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).

Gallant, on the other hand, contends that it is only because the Security Council may 'create a subsidiary organ as a chapter VII enforcement measure' that Tribunal decisions can be binding on member states and individuals in them; he denies what Kolodkin seems so intent on defending, namely that Tribunal orders can be seen as 'the legal and moral equivalent of a Security Council resolution' (pp. 565–566). Neither author addresses whether such doctrinal uncertainties pose risks for the legitimacy of this Tribunal, the first international court created by an international organization empowered to take legally binding decisions directly on individuals without the mediation of sovereign states.[3]

Most of the authors here evince considerable faith in the efficacy and desirability of internationalized criminal justice. Few of them are inclined to draw larger pessimistic conclusions from, for example, the travails of the UN Commission of Experts, the entity established to gather evidence in advance of the Tribunal's establishment. And this despite the contribution to the volume by the former chairman of that body, M. Cherif Bassiouni. Although Bassiouni documents how bureaucratic squabbles, inadequate financing, and the premature termination of ongoing investigations undermined the Commission's efforts, not even he seems inclined to question the international community's good faith in creating this Tribunal (p. 279).

Most of the authors in the volume remain indefatigably optimistic about the Tribunal's prospects, whether they are, like Julian J.E. Schutte, recounting the efforts required of the host country for the Tribunal, or like Daniel D. Natanda Nserko, addressing the procedural and evidentiary innovations required to prosecute individuals under rules acceptable to most states, or Kenneth Gallant, discussing the adjustments needed with respect to existing extradition practices, or Jules Deschênes, noting Canadian efforts to identify alleged war criminals within its borders. At the end of 1996, with 75 indictments issued but only seven individuals in custody, such optimism does not seem warranted. Similarly, in response to C.P.M. Cleiren and M.E.M. Tijssen's elaboration of the complex legal, procedural and evidentiary issues involved in the prosecution of rape and other forms of sexual assault and their expression of hope that the Tribunal will facilitate the prosecution of these crimes in international and domestic courts (p. 506), readers in late 1996 are more likely to be more temperate in their hopes. This is especially the case, in light of divisive debates surrounding the propriety of the prosecution's resort to unidentified witnesses, the prosecution's continuing struggle over whether to include rape committed in the course of 'ethnic cleansing' as 'genocide', the international community's inability to make effective its promise of counselling and other support for rape victims, and the ever dimming prospect that many of the rapists of the estimated 20,000 rape victims in the Balkans will ever be brought to justice.[4]

For a respite from this volume's otherwise rosy perspectives, readers should turn to the clear-eyed contribution of David P. Forsythe. Forsythe, the sole political scientist represented, injects a healthy, prescient dose of scepticism. He argues that (1) key states opted to create the Tribunal for 'morally cogent', but 'never politically compelling' reasons; (2) profound obstacles facing the Tribunal will prevent its success under prevailing conditions; but that (3) since perhaps in another half century a similar endeavour might succeed, this 'disappointing exercise' might have some 'positive

3 Cf. Gallant (pp. 557–570). Of course, this was also not evidently a concern for the trial or appellate chambers in the *Tadic* case (see Kolodkin, pp. 388–395). The apparent disagreements between some of the authors here reflect similar disagreements among the judges of the Tribunal.

4 For the Tribunal's divided opinion on the use of unidentified witnesses, see *Dusko Tadic*, Case No. IT-94-I-T, August 10 1995. Cf. Leigh, 'The Yugoslav Tribunal: Use of Unnamed Witnesses against Accused', 90 *AJIL* (1996) 235.

value' (p. 402). Anticipating problems that recently have become ever more apparent, Forsythe enumerates the near impossibility of effectively applying UN sanctions to states that refuse to cooperate with the Tribunal; getting the UN protection force to alter its mandate to arrest those indicted; or securing the cooperation of prominent national leaders in the area. Noting that courts are necessarily the 'weakest branch of governments', Forsythe argues that the international community's persistent failure to prosecute war criminals at either the international or national level suggests that, for now, international humanitarian law is fated to remain 'soft law' (pp. 419–422). Forsythe, as an outsider to the conflict, is a more credible critic of the Tribunal than is Dusan Cotic, the author of the only other truly 'critical' essay in this collection. (Cotic, a former Deputy Secretary of Justice and former Justice of the Supreme Court in the Socialist Federal Republic of Yugoslavia, supplies a short – and partisan – historical introduction.)

With the exception of Forsythe, these authors largely *presume* that the Tribunal 'fulfills the promise of Nuremberg'. Without ever expressly saying so, they leave the impression that internationalized criminal prosecutions in the Balkans will deter violence, punish the guilty, rehabilitate victims, secure public order, prevent mob retaliation, help restore the 'rule of law' (both internally and internationally), permit 'national reconciliation' through restoration of a 'civil society', and establish 'the truth' by preserving the historical record. No one here examines whether these goals are truly achievable.[5] Likewise, there is no questioning of the premise that Nuremberg's flaws – the perception of 'victor's justice', procedural and evidentiary lapses, improper applications of '*ex post facto*' law, and the inaccurate rendering of history – have been fully rectified.[6] At the closing of this book, we are no nearer to knowing whether this Tribunal, created in the shadow of Nuremberg, can fulfil Nuremberg's epic promises.

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Vervaele, John A.E. *La fraude communautaire et le droit pénal européen des affaires*. Paris: Presses Universitaires de France, 1994. Pp. xviii, 436. FF 280.

The protection of the financial interests of the European Community is very much in the news. Nevertheless, the subject has been ignored for a long time by authors, except in the field of customs. The amount of fraud discovered to date has caused the Community to react, through the Convention of 26 July 1995 (OJ 1995 C 316, and protocol of 27 September 1996, OJ 1996 C 313, based on article K.3 of the EU Treaty) concerning the protection of the financial interests of the European Community, and by Council Regulation 2988/95 of 18 December 1995 concerning the protection of the financial interests of the European Community (OJ 1995 L 312, based on article 235 of the EU Treaty).

Next to other monographs (see, e.g., F. Tulkens, C. Van Den Wijngaert and I. Verougstraete, *La protection juridique des intérêts financiers des Communautés européennes*. Brussels: Bruylant, 1992; L. Huybrechts, T. Marchandise and F. Tulkens, *La lutte contre la fraude communautaire dans la pratique*, Brussels: Bruylant, 1994), this work by J. Vervaele, a translation of *Fraud against the Community: The Need for European Fraud Legislation* (Deventer: Kluwer, 1992), is

5 For consideration of whether these goals are achievable in other contexts involving 'administrative massacres', see, e.g., Osiel, 'Ever Again: Legal Remembrance of Administrative Massacre', 144 *Univ. of Pa. L. Rev.* (1995) 463.

6 Cf. Chaney, 'Pitfalls and Imperatives: Applying the Lessons of Nuremberg to the Yugoslav War Crimes Trials', 14 *Dickinson J. Int'l L.* (1995) 57; 'Critical Perspectives on the Nuremberg Trials and State Accountability,' (Symposium) 12 *New York School J. Hum. Rights* (1995) 453.