Schröder’s efforts to omit this fact: “[o]ne member of the panel disagreed and insisted on having his opinion noted in the panel report” (p. 147).

Mavroidis notes the strong influence LAD had over panelists during the transition from GATT to WTO (“its influence in persuading panelists on the status of the law should not be underestimated” (p. 239)) and cites accounts from the 2000s and 2010s to suggest “a substantial rather than minor influence” (p. 240, n. 15) has continued. In his words, “the Secretariat possessed a winning card: it was the guardian of the system; its opinion on the status of the law mattered. Those wanting to differ would carry an important burden of proof” (p. 240).

Contributors who joined the GATT/WTO a bit later paint a more optimistic picture. Valerie Hughes (chapter 28), director of LAD from 2010–2016, defends the role played by the Secretariat, arguing that “[i]t would be wrong to say . . . that the Secretariat exercises undue influence on the decisions made by panels” (p. 406). She offers as proof of this the lack of uniformity in the three panel reports issued in close succession in 2011 interpreting aspects of the TBT Agreement (US – Clove Cigarettes, US – Tuna II, and US – COOL) (p. 406, n. 7, 15).

And Marceau argues convincingly that pragmatism has been a positive, complementing rather than contradicting legalism (p. 246). Bill Davey (chapter 25) and Bruce Wilson (chapter 27) who served as directors of LAD from 1995–1999 and 2002–2010 respectively, offer numerous examples of pragmatic decisions taken to address ad hoc procedural issues that have arisen for which no written rules or guidelines existed.

This review has barely scratched the surface of all the valuable contributions contained within this volume. I have already cited nine different chapters in my current research projects, and have discovered dozens of useful references in the footnotes. I highly recommend this book, particularly to those who are already familiar with the contours of the GATT/WTO system.

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doi:10.1017/ajil.2017.82

International criminal law is now a distinct body of public international law with its own substantive rules of decision, procedural conventions, institutions dedicated to its enforcement, civil society ecosystem, and discourse. It also has its own history, which has now been exhaustively recounted in a five-volume set published by the Torkel Opsahl Academic EPublisher (TOAEP). The series was expertly edited by Morten
Bergsmo, Assistant Professor Cheah Wui Ling of the National University of Singapore, and Associate Professor Yi Ping of Peking University Law School—an editorial team later joined by Song Tianying (Volumes 3–5), a researcher with the European University Institute, and Klaus Rackwitz (Volume 5), now heading the International Nuremberg Principles Academy.1

The series is the brainchild of its lead editor, Professor Bergsmo, who has been a mainstay in international criminal justice since the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and who led the preparatory team charged with establishing the Office of the Prosecutor of the International Criminal Court (ICC).2 Bergsmo is now Director of the Centre for International Law Research and Policy (CILRAP), a Visiting Professor at Peking University Law School and editor-in-chief of TOAEP, a nonprofit open-source publisher. The series, which began with an initial two volumes, emerged out of a pair of source publisher. The series, which began with an initial two volumes, emerged out of a pair of expert seminars convened in Hong Kong and New Delhi on the historical origins of international criminal law. The first three volumes tell the genesis story of international criminal law from stereoscopic perspectives. Legal scholars cross paths with political scientists, historians, sociologists, and practitioners in the table of contents, all recounting key historical events and legal precedents from their particular multidisciplinary and methodological perches. The first volumes also include some less celebratory accounts of the post-World War II proceedings3 and canvas the hundreds of less salient trials that took place in the European and Pacific theaters before domestic authorities, military tribunals, and people’s courts.4 These national proceedings offer unique insights into the political motivations of their conveners. As has been seen in France and elsewhere,5 postwar trials operate as an exercise of self-definition, often in the service of constructing a less compromised and more heroic historical memory.6 This series is also unique in its cultivation of non-Western and emerging academic voices, particularly from South and East Asia, who have their own take on the project of international justice.

According to the orthodox genealogy, international criminal law was born in the post-World War II period in proceedings convened in Nuremberg and Tokyo, although the latter regularly receives short shrift in these accounts. After a period of Cold War quiescence, the project was revived in the mid-1990s with the establishment of the first ad hoc criminal tribunals by the UN Security Council and the finalization of a multilateral treaty to create the ICC in 1998. This history is traditionally portrayed in a linear fashion that assumes juridical continuity between the post-World War II era and the ICC. This set of volumes, by contrast, meanders further back in time and elsewhere around the globe to tell a richer and more convoluted story replete with false starts and dead ends. Contributors explore the deep historical origins of the bodies of law invoked at Nuremberg/Tokyo and in today’s international criminal proceedings, including the legal origins of the concepts of war crimes,7 crimes against peace,8 and crimes against...
humanity;\textsuperscript{9} international humanitarian law in ancient China\textsuperscript{10} and India;\textsuperscript{11} the 1649 prosecution of Charles I for what we would today call crimes against humanity;\textsuperscript{12} early manifestations of transitional justice in Greece following the Peloponnesian War;\textsuperscript{13} and precedents drawn from admiralty law, including early prohibitions on piracy and the principle of neutrality.\textsuperscript{14} In addition to covering the abortive World War I efforts in Leipzig,\textsuperscript{15} which regularly appear as object lessons in the classic historical narrative, the series also provides insight into the somewhat more efficacious domestic trials of Ottoman Empire perpetrators—proceedings that are largely overlooked in contemporary accounts.

Volume 2 of the series continues in this vein by presenting rich accounts of national efforts at enforcing international criminal law around the world,\textsuperscript{16} including trials in China\textsuperscript{17} and the then-Soviet Union,\textsuperscript{18} where a prolific history of postwar prosecutions belies contemporary reticence about the project of international criminal justice. Contributions by national criminal law experts reinforce the centrality of complementarity in the ICC system, laying emphasis on the importance of building national capacity and incorporating international crimes into the world’s domestic penal codes. With the original \textit{ad hoc} tribunals in their final juridical throes, the ICC is becoming the only truly international game in town. This reinforces the importance of national judiciaries taking up the responsibility to prosecute international criminal law breaches when the accused fall within the reach of their courts and of new experiments with hybridization, such as the special criminal court in the Central African Republic.\textsuperscript{20}

Volume 3 adopts more of a thematic and substantive law approach, tracing the origins of the international criminal law canon as well as the forms of responsibility that have emerged to capture collective criminality in an individual criminal law framework.\textsuperscript{21} This includes contributions on the history and evolution of superior responsibility.\textsuperscript{22}

\begin{itemize}
\item War Crimes Commission to International Criminal Law, 1944–1947, pp. 475–505 (Volume 1).
\item Manoj Kumar Sinha, \textit{The Manusmrti and Laws of Warfare in Ancient India}, pp. 13–25 (Volume 3).
\item Geoffrey Robertson, \textit{The Tyrannicide Brief}, pp. 115–40 (Volume 1).
\item Emiliano J. Buis, \textit{Between Isonomia and Hegemonia: Political Complexities of Transitional Justice in Ancient Greece}, pp. 27–61 (Volume 3).
\item Shavana Musa, \textit{War Crimes Trials and Pre-Nineteenth Century Admiralty Court Precedents}, pp. 63–91 (Volume 3).
\item Moritz Vormbaum, \textit{An “Indispensable Component of The Elimination of Fascism”: War Crimes Trials and International Criminal Law in the German Democratic Republic}, pp. 397–425 (Volume 2).
\item Patryk I. Labuda, \textit{The Special Criminal Court in the Central African Republic: Failure or Vindication of Complementarity?}, 15(1) J. INTL CRIM. JUST. 175 (2017).
\end{itemize}
and its counterpart, the defense of superior orders.23

In addition to the events and themes international criminal law aficionados regularly celebrate—the triumph of law over vengeance and giving voice to victims—the series does not turn away from moments of fallibility, such as trials in Poland that were used to persecute perceived traitors and other opponents of the postwar regime,24 the shameful invisibility of, and thus impunity for, the Japanese system of mass organized rape at Tokyo and beyond,25 and acts of political vengeance masquerading as historical justice before the Bangladesh International Crimes Tribunal (BICT).26 The result is a new and more rigorous historiography that suffers less from the “judicial romanticism”27 that often permeates scholarship in this field.28

In these historical accounts, readers benefit from a thick description of the case files,29 many of which are not available in English.30

These contributions reflect innovative archival research on materials newly discovered and rediscovered by contemporary scholars. Many of these records have been made more accessible through another of Professor Bergsmo’s many contributions to the field: the International Criminal Court’s Legal Tools project,31 a comprehensive database of modern jurisprudence mingling with heretofore obscure historical records, including transcripts and judgments of lesser international criminal law proceedings.

The success of the original trilogy spurred the publication of two additional volumes. Volume 4 takes up intersecting questions of criminal procedure and investigative methodologies. Chapters are devoted to the use of demographic analysis to prove international crimes32 and the contributions of fact-finding commissions to accountability exercises.33 It also tracks episodic domestic prosecutions during, or emerging from, the Cold War,34 when developments at the international level lay in quiescence but domestic courts acted opportunistically when they had jurisdiction over particular defendants, such as Adolf Eichmann in Israel.35 Here the series brings the reader up to contemporary times, with contributions tracking the evolution of international criminal law before the ad hoc tribunals and the ICC.36


Volume 5 is devoted to the capstone event in the modern history of international criminal law: the establishment of the ICC. This volume contains copies of, or adaptations from, a series of memoranda solicited by Professor Bergsmo in his advance team capacity from a range of experts as the ICC was being created. These contributions track the myriad logistical, strategic, and legal decisions—from the sublime to the mundane—that must be resolved in order to build and operate an entirely new judicial system virtually from scratch. Here, the series also breaks new ground: legal scholarship in this field tends to focus on the jurisprudence around substantive crimes and forms of responsibility and neglect questions of institutional design, which are essential to ensure the fairness and efficacy of the system. In this vein, Volume 5 addresses a range of issues whose importance might only be obvious to true experts. These include the need to ensure an effective organizational structure; a culture of legal pluralism; a rational and sustainable budget; prosecutorial regulations and codes of conduct; a program of professional training; and an accessible yet secure information management system. Several chapters include legal artifacts in their annexes, such as draft versions of court regulations with comparative tables, to enable legal research on the evolution of norms. By tackling some of the major criticisms of ad hoc tribunals, such as inconsistent cooperation from national authorities and the excessive length and cost of penal proceedings, many of these chapters amount to cogent “lessons learned” exercises. All told, this volume serves as a veritable institutional history of the ICC. As the Court faces unprecedented challenges and criticism, it becomes apparent that many of the recommendations and proposals contained in these memoranda were not taken to heart by actors operating within the ICC—to the institution’s detriment.

This final volume also features more praxis-oriented chapters, touching upon best-practice methodologies for war crimes investigations, including evidentiary analysis and forensics, by some of the world’s great international criminal law practitioners. These include contributions by John Ralston, the former chief of investigations of the ICTY who went on to found the Institute for International Criminal Investigations (IICI); Mark Harmon, whose illustrious career in international criminal law culminated with his appointment as co-investigating judge at the Extraordinary Chambers in the Courts of Cambodia (ECCC); Hanne Sophie Greve, formerly of the European Court of Human Rights; and Christopher Keith Hall, who ran Amnesty International’s international justice program for many years to great effect until his untimely death in 2013. Given their highly technical nature, some of these contributions are less accessible to the non-practitioner, but will be of

38 Fabrizio Guariglia, Policy and Organisational Questions, pp. 275–92 (Volume 5).
41 Roelof Haveman, Legal Training and the Prosecution, pp. 519–29 (Volume 5).
42 Christopher Staker, Observations on Legal Culture, Legal Policy and the Management of Information, pp. 629–38 (Volume 5).
43 Carlos Vasconcelos, Draft Regulations of the Office of the Prosecutor, pp. 801–949 (Volume 5).
44 Morten Bergsmo & Vladimir Tochilovsky, Measures Available to the International Criminal Court to Reduce the Length of Proceedings, pp. 651–703 (Volume 5).
45 Xabier Agirre, The Role of Analysis Capacity, pp. 37–120 (Volume 5).
46 See https://iici.global.
48 Hanne Sophie Greve, Characteristics of Large-Scale Crimes, pp. 271–74 (Volume 5).
49 Christopher Keith Hall, Prosecutorial Policy, Strategy and External Relations, pp. 293–373 (Volume 5); see also Nigel Rodley, Christopher Keith Hall Obituary, GUARDIAN (June 5, 2013), at https://www.theguardian.com/world/2013/jun/05/christopher-keith-hall.
interest to individuals desiring to work in this field or learn lessons from international prosecutions for domestic proceedings, such as strategies to prove command responsibility or joint criminality.

While the effort to include diverse voices in this series is a welcome one, Volume 5 falls woefully short when it comes to gender. Although we still do not enjoy parity on international judicial benches, women have occupied very high positions in international criminal law since its revival in the 1990s. Indeed, at one point in time, the top three positions at the ICTY were held by women: Louise Arbour as chief prosecutor, Gabrielle Kirk-McDonald as president of the Tribunal, and Dorothee de Sampayo Garrido-Nijgh as registrar. Yet none of these pioneers appear in this volume. Also absent are Navanethem Pillay, former president of the Rwanda tribunal and judge on the ICC; Patricia Sellers, who helped lead the sexual violence prosecutions before the ad hoc tribunals; Carla del Ponte, the last joint chief prosecutor of the ad hoc; Teresa McHenry, who now heads the Human Rights & Special Prosecutions Unit at the U.S. Department of Justice after a long career at the ICTY; and Fatou Bensouda, the current chief prosecutor of the ICC. As a result, the ratio of contributions from men to women in Volume 5 is a startling 5:1.

Fortunately, the voices of women experts appear in more equal numbers in the rest of the series. Notwithstanding the length and breadth of the series, gaps remain—a common shortcoming of many edited volumes that emerge from a call for papers. For example, there is little attention paid to corporate criminality—the next frontier of international criminal justice—although there is one short and prescient chapter on the prosecution of financial enablers. Furthermore, although the ICC dominates the series’ modern history, efforts at creating hybrid institutions, where the most fascinating innovations in the field are currently underway, are largely invisible. Additionally, the series takes a very pro-prosecution perspective, with less attention paid to challenges of the defense in historical context. Finally, given the centrality of the conflict between the African Union and the ICC, the series and its readers would benefit from more African voices to build a better understanding of African perspectives.

All that said, given its length and breadth, it is safe to assume that there is a chapter on almost any element of the history of international criminal law that the patient reader might be looking for. The series will be an essential resource for both academics and practitioners interested in the history of international criminal law as a distinct field and also of the early days of the ICC, the world’s first permanent international criminal court.

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Books Received

International Law—General


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