

BOOK REVIEWS

Foreign Investment Law Journal

Edited by Ibrahim F. I. Shihata, Washington, D.C.: International Centre for Settlement of Investment Disputes, \$40.00 per year.

Ibrahim F. I. Shihata, Vice President and General Counsel of the World Bank and Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), is the Editor of this superb new publication that fills a heretofore unsatisfied need for a specialized periodical reporting on the developments relating to the legal aspects of foreign investments and analyzing and disseminating information on this subject. The avowed purpose of *ICSID REVIEW—Foreign Investment Law Journal* (the *Journal*) is “to meet the need for a publication offering under one cover material on the law and practice relating to foreign investments, including domestic laws, investment treaties, international trends and the resolution of investment disputes.” Judging by Volume 1, Numbers 1 and 2, this aim is already being fulfilled in an admirable way.

International investment is a critical and rapidly evolving area of international law. While the importance of organizations such as the World Bank and its affiliate, the International Finance Corporation, are well-known and appreciated, comparatively little is known about ICSID; and even less about the projected Multilateral Investment Guarantee Agency (MIGA).

As international lawyers, we should all be vitally concerned with contributing to world economic growth, not only in the developed countries, but also in the less-developed areas of the world. Foreign investment can greatly contribute to world economic growth and development and consequently, can help to achieve improvement in the standards of living for all human beings. MIGA's objective is the encouragement of investment flows among its members and particularly towards its developing members. It will do this by guaranteeing, coinsuring, or reinsuring eligible investments that will contribute to the economic development of the host country and by developing technical, informational, and promotional programs involving foreign investment. MIGA will also be uniquely placed to facilitate amicable settlements of disputes and potential disputes. MIGA,

whose convention has thus far been signed/ratified by fifty-two states, should be operational this year.

ICSID, consisting of eighty-nine member states, was established when its Convention entered into force on October 14, 1966. It is based in Washington and has close ties with the World Bank. ICSID provides facilities for conciliation and arbitration of investment disputes. Its paramount objective is to promote a climate of mutual confidence between states and foreign investors conducive to an increasing flow of resources to developing countries. It is fitting that ICSID should sponsor publication of the *Journal*, which, inter alia, instructs the members of the international community on international, legal/financial developments and, significantly, on the mechanics of operation of MIGA and ICSID as an integral part of the world foreign investment process.

The *Journal* not only has eminent authors and contributors; its Advisory Board is most illustrious, reflecting the highest levels of the international community.

The *Journal*, a scholarly, yet practical tool, is well-organized and comprehensive. Each issue contains the following: Articles, Comments, Cases, Documents, Bibliography, and Book Reviews. The following Articles appear in Volume 1, Number 2 (Fall 1986): "ICSID and the Transnational Financial Community" by Georges R. Delaume; "The Law Governing a New Generation of Petroleum Agreements: Changes in the Arbitration Process" by Ahmed S. El-Kosheri and Tarek F. Riad, and "Legal Implications of China's Economic Reforms" by Natalie G. Lichtenstein. In the same issue appear the following Comments: "MIGA and the Standards Applicable to Foreign Investments" by Ibrahim F. I. Shihata; "The First ICSID Conciliation: *Tesoro Petroleum Corporation v. Trinidad and Tobago*" by Lester Nurick and Stephen J. Schnably, and "Madagascar's New Investment Code: Definite Progress" by Charles C. Adams, Jr. and Vincent Sol. The Cases, the Documents, the Bibliography, and the Book Reviews are of equally high quality, interest, and importance.

The *Foreign Investment Law Journal* is an indispensable tool for the international lawyer; and at forty dollars per year, it is an excellent "investment."

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The Law and Procedure of the International Court of Justice

By Sir Gerald Fitzmaurice, Grotius Publications, Ltd. (P.O. Box 115, Cambridge CB3 9BP, United Kingdom), 1986, 2 vols., pp. 860, \$152.

Sir Gerald Fitzmaurice was for many years among the most distinguished practitioners of international law.¹ As Legal Adviser to the British Foreign Office, Judge and twice President of the International Court of Justice,² and a leading participant in innumerable international conferences and studies, Fitzmaurice was also a prolific and influential writer. He wrote no treatises, however, and his writings are scattered among many sources. *The Law and Procedure of the International Court of Justice*, a recently published collection of his writings on the International Court of Justice, fills this gap by bringing together some of Fitzmaurice's most distinguished work.

The Law and Procedure of the International Court of Justice is a collection of twelve articles first published in the *British Yearbook of International Law* between 1950 and 1963. The first nine articles are annual commentaries on the jurisprudence of the International Court of Justice. The last three, written after Fitzmaurice had been elected to the Court, are commentaries on Sir Hersch Lauterpacht's judicial opinions.

The format of the collection has several drawbacks. As each article is concerned primarily with the decisions of the Court (or Lauterpacht) for a particular year, the general organization is sequential rather than thematic. To find Fitzmaurice's views on a topic it is often necessary to cross-reference several different analyses, written over a period of years and in dissimilar contexts. Parts are also dated, particularly those relating to areas of the law that have developed significantly by convention in recent years, e.g., the Law of Treaties and the Law of the Sea.

Nevertheless, the collection is invaluable. Fitzmaurice's method was to use specific decisions of the Court (or Lauterpacht) as a basis for his own disquisitions on the relevant law. He would extract general principles from cases, relate those principles to other sources of law, and provide his own commentary. The result is a series of essays on topics of international law of much broader interest than the specific holding in the case

1. Fitzmaurice's distinguished career is described in Jennings, *Gerald Gray Fitzmaurice*, 55 BRIT. Y.B. INT'L L. 1 (1985).

2. For a study of Fitzmaurice's judicial opinions, see Merrills, *Sir Gerald Fitzmaurice's Contribution to the Jurisprudence of the International Court of Justice*, 48 BRIT. Y.B. INT'L L. 183 (1978).

he is discussing. Virtually every major topic of international law is touched upon at one point or another—e.g., sources of law, treaty interpretation, state responsibility, territorial questions, competence of international tribunals. As a consequence, although the organization is not so convenient as a treatise, the result is very much the same.

Fitzmaurice writes, moreover, with consistent acuity and discernment. It is unusual to find any topic on which he does not cast new light or articulate an old principle in a new and felicitous fashion. Even commentary that, at first glance, appears to be dated often has contemporary relevance. Fitzmaurice's views, for example, on the compulsory jurisdiction of the Court, written in 1958, are relevant in many respects to the arguments on jurisdiction before the Court in the recent *Nicaragua Case*.³

Fitzmaurice's jurisprudence was a traditional one. His primary concern was adherence to legal method. Careful textual exegesis, reliance on agreed sources of law, and, above all, strict legal reasoning, were his creed. This was not conservatism for conservatism's sake, nor an obliviousness to underlying policy considerations. Rather, Fitzmaurice was acutely conscious of the dependence of international law and institutions on the confidence of states. He apprehended that any departure from strict legal methodology would undermine the effective evolution of the law and international institutions. Fitzmaurice was among the most articulate proponents of this approach to international law. *The Law and Procedure of the International Court of Justice* will stand as his treatise, and many international lawyers will find it an informative and useful source.

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3. *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility, Judgment*, 1984 I.C.J. Rep. 392.

*The views expressed herein are those of the reviewer and do not represent those of the U.S. Department of State or the United States Government.