

BOOKS RECEIVED*

Book Note

Precautionary Legal Duties and Principles of Modern International Environmental Law

By Harald Hohmann. The Hague, The Netherlands, London, U.K.: Graham and Trotman/Martinus Nijhoff Publishers, 1994, pp. 400, \$144.00 [ISBN 1-85333-911-3].

Basic Documents of International Environmental Law

By Harald Hohmann. The Hague, The Netherlands, London, U.K.: Graham and Trotman/Martinus Nijhoff Publishers, 1992, 3 vols., pp. 1900, \$601.50 [ISBN 1-85333-628-9].

Precautionary Legal Duties and Principles of Modern International Law—an updated translation from German of the author's doctoral thesis—seeks to determine whether there has been a change of perspective in international environmental law from the predominantly economic, traditional (anthropocentric) perspective to a primarily ecological approach. More simply: Is environment a value per se or only because it benefits man? The first half of the book is devoted to a broad presentation of statements emanating from many international bodies, bodies that range from formal intergovernmental organizations to private, academic bodies. This part is concluded by a lengthy but nevertheless interesting debate on the legal value of these statements. By necessity this debate turns around notions such as soft law, state practice, instant custom, and the like. The author strongly favors a progressive approach, which reduces the role of state practice (as a behavior demonstrated by concrete actions) and elevates the repetition of declarations, made by governments in the context of international organizations, to a source of law-making. This approach leads to surprising results: Principle 21 of Stockholm is identified as a peremptory norm of international law (*ius*

*With the exception of the first entry, this listing of Books Received was prepared by Hendrik Jordaan and William C. Murley, J.D. Candidates, 1997, Southern Methodist University. Mr. Jordaan is Editor-in-Chief and Mr. Murley is Comments Editor of the Southern Methodist University School of Law Student Editorial Board of *The International Lawyer*.

cogens), although most scholars would consider it simply as customary law. The question remains: Should our catalogue of sources of law go much beyond Article 38 of the ICJ Statute, because many feel that environment, due to the urgency of measures to be taken, requires immediate international action.

The following chapter analyzes formal agreements, which range from water protection to the protection of soil and species, from air pollution and ozone depletion to the Rio instruments. In a comprehensive as well as detailed examination the author reviews these agreements by means of a series of questions: Is risk potential sufficient for the application of precautionary duties or is a suspicion of concrete danger required? Has one to distinguish between environmental damage within and outside one's own jurisdiction? Are environmental impact assessments already a general duty incumbent upon states? Do prevention and abatement duties depend on full scientific proof of causality and threshold? These agreements appear from the author's perspective as mere confirmation or nonconfirmation of preexisting customary law, that has in his view emerged from the more or less informal statements quoted in the first half of the book. Again this unusual approach to the sources of international environmental law deserves a prolonged scientific debate.

Lessons learned during the two preceding parts of the book are pulled together in a short conclusions chapter. Here the author describes the three main features of modern international environmental law, namely relativity regarding form of the source of law, time, and region. To this reviewer's mind it is too early to distinguish between traditional and modern international environmental law. Certain treaties contain relatively progressive duties, but it appears to be difficult to infer from such isolated instances that this branch of international law as a whole is moving in very specific directions. Statements of the author on sovereignty or on reciprocity are welcome, but statements to the effect that duties of notification and consultation became peremptory duties for all environmental media remain doubtful. Recent deliberations in the context of the United Nations Environment Program and the Commission on Sustainable Development would rather teach caution in respect of the present state of international environmental law.

This book is accompanied by three volumes entitled *Basic Documents of International Environmental Law*. Whereas the first volume contains the most important declarations (UN, ILC, ECE, OECD, etc.), the other two volumes contain important global and regional agreements in the respective fields (water, soils and species, air and atmosphere, and so forth). These three volumes constitute a most helpful instrument for legal scholarship in the field of the environment.

As regards the future of international environmental law, special attention will have to be paid to issues such as compliance control, dispute avoidance, and the most difficult question of responsibility and liability. Further progress in new law-making should be preceded by the full implementation of existing law.

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ABA Section of International Law and Practice Publications

A Lawyer's Guide to Doing Business in South Africa

Edited by Vaughan C. Williams, William M. Hannay, Michael R. Littenberg, and Lauren G. Robinson. Chicago, Illinois: American Bar Association, Section of International Law and Practice, 1996, pp. 209, \$29.00 (Section members), \$40.00 (nonmembers) (pb) [ISBN 1-57073-364-3].

A collection of writings on international commercial transactions with South Africa, this book provides practical advice for attorneys or executives considering business ventures in the new South Africa. Its coverage, extensive yet concise, includes chapters on establishing joint ventures in South Africa, establishing a distribution business, South African financial statements requirements, South African securities laws and portfolio investment, taxation, trade regulation, competition law, intellectual property protection, employment law, environmental law, and the Southern African regional legal framework. In addition, the book has useful appendixes setting forth resources about South African law in the U.S. and contact addresses for selected business, trade, and legal associations and government agencies in South Africa. The authors include prominent South African attorneys, scholars, and government officials.

The World Trade Organization: The Multilateral Trade Framework for the 21st Century and U.S. Implementing Legislation

Edited by Terence P. Stewart. Chicago, Illinois: American Bar Association, Section of International Law and Practice, 1996, pp. 761, \$80.00 (Section members), \$95.00 (nonmembers) (pb) [ISBN 1-57073-165-9].

This text provides a comprehensive overview of the development of the World Trade Organization (WTO), as well as the importance of the 1993 Uruguay Round Agreements. Specifically, the work's central focus is on the issues over which international trade disputes are most likely to arise, as well as guidance as to how client interests may be affected. The eighteen detailed chapters have been authored by recognized scholars in the field. A broad sampling of topics addressed in this volume include: the Uruguay Round, the Marrakesh Agreement Establishing the WTO, market access, reforming global trade in agriculture, antidumping, the subsidies agreement, the Agreement on Trade Related Investment Measures (TRIMS), trade-related aspects of intellectual property, dispute settlement, unique treatment of developing countries, and

the effects on international trade law in the United States. This book is an excellent source of timely information for practitioners, as well as laypersons, interested in the WTO and U.S. implementing legislation.

General Publications

Arbitration and Mediation in International Business

By Christian Buhring-Uhle. The Hague, The Netherlands: Kluwer Law International, 1996, pp. xxiv, 546, \$163.00, Dfl. 250.00, £110.00 [ISBN 1-85333-573-8].

In the words of the author, “[i]nternational business disputes are becoming increasingly numerous, complex, and in many instances unmanageable.” Accordingly, this work represents an exhaustively researched, practically written examination of how international commercial arbitration and other ADR techniques can be applied to promote effective conflict management in international business. Following a brief foreword by William W. Park, vice president of the London Court of International Arbitration, the treatise is broken down into four main parts. Part One, an introduction, examines the economic factors prompting the need for effective conflict management in international business. Part Two deals with the positive impact of international commercial arbitration in transnational litigation as well as the practical function and transaction costs of the process. Part Three considers mediation and other arbitration alternatives in the context of international business as well as to multijurisdictional disputes. Part Four concludes the study by discussing the synthesis of arbitration and mediation to best effectuate the goal of conflict management. Buhring-Uhle’s treatise is a tremendous resource for practitioners interested in transnational litigation and international dispute resolution processes.

Challenges to the New World Trade Organization

Edited by Pitou van Dijck and Gerrit Faber. The Hague, The Netherlands: Kluwer Law International, 1996, pp. xxi, 350, \$117.00, Dfl. 175.00, £79.00 [ISBN 90-411-0236-1].

The creation of the World Trade Organization (WTO) in early 1995 was a significant event in light of the pressing need to manage political tensions stemming from increasing international independencies. Accordingly, the WTO was an important step in the development of a comprehensive multilat-

eral framework for global trade governance. Yet, as noted in the preface by Alfred van Staden, director of the Netherlands Institute of International Relations, the WTO faces a number of growing challenges not adequately accounted for by the current structure. This book, which incorporates chapters written by renowned policy-makers, academic economists, and lawyers, first gives the reader a working understanding of the various problems created by the changing world economy, including standardization of trade-related investment, intellectual property, labor, and environmental conditions. This overview is followed by a discussion of appropriate enforcement techniques. Second, the book discusses the relationship between the WTO and emerging regional preferential trade systems. In sum, this book presents a timely and comprehensive examination of the problems facing the WTO.

Consortia Agreements in the International Construction Industry

By Hani Sarie-Eldin. London, U.K.: Kluwer Law International, 1996, pp. xxv, 306, \$107.00, Dfl. 160.00, £72.00 [ISBN 90-411-0912-9].

This book, the third volume in the International Economic Development Law Series, will be of particular significance to practitioners interested in various aspects of economic cooperation between international contractors. Several issues related to the development and structure of international construction consortium agreements are thoroughly discussed, including an analysis of common contractual structures, legal classification and status of consortia agreements in municipal laws, as well as internal and external obligations and liabilities of the members of the consortium to each other and to the employer under the terms of the works contract. While the author places special geographic emphasis on Egypt, he includes thoughtful comparative analysis of the English, French, German, and American legal systems.

Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order

By Yves Dezalay and Bryant G. Garth. Chicago, Illinois: The University of Chicago Press, 1996, pp. x, 343, \$35.00, £27.95 [ISBN 0-226-14422-4].

This book addresses the changing landscape of international commercial arbitration. It looks at "how an elite, transnational legal profession has emerged over the last three decades and engaged in the construction of an

autonomous market” and the competition among transnational arbitrators to be selected to arbitration panels. Part One sets out the book’s method and structure, the authors’ research strategy, and the world of international commercial arbitration. Part Two focuses on the construction of an international private justice. Part Three deals with the relationship between the development of international commercial arbitration and national transformations in the landscape of business disputing. The book analyzes, in light of increased international market and regulatory institutions, the changing prospects for international business dispute resolution.

The European Union, the United Nations, and the Revival of Confederal Governance

By Frederick K. Lister. Westport, Connecticut: Greenwood Press, 1996, pp. xi, 182, \$55 [ISBN 0-313-29890-4].

As the title suggests, this book is a thought-provoking examination of confederal governance in the post-Cold War world, with a special emphasis on the European Union and the United Nations. The author, a veteran of thirty-four years of service in the U.N. Secretariat, lends considerable practical insight and experience to this deftly written political commentary. The work is divided into three chapters. Chapter 1, *The Nature of Confederal Governance*, examines and analyzes the place of confederations in the typology of governments, as well as its modern application. In Chapter 2, *The European Union: Jumbo Confederation*, the author explores the origin and history of the European Union from 1957 to 1995, and analyzes the primary characteristics of the Union. In Chapter 3, *The United Nations: A Collective Security Confederation in the Making?*, the author discusses the origins of the U.N.’s collective security system and analyzes the prospects for achieving global confederation. In addition, this sharply written text contains a foreword on the United Nations by Benjamin Rivlin of the Ralph Bunche Institute.

The External Relations of the European Communities

By I. MacLeod, I.D. Hendry, and Stephen Hyett. New York, New York: Oxford University Press, 1996, pp. lxxxi, 432, \$98.00 (hc) [ISBN 0-19-825929-8], \$32.00 (pb) [ISBN 0-19-825930-1].

The aim of this book, according to its authors, is “to state briefly the laws and practices which govern the conduct of the external relations of the

European Communities." A current and thorough assessment of recent developments in the area of European Community law, this book's coverage spans the overarching structure of the European Communities and the European Union. At the same time, it offers in-depth and industry specific analysis pertaining to fisheries, transportation, education, public health, the environment, energy, and technology. The work also addresses the European Union's common foreign and security policy, which is often closely related to the conduct of the Community's external relations. Throughout the book, the authors effectively combine legal analysis with an examination of the practice.

The Future of Copyright in a Digital Environment

Edited by P. Bernt Hugenholtz. The Hague, The Netherlands: Kluwer Law International, 1996, pp. viii, 248, \$88.00, Dfl. 135.00, £59.50 (pb) [ISBN 90-411-0267-1].

The rapidly evolving technological environment is one of the foremost challenges currently faced by copyright law practitioners. Specifically, this technological revolution, in the view of the editor, is "having a profound, and sometimes disturbing, impact on the scope, nature, and structure of copyright law." This challenge was the central focus of a colloquium on July 6-7, 1995, organized by the Royal Netherlands Academy of Sciences and the Institute for Information Law at the University of Amsterdam. This volume is a compilation of fourteen scholarly papers, prepared by some of the world's leading authorities on digital technology and copyright law, which were presented at that colloquium. Issues addressed in this concise, useful guide include the scope of protected rights in the digital environment, various exemptions and limitations, the collective administration of rights, unique problems regarding conflict resolution, as well as copyright alternatives and proposed solutions. This book is an excellent resource for anyone interested in current information on copyright law and the effects of the information superhighway.

The German Stock Corporation Act

By Hannes Schneider and Martin Heidenhain. The Hague, The Netherlands: Kluwer Law International, 1996, pp. v, 316, \$98.00, Dfl. 150.00, £66.00 [ISBN 90-6544-782-2].

This complete English translation of the German Stock Corporation Act is the first title in the Series of Legislation in Translation published by Kluwer

Law International and C.H. Beck. The introduction provides a concise, detailed discussion of the Aktiengesellschaft (AG) and the Kommanditgesellschaft auf Aktien (KGaA), the two primary types of German stock corporations. Specifically, the introduction explores some of the primary features of the AG and KGaA, including formation, management and shareholders' meetings, capital integration, affiliated enterprises, accounting, profit distribution, and dissolution. The translation of the Act itself is arranged with the German and English texts in a dual column, side-by-side format for easy reference. This volume "reflects the prevailing state of legislation and will prove valuable to foreign lawyers and business people dealing with stock corporations."

Inhuman States: Imprisonment, Detention and Torture in Europe Today

By Antonio Cassese. Cambridge, Massachusetts: Polity Press, 1996, pp. ix, 141, \$19.95 (pb) [ISBN 0-7456-1722-0].

A critical assessment of human rights in contemporary Europe, this book is based on the experiences of international inspectors who visited prisons, police stations, psychiatric institutions, and detention centers for foreigners in Western Europe. Representing twenty-three member states of the Council of Europe, the inspectors set out to "determine whether cruel, inhuman or degrading treatment, especially torture, had been inflicted on detainees." The author sets forth personal experiences, emotions, and observations as presiding member of the group of inspectors. In addition to his personal experiences, the author also offers thoughts on the nature of being human, and the essence of human rights.

Innovation and the Intellectual Property System

Edited by Andrew Webster and Kathryn Packer. London, U.K.: Kluwer Law International, 1996, pp. xi, 210, \$97.00, Dfl. 145.00, £65.00 (pb) [ISBN 90-411-0907-2].

This book provides a comprehensive and current examination of the evolving relationship between the contemporary innovation system and intellectual property. Specifically, the editors have compiled scholarly essays written by specialists from a diverse range of professional backgrounds, including biochemistry, sociology, economics, law, and intellectual property management. These essays primarily focus upon three major topical areas which,

in the editors' words, are "crucial to the analysis of intellectual property today." These areas include innovation and firm strategy, the commercialization of university research, and the international policy dimensions of intellectual property policy. Within this tripartite framework, various sub-topics are also addressed including, for example, patenting in the U.K. scientific industry, the challenge of standardization, and intellectual property in the pharmaceutical industry.

Insider Trading

By William K.S. Wang and Marc I. Steinberg. Boston, Massachusetts: Little Brown & Co.; Toronto, Canada: Little, Brown & Company (Canada) Limited, 1996, pp. xxxiv, 1237, \$155.00 [ISBN 0-316-92108-4].

A landmark treatise, this book covers all federal, state, and transnational issues on insider trading. Its breadth and depth considerable, it analyzes, among others, the following issues: the impact of insider trading laws on society, the issuer, and the insider trader's employer; the harm to individual investors from a specific insider trade; section 10(b) and rule 10b-5; tipping; government enforcement; rule 14e-3; section 17(a) of the Securities Act of 1933; related RICO issues; section 16 considerations; and related state law. The treatise tracks the development of insider trading laws, offers insights into recent court decisions, and analyzes trends in securities law.

International Business Acquisitions: Major Legal Issues & Due Diligence

Edited by Michael Whalley & Thomas Heymann. London, U.K.: Kluwer Law International, 1996, pp. xv, 376, \$110.00, Dfl. 165.00, £75.00 [ISBN 90-411-0893-9].

In light of the increasing number and diversity of international acquisition transactions, the editors describe in detail the many significant considerations involved in a cross-border acquisition of shares or assets. This handbook focuses on two stages of cross-border business in twenty-three jurisdictions. First, the importance of legal issues common to particular jurisdictions is examined. The environment surrounding the target business in particular is emphasized including government regulation, taxation, contract law, employment law and employee rights, exchange controls and other issues relevant to acquisitions. Second, the editors discuss "due diligence," the detailed examination of a particular target's business and assets. Included is a compre-

hensive due diligence checklist that can be used as a starting point for the detailed inquiries that generally precede such acquisitions.

The International Court of Justice: 1946–1996

By Arthur Eyffinger. The Hague, The Netherlands: Kluwer Law International, 1996, pp. xvi, 428 \$77.00, Dfl. 115.00, £52.00 [ISBN 90-411-0221-3].

This book is a thoroughly researched, illustrated history of the International Court of Justice from its inception to the present date. Eyffinger explores in detail the origins of modern international law leading to the creation of the World Court. This examination includes a discussion of a broad range of related topics including historical international dispute resolution techniques and the Permanent Court of International Justice. Moreover, the constitution and functioning of the Court are reviewed, including biographical information regarding both former and present members of the Court, jurisdiction and procedure, the principal legal systems involved, and the Court's case law. The text contains statistics and indices, as well as a foreword by His Excellency Mohammed Bedjaoui, President of the International Court of Justice.

International Human Rights in Context: Law, Politics, Morals

By Henry J. Steiner & Philip Alston. New York, New York: Oxford University Press, 1996, pp. xxxix, 1245, \$98.00 (hc) [ISBN 0-19-825427-X], \$45.00 (pb) [ISBN 0-19-825426-1].

This book examines the human rights movement, a term the authors define as governmental and intergovernmental as well as nongovernmental developments since 1945, by focusing on the movement's achievements and prospects that now form a part of our legal, political, and moral landscape. The authors intended this book to be a course book for teaching purposes by introducing readers to those characteristics and topics of public international law that are vital to understanding human rights issues. After Part A's brief introduction, Part B examines the historical background in the first half of this century to the growth of international human rights in the second half and includes a discussion of the normative structure of international human rights: the Universal Declaration and the basic covenants and conventions. Part C explores the reasons for institutionalizing human rights norms in a variety of international organizations and organs. Part D completes the book's conceptual framework by examining how states do or could imple-

ment human rights norms. The remainder of the book draws on this completed framework to examine some substantive topics of contemporary relevance.

International Litigation and the Quest for Reasonableness

By Andreas F. Lowenfeld. New York, New York: Oxford University Press, 1996, pp. xxvii, 243, \$65.00 [ISBN 0-19-826059-8].

This work is a compilation of ten tightly woven, scholarly essays taken from lectures prepared for the General Course on Private International Law at the Hague Academy of International Law in the summer of 1994. The focus of the essays, according to the author, "is on areas that are of great concern both to lawyers advising participants in international transactions and to governments. . . ." Accordingly, subjects examined and discussed include, in part, jurisdiction of courts, the effects doctrine, recognition and enforcement of foreign judgments, liability of multinational corporations, and discovery across national frontiers. This highly readable, thought-provoking volume demonstrates exhaustive research, and is replete with detailed examinations of judicial decisions from a variety of countries, as well as illustrative examples drawn from the author's lifetime experience.

The Law of the International Criminal Tribunal for the Former Yugoslavia

By M. Cherif Bassiouni and Peter Manikas. Irvington-on-Hudson, New York: Transnational Publishers, Inc., 1996, pp. xxxiii, 1094, \$135.00 [ISBN 1-57105-004-3].

This book is a classical legal commentary about the substantive law and rules of evidence and procedure applicable in the criminal proceedings before the International Criminal Tribunal for the Former Yugoslavia. Cast against the background of the conflict in the former Yugoslavia, this book sets forth the tribunal's unique legislative history; its ultimate competence, legality, and jurisdiction; specific sanctions, penalties, and rules of detention; methods of enforcement; the organization of the tribunal; and related proceedings. This book covers with clarity and depth the tribunal's vast landscape where history, treaties, fundamental rights, and politics intersect. Finally, it provides a comprehensive index to make for easy navigation through this extensive work.

The New World Order: Sovereignty, Human Rights, and the Self-Determination of Peoples

Edited by Mortimer Sellers. Oxford, U.K.: Berg, 1996, pp. xii, 340, \$45.95 (hc) [ISBN 1-85973-059-0], \$19.95 (pb) [ISBN 1-85973-064-7].

Eleven authors from across the globe address the issue of “which internal actions of states will justify intervention by the international community” in a post-Cold War era. The central themes of the book are the conflict between cultural relativism and human rights in the postmodern world, and the limits of national self-determination after the fall of communism. Essay titles include: Human Rights and Self-Determination in the Post-Colonial Age; Self-Determination in a Modern World: Conceptual Development and Practical Application; Sovereignty Without Nationalism? A Critical Assessment of Minority Rights Beyond the Sovereignty Nation-State Model; Self-Determination and Secession in Islamic Thought; Self-Determination as Ethnocracy: Perspectives from the South Pacific; and United Nations Peacekeeping Operations in Situations of Internal Conflict.

Offshore Trusts

Edited by Dennis Campbell. London, U.K.: Kluwer Law International, 1996, pp. x, 318, \$130.00, £88.00 [ISBN 90-411-0921-8].

A series of eleven collected essays, this publication addresses an array of company law topics dealing with the flourishing industry of offshore trusts. The work delves into tax and confidentiality issues relating to private and corporate offshore investments. Essay titles include: The Future of the London Stock Exchange; Capital Maintenance; The Legal Personality of Associations, Private Property and Corporate Governance; Corporate Rescue Procedures—Some Overseas Comparisons; Close Corporations and Private Companies in South and Southern Africa; and Reforming Company Law. Contributors to this publication, drawn from all of the world’s leading offshore jurisdictions, include academics, members of the judiciary, and practitioners.

Small Islands, Big Politics: The Tonbs and Abu Musa in the Persian Gulf

Edited by Hooshang Amirahmadi. New York, New York: St. Martin’s Press, 1996, pp. viii, 200, \$45.00 [ISBN 0-312-15910-2].

The first English book-length analysis of the dispute between Iran and the United Arab Emirates over control and ownership of the Tonbs, a series

of islands in the Persian Gulf, this book offers insights into territorial disputes and Middle Eastern politics. Chapter 1 examines the British colonial legacy and the current strategic context of the dispute. Chapter 2 assesses the territorial history of the Tonb and Abu Musa Islands, while Chapter 3 examines the legal basis of Iran's sovereignty over the Abu Musa Island. Finally, Chapter 4 considers Iran's and Great Britain's respective legal claims to the Tonbs. The book also contains a useful bibliography and copies of documents relevant to the discussion.

Textbook on International Law, 3rd Edition

By Martin Dixon. London, U.K.: Blackstone Press Limited, 1996, pp. xxix, 340, £16.95 (pb) [ISBN 1-85431-444-0].

This text is a well-written, thorough examination of public international law geared towards the traditional international law student. Fundamentals of both international law theory and practice are incorporated, as well as a discussion of the increasing role of international courts and tribunals. Topics addressed include the nature and sources of international law, treaties, the relationship between national law and international law, personality, statehood and recognition, jurisdiction and sovereignty, immunities from national jurisdiction, the law of the sea, state responsibility, peaceful dispute resolution techniques, the use of force, and human rights.

Transnational Litigation

By Louise Ellen Teitz. Charlottesville, Virginia: Michie Law Publishers, 1996, pp. x, 577, \$105.00 [ISBN 1-55834-345-8].

The increasing globalization of trade has dramatically expanded both the scope and importance of international transactions, and has likewise given rise to a corresponding expansion in transnational litigation. This volume, written with the international lawyer in mind, presents a well-researched, thoughtful examination of centrally important principles and rules in international litigation. The work is organized into eight topically arranged chapters including: Personal Jurisdiction; Subject Matter, Sovereign, and Prescriptive Jurisdiction; Forum Selection and Venue; Service of Process; Discovery and Obtaining Evidence Abroad; Foreign Law in American Courts; Multiple Proceedings; and Judgments Here and Abroad. In addition, each chapter begins with a checklist of key principles and concepts. This book is a useful guide to international practitioners of varying levels, and is arranged in a practical, easy-to-understand, and user-friendly format.

