

BOOK ANNOTATIONS

- COTULA, LORENZO, HUMAN RIGHTS, NATURAL RESOURCE AND INVESTMENT LAW IN A GLOBALISED WORLD: SHADES OF GREY IN THE SHADOW OF THE LAW (New York, New York: Routledge, 2012).
- DINNISS, HEATHER HARRISON, CYBER WARFARE AND THE LAWS OF WAR (New York, New York: Cambridge University Press, 2012).
- JACQUES, MÉLANIE, ARMED CONFLICT AND DISPLACEMENT: THE PROTECTION OF REFUGEES AND DISPLACED PERSONS UNDER INTERNATIONAL HUMANITARIAN LAW (New York, New York: Cambridge University Press, 2012).
- KOSOLAPOVA, ELENA, INTERSTATE LIABILITY FOR CLIMATE CHANGE RELATED DAMAGE (The Hague, The Netherlands: Eleven International Publishing, 2013).
- KULICK, ANDREAS, GLOBAL PUBLIC INTEREST IN INTERNATIONAL INVESTMENT LAW (New York, New York: Cambridge University Press, 2012).
- MAYERSEN, DEBORAH AND ANNIE POHLMAN, EDS., GENOCIDE AND MASS ATROCITIES IN ASIA: LEGACIES AND PREVENTION (New York, New York: Routledge, 2013).
- NEUMANN, IVER B., DIPLOMATIC SITES: A CRITICAL ENQUIRY (New York, New York: Columbia University Press, 2013).
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- SLOAN, JAMES, THE MILITARISATION OF PEACEKEEPING IN THE TWENTY-FIRST CENTURY (Portland, Oregon: Hart Publishing, 2011).

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Human Rights, Natural Resource and Investment Law in a Globalised World: Shades of Grey in the Shadow of the Law. By Lorenzo Cotula. New York, New York: Routledge, 2012. Pp. vii, 197. \$42.95 (paperback).

REVIEWED BY HANNAH FLAMM

In *Human Rights, Natural Resource and Investment Law in a Globalised World*, Lorenzo Cotula analyzes how these three bodies of law protect investments and property rights. He considers the "shadow of the law"—the law's effect on the leverage that each party has in a negotiation—and its impact on natural resource project bargaining between investors and host governments. Despite its scope, the book gives insufficient attention to how well the legal system functions as a whole. Cotula notes that national elites "may have direct vested interests in an investment project" and that laws requiring a public purpose may have extraordinarily loose definitions of what entails a public purpose. But he does not weave into his analysis the effects of corruption or the role of major corporations, investors, and multilateral financial lenders in writing the laws that shape natural resource extraction projects. These considerations are crucial to having a realistic sense of the law and its shadow.

The study's conceptual framework, presented in Chapter Two, is based on definitions of property rights provided by private and public law and by various regional human rights tribunals. Cotula considers the numerous sources of legal protection, their strengths, and enforcement mechanisms. How-

ever, the book focuses only on how the state—not investors—may interfere with property rights and how the law guards against compulsory takings by the state. Such takings are one subset of rights violations that may ensue during extractive endeavors. Cotula does not grapple with the effect of considering only the state as the potential rights violator. He simply states that he will not look at how rights may be impinged or trampled by “adverse effects” that the investor causes, such as an oil spill. As a result, the book provides an informative analysis without providing a robust and candid picture of the human rights violations associated with the extractive industries.

Chapter Three considers the international protection of property rights under human rights and investment law. The chapter discusses exercises of state sovereignty and limitations on it. It compares how various international human rights treaties and courts treat the right to property, the right to food, the right to freely dispose of natural resources, compulsory takings, and legal remedies. Ultimately, Cotula shows that the global human rights treaties offer weak protection for property rights. Sometimes the content of the treaties causes them to offer weak protections. Other times the problem is their non-ratification or their ineffective enforcement and compensation mechanisms.

The next chapter explores property rights and natural resource investments under national law in Cameroon, Mali, and Mozambique. It is unclear how representative these countries are compared to others. The author describes the ways in which the national law of the host state and the laws of the investor’s state affect investment projects. Cotula explains the historical origins of many African countries’ current legal stratification. Specifically, he highlights colonial laws making any “vacant land” property of the state and the treatment of “customary rights” to rural land. He also addresses the continued dominance of centralized resource control in the state’s hands, a legacy of the colonial era, in spite of privatization efforts. Ultimately, Cotula finds that the more significant investment projects usually receive stronger legal protection than the people living near the project. He emphasizes that the difference in government treatment of each is rooted in the scale of the investment rather than in the nationality of the investor.

Cotula also discusses recent legal reforms and the efforts to design laws to attract foreign investment. Yet he does not

explore who pushed the ideas to promote investment; who drafted the laws, regulations, and standards; and how their interests shape the dynamics of natural resource extraction project negotiations today. In Mozambique, for example, Cotula notes that “due process” requires that investors consult the local community on their project and establish a partnership with them. However, he explains, that procedure is applied inconsistently. Partnerships often consist of one-off measures like building a clinic. Agreements are not binding. No authority evaluates the fairness of the agreement. No mechanism exists to enforce the agreement. It is evident that laws designed to attract foreign investment offer weak-to-futile protection of the local population’s rights. Yet Cotula fails to analyze precisely why the law has developed in such a manner.

Chapter Five addresses contractual arrangements and standards of treatment, focusing on the Chad-Cameroon oil pipeline contracts. The chapter discusses contract provisions such as stabilization clauses, which prevent the host state from changing its regulatory framework in a way that would affect the investor’s project. An Amnesty International UK report on these clauses that Cotula cites concludes that the clauses are “sufficiently vague that they could be used in an attempt to undermine . . . human rights.”

Cotula then compares how the law protects the oil consortium’s property rights versus the rights of people affected by the project. Tellingly, the investors are parties to binding and enforceable contracts. People affected by these projects are not parties to them at all. The law deems the people who live on and work the land—who have been there for generations and who need it for basic subsistence—“third parties.” The analysis acknowledges that the project’s benefits “do not necessarily accrue” to people affected by the project. Cotula notes the “glaring disequilibrium” between the oil consortium and local people in their abilities to influence the project and to obtain advantages from it. However, he stops short of criticizing the law for enabling such inequality.

Instead, Cotula argues that the local communities have “countervailing power” in the form of “sabotage or unauthorized abstractions from pipelines” or inflating the number of people who live in a household to receive greater resettlement benefits. But Cotula neglects to conclude that the local population’s extralegal methods of shifting the balance of power is

a reflection of the failure of the law to offer them meaningful recourse. He does not state the obvious: The local population's leverage is almost always marginal. It does not change the tilt of the playing field. The multi-billion dollar project goes on, largely as the investors wish, even if NGO pressure in Chad "reportedly resulted in considerably higher compensation rates for mango trees."

Cotula's discussion presents clearly how investment treaties protect the rights of investors to a much higher standard and to a greater degree of enforceability than it protects the local population's rights. The analytical shortfall is in not wrestling with the tradeoffs of giving the strongest rights and protection to Exxon, Chevron, and Petronas. The book paints a sterile and misleading picture of the pipeline without mentioning the effects of the project on the existing water scarcity in Chad; ethnic conflict; indigenous groups living in fragile rainforests the pipeline traverses; or the coastline fishing economies where the pipeline terminates.

In terms of the broader context of the extractive project, Cotula never says that Chad is one of the world's poorest countries and lacks significant basic infrastructure. He does not describe the population's pervasive illiteracy and dependence on subsistence agriculture; the country's civil war lasting much of the last half century since independence; or that the Chadian government has spent some of its oil contract bonus on weapons. For a study on the "shadow of the law," this context seems relevant.

It is also misleading to report that the pipeline project is "considered to be best practice within the petroleum industry for its state-of-the-art system to deal with takings of local resource rights" without acknowledging how inadequate that best practice is in reality. State of the art entails "no effective government monitoring of the pipeline," according to a World Bank source that Cotula cites.

The book concludes in Chapter Six with a discussion of property rights regimes in the global legal order. Cotula writes that these regimes appear to favor the facilitation of investment flows over the welfare of the local people and the potential benefit to them of the investment projects. It would have been interesting to take this conclusion as a starting place. Then the book might have explored why the law values invest-

ment flows at the expense of the benefits and rights of the people who have the misfortune of living near natural resource deposits someone wishes to extract. Similarly, Cotula's comment that "power relations . . . can affect dynamics within the law itself" could have provided a framework for analyzing how the law protects the powerful and the status quo amenable to them.

Cotula acknowledges that the premises for many arguments—and for much of the law—are flawed in that they rely on a valuation in absolute terms (the billions of dollars that investors spend versus the value of small plots of land and agricultural crops) as opposed to relative terms (extra zeros in an executive's bank account versus an entire community's livelihood system). He recognizes that the empirical evidence is "mixed" for the argument that lower-income countries need foreign investment in order to develop.

In the end, Cotula recognizes in his "agenda for action" that legal empowerment will require changing the terms of poor people's involvement in the legal system, not just bringing them into the economy. This is Cotula's most compelling moment. He argues that the challenge is to make international law less imbalanced, national legal regimes more democratic, and private investment contracts more inclusive. Unfortunately, the law, practice, and case studies Cotula presents throughout the book leaves little confidence that such an agenda could be achieved in the face of the power structures and vested interests that will resist being dismantled.

Cyber Warfare and the Laws of War. By Heather Harrison Dinniss.
New York, New York: Cambridge University Press, 2012.
Pp. vii, 331. \$110.00 (hardcover).

REVIEWED BY MARTIN KIM

Warfare has fundamentally changed since the last World War. Heather Dinniss opens her first book, *Cyber Warfare and the Laws of War*, with a description of the famous "Dambusters" raid during World War II in which two German dams were breached by nineteen modified bombers. The cost was the loss of eight bomber crews. She then compares this to an unauthorized breach into the control system of the Roosevelt Dam in

1998—attributed by some reports to the hacking activities of a twelve-year-old boy.

Dinniss, a postdoctoral research fellow at the International Law Centre of the Swedish National Defense College, has written several papers on the subject of computer network attacks and their relationship to the laws of war. In her book, Dinniss attempts to provide a comprehensive review of international rules regarding the use of force and their application to computer network attacks—a broad topic, and one that Dinniss readily admits requires some omissions. Borrowing the phrase “computer network attack” from the U.S. Department of Defense, Dinniss argues that the interaction between the laws of war and computer network attacks does not require a new set of rules. Instead, she asserts that the current rules regarding force were designed with the express purpose of being adaptable to new and different forms of conflict.

The book begins with an introductory section detailing the changes in society wrought in part by an increasing reliance on the Internet and the changing landscape of warfare in many parts of the world. This section provides context for a rather complicated and intricate analysis of the laws of war. The remainder of the book is arranged into two parts: the first focuses on computer network attacks and *jus ad bellum*, the situations that justify engaging in war, while the second deals with the restrictions that *jus in bello*—the rules that apply during warfare—places on computer network attacks.

Dinniss follows the same general strategy with each chapter of her book: She begins Part I with an exploration of the general laws on a particular topic, and then applies those general laws to the specific problem of computer network attacks. This approach immediately stumbles upon two problems. First, because “cyber warfare” is in its infancy, as Dinniss notes, chapters are often heavy on the analysis of the existing rules and light on their application to computer network attacks. While some imbalance may be inevitable, this is a technical book that seems to be aimed at practitioners with some knowledge of international laws of war so the emphasis on existing rules seems misplaced.

For example, in her first section Dinniss discusses when computer network attacks may be considered as a use of force and then attempts to determine when a computer network at-

tack might constitute an armed attack. The former is prohibited under Article 2(4) of the U.N. Charter, and the latter is enough to trigger the right to self-defense under Article 51. Dinniss provides in detail the general background of the rules regarding force, explores theoretical frameworks from scholars, and creates her own framework to analyze computer network attacks. While it is understandable that Dinniss would spend so much time on such an important question, the payoff is lacking. Exploring the issues of indirectness, intangibility, locus, and result, Dinniss comes to the conclusion that only a computer network attack that results in a physical consequence (death, injury, or the destruction of physical property) will constitute a use of force. This conclusion is less than surprising given that it tracks the general understanding of the use of force. Of course, this is precisely Dinniss's thesis, but in Part I it seems as if the general laws of war are completely swallowing up the analysis, with very little flexibility for a unique interpretation.

The second problem is that while Dinniss attempts to use state practice both to provide support for her arguments and as data from which to draw conclusions, she notes that there are serious problems of attribution for computer network attacks. This makes it extremely difficult to draw concrete conclusions about the legal status of perceived computer network attacks, a problem particularly significant for a book regarding international law. To make up for this, Dinniss often draws analogies using known state practice and also government statements to support her arguments.

Despite these problems, Dinniss provides a cogent analysis by employing a two-part approach: When she can, she engages in interpretation of existing law and state practice to encompass the issues raised by computer network attacks. Where the law is lacking in details as to its application, Dinniss goes back to first principles, focusing on the purpose of international humanitarian law (IHL) and elaborating on those principles to create a working theory of what the law should be. Dinniss employs both strategies in Chapter Three, which discusses armed attacks and the state's response. Starting with the law as it is, Dinniss notes that there is a split in international law doctrine as to the right of anticipatory self-defense. She continues with an analysis of state practice, using two actions by Israel to argue that the right to anticipatory self-defense clearly exists,

with some limitations. Dinniss concludes that, based on basic principles of attribution, necessity, and proportionality, for computer network attacks, the right to self-defense should be interpreted restrictively in order to avoid escalation into traditional conflict.

Part II of the book—which address *jus in bello*—is about twice as long as the first section. In Chapter Four, Dinniss comes to the conclusion that the laws of armed conflict apply to computer network attacks launched by states that constitute a use of force, as long as that attack constitutes more than an isolated incident. In internal armed conflicts, computer network attacks can also be launched by organized armed groups, must be protracted, and must be more than just the equivalent to riots or other internal disputes. Dinniss bases this conclusion on principles of IHL given that the paucity of state practice provides little data for a more descriptive analysis. She points out that because IHL is meant to limit the amount of death and destruction in war, it makes sense to apply IHL only when a computer network attack manifests physical effects.

While Dinniss uses the same framework in Part II that she used in part one, the more specific inquiries of Part II tend to mitigate the problems of the previous chapters. Chapter Five discusses the participants in computer network attacks under the framework of combatant status. Dinniss mentions two reasons for the particular problem that computer network attacks pose for the laws of armed conflict: the unique nature of the medium of attack (in particular, the irrelevancy of distance and proximity as well as the prevalence of anonymity) and the civilianization of state armed forces. From this basis, Dinniss concludes that the challenges posed by a law that did not envision the radical difference between conventional military action and computer network attacks require deep reinterpretation, while maintaining the distinction between legitimate civilian assistance and direct participation. Given the unique position of the agents that carry out computer network attacks, Dinniss's analysis in this chapter tends to be more detailed and varied. In one particularly fascinating section, for example, Dinniss analyzes the prevalence of young hackers in light of the laws regarding child soldiers, and finds that states must be particularly careful in their recruitment of young hackers when they engage in computer network attacks. However, Dinniss notes that this raises another issue regarding attribution,

using the Distributed Denial of Service attacks on Estonia (attributed by some to a Russian youth organization, but by others to the Kremlin) as an example.

Chapter Six delves into the problems of targeting in computer network attacks, particularly in terms of the traditional principles of distinction, proportionality, and necessity. Dinniss begins with a discussion of the problems of distinction in a world where military and civilian resources are intermingled. Dinniss makes some limited predictions: She posits that while the principles of distinction, proportionality, and necessity are still applicable, the shift from attrition warfare to effects-based operations might tempt military commanders to ignore or bypass the limits on targeting when it comes to computer network attacks. This springs from the flexibility of a computer network attack, both in its targets and its effects. Dinniss spends much of the chapter examining the difficulty of distinguishing civilian and military objectives—as she notes, in cyber warfare, civilian infrastructure may have military significance.

Chapter Seven deals with the special protection afforded to certain areas under the laws of armed conflict. Noting that technology has not advanced as of yet to expose protected *personnel* to risk, Dinniss spends the chapter focused on the protection afforded to the locations that can be manipulated by a computer network attack. While she covers such topics as the environment, hospitals, and non-defended localities, she focuses much of the chapter on cultural property. The issues of cultural property offer interesting questions because of the intangible nature of digital cultural property. Dinniss concludes that while attacks on digital works might be breaches of the Cultural Property Convention, they would probably not rise to the level of grave breaches and constitute war crimes.

The main problem with this chapter is that Dinniss fails to analyze a particularly interesting hypothetical related to purely digital cultural property. Dinniss notes that purely digital forms of cultural property are susceptible to unnoticed modification and perhaps to a surreptitious rewriting of history—a frightening observation that is only mentioned in passing and never fully addressed. Given that Dinniss herself observes that much of digital cultural property can be backed up and recovered after the fact, it is strange that she chooses to analyze destruction instead of approaching the problem from the angle of revision or modification.

In the final chapter of the book, Dinniss tackles what she argues is the most difficult area of the laws of war to apply to computer network attacks: the principles regulating the means and methods of warfare. Dinniss splits this chapter into three parts: law of weaponry; perfidy and ruses of war; and the destruction and seizure of property. Computer network attacks can be both a method and means of war. Because it is also true that computer network attacks take many forms, Dinniss argues that the application of the law of weaponry will have to be applied on a case-by-case basis. She also argues that the positive obligations of Article 36 of Additional Protocol I to the Geneva Convention for states to make a legal review of new weapons, means, and methods of warfare will help keep states in line. For her discussion of perfidy and the ruses of war, Dinniss explores several computer network attacks that should fall into the category of ruses of war, but notes that the frequent anonymity of computer network attacks poses some problems in application. However, because perfidy is only prohibited when it causes killing, injury, or capture, it is unlikely to apply when computer network attacks do not rise to that level of force. The analysis of the destruction of property is also complicated in that digital property presents problems generally; Dinniss mentions the problems of applying the concepts of pillage and plunder—where an owner must be permanently deprived of the property—in the digital context.

In conclusion, Dinniss makes a valiant effort to collect the various strands of the laws of war and apply them to computer network attacks, and in fact provides an extremely comprehensive framework for readers interested in the laws of war. However, given the infancy of the subject and the dearth of publicly available data, this venture may have been premature. In some places of the book, the specifics of how computer network attacks are or should be treated are drowned by the description of the general laws of war. Nevertheless, Dinniss makes a significant early contribution and thoughtfully lays the foundation from which she and other scholars may build upon. Many chapters raise novel questions, and the treatment of digital property in war is particularly ripe for further analysis.

Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law. By Mélanie Jacques. New York, NY: Cambridge University Press, 2012. Pp. vii, 256. \$120.00 (hardcover).

REVIEWED BY CATHERINE OWENS

In *Armed Conflict and Displacement*, Mélanie Jacques explores whether International Humanitarian Law (IHL) has been successful in preventing the forced displacement of innocent civilians in armed conflict and protecting refugees and displaced persons when displacements occur. This study is particularly relevant given the rise in armed conflicts fueled by ethnic and ideological differences where civilian displacement has become a military *objective* rather than a natural consequence of warfare. Former Yugoslavia's ethnic cleansing practices and the armed attacks on the Gatumba refugee camps in Burundi illustrate this disturbing trend. Jacques notes many gaps in protection under IHL and proffers solutions to ensure uniform protection. She concludes, however, that until the international community starts enforcing IHL in general, her proposed solutions are meaningless. Despite the soundness of her solutions, one of her proposals undermines a basic principle that underlies IHL and proves unworkable.

Jacques begins by providing an overview of what IHL is, the relevant legal instruments covered under it, and its relation to International Human Rights Law (IHRL) and International Refugee Law (IRL). IHL is applicable only in armed conflicts and limits a state's ability to wage war in order to protect certain persons affected by the conflict. Whether the conflict is international or non-international affects the protections owed to civilians since a wider range of developed legal instruments govern international conflicts. IHL is also limited with respect to the categories of persons that it protects. However, since IHRL and IRL function at all times, they can sometimes fill gaps found in IHL.

In Chapter One, Jacques argues that the class of persons protected from forced displacement in international armed conflicts under IHL should be based on a person's allegiance to the enemy state and not on nationality. Presently under IHL, nationals to a belligerent government may be forcibly displaced during an international armed conflict. Although

IHRL does regulate the conduct of a state against its own nationals, Jacques correctly notes that these rights, such as the right to freedom of movement and choice of residence, which would impliedly prohibit a government from forcibly displacing its own citizens, are *not* non-derogable. This combined with IHL's strict adherence to the principle of noninterference with a state's ability to regulate its own nationals creates an unfortunate gap in protection. Jacques emphasizes that modern armed conflicts do not always fit perfectly into the international/non-international binary that IHL is premised upon. Internal conflicts often become internationalized and since most conflicts stem from ethnic or religious divisions, allegiance to the belligerent state is relevant. Although her logical formulation is more difficult to apply in practice than the current test of simply determining where an individual is from, the limited class of protected persons under IHL has allowed belligerent governments to participate in awful practices such as "ethnic cleansing" against its own nationals.

In Chapter Two, Jacques analyzes forced displacement in the context of non-international armed conflicts. Under Article 17 of Protocol II of the Geneva Conventions, if the state is involved in a *large-scale* civil war per Article 1, it may not forcibly displace its *own* citizens from their own territory unless the removal serves a security or military imperative. Without sufficient explanation, Jacques argues that "their own territory" is ambiguous and should be interpreted to mean outside the *national* territory and not outside the territory under rebel authority. She explains that the latter interpretation would render the prohibition applicable only for certain agents in control, but does not offer anything from international law to support her interpretation. In fact, she concedes, that the opposing interpretation better coincides with the prohibition laid out in Article 49(1) for deportations in occupied territory. Jacques also criticizes the high threshold that must be met in Article 1 before Article 17 can ever be implicated. Many internal conflicts are not covered because the states claim that they are merely "internal disturbances" and fall outside the realm of a "full scale civil war." Jacques proposes that an *impartial* body, and not the State, should make this determination since States typically abuse their discretion. She acknowledges however that her solution would undermine the basic premise of IHL that only the state can govern its internal affairs. In that

respect, her proposal does not add much in the way of doctrine and serves more to magnify the issue.

Next, Jacques provides an in-depth case study on the recent Israeli settlement policy, where Israel transposed its *own* citizens into the Occupied Palestinian Territory. She argues that this policy contravenes IHL because it forcibly displaces the Palestinians from their own territory. In addition, she supports the International Court of Justice (ICJ) advisory opinion denouncing the legality of Israel's Separation Wall and the settlements included within it because those have also contributed to forcibly displacing Palestinians. She asserts, however, that the Court's scantily reasoned opinion fails to explore the connection between the settlement policy and IHL. By contextualizing the doctrines prohibiting forced displacement in a modern armed conflict, Jacques enables the reader to appreciate the importance of enforcing IHL. However, the reader would have been better served if this section were placed after Chapter One. The Israeli-Palestinian conflict is best understood as an international conflict and for this reason does not logically flow from her discussion of internal conflicts in Chapter Two.

After establishing the illegality of forced displacement under IHL in both international and internal armed conflicts, Jacques inquires in Chapter Four whether criminal responsibility can be assigned to such violations. Here, Jacques does not aim to demonstrate the weaknesses of IHL. Rather, she explains what is required to criminally prosecute someone for forced displacement as a war crime or crime against humanity. She traces the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to guide her discussion. She ends the chapter by arguing that forced displacement would constitute a war crime in internal conflicts even though no one has ever been indicted on such charges. This argument exemplifies Jacques's ability to clearly articulate her point of view and the organizational clarity that she employs throughout the book. Using headings to delineate each part of her argument, Jacques demonstrates that forced displacement in an internal conflict is a war crime because it is a violation of the laws and customs of war under Article 3 of the ICTY Statute and Article 4 of the International Criminal Tribunal for Rwanda Statute, and that the International Criminal Court

Statute prohibits such population transfers. Each of these statutes has provisions that recognize criminal violations of IHL.

In Chapter Five, Jacques describes how IHL protects refugees from forced displacement during an armed conflict. Refugees, as defined in the 1951 Refugee Convention, are persons who have a well-founded fear of being persecuted for reasons of race, religion, or nationality, among other things, in their country of origin. Jacques should have placed this discussion in Chapters One and Two, since she simply reiterates the arguments in those chapters again here with respect to refugees. Many of the same legal instruments that protect civilians also apply to refugees. For example, after describing the rules under IHL that apply to refugees, Jacques again argues that IHL should base its protection on allegiance to a belligerent state and not on nationality since the present scheme does not protect all refugees from forced displacement. She does concede however that Article 73 of Protocol I expands protection for refugees by abolishing the nationality requirement, but this protection applies only under certain conditions. Jacques also discusses duties an occupying power has towards refugees, many of which also apply to normal civilians during armed conflicts. Although most of the chapter reiterates similar arguments she has already made, she does conclude the chapter with a different concept: the principle of *non-refoulement*. Under that principle, a refugee may not be transferred to another state where he has reason to fear persecution for the reasons stated in the 1951 Refugee Convention. However, aside from discussing the principle's scope and application in both international and internal conflicts, she does not raise any novel arguments or criticisms of the doctrine.

In Chapter Six, Jacques summarizes the protections that IHL and IHRL afford to internally displaced persons (IDPs) in an armed conflict. Most of the chapter outlines the relevant provisions under IHL that detail the basic living requirements and family reunification provisions that parties to an armed conflict must respect. These include the prohibition of starvation as a method of warfare, the protection of the wounded and sick, and the right to know the fate and whereabouts of family members. Like her discussion on refugee protection in Chapter Five, this section also may have been better served in Chapters One and Two since the provisions that apply to normal civilians displaced during armed conflict also apply to

IDPs. Despite the wealth of rules protecting IDPs from inhumane treatment and poor living conditions, states sometimes cannot fulfill their obligations and must receive humanitarian assistance. Some states however deny assistance in order to starve the civilian population as part of its war strategy. This is particularly troublesome for IDPs since unlike refugees they do not enjoy additional protections under a formal legal instrument dedicated only to their protection. Jacques further explores this unsettling war tactic in the next chapter.

In the book's final chapter, Jacques explains how civilian immunity under IHL helps protect refugee and IDP camps from attacks during armed conflicts. Under IHL, parties to an armed conflict must respect the principle of distinction: Parties must distinguish between civilians and combatants and between civilian and military objectives. Therefore, if a party to a conflict targets an area that consists of both civilian and military objects, the attack is unlawful. Civilian immunity for refugee and IDP camps may be revoked, however, if the camps serve military purposes, and hence become military objects. Protected and safety zones help enforce civilian immunity by specifying areas that may not be attacked. Unlike protected zones, the creation of safety zones need not be based on the consent of warring parties and may be used to further military objectives. Jacques agrees with most commentators that safety zones are not effective in protecting civilians. Without a proper military deterrent and mutual consent, states will often attack these "safety" zones, which often house innocent civilians.

Armed Conflict and Displacement is a great book for those unfamiliar with IHL and its relation to IHRL and IRL. Although the order in which the material is presented leads to some repetitious arguments, Jacques's inquiries into the relation between IHL, IHRL, and IRL and the inadequate protection civilians receive under IHL are important given the increasing globalization of armed conflicts that inevitably lead to civilian displacement. However, this study may not be as useful for those familiar with the rules governing armed conflicts under IHL, IHRL, and IRL since Jacques spends a considerable part of the book simply stating the rules of law apart from her analysis. Overall, Jacques's solutions to the shortcomings inherent in IHL are thoughtful contributions to the continu-

ing dialogue of how best to protect those displaced as a result of armed conflicts and make the book worth reading.

Interstate Liability for Climate Change Related Damage. By Elena Kosolapova. The Hague, The Netherlands: Eleven International Publishing, 2013. Pp. v, 224. \$ (Hardcover).

REVIEWED BY HILLARY COLEMAN

As the globe warms up, sea levels rise, and extreme weather becomes more frequent, climate change increasingly captures international attention. Over the past several decades, the international community has taken steps to address the threats posed by climate change, primarily through the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. While the international climate regime has made strides towards addressing climate change, it has serious limitations. These limitations include the lack of obligations for developing states, the non-participation of key industrialized states, and the absence of a liability mechanism. Coupled with the slow pace of international negotiations, these limitations undermine much of the international regime's effectiveness.

Elena Kosolapova, a guest lecturer at the Amsterdam Centre for Environmental Law and Sustainability at the University of Amsterdam, addresses one of these limitations—the lack of a liability mechanism—in her book *Interstate Liability for Climate Change Related Damage*. She suggests that interstate liability, or rather the liability one state incurs from harming another, could be used to hold states accountable for climate change-related damage. In particular, she argues that litigation at the international level is an adequate mechanism for finding interstate liability, and she evaluates the suitability of existing international liability regimes for such litigation. Ultimately, she argues that the law of state responsibility, which holds states responsible for breaches of international obligations, could be used to find liability in climate change litigation.

Kosolapova's argument is topical, convincing, and instructive. She lays out both the substantive and procedural requirements for invoking state responsibility in climate change litigation. As a result, her book not only proposes a novel legal approach to climate change-related damage, but it also acts as a

helpful primer for those thinking about litigating in that context. Importantly, it fills a gap that exists in the current climate change regime, namely the lack of a liability mechanism.

Despite these strengths, her argument would be clearer if she had a better awareness of her audience and used a more coherent structure. Her argument is quite specific as it seeks to fill a single gap in the climate change regime. Her focus on the substantive and procedural details of state responsibility narrows her argument even further. As a consequence, her argument is relevant primarily to lawyers working within the international climate change regime, and the time she spends reviewing the climate change science and international regime become a distracting summary of common knowledge within the field. Moreover, she frequently separates her initial review of a particular body of law, such as state responsibility or domestic climate change litigation, from her application of it to international climate change litigation. This structure makes her argument difficult to follow at times and undermines its effectiveness.

In the first chapter, Kosolapova begins with an overview of the scientific background to climate change by reviewing the Intergovernmental Panel on Climate Change's AR4 Report published in 2007. In particular, she focuses on the environmental consequences, such as the rise in sea level and desertification, and the impacts on the different regions of the globe. Although this overview is an apt way to begin her analysis, Kosolapova's audience is likely familiar with climate change science given the specificity of her inquiry and this summary becomes a mere restatement of common knowledge.

In Chapter Two, Kosolapova surveys the current international legal system governing climate change. She outlines the UNFCCC as well as the Kyoto Protocol and the ongoing attempts to refine it. Her review is up-to-date, ending with the developments achieved at Doha in 2012. She also gives a detailed review of the Protocol's implementation and compliance mechanisms. As in Chapter One, however, this overview is limited in its utility. Although it is essential to understand the current legal framework, Kosolapova spends a significant amount of time summarizing a framework that has been summarized many times before and not enough time analyzing the failures of that framework. Indeed, she limits her critique of the system to two brief paragraphs in her conclusion to the

chapter. It is only here that she explains that the failures of the climate regime necessitate her inquiry into interstate liability. This connection between the failure of the climate change regime and her argument is of utmost importance to her work and it is surprising that she does not introduce it earlier and with more prominence.

The true substantive inquiry begins in Chapter Three. Here, Kosolapova analyzes two existing international legal frameworks—state liability and state responsibility—that could be used to create interstate liability for climate change-related damage. First, the author addresses state liability, which arises out of lawful acts that nonetheless cause harm. The state liability regime creates obligations for states to address harm caused by lawful acts, primarily through discrete treaties. Kosolapova details the various forms of obligations that have been used in other environmental contexts, including obligations to pay compensation, to negotiate a redress settlement, to ensure prompt, adequate, and effective compensation, and to take response action. Confusingly, Kosolapova fashions state liability as a regime unto itself, but she only analyzes that regime through liability mechanisms that are contained in specific treaties. The premise of her work is that no liability mechanism exists in the climate change regime and that therefore some other legal means must be used to hold states accountable for the climate change damage they have caused. Given this premise, it is unclear why she reviews treaty-based liability mechanisms at all.

After discarding state liability as an option, Kosolapova turns to state responsibility. The section follows the general structure of the International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts*. State responsibility is the liability arising out of the breach of an international obligation that is attributable to a state. There are various types of obligations that can be breached, including obligations of conduct and due diligence on the one hand and absolute obligations of results on the other hand. These obligations can stem from international agreements or customary international law. Throughout this section, Kosolapova weaves in how state responsibility can apply to environmental harms in general as opposed to the harms arising specifically out of climate change. While she gives a good analysis of the law of state responsibility in this chapter, she does not apply

the framework to climate change until Chapter Five. The framework is complex, and the gap between its analysis and application only makes it harder to follow its application later on.

Kosolapova takes a side step to survey domestic climate change litigation in Chapter Four. Here, she reviews procedural injury claims, injunctive relief claims, and compensation claims in common law countries and highlights a number of legal difficulties plaintiffs face in mounting successful climate change litigation. These domestic challenges should be considered when assessing the viability of international climate change litigation. Unfortunately, Kosolapova does not draw out the lessons to be learned from domestic cases in Chapter Four. Rather, she waits until the final page of the conclusion to highlight them. In this way, the chapter is an odd disruption in the flow of Kosolapova's analysis of state responsibility. Moreover, the lessons that domestic climate change litigation holds for international litigation are extremely important, especially given the nature of Kosolapova's work as a kind of primer in the field. Addressing these lessons in under two pages in the conclusion limits what the reader might otherwise take away from them.

In Chapter Five, Kosolapova returns to her discussion of state responsibility and makes a persuasive argument for the application of state responsibility to climate change-related damage. She begins by explaining why the UNFCCC and the Protocol are inadequate for addressing the injurious consequences of climate change. From there, she identifies three sources of international obligations for climate change damage that could trigger state responsibility if breached. These include the obligations of mitigation and of adaptation, which arise out of the UNFCCC and the Kyoto Protocol, as well as the obligation to prevent significant transboundary harm, which arises out of customary international law. Kosolapova gives a detailed analysis of each obligation and what actions they would entail. Ultimately, the author concludes that the obligation to prevent significant transboundary harm is the best option for invoking interstate liability. From this premise, Kosolapova investigates what interstate liability would look like for four types of states: industrialized states party to the Protocol (e.g., Canada), industrialized states with emerging market economies (e.g., Russia), industrialized states not party to the

Protocol (e.g., the United States), and developing states (e.g., China). Finally, she probes what the implementation of interstate liability would look like, both in terms of which courts would hear the claims and what forms of redress would be available to injured states. In assessing the implementation of interstate liability, Kosolapova recognizes that there may be insurmountable procedural challenges, such as proving causation or finding a competent court, to successfully litigating climate-change related damage. Nonetheless, she provides various alternative solutions to these challenges and draws a plausible roadmap for what climate change litigation might look like.

Overall, *Interstate Liability for Climate Change-Related Damage* proposes a novel legal solution to one of the international climate regime's biggest limitations: its lack of a liability mechanism. Kosolapova's argument that state responsibility could be invoked to find liability for climate change-related damage provides a conceptual framework going forward as more and more states feel the negative impacts of climate change. Moreover, her detailed analysis of the substantive and procedural requirements of state responsibility makes her book a useful primer to practitioners in the field. Although it would be stronger if she directly applied the law of state responsibility to climate change and investigated the lessons of domestic climate litigation further, her argument is both compelling and germane.

Global Public Interest in International Investment Law. By Andreas Kulick. New York, New York: Cambridge University Press, 2012. Pp. x, 412. \$125.00 (hardcover).

REVIEWED BY WONJOO CHOE

In a globalized world, states compete for foreign investment as an essential fuel for economic growth. Since states are obliged to attract foreign investors and not the other way around, international investment law that governs their interactions has focused on the protection of the latter's rights from political interference by the former. However, a growing public interest concern that the current investment adjudication and enforcement system does not adequately protect the host countries' legitimate regulatory interests has prompted

discussion on what defenses host countries can raise to invoke certain responsibilities on the part of foreign investors. In *Global Public Interest in International Investment Law*, Andrea Kulick provides a critical perspective on the current structure of the international investment law system and proposes some improvements. His most important contribution to this debate is a new theory of how international investment law can incorporate public interest concerns to strike a better balance between the needs of the public and those of the individual investor.

Kulick's study is intended to provide a theoretical foundation for incorporating public interest considerations into international investment law. Part I lays out the theoretical foundation of a global public interest theory. Part II assesses the applicability of this theory in three areas of public interest considerations that are most relevant to investment treaty arbitration: the environment, human rights, and corruption. His main thesis is that investment law should be seen as a global public law system, allowing room for host states to argue for proportionality as a reasonable approach to balancing the conflicting interests of the public and individual investors.

In Chapter Two, Kulick begins to provide his analysis on the current status of international investment law, especially on the relationship between international and national law in investment arbitration. He argues that there have been two dominant developments: International law has gained supremacy over domestic law ("internationalization"), while international law and domestic law have merged to a significant extent ("integration"). The increasing number of bilateral investment treaties (BITs) has led investment tribunals to recognize the increasing importance of international law over domestic law. At the same time, case law under the International Centre for Settlement of Investment Disputes (ICSID) suggests that international law and domestic law are not separate but form "an integrated legal order." The author concludes that "international investment law is gradually developing into an integrated and harmonious system" under "the primacy and supremacy of international over domestic law." What is problematic about these developments is that the sources—including BITs—that now shape international investment law heavily favor investor rights over domestic public interest concerns. As a consequence, host states find it increasingly diffi-

cult to effectively argue against investor rights in an investment dispute by raising issues relating to the public interest. Kulick elevates his arguments from the abstract to the practical level, by providing three hypothetical situations on the environment, human rights, and corruption where investor rights trump state measures and raise public interest concerns.

Chapter Three is a critical examination of two existing regimes that are supposed to provide adequate responses to public interest challenges: international law regarding legal obligations of multinational enterprises and BITs. The author criticizes the current approach toward shaping international obligations imposed upon corporate actors since it is based on a false dichotomy between states as subjects and other actors in the international system as objects. Model BITs do not fare well either; they provide ambiguous provisions that accept public interest defenses in investment disputes. Kulick's critique on model BITs seems to miss the mark. He ignores the possibility that the treaty drafters will come up with effective provisions that allow for public interest considerations to be taken seriously in the investment regime.

In Chapter Four, Kulick elaborates his global public interest theory in great detail. Kulick posits that international investment law should be seen as a global public law system that has both administrative and constitutional features. In a nutshell, the system "involves the adjudicatory control of the exercise of public authority, providing non-state entities with rights that pierce the sovereignty shield of the host State." He proceeds with a comparative analysis between investment law, European law, and the European Convention on Human Rights (ECHR) system. While using comparisons to highlight that investment law should allow public interest defenses just as European laws do, Kulick falls short of addressing a potential criticism that investment law does not have a single dominant multilateral treaty or adjudicatory body analagous to the highly centralized and integrated European legal system. Furthermore, the argument depends heavily on the European Court of Justice (ECJ)'s *Schmidberger* decision in arguing in favor of invoking general principles of international law as a public interest defense in an investment dispute. But Kulick infers that this is possible based on one decision regarding the ECJ's views on the issue. Kulick exalts the state as "an agent for the interests of human beings" whose purpose "is to promote the

interest of its citizens, determined both by its internal constitutional goals and by an external, international rule. . . situated in a value-based public international law system focusing on the human being.” The idea of the state as the agent of public interest seems to be a theoretical assumption at best, and perhaps allowing space for other actors to play such role could be a better way of addressing public interest concerns in an investment dispute. On the other hand, in the next chapter Kulick provides suggestions for a procedural mechanism against the host state’s abuse of public interest considerations for protectionist or other illicit purposes.

In Chapter Five, Kulick slowly moves away from a global public interest theory towards means of operationalizing this theory through the host state’s defenses against investor claims. He draws these defenses from general principles and customary law, and derives a three-step proportionality analysis to assess them under various legal systems including the ECHR. The three steps include examining: (1) whether the defense serves a legitimate public purpose in a proper way (suitability); (2) whether it is necessary, especially when there is no relatively less restrictive measure available (necessity); and finally; (3) whether it is proportionality *stricto sensu*, that is, evaluating the relative importance of all the interests involved. Applying this analysis would generally result in the lower amount of compensation and damages for investors than typical arbitration outcomes.

While scholars will be more interested in the theoretical foundations of Part I, practitioners will be much more interested in Part II, where the practical implications of the global public interest theory are discussed through case studies in investment disputes concerning the environment, human rights, and corruption. In Chapter Six, Kulick argues that the investment tribunals either ignore environmental concerns or do not know how to address them, and his theory can provide “a thorough theoretical underpinning” to resolve the latter problem. The next chapter on human rights gives an optimistic view that the tribunals have allowed human rights concerns to affect their decision-making “through the back door by choosing overly strict standards or reducing or denying compensation.” The last chapter addresses corruption and fraud, identified as global public interest considerations in international treaties and arbitration case law. Those working on anti-cor-

ruption matters in many parts of the world will appreciate the fact that the chapter includes the general overview of different types of corruption and the detailed analyses of international instruments and international investment cases that dealt with the issue of corruption. Kulick rightfully criticizes tribunals for declining to adjudicate corruption claims on jurisdictional grounds as “an all-or-nothing decision that does not allow for the nuanced balancing a reciprocal relationship usually requires.” Indeed, the issue of corruption is better dealt with at the merits stage instead, especially when the host state should be held responsible for allowing its officials to take bribes and forge documents. Kulick provides a proper summary of the conclusions made in the previous chapters, and concedes that the study “leaves many questions unanswered and raises even more new ones.”

Kulick’s study is ambitious, sophisticated, and courageous. Unlike other writings on international investment law, this book is a bold attempt to develop a theoretical basis for putting public interest considerations back on the map at the international level and to strike a better balance between the interests of the public with that of the individual investor. Kulick does not hesitate to criticize the prevailing approaches to the question of public interest concerns in investment disputes, and tries his best to answer why the current system of arbitral settlement of disputes between the investors and host country governments requires a paradigm shift. The only general criticism would be that his new global public interest model needs further validation in practice. However, over time Kulick’s model and findings will be more and more relevant as international investment law as the field continues to develop.

Genocide and Mass Atrocities in Asia: Legacies and Prevention. Edited by Deborah Mayersen and Annie Pohlman. London, UK: Routledge, 2013. Pp. 204. \$135.00 (hardcover).

REVIEWED BY RYAN DAVIS

Referred to as the “century of genocide,” the 20th century saw hundreds of millions perish as the result of genocide and mass killings. In the latter half of the century, spurred on by the horrors of the Holocaust and the international community’s continued failure to prevent similar atrocities in other

countries, political scientists turned to the burgeoning field of Genocide Studies. This area of scholarship sought to provide answers regarding the factors that allowed these events to take place in the hopes of developing safeguards that would prevent history from repeating itself. Although well intentioned, Genocide Studies as a discipline has been limited by its decidedly western focus. As a result, events such as the Holocaust and Stalin's purges have received significant scholarly attention while mass atrocities in other parts of the world have been largely overlooked.

In *Genocide and Mass Atrocities in Asia*, editors Deborah Mayersen and Annie Pohlman seek to correct this imbalance by analyzing the events preceding mass killing events in Asia and the deep, long-standing wounds that remain in the societies in which they occurred. This collection of essays is unique due to its focus on genocides and atrocities that occurred in Asia, as well as the specific case studies on which it focuses. Instead of focusing on the more infamous Asian mass atrocities that took place in China and Vietnam in the last century, this collection draws attention to the conflicts in East Timor, Democratic Kampuchea, and East Pakistan, where intervention by the international community was possible and would likely have saved millions of lives.

As the title indicates, the book is divided into two sections based on the theme of "Legacies and Prevention." In the first section, "Legacies," the authors aim to demonstrate the ways in which past mass atrocities continue to affect a nation's political, economic, and civil development long after they occur. This section begins with Annie Pohlman's "An Ongoing Legacy of Atrocity: Torture and the Indonesian State," describing the lingering effects of Indonesian brutality during the twenty-four-year occupation of East Timor. Specifically, Pohlman focuses on the justice mechanisms used to investigate Indonesian brutality during East Timor's 1999 independence plebiscite. Despite the large amount of evidence compiled by international judicial bodies and truth-seeking missions, the Indonesian state has failed to punish the perpetrators of the atrocities in any meaningful way. This disturbing pattern of behavior has acquired renewed relevance as the Indonesian police and military continue to use repressive tactics and torture on the population in the provinces of Papua and West Papua, acts which Pohlman sees as largely attributable to the culture

of impunity which has surrounded the events in East Timor. Although the author goes into great detail when describing this cycle of impunity and violence while tracing it back to its roots, she falls short when offering any potential remedy to the situation. Her solution to the situation—that Indonesian politicians simply find the “political will” to prosecute offenders—reads as naive given the reality of the nation’s political situation.

The following chapter, “International Civil Society as an Agent of Protection” by Clinton Fernandes, would have been better positioned as the opening chapter to this section. The article delves deep into the atrocities committed during East Timor’s occupation, particularly focusing on the mass killings, starvation, and forced relocation which left roughly twenty-five percent of East Timor’s population dead and fifty percent displaced. This background information would have provided readers with historical context that would prove useful when reading Pohlman’s analysis on the transitional justice measures being taken in order to hold Indonesia accountable for these crimes today. Fernandes also helps explain how these events came to pass and were allowed to persist by painting a fascinating diplomatic picture while laying the blame primarily at the feet of western democracies. Unfortunately, Fernandes leaves the reader with little analysis into what can be learned from the ending of the East Timor story, finding it sufficient that “lessons could quite conceivably be learnt” from “further research” into these events.

The fourth chapter of the “legacies” section stands out from other works in the collection both due to its subject matter and its analysis. Whereas the preceding chapters blended international law with political history, “Transitional Justice Time: Uncle San, Auntie Yan, and Outreach at the Khmer Rouge Tribunal,” by Alexander Laber Hinton, uniquely blends international law with literary analysis and psychology. The chapter walks the reader through a thirty-four-page booklet distributed by the Khmer Institute of Democracy in order to educate Cambodia’s rural population on the function and benefits of the Extraordinary Chambers in the Courts of Cambodia (ECCC), or Khmer Regional Tribunals (KRT). Hinton describes the role the booklet plays in the “transitional justice imaginary,” the “set of interrelated discourses, practices, and institutional forms that . . . help generate a sense of shared be-

longing among . . . the transitional justice community.” The booklet details the toll the legacy of the Khmer Rouge has left on the story’s protagonist, Uncle San. Constantly reliving the horrors he experienced under the Khmer Rouge, San—meant to represent a typical Cambodian villager as well as the nation itself—is unable to find closure regarding the events of his past and move on with his life. With the help of his friend, Auntie Yan, Uncle San learns how to take advantage of the opportunity for justice provided by the ECCC and prosper. While acknowledging the booklet’s usefulness and the way in which the story takes place in a Cambodia familiar to a potential reader, Hinton remains somewhat critical of the book’s oversimplification of events. In particular, Hinton feels the story “has a tendency to erase historical and sociocultural complexities” which he feels are necessary for the reader to have a real understanding of the past.

Although this criticism is not without merit, Hinton seems to mischaracterize the booklet’s purpose. By focusing on the binary nature of the story, evidenced by the juxtaposition of the violent, traumatic past with the just and promising future, the story does indeed oversimplify the circumstances surrounding the rise of the Khmer Rouge and the difficulties Cambodia faces as it attempts to emerge from this legacy. However, the purpose of the booklet is not to educate Cambodians on how to prevent these events from repeating themselves. The story is intended for rural Cambodians who, like Uncle San, are concerned less with geopolitics and more with their livelihoods and the circumstances present in their villages. Additionally, the purpose of the literature is to inform the reader that a tribunal exists where they can seek redress for these crimes and provide them with first steps describing how they go about doing so. Given the audience and purpose of this particular booklet, Hinton’s expectations may be too lofty.

In “Humanitarian Intervention and Legacies of Security Council (in)Action,” the final installment in the “Legacies” section, Phil Orchard discusses the U.N. Security Council’s historic inability to properly address episodes of mass killing, specifically focusing on the massive regime-induced displacement events in East Pakistan in 1971 and East Timor in 1975–1979. Orchard chooses to focus on regime-induced mass displacement events due to the way they internationalize the original

conflict through refugee flows and the increasing frequency of their occurrence across the globe. As a result, these events present a unique opportunity for U.N. intervention in the future under the Responsibility to Protect Doctrine (R2P). Orchard argues that, although U.N. Security Council policy was essentially frozen due to Cold War politics, it still served an important purpose as a legitimizing tool. In these examples, Pakistan and Indonesia still felt the need to use rhetoric in order to politically “frame” the events in the way most favorable to their cause in order to justify their actions. Although Cold War politics may have constrained the Security Council during the 1970’s, describing this as the primary reason for the Council’s inaction directly contradicts Orchard’s own observation that these patterns of behavior “continue today,” decades after the Cold War ended.

The following chapter, the first in the book’s “Prevention” section, works to resolve this seeming inconsistency. This section looks to the past events discussed in “Legacies” in order to ascertain a means of preventing similar events from reoccurring in the future. In “Political Realism, Sovereignty and Intervention,” Paul Bartrop asks if genocide prevention is actually an attainable goal in our modern state system. Building off the events discussed in the previous chapter, Bartrop analyzes the role of *realpolitik* in a state’s decision to prioritize sovereignty over humanitarian concerns. While asserting that states’ prioritization of their own political interest along with a lack of political will to prioritize humanitarian concerns is to blame for the international community’s repeated failure to prevent mass atrocities, Bartrop does not present these issues as insurmountable. Pointing to international support for the U.N. Genocide Convention, the U.N. Declaration for Human Rights, and, more recently, the unanimous support for R2P, Bartrop is cautiously optimistic that countries are beginning to accept the primacy of humanitarian concerns over sovereignty in select situations. This, in turn, would lead to a more secure world, thereby serving the *realpolitik* concerns of all states. Through outlining the progress the international community has made in recognizing that humanitarian concerns may be placed above sovereignty issues in certain circumstances, Bartrop offers a compelling case for his cautious optimism.

In the collection’s final chapter, Deborah Mayersen scrutinizes these developments. “‘Never Again’ or Again and Again”

looks at the shortcomings of the Genocide Convention in the case of Democratic Kampuchea under the Khmer Rouge and whether there is reason to believe the more recently articulated R2P doctrine will be able to succeed where its predecessor has failed. R2P differs from the Genocide Convention in that it places the responsibility to prevent genocide and other atrocities directly at the feet of the nation in which they may occur. The international community has a responsibility to provide the capacity for every state to do so, only stepping in when the state in question persistently fails to deliver on this obligation.

Mayersen identifies four barriers that have frustrated the Genocide Convention and that largely overlap with Bartrop's analysis. Due to improved technology and a noticeable shift in international norms, Mayersen believes that the first three barriers—information, sovereignty concerns, and *realpolitik*—will all be considerably less problematic in the future. Overcoming these three barriers will only result in the international community noticing and denouncing the actions of the offending state. In order to make R2P succeed where other attempts have failed, the most powerful actors in the international community have to overcome the fourth hurdle and find the political will to physically intervene if necessary. If this comes to pass, Mayersen asserts, history may finally stop repeating itself. Although a thoughtful analysis of the current state of play in the international politics of genocide prevention, the chapter does little by way of introducing any information not previously discussed in the preceding articles. As a result, the chapter may serve better as a well-written concluding piece that synthesizes the lessons learned from the other authors in the collection.

Genocide and Mass Atrocities in Asia seeks to fill a perceived gap in modern day international relations and genocide studies by analyzing causes of mass killings in the Asia-Pacific region and attempting to divine what these revelations hold for the future. Although flush with interesting historical and political narrative of some of the world's oft-ignored atrocities, the book does little to distinguish these events from those occurring in any other region. If anything, the authors repeatedly apply universal themes—such as impunity, cultural empathy, sovereignty, and political will—which are already common to genocide studies. Although perhaps failing in this regard, the

collection does provide a well-written and insightful analysis on three lesser-known mass killing events in Asia's history while making a successful case for keeping this issue at the forefront of international political discourse.

Diplomatic Sites: A Critical Enquiry. By Iver B. Neumann. New York, New York: Columbia University Press, 2013. Pp. viii, 190. \$44.95 (hardcover).

REVIEWED BY JOSHUA LUSTIGER

With the recent communication breakthroughs between the highest levels of government in the United States and Iran, the nuances of diplomacy have once again come into focus. Political sensitivities and diplomatic hurdles were on clear display at the recent meeting of the United Nations General Assembly this past September. According to a senior administration official, the Iranian delegation felt that a handshake between President Barack Obama and Iranian President Hassan Rouhani was premature and "too complicated." Instead, a telephone call ensued between the two leaders as Rouhani was en route to the airport. This diplomatic breakthrough highlights the importance of location and the context of discussions in addition to the content to be discussed.

Iver B. Neumann's *Diplomatic Sites* is a significant addition to the minimal scholarship currently available in the field of how diplomacy can be understood as simply a part of everyday social life between different polities. Neumann draws on his vast experience as both an academic and a Norwegian diplomat to present a compelling argument for the continued significance of diplomatic sites in a globalized world. Neumann defines the concept of diplomatic sites broadly to include virtually every interaction between political entities and gives countless examples of the importance and planning that allows diplomats to succeed in their core tasks of information gathering, negotiation, and communication. With a background in social anthropology and political science, Neumann's work with the Norwegian Ministry of Foreign Affairs makes him uniquely well suited to comment on diplomacy not only as formal communications between polities, but as a social phenomenon.

Neumann frames each of the main chapters of the book with a discussion of Byzantine diplomacy and its continued influence on current diplomatic efforts. Byzantine diplomacy is known primarily for its manipulative techniques and for the planning that goes into influencing counterparties. Neumann shows that even though it manifests itself somewhat differently in the modern era, it still forms the foundation for much of modern diplomacy. Neumann convincingly argues that the emergence of such powers as Brazil, Russia, India, and China (BRIC countries) and increased globalization has had a transformative impact on the social aspects of diplomacy. Certain principles previously considered universal due to the dominance of the Eurocentric model of diplomacy have been reassessed based on different cultural norms exhibited by the BRIC countries. Neumann gives as an example the U.S. tendency towards more informality in diplomatic efforts being met with resistance by the Chinese who prefer a more ceremonial approach. This, in turn, has had an impact on the form that diplomacy takes.

The author begins in Chapter One with a discussion about Eurocentric diplomacy and the challenges it presents; this serves as a theoretical introduction to the foundation of diplomatic interactions. Neumann argues that present-day diplomacy rests on a combination of myths, narrative sociabilities, and practices. Every culture has its own series of myths, and similar situations may cue different reactions from different cultures. For instance, the centerpiece of the 1961 Vienna Convention on Diplomatic Relations is immunity of the envoy to legal proceedings in the host country. This social narrative, Neumann explains, is, in actuality, based on Christian myths that date back to the Middle Ages. The ambassador was viewed as sacred because he acted for the general welfare of the population. In addition, it was God's will that His children live together peacefully. It follows that harming the envoy has a sacrilegious element to it. This concept of the immunity of the envoy from harm eventually evolved into legal immunity. Neumann ties this together with his thesis that Europe is the birthplace of modern diplomacy in that these values form the basis of global diplomacy. Myths, therefore, form the basis of Euro-centric diplomacy that eventually influences current practices including treaty making and dress codes. However, there are certainly other diplomatic practices that make cur-

rent diplomatic practices not uniquely European. A more casual reader may find this chapter challenging due to its reliance on medieval history and philosophy.

In Chapter Two, the author uses his personal diplomatic experiences to describe in vivid detail the importance of one particular aspect of diplomacy: food. Based on the axiom “we are what we eat,” Neumann explains how the mundane act of eating and the setting in which we eat take on crucial importance in the diplomatic realm. The importance of the menu to the different cultural sensibilities of the parties involved is described using personal anecdotes. As an example, Neumann recounts that a meal served at the Royal Palace in Norway would feature foods using Norwegian raw materials to display a concern for provincialism. This contrasts with the method used at a luncheon hosted by the Japanese Ambassador to Norway, who would use Western foods simply because the chef had been Western-trained. The use of personal anecdotes is particularly effective in giving the reader an inside look at diplomatic practices. In addition to the menu, important related choices the diplomat must make involve the timing, location, seating arrangements, and dress code. Each of these factors plays an important role in setting the proper mood and conveying the right messages as conduits for good diplomacy. Diplomacy with regards to food is an area that has yet to be sufficiently discussed because of its seemingly routine nature and Neumann’s work is a valuable contribution.

Chapter Three shifts the conversation to the precedent steps necessary to get two adversarial parties to the “dinner table” and the role of the mediator. He cites the example of the Nilotic Nuer to prove that there have been times when the role of what Neumann describes as systems maintenance was delegated to minor powers. The Nilotic Nuer are an ethnic group primarily inhabiting the Nile Valley. Among the Nuer in the 1930’s was a “Leopard-Skin Chief,” an essentially powerless individual whose purpose was to mediate conflicts involving murder or theft. If, in the midst of negotiation, a party refused to listen to him, the Leopard-Skin Chief was toothless. Neumann then pivots back to a discussion about modern governments, arguing that just as the peacemaker among the Nilotic Nuer was a minor force with no real power, it is oftentimes the small and medium powers that play a disproportionate role in peacekeeping mediation efforts. He once again uses his first-

hand knowledge from his diplomatic endeavors in Norway as an example of a medium power playing a large role in systems maintenance. This is due to the inherent advantage for these powers in solving conflicts through peacekeeping initiatives rather than war, which they would be ill equipped for. Here especially, it would seem beneficial to hear the perspectives of diplomats from other nations (both large and small) to display any differences or similarities between them. Neumann then discusses the other roles mediators play once the parties have agreed to sit down and negotiate. The mediator must facilitate a proper setting for the negotiations and delicately guide the parties along in the process. Finally, the facilitator must often monitor the agreements reached between the two sides.

In the very original Chapter Four, Neumann takes the once popular television series *Star Trek* and uses it as a model of diplomacy, referring to it as a “Hyperspatial Site,” a type of virtual site that has intruded on the physical. In great detail (perhaps too great), he summarizes many (perhaps too many) episodes of *Star Trek*, the Original Series, and *Star Trek* the Next Generation and discusses diplomacy within the context of these episodes. Trekkie diplomats will no doubt be thrilled with his description of the Starship Enterprise, and its discovery of new civilizations and their efforts at diplomacy with Borgs, Klingons, and Cardassians, but non-Trekkies might find the in-depth descriptions a bit tedious. Nevertheless, Neumann does make an interesting and compelling argument that the diplomatic efforts of the United Federation of Planets are modeled after U.S. diplomacy, in that the Federation only talks to those civilizations which it thinks can benefit from such contact, while ignoring other “pre-warp civilizations.” U.S. diplomacy likewise only initiates diplomacy with entities that it feels are worthy. Neumann portrays American diplomats as elitists, not needing the approval of the United Nations or any other international body. He points to the lack of formal U.S. diplomatic relations with a number of totalitarian regimes over the years, including Iran from 1979 to the present.

In Chapter Five, Neumann analyzes what he refers to as “sublime diplomacy,” the attempt by diplomats to “knockout” their counterparts through various techniques designed to alter their mental state. Using three periods of time—antiquity, the 18th century, and the contemporary era—he examines

whether or not diplomacy can be considered sublime according to theories of sublimity prevalent in each of those eras. The first theory was proposed by a Byzantine scholar who explained that sublimity is achieved by overwhelming the senses. According to this theory, Byzantine diplomacy certainly amounted to “sublime diplomacy” with its various methods of stimulating all the senses. Next, Neumann addresses the theory of Edmund Burke, an 18th century philosopher who understood the sublime as the activation of strong passions that arises out of a fear kept at bay. Finally, Neumann advances his understanding of the contemporary theory of the production of a sublime experience. He bases his understanding on a theory developed by Jean-François Lyotard that describes a sublime experience as an overabundance of information to ensure that the recipient will never cease acquiring new knowledge. Here, Neumann posits that diplomacy nowadays does not reach this level sublimity because of its modern bureaucratic nature. It may confuse the reader as to why Neumann focuses on comparing these the different diplomatic styles with theories of sublimity that are unrelated to diplomacy.

Overall, Neumann contributes a tremendous amount to the scholarship available regarding the art of diplomacy. He presents a careful analysis of the many issues a diplomat faces from the time the two parties agree to negotiate through the monitoring of any agreement while giving the reader an understanding of the theories involved, both psychological and philosophical. He accomplishes this goal by taking the reader through a detailed study of all the sites used for diplomacy, from the physical to the intangible. It would be beneficial for the student of diplomacy or diplomats from different demographical nations to contribute to this foundation and perhaps offer more perspectives on differences in practices between them. Nevertheless, Neumann’s personal anecdotes help to provide context and color his otherwise complex theoretical discussions.

Sex in Peace Operations. By Gabrielle Simm. New York, New York: Cambridge University Press, 2013. Pp. xiii, 235. \$99.00 (hardcover).

REVIEWED BY KELLY COSBY

In *Sex in Peace Operations*, Gabrielle Simm reviews how sex between peacekeeping personnel and local individuals is regulated. She focuses on United Nations peacekeeping operations and includes case studies of U.N. peacekeepers, humanitarian workers, and private military contractors (PMCs). Asserting that law alone is inadequate to regulate sex in peace operations, Simm advocates implementing a broader regulatory framework to reform these practices, arguing that it would be more inclusive of non-state actors than current law and would therefore lead to more effective monitoring and enforcement.

Simm does not limit her exploration of sex in peace operations to sexual abuse. Although she focuses partially on instances of sexual violence and forms of sexual exploitation such as sex trafficking, she also discusses other arguably exploitive practices, such as NGO workers trading aid for sex. Simm also explores consensual sexual relationships between peacekeepers, NGO staff, and PMCs. Instead of dismissing sex in peace operations as a one-dimensional problem, Simm recognizes that this issue takes various forms, not all of which can be narrowly categorized. Simm writes from a removed perspective that adds an element of objectivity to her discussion of methods that should be used in generating reform. However, when it comes to what this reform should look like, Simm's lack of concrete recommendations combined with this objective style makes it difficult to ascertain her goals for reform.

Although it is important to establish a solid framework when analyzing an issue such as how to better address sexual abuse and exploitation in these situations, there is also a danger of focusing too much on the technicalities of that framework instead of moving on to its application. Simm makes this mistake early on. Additionally, at times, it seems that parts may have been written without regard to other sections, as if they were pieced together separately but not thoroughly reviewed as a whole. This is particularly distracting in the early chapters as the reader is presented with a large amount of information

involving not only broad frameworks of how to assess regulations but also detailed case studies.

In her Introduction, Simm notes that sex is subject to layers of social, ethical, and legal regulation but that in the context of peace operations, it is not well regulated. Simm defines a regulatory regime “to encompass the setting of standards; processes for monitoring and compliance with the standards; and mechanisms for enforcing the standards” (internal quotation marks omitted). She explains that, for the purposes of her discussion, law should be seen as a subset of regulation. She sets out to answer the question of how regulation of sex in peace operation can be made more effective by combining approaches from international law and regulatory studies. Simm provides an overview as well as the background of one of her case studies. Simm does her best to define key terms and concepts, but as she delves further into the details of her approach to studying sex in peace operations, some concepts remain vague, causing initial confusion. For example, Simm begins to detail why the United Nations’ zero tolerance policy is problematic without first providing the actual text of the policy (the text is not provided until Chapter Two). This creates the feeling of putting the cart before the horse and makes it difficult initially to fully grasp the author’s argument.

Simm spends Chapter Two laying out her conceptual framework and expounding on the United Nations’ “zero tolerance” policy on sex between peacekeepers and local people (explored further in Chapter Six through a case study on U.N. peacekeepers). By considering U.N. policy and literature on sex in peace operations, Simm finds that “gender is fundamental to a discussion of sex in peace operations” and advocates that a feminist perspective be incorporated in the regulatory studies-based approach to this issue. She discusses the U.N. policy of gender mainstreaming—“the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes . . . making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies . . . so that women and men benefit equally, and inequality is not perpetuated.” She notes that, despite the existence of this policy, sex in peace operations garners more attention when it is separated from the issue of gender. Simm mentions previous U.N. Security Council resolutions on Wo-

men, Peace, and Security (WPS), and it would be interesting to know how Simm would characterize WPS resolution 2106, which was adopted in June and includes language about the importance of women's participation in combatting sexual violence.

However, Simm could be clearer in her discussion of how a feminist perspective can be applied to a regulatory studies-based framework. In this chapter she introduces how regulatory theory can be a useful framework to analyze sex in peacekeeping, as regulatory studies is an interdisciplinary field. Simm gives a detailed explanation of the regulatory framework, the advantages and disadvantages to this approach, and her reasoning for advocating regulatory-based reform. But the amount of detail provided before making a brief link to sex in peace operations detracts from the actual application of the regulatory framework to the main issue that Simm purports to explore.

In Chapter Three, Simm focuses on how law fits into the regulatory framework. She discusses how international law regulates sex in peace operations, the responsibilities of state and non-state actors, and how immunity for crimes can undermine regulation of sex in peace operations. Specifically, Simm notes how the elements of jurisdiction, immunity, and responsibility of actors and nonactors in international law play an important role in the regulatory regime, particularly in the area of enforcement. International law provides guidance for setting standards for state and international responsibility, but Simm argues that international law is weak in monitoring compliance and enforcement mechanisms.

Simm returns to her case study on PMCs in Chapter Four and uses it to illustrate the problem and nuances of sex trafficking. In similar fashion, Chapters Five and Six also use case studies to demonstrate other aspects of sex in peace operations—namely, the trading of sex for assistance from aid workers and the zero tolerance policy regulating U.N. peacekeepers. It would be helpful if Simm outlined the criteria she used in selecting or case studies or if she or the studies she cites evaluated other NGOs than those mentioned (namely Save the Children and the International Committee of the Red Cross). Knowing how broad and representative the assessment was would be helpful to readers in understanding Simm's analysis.

In these chapters, Simm rightly recognizes that the book represents sex in peace operations as disproportionately abusive and exploitative, given that the reported evidence she examines deals mainly with these cases. Similarly, Simm acknowledges problems with studies that simply equate prostitution with sex trafficking. She also is concerned with not encroaching on the sexual autonomy of local women by criminalizing consensual sexual relationships. This is one of the major criticisms Simm has of the United Nations' zero tolerance policy, which strongly dissuades peacekeepers from engaging in any sexual relationships with local individuals, so much so that many peacekeepers feel it is not only discouraged but banned. Simm is not satisfied with the provision of the zero tolerance policy that allows an U.N. mission director discretion in determining if a sexual relationship between a peacekeeper and a local individual may continue because it is not abusive or exploitative. Though an understandable criticism of this provision might be that an U.N. mission director may not be qualified to make such a decision and thus could lead to arbitrary enforcement (which Simm asserts already happens anyway, effectively allowing immunity for many perpetrators), Simm does not make this specific criticism about the competence of the U.N. mission director in that capacity. It would be helpful to know more about how this provision has been used by mission directors; it would also be more useful if Simm gave more of an explanation of why this discretion is not at least one useful tool in solving the problem. Simm contends that doing away with the zero tolerance policy would be better for promoting the sexual autonomy of women, but the zero tolerance policy could arguably promote sexual autonomy by eliminating harder-to-classify situations in which women and girls feel they must trade sex to aid workers for subsistence, as discussed in Chapter Six. Simm also argues that the zero tolerance policy still has exceptions that effectively perpetuate immunity from prosecution for sex crimes, which is a notable challenge.

One might expect more concrete suggestions for regulation in Chapter Seven, Simm's conclusion, given that she has raised a vast number of questions; but, she leaves most of these concerns unanswered. Based on the findings Simm enumerates throughout the book, Simm comes to the conclusion that, given the problems with the way international law regulates sex in peace operations, "it seems appropriate to take advan-

tage of the fact that non-legal regulatory mechanisms appear to be at least somewhat effective, despite their non-legal quality.” She argues that regulatory theory should be used to reform peace operations in ways that advance feminist objectives, namely “[e]nhancing the sexual autonomy of local women and girls in peace operations. . . .” These observations are unquestionably important. But, given Simm’s critiques of policies and mechanisms that do not work, it would be preferable that she give concrete examples of policies that might cure some of these problems rather than abstract and generalized objectives.

Overall, Simm provides a thorough explanation of empirical examples supporting her assertions about the problems with the regulation of sex in peace operations. The case studies Simm examines are particularly poignant and help communicate the need for a multidimensional approach to regulating sex in peace operations, as well as the difficulties in how intertwined sexual exploitation and abuse truly is with peace operations. However, with such a broad array of issues within Simm’s topic, it is difficult for her analysis to address each in an in-depth manner. As Simm’s investigation of each issue involves a case study with a different group of actors, it is difficult to piece together an accurate and comprehensive depiction of sex in peace operations by the end. Simm successfully makes the case that regulatory studies must be combined with international law in order for an approach to the issue of sex in peace operations to be effective in terms of monitoring compliance and enforcement of international law standards, but the substantive suggestions Simm provides are limited. In answering the question of how regulation of sex in peace operations can be made more effective, Simm only partially succeeds.

The Militarisation of Peacekeeping in the Twenty-First Century. By James Sloan. Portland, Oregon: Hart Publishing, 2011. Pp. xxix, 306. \$120.00 (hardcover).

REVIEWED BY MATT SHORE

During the late 20th century, and into the 21st, there has been a surge in the number of peacekeeping missions authorized by the United Nations Security Council. The level of force

authorized for these peacekeeping missions has also been greater when compared to the missions of the 1950s and 1960s. In James Sloan's sweeping study of the success of these operations, *The Militarisation of Peacekeeping in the Twenty-First Century*, he argues that the United Nations' drift away from its fundamental peacekeeping values has rendered the missions less effective. Through skirting, and sometimes altogether ignoring, the fundamental values of self defense, impartiality, and state consent, Sloan contends that the new enforcement-type functions bestowed on these peacekeeping operations has damaged the reputation of the United Nations worldwide. While the author does an excellent job of showing the United Nations' drift away from an adherence to the fundamental values of peacekeeping, and is thorough in his description of the failures of militarized peacekeeping, he is less successful in articulating "a path forward."

Sloan's logical structure certainly makes it easy for the reader to follow his argument. He begins with an introduction to U.N. peacekeeping missions in general, then in the second chapter proceeds to trace the history of the missions, along with the increase in the amount of force authorized. Chapter Three describes the limitations imposed on the Security Council in their authorization of these peacekeeping missions, focusing on the authority for these missions under the U.N. Charter. Lastly, though probably most importantly, in the fourth, fifth and sixth chapters, Sloan analyzes the major U.N. peacekeeping missions, focusing on their adherence to the fundamental principles, as well as their legal basis in the U.N. Charter. At times, the organization of the book made it feel more like a legal brief than an academic endeavor: Sloan lays out his rule (the legal basis for peacekeeping operations) and then applies the facts to this rule. While this layout allows for a tremendous clarity, the methodical approach can cause a reader to lose interest.

The meat of the book is really in the fourth, fifth, and sixth chapters, in which Sloan delves into some of the more critical U.N. peacekeeping ventures throughout the 20th and 21st centuries. From Egypt in the 1950s and Yugoslavia in the 1990s, to Sierra Leone and Cote D'Ivoire in the early 21st century, the author gives a description of the peacekeeping operation, followed by an evaluation based on their adherence to the "fundamental principles," their constitutional bases, and a

conclusion and assessment of the success. The most time is spent on the missions in the early 21st century, with Chapters Five and Six referring to operations in Sierra Leone, East Timor, Liberia, and Sudan, among others.

Sloan arrives at the general conclusion that the drifting away from the “fundamental principles” of using force only for self defense, impartiality, and state consent has rendered the peacekeeping operations less effective, and in some cases counter-productive. In fact, with the exception of the minor success of the East Timor operation, Sloan writes of almost no successes on the part of recent U.N. peacekeeping operations. While he expertly demonstrates the failures of these peacekeeping operations, Sloan is less convincing in arguing that these failures were due to a drift away from the “fundamental principles,” and their increased militarized nature. Without a success story in which an effective peacekeeping operation stayed true to the “fundamental principles,” one remains skeptical whether this correlation should be interpreted as causation. Additionally, certain parts of Chapters Four through Six could be more succinct. When Sloan describes the mandate and functioning of each of these operations, one can easily see a reader becoming lost in the panoply of abbreviations (UNEF, ONUC, MONUC, UNTAET, etc.), and resolution numbers. These sections could have been summed up in a tighter fashion, resulting in a sharper narrative.

For all these minor flaws, Sloan’s argument that militarized peacekeeping has failed is compelling. In his seventh and final chapter, *Conclusions*, the author lays out the problems resulting from the militarization of peacekeeping under four categories: the difficulties of establishment, management, problems relating to the need for host state consent or cooperation, and problems relating to expectations. Under the banner of establishment difficulties, one of his stronger arguments is that the more militarized a peacekeeping operation is, the less willing states will be to send in troops. Using the example of Brazil in Haiti, Sloan demonstrates that often states with the most skilled militaries will be most fearful of sending troops into harm’s way on foreign battlefields for fear of domestic backlash. Poorer countries are incentivized to offer troops because doing so will not only result in money, through a subsidy, but also crucial training for their troops at the United Nations’ expense. Sloan also astutely points out the

more militarized an operation is, the more it is perceived to be impartial by one of the sides involved in the conflict. This can possibly create even more chaos than existed before, and at the very least does little to quell the violence in the country.

Sloan argues that peacekeeping operations should stick to their traditional, fundamental principles and something called quasi-enforcement should be used to prevent harm to civilians and restore security. Quasi-enforcement is an operation in which either a NATO-led mission or a U.N. member state is authorized by the United Nations to use force. These operations typically work best alongside a peacekeeping operation, and can stabilize a situation before a peacekeeping force enters, or rescue a peacekeeping operation if conditions deteriorate. These operations are different from full-blown enforcement regimes in that they typically work within a state as opposed to two opposing states, and Sloan argues that the quasi-enforcement regimes are much more effective in stabilizing a state than a militarized peacekeeping force. The author backs this up with some empirical evidence, such as the relative success of Australia-led quasi-enforcement in East Timor. However, in regards to UNPROFOR (United Nations Protection Force in the Former Yugoslavia), Sloan notes that because the peacekeeping operation worked “hand in glove” with the quasi-enforcement operation, there was no way that the peacekeeping operation would be seen as impartial. In one sense, Sloan advocates that the quasi-enforcement work with the peacekeeping operation, while in another sense he believes that this teamwork imperils the peacekeepers.

The author’s assumption that with a reduction in militarized peacekeeping will come an increase in the amount of quasi-enforcement seems to be a bit of a logical leap. Reason and the rest of the evidence in the book suggest that finding a state to lead a quasi-enforcement force would be a difficult task, and nothing suggests that a decrease in militarized peacekeeping would make this task any easier. Sloan shows no evidence for why states would have incentive, or be more likely to lead or join a quasi-enforcement operation simply because a reduction in the amount of militarized peacekeeping operations. If anything, his failure to provide evidence to this lends credence to the theory that his preferred solution is not a viable one.

Sloan focuses a great deal of his analysis on the legal justification for militarized peacekeeping operations. In the concluding chapter, he comes to the conclusion that almost all of the peacekeeping operations of the late 20th century to the present should have been authorized under Chapter VII, Article 42 of the U.N. Charter, which allows for intervention without consent of the state, and for force beyond self-defense. Sloan neglects to tie this to his overall thesis that the militarization of peacekeeping has rendered it less successful and undermined its effectiveness. While the legal analysis could conceivably demonstrate the United Nations' drifting away from their fundamental values of peacekeeping, he already thoroughly discusses this concept in depth, making the discussion of Article 42 seemingly unnecessary.

Ultimately, Sloan fails to provide sufficient evidence that his proposals would be feasible, or even necessarily better than the current situation. The book provides very few examples of peacekeeping missions that were resounding successes. One is left thinking that perhaps there is no perfect way to run these peacekeeping missions, and that current U.N. practice may be the best of all available options. Sloan spends so much time talking about the failures of the current approach that he fails to show adequate evidence for why his tactics would be successful. One of the few successes that he mentions is the quasi-enforcement regime led by Australia alongside the peacekeeping mission in East Timor. Even there, Sloan admits that the security threats in East Timor were of a relatively limited nature. Had there been a conflict on the scale of the one the Democratic Republic of Congo has faced since the end of the 20th century, there is a good chance that this strategy would have seen less success. Ultimately, while Sloan makes several strong arguments in favor of his preferred method, his lack of empirical evidence leaves one doubtful that there will ever be perfect approach to U.N. peacekeeping missions in dangerous states.

“Partly Laws Common to All Mankind”: *Foreign Law in American Courts*. By Jeremy Waldron. New Haven, Connecticut: Yale University Press, 2012. Pp. xv, 288. \$65.00 (hardcover).

REVIEWED BY JULIANNE J. MARLEY

Nearly ten years after the Supreme Court’s decision in *Roper v. Simmons*—in which Justice Kennedy, writing for the Court, found “confirmation” in foreign law and a consensus among other nations for the Court’s rejection of the juvenile death penalty—the appropriateness of U.S. courts referencing foreign law remains deeply controversial. In *“Partly Laws Common to All Mankind”*: *Foreign Law in American Courts*, Jeremy Waldron makes a convincing case for the invocation of foreign law, and in doing so, creates a compelling new framework for the debate.

While a number of arguments against the use of foreign law in American courts have been put forth—that it lacks a constitutional basis, that it is undemocratic (in subverting the will of the American people, expressed through the legislature, by relying on unelected foreign lawmakers), or that it is simply inappropriate to decide American cases with anything other than American law—arguments in favor of invoking foreign law have thus far been largely pragmatic. In other words, U.S. judges should refer to foreign law because they can learn from how foreign judges and lawmakers have dealt with similar issues. While Waldron advances this “learning argument” as one justification for invoking foreign law, he makes clear from the outset that this is not his primary focus; rather, he is most interested in providing a *legal* argument for doing so. Waldron argues that sources of foreign law “sometimes add up to a body of law that has its own claim on us: the law of nations, or *ius gentium*, which applies to us simply as law, not as the law of any particular jurisdiction.” American courts, he argues, should invoke foreign law not only because it may be useful to see how other judges have addressed similar issues, but also because the commonality of certain legal propositions gives them a claim on us as law. Waldron describes *ius gentium* as a body of law originating from the “overlap” between the positive laws of states, which regulates relations *within* states alongside the state’s own laws. Waldron’s conception of *ius gentium* is one of positive law, which, unlike natural law, derives its claim as law

not from a sense of inherent “rightness,” but from commonality and consensus between legal systems.

Waldron begins by describing the contours of the debate surrounding the invocation of foreign law in *Roper v. Simmons* and other death penalty cases (with Justice Scalia leading the charge for the anti-foreign law camp), and by laying out the general framework of his argument. In Chapter Two, Waldron discusses the concept of *ius gentium*, both in its historical origins and in the current debate, and its role in explaining the use of foreign law in U.S. courts. In doing so, he also aims to clarify “ambiguities” inherent in the term—in particular, by distinguishing between *ius gentium* and international law, and between *ius gentium* and *ius natural*, or natural law. Parsing the distinction between *ius gentium* and natural law from the outset is a wise move, as it allows Waldron to avoid general critiques of his theory on the grounds that it is simply a re-articulation of natural law.

Chapters Three, Four, and Five develop the heart of Waldron’s theory. Chapter Three examines the ways in which foreign law—or more specifically, the consensus that has arisen among the laws of different nations—can be said to exist as a system of law that can be invoked in national courts. This consensus, he argues, forms the basis for a body of legal principles that “complements and interacts” with the laws of any particular nation. In Chapters Four and Five, Waldron examines why the fact of consensus among nations should matter to national judges deciding cases before them. In doing so, he argues, first, that we can learn from how other judges have handled similar questions—not simply on a case-by-case basis, but rather in a more systematic fashion, where consensus represents “a body of legal science” signifying “the accumulated wisdom of the law on certain recurrent problems.” Second, he argues that, for reasons both of fairness and practicality, consistency between legal systems in the sense of treating like cases alike may itself be normatively desirable, particularly in cases involving questions of fundamental rights.

In Chapter Six, Waldron faces the textualist critique of using foreign law in American courts head-on, as well as the related argument that the practice of U.S. courts invoking foreign law is somehow anti-democratic. He also responds to the more personal critique that his argument in favor of U.S. courts invoking foreign law is inconsistent with his well-estab-

lished position as an opponent of strong judicial review—a response that may satisfy some readers more than others, but which is generally consistent with and complementary to the greater issue at hand. Waldron’s discussion of textualism and foreign law—in which, after first identifying himself as a “textualist,” he provides a nuanced account of that position’s inherent *consistency* with invoking foreign law—is one of the book’s several vignettes worth reading in its own right, in addition to the role it plays in advancing the book’s general argument. Chapter Seven addresses the practical difficulties that might arise for U.S. courts invoking foreign law.

After spending the majority of the book shaping the contours of his theory, Waldron concludes by blurring some of those lines in Chapter Eight, “Legal Civilizations,” which introduces the difficult question of how we define “civilization” in the context of *ius gentium*’s reliance on consensus. Given the past evils perpetrated and defended by the practice of “civilized” nations (Waldron cites Justice Taney’s *Dred Scott* decision as a notable example), it is a deeply important question, and it is to Waldron’s credit that he addresses it directly from a number of different angles despite its lack of clear resolution.

Waldron’s interest in “law in the world,” rather than law in a purely theoretical sense, and the credence he gives to how the contours of law evolve and are shaped through our institutions, also has the welcome secondary effect of broadening the scope of what is at heart a philosophical discussion. Despite the complexity of the topic, Waldron’s admirably clear, conversational style of writing invites readers of all stripes to participate and engage with it intellectually. While some background is undoubtedly helpful, this is the rare book of legal philosophy that seems written for both a general audience and for experts in the field—and is likely to succeed at reaching both.

It is also, in many ways, a book written for a skeptical audience. Waldron devotes a great deal of time to developing his theory in such a way as to avoid some common critiques—by differentiating his conception of *ius gentium* from natural law or from the general common law discredited in *Erie*, for example—or more frequently, to address them head-on. This is most apparent in Chapter Six, which addresses democratic and textualist objections to the use of foreign law in U.S. courts, but Waldron uses the technique of critique (actual or

imagined) and response throughout. While this impulse is understandable—defending the use of foreign law in American courts means staring down the rhetorical force and weaponized logic of Justice Scalia, for one—it also means that at times Waldron appears to spend more time on what *ius gentium* is not than on what it is. Yet overall, the technique is quite effective in achieving what appears to be one of the book's central goals: not strictly parsing definitions, but in creating a general framework of how to consider the invocation of foreign law in U.S. courts from a *legal* perspective.

On one level, "*Partly Laws Common to All Mankind*" is a reasoned articulation in favor of the invocation of foreign laws in American courts. Yet in a deeper sense, Waldron is less interested in arguing *that* we should invoke foreign laws than in articulating *why* we should—and in ensuring that both sides of the debate engage in the latter question. As a result, the book's lasting impression is that it represents a starting point for further dialogue and discussion. On occasion, one may wish that Waldron would go deeper into some of the issues he leaves "for further discussion," but this speaks more to his skill in engaging the reader than to any real detriment. While Waldron somewhat modestly notes that he ends "on a rather inconclusive note," the overall force of his effort is clear. Waldron has created a fruitful arena for exchange and debate about the usefulness of foreign law on a deeper level than the "should vs. shouldn't" view that has dominated the discourse—and has challenged the rest of us to join the conversation.

Democracy in Latin America: Between Hope and Despair. By Ignacio Walker. Translated by Krystin Krause, Holly Bird, and Scott Mainwaring. Notre Dame, Indiana: University of Notre Dame Press, 2013. Pp. xvi, 262. \$38.00 (paperback).

REVIEWED BY NATE STEIN

Ignacio Walker's book, *Democracy in Latin America: Between Hope and Despair*, depicts the political development of Latin America over the last few centuries in a thorough and thoughtful manner. Walker describes Latin American politics as a difficult and endless struggle towards democracy. Despite this turmoil and suffering, he explains that the future prospects of Latin America are filled with hope rather than despair.

Walker is a senator of the Republic of Chile who writes with optimism about the situation of both his home country and of all Latin America. His optimism stems from a view that all people can succeed and can be governed in a representative, effective, and equitable way. He is not fatalistic, and he believes in the possibility of change. Importantly, his optimism does not come off as naïve; he clearly explains the complex web of interacting forces that influence politics from which he draws his beliefs. His approach is a multidisciplinary one and his lexicon—without a glossary of terms—can be overwhelming at times, but necessary to fully explain his position. Without discounting the challenges ahead, he discusses the great changes he has witnessed in Latin America and the great potential for a positive future.

Walker starts with an introduction of his thesis and main themes, specifically that modern Latin American history has been marked by the search for alternatives to the crisis of oligarchic rule with the notable difficulty of replacing the oligarchic order with a democratic one. One alternative to oligarchy, populism, is characterized by an “ambiguity towards democracy.” Walker makes one central theme of the book the challenge of reconciling a desire for democracy with this trend towards populism as states transition away from oligarchic rule.

Walker states, accurately, that his book eschews all determinism: the idea that specific conditions can only lead to specific outcomes. Curiously, he tries to avoid theories that emphasize economic, social, political, or cultural ways to explain political processes. Instead, he focuses strictly on the historical evidence and the domino-series of events that have made establishing democracy so challenging in the region. At times, his preference to avoid deterministic factors is nearly impossible, as he is simultaneously forced to consider economic history while ignoring its influence on Latin America’s future. Nevertheless, throughout the book he handles this challenge adequately and tenaciously adheres to the idea that Latin America is not tied down by its past.

Chapters One and Two begin Walker’s history lesson as a search for political and economic alternatives to oligarchy, in which he enumerates different theories to explain the current political climate. Walker states that the seeds for democracy in Latin America were planted in the 19th century but none of these seeds were individually strong enough at the time to

change the old political order, and unfortunately by the end of the book it is clear that these seeds of change have not yet fully grown into trees of democracy. Latin America's main tool for political change, he says, has been revolution, which is logical considering the limited alternatives available for asking an oligarchic leader to give up power. Walker lays out Latin American history very concisely, allowing the reader to understand the context in which the changes occur. He describes the economic development of the 1870s–1940s as a background for understanding the economic changes wrought by the crisis of state-led import substitution industrialization (ISI) from the 1940s through the 1960s which presaged later economic challenges during the modern transition to democracy. Walker carefully dismisses the idea of dependency theory, the theory that certain nations' economic successes are directly dependent on the workings of another more developed economy—for example, the United States. His argument against dependency is strong: Dependency may be true in only certain situations which vary between time and place through a complex web of internal and external variables. Any greater use of dependency theory leads to oversimplification.

Walker points out that democratic transitions are not linear, but instead are marked with periods of progression and regression. From this, he segues into different perspectives of the role the state should play in the development of the economy, particularly whether the state should lead development and have an active role in promoting industrialization. Walker concludes that the role the state should take depends upon many factors, and often the state's best option is a combination of leadership and passiveness in the face of market forces.

Chapter Three explores the post-World War II optimism in the region after the fall of Nazism and Fascism and the wave of democracy that followed, but also how the mood changed after the Cuban Revolution. There was a general feeling in the region that democracy would take over and that Communism was too far away to interfere with this transition, but the events in Cuba fundamentally altered this sentiment. The descriptions here are sometimes difficult to follow because Walker goes back and forth between theories of democratic breakdown and their examples instead of chronologically listing and explaining the changes. For example, when explaining the factors that led to democratic breakdown such as the Cold War,

domestic import-substitution, and various military coups, he orders them by relevance rather than time. His method, though confusing at times, is more logical and more academically structured than a simple timeline. Again, Walker reiterates that a reliance on the dependency theory comes from a marked difficulty in understanding the external factors that affect internal events. Walker suggests that we need to consider the relationship between external and internal factors in a more balanced way.

For Latin America's abortive transition from oligarchy to democracy, Walker argues that the final result of political change depends upon both the initial political conditions of the state, and the type of transition the state undergoes. Even as Latin America modernized, seventeen of the twenty nations still underwent successful coup d'états. Walker asserts that while modernity itself does not breed instability, the process of modernization can. Unfortunately for Latin America, modernization also does not inherently lead to democracy. Instead, Latin America encountered a new type of authoritarianism which Walker calls bureaucratic-authoritarianism. Bureaucratic-authoritarianism is characterized by high levels of modernization and social differentiation, military assumption of power, national security, and economic growth and social development. Walker makes the argument that democracy does not emerge directly from economic growth but from a third hidden variable—the middle class. Industrialization transforms society by creating a large, politically powerful middle class with economic might. Out of this budding middle class, democracy grows, because the size of the middle class makes it difficult to exclude them from the political process. This distinction seems artificial, though, and it would have been better for Walker to say that democracy comes indirectly, rather than directly, from economic development.

In Chapters Four and Five, Walker outlines major political obstacles to political transition, which include low approval ratings for democracy and satisfaction with progress under the current system. In 2008, only fifty-three percent of people believed that democracy helped to ameliorate social inequality; many respondents said it did not matter if a government was nondemocratic as long as it could fix the economy. As is true in many regimes, results win support. If the goal is democracy, however, then this statistic will have to change. Walker optimis-

tically states that Latin America appears to have resolved to stick with democracy no matter how imperfect they perceive it to be. Based on these observations, he suggests that, although the aspiration is that a new democratic order will replace the old oligarchic world, the reality may be the emergence of unique hybrid regimes. The history of populism supports Walker's ideas that quasi-democratic hybrid regimes may be the future of Latin American politics, with the core tension between democracy and populism being the disconnect between the strength of institutions and the emergence of personality-focused leadership, which is based on the charisma of the leader, that generally flourishes in the context of low institutionalization. Essentially, a popular president is able to implement his goals with strong democratic institutions already in place. If the institutions are not in place, however, then the government faces populist and authoritarian temptations which undermine support for democracy.

In the final three chapters, Walker's tone shifts to include a more personal perspective. These chapters continue with political theory but also draw from his personal experience as a senator and include his observations and aspirations. The first chapter describes the differences between parliamentary and presidential governments. Walker does not express a preference between the two, and it would have been helpful to have an account of which would be more likely to succeed in Latin America or elsewhere.

In the book's penultimate chapter, Walker describes the recent emergence of a new social democratic movement in the 1990s, which came as both populist and non-populist responses to previous neoliberal economic reforms. This movement represents the new social democratic left that supports a globalized social democracy and foreign markets, while still valuing institutions and citizen responsibility. The new movement is aware that democracy depends on economic progress and political initiatives to reduce poverty and extend social welfare. Walker says, "I hope to have demonstrated with these arguments that Latin America is not condemned to choose between neoliberalism and neopopulism," and that the reality is much more complex. Latin America has greatly changed and now has come very close to achieving the triple objectives of democracy, growth, and social equality. This book does not have the opportunity to consider the impact of the 2008 finan-

cial crisis, but Walker does make the point that social welfare spending was already unstable in most developed countries and even less stable in areas of Latin America with its high poverty rates, and that this may lead to problems.

In the last chapter, Walker discusses the institutions of democracy and his goals for the future. A better state and better institutions are needed in the region as democratic governance and representation are still just an ideal, not a reality, in Latin America. Though Latin America has taken great strides away from dictatorships, it remains far from fully consolidating into an authentic representative democracies. Walker concludes by arguing that democracy helps make changes possible, and that all of Latin America is coming closer to attaining both democracy and development.

Overall Walker balances broad theory with specific examples to thoroughly consider the political challenges of Latin America. His consideration of multiple points of view creates a substantial and engaging body of work for people of all academic backgrounds. His inclusion of his political experiences throughout, and especially at the end, adds a strong personal touch and sense of connection to Latin America. Walker's book leaves the reader with both knowledge of, and a sense of optimism about, the past, present, and future of democracy in Latin America.

Exporting the Matrix: The Campaign to Reform Media Laws Abroad.

Edited by Richard N. Winfield. Durham, North Carolina: Carolina Academic Press, 2012. Pp. xiv, 131. \$40.00 (hardcover).

REVIEWED BY WENDY LIU

The guarantees of a free press and liberal media laws are often viewed as critical to the functioning of a democratic society. From the perspective of Western democracies in particular, liberal media laws not only allow for the free flow of information, but also importantly allow for public debate and criticism of governmental policies. As noted by U.S. Supreme Court Justice Benjamin Cardozo in *Palko v. Connecticut*, 302 U.S. 319 (1937), “[F]reedom of thought and speech. . . is the matrix, the indispensable condition, of nearly every other form of freedom.”

Deriving its title from the Cardozo quote, *Exporting the Matrix: The Campaign to Reform Media Laws Abroad* seeks to illuminate the challenges of bringing liberal media laws to developing countries. Compiled by the Media Law Working Group of the International Senior Lawyers' Project, *Exporting the Matrix* is an anthology of essays from fifteen experts in media law and policy discussing their experiences in advancing media law reform abroad. The authors in the anthology draw from a diverse cross-section of the field of media law: They include, among others, practitioners, scholars, professors, and a judge. The anthology itself is edited by Richard N. Winfield, former Associated Press General Counsel and professor of media law at Columbia and Fordham Law Schools. Winfield also leads the Media Law Working Group, which provides pro bono legal services to further the development of media laws and policies abroad.

In *Exporting the Matrix*, the authors draw upon their media law reform efforts in developing countries and transitional democracies. The fifteen authors discuss their efforts in an impressive array of countries: Yemen, Peru, Bulgaria, India, Russia, and Ghana are just a few of the countries examined within the anthology. In discussing their experiences abroad, these authors share their perspective on media reform through different lenses and subjects. Some essays offer general advice for how to engage with local actors in international media law reform. Other essays discuss particular pieces of media legislation and offer narrative accounts of the discussions to reform that legislation. Other essays discuss the role of media in law and political governance. Most essays, either directly or indirectly, discuss the particular social, political, and cultural dynamics that shape the context for media legislation and reform.

Despite the diversity of topics and countries examined in the anthology, each essay communicates the same underlying message: that U.S. ideals of liberal media laws cannot be easily exported to other countries without some attention to the nuances of each country's culture, history, and institutional and political arrangements. For example, in an essay on their news media law reform efforts in Yemen, Ben Allgrove and Madeleine Schachter emphasize that effective reform necessitates an understanding of the local country's political system and approach toward legislative reform; an understanding of the

social and cultural norms in Yemen can also prove essential. As Robert J. Freeman eloquently puts it in his essay on freedom of information legislation, “Time and again, I found that what might work for us in the United States might not work elsewhere, and that cultural, governmental, and historical differences and idiosyncrasies are crucial in the development and implementation of law.” As experts in media law and policy, each of these authors confronts the challenge of grafting the norms of Western liberal media laws onto the institutions of the developing country.

While the anthology offers a breadth of experience across a wide array of topics and countries, it lacks the depth needed to effectively analyze and comprehend each of the author’s experiences with media reform. David L. Cook, for example, discusses the draft Press Law in Yemen and the reforms that are present within the draft legislation. The draft Press Law removes a provision within the existing Press Law that authorizes Yemeni courts to order the closure of newspapers, and it removes penal provisions specifically targeted at journalists. The draft Press Law thus makes significant advances toward removing legislation that had operated to chill journalistic content and the operation of the press. Nevertheless, Cook’s essay offers no insight as to the likelihood that the draft Press Law will actually be enacted: It does not discuss in depth the political dynamics that might thwart the enactment and enforcement of the law. Nor does the essay illuminate in detail the negotiations that led to the drafting of the Press Law. While detailed treatment of the political dynamics and the negotiations would result in a much longer essay, these topics are essential to understanding the mechanics behind instituting media reform in a country that has historically repressed the emergence of a robust and liberal media.

But it would be unfair to single David Cook out for his quick appraisal: All of the essays in the anthology seem far too short to critically engage with the complex and gargantuan topic of media law reform in developing countries and transitional democracies. Kurt Wimmer, in another example, offers advice on how to engage with international media law reform efforts abroad. Among other things, Wimmer recommends: to avoid recourse to American exceptionalism and instead to focus on local law; to be creative and find pressure points in which to exert leverage in pushing for reform; and to stay in

the local country for as long as possible in order to ensure the effectiveness of the reform. Such advice, while no doubt valuable, would benefit from detailed examples of how the particular advice was implemented in the field.

Indeed, while all the essays engage with the topic of media law reform in developing countries, the anthology could have benefited from more structure in its organization. The anthology seemed more like a mixed bag of stories and reflections from different experiences in the field, rather than a coherent collection of essays that develop common themes or sub-themes in analytical ways. The essays are not grouped by topic, country, type of author (practitioner, scholar, etc.), or theme; the essays discussing the draft Yemeni press law, for example, were not next to each other in the anthology. Adding sections to the anthology—and grouping the essays within those sections—might provide the reader with guidance as to what messages are to be gleaned from each essay. Without such organizational structure, it seems far too easy for the reader to get lost in the different countries and topics discussed within the anthology. One unifying message emerges—that liberal theories of media and the press are not easily grafted onto local cultures—but it is difficult to ascertain what other messages we are supposed to learn, and how we should think critically about the emergence of liberal media in developing countries.

In the end, the strength of the anthology reveals one of its main shortcomings. In providing a diverse set of essays from a number of esteemed experts, the anthology introduces the topic of media law reform through a number of different lenses and contexts. But, in attempting to achieve such breadth, the anthology fails to treat the topic of international media law reform with much depth. If the objective of the anthology is to introduce a novice to the topic of media law reform, then the anthology succeeds. But, if the objective is to guide aspiring reformers as they navigate (or contemplate navigating) media law reform in developing countries, then the anthology falls short of meeting that objective.