BOOK REVIEWS*

Sovereignty over the Paracel and Spratly Islands, by MONIQUE CHEMILLIER-GRENDREAU, Kluwer Law International, The Hague/London/Boston, 2000, pp. vii + 265.

The Paracel and Spratly Islands are offshore archipelagos lying in the northern and southern parts of the South China Sea respectively. Territorial title to both is contested by a number of States. China and Vietnam are the sole disputants over title to the Paracels, while the question of sovereignty over the Spratly Islands is the subject of contention between China, Taiwan, Vietnam, the Philippines, and Malaysia. The circumstances of the dispute surrounding the Spratly Islands are far more complex than those involving the Paracel Islands. The reasons for this are that not only is title to the Spratly Islands contested by a greater number of States, but the political and economic issues involved here are also more acute. On the political front, the emotive issues of sovereignty and historic patrimony are supplemented by the strategic significance of the islands and the role that they play in the process of nation-building and territorial expansion. Economically, the Spratly Islands are reported to be well endowed with hydrocarbon resources and have the potential to form the basis of extensive maritime claims, with the impact that these will have on access to fishery resources. These various factors make a potent mix which, if not resolved, could lead to serious military conflict. Indeed, Vietnam and China have already sparred militarily over certain of the Spratly Islands, and most strategists recognise the Spratlys as potentially one of the world's most dangerous military flashpoints. It would seem, therefore, that some form of peace-

ful resolution of the dispute over the territory in question is a prerequisite to developing a safer world. This book seeks to make a contribution to understanding the Paracel and Spratly Islands dispute by reviewing the question of territorial title primarily by using historical-legal method. In so doing, the author relies to a significant degree on materials from the French archives that have not hitherto been the subject of detailed consideration.

Although the Spratlys and Paracels are two distinct archipelagos; nonetheless, they are treated as a single entity in Chinese and Vietnamese claims. While the author analyses the claims in this way, she acknowledges that the conclusions arising from this form of treatment differ. The author begins by providing a *mise en scène* in which she examines the fundamental geographical, physical, political, economic, and strategic significance of the islands is reviewed. Some interesting points arise from this. The first is that the islands have never been inhabited: they have never had a native population, although some of the larger islands are capable of occupation. The second point of note is that there are a large number of uninhabitable sandbanks, shoals and rocks which do not constitute islands proper within the meaning of article 121 of the Law of the Sea Convention of 1982 because they are incapable of sustaining human habitation or economic life of their own. The net result of this is that while claimant States would be able to claim a twelve-mile territorial sea around these rocks, they will be unable to use them as bases for claiming either an exclusive economic zone or a continental shelf. This, however, is a controversial area of the law of the sea, and there is no guarantee that a suc-

* Edited by Surya P. Subedi, General Editor.

cessful claimant would not find some method of maximising their maritime claims by exploiting the uncertainty generated by this controversy. Despite this, however, the author is of the clear opinion that whether they be rocks or islands, the territory in question is susceptible to claims of sovereignty, a view which is supported by the approach of the International Court of Justice in the *Minquiers and Ecrehos* case between France and England.

In analysing the various claims to territorial title by the disputing States, the author adopts a traditional approach by attempting to analyse who has the stronger claim. At the outset, she rejects the argument of sovereignty over territory by virtue of geographical contiguity or by virtue of the fact that, in the case of the Paracels, the islands potentially lie within the exclusive economic zones of either of the contesting States. Indeed, this latter cannot be an operative factor since, as the author points out, the delimitation of the respective EEZs of China and Vietnam cannot be determined until the question of sovereignty over the islands is solved. The case of the Spratlys is different since these lie outside any potential maritime claim based on the mainland of the contesting States. The author also emphasizes the role of inter-temporal law in the determination of territorial title. In the case the Spratlys and Paracels this is of considerable importance since the colonial period in the region served to disrupt the continuity of claims, with France, for example, not pressing Vietnam's claims as strongly as it might for a variety of political reasons. Furthermore, the events of the Second World War, the French abandonment of Vietnam, the creation of two Vietnams and the ensuing Vietnam War (or American War, as the Vietnamese call it) created a situation of confusion in which the elucidation of the various claims became difficult to achieve. As the author concludes (p. 33):

"In the long, chaotic, conflict-ridden, and even for a long period, dramatic history of this part of the world, it is very difficult to assemble the sort of incontrovertible documents which constitute evidence and are the material on the basis on which the law can be established."

Despite this, the author attempts to show that the material and psychological elements

necessary for the acquisition of territory are sufficiently available to support claims for the better right to title on the part of one of the actors in this dispute. Following a review of the available archival evidence, the author comes to the conclusion that it is Vietnam which has the better title to territory in both the Paracels and Spratlys, this despite the fact that China has actual physical control of the Paracel Islands. The reason the author rejects the fact that physical control gives China the right to sovereignty is because it is based upon the use of force, now considered illegal under both general and particular international law. The claims of the other contesting States are generally perceived as having little or no merit.

While this book makes an important and useful contribution to the question of the Paracel and Spratly Islands through its analysis of hitherto-unknown French archival material, it is doubtful whether it really takes the matter much further forward. It certainly helps to fill out the picture, yet it is not certain whether it will form the basis for a resolution of the dispute. In a sense the historical uncertainty and confusion surrounding most of the claims renders it unlikely that an application of conventional legal norms associated with acquisition of territory will solve the problem. While the author is correct in stating that the contesting States by virtue of Article 33 of the United Nations Charter are under an obligation to settle their dispute peaceably, it seems clear that it will take more creative methods than simply relying on what are essentially a series of early twentieth century rules. Although the author does canvas the possible use of a condominium arrangement for the islands, it is unlikely that this would satisfy the parties. Perhaps the answer is not to become too obsessed with resolving the question of territorial title through an application of historical method, but to find other modes of operating which will circumvent this issue. In a sense, this is what is happening with the development of a code of conduct for the South China Sea that will allow States to function cooperatively in the area without sacrificing their respective claims to territorial sovereignty. This "without prejudice" approach might well lead to the construction of a regime that avoids the rigidities and dangers of a fruitless zero sum game.

Although this book is a useful contribution to a fuller understanding of the disputes surrounding the Paracel and Spratly Islands, particularly through the author's scholarly analysis of the French archival material and the reproduction of a substantial amount of the original material in the latter half of the book, there are nonetheless some minor defects in the work. First, the final chapter, entitled "Conclusions and Bases for the Settlement of the Dispute" contains no reference to the considerable efforts being made in a variety of forums to do just that. There is no reference to the Canadian-sponsored South China Sea Workshop or to the ASEAN Regional Forum, both of which have been actively engaged for some time in attempting to seek workable solutions to the problems of the area without necessarily resolving the issues of territorial title. Second, there are no modern charts showing the relative claims of the competing States. These would have been useful as a reference point. Finally, there is no index. Readers are likely to find this rather frustrating when attempting to pinpoint a particular piece of information. Despite these minor criticisms, however, this book is a very welcome addition to the literature on this complex and fraught issue and should be in every library claiming to have an interest in South East Asia.

SCOTT DAVIDSON
University of Hull Law School

Japanese Law by Hiroshi Oda, Oxford University Press, Oxford, 1999, pp. 494, ISBN 0-19-8764 561.

Even in this modern age when high-tech products labelled "made in Japan" are easily available all over the world, it is probable that very few lawyers, academics, and students outside Japan would have much knowledge of Japanese law. Japanese law may still be confused with Chinese law; while many simply do not have a clear idea about Japanese law, except for Article 9 of the Constitution that famously renounces war. Thus, ODA's new edition of "Japanese Law" in English is an excellent piece of work, demystifying Japanese law.

"Japanese Law" is not a monograph that focuses on any specific area of Japanese law,

but a textbook covering almost all aspects of the law. It starts, as traditionally, with comparative study, the history and sources of Japanese law. What is important in this very first part of "Japanese Law" is ODA's contention that Japanese law is not part of the legal system of the Far East; he claims that it belongs to the Western legal system. This becomes an important aspect throughout this book. ODA refers to German, French, English, American, and other Western legal systems whenever necessary in order to explain the background to Japanese law. Indeed, it would be correct to assert that no Japanese scholar seriously believes the present Japanese legal system to have been influenced by Chinese law or Confucianism. First-year law students at universities are taught not what Confucius said, but German terms and schools of thought, such as *Recht*, *Bürgerliches Gesetzbuch* and *Rechtssicherheit*. ODA rightly proves the fact that Japanese legal system is very much Western in character.

Next, the author proceeds to the administration of justice, the legal profession, and the protection of human rights. The law's delay was lamented in SHAKESPEARE's *Hamlet*, and the Japanese legal system, as ODA explains, notorious for its delay in bringing justice, is no exception. Notwithstanding problems of justice, it is significant for him to state in these chapters that the Japanese judiciary has played an important part in developing case law, particularly in the area of Constitutional Law. He contends that human rights law has developed as the result of the judiciary's interpretation of the vaguely worded and never amended Constitution. Scholars may tend to think that Japanese law, which basically stems from the Continental law, should be heavily dependent on written law, but his argument clearly refutes such a traditionally held view.

The writer next moves on to the most important part of this textbook, namely, chapters on the Civil Code, commercial law, financial law, anti-monopoly law, and intellectual property law. As he states in the preface, the second edition puts a great deal of emphasis on commercial law, unlike the first edition of *Japanese Law*. Limited space does not allow the comprehensive listing of the major changes to which the textbook refers, but they include the following: a new law concerning product liability; the introduction of stock options; simplification of

procedure for merger and acquisition; new developments in insolvency and bankruptcy laws; the establishment of a new supervisory body over the financial sector, namely, the Financial Supervisory Agency; improving disclosure of companies; and the liberalization of holding companies. In addition, in the last chapter of *Japanese Law*, he discusses those areas of Japanese law to have international dimensions, but he mainly focuses on commercial law relating to international relations, such as foreign exchange and cross-border insolvency. For those who are following Japanese economic news and others directly involved in business with Japanese companies, these chapters offer an understanding of Japanese business and economy in a legal context.

In the last part of the book, ODA expounds labour law, family law and succession, civil and criminal procedures, and criminal law. Although his elucidation of these laws may not be as detailed as that of commercial law, he covers necessary issues and refers to recent developments. For example, in the chapter on family law and succession, he describes recent controversies regarding this area of law, such as a common family name and succession by an illegitimate child. In the chapter of criminal law, he refers to a new law regarding organ transplantation, a development that has changed the traditional concept of death, as well as to the introduction of laws to fight against organized crime, a continuing problem in Japan.

Notwithstanding both ODA's clarity in explaining Japanese law and his efforts to bring up to date cases and materials, those who major in public law might be less content with *Japanese Law* than those in private law. This may be disregarding the stated intention of the author who, in the preface, declares that the second edition of *Japanese Law* highlights commercial law. Despite the fact that Japan has been in a serious recession for almost ten years, it has retained its status as the second-largest economy in the world; therefore, it is natural that greater attention has been paid to its commercial side. Having said this, Japan is now facing many political and social changes as well, and more attention should be devoted to new developments in public law. For instance, Japanese people have been extremely reluctant to debate any possibility of changing their Constitution for more than fifty years, but recent discussions

have increasingly frequently taken place in various fora, including in the Diet, the national parliament, on future changes of the Constitution. The aforementioned Article 9 of the Constitution is an area that almost always raises controversy in such debates. Unfortunately, however, this edition of *Japanese Law* places little emphasis on such recent dynamism. Similarly, the chapter on criminal law appears to be minimal. It is to be hoped that the next edition of *Japanese Law* will focus equally on public law and on private law.

In spite of the above shortcomings, *Japanese Law* presents a good overview of the present Japanese law in a clear fashion. In addition, after a thorough reading of this book, certain readers, including this reviewer, start to consider what Japanese law will and should be in the future. Readers, particularly those who are not Japanese, will notice from the book that Japanese law is not as unique as they may have expected. As the author points out, Japan has pursued a goal of "emulating and surpassing Western powers" since the beginning of her modernization and for that purpose Japan has "imported" a legal system from Western Europe and the US. However, Japan is in a state of uncertainty because she has virtually achieved the goal and lacks examples from whom she can receive further instruction. Therefore, it appears to this reviewer that it is time for Japan to consider what kind of legal system the state will have in the future. Will she continue to have the present legal system, or will she transform her legal system into something uniquely Japanese?

TOSHI KAWAI, LL.B.(Tokyo),

LL.M. (Nottingham)

Staff Member,

Japanese Red Cross Society, Tokyo

Droit International Public, by JOE VERHOEVEN, Précis de la Faculté de Droit de l'Université Catholique de Louvain, De Boeck et Larcier s.a., Brussels, Belgium, 2000. pp. 856, ISBN 2-8044-0630-X.

This book is aimed primarily at students and the author hopes it will also prove interesting to legal specialists such as lawyers, judges, and civil servants who increasingly face questions of international law in "ordinary" practice.

While public international law is no longer of interest solely to an intellectual elite, it remains a complicated, and often vague, form of law. This gives rise to fears on the part of those new to the subject that there are no definite answers and that the subject is insurmountable. In this book, Professor VERHOEVEN raises relevant issues of controversy and debate, without dwelling on those topics that, however interesting, are no longer moot. He does not, however, lull the reader into the false belief that the subject is clear-cut.

He has a critical approach, providing commentary on the efficacy or otherwise of various practices and the validity of rulings of the ICJ, as well as pointing out various idiosyncrasies inherent in the structures and practices of public international law. However, he does this only where appropriate, sometimes with an ironic tone, thereby managing to avoid politicizing that which is supposed to be a technically descriptive work.

Professor VERHOEVEN has structured the book to deal with the main areas of public international law and still manages to address possibly minor issues in greater depth than in a dismissive paragraph. The book is divided into five sections: the Subjects of International Law, the Sources of International Law, the Judicial Regime of Spaces, Reparation and Sanctions, Dispute Resolution, and Collective Security. Although each section is extensive, the subsections are efficient and clear, providing an overall structure that can easily be followed.

As a Francophone textbook, this work follows a certain traditional civil law approach, which should make it more, rather than less, interesting to readers grounded in the common law system. In particular, it is clear that the author is not pressed by an overriding need to justify all his statements through reference to an institutional judgment or the work of another. The credit given to others is thus presented in the more accessible form of a brief footnote, combined with a comprehensive bibliography at the end of each chapter. Further, the author has quoted from works in many languages, providing the reader with a usefully wide range of material for further research.

One of the assets of the work is that the historical context is given not as a chapter on the History of Public International Law, but issue by issue in order to enhance understanding

of particular areas of the law. Obviously, for the sake of brevity, not all historical contexts can be analysed, so various judicious choices have been made; for example, in the section on subjects of international law, the author explains the political, legal, and social history of the Roman Catholic Church before outlining the current status of the Holy See and Vatican City. This recognises that not all readers are steeped in the Western Christian tradition and, further, exposes the reality behind the anomaly of attributing international personality to such confessional entities.

A special feature of this work is the chapter on Belgian solutions to matters of international law. There are two main reasons why this section is a positive attribute. Firstly, the issue of national law is dealt with in depth in a separate section rather than being cited only in a fragmentary manner throughout the book; the approach provides a focus for all students to consider how their countries deal with international law. Secondly, and more importantly, the unique federal system in Belgium provides a fascinating example of the extension of international capacity to internal regional entities.

If there is a criticism to be made, it is in the lack of detailed reference to recent developments in Belgian legislation relating to specific issues of international law, for instance violations of international humanitarian law.¹ In the light of the *Pinochet* case, and the forthcoming International Criminal Court, the Belgian example in this field could give rise to rich debate.

Professor VERHOEVEN is very clear that his book is a technical handbook ("*un manuel de solfège*") and that it is a summary of public international law; it is not necessarily a short book, but one that exposes and teaches the essentials. He states that students should not be the only ones interested in a relatively complete and systematic expose of international law. While wishing to reach a larger readership is a legitimate aim for this type of book, it is not achieved as successfully as it might have been.

¹ Loi du 10 février 1999 relative à la répression des violations graves de droit international humanitaire, *Moniteur Belge*, 23 March 1999.

The style is very much that of the Francophone academic and as such tends towards the intellectually élitist. The essentials are covered, the moot points are raised, but there is confusion rather than clarity in the mode of delivery, if not in the substance. This is disappointing because there are many interesting aspects to this book. If it were more accessible to the reader who does not attend university lectures, it would be an asset to that additional readership.

Whereas a student may have to read the whole book, other professionals will want to be able to read it selectively. The current style tends to mix factual conclusions on the actual status of international law and practice, on the one hand, with the various discussions surrounding the issues, on the other. Therefore, one would have to read entire sections, including all the academic debates, in order to find a few sentences stating the current situation. This is of course beneficial to students, but is less so to legal professionals and to those using the book as their secondary textbook.

In order to reduce the impact of this prose style, the current index pages could be expanded; it would also be of greater assistance if at least the major cases and primary sources were mentioned in the index. Further, the structure might be reconsidered to the extent of making certain chapters more specific, and certain conclusions more apparent.

It may be suggested that the issue of style is a personal one, and that much of the criticism of this book is based on a misunderstanding of the prose style of Francophone textbooks. However, as public international law moves into ever-wider areas of law and life in general, increasing numbers of lawyers of all nationalities will be seeking access to academic and other textbooks on the subject. Indeed, this is the type of book they will be hoping to read.

It is therefore necessary that all authors start to simplify their use of the written language, irrespective of which one it may be. Academics have long been accused of living in ivory towers, and while this accusation is often ill-founded, it finds some evidence in the textbooks in this field.

Law is a complicated subject; its complexities are what provide so many of its acolytes with their interest and enthusiasm. However, complex ideas can nevertheless be

analysed and explained simply, and this is a challenge that international lawyers should take seriously.

This book will have an immediate readership in French-speaking students of the subject. It provides them with an interesting outline and analysis of the foundations needed in public international law, after which students can proceed to works that are more highly specialized. Other groups will also find it of interest; future editions can only expand that readership.

CAITLIN C.E. MACKENZIE
Hull University Law School,
England

International Refugee Law: A reader, edited by B.S. CHIMNI, New Delhi/Thousand Oaks/London, Sage Publications, 2000, pp. 613, ISBN 0-7619-9362-2 (US-Hb); 81-7036-853-7 (India-Hb), Price: Rs. 695.

Producing a comprehensive publication of this nature and especially on such a complex area of international law is quite a laborious task for the author or editor, but a very useful book for the readers to have. This appears to be the first publication of its kind on the international law of refugees. Professor CHIMNI has a well-established reputation as a leading scholar in the law of refugees and the publication of this book by him is a welcome addition to the body of literature on the subject matter. As stated by Dr SADAKO OGATA, the UN High Commissioner for Refugees, in her foreword to the book, "Professor CHIMNI has been a strong voice and critic of the current international refugee regime, in particular the restrictive practices of states on international protection." (p.xi)

This book is a collection of material on international refugee law. It is divided into eight chapters covering all major aspects of the current regime of refugee protection under international law. The material presented is organized around certain thematic lines and the editor has provided his own introduction to each of the chapters outlining the basic strands of thought on the issues covered. The first four chapters deal with the basic rules of the law of refugees, including the definition of a refugee, the law of asylum, the right and duties of refugees, and the mandate and functions of the UNHCR. After

providing a good exposé of the basic law, the next three chapters go on to examine the issue of the root causes of refugee flows and the law of state responsibility, durable solutions to the refugee condition, and the internally displaced persons. In doing so, these chapters go beyond the ambit of the 1951 Convention on Refugees and consider a wide variety of social, economic, political, and legal issues relating to the global refugee problem. The last chapter analyses the Indian practice on the protection of refugees.

The book begins by providing, in Chapter I, the definition of a refugee in international law. It looks at the provisions of both the 1951 Convention on Refugees and other instruments such as the OAU Convention, the Cartagena Declaration, and the AALCC principles. Chapter II deals with the issues surrounding the institution of asylum and considers the principle of non-refoulement, temporary protection and burden sharing, etc. Chapter III provides a detailed account of the rights and duties of refugees under international law. The functions and powers of the main UN agency responsible for the protection of refugees, i.e. the UNHCR, are analysed in Chapter IV. Both the mandate of the UNHCR and its limitations come under close scrutiny in this chapter. While Chapter V outlines the causes of refugee flows and the law of State responsibility, Chapter VI discusses the solutions to the problems of refugee flows. Some of the most controversial issues and the dilemmas faced by many states hosting the refugees have been discussed in this chapter. They include the question of local integration, voluntary repatriation, organised repatriation, and spontaneous repatriation.

Chapter VII considers a slightly different yet related issue of internally displaced persons. This chapter demonstrates the inadequacies of the existing international law on internally displaced persons. They are more often than not in need of as much protection as refugees, but, sadly, they do not get as much protection under international law as do refugees. Chapter VIII deals with the legal condition of refugees in India. This chapter begins by surveying the plight of refugees from the time of the partition of India and goes on to examine the protection afforded by India to the Tibetan refugees, the Bangladeshi refugees during the Indo-Pak conflict of 1971/72 and the flight of Tamil refugees

from their homeland owing to the on-going conflict in Sri Lanka.

The attempt of the editor in this publication seems to be to provide a comprehensive collection of material on all major aspects of refugee law and he has succeeded in it. As stated by Professor CHIMNI, his aim was also to offer a text that “presented international refugee law from a Third World perspective.” Although it is difficult to present a third-world perspective on any area of law through the publication of a reader of this nature, the editor has done his best both through his introduction and through the careful selection of material to outline the problems involved; this is done from the perspectives of both northern and southern countries, making the book truly comprehensive in character.

His decision to include a separate chapter on the practice of India has added a welcome Indian flavour to the exercise. By analysing the practice of a third-world country that has provided protection to refugees from neighbouring countries without ratifying the main international treaty on refugee protection, the editor has highlighted the strengths and weaknesses of the existing international legal regime on refugees. Since the editor of the book has himself contributed a great deal to the debate on the protection of refugees under international law, he has not hesitated to include his own published and unpublished material in the book since these provide an interesting insight into the status of the law and its application in practice.

All in all, this is a very welcome collection of material on the subject matter from a person who has contributed a great deal to the subject. Although the editor states that the publication was designed to cater mainly for readers from India and South Asia, it has all the qualities to make it a publication suitable for recommended reading for courses on international refugee law offered by any university located anywhere in the world. This is a very useful and valuable source of material for the teachers and students alike of international law of refugees.

SURYA P. SUBEDI
Middlesex University Law School,
London

Comparative Studies on Governmental Liability in East and Southeast Asia, by Yong Zhang, (ed.) The Hague/London/Boston: Kluwer Law International, 1999, pp. xx, 252, ISBN 90-411-1074-7.

The book is the product of a conference of the same name and is the second volume in a trilogy on the protection of citizens' rights against the State in East and Southeast Asia. It contains a number of essays by distinguished academics from a range of East and Southeast Asian countries, including Korea, Taiwan, China, Japan, Indonesia, and Malaysia. Moreover, it also contains two essays regarding the state of the law in Germany and the Netherlands that serve to demonstrate the influence of western legal systems in the development of Asian legal systems. They also provide a wider comparative perspective, and offer a benchmark for an appraisal of the less sophisticated Asian systems. The establishment of governmental liability in East Asian countries is a relatively recent phenomenon, occurring for the most part in the mid to latter part of this century under pressure from Western powers. Social and economic demands have led to a changed role for Government, and in turn have demanded modernisation of Asian legal systems. The recent modernization in the area of governmental liability is the focus of this volume.

DR. ZHANG introduces the volume and draws the reader's attention to a number of points. Some comparative works on the legal systems of East Asia have been affected by a superficial understanding of the divergent colonial histories of the countries, and by a lack of research into the actual functions of legal systems therein. He also notes that the modernization of legal systems in East and Southeast Asia share similar patterns, partly derived from shared historical experiences, and partly from the shared environment in which they at present operate. It might be added that each country is faced with similar concerns regarding development, and the consequent demands which are placed on the institutions of the State to accommodate such concerns. He asks the reader to read the subsequent essays in this light. Apart from a useful introductory chapter by TOSHIRO FUKU on the historical development of State Liability and the Law of Remedies, and the final commentaries by DR. ZHANG, the remainder of

the book consists of a series of essays written by distinguished academics in the field of Public Law. Although the issue of government liability is a large one the essays manage to review many of the key issues. Each essay examines the scope and limits of government liability in a particular country, and as well as precisising the general regime for liability, they make reference to particular heads of liability. These include the expropriation of property, which may be the most common instance where governmental liability arises, employment liability, negligence by the police and penal authorities, and medical victim compensation. Questions of liability arising from lawful activities, vicarious liability and the scope and limits of reparation are generally considered. However, it is not the aim of this book to provide a comprehensive analysis of every area of government liability, and readers should not expect that depth of coverage. Indeed each essay differs in both content and approach, perhaps reflecting the respective ideologies of each system. Certainly the book is a comparative exercise and designed to illustrate certain dynamic issues or problem areas, and to provoke reflection.

DR ZHANG concludes the book with his own commentaries on comparative studies on governmental liability. His chief concern is the lack of sophisticated in forms of preventative action in most East Asian countries as opposed to basic systems for compensating damages. Compensation ought to be a final safeguard of citizens' interests, and the absence of proactive measure places undue stress on the legal system. Although States have introduced systems of judicial review they leave much to be desired, and as a consequence they are likely to be incurring themselves to unnecessary and fruitless litigation. This section provides an important comparative overview and remarks on key issues such as compensation and reparation from losses arising out of lawful activities.

The individual essays are by necessity quite descriptive of the systems of government liability they portray. Yet the respective authors manage to suffuse them with a valuable degree of critical appraisal. For example, DR HARDING is highly critical of the situation in Malaysia where unnecessarily obstructive protection is afforded to public authorities in the absence of legitimate policy considerations. PROFESSOR HADJON is equally dissatisfied with judicial

constraints that inhibit the Indonesian system of governmental liability. For the most part these 'flaws' in the respective legal systems appear to flow from entrenched conceptions about the proper role of the State, and even ideologies about institutions such as property rights. Thus in China, Taiwan and Indonesia the State enjoys a high degree of discretion in providing compensation for the expropriation of private property. In practice there is often a low level of compensation that may reflect a preference for public considerations over private rights, or at the very least a failure of the legal system to adequately facilitate private property interests. As the legal systems in the region are undergoing extensive modernisation they offer an excellent opportunity for examining the confluence of ideas and philosophies, and the book seizes this opportunity. As PROFESSOR DEPPENHEUER's essay on Germany notes this process is occurring in Europe under the influence of the European Union. Arguably East and South-east Asia are experiencing a similar process resulting from their shared economic concerns.

The book is a quality publication in an area of continuing practical and academic concern. Primarily, it is a valuable introduction to the different systems of government liability and would appeal to public lawyers as such. Yet it also provides profitable insights into those factors which underpin and shape the letter of the law. Implicit and explicit in the text are concerns such as the reticence to develop proactive administrative remedies, the treatment of property rights, and even the influence of human rights in effecting the limits of citizens redress against the state. Such concerns add greatly to its value as a comparative text. Given that principles tortuous liability underpins the subject of government liability, the book might well appeal to students with an interest in the private sphere, or at least the relationship between public and private law. Overall the book is a recommended addition to the law library of any institution.

RICHARD A. BARNES
University of Hull Law School,
England

International Law and the Use of Force, by
CHRISTINE GRAY, Oxford University Press,
2000, pp. 243, ISBN 0-19-876527-4.

Apart from the important provision of Article 51 that admits unilateral forcible action in exercise of the right of individual and collective self-defence against an armed attack, the UN Charter makes clear that the use of force under the United Nations system is intended to be monopolized by the Organization. This monopoly finds its corollary in the context of the United Nations, in the prohibition of the unilateral resort to force by States when the Charter, for the first time, referred directly to not resorting to force in Article 2(4). However, as a consequence of unilateral actions in the final decade of twentieth century by some States, the Article is currently the subject of fundamental disagreement; the perennial problems surrounding the legality of the use of force, the subject of fierce debate and fundamental doctrinal difference during the Cold War, still continue. Indeed, not only have the problems not been solved but other problems have emerged.

This book attempts to cover the whole of the large and controversial subject of the use of force under contemporary international law. It examines the use of force by States, the role of the UN and regional organizations in the maintenance of international peace and security, and State practice in the light of doctrinal debates. It is divided into seven chapters on the following diverse topics: Law and Force (Ch. I), The Prohibition of the Use of Force (Ch. II), Invitation and Intervention: Civil War and Use of Force (Ch. III), Self-defence (Ch. IV), Collective Self-defence (Ch. V), The UN and the Use of Force (Ch. VI), and Regional Peacekeeping and Enforcement Action (Ch. VII).

The question of self-defence in the light of recent academic debate over the issue, the role of the Security Council under article 51 of the UN Charter, and the scope of self-defence are well discussed by GRAY in what is perhaps the most interesting part of this book. The author tries to highlight fundamental disagreement on the issue on law of self-defence among States and also among jurists. The divisions over the scope of the right of self-defence whether anticipatory or preventive, the protection of nationals, and the right of self-defence in response to colonial occupation and terrorism are addressed. If there were an armed attack the right of self-defence arises. This is an issue upon which all States agree. It is expressed in the

Declaration of Non-Use of Force in 1987, which relies on the UN Charter; it is stated that "States have the inherent right to individual or collective self-defence if an armed attack occur, as set forth in the Charter of the United Nations". However, the important issue is what constitutes an armed attack. This disagreement was well demonstrated in the *Nicaragua Case*, where the US claimed that its use of force against Nicaragua was justified as collective self-defence of Costa Rica, Honduras, and El Salvador in response to armed attacks on those States by Nicaragua. However, the Court rejected the US argument and found that there was no armed attack by Nicaragua. With reference to *Nicaragua Case* and the *Legality of the Threat or Use of Nuclear Weapons*, the Court reaffirmed that necessity and proportionality are conditions for self-defence, individual and collective. Necessity and proportionality help to distinguish unlawful reprisal from lawful self-defence. The Security Council has in its resolutions condemned disproportionate responses by Israel, South Africa, and Portugal.

Another important issue that the international community has recently dealt with is response to a terrorist attack by military force based on self-defence. The author discusses the issue in Chapter IV (pp. 115-119). A quick look at certain events shows that an extended concept of self-defence has been used by the US against Libya in 1986, Iraq in 1993, Sudan and Afghanistan in 1998; also by Israel against Lebanon in 1968 and Tunisia in 1985 in order to respond to terrorist attacks. Those actions combine the protection of nationals and anticipatory self-defence. The first action by Israel in 1968 against Lebanon, on the pretext of response to a terrorist attack on an Israeli plane in Athens airport, met with strong objections from the international community. The UN Security Council also unanimously condemned in Resolution 262 the action taken by Israel. Other actions met a more or less similar response.

Does the right of self-defence apply in this situation? The wide doctrine of self-defence was used by the US in 1993 against Iraq, following an assassination attempt on ex-president Bush by an Iraqi agent in Kuwait in April 1993, against a Sudanese pharmaceutical plant and in Afghanistan, against Osama Bin Laden's training camp, as well as missile attacks in 1998 after

terrorist attacks on USA embassies in Kenya and Ethiopia in August 1998. CHRISTINE GRAY argues that these actions appear to be reprisals, because they were punitive rather than defensive. She also notes that "even if the actions were aimed at those actually responsible for terrorist attack, and even if the response could be accepted as proportionate, it is difficult to see how the use of force was necessary, given that the attack on the nationals had already taken place. The USA and Israel aimed to retaliate and deter and said that their actions were preemptive. The problem for USA and Israel is that all States agree that in principle forcible reprisals are unlawful. Moreover, the GA also made it clear in the *Declaration on Friendly Relations* and the *Resolution on Inadmissibility of Intervention*."

The book also well refers to the end of the Cold War when, with the co-operation of the Soviet Union and the US starting in the late 1980s, UN missions increased in various respects. Analysis of UN missions makes clear that the UN authorised its missions first in conflicts that were primarily internal, such as the tragedy in Angola, Cambodia, Congo, Kashmir, Middle East, Somalia, Bosnia, Kosovo and finally in East Timor. The wide latitude offered in the terms "international peace and security" and the extent to which such conflicts were indeed connected to international security issues made it possible to say that the conflicts were indeed linked to international peace and security. The invasion of Kuwait by Iraq in the late 1990s prompted the second experience of the UN with full-scale Chapter VII enforcement operations, such as had been undertaken in Korea. After the occupation of Kuwait, a series of SC resolutions was issued in order to end the crisis in a peaceful manner. When the imposition of sanctions proved unable to guarantee the liberation of Kuwait, the SC moved towards enforcement measures in response to the invasion. The SC authorized a group of countries to carry out the enforcement action on its behalf for the liberation of Kuwait. The UN, in the name of peace and security, also took an important step by issuing an *Agenda for Peace* in 1994, addressing a whole spectrum of peace and security actions: preventive diplomacy; peacemaking; peacekeeping, and peace building.

This book well explores the current pattern of legal regulation in a manner that combines

clarity of presentation with rigour in academic scrutiny. The special attention paid by the author to the recent unilateral use of force in the light of various arguments upon the issue, as well as the author's own conclusions which appear at the end of the last four chapters, are notable features of the book. In my opinion, this book is a valuable and rich resource for international lawyers, students, and all those who wish to study the question of use of force in international law.

M.T. KAROUBI, Tehran, Iran

Just War or Just Peace? Humanitarian Intervention and International Law, by SIMON CHESTERMAN, Oxford University Press, Oxford and New York, 2001, pp.295, ISBN 0-19-924337-9

Following the NATO military action against Federal Republic of Yugoslavia on 24 March 1999, politicians and commentators gave various reasons for its occurrence. Among those reasons, the doctrine of humanitarian intervention was cited even though later the behaviour of States showed great reluctance to rely upon it. The place of humanitarian intervention and its legality was and still is a controversial issue in the contemporary modern legal system. The Charter of the UN clearly prohibits the use of force in international relations with the sole exceptions of self-defence and enforcement actions authorized by the Security Council. There are long-standing arguments that a right of unilateral intervention pre-existed the Charter.

This book attempts to explore the humanitarian intervention doctrine in its historical and political context and also covers various arguments surrounding it. Attention is drawn to the crucial tension in the international legal order between sovereignty and human rights, between the prohibition of the use of force and the protection of human dignity. In this regard, the author first examines the origins of the right and then pays special attention to the doctrine and debate surrounding it, such as the argument that the right has survived the passage of the Charter, through a loophole in Article 2(4) or as part of customary international law.

The book is divided into six chapters. Chapter One considers the origins of human-

itarian intervention, based on an analysis of the early international law writings of scholars, natural law theorists, and positivists, and concludes that its moral and legal heritage lies in the earlier conflict between the moral impetus to war over religious differences and the legal restraints that came to be placed on States entering into a society of equals. The principle of non-intervention in international law was propounded by positivists in the eighteenth century and encouraged by the political transformation in Europe in the nineteenth century. Adherents of this school are generally committed to sovereignty and to the State as a morally free entity, and strongly reject all intervention in the sovereignty of other States, because any intervention on their behalf, no matter how great the moral claim, is incompatible with sovereignty. State practice between 1815-1945, cited by the author, demonstrates the paucity of evidence of a general right of humanitarian intervention in customary law. Following the emergence of the term "humanitarian intervention" in the nineteenth century, a group of jurists argued that humanitarian intervention existed as a legal right. They tried to define the theory in an attempt to give a juridical basis to the right of one State to exercise control over the internal acts of another State. WOOLSEY and ARNTZ approached GROTIUS' conception of punitive war and adopted the view that it was representative of civilized government intervening in the affairs of other States. BLUNTSLI and CREASY recognized the legality of humanitarian intervention based on States' entitlement to assert the rights of subjects *vis-à-vis* their sovereignty in certain circumstances. This was the modern equivalent of GROTIUS' right to wage war on behalf of the oppressed.

The status of humanitarian intervention in the first half of the twentieth century, however, shows that the doctrine at that time became more problematic. Collective action on the part of the international community was politically difficult, and the notion of unilateral intervention by a State or group of States sat uncomfortably with the increasing emphasis on the inviolability of the domestic jurisdiction. CHESTERMAN argues that the League of Nations neither prohibited nor explicitly supported humanitarian intervention. By acceptance of obligations not to resort to war and "the maintenance of justice and a scrupulous response for all treaty obliga-

tions in the declaring of organised reports with one another” the Covenant aimed at peace. The use of force was not outlawed as such, but war was made a matter of concern to the entire League; members were required in the first instance to submit any dispute to arbitration, judicial settlement, or to enquiry by the Council. It is at least arguable that internal human rights violations could have constituted such a dispute, though the Council explicitly disclaimed any capacity to make recommendations on a matter that “by international law is solely within the domestic jurisdiction of [a] party”. The author also notes that the Pact of Paris makes no mention of humanitarian intervention, although its tenor was clearly inconsistent with any such right. States parties stated their conviction that “all changes in their relations” should be sought only by pacific means, condemned recourse to war for the “solution of international controversies”, and renounced it as an instrument of national policy. There was considerable diplomatic activity concerning reservations to this prohibition, but the reservations were limited to the right of legitimate defence or self-defence. Since World War II, war is to be renounced as an instrument of national policy, human rights are to be affirmed, but the tension between sovereignty and human rights in the established international legal order is manifest in the opening words of the United Nations Charter.

Both Chapter Two and Three examine whether a right of humanitarian intervention can exist and be compatible with the UN Charter provisions and acceptable as customary international law. Opinions of some jurists such as TSON and REISMAN, as well as claims to intervene to promote democracy (the Reagan doctrine) are examined in the light of State practice from 1960 till 1999. Under Article 2(4) of the Charter, the threat or use of force is prohibited and protection of human rights is limited to the provisions of Articles 55 and 56. The author indicates that the most recent writer who paid attention to humanitarian intervention recounts this tension then proceeds to consider a series of alleged instances of intervention on humanitarian grounds, in order to conclude whether or not such a right exists in practice (p.45).

Enforcement actions authorised by the Security Council for humanitarian reasons, called “collective humanitarian inter-vention”,

are considered in Chapters 4 and 5. At the end of the Cold War a more unified and active SC sought to fulfil its primary responsibility for the maintenance of international peace and security. At the same time, by blurring the boundaries of the exception to the prohibition of the use of force established by Chapter VII, it threatens to undermine this cardinal principle of international legal order. Lack of international institutions capable of dealing with this increased responsibility led to a reliance on delegation. Therefore, according to the author, “Security Council actions were limited to situations where acting States had the political will to bear the financial and human costs of such measures.” As a result of that, a series of ambiguous resolutions and conflicting interpretations of the extent and duration of the authority conferred by the Council were issued, particularly against Iraq throughout the 1990s. Chapter 5 demonstrates that the transition from Operation Desert Storm in Kuwait to Operation Allied Force in Kosovo is not as great as it might at first appear. Those SC resolutions that authorized the coalition action against Iraq depended not only upon a broad international consensus but also upon a coincidence with the national interests of the acting States. Therefore, the author concludes that “... As subsequent enforcement actions showed, however, this coincidence of interests quickly resolved into a condition precedent to action. This was reflected most graphically in the changing role of the Secretariat, as the Secretary-General’s reports to the Council increasingly reflected pre-arranged deals with the P5. In the lead up to and during Operation Allied Force – where there was no deal – this role as salesman seamlessly transformed into that of apologist.”

With regard to East Timor and the Kosovo disaster in 1999, the final Chapter explores how international law responds to the disjunction between recognised norms and enforceable law. Following depth discussion on this issue, the author concludes that none of these arguments is found to have merit, either in principle or in the practice of States. He notes that none of the arguments upon the legitimacy of humanitarian intervention put forward by commentators and politicians, claiming that the right has survived or emerged after the enactment of the UN Charter, and that recent humanitarian action for

human rights is compatible with Article 2 (4) of UN Charter, are persuasive.

CHESTERMAN takes a very narrow view of just war theory and classical precursors to humanitarian intervention. In the view of the present reviewer, study of the origin of just war as presented by traditional scholars and the criteria for legitimate war, including religious and secular approaches, would have been useful in this work. Apart from this suggestion, it can be said that the author has given a comprehensive discussion of humanitarian intervention in the light of policy and political considerations, as well as the moral ideas lying behind the emergence of principles. The examination of the latest cases, treaties, and SC and General Assembly resolutions in the light of various arguments that are addressed in the work, make the book remain a rich resource for anyone wishing to study the issue. As Professor IAN BROWNLIE says, the text is, "of considerable value to lawyers, historians, and students of international affairs".

M.T. KAROUBI, Tehran, Iran

The Gentle Civiliser of Nations: The Rise and Fall of International Law 1870-1960,
by MARTTI KOSKENNIEMI, Cambridge University Press, 2002, ISBN 0521-62311-1 (hardback)

No one interested in the history of international law over the past century and a half can afford not to read this book. Anyone who does will be rewarded with a wealth of insights into the nature of this curious branch of jurisprudence. Professor KOSKENNIEMI takes as his basic theme the emergence of a system of international law with the growth of empires in the second half of the nineteenth century, its heyday and its decline with the collapse of those empires. He has succeeded in his objective of placing the lawyers responsible for the development of international law within social and political contexts, evoking in an unusually powerful narrative their attitudes and emotional dispositions ("sensibility").

His account takes as its starting point the *Revue de Droit Internationale et de Legislation Comparée* launched in 1869 under the editorship of the Belgian liberal activist GUSTAVE ROLIN-JAEQUEMYS. It began a process by which inter-

national law came to be seen as part of European history and the development of European conscience, a concept rooted in political liberalism and finding its highest expression in an aspiration to act in a civilized manner. Expressly anti-communist and bourgeois, the *Revue* counterposed the "civilization" of the European powers with the "barbarism" that ruled much of the rest of the world, and that it was the obligation of the civilized to correct.

KOSKENNIEMI dissects with great delicacy and wit the web of assumptions and attitudes that were the stock-in-trade of international lawyers in the closing third of the nineteenth century. He shows the circularity of much of their argumentation and the prejudice colouring their view of non-European races. He deals in detail with their relationship to the great colonial enterprises of the day, and particularly with the Berlin West African Conference of 1884: it sought to agree a legal basis for European penetration into the Congo basin. His restrained and balanced account of the debates among the European international lawyers of the day about the institutional packaging of the civilizing mission is a delight.

The problem of the relationship between international law and formal empire, in KOSKENNIEMI's view, arises from the connection made by liberals between progress and civilization on the one hand, and a particular political form, Western statehood, on the other. As he points out, Western political institutions do not carry the good society with themselves. "The same types of government create different consequences in different contexts; there is nothing predetermined about the State form. It can be used for freedom and for constraint, and history is full of examples of both." And he draws the contemporary moral: "whatever the choice of institution, it should be a matter of debate and evidence, and not of the application of universal principles about 'civilisation', 'democracy', or 'rule of law'."

Four substantial essays follow on traditions of international law in pre-Hitler Germany, France from 1870 to 1950, on HERSCH LAUTERPACHT and on the American international law tradition epitomised by CARL SCHMITT and HANS MORGENTHAU. In a short review it is not possible to do justice to these chapters, containing as they do a wealth of valuable insight and acute critical observation. They are followed by

an Epilogue drawing together biographical observations on his main protagonists with reflections on the state of international law in the post-colonial period. As KOSKENNIEMI observes, "Today it has become much harder to believe that there is a rationality embedded in international law that is independent from the political perspectives from which it is seen. On the contrary, a Security Council sanctions regime or a multilateral trade arrangement within the World Trade Organisation appear as completely legal and completely political at the same time, rather like Wittgenstein's image of the duck-rabbit. If there is no perspective-independent meaning to public law institutions and norms, what then becomes of international law's universal, liberating promise?"

His answer to this key question is that the energy and hope of international law lies in its ability to articulate existing transformative commitment in the language of rights and duties and thereby to give voice to those who are otherwise routinely excluded. Its content cannot be fixed permanently to definite institutional or normative structures. Instead, it should embody the understanding that every community is based on a form of exclusion and that an acceptable community must constantly negotiate that exclusion and widen its horizon.

MAUREEN SPENCER
Middlesex University

Transnational Environmental Law: lessons in global change, by PETER H. SAND, The Hague, Kluwer Law International, 1999, pp. 385, ISBN 90-41197249.

PETER SAND is a name highly regarded in the area of international environmental law. He has been an important figure in international environmental law making within the last three decades or so. A prolific writer with his own intellectually sharp and practical vision for the safer and better world, Dr SAND has contributed much to both the development and the dissemination of international environmental law over a long period of time. This book, published in the *International Environmental Law and Policy Series* edited by Professors DANIEL BODANSKY and DAVID FREESTONE for Kluwer Law International, is a collection of his essays

written over a long span of time. There are altogether twenty chapters in this volume, each chapter tackling a highly significant aspect of environmental law.

The essays selected for inclusion in this volume have been updated and the author has gone to great lengths to provide as much both traditional and current information as possible, including items posted on the Internet, on the subject matter covered by the relevant chapters. This accessibility provided by the author adds to the usefulness of the volume to teachers and students alike of international environmental law. His writings seem to be a distilled and mature expression of the views he has gained through working for various environmental organizations. His views are inspiring and thought provoking. As the editors of this series point out, "What makes Peter's work so valuable is its unique marriage of theory and practice".

The book covers a wide variety of topics and presents an intellectually rich analysis of extant and evolving principles of international environmental law. It is an interesting read and a very useful source of reference on the topic. International environmental law is still in its infancy and, as stated by Dr SAND, "experiments have been going on all the time" in this area. He rightly sums up the contemporary experiments taking place at four distinct levels: "(1) new techniques of international law-making; (2) transformations in response to innovative national law-making; (3) new focal area of legal regulation; and (4) a new emphasis on the effectiveness of laws and legal institutions" (p.5). Accordingly, the essays included in this book address these four themes in turn.

The volume is divided into four Parts, with the twenty Chapters grouped together along certain themes. Part I deals with the new ways of making environmental law. Here, the author deals with the evolving machinery of environmental standard setting with particular reference to Eco-standards, Eco-permits and Eco-audits, and the new approaches to trans-national environmental disputes. In assessing the 1992 Rio de Janeiro Conference on Environment and Development in Chapter 5, the last of Part I, Dr SAND provides much food for thought for international environmental lawyers with his analysis of the dichotomy of "hard" and "soft" law rules, non-law and pre-law outcomes of the UNCED

and the issues surrounding the UN reform or UN by-pass. Since Dr SAND had first-hand experience of leading the way to the UNCED, his analysis in this Chapter is particularly interesting since he gives here his wealth of experience on the subject matter.

While Part II deals with the impact of innovative national law on the development of environmental legal norms, Part III discusses the new focal areas around which a great deal of international environmental law has developed. The topics analysed here are the regional approaches to trans-boundary air pollution, protection of the Ozone layer, and the new financial mechanisms for global environmental protection. Part IV contains an assortment of issues put together under a broad title, "A New Emphasis on Effectiveness of Legal Institutions". The areas covered to assess the effectiveness of environmental law principles and the institutions created for their implementation are CITES; international environmental governance through standard-setting, licensing and auditing; use of economic instruments for sustainable develop

ment, and institution building. Since this book is not a monograph but a collection of by and large self-standing essays, there is no concluding Chapter to encapsulate the foregoing discussion.

However, the author has made an attempt in each of the chapters to convey a powerful message to the decision and policy-makers around the globe. As expressed in the cartoon pictured on page 348, legal measures are lagging in arresting the environmental problems facing the world today. It is where the book makes an effective plea for the adoption of rapid legal and political measures designed to protect the environment. All in all, this book is a welcome and rich addition to the body of literature on international environmental law. Accordingly, the present reviewer would gladly recommend this book as a very valuable and insightful work to those interested in international environmental law and policy.

SURYA P. SUBEDI
Middlesex University Law School,
London