on 'The Formation of Customary International Law' (forthcoming).

Glassner, Ira Martin. ***The United Nations at Work***. Westport, CT, London: Praeger, 1998. Pp. xx, 340. Index.

The last two decades, at least, have witnessed a proliferation of literature on the United Nations. While some dismiss the ideal of multilateralism and, by extension, the United Nations, as untenable, others, maintaining an abiding faith in the United Nations, offer reform proposals. In *The United Nations at Work*, Glassner's goal is to fill a gap in the existing body of literature by providing an analysis of 'the UN's practical, everyday activities'. The book is a continuation and an expansion of the author's earlier work that appeared in the journal *Political Geography*.[16] Contributors to the book, according to Glassner's criteria, had to be persons 'with either a solid reputation in his field or considerable UN experience' and who were not present employees of the UN or of any body within the UN system (pp. ix–x).

Divided into four parts and 13 chapters, the book examines a wide range of topics in international law, from international waterways, the outer space, environmental protection and trade to human rights. Part I focuses on International Law, Part II on International Relations, Part III on Individuals, and Part IV on Prevention and Resolution of Conflict. After an introduction by Glassner, Caflisch Lucius leads off in Chapter 1 with an examination of attempt by states to regulate the non-navigable uses of international waterways, from a 1961 resolution adopted by the Institute of International Law in Salzburg[17] to

[16] 15 *Political Geography* (March-April 1996).

[17] Resolution on the 'Utilization of Non-Maritime International Waters (for Purposes Other than Navigation),' 49 *Annuaire de l'institut de droit International* (1961), at 381.

the recent Convention on the Uses of International Watercourses Other than Navigation.[18] How effective will the new Convention be? Caflisch is not too optimistic for two reasons: first, because 'the number of affirmative votes barely exceeds that of the ratifications and accessions required to bring the Convention into force'; second, because 'it is uncertain whether there will be sufficient number of downstream *and* upstream countries Parties to the Convention, so that the new instrument can serve its purpose' (p. 26).

The expansion of the UN's activities into areas not specifically mentioned in its Charter has become a feature of our time — a necessary evil, some would argue. In Chapter 3, Djamchid Momtaz examines the work of the UN in one such area — the field of environmental protection. His focus is on the UN's role in the progressive development of international law in this field and the work of two bodies central to the UN's activities in the area: the United Nations Environment Programme (UNEP) and the United Nations Commission on Sustainable Development. Ultimately, Momtaz's piece offers valuable insight into the role of the UN in international norm creation. Sherry M. Stephenson's task in Chapter 5 is to present an overview of international trade within the UN system. This she does by tracing the growth of international trade over the past 40 years and the role that various institutions within the UN have played in the field.

In Chapter 7, Hungdah Chiu takes up a rather unpopular, if not 'untouchable', issue in international politics today: the status of Taiwan in the United Nations. Tracing the early role played by the Republic of China in the crafting of the UN, he concludes that 'by a fair standard of international law, moral principles and common sense, the exclusion of the Republic of China and its 21 million people from participation in the United Nations and its specialized agencies is an injustice in the world today' (p. 168).

The idea of a global civil society is one that has gained currency in recent times. Yet what impact non-governmental organizations (NGOs) actually have in the international arena remains unclear and highly contested. Peter Uvin and Thomas G. Weiss, in their piece, 'The United Nations and NGOs: Global Civil Society and Institutional Change', offer an analysis of the increasing role of NGOs in international affairs and within the UN system. The authors' goal is to analyse 'the myth and the reality of the relations between the United Nations (UN) and NGOs' (p. 214).

Other topics covered in the book include: 'The United Nations and International Space Law', by Vladmir Kopal; 'The Protection of Minorities', by Budislav Vukas; 'The United Nations and the Trade and Transit Problems of Land-locked States', by Surya P. Subedi; 'International Migration: UN Moves', by William B. Wood; 'A Note on Some UN Achievements with Special Reference to the World Food Programme', by D. John Shaw and Sir Hans W. Singer; 'Contributions of the United Nations to Solving Boundary and Territorial Disputes, 1945–1997', by Victor Prescott; 'The United Nations, the Oceans and Some Geography', by Shabtai Rosenne; and 'United Nations Peace-Maintenance', by Jarat Chopra.

Perhaps, having as its goal simply to present to the reader 'what the UN actually *does*' (p. xi), most of the contributors refrain from passing any critical judgment on the work of the UN; (indeed it was Glassner's intent to produce a book that was 'neither condemnatory nor celebratory'). Some do so nonetheless. Stephenson would give the UN what appears to be an 'A' for its role in the promotion of international trade: 'the success of the international trading system has become one of the most positive accomplishments of UN's post war system' (p. 106). On what does she base her judgment? On what, arguably, is a rather controversial standard: 'a truly global economy of unprecedented magnitude, a true integration of the international market-place'. Despite his lack of optimism about the prospects of the Convention on the Uses of International Watercourses Other than Navigation, Caflisch is

[18] GA Res. 51/229 of 22 May 1997.

quick to absolve the UN of blame: 'if, in the end, the result does not live up to its expectation, that is due to the lack of agreement among its member states rather than any failings of the organization' (p. 26). However, on the role of NGOs in the international system, Uvin and Weiss are more guarded. While NGO pressure can lead to greater openness of the UN institutions, 'UN organizations — and the (powerful) governments behind them — remain firmly in control of policy-making', they conclude.

Given the broad range of activities the United Nations is involved in today, it would be difficult to expect a book of this nature to cover all aspects of the UN's work. The work of the UN with traditionally marginalized groups such as women and children is, regrettably, noticeably absent. Also noticeably absent are women's voices among the authors. Of the 15 contributors, only one is a woman, perhaps reflecting charges by women's groups that, despite repeated calls for reform, the UN has remained a men's club.

Nonetheless, *The United Nations at Work* puts in the hands of readers, clear and concise accounts of the UN's work in a wide variety of issues, many of which are contemporary, controversial or otherwise ignored or trivialized. Its strength lies in the analysis of more novel or ignored issues in international law (for example, space law, waterways, transit problems of landlocked states) and the UN's work in these areas. Moreover, at a time when global security concerns cloud any assessment of the UN, the book offers insight into those aspects of the UN's work that may never make the headlines.

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Mower, A. Glenn Jr. ***The Convention on the Rights of the Child: International Law Support for Children***. Westport, CT, London: Greenwood Press, 1997. $59.95.

November 20 1989 marked a turning point in the struggle for the protection of the world's children. On that day, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child (the Convention).[19] Opened for ratification on January 26 1990, the Convention had garnered sufficient ratifications by September 2 1990 to bring it into force, making it one of the most speedily ratified human rights instruments in history. As at the present day, all but two states — the United States and Somalia — have ratified the Convention.[20] Yet despite its rapid ratification and despite the fact that the Convention arguably broke new grounds in international human rights law, aptly described as 'a landmark in the history of childhood',[21] a more pertinent question today is how effective is the Convention in addressing the problems of the world's children.

The Convention on the Rights of the Child is an examination of the background, text and potential significance of the Convention. The book is divided into four sections and 17 chapters. Section 1 is on 'The Significance, Background, and Development of the Convention'. Here, Mower identifies four factors as contributing to the Convention's significance; first, its recognition of the child as a possessor of rights; second, its character as both a consolidator and innovator; third, its practical aspect because of 'what it could mean in terms of the present and future economic and social health of the world's community' (p. 6); and finally, 'its potential for making a very real impact on the domestic life of its parties' (p. 8).

In Section 2 (pp. 23–60), 'The Substance of the Convention', Mower introduces some of the key principles (e.g. best interest and non-discrimination) and key human rights provisions (e.g. the right to life and the right to survival and development) of the Convention.

[19] UN Doc. A/RES/44/25 of 20 Nov. 1989 adopted at the Forty-fourth Session of the General Assembly of the UN.

[20] See, Multilateral Treaties Deposited with the Secretary-General: Status as at 27 April 1999.

[21] Freeman, 'Introduction: Children as Persons', in M. Freeman (ed.), *Children's Rights: A Comparative Perspective* (1996) 1.

He advances two questions as central to the evaluation of the substance of the Convention: 'is the convention too inclusive or insufficiently inclusive of the rights to which the child could or should be entitled?' 'Are the rights contained in the convention clearly set forth?' He answers both questions in the negative (pp. 49–58). Section Three, 'The Implementation of the Conventions Provisions' (pp. 61–144), is an examination of the implementary provisions of the Convention and the work of the Committee on the Rights of the Child, while the focus of Section 4, 'Prospects for the Realization of the Convention's Goal', is on the factors likely to determine the extent to which the Convention's goals for children are realized. Mower identifies several factors, including: at the global level, the role of extra-conventional international agencies; at the domestic level, the policies and practices of national governments and the impact of key segments of the private sector such as the media, professionals and NGOs; and, finally, general conditions and issues that call for responsive action on both the global and domestic level, such as armed conflict, the presence of physical environment and economic factors such as poverty.

1999 marks the 10th anniversary of the Convention's existence. The need for a serious evaluation of the Convention's performance necessarily arises. Can it be said that the lives of the world's children have been bettered by the Convention? What empirical evidence is needed to support or rebut such a claim? Who is best poised to answer questions relating to the Convention's effectiveness: scholars, activists, policy-makers, states parties to the Convention, or the world's children themselves? Mower avoids these and similar questions. His focus on the 'likely' or potential impact of the Convention, therefore, begs the question. Arguably, since 1990, sufficient time has elapsed to allow for a deeper assessment of the actual impact of the Convention on the lives of children rather than a superficial examination of its 'likely' impact.

Mower also avoids the universalism/relativism debate, particularly as it relates to children.[22] In other words, he does not address the question of how ideological conflicts as well as religious and cultural divisions affect both the legitimacy and the effectiveness of the Convention in many societies. Although he somewhat acknowledges the Western origins of the Convention,[23] he does not address the problem this poses for non-Western societies. He rather appears to dismiss the position of non-Western states as rooted in the authoritarian nature of their regimes rather than in any ideological ground.[24]

The Convention on the Rights of the Child provides a broad overview of the Convention and raises some interesting questions. It does not, however, fully address more fundamental issues that are raised today, particularly in countries of the South. These include, for example, questions relating to the multiple meanings of childhood and the apparent universalization and 'exportation' of what, arguably, is a Western notion of childhood, the impact and relevance of the Convention on the ground, and the external and global forces, including falling commodity prices, huge debt burden and structural adjustment programmes imposed by the international financial institutions that may impede efforts

[22] See, e.g., P. Alston (ed.), *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994).

[23] He notes, e.g., that 'philosophically, the convention is rooted in the change that occurred in the nineteenth century when the child ceased to be viewed simply as a property item. . . .' (p. 11). These changes were, of course, as manifested and recorded in the West as many countries of the South were still under colonial domination or were just about to be 'discovered'.

[24] For example, in his discussion on disagreements at the drafting stage of Article 14 (freedom of religion), he observed: 'this was one issue that brought representatives of more authoritarian religious and political systems into conflict with those whose backgrounds included a preference for a greater degree of individual freedom' (p. 16).

to realize the goals of the Convention at the local level. It is, nonetheless, a welcome addition to the growing literature on children's rights.

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Dallmeyer, Dorinda G. (ed.). ***Joining Together, Standing Apart: National Identities after NAFTA***. The Hague, London, Boston: Kluwer International, 1997. Pp. xxiii, 155.

The North American Free Trade Agreement (NAFTA) was not conceived of by its negotiators nor described to domestic constituencies as an effort at political and social integration. Nonetheless, North American economic integration combined with expanded trade regulation does internationalize an increasing number of political and social issues that previously were addressed through purely domestic legal and social processes. The papers in this volume recognize and explore this connection by examining the interaction between the genesis, passage and future course of NAFTA and national politics, cultures and identities.

The authors in this volume adopt interdisciplinary approaches from law, politics, economics and anthropology to explore the connection between trade policy and issues of domestic politics and local identity. Louis Ortmayer utilizes a dialectical theory of international trade negotiation, two-level game theory and an internalization theory of multinational enterprise to analyse the complex political economy of the negotiation and passage of NAFTA. Alejandro Nadal provides a critical account of the origins and claimed benefits of the neoliberal economic agenda of the Salinas era in Mexico, of which NAFTA is considered a part. Léon Bendesky describes the social unrest and political resistance following the 1994 financial crisis in Mexico as consequences of the economic sacrifice and the lack of substantial political or social reform involved in the Salinas agenda. Daniel Salée discusses the challenges for national identity in Quebec posed by both globalization and the growth of significant sub-national identities. Jill Norgren and Serena Nanda argue that NAFTA will have minimal impact on US national identity based on their examination of an assortment of US laws and cases which show a limited tolerance for pluralism of cultural minorities. David Wirth summarizes various kinds of effects that NAFTA and 'government by trade agreement' may have on the formation of domestic environmental regulation in the United States. Dorinda Dallmeyer concludes with a chapter summarizing pertinent themes of the volume.

The papers provide a diversity of critical voices and identify some fruitful interdisciplinary approaches to NAFTA policy debate. With this diversity, however, there are also weaknesses. The chapters range so widely that at times they connect very little with each other; greater engagement between the different authors would have been useful, for example, to explore the connection between limitations on national regulatory autonomy and changing national identity. Topics such as the trade of cultural products or the legal and illegal movement of workers may have more effectively bridged the issues of trade and identity. More generally, a number of the papers provide limited commentary on the specific significance of NAFTA. The NAFTA often seems epiphenomenal, subsumed under discussions of globalization (Salée), pluralism of cultural identities (Norgren and Nanda) or Salinas-era neoliberalism (Nadal, Bendesky). More nuanced analyses might consider NAFTA not just as a symptom of these other social phenomena, but as a distinctive process and venue for the formation of policy, ideology, culture and identity. In this respect, Wirth's article provides the most careful consideration of the specific effects of NAFTA on domestic policy formation and national politics. Greater engagement with the literatures on European integration and on comparative federal structures might also have better focused attention on the particular impact that different legal and institutional structures can have. Overall, however, the

volume makes a useful contribution towards a richer literature on the many and increasing connections between domestic autonomy, national identity, economic integration and international trade regulation under agreements like NAFTA.

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Denza, Eileen. ***Diplomatic Law, A Commentary on the Vienna Convention on Diplomatic Relations*** (2nd ed.). Oxford: Clarendon Press, 1998. Pp. xvii, 436. Index. $170.

Having served for four years as a diplomat in the Arab Gulf countries, it was with great interest that I read Eileen Denza's book, *Diplomatic Law, A Commentary on the Vienna Convention on Diplomatic Relations*. This volume is a rewritten and updated version of the first edition, published in 1976, and is intended principally as a practitioner's handbook. The book benefits from the author's own practical background as Legal Counsellor in the Foreign and Commonwealth Office of the United Kingdom.

As a handbook, the structure of the book is necessarily quite formal and conformist. An extensive introduction gives a general presentation and overview of the Vienna Convention as a universal convention, regulating all essential diplomatic privileges and immunities. In her Introduction, Denza also describes the progressive development of diplomatic law, as well as how the convention regime has changed over time. The Introduction is followed by a commentary on the preamble and each provision of the Convention. Each article or group of articles is placed in the context of the previous customary international law and the negotiating history. Different interpretations are discussed, and different state practice, although mainly related to the United Kingdom and the United States, is described.

In general, I find the book well structured, it is easy to use and has a comprehensive and useful table of cases dealing with the different interpretation and application of the Convention. The Vienna Convention is a comprehensive codification and formulation of the rules of modern diplomatic law and is essential to the efficient performance of the functions of diplomatic missions. Furthermore, the Convention is a valuable point of reference in the development of related areas of international law.

I agree with Denza in her opinion that the Convention has stabilized diplomatic law, and it has proved remarkably resilient to the new challenges of the last decades. Denza identifies and discusses six provisions of the Convention as being significant developments on the previous customary law. The inviolability of the mission premises, free and protected diplomatic communication, and clarification of different diplomatic immunities and privileges are, in my opinion, the most important of these topics.

The whole concept of inviolability of the mission premises has been of much concern and controversy over the years, ranging from the discussion of diplomatic asylum, the problem of planting electronic devices in diplomatic missions, to the obligations of the receiving state to protect missions against intrusion and damage. Violent incidents and mob hostility against diplomatic missions have increased over the last decades, and it may be the most serious problem of today. The book deals extensively with the latest incidents and their legal ramifications. In a diplomat's busy daily life, there is no time for an in-depth analysis of the legal problems of modern diplomacy. However, during my readings I recognized many topics from my active service and the book will be a most welcome tool in my future professional life.

In my opinion, Denza's book will be a useful and comprehensive source of practical guidance for diplomats as well as other practitioners. And I am sure it will be equally appreciated by scholars and students of public international law as a source of reference and learning.

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Barrett, Neil. ***Digital Crime: Policing the Cybernation***. Dover, NH, London: Kogan Page, 1997. Pp. 218. Index. £11.99. $19.95.

Neil Barrett authored *Digital Crime* in 1997 — two years ago by the calendar, perhaps 20 years ago in Internet time. It provides a solid read today, both as a work that anticipated many of the issues facing the Internet of 1999 and as a cybercrime 'Renaissance book' written at a time in which such a work was still possible without having to be an ambitious treatise. *Digital Crime* comfortably springs from a loftily titled introduction on 'The Information Age' into a tour of crimes for which the common thread need only be an object that passes electronically: theft of computer chips, theft of money over computer networks, illicit copying of software and, yes, distribution and possession of digital child pornography.

Readers unfamiliar with either computers or criminal law are among the targeted audience for the book; Barrett takes time to walk carefully through UK and, to a lesser extent, United States statutes that bear on each covered crime, and explains in lay terms now familiar buzzwords such as 'viruses', 'hacking', and 'encryption'.

Barrett describes the problem of illicit software copying — such can be done quickly, nearly cost-free, and results in a copy as perfect as the original — by reference to the copying of music compact discs, which he describes by contrast as slow, with an 'analog' middle step. Today software copying has become more complicated — the existence of licence codes in a networked environment and the need for reliable technical support and documentation preclude easy substitution of a copy for an original — even as 'MP3' compression has enabled a brisk traffic in pirated music straight from a CD to one's computer speakers. This flip-flop may not have been easy to anticipate, particularly from the tail end of the Internet era in which the Net could only be used as it was found: the product of academic engineers who did not anticipate its uses for commerce and personal information exchange among a heterogeneous, non-computer-literate public. We are now on the cusp of a new Internet, one built and rebuilt to a specification more in line with those who might wish to lock up information for certain purposes, or track the mouse clicks and buying behaviours of fellow Net surfers. Such an architecture will surely offer new opportunities for digital crimes, but more importantly will nip many we have become accustomed to in the bud; there is less need for enforcement against, say, software theft when the architecture of the next generation Internet makes the costs of copying software significantly higher than before.

Barrett's disposition is generally pro-regulation, but in avoiding support for the anarchy which many Net old-timers still obstinately espouse he makes it clear that he does not wish a Draconian regulatory atmosphere breathable by only the most sophisticated, traditional players. He looks askance at instances of Net vigilantism, instances in which some 'Netizens' have taken it upon themselves to unilaterally disrupt the presence of others who are deemed to have flouted some important norm, without having a chance to delve into other controversial 'self-regulation' such as the 'real time blackhole list', a privately-run system through which outgoing e-mail sites used by suspected junk e-mailers find that their outgoing mail is turned away by other e-mail transfer points.

Anyone writing a physical book about the cyberworld is bound to face difficulties with the work's shelf life. Barrett faces such problems well, and in the process has generated a book that is yet another helpful roadmarker visible in our collective rearview mirror as we hurtle along the frenetic path of global cyberdevelopment.

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