Book Reviews

Peter H. Sand: Transnational Environmental Law: Lessons in Global Change

Kluwer Law International, 1999. XXII + 385 pages.

The book by Peter H. Sand covers a collection of twenty essays by the author, which he has written over a period of the last thirty years. Consequently, the essays span the entire history of modern international environmental law, addressing a very broad selection of environmental issues in the transnational context. Sand has accompanied the evolution of transnational environmental law in a variety of key functions with many international institutions. As a result his written work combines theoretical background with practical experience. This valuable combination becomes particularly apparent in this collection of essays on different environmental topics. Peter H. Sand is now a Professor at the Law School of Munich University in Germany.

The essays in this collection are divided into four broad Chapters: I. *New Ways of Making International Law*; II. *The Impact of Innovative National Law*; III. *New Focal Areas*; IV. *A New Emphasis on Effectiveness of Legal Institutions*. These four broad themes are envisaged to be the major distinct levels on which transnational environmental law operates and experiments.

The introduction by the author exemplifies some of the practical value of the volume, since he not only records the most important bibliographies and collections on international environmental law, but also lists a selection of websites, the exploration of which serves as a valuable basis either for in-depth research on specific environmental issues or to keep up with the (rapid) development of environmental law.

The first category of articles, five essays altogether, focuses on the development of instruments that characterise innovative environmental law-making. The essays, *inter alia*, cover the issues of eco-standards and other tools of transnational environmental law and the changed ap-

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proach to the settling of disputes over environmental law. Furthermore, the articles analyse the questions as to whether a treaty is a viable instrument of international environmental law and what changes in law-making result from the UN Conference on Environment and Development in 1992.

The essay on eco-standards, although drafted for the Secretary-General of the Stockholm Conference in 1972, i.e. at the birth of international environmental law, exemplifies the focus on innovation and progressive development of environmental law that runs like a thread through the whole collection. It is remarkable to discover that directions for the future envisaged in Sand's early essays in this collection have proved practical and viable tools by the recent developments in international environmental law. The concept of standard setting, for example, that is developed in one of his early articles is now common practice in a variety of modern treaties.

The second Chapter consists of three essays. It discusses in particular the issues of national pollution sanctions as an alternative to the traditional system of civil liability, the influence domestic procedures have on transnational disputes and the development of the precautionary principle from a domestic principle to a widely recognised international concept.

The approach taken by these essays is innovative in itself, since it is usually the effect that international law has on the national legal order that is the subject of review and not *vice versa*. Sand, by using case studies to illustrate his approach, manages to look at environmental and procedural issues from an angle that is thought-provoking. Again, theory and practice are expertly combined to make the essays a viable source for readers with different backgrounds and/or interests. Furthermore, the elements of comparative law with examples, *inter alia*, from the U.S., German, French and Italian case law and legislation that are included in these essays deepen the understanding of the issues addressed. This is particularly so in regard to the essay on the role of domestic procedures in transnational environmental disputes and the one on the precautionary principle.

The third Chapter deals with new focal areas. In this context five essays have been chosen that focus on different aspects of international environmental law. The first essay deals with trade in endangered species. This issue is not usually considered a new focal area since it was addressed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1973. Yet, the author, having been designated Secretary General of CITES for many years, offers

new insights into this important aspect of transnational species protection, particularly, with a view to compliance assistance and the future development of CITES.

The following three essays in the this Chapter focus on regional agreements for marine environment protection, transboundary air pollution and the protection of the ozone layer, respectively. These essays are comparably short but still illustrate the specific background, difficulties and approaches of mitigation and protection in a comprehensive manner. The respective sections in these essays on policy criteria and the potential impact of legal techniques that the regimes incorporate enable the reader to draw conclusions for a broader context of transnational environmental law.

While the first four essays in the third Chapter specifically address certain environmental problems and transnational approaches thereto, the fifth essay deals in a cross-sectoral fashion with financial mechanisms in global environmental agreements. The issue of financial mechanisms and assistance for environmental protection has developed to be one of the most important issues in current international environmental law. The subject also comes up again in the essays of the fourth Chapter: here in respect of the effectiveness of legal institutions. The author developes in his essays on financial mechanisms and assistance, again, thought-provoking approaches to the establishment of financial mechanisms and their contribution to effective transnational environmental protection.

Apart from the issue of financial mechanisms, technical assistance and their contribution to the effectiveness of legal institutions, the fourth and last category of essays also deals with the experiences of the author with the compliance with CITES at customs (this three page article on the "migratory cactus" is a hilarious treat for everyone interested in the effectiveness of species protection by trade controls), innovations in international environmental governance, economic instruments for environmental protection and a general assessment of effectiveness of environmental agreements.

The second essay of the fourth Chapter deals with specific forms of technical assistance. Instead of focusing on assistance for the implementation of international conventions the author covers transnational assistance for legislative information, the drafting of national environmental law and its implementation. This truly transnational subject is rarely discussed in the usual realm of international environmental law and can also serve as an acknowledgement for Sand's preference for the term "transnational" instead of "international" environmental law.

This last category of essays is surely the most relevant when considering outlooks for the future of transnational environmental law, since effectiveness and approaches to improve effectiveness must be the central focus of any efforts to establish a world-wide system of environmental protection. With regard thereto not only the essay on taking stock of the effectiveness of environmental agreements that was originally drafted as part of the "Rio Baseline" for the Earth Summit, but also the articles on institution-building for compliance assistance and the one on environmental governance show directions for the future.

The only potential critical note concerning the book rather addresses a formality. While the number and extent of footnotes are helpful for further research on the respective topics, at times they are more extensive than the substantial text itself, which can seem slightly distracting to the reader.

Sand's innovative thoughts that are based on profound theoretical knowledge and spiced with practical experience make even those articles a valuable source of research and information that would otherwise, judging by their date of first publication, be considered outdated. Furthermore, it is the variety of issues addressed in this book that makes its value for the reader. As Professor Oran Young says in his Foreword: "The result in an extraordinary combination of insights that avoid the pitfalls of particularism because they are based on a range of practical experience..." As a result the book is able to prove a valuable source of information for academics as well as for the practitioner.

The collection of Sand's essays in one volume illustrates the development of transnational environmental law to such a degree that cannot be achieved by the reading of single essays in their original publications only. In this respect, the "whole is more than the sum of its parts".

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Linos-Alexandre Sicilianos: L'ONU et la démocratisation de l'Etat – Systèmes régionaux et ordre juridique universel; Préface de Boutros Boutros-Ghali

Éditions Pedone, 2000. 321 pages.

The democratization process that has been initiated after the end of the Cold War has assumed two dimensions, the democratization of states and the debate for the democratization of the international community.

The book of *L.-A. Sicilianos* deals with the first aspect and examines the relevant practice of international organizations on a regional and universal level.

The book is composed of two parts, each divided into two Chapters. In the first part ("La mutation conceptuelle: L'universalisation progressive de l' "impératif démocratique"), the author examines the transition from the principle of equivalence of regimes to the principle of pluralist democracy. In the second ("L'évolution des activités opérationnelles: L'intensification de l'action en faveur de la democratization") he deals with the UN practice after the end of the Cold War.

In the first Chapter of Part 1, the principle of equivalence of the political regimes, as it has been "codified" in the Nicaragua Judgement and in the Western Sahara Advisory Opinion of the ICJ, is juxtaposed with the new emerging principle of democratic governance. The author underlines that the principle of equivalence of regimes was established on the external aspect of the principle of self-determination, which was reinterpreted, as far as the political status is concerned, as conferring a right to "States" to determine their internal regime, rather than to peoples (page 45).

The author stresses the important exceptions to the above principle, namely "the attachment of the member states of the Council of Europe to the democratic legitimacy as a continuing legal obligation" (page 48). The dynamics of that obligation have been amplified since the end of the Cold War so far, that we could speak of a "political conditionality" on the terms of admission of the new democracies to the Council of Europe, in particular as far as these terms are derived from the opinions of the Parliamentary Assembly requesting even constitutional amendments from the candidates (page 52 et seq.). As the author emphasizes, at the end of that evolution, the ECHR stated in its Judgement of 30 January 1998 (United Communist Party of Turkey v. Turkey) that "democracy (...) appears to be the only political model contemplated by the Convention, and, accordingly, the only one compatible with it" (page 61). This is a development of major political and legal significance and marks the emergence of a full right to democratic governance as a regional treaty — eventually also customary — law in Europe; this is also the author's conclusion (pages 282–283).

The second regional exception to the principle of equivalence of political regimes is to be found in the OAS Charter. *Sicilianos* stresses that the inter-American system has connected the principle of non-intervention with the right to self-determination in both in its external and its internal dimensions; thus, respect for human rights is the counter-

part of the right of the member states to develop their political, cultural and economic systems (pages 70–71). In the comparison between the two regional exceptions, it is necessary to note not only that the normativity of the OAS's democratic principle has not been as strong as that of the Council of Europe, having until 1992 only a programmatic character (pages 71–72) and still a long way from the crystallization of a regional custom (page 283), but also that this "normative status" corresponded to the social realities in Latin America. Although the states of the region succeeded in bringing the transition to democracy at the end of the 1980s, a number among them have still difficulties in managing situations of extreme poverty and in effectively establishing the rule of law. Thus, strong presidential regimes, weak societal structures and inherent political instability diminish the normative density of the democratic principle, as it is stipulated in the OAS Charter.

In the second Chapter of Part 1, the author describes the re-invention of democracy on a pan-European level, as well as the democratization in the conceptual apparatus of the United Nations. This part of the book occupies a "mediating" place in its structure. The Chapter on the re-invention of democracy in Europe through the CSCE/OSCE process is systematically correlated with the previous Chapter concerning the European "regional exception" to the principle of equivalence of regimes, while the Chapter on the conceptual analysis on democratization within the United Nations framework prepares the ground for the second part of the book, which refers to the pertinent UN practice.

The end of the Cold War was marked first and foremost by the instigation of democratic regimes in the actual theatre of the conflict between East and West in Europe. The "iron curtain" and the Berlin Wall were torn down and the conflict ended with the definite victory of the political model of the Western democracies. Two "superstructures" defining the democratic principle in Europe emerged from that development, namely the CSCE/OSCE framework and the EU practice towards the new democracies of Central and Eastern Europe. *Sicilianos* describes the different steps of the transformation of the philosophy of the CSCE/OSCE after 1989 from the Copenhagen Document (1989) to the Charter of Paris (1990) and to the Moscow Document (1991) and the EU association and cooperation agreements, as well as the principles for the adhesion of new members to the Union (pages 90-120).

The picture derived from that evolution, which is very accurately described by the author, is asymmetric. On the one hand, despite its political character, or perhaps because of it, the CSCE process has

played a major role in a critical moment facilitating the transition of the Central and Eastern European states to democracy until the final breakdown of the Soviet Union. However, the commitments undertaken by the states participating in that process have not evolved into legal obligations. On the other hand, EU practice is future-oriented and normatively strong, in particularly with regard to the association and cooperation agreements with the Central and Eastern European countries, and even provides for the suspension of the relevant obligations towards the contracting party, if it commits grave violations of human rights or interrupts the democratic process ("Baltic" clause, "Bulgarian" clause, see pages 110–111).

Democracy has been also re-evaluated in the conceptual framework of the United Nations. In Part 1, the author describes the different stages of that conceptual "revision" (pages 121–160). The Organization has adopted the extensive interpretation of the right to self-determination, referring not only to the accession to independence, but also to the exercise of political authority by the people. The internal self-determination is closely related to the exercise of the political rights, as they are defined in article 25 of the International Covenant on Civil and Political Rights; the democratic principle is interrelated with the overall human rights complex and with the process of development. The democratic principle has been codified in acts of UN organs, such as the General Comment 25 of the Human Rights Committee, the Resolutions 1999/57 and 2000/47 of the Commission on Human Rights and the Agenda for Democratization of the UN Secretary-General.

The emphasis of the book's analysis lies in the implementation of the democratic principle in the UN practice. The second Chapter of Part 1 introduces the reader smoothly to Part 2 of the book that deals with the operational activities of the United Nations for the enhancement of the democratization. The two Chapters of Part 2 examine the electoral assistance and the changing attitude of the United Nations towards coups d'Etat, the operations for the maintenance of peace and the reinforcement of the rule of law respectively.

Sicilianos underlines the ambivalent approach of the UN General Assembly *vis-à-vis* the monitoring of elections. Although the General Assembly has affirmed, since the end of the Cold War, the democratic entitlement, it continues to support, in a second series of resolutions, the right of states to determine the electoral process according to their constitutional and national legislation (pages 162–169). The author correctly criticizes these resolutions as "anachronistic" (page 165). *Thomas Franck* had already proposed, in 1992, that states should have the duty

to be monitored and this duty should be linked to the right to non-intervention. Despite the diversification of the different forms of electoral assistance (organization and control of elections, supervision, verification) which are systematically presented in the book, a "duty" to be monitored has not yet emerged. In that sense, an essential element of a right to democracy on the universal level is still missing.

The author further stresses the change in the UN's attitude towards coups d'Etat. The two coups d'Etat in Burundi (1993, 1996) constituted the first important example in that respect. Nonetheless, despite the condemnation of the coups by the organs of the United Nations, including the Security Council, no drastic measures were taken (page 182–187). On the contrary, the UN's response towards the Haitian crisis was very decisive and culminated in the authorization for the use of force against the "de-facto" authorities of Port-au-Prince. Discussing the issue from the ambiguous language of the Security Council in the Haitian crisis, the author examines the fundamental question, whether the violation of the democratic principle as such was the basis of the Security Council's activism, or whether the decisive moment was the refugee exodus or the massive displacement of population (pages 193–201). His standpoint is that the violation of the principle of democratic legitimacy cannot constitute the only justification for the activation of Chapter VII of the Charter, but there has to exist also a threat to the peace. A coup d'Etat constitutes an additional, but important justification for an action under Chapter VII, because, as a general rule, it is accompanied by systematic and massive violations of human rights (page 198). After examining the involvement of the Council in the crisis in Sierra Leone, *Sicilianos* states his conclusion: he maintains that, given the close relationship between peace and democracy, it seems even more natural to consider that the violation of the democratic legitimacy constitutes a threat to the peace and that a coup d'Etat could constitute such a threat to international peace and security (page 206). In evaluating S/RES/1132 of 8 October 1997, he then goes the "extra mile", and states that "the threat to the peace can arise from the destabilizing effects that are inherent in the violation of the principle of democratic legitimacy" (page 208).

In successive steps, the author examines the cardinal issue concerning the relationship between the democratic principle and the destabilization of peace. Although it can be inferred from international practice that a coup d'Etat can be the origin of a serious destabilization, it might be questioned, whether the destabilizing effects are *inherent* to the violation of the democratic principle. In the light of the lack of any notable

international response to the 1999 Pakistani coup, the conclusion the author has drawn from the Haitian crisis seems to be more compatible with the realities of the international relations than the "inherent effects" theory.

Even if the overthrow of a corrupt and malfunctioning democratic government would constitute a violation of the international human rights law, this does not mean that it would necessarily create a threat to the peace. This depends on the situation "on the ground", i.e. on the active resistance by, or the tacit support of, the population towards the new regime. There are exceptional moments in the life on nations, when revolutionary changes should be left to take their course, without meeting with strong international response; the exception is here a means to revitalize and reaffirm the principle.

The position of *Sicilianos* has the important merit of illustrating the potentialities of the democratic principle and of extrapolating a possible evolution towards a full "right to democratic governance" under general international law: assuming that such a right emerges under universal customary law, which cannot be excluded, and that, furthermore, this firmly established right acquires the quality of a *jus cogens* norm, then it is clear that destabilizing effects would be inherent in the violation of the principle. Until that time, however, the overthrow of a democratic regime remains one major factor to be balanced against others, as far as international peace and security is concerned.

In another important point, the author stresses that in the crisis of Sierra Leone, Resolution 1132 authorized *ex post* the coercive measures which had been taken by ECOWAS for the implementation of the economic embargo against the rebels and considers, albeit with some hesitancy, that the Council has not exceeded its competence in that respect (pages 204, 211–212). His voice can be added to that part of the legal literature that favours the enlargement of the powers of the Council under Chapter VIII of the Charter to enable that organ to directly or indirectly legitimize armed activities by regional organizations for the restoration of peace, including humanitarian interventions, even if they had been initiated without a prior mandate of the Council. The tacit acknowledgement of the necessity of the Kosovo intervention by S/RES/1244 of 10 June 1999 constitutes an example of that power.

In the last Chapter of Part 2, the author examines the action for the consolidation of democracy in the UN practice. In the first place, he examines the multifunctional peace-keeping operations, which fulfill an interrelated series of tasks. The democratization of a state is a transversal aspect of these operations and it is related to the organization of the

electoral process, to the restructuring of the state apparatus, including the army, the police, the administration and the judiciary, as well as the creation of institutions for the protection of human rights (pages 219–249).

Sicilianos traces here another major issue when he points out that the consent of the respective governments is a necessary aspect of the action for democratization, and he contends that the legal basis for that action is rather Chapter VI or Chapter VI bis, than Chapter VII (pages 229–232). It is an important element of the peace-making efforts of the international community that the restoration or instigation of democracy is not the result of a program or process imposed by the Security Council, but should be based on the consent of the parties.

This should not necessarily lead to the legal construction of a Chapter VI bis, or to the separation of the legal bases of Chapter VI and VII. Under Chapter VII, the Security Council is not obliged to use exclusively coercive measures, but its potential instruments of intervention are enriched, as the author explicitly notes (page 231). Therefore, although the Council often applies in practice Chapters VI and VII simultaneously, depending on the kind of action taken or recommended, it is preferable to consider that Chapter VII, once activated, is the exclusive legal basis, which offers the Council the choice between coercion and consent. Nonetheless, after the determination of the existence of a threat to the peace, consent will never be as "free" as it was before.

The last issue dealt with by the book is the UN's concept of the rule of law, which has progressively emerged since 1993. Although the exact contours of that concept cannot yet be defined, there is a close conceptual relationship with the protection of human rights and the democratic principle. For the author, the rule of law implies practically the limitation of the discretionary powers of the state ("substantial aspect") and the creation of institutions proper to guarantee the good functioning of law ("instrumental aspect" page 278). The author is right to conclude the book with that issue, which can be considered as the "coronation" of the democratic principle.

If we read Resolution 2000/47 of the Commission on Human Rights on "promoting and consolidating democracy", we see that the rule of law is a constituent element of the democratic state. The acknowledgement by the UN organs that democracy and the rule of law are inextricably connected as the two aspects of a single historical process, is a major evolutionary achievement of our era. This was not always the case: the French Revolution gave birth to democracy without the rule of law; Napoleon and Bismarck created the rule of law without democ-

racy. Nowadays, both aspects are destined either to evolve together, or to fail. The complexities of the modern global industrial and post-industrial society necessitate democracy and the rule of law as elements of "good governance". These are in turn essential elements for the preservation of order and "rationality" in the international system.

The work of *Sicilianos* is an indispensable source for the understanding of the overall process of the democratization of states. The author has succeeded in describing the, often incongruous, paths the democratic principle has traced in the 1990s, without omitting to go back to the origins, as far as necessary. The reader gets the picture of a complex process giving birth to a principle of "variable geometry", depending on the applicable normative framework. Differentiations and nuances do not permit a persuasive argumentation in favour of the emergence of a universal customary rule of democratic governance; the author's caution (page 283 et seq.) is supportive of this view.

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Gabrielle Kirk McDonald/ Olivia Swaak-Goldman (eds): Substantive and Procedural Aspects of International Criminal Law – The Experience of International and National Courts

Kluwer Law International, 2000. Volume I: Commentary, XVI + 705 pages. Volume II, Part 1 and 2: Documents and Cases, XVIII + 2451 pages.

With the adoption of the Rome Statute of the International Criminal Court, international criminal law has come of age. Accordingly, one cannot but welcome the timely publication of the work, edited by Gabrielle Kirk McDonald, the former outspoken President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and by Olivia Swaak-Goldman, a former legal assistant of the ICTY.

As indicated by the title, Volume I attempts to take stock of the current status of international criminal law with regard to both, more general (individual criminal responsibility, defences, procedural questions) and more specific questions (e.g. the crime of aggression, grave breaches of the Geneva Conventions, other forms of war crimes, genocide, crimes against humanity).

It is not quite clear, however, whether the different authors were supposed to address the current status of the questions they had been assigned under the statute of the two *ad-hoc* tribunals, according to the Rome Statute of the International Criminal Court, or whether instead they were supposed to describe the state of the law under current customary international law. Thus, it is not surprising that the approach used by the different authors is less than uniform.

K. Ambos gives a broad outline (pages 3–31) of the general concept of individual criminal responsibility in international criminal law. Notwithstanding the fact that the author accomplishes this goal, one cannot but mention that the language used is, at least from time to time, somewhat awkward and that sometimes references are less than complete (see e.g. page 11, note 28 where the reader is unable to understand which ordinance the author is referring to).

Chapter 2 by B. Ferencz on the crime of aggression tells the seemingly never-ending story of defining the crime of aggression. Given that the crime of aggression is closely intertwined with the prohibition of the use of armed force under general international law, the author obviously had to discuss the latter issue as well. To some extent, however, the author is not always able to clearly distinguish the two concepts. Besides, he has a style of writing which — at least for this reviewer — tends to be not always precise and also somewhat picturesque (see e.g. page 39 where the author refers to "little Luxembourg"; page 45 "sneak attack on Pearl Harbour" or page 51 "slow and bumpy ride"). Furthermore, on page 58, the head of the German delegation is referred to as "Foreign Ministry spokesman" and his first name is quoted in the wrong way in note 133. More to the point, B. Ferencz sometimes makes broad statements, which are, to say the least, somewhat contentious. For example, he states that there is a duty of the Security Council to determine whether aggression has been committed. Likewise he also states — without any further references or arguments — that the General Assembly, too, could create a criminal tribunal.

Chapter 3 and 4 then deal with war crimes. While Chapter 3, written by H. Fischer on grave breaches of the 1949 Geneva Conventions (pages 65–93) is a precise and concise overview of the content and current interpretation of the provisions, the article on other violations of the laws and customs of war written by H. Aldrich attempts, in thirteen pages, to give a complete analysis of a very complex array of questions. In particular, one would have hoped that author would have further elaborated on the question as to what extent provisions and prohibitions of Additional Protocol I have passed into the general corpus of

customary law so as to give rise to individual criminal responsibility and where, accordingly, even nationals of non-state parties to the Protocol could be punished for having behaved contrary to the rules contained therein.

Chapter 5 (pages 116–140), written by D. Ntanda Nsereko, deals with genocide. Notwithstanding the fact that the work was published in 2000, the landmark decision of the International Criminal Tribunal for Rwanda (ICTR) in the Akayesu Case of 1998 (!), not to mention of the later jurisprudence of the tribunal, is only referred to in a footnote quoting a newspaper article rather than the decision itself which was, only days after the decision, available on the official internet site of the ICTR and which is also published in Volume II Part 2, pages 1573 et seq. of the work itself! Furthermore, it remains unclear why a book devoted to international criminal law deals with matters of state responsibility (pages 135–136) and why, when dealing with article VI of the Genocide Convention, the author does not discuss the pertinent question of whether universal jurisdiction has in the meantime developed outside the framework of the Convention but simply states that "the Convention does not provide for universal jurisdiction".

Chapter 6 (pages 143–168) then deals with crimes against humanity (O. Swaak-Goldman). This Chapter contains a thorough discussion of most of the current issues relating to the concept of crimes against humanity.

The different parts of Chapter 7 then deal with different crimes which can be either committed in the form of war crimes or crimes against humanity, such as murder/ wilful killing, torture, persecution and severe forms of sexual violence. As to murder/ wilful killing, the authors, both having a criminal law background, largely refer to domestic criminal codes to explain the different elements of this crime. Thus it might not be surprising that they take it for granted that the Geneva Conventions, when using the term 'wilful killing', refer to the domestic law of the respective contracting party (page 187) without even taking into account the possibility that the Conventions themselves had used a generic term. Besides, it is hard to understand, why the authors refer to the German translation of this term (ibid.), given that German is not an authentic text version of the Conventions.

As to the crime of torture (A. Byrnes, pages 197–245), one cannot but state that this part contains an excellent review of the state of the law, referring in detail to the jurisprudence of both international human rights bodies and international criminal tribunals. One might have hoped that all of the different Chapters would have abided by this stan-

dard. Similar considerations might apply to the two following parts on persecution and sexual violence. With regard to the last one of these two articles, one might only mention as critique that here, the important attempt to define sexual violence as a separate crime under the Rome Statute, is neither mentioned, nor analysed.

In turn, Chapter 8 written by M.-C. Bourloyannis-Vrailas on crimes committed against United Nations and associated personnel does not only give ample details as to the development of the law in that area (see e.g. the description of a very interesting incident on page 357) but also a very straightforward analysis of the jurisprudence of the *ad-hoc* tribunals and the drafting of the Statute of the International Criminal Court.

Chapter 9 on defences, written by Y. Dinstein (pages 367–388), contains a brief, but again straightforward and very thoughtful analysis of possible defences. Here again, given that the author has a very clear international law background, no references to domestic criminal legal systems may be found.

R. Wegdwood then deals in Chapter 10 with the relationship between national and international courts when it comes to the prosecution of war crimes (pages 393–413), which again is full of relevant details. But one might wonder how she came to argue that under the Rome Statute, the Security Council would be able to renew its deferral of an ongoing investigation for a longer period than another twelve months. Also, it is interesting to note that the author (wrongly) criticises the model adopted in arts 93 and 72 of the Rome Statute, which deals with the production of evidence related to national security matters, as being — as she argues — not in line with the Blaskić judgement of the ICTY, while at the same time being very sovereignty-oriented, when it comes to the position of the United States *vis-à-vis* the International Criminal Court.

Chapters 11–15 (pages 415–668) all deal with different aspects of procedure, ranging from the rights of suspects and accused (M. Wladimiroff), the protection of victims and witnesses (C. Chinkin), pre-trial procedures and practices (Judge Chand Vorah), trial procedures and practices (Judge Kirk McDonald) and appeal procedures and practices (Justice Karibi-Whyte) and all largely focus on the relevant practice of the two *ad-hoc* tribunals as developed over time.

On the whole, one might say that — as indicated above — the quality of the different Chapters varies significantly. In addition, uniformity in the style of citation has not always been achieved, e.g. with regard to the way ICTY and ICTR decisions are quoted. Also, some references

are uncommon, e.g. the decisions of the ICJ, where one would have expected references to the official series of ICJ Reports (but see page 80, note 43). Finally, a list of abbreviations used would have been useful, if not mandatory – at least this reviewer would then know what "7 App. Cas. 741 (H.L.)" or "1 All NLR 237" stand for, without needing to look them up elsewhere. On the other hand, non-German-speaking readers would not necessarily know that "BGHSt 41, 101" refers to Volume 41 of the official series of decisions of the German Supreme Court in criminal matters. The index is also less than satisfactory. For example, one might wonder why under the heading "UN Security Council", readers are not also referred to the respective parts of the analysis made by Wegdwood (see above).

On the whole, Volume I may be considered a mixed menu, ranging from first class dishes to rather mediocre home-made food. It might indeed very well be the case, that it is not sufficient merely to look for good cooks, but also to make sure that they invest sufficient time and energy in the preparation of the meal; besides the persons choosing the menu must make sure that the different courses match each other.

Volume II/ Part 1 contains relevant documents, ranging from the Hague Regulations of 1907 to the Rome Statute, most of which were also largely available somewhere else, beforehand. Besides, one wonders why certain documents such as, inter alia, the Anti-Apartheid Convention, have not been included. Furthermore, one might ask why the respective human rights conventions, such as e.g. the Covenant on Civil and Political Rights, the ECHR, the American Convention on Human Rights and the African Charter have also been included, given that their focus is significantly different since they are not criminal law instruments. Finally, as to texts of domestic origin, one is more than puzzled to note that only texts originating in the United States are reproduced but not, inter alia, relevant war crime provisions of other countries. This is even more true since the US Alien Tort Claims Act (pages 555–558) only deals with civil actions and has therefore nothing to do with the overall topic of the work.

Similar considerations apply at least to some extent with regard to Volume II/ Part 2 containing relevant case law. It should be stated, however, that the (partial) reproduction of both the Nuremberg and Tokyo case law as the case law that has arisen under Control Council Law No. 10 is quite helpful. But one wonders why that last jurisprudence is listed only after decisions rendered by the ICTY/ICTR since it occurred earlier.

The reproduction of summaries of selected ECHR decisions, on the other hand, is basically useless since the summaries in question do not give any legal arguments why the respective cases have been decided in the way they have been. Finally, as to the domestic decisions reproduced on pages 2237 et seq., one might very well question again the criteria of the selection, given that only eleven decisions are reproduced at all, seven of which originate in Anglo-Saxon jurisdictions, while e.g. most recent German, Danish or Swiss decisions on war crimes and genocide committed in the former Yugoslavia or Rwanda of 1994, 1996 and 1997 (rightly referred to by Wedgwood in Volume I, page 401) are simply missing! And once more, it is hard to understand why civil cases, such as Filartiga and Kadić v. Karadžić, have also been included.

On the whole, this reviewer cannot — notwithstanding some very positive points mentioned above — but express his overall disappointment with the work, even more since the price of NLG 1433, being approximately equivalent to 1208 DM — does seem to be almost prohibitive. Indeed, one might have wished that the editors should have simply concentrated on Volume I and would have thus been able to come up with a work, which, in all its parts, would have been as solid and thorough, as some of the articles already are.

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