

BOOK REVIEWS

G. CUNIBERTI, *Les mesures conservatoires portant sur des biens situés à l'étranger* (preface by Horatia Muir Watt), L.G.D.J., Paris 2000, vii + 409 pp. ISBN 2-275-01967-7.

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When a debtor does not pay, it may be a concern for the creditor whether he is going to pay at all. There may be an insolvency looming at the background. The creditor may feel a need for measures in order to protect his position. If the debtor's assets are concentrated in one jurisdictional area, the court competent to decide on the merits is normally located in the same area, and the question of measures to be taken with regard to assets situated abroad will not arise. The debtor's assets may, however, be dispersed in different countries. The creditor may consider asking for protective measures to be taken in each of those countries. This is a cumbersome exercise, absorbing time and money, and bearing the risk of assets disappearing as the debtor may not act in good faith. The question dealt with in this book is whether a decision by one single court regarding assets dispersed in more than one country suffices. The legal policy of some countries has been more liberal than the policy of others, notably France, which creates a relative disadvantage for the latter and their respective bars.

Cuniberti's knowledge of foreign languages enabled him to conduct thorough investigations of foreign law. The book presents a thoughtful comparative study, in which the laws of England, Germany and Italy were selected as representative for different currents in the law as regards the chosen subject matter.

The book consists of two parts, in line with French tradition. The first part deals with the principle of extra-territoriality, the second part with the modalities of the extra-territorial protective measures. In the first part the public international law aspects are properly dealt with in a preliminary chapter. In the main body of the first part, much attention is given to the famous English 'Mareva injunction' of 1975, developed in case law, and particularly by Lord Denning, then Master of the Rolls.¹ The reaction of a given forum on the incoming measures is analysed in Part I. Part II contains an analysis of all sorts of private international law aspects of both outgoing and incoming protective measures.

The book is based on a thesis for a French doctorate. The subject matter continues to develop in this dynamic area. Nevertheless, whoever needs a thorough knowledge of the area will be well advised to study the present book for the multiplicity of sources it draws from. The wealth of careful analyses and the superb presentation reflect the best of the French tradition.

The publisher would render a great service to many scholars interested in the numerous first class French private international law theses, both by publishing more

of the theses and by adding a summary in English for the growing mass of unfortunate lawyers who have no sufficient knowledge of the French language, a summary which the book unfortunately does not contain. It would add both to the '*gloire de la France*' and to the marketing of the important works.

A.V.M. Struycken
Board of Editors

1. See also A.T. Denning, *The Due Process of Law* (London, Butterworths 1980, reprinted).

E. FRANCKX; P. GAUTIER, eds., *La zone économique exclusive et la convention des Nations unies sur le droit de la mer, 1982-2000; Un premier bilan de la pratique des Etats/The Exclusive Economic Zone and the United Nations Convention on the Law of the Sea, 1982-2000: A Preliminary Assessment of State Practice*, Bruylant, Brussels 2003, xvii + 247 pp., €40. ISBN 2-8027-1730-8.

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More than two decades have passed since the signature of the UN Convention on the Law of the Sea. State practice has developed continuously in the intervening period. This book, edited by Erik Franckx and Philippe Gautier, examines the development of state practice relating to the EEZ since the signature of the Convention, making it especially important. The book is the product of an international symposium which took place in Brussels in 2000 and comprises ten chapters, some of which are in French, as well as containing the texts of two Belgian Acts.¹

The first chapter, written by Eddy Somers, examines the Act concerning the Exclusive Economic Zone of Belgium in the North Sea, 22 April 1999. In particular, Somers focuses on two issues. First, he considers the relationship between the three different zones, the EEZ, the continental shelf and the fisheries zone. Secondly, Somers addresses the competence *ratione loci* of the coastal state to detain foreign vessels in the EEZ. With respect to the first issue, Somers indicates that the limits of the Belgium EEZ is identical to those of the continental shelf and fisheries zone established by the Act of 10 October 1978. In this regard, the writer questions the need for a fisheries zone whose limits are identical to those of the EEZ. Furthermore, he points out that the second question relating to the coastal state's jurisdiction concerning the arrest of vessels in the EEZ is resolved by the 1999 EEZ Act. In addition, Somers notes that Belgium also established a contiguous zone under the 1999 Act. Overall, Somers concludes that on the one hand, the 1999 Act can be praised by providing a legal basis for the protection of national and regional interests in fisheries as well as in the protection of the marine environment. On the other hand, he argues that Belgium appears to have missed a good

opportunity to prescribe transparent legislations, which incorporate different regimes concerning exploration and exploitation of natural resources. The analysis of the Belgian Acts, together with annexed texts of the Acts, provide a useful reference source for readers.

In the second chapter, Erik Franckx addresses the issue of vessel-source pollution in the EEZ. Broadly speaking, this chapter is made up of two components. The first component reviews the work of the Marine Pollution Committee of the International Law Association (ILA). According to Franckx, the Marine Pollution Committee is of the view that the 1982 United Nations Convention on the Law of the Sea is flexible enough to deal with the problems associated with vessel-source pollution. In this respect, Franckx considers the legal technique of 'law-making by reference' as a perfect tool for obliging recalcitrant states to submit to the 'generally accepted' rules on the international level and to enforce 'applicable' rules on ships flying their flag. The second component analyses state practice concerning vessel-source pollution in the EEZ. With respect to national legislative Acts concerning vessel-source pollution, Franckx notes a number of interesting facts and tendencies in relation to state practice. For instance, first, the countries which have recently established EEZs have also overhauled their marine pollution legislation shortly afterwards. Secondly, the UN Convention on the Law of the Sea only allows for monetary penalties for violations relating to the EEZ. Yet it is reported that the Netherlands and the United States appear to provide for non-monetary sanctions for violations of laws relating to the prevention of pollution in the EEZ. Whereas this theoretical conflict will most probably never occur in practice in the Netherlands, it is suggested that non-monetary sanctions have already been applied in the United States. Thirdly, Franckx indicates that even though nine countries claimed jurisdiction to enforce their vessel-source pollution legislation against foreign ships, many of the country reports cast doubt on whether this would actually be implemented in practice. Finally, the writer suggests that there is a clear disparity between the investment put into a system for vessel-source pollution detection on the one hand and practical results concerning court convictions of offenders or financial settlements extracted from them on the other.

Chapter 3, written by Judge David Anderson, is an interesting contribution concerning fishing-related activities in the EEZ. The principal issue in this chapter concerns the question as to how fishing and some related activities in the EEZ are provided for in the UN Convention on the Law of the Sea and how they are being regulated by state practice. In this connection, state practice, the work of international organisations, international jurisprudence (*La Bretagne* case and the *Saiga* cases) and national laws are analysed in some detail. Judge Anderson concludes that while there exists considerable uniformity as regards the inclusion in fisheries jurisdiction of the ancillary activities of processing, transport and trans-shipment of fish, there are differences over bunkering. Concerning processing, transport and trans-shipment, Judge Anderson argues that these ancillary activities, directly concerning the catch taken in the EEZ may be regulated in exercise of the coastal state's sovereign rights in light of the terms of the

UN Convention. With respect to bunkering, he maintains that a coastal state 'is entitled, in principle and subject to particular treaty obligations, to regulate in certain ways those activities, including bunkering, which are in direct support of fishing vessels engaged in fishing in its EEZ'. In this respect, Judge Anderson suggests a criterion that 'when it [bunkering] serves navigation, the rules on navigation apply, whereas when it serves fishing in the EEZ the applicable rules are those on fishing'. This argument is worth considering. On the other hand, it might be difficult in practice to distinguish bunkering for the purpose of navigation such as passage in an EEZ from bunkering for the purpose of fishing.

Chapters 4 and 5 address the practice of international organisations. In chapter 4, Annick de Marffy reviews the activities of international organisations relating to the EEZ by focusing on two different approaches: the sectoral approach and the global approach. Under the rubric of the sectoral approach, the practices of DOALOS, UNEP, IMO, FAO and UNESCO are examined. On the one hand, the survey displays that these organisations are playing an important role in the implementation of relevant rules concerning the EEZ. On the other hand, de Marffy presents her misgivings regarding the sectoral approach which lacks a global basis for managing marine affairs. In reality, according to her, cooperation between international organisations is inadequate and the lack of coordination does not facilitate addressing questions in a comprehensive manner. Hence, she stresses the importance of the global approach, which goes beyond each organisation. In this respect, the open-ended informal consultative process is presented as a possible forum to promote coordination and cooperation between relevant international organisations. The problems indicated by the writer are particularly important and further considerations will be needed in theory and practice.

On the other hand, Claire Bury and Jörn Sack in chapter 5 focus mainly on European Community (hereinafter: EC) practice concerning fisheries, transport, maritime safety and the environment. With respect to fisheries, their survey reveals that the EC participates in a number of bilateral and multilateral agreements. Furthermore, concerning transport and maritime safety, Bury and Sack argue that the role of the port state has been enhanced through Council Directive 93/75 as well as Directive 95/21. Moreover, concerning the protection of the marine environment, three Directives – Directive 92/43 (the Habitats Directive), Directive 79/409 (the Wild Birds Directive) and Directive 85/337 (the Environmental Impact Assessment Directive) – are discussed. In this regard, it is worth noting that these Directives are applicable not only to terrestrial areas but also to the EEZ. According to the writers, Community practice regarding the EEZ is in general fragmented. Nevertheless, a significant volume of Community legislation is relevant to the EEZ. Furthermore, member states' rights to adopt national measures concerning the EEZ is to be restricted in areas where common policies exist on the basis of the EU treaties. Thus, Bury and Sack suggest that hopefully the ever-increasing significance of EC policies might eventually encourage a more consistent approach.

Chapters 6 and 7 deal with proceedings rules concerning the peaceful settlement of international disputes. In chapter 6, Judge Tullio Treves thoroughly analyses the law on

the settlement of disputes in the EEZ. This chapter is composed of four parts. In the first part, Judge Treves specifies that the main purposes of the provisions concerning the settlement of disputes relating to the EEZ is to prevent abuse and to reassure the opposing groups of states against such abuse. Part 2 then examines exceptions to compulsory jurisdiction in some detail. In Part 3, special procedures for preventing abuse, such as preliminary proceedings embodied in Article 294 of the UN Convention on the Law of the Sea as well as prompt release of vessels and crews were considered. In Part 4, Judge Treves concludes, as far as disputes concerning the interpretation and application of the UN Convention on the Law of the Sea in general is concerned, that 'it would seem difficult to hold the view that exceptions concerning only one area of the seas (however important) are such as to allow the conclusion that non-submission to compulsory jurisdiction prevails on submission'. In this regard, the learned Judge examines the *Southern Bluefin Tuna* arbitration of 2000. In his view, the rules concerning specific disputes relating to the EEZ are exceptions to a general set of rules, which applies to all non-expected disputes. Hence he stresses that '[t]o consider the exception as the basis for the interpretation of the general rule does not seem appropriate'. Overall, it appears that Treves's arguments place emphasis on the importance of the compulsory settlement of disputes. Considering that effectiveness of relevant rules depends largely on the procedure for peaceful settlements of international disputes, a survey of international court practice on this matter will be of central importance.

Furthermore, chapter 7 examines the question relating to 'forum shopping.' This chapter, written by Philippe Gautier, is a worthwhile contribution on the basis of analysis of a number of international instruments as well as preceding studies. Having reviewed 'forum shopping' in municipal law, Gautier addresses the question of 'forum shopping' in the context of international law. With respect to the question regarding multiplicity of jurisdiction and unity of the law, the writer argues that hard cases of contradiction between international decisions remains modest. By quoting the opinion of Charney, Gautier maintains that the arguments concerning the fragmentation of international law produced by the proliferation of international courts is less founded. On the basis of the above considerations, Gautier further discusses this question in the context of law of the sea. In his view, the choice of judicial forums is in reality limited under the UN Convention on the Law of the Sea. In fact, such a choice is to be conditioned by the declaration of parties and the obligation to resort to arbitration when such declarations do not coincide. In addition, it is conceivable that the prompt release disputes as well as prescription of provisional measures will primarily be under the jurisdiction of the International Tribunal for the Law of the Sea. In conclusion, Gautier states that the risk of 'forum shopping' arising from anarchical choice of judicial forums is not well founded in law of the sea.

Chapter 8, written by Tim de Bondt, addresses issues relating to the control of ships. This chapter discusses four questions relating to cause, responsibility, prevention and future perspective, respectively. With respect to the first two issues, as the writer accepts, answers are inconclusive. Concerning the prevention of accidents of vessels, the writer examines this issue by focusing on port state control. In this respect, the

writer stresses that the international community is laying more and more emphasis on port state control. In particular, the writer emphasises the importance of the 1982 Paris MOU, which was enhanced by the EC Directive on port state control. Regarding future developments on the prevention of accidents of vessels, the writer concluded that the international community will have to continue to rely upon port state control since the community is incapable to force all flag states to impose the internationally accepted rules and regulations onto the ship owners and masters. On this point, one may note that some writers point to the paucity of national legislation implementing the Convention's provisions on port state control.² Hence, it appears that more detailed examination of state practice on this matter will be needed in order to evaluate the effectiveness of port state control.

Chapter 9, written by Pierre Klein, addresses the impact of NGO action upon the development of law of the sea. In this chapter, Klein examines two incidents relating to the activities of Greenpeace. The first instance concerns the offshore installation *Brent Spar*. He recalls the campaign made by Greenpeace opposing Shell's plan to dump the installation in the Atlantic Ocean on the grounds that there was a risk of contamination of the marine environment. Subsequently, Shell conceded to the pressure of public opinion and cancelled the proposed plan, although, according to Klein, the data used by Greenpeace to support their case was unreliable. In this respect, the writer argues that this action influenced the development of the rules of international law on this matter, even though this case fell outside the context of a judicial settlement. In fact, Klein argues that this incident has had a significant effect upon the development of the OSPAR decision in relation to disused offshore installations. The second case concerns the *Queen v. Secretary of State for Trade and Industry, ex parte Greenpeace Limited* of 1999 before the High Court of Justice in the United Kingdom. In this case, Greenpeace alleged that Secretary of State for Trade and Industry ignored Directive 92/43 EEC of 1992 when issuing licences for exploitation of petrol and gas in the EEZ of the United Kingdom. The United Kingdom argued that the Directive was not applicable beyond 12 nautical miles. By contrast, Greenpeace contended that Directive 92/43 was applicable to the continental shelf of the United Kingdom and its adjacent waters. The High Court ruled that this Directive covered all marine spaces where the member states exercised sovereign rights beyond the limit of the territorial sea. Thus, the Court concluded that the Secretary of State could not grant the licences in maritime zones where the United Kingdom exercised sovereign rights without taking that Directive into account. This decision was significant, in the sense that it clarified the geographical scope of the Directive. On the basis of these two incidents, Klein maintains that NGOs can contribute to environmental protection of the EEZ as well as to the development of the law. Two comments may be made regarding this chapter. First, with respect to the *Brent Spar* affair, one should note that, in addition to Greenpeace's action, intervention by a number of states as well as the European Community influenced Shell's plan to dump the installation.³ Secondly, as the writer observed, there is currently no procedure for NGOs to appear before the International Tribunal for the Law of the Sea. Thus, one cannot but

accept that there is a limit to the action of NGOs. On this point, Klein suggests that the participation of NGOs in international judicial procedure could make a contribution to the protection of the marine environment. Finally, brief conclusions to the symposium are added by Yves van der Mensbrughe.

There is little doubt that this book is timely. The contribution of the various authors provides an important insight into the concept of the EEZ. Furthermore, the variety of writers, comprising academics, judges and practitioners, makes it possible to examine activities in the EEZ from a number of viewpoints. On the other hand, the book examines some areas that require further elaboration. First, in spite of the subtitle, 'A Preliminary Assessment of State Practice', only four out of ten chapters *directly* address state practice regarding the EEZ. Some chapters relate to procedural matters (chapters 6 and 7) or the activities of international organisations as well as NGOs (chapters 4, 5 and 9). Secondly, there is little argument concerning the development of customary law on this issue. Considering that customary law generated from the subsequent state practice, as well as *opinio juris*, may influence the interpretation of the provisions of the UN Convention on the Law of the Sea, it appears that the examination of customary law character of relevant provisions concerning the EEZ is worth considering. In any case, the object provoked by this book, namely, the assessment of state practice after the signature of the UN Convention on the Law of the Sea, is highly important, and further study will be required on the basis of the achievement of this book.

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1. Act concerning the Exclusive Economic Zone of Belgium in the North Sea, 22 April 1999 as well as Act on Protection of the Marine Environment and Ocean Space under Belgian Jurisdiction, 20 January 1999.

2. R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd edn. (Manchester, Manchester University Press 1999) pp. 352-353.

3. Cf., J. Woodliffe, 'Decommissioning of Offshore Oil and Gas Installations in European Waters: The End of a Decade of Indecision?', 14 *IJML* (1999) pp. 115-118.

J.R.W.D. JONES; S. POWLES, *International Criminal Practice*, Transnational Publishers, Ardsley, NY 2003, xlv + 1085 pp., US\$165. ISBN 1-57105-229-1.

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When in 1993 the Security Council adopted Resolution 827(1993) establishing the first *ad hoc* International Criminal Tribunal for the Former Yugoslavia (ICTY), there were very few who believed that the Tribunal would be capable of developing such an impressive practice within a relatively short period of time. However, this proved to be incorrect. The statistics reveal that in the period from 1993 to January 2004, 91 accused have appeared in proceedings before the ICTY; 46 accused were tried; 35 cases were completed, 54 accused were in custody at the Detention Unit in The Hague. Similar practice has developed in the International Criminal Tribunal for Rwanda (ICTR), created in the same manner (by the Security Council Resolution 955(1994)) only one year after the ICTY was established. The ICTR, whose temporal jurisdiction covers only one year (1994), completed 19 cases and has 58 cases in progress; while 62 accused are in the Detention Unit. The creation of the two *ad hoc* Tribunals triggered developments not only in the normative field but also in the institutional. As result, in 1998 the Rome Statute establishing the permanent International Criminal Court (ICC) was adopted. Recently, in 2002, by an agreement concluded between the UN and the government of Sierra Leone a Special Court for Sierra Leone was created. Mentioning deserves also the creation of a hybrid structure for East Timor, the Serious Crimes Panel at Dili District Court, composed of national and international judges.

The book of John Jones and Steven Powles, *International Criminal Practice*, offers detailed information on various aspects of individual criminal responsibility as they have been developed primarily in the practice of the two *ad hoc* Tribunals, ICTY and ICTR. In addition, it provides for a parallel analysis of the institutional and substantive law of the Rome Statute. It is divided into ten major chapters dealing with the issues of the establishment (1); the organization of the international tribunals (2); their status, privileges and immunities (3); the issues of competence (4) the primacy of the international tribunals *vis-à-vis* national courts (5); general principles of criminal law (6); rules of procedure and evidence and international criminal proceedings (7); as well as sentencing procedure (8), penalties and enforcement of sentences (9); and, finally, the appeal and review proceedings (10). The practice of purely national courts is excluded and accordingly, as stressed by the authors in the Introduction, the book does not discuss the international criminal law as applied by national courts, except when these courts have referred in their decisions and judgments to international criminal practice. The discussion on every issue dealt with in the book starts with a quotation of the relevant provisions from the Statutes or the Rules of Procedure and Evidence of the ICTY and ICTR. A brief historical note concerning the respective provision is provided regularly. As a rule, various legal aspects involved in regard to the quoted provisions are supported by the jurisprudence of the tribunals. For those who are interested in further readings on various topics, most of the time there is a brief bibliography or reference to the sources

of information at the end of each of the sections. In addition to the provisions of the *ad hoc* Tribunals parallel provisions of the ICC Statute are also included.

The main table of contents is given at the beginning of the book, whereas before each of the chapters a detailed table of contents is provided. With their reference to respective paragraphs, and not pages, these detailed tables of contents make the use of the publication 'technically' easier. There also are six annexes with a summary of concluded trials in the ICTY, ICTR and the Special Panel for Serious Crimes in East Timor (unfortunately without indication to the period covered by the summary); and the reproduced texts of: the Rome Statute and its Rules of Procedure and Evidence; the ICTY Directive on the Assignment of Defence Counsel; and the Statute and the Rules of Procedure and Evidence of the Special Court for Sierra Leone. Finally, at the end of the book one can find a bibliography with the list of publications and other sources of information, as well as a biographical note of the two authors and an index.

The book is, in fact, the third edition of *The Practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, published in the period 1998-2000. As pointed out in the User's Guide, unlike the first two editions, for this third edition the subject-matter approach was chosen due to the growing corpus of emerging international criminal law generated by the Statutes of the existing Tribunals and the Court, the Rules of Procedure and Evidence and jurisprudence. This approach is meant to considerably facilitate the work of lawyers and researchers of international criminal law and to provide them with information on the existing authoritative interpretation given by the two Tribunals. Whereas the subject-matter approach is definitely welcome, one should be aware of the enormous complexity of the task undertaken by the authors: they took to analyse (a) the law as established in the Statutes of the ICTY, ICTR and ICC, (b) the rules of procedure and evidence adopted by these bodies and (c) the practice as it developed within the ICTY and ICTR. Though there are, to a large extent, parallel international rules and structures between the two *ad hoc* Tribunals, this has not certainly made the work on the book easier as the authors had to go through the whole jurisprudence in order to determine their relevance for each of the particular points discussed. For this difficult task they embarked on, the authors deserve a sincere compliment. At the same time, while the subject-matter approach can be greeted as a valuable contribution to the current and further discussion on the practice of the International Tribunals, it should be noted that exactly this kind of approach makes the publication more sensitive to different criticisms. As a matter of fact the readers will be more inclined to pose questions on the criteria which guided the authors in selecting some aspects of the topics and cases discussed and leaving without discussion others, especially if, as it happened here, these criteria have not been elaborated upon. In this respect some examples can be mentioned.

The first example concerns the establishment of the international tribunals discussed in Part 1. The lawfulness of the establishment of the two *ad hoc* Tribunals is a very important point of discussion. The two *ad hoc* Tribunals were brought into being in a rather exceptional manner by the Security Council resolutions adopted under Chapter

VII (Threats to peace, breaches of peace and acts of aggression) and Article 29 (creation of subsidiary bodies by the Security Council). Neither with regard to the Special Court for Sierra Leone, nor with regard to East Timor the Security Council has chosen to follow the same path. The discussion on lawfulness basically concentrated on the capacity of the Security Council – as a UN body with primary responsibility for the maintenance of peace and security and without any judicial functions – to create the criminal tribunals. Some defendants in cases brought before both the ICTY and ICTR unsuccessfully contested such a capacity. The *Tadic* case was the first case ever considered by the ICTY in which the matter of lawfulness of the Security Council decisions to create the Tribunal was raised. Whereas in the Decision on the Defence Motion on Jurisdiction of 10 August 1995, the Trial Chamber ruled that it was not competent to review the lawfulness of the decision(s) of the Security Council to create the Tribunal, it pronounced itself with regard to the grounds which, in its view, made the decision(s) of the Security Council lawful. It is a pity that in the book more attention was not given to this Decision of the Trial Chamber because of its clear determination of several important points. Among these, mentioning deserve the following. Firstly, the Trial Chamber said that the issue concerning the decision of the Security Council to create an *ad hoc* tribunal was not justiciable ('24. The validity of the decision of the Security Council to establish the International Tribunal rests on its finding that the events in the former Yugoslavia constituted a threat to peace. This finding is necessarily fact-based and raises political, non-justiciable issues'). Secondly, it noted that the Security Council established the International Tribunal as an enforcement measure under Chapter VII after finding that the violations of international humanitarian law in the former Yugoslavia constituted a threat to peace and security. The nexus between the violations of international humanitarian law and the existence of a threat to peace and security which, under Article 39, is determined by the Security Council, has already been established in some other previous situations such as in Southern Rhodesia in 1965 and 1966, South Africa in 1977, Lebanon on a number of occasions in the 1980s, Iran and Iraq in 1987, Iraq in 1991, Haiti and Somalia in 1993 and, in Rwanda in 1994 (para. 21). Thirdly, Article 41 of the UN Charter poses no limitations to the discretion of the Security Council to take measures not involving the use of armed force. No good reason has been advanced why Article 41 should be read as excluding the step of creating the ICTY to deal with the notorious situation existing in the former Yugoslavia (paras. 26-27). Fourthly, Article 29 of the UN Charter is expressed in the broadest terms and nothing appears to limit its scope to non-judicial organs. If the General Assembly had the authority to create a subsidiary judicial body, then surely the Security Council can create such a body in the exercise of its wide discretion to act under Chapter VII (para. 35).

Further on, in its Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, the ICTY Appeals Chamber extensively dealt with the lawfulness of the establishment of the International Tribunal, including the issue of its own jurisdiction to deal with the questions of lawfulness. Contrary to the Trial Chamber, the Appeals Chamber took the position that the International Tribunal has the

jurisdiction to examine the plea against its jurisdiction based on the invalidity of the establishment by the Security Council (para. 22). Accordingly, it went into a detailed elaboration of the legal aspects of the powers of the Security Council regarding the creation of the ICTY by including also the issues of non-justiciability and constitutionality. With regard to the later, the Appeals Chamber discussed the power of the Security Council to invoke Chapter VII, the range of measures envisaged under Chapter VII, the establishment of the International Tribunal as a measure under Chapter VII of the UN Charter, and in this framework it provided also its view on what was the possible article of Chapter VII which served as a basis for the establishment of the Tribunal, as well as whether the Security Council could establish a subsidiary organ with judicial powers.

Regrettably, the above-mentioned decisions in the *Tadic* case are only briefly mentioned in the context of the competence of the Tribunal to deal with the issue of the lawfulness of the Security Council decision to establish the ICTY (pp. 5-6), and further were referred to when various aspects of the lawfulness, such as state sovereignty or lack of competence on the part of the Security Council, were discussed in the context of the *Kanyabashi* case and the ICTR Decision of 18 June 1998.

It is unclear why the authors have chosen to pay so little attention to these decisions and at the same time to stress – without supporting it with the existing practice of the courts – that in the light of massive human rights violations being committed in the former Yugoslavia and Rwanda, the creation of the ICTY and ICTR may be seen as a modern form of collective humanitarian intervention. It also seems that Meron, to whose article a reference was made, does not make a suggestion in this sense. In his Editorial Comments on the ‘War Crimes in Yugoslavia and the Development of International Law’ (88 *AJIL* (1994) pp. 78-87), he rather stresses the important precedent the Security Council made by singling out the violations of humanitarian law as a major factor in the determination of a threat to the peace. Also the view of Conforti (on p. 12) that the creation of the Tribunals can be seen as an action under Article 42 of the UN Charter providing for an enforcement measure involving military means, is rather isolated. It is pity that in this context under the Section entitled ‘Article 41 or Article 42 of the United Nations Charter’ (pp. 11-12), the authors only briefly mentioned the Appeals Chamber Decision in the *Tadic* case, of 2 October 1995. Paragraphs 33 and 34 of the Decision certainly were worth quoting as the Chamber stressed that ‘[o]bviously, the establishment of the International Tribunal is not a measure under Article 42’ and that ‘[p]rima facie, the International Tribunal matches perfectly the description in Article 41 of “measures not involving the use of force”’. Instead, the authors have chosen to include a quotation of Conforti which raises more questions than it offers answers and which was placed in his publication in the chapter on the so-called residual powers of the Security Council.

Also the argument (on p. 12) supporting the position that the creation of the Tribunals was a Security Council measure under Article 42 by mentioning both the activities of SFOR in Bosnia and Herzegovina in apprehension of suspected and indicted persons and the NATO-led military intervention in Kosovo, seems to be misleading. It is true

that NATO-led SFOR (Stabilization Force) and previously IFOR (Implementation Force) are military forces present in Bosnia and Herzegovina. However, IFOR/SFOR was primarily deployed on the basis and under the conditions of the Agreement on the Military Aspects of the Peace Settlement (Annex 1A of the Dayton Peace Agreement, signed in Paris on 14 December 1995) concluded between the parties to the conflict in Bosnia and Herzegovina, which was then endorsed by the UN Security Council Resolution 1031(1995) of 15 December 1995. The primary task of IFOR/SFOR is to provide a secure environment in the process of stabilization in Bosnia and Herzegovina. The above-mentioned Agreement does not even provide for any concrete tasks for IFOR/SFOR with regard to ICTY, but rather poses obligations on the parties signatories to cooperate with the ICTY (Art. X of the Agreement, Annex 1A). It was only later that the cooperation between NATO and ICTY in the context of IFOR/SFOR was developed, however by no means under Article 42 of the UN Charter. Similar conclusion can also be drawn with regard to the NATO-led military intervention in Kosovo, i.e., Federal Republic of Yugoslavia in 1999, which was carried out without any Security Council authorization and for this reason its legitimacy was also questioned.

The second observation can be given with regard to Part 4 dealing with the competence of the International Tribunals. Throughout four sections contained in this chapter, the sources of law and the four types of jurisdiction (subject-matter, personal, temporal and territorial) of the Tribunals and the ICC are dealt with. The concurrent jurisdiction of the two *ad hoc* Tribunals (which establishes jurisdiction of both national courts and international tribunals with the primacy given to the Tribunals), and the complementary jurisdiction of the ICC (which will be established in case the national state is unwilling or unable genuinely to carry out the investigation or prosecution) are separated from this chapter and are discussed in Part 5 (Primacy of the International Tribunals).

The subject-matter jurisdiction includes the discussion on the various aspects of crimes put under the competence of the Tribunals, such as genocide, crimes against humanity, violations of the laws or customs of war and grave breaches of the 1949 Geneva Conventions. Both Tribunals have provided interpretation with regard to the existence of the crimes, the conditions under which the crimes can be committed, the elements of the crimes (*actus reus* ('guilty act') and *mens rea* ('guilty mind')), the commission of the crimes in the context of international or internal conflict, etc. The existing jurisprudence in this respect is a valuable contribution to the development of international criminal law because of the fact that, before being embodied in the Statutes of the ICTY and ICTR, as it has been pointed out by the Security Council, all these international crimes invoking international individual responsibility were making part of the customary law for which there was no jurisprudence (except for the Nuremberg and Tokyo trials). For this reason there will be those among readers who will consider Section 2 as one of the most important chapters of the book. Whereas the authors deserve credit for the elaborate discussion, here too can be noted that the subject-matter approach they have chosen resulted in some confusing 'solutions'. So, for example, for the readers it will be unclear why the ICTY/ICTR Rules of Procedure such as those dealing with the contempt of the Tribunal, payment of fines, false testimony under

solemn declaration, etc. were included in Section 2, i.e., in the part in which serious crimes under international law are discussed. One could think that these issues would be more appropriately placed in the chapter dealing with procedural rules of the Tribunals than with jurisdictional issues. Similar remarks can be made with regard to Article 4 of the ICC Statute on the legal status and powers of the permanent court, which is placed in Section 4 of Part 4 ('Temporal and territorial jurisdiction', p. 358). Article 4 establishes the international legal personality of the permanent Court which was brought into being by a treaty, i.e., in a quite different manner than the two *ad hoc* Tribunals. Because of that, it seems that more appropriate was to place Article 4 of the ICC Statute in Part 1 of the book ('The establishment of the tribunals'), and in that context to discuss the legal capacity of both the ICC and the *ad hoc* Tribunals. Inconsistencies of different type appear in some other sections too. So, for example, whereas Part 3 reproduces relevant provisions of the ICTY/ICTR Statutes on privileges and immunities, it does neither mention nor reproduces Article 48 of the ICC Statute, which establishes the immunities and the privileges of the Court, the judges as well as of other ICC officials and personnel.

The third and the last observation concerns Rule 65 of the Rules of Procedure and Evidence of both Tribunals. Rule 65 gives a possibility to the Tribunals to decide on the provisional release of the accused. This can take place under strictly established criteria. In the ICTY Rule 65(B) there are three such criteria: two substantive (that is a certain guarantee that the accused will appear for trial, and that, if released, the accused will not pose a danger to any victim, witness or person) and one procedural (refers to the host country, the Netherlands, which must be heard on the issue of provisional release). On the other hand, the ICTR Rule 65(B) is more extensive and includes also the 'exceptional circumstances' which are a *sine qua non* condition for provisional release. The fact that this condition was deleted from the ICTY Rules of Procedure and Evidence and remained as such in the ICTR Statute leads to different practice of the two Tribunals. The basic objection against the requirement of 'exceptional circumstances' for provisional release is that it violates a 'fundamental right' of an arrestee or detainee as established by international law, such as Article 9(3) of the International Covenant on Civil and Political Rights (Decision on the Defence Motion for the Provisional release of Élie Ndayambaje of 21 October 2002, para. 2). It was exactly the reason why the ICTY decided to remove this condition from Rule 65(B). Notwithstanding this, the practice of the ICTY with regard to provisional release has been a matter of criticism. Even Judge Patrick Robinson criticised the prevailing 'culture of detention' at the ICTY in his 15-page long dissenting opinion regarding the refusal of the request of Momcilo Krajisnik to render provisional release. In his view the ICTY as 'a judicial institution cannot assert its peculiarities to justify derogation from the rule of respect for individual freedom' (the Trial Chamber's Decision on Momcilo Krajisnik's notice of motion for provisional release of 8 October 2001 and dissenting opinion of Judge Robertson).

Besides, it has also been claimed that the practice of the ICTY is inconsequent in the application of the criteria for provisional release, and that the same factors were differently weighted in different cases. By so doing, the ICTY Trial Chamber is applying

a 'double standards for identical cases' (Decision on Appeal Against Refusal to Grant Provisional Release to Mile Mrksic of 8 October 2002, paras. 4-5). This inconsistency was apparent in the Tribunal's consideration of the issue of surrender to the Tribunal, of the guarantees offered by the country in which the provisional release would be carried out designed to ensure cooperation with the terms of provisional release, and of the guarantees that the accused would return for trial. The Appeals Chamber refused this claim as 'a misapprehension as to how Trial Chambers are required to approach the reliability of guarantees' (para. 8 of the Decision). However, in the view of the Appeals Chamber, the authority of the Trial Chambers to determine the circumstances arising in each particular case, pose on them also obligation to take care and 'to explain their decisions in a way to avoid such criticism' (para. 10). Exactly because of the seemingly inconsistent practice due to the scope of the discretion of the Trial Chambers, this decision of the Appeals Chamber deserved attention in the book. In this context mentioning should have been made also of the provisional release of Biljana Plavsic, the only woman who was indicted by the ICTY. In the Decision of the Trial Chamber for provisional release of Biljana Plavsic, of 5 September 2001, it was confirmed that the decision 'as to whether release is to be granted must be made in the light of the particular circumstances of each case' (preamble of the Decision). The existence of particular circumstances in her case, which however remained unknown to the wider public due to the confidentiality of the documents, was in a way confirmed by the decision on the extension of the provisional release of 2 October 2002. As it was pointed out, in this case the Trial Chamber, presided by Judge Richard May, took 'a wholly exceptional course' and 'for reasons of security' the provisional release was continued (*CBS News*, 2 October 2002). More attention paid in the book (in Part 8, Section 5) to the above-mentioned points would assist the readers in getting a more balanced and complete view on the practice regarding the provisional release.

The above-discussed points are chosen only as an illustration indicating the complexity of legal and normative issues involved in the work and practice of the Tribunals with which the authors have been faced during their work. Due to the limited space and purpose of this review, this discussion is neither exhaustive nor systematic. However, notwithstanding the possible remarks, it should be stressed that this new edition of Jones and Powles on the practice of International Tribunals will definitely assist the researchers. All those involved in one or another manner in the field of individual criminal responsibility can find a lot of valuable and useful information included in the book. It will not offer a complete answer to all the questions which might be raised in the context of the topic and subject-matter covered, but it will give an idea on the basic rules, principles and issues involved in the work of the Tribunals.

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R. KOLB, *Case Law on Equitable Maritime Delimitation: Digest and Commentaries/Jurisprudence sur les délimitations maritimes selon l'équité: Répertoire et commentaires*, Martinus Nijhoff Publishers, The Hague 2003, xlviii + 1150 pp., US\$348/€348. ISBN 90-411-1976-0.
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The title of this book eloquently indicates its subject matter. It provides a digest of the case law concerned with the delimitation of maritime boundaries between states and comments upon this case law. As the title also indicates, the book is bilingual, giving most texts it reproduces both in English and in French. The book collects an impressive amount of materials, including not only the commentaries of the author on the cases which are excerpted, but also summaries of some key publications commenting on the case law. The commentaries of the author are not only limited to the individual cases but also set out how maritime delimitation law has evolved over the last couple of decades and how the treatment of various elements in the delimitation process differs between the cases.

The book contains arbitral awards and judgments of the International Court of Justice (ICJ) on the delimitation of maritime boundaries starting from the 1909 *Grisbadarna* case¹ up to the 2001 judgment of the ICJ in the *Qatar/Bahrain* case.² The only case from this period not included in this review is the *Beagle Channel* arbitration.³ The reason for the exclusion of this case remains obscure, as it was also concerned with the delimitation of the territorial sea.⁴

After a short introduction, the cases included in the book are presented in a common format. First of all, a short description of the geographic context of the case is provided, which is illustrated by a map. After that, the questions submitted to the court or tribunal by the parties in respect of maritime delimitation are reproduced and commented upon. The next section on each case sets out its specific features as identified by the author. To give an example, in the *Eritrea/Yemen* arbitration the headings of the subsections of individual specific features are: simplicity of the overall geography and of the legal reasoning; a single complicating factor: the presence of islands; the advance of socio-economic factors; and dual nature of the case: maritime delimitation and attribution of sovereignty. The presentation of the submissions of the parties is followed by excerpts from the judgment concerned, which are commented upon. These comments are intended to

‘make the tribunals’ judgments more readily comprehensible, to discuss the problems and the lacunae, to present certain problems in a systematic way (for example, the types of problems which islands pose for delimitation), to provide a critique of the issues, and to identify the links with the preceding or subsequent cases in order to uncover the deeper threads connecting often quite disparate pronouncements’ (p. xxi).

Separate and dissenting opinions are also excerpted and commented upon, albeit in briefer form. The one exception is formed by the dissenting opinion of Judge Bedjaoui in the *Guinea-Bissau/Senegal* case.⁵ In this case, the Arbitral Tribunal found that the

continental shelf boundary had already been delimited by an agreement between the former colonial powers, France and Portugal, from 1960. The Tribunal considered that the compromise in these circumstances did not allow it to establish a boundary for the exclusive economic zone. Judge Bedjaoui, who considered that the 1960 agreement was not binding on the parties, delivered a dissenting opinion in which he suggested the reasoning that might have been applied by the Tribunal to arrive at a single maritime boundary. Whether this circumstance justifies a fuller discussion of a separate opinion than in other cases may be open to some doubt.

Most sections conclude with an overview of the academic comment which has been given on the case. This includes a bibliography and an analysis of how the case has been received in the literature. This analysis is illustrated by some excerpts from this literature. These overviews of academic writings focus on articles and books which deal with the specific case, but do not include writings dealing with maritime delimitation law in general. It is to be regretted that this approach has been followed as some of the most interesting reflections on the law of maritime delimitation can be found in such general works.

The views of the author on the development of maritime delimitation law through the case law of the ICJ and arbitral tribunals is set out in the introduction to the book.⁶ Not surprisingly, the relationship between equity and equidistance is seen as a central theme in this development. The combined rule of equidistance and special circumstances is found to represent the pole of normativity, that is 'rule-oriented, with its concomitant elements of directivity and legal certainty' and equity the pole of 'individualisation of the law, i.e. the equity of the particular case (fact-oriented, with concomitant elements of flexibility and concern to find solutions tailored to the very particular facts of the matter ...)' (p. xxiv). Kolb concludes that with the decision of the ICJ in the *Qatar/Bahrain* case in 2001 the wheel has come full circle and the Court has returned to 1958 by applying the pure 'equidistance/special circumstances' rule that it had so violently rejected in the *North Sea Continental Shelf* cases in 1969 (ibid.).

It is certainly possible to agree in principle with the abovementioned distinction between the combined rule of equidistance and special circumstances and an equity-based rule. However, some further reflection on the normativity of the combined rule might have been welcome. For instance, can it really be maintained that the application of the combined rule leads to greater legal certainty, in the light of the outcomes this rule has produced over the years. In this context, one should be reminded of the fact that Judge Schwebel made the following comment in his separate opinion in the *Jan Mayen* case:

'If what is lawful in maritime delimitation by the Court is what is equitable, and if what is equitable is as variable as the weather of The Hague, then this innovation may be seen as, and it may be, as defensible and desirable as another.'⁷

Contrary to what may be suggested by this quotation, the Court in this case applied the combined rule of equidistance and special (relevant) circumstances. Kolb finds that the

Jan Mayen case in certain respects represented a move towards a greater reliance on the equidistance and special circumstances rule. On the other hand, the Court shifted the provisional equidistance line as a function of a wide variety of circumstances and in a highly discretionary spirit (pp. xxiii-xxiv and 457-458). To appreciate the differences between the two approaches to maritime delimitation law, it would have been interesting to learn what boundary should in the author's opinion have resulted from the application of more limited number of circumstances and a less discretionary spirit. That this may not be an easy task can be illustrated by Kolb's commentary of the treatment of the island of Abu Musa in the *Dubai/Sharjah* arbitration:⁸

'It was treated as a special circumstance necessitating a certain measure of adjustment to the equidistance line. The Tribunal's approach was clear. The equidistance line was the main line. It was appropriate to correct it to the minimum extent required by the presence of Abu Musa' (p. 148).

The perceived clarity of the approach of the Tribunal is more apparent than real. For instance, one may ask why this specific case required to select the equidistance line completely disregarding Abu Musa as the main line and then correct it to the minimum extent required by the presence of the island. Even in this arguably relatively simple case there are a number of choices involved in the process of arriving at the boundary. For instance, it would seem to be equally defensible to argue that the not insignificant size of Abu Musa and the distance it is located from the mainland (31 nautical miles) warranted to attribute it a limited area of continental shelf beyond the 12 nautical mile limit. Although the combined equidistance and special circumstances rule provides a formula to present the result arrived at in a seemingly systematic fashion, this rule is an equation containing too many variables to establish the value of any of them with any certainty.

Although, the preceding discussion focuses on one of the key questions presented in *Case Law on Equitable Maritime Delimitation*, the book is probably of most interest for the detailed analysis of the specific points at issue in each case. A discussion doing justice to such an analysis is beyond the scope of a book review. All in all, *Case Law on Equitable Maritime Delimitation* provides a wealth of interesting observations on the development of maritime delimitation law in general and specific points of individual cases. As such, the book can certainly be recommended. Whether it is justified to present these materials in the form of a bilingual digest of the case law, running more than 1200 pages is another matter, on which different views are possible.

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1. *Grisbadarna* arbitration (*Norway/Sweden*), Decision of 23 October 1909; reproduced in 9 *RIAA* p. 147.
2. *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Judgment of 16 March 2001 (*ICJ Rep.* (2001) (not yet reported)). Judgments on incidental procedures or other matters not directly related to the delimitation of maritime boundaries are not reported upon.
3. *Beagle Channel* arbitration between the Republic of Argentina and the Republic of Chile of 18 February 1977; reproduced in 52 *ILR* p. 99.
4. As a matter of fact it is mistakenly claimed that the *Qatar/Bahrain* case was the first modern case concerned with the delimitation of the territorial sea (p. 538). Apart from the *Beagle Channel* arbitration, this matter had also already been considered in the *Eritrea/Yemen* arbitration (*Eritrea/Yemen Arbitration; Phase II (Maritime Delimitation)*), Award of 17 December 1999; reproduced in 119 *ILR* p. 417.
5. *Arbitration between Guinea-Bissau and Senegal concerning the Delimitation of the Maritime Boundary*, Decision of 31 July 1989; reproduced in 83 *ILR* p. 1.
6. These views are also set out on p. 537 in a discussion of the *Qatar/Bahrain* case.
7. *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, separate opinion of Judge Schwebel (*ICJ Rep.* (1993) p. 118 at p. 120).
8. *Dubai/Sharjah Border* arbitration, Decision of 19 October 1981; reproduced in 91 *ILR* p. 543.

E. VAN SLIEDREGT, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law*, T.M.C. Asser Press, The Hague 2003, xxiv + 437 pp., US\$107/UK£66.50. ISBN 90-6704-166-1.

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E. van Sliedregt's book on the criminal responsibility of individuals for violations of international humanitarian law is result of a PhD research carried out at the Tilburg University and the T.M.C. Asser Institute in The Hague in the period 1998-2003. The title of the book, given in rather general/neutral terms, provides just a vague indication of what follows further in the text. However, the reader is pleasantly surprised not only with the fact that an extensive publication has been devoted to the issues related to the modes of creation and grounds for exclusion of individual criminal responsibility, but more importantly with the quality of the thorough analysis of the aspects discussed.

The book is divided into three main parts. It contains also a summary (English and Dutch languages); an annex with selected provisions of the Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and of the International Criminal Court (ICC); an extensive bibliography; a table of cases of international courts and tribunals and decisions of national courts; table of treaties and other documents; and an index. Part I deals with the capacities in which individuals can take part in criminal activities invoking individual responsibility; Part II is completely devoted to the establishment of the superior responsibility, whereas Part III deals with the defences, i.e., with the grounds excluding

responsibility for wrongdoing acts. As the point of departure the ICC Statute is taken, and basically its Articles 25 (individual criminal responsibility), 28 (responsibility of commanders and other superiors), 31 (grounds for excluding criminal responsibility), 32 (mistake of fact and mistake of law) and 33 (superior orders and prescription of law). In fact, as pointed out by the author, the study covers two basic sides of criminal responsibility: attributing – covering the conditions, circumstances and situations under which one shall be held responsible for violations of international humanitarian law, and averting – covering the conditions, circumstances and situations under which the responsibility for violations occurring under international law would be excluded. It only concentrates on the international legal system and does not include the so-called ‘semi-international’ law systems, such as the Special Court for Sierra Leone or the one for East Timor.

The chosen topic of the research presents, in fact, the core issue of this rapidly developing area of international law. In the recent publications a substantial attention has been paid to this issue, however rather from the point of view of the emerging case law and existing jurisprudence of the two *ad hoc* Tribunals, on Yugoslavia and Rwanda, than from the theoretical point of view. By taking primarily a theoretical approach and analysing the relevant international and national law, and in addition supporting it by the jurisprudence of the tribunals and where appropriate of national courts, this study makes a great contribution to the discussion on the issue(s) covered. The central question posed is whether ‘the parameters of culpability underlie the concept of individual criminal responsibility in international criminal law’, or, more specifically whether ‘the nature of international crimes and the nature of the normative framework generate a concept of international individual criminal responsibility that deviates from individual criminal responsibility in national law’. So, what the author does is, in fact, moving back and forth from international to national rules and concepts, giving to both international and national laws equal attention, as well as to the relevant historical development and to important case law and jurisprudence. Whenever possible the author follows a pattern in her analysis by providing four clearly divided points of discussion, namely: (a) text and legal history, (b) jurisprudence, (c) national underpinnings and (d) observations. It is the thoroughness of the analysis and the systematic and consequent approaches that enrich the work and leave the reader with almost no questions unanswered. At the end of the journey the author comes to the conclusion that the nature of international crimes and the international nature of the normative framework do not generate a concept of individual criminal responsibility that fundamentally deviates from individual criminal responsibility as it has taken shape in national criminal law systems. ‘We thus witness a rapprochement between national and international criminal law ... international criminal law is catching up on its backlog vis-à-vis national criminal law faster than we may have realised’ (p. 371).

The publication contains quite a balanced analysis of historical, international and national concepts and jurisprudence. The information provided on historical developments does not only make the publication interesting for reading but also enables the

readers to put the issues discussed into a historical perspective. She begins the study with a historical survey concentrating basically on the concepts of collective criminality and individual responsibility and deals with the question of whether the current rules embrace the concept of collective criminality or it is the law of individual responsibility which applies. Of course, these concepts are difficult to differentiate if taken in the context of international crimes. International crimes could not possibly be committed without participation of individuals as well as without the context of the criminal behaviour as required under international law. International crimes are in this regard specific as they usually take place in a broader political, security and/or humanitarian context and most of the times with established goals which tend to be achieved by pursuing criminal policy and activity. In this sense, those acts (be it deeds or omissions) which qualify as the most serious crimes under international law, are usually not purpose for themselves, but are rather means for achieving the established purpose(s). This is a matter of fact, independently of whether these crimes take place in international or internal context, in the time of war or in the time of peace. By bringing some of these points forward and elaborating on them, Colonel Murray C. Bernays, with whom the author starts her study, became famous as 'the guiding spirit leading the way to Nuremberg'.¹ Being a successful New York attorney and naturalized American Jew of Lithuanian origin, Bernays developed his theory on the basis of two premises: (a) the Nazi program, carried out by various Nazi organizations, was a conspiracy against humanity and as such it presented a violation of international law, and (b) not only the Nazi individuals, but also the Nazi movement which carried out the Nazi plan and program should be punished. For this reason, if an organization was tried and found guilty for conspiracy against humanity, in that case the responsibility should also extend to all the members of that organization only on the basis of their membership. This provided, under the Nuremberg Military Charter, for criminal responsibility of groups and organizations in addition to individuals. The developments following the Nuremberg trials indicate that the idea of corporate responsibility was abandoned. During the preparatory period of the Rome Statute establishing the International Criminal Court some documents referring to the criminal responsibility of legal persons were submitted, however in the final text no provision providing for corporate criminal responsibility was included. With regard to the responsibility of groups the situation remained somehow unclear: except the vaguely worded provision contained in Article 25(3d) of the ICC Statute, there are no other international provisions mentioning groups in the context of international crimes. The notions of conspiracy and complicity, rightly brought forward by the author, are however recognized in the existing international criminal law. They all inculcate individuals who have not directly participated in the commission of crimes.

It might come to some readers' minds that the question of a group crime and/or corporate crime could receive a renewed attention, nowadays in a different context. There is a very curious question which might draw attention in the future, of how possible illegal activities mounting to war crimes should be considered in case they are agreed upon and concerted within institutionalised multilateral forums. One would

think in that respect about the questions raised with regard to the lawfulness of the NATO military intervention in the Federal Republic of Yugoslavia carried out in 1999 without the UN Security Council authorization and about the possible violations under international criminal law which might have occurred in that context. *If* such and similar activities would qualify as crimes invoking international responsibility, than the discussion would include, apart from responsibility under national law in the context of ministerial responsibility, quite interesting questions under international law, such as whether there would be an analogy with the concepts of corporate or maybe group responsibility, in addition to the concept of superior responsibility.

An interesting discussion on historical developments is also given in the introduction to Part II on superior responsibility. Cases such as the one of the Japanese general Tomoyuki Yamashita, known as the Tiger of Malaya, and its comparison with the *Medina* case and the My Lai massacre which took place in the Vietnam War, seem instrumental in getting a better view of the (sometimes surprisingly inconsistent) practice of national courts when dealing with international crimes. Otherwise, the whole Part II is a rich analysis of aspects involved in the responsibility of those who, because of their superior position 'knew or were supposed to know' of the crimes committed by their subordinates. There are three basic elements of the concept: functional (duty to act), operational (failed to act) and cognitive (presupposed) knowledge of the crimes). The author rightly pleads for a cumulative application of all three elements in order to make superior responsibility a solid and coherent concept. One can find especially interesting the discussion contained in chapter 5 on the concepts analogous to superior responsibility such as responsibility of corporate officers and employers and parental responsibility in cases when parents have failed to prevent misdeeds and/or crimes committed by their children. By bringing the basic elements down to the level of everyday life it facilitates better understanding of the whole logic behind the concept of superior responsibility. The discussion concerning members of government is also very interesting and important.

Apart from the sincere compliments the author deserves for her remarkable work, one small remark is due to some of the titles of the sections and sub-titles. Chapter 2 (Perpetration and Participation), sub-section entitled 'Terminology' might be one of the examples where the title given does not completely correspond to the content covered by it. One would expect that this sub-section primarily explains the terms the chapter deals with. However, it goes much deeper into analysis of the concepts than discussing the terms alone. Firstly, it discusses the two basic elements necessary for the existence of a crime under international law. These are: the objective (*actus reus*) and subjective (*mens rea*) element, both being needed in order to establish individual responsibility. The analysis of the notion of the subjective element is provided with regard to Anglo-American law, civil law, *ad hoc* Tribunals on the former Yugoslavia and Rwanda, as well as with regard to the Statute of the International Criminal Court. Certain attention is paid to three degrees of the subjective element, namely intent, knowledge (knowledge that the harmful consequence will occur, or *dolus directus*) and 'risk responsibility', i.e.,

the knowledge that the harmful consequence might occur (*dolus eventualis*). In addition, the negligent action (*culpa*) is discussed which consists not in ‘what a person’s state of mind was, but what it should have been’ (p. 47). With regard to the objective element the commission and omission are discussed as the forms in which the crime can take place and which are required by law in order to establish what the (un)lawful behaviour was. This sub-section includes also an analysis of the concepts of principal/direct and derivative/indirect responsibility. This all indicates that the author went much beyond the topic announced in the sub-title. However, as pointed out above, the quality of the text contained and analysis offered makes this remark negligible.

In conclusion, on page 4 the author warns: ‘International criminal law is a meeting of two worlds, that of criminal law and that of international law. Rather than resulting in a natural osmosis this encounter is an uncomfortable combination of two inherently different types of law’. This study reveals much better than some other publications, exactly this ‘uncomfortable combination’, which will place both international and criminal law experts in a rather challenging position of embarking into the new and different areas of expertise which now make part of the international criminal law discipline. For all involved in the field, independently of whether they are international or criminal lawyers, Van Sliedregt’s book presents a publication which will be often consulted and quoted.

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1. See R. Conot, *Justice at Nuremberg* (New York, Harper and Row 1983) pp. 10-13.