theoretical statements are invariably accompanied by clarifying examples.

This reviewer cannot resist the temptation to prove her thoroughness by mentioning a few minor points on which she disagrees with the author. Prof. Franck uses the term exterritoriality in the context of immunities (p. 36), but this term was based on a fiction and has practically been discarded. The 1951 Fisheries case (p. 53) dealt with the territorial sea and not with the continental shelf. The author seems to assume that the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities offers autonomy to minority groups (p. 162), but the text only ensures those groups the preservation of their identity without granting them autonomy. These minor remarks are not intended to detract from the great value of the book.

To conclude, Professor Thomas Franck has written a masterpiece, a modern classic of international law.

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Kontou, Nancy. *The Termination and Revision of Treaties in the Light of New Customary International Law.* New York: Oxford University Press, 1994. Pp. xvii, 166. Index. $55.

The problem addressed by this book is the situation created by the coming into effect of a rule of customary law that runs contrary to an existing treaty provision. It takes a rather strong position in favour of the idea that a state bound by a treaty which is contra to newer custom has the right to insist on its cancellation or renegotiation. This seems to follow from a rather straightforward, binary view of custom, namely that there either is or is not a new custom. Americans are inclined to be sceptical of assertions about custom, noting that they can be highly partisan, self-seeking and disingenuous. In a world without judicial institutions possessing broad jurisdiction, definitive resolution of questions about custom is rare. One fears that an assertion of a new custom may be one more in a set of reasons for avoiding a nation's treaty obligations.

In fact, the supersession of treaties by custom is not a common event since in the context of modern international law the advent of new treaty rules codifying, modifying or cancelling prior customary law is by far the more usual. A large fraction of the examples considered in this book come from a single event – the supersession of various agreements by newer customary international law of the sea. The special quality of this new custom lies in the fact that it is primarily the product of widespread agreement among states upon the provisions of the Law of the Sea Treaty signed in 1982, together with its failure to achieve enough ratifications to cause it to come into effect before 1994. It is a somewhat uneasy state of affairs when a treaty that has failed *qua* treaty has such a major effect, coming through the back door as custom. For one thing, this shift from treaty to customary law alters the internal balance of power among branches of the government in the United States and perhaps in other countries as well. A treaty under the US Constitution requires the agreement of two thirds of the Senate, and even a presidential/executive agreement needs a vote of both houses of Congress. Yet a President can alone determine that a new customary rule has formed and that the United States should adhere to it. This is what happened in 1993 when President Reagan proclaimed a 200 miles exclusive economic zone. The judiciary also has some power to declare customary law as part of the law of the land. As between states, the existence of this new custom has been hotly controverted. The United States has with considerable success taken the position that the parts of the Law of the Sea Treaty that it likes have become custom, whereas the parts that it does not like, chiefly those relating to the Deep Sea Bed Mining Authority, have not. It has thus been able to avoid directly confronting the question whether it should accept the whole package. That has also weakened the position of states that thought they could insist on the deep sea bed provisions

because states with other priorities would accept it in order to get the clauses they wanted.

Dr. Kontou writes clearly and rather elegantly. There is so much bad prose assaulting the reader of international law publications that it is a pleasure to read straightforward declarative sentences without entangling clauses. In the best tradition of British international law it is lucid and understandable – and mercifully condensed. It also has some of the limitations of the British tradition. The view it takes of custom is rather old-fashioned. One finds no reference to the works of such authors as David Kennedy and Martii Koskenniemi who have tested the rhetoric of customary law and found it inadequate to explain why and when a customary rule is binding. An infusion of that scepticism would have made the book more realistic, though probably less readable.

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'A Critical Study of the International Tribunal for the Former Yugoslavia', *Criminal Law Forum* (vol. 5, 2–3). Camden, Rutgers University School of Law, 1994. (republished as *The Prosecution of International Crimes: A Critical Study of the International Tribunal for the Former Yugoslavia*. Roger S. Clark and Madeleine Sann (eds). Transaction Publishers, 1996)

This collection of essays by prominent academics and practitioners worldwide is one of the first surveys in print of the many substantive and procedural issues raised by the Security Council's establishment in May 1993 of an ad hoc Tribunal to judge crimes committed in the former Yugoslavia. These essays, all completed between late 1994 and early 1995, present a useful starting point for those interested in the growing field of international criminal law.[1] Those looking for more philosophical analyses or for a full-fledged critique of the Balkan tribunal will be disappointed, however. The authors here are, with a couple of exceptions, advocates for internationalized war crimes prosecutions and the glimmering goal of a permanent international criminal court. They applaud the creation of the Tribunal, seeing it as the forerunner of a permanent court and a worthy successor to Nuremberg. The challenges facing it are regarded as amenable to innovative, lawyerly solutions. Readers aware of continuing breaches of international humanitarian law in the former Yugoslavia and, through 1996, of the failure of virtually all involved to comply with those aspects of the Dayton Accords requiring cooperation with the investigation and prosecution of war crimes, will surely be less sanguine about the Tribunal's prospects.

Those familiar with the not entirely consistent interpretations of the Security Council's powers rendered by the trial and appellate judges in the course of the Tribunal's first trial[2] will be neither surprised nor enlightened by the inconsistent rationales advanced here to justify the legality of the establishment of that Tribunal under the UN Charter. In this volume, Roman A. Kolodkin argues that the general and specific powers of the Security Council under UN Charter Articles 24, 25, and 41 (but not Article 29 on the establishment of subsidiary bodies) authorizes the creation of an ad hoc (but not a permanent) international criminal court. He further contends that such bodies cannot be created by the General Assembly under any circumstances (despite its creation of the UN Administrative Tribunal) or by the Council pursuant to an 'enforcement action' under Chapter VII (pp. 388–395). Kenneth S.

1 Both the original journal format and the hard-bound published version contain handy appendices with some of the foundational documents for the Tribunal, including basic Security Council resolutions and the Statute and Rules of the tribunal. Page references in this review refer to the journal edition.

2 *Dusko Tadic*, Case No. IT-94-I-T, August 10 1995 (Trial Chamber); *Dusko Tadic*, Case No. IT-94-1-AR72, October 2 1995 (Appellate Chamber).