This is of course the second volume of the Special Edition on Genocide and War Crimes Trials, immediately following the previous edition of this journal (Vol. 26, No. 3). This earlier edition included studies on the deployment of atrocity film evidence at the Nuremberg trials, plea-bargaining in recent ad hoc UN tribunals and a case study on the differential legal treatment of two Nazi war criminals: SS Karl Wolff and Field Marshall Albert Kesselring. This successor volume complements these earlier studies with articles by Suzanne Ost, Susan Twist, Salter and Charlesworth and Barbara Korth, each of which we discuss in turn.

Ost’s article is based on extensive archival research that uncovered the implications of newly declassified US intelligence files and other sources. These include, relevant trial documents translated from the original German language and, administrative documents and letters sent to the director of the Kaufbeuren psychiatric institution in Bavaria from individuals within the Reich Ministry of the Interior. The topic is one aspect of the extreme form of utilitarianism which lay behind the euthanasia programme, and the associated objectification and reification of certain individuals as ‘stock’ or ‘subjects’ in order to serve the perceived needs of Nazi German society. The Nazi eugenic programme involved the killing of mentally and physically sick individuals whom officials from this regime deemed to lack continuing worth. Her account supplements earlier studies on the Nazi’s so-called ‘Euthanasia’ policies. It also draws attention to gender issues, not least the fact that women, as well as men, can be cold, hard killers. Ost brings out new details of the manner in patients of the institution were, from their admission onwards, redefined as disposable objects. She discusses the difficulties the prosecution’s strong evidence posed for the defence case. One
result of her research is to challenge the assumption that it was only the doctors and non-Catholic nursing staff at Kaufbeuren who were the perpetrators of the actual killings.

Susan Twist’s article addresses one aspect of the theme of retrospective criminalisation within the Nuremberg Trials (1945–1946), which earlier studies have neglected: the need to formulate an appropriate typography of different types of restrospectivity. It critically explores the relevant provisions of the Nuremberg Charter, effectively the primary legislation for the trials, which had been unilaterally enacted by the Allies on 8 August 1945, in order to charge defendants with crimes which took place from the start of the Nazi regime in 1933. These included ‘crimes against humanity’ and ‘crimes against the peace.’ Her article analyses and links relevant strands of retrospectivity, identified within the typography she has developed in order to cast new light upon how the Allied authorities deployed restrospective or ‘ex post facto’ law contrary to traditional prohibitions which insist that there can be no crime or punishment other than that provided by pre-existing laws. Her discussion inevitably raises the question of under what circumstances, if any, is it possible to justify their adoption by the military when resort to such criminalisation was a characteristic of the defendants’ own regime as a legally problematic mode of governance.

The contribution by Michael Salter and Lorie Charlesworth focuses upon a theme which, in the wake of recent military actions including the invasion of Iraq, has become even more topical: the potential liabilities of foreign minister under international criminal law for ‘diplomacy’ linked to military aggression. That theme had become more acute in the wake of the creation of the International Criminal Court, the decline of traditional immunities for acts of state, and the expansion of universal jurisdiction for serious war crimes. However, a recent decision by the International Court of Justice, the Arrest Warrant case, Belgium vs. Congo, (2002), appears to have diluted the developing international customary rule that suspends legal immunity whenever a grave international crime has been committed. This decision has apparently strengthened the immunity of such officials from prosecution for war crimes and crimes against humanity but on legal grounds that have rightly attracted considerable criticism and calls for a return to earlier precedents, including those within the Nuremberg trials. The authors maintain that the trial of Hitler’s foreign minister, von Ribbentrop, at the Nuremberg International Military Tribunal constitutes a surprisingly relevant precedent for how international criminal law