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BOOK REVIEWS

Law and Practice Under the Gatt

By Kenneth R. Simmonds and Brian H.W. Hill. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1988, 1 binder, \$100.00.

At the outset the GATT was intended to be a treaty for reducing tariff and nontariff trade barriers, which was later to be incorporated into the ITO. Forty years after its foundation, and after the failure of establishing the ITO in 1950, the GATT has grown far beyond its original boundaries. Today it is the most complex regulatory instrument in the area of international trade by which sovereign states try to abolish trade barriers to guarantee a free flow of goods in the international market. By the end of 1986 the GATT had ninety-two members whose total merchandise trade accounted for almost 85 percent of the world trade by 1984. Thus, it has become more and more complicated to answer questions and to find solutions in the ever growing system of the GATT. The bulk of materials that has to be taken into account is almost incomprehensible.

Kenneth R. Simmonds and Brian H.W. Hill have compiled in a looseleaf edition a collection of documents to provide easy access to the most important materials on the GATT for the professional as well as for the scholar and the interested student. The title *Law and Practice Under the GATT* is somewhat misleading. The book is not intended to be a hornbook. Nor does it cover all materials concerning the GATT that have been issued up to date. Rather, the editors have selected certain constitutive, interpretative, and documentary texts that they deem most important for the understanding of the GATT system as it exists today. Accordingly, the three main parts of the book consist of some basic documents, materials on the Tokyo Round, and materials on the recently launched Uruguay Round.

At the beginning of the book (pp. 1-26) the reader finds an introduction that provides the less informed with an overview of the GATT from its inception up

to the currently pending Uruguay negotiations. According to the editors this introduction is intended "to provide guidance to the overall context against which the selected documents and other materials should be read and analyzed." The first thirteen pages deal with the emergence of the GATT out of an unsuccessful attempt to establish the ITO. Here the status of the GATT as a de facto organization and an instrument to "provide treaty mechanisms for the establishment and maintenance of a common code of conduct for international trade" is analyzed. This analysis is followed by a description of the four membership categories of the GATT and a short overview of the establishment and the functions of the GATT institutions. Another chapter is on dispute settlement procedures, especially with respect to the agreements of the Tokyo Round. The authors then review the previous negotiation rounds and give an outlook on the Uruguay Round with special consideration of the EEC and United States objectives (pp. 13-26). After a short summary of the Punta del Este Ministerial Declaration follows an enumeration of the fourteen issue-specific negotiation groups of the Uruguay Round. The introduction is supplemented with numerous footnotes that refer to primary and secondary sources as well as to particular documents in the book itself.

The collection of documents is printed in the form of booklets that are filed into the binder and thus, like the introduction, can be easily updated by means of supplementary materials. Part I of the documents collection contains the GATT text as it was valid by the end of 1986. A table of contents and an unofficial index by article provide easy access to the different provisions. The GATT text is followed by a detailed sketch of the legislative history of the GATT and a complete list of membership.

Part II contains information and materials on the outcome and implementation of the Tokyo Round. This round deserves particular attention because of the new wave of protectionism that had called the success of the GATT in question at the beginning of the 1970s. The authors selected the agreements of the contracting parties and four framework texts on certain regulations with respect to developing countries and to dispute settlement procedures.

The Uruguay Round which is dealt with in Part III is of outstanding importance for the future of the GATT. A changing world economy necessitates an extension of the GATT especially in the fields of services and intellectual property rights if the GATT wants to maintain its function as a leading system for the regulation of international trade. Part III consists of the three drafts of the Punta del Este Ministerial Declaration, the Own-Initiative Opinion of the Economic and Social Committee of the EEC, and the EEC Overall Approach to the Uruguay Round. Furthermore the editors include Clayton Yeutter's address before the U.S. Chamber of Commerce from Sept. 10, 1986, regarding an agenda for the new GATT Round, and his statement before the contracting parties who met in ministerial session at Punta del Este on September 15-20, 1986.

A bibliography at the end of the book enlists a selection of GATT publications and secondary literature that can be referred to for further information.

Kenneth R. Simmonds' and Brian H.W. Hill's book is a well organized collection of materials that makes important information and documents available in one book. As it will be updated with special regard to the developments in the Uruguay Round negotiations it is a valuable source of reference for everybody who has to deal with questions concerning the GATT or for those who just want to be frequently informed about the status quo of the GATT system.

Markus Gockel
Assistant
University of Konstanz
School of Law
West Germany

The British Year Book of International Law, 1985

Edited by Ian Brownlie and D.W. Bowett. Oxford, England: The Clarendon Press, 1986, pp. 556, \$116.00.

The 1985 volume of *The British Year Book of International Law* contains: six major essays dealing, respectively, with sources of international law, remedies in international law, international boundaries, law of the sea, military intervention, and human rights; a large number of book reviews; a selection of decisions of British courts and of the European Court of Human Rights; and a comprehensive (180 pages), systematically arranged, selection of official United Kingdom statements on current issues of international law.

1. Professor Charney (Vanderbilt University) discusses the difficult question whether a State may opt out of an emerging rule of international law by actively and persistently objecting to it. While it is clear that the persistent objector cannot prevent the final crystallization of the new rule, there is some doubt about the right of the dissenting State to contend that a generally accepted rule has not become binding on it. The author notes that in several recent instances the objectors have finally yielded to international pressure and accepted the new rules (e.g., a twelve-mile territorial sea and the 200-mile exclusive economic zone). He concludes that the permanent objector rule is merely a transitory rule that leads either to acceptance by the objector, or to a carving out of an exception to the rule that takes care of the objection. Thus, the objection is actually a procedural device that opens the door to further negotiations on the subject until

a solution is agreed upon or the rule is imposed upon the objector by the overwhelming rejection of the objection.

2. Dr. Christine Gray (St. Hilda's College, Oxford) is trying to find an answer to the question whether there is an international law of remedies for violations of international law. She concludes that neither the practice of States nor decisions of international courts or arbitral tribunals provide sufficient guidance in this area. She claims that the draft presented to the International Law Commission with respect to responsibility of States for violations of international law has in fact avoided the issue; and doubts that States will accept the more concrete standards presented to the Commission by the rapporteur dealing with international liability for injurious consequences arising out of acts not prohibited by international law. Her negative conclusions on the existence of an international law of remedies are contradicted to some extent by the American Law Institute's recent *Restatement of the Law, Third, The Foreign Relations Law of the United States* (1987), which contains a set of rules on the subject, with comments and reporters' notes, which spell out the obligation of a State that has violated an international obligation "to terminate the violation and, ordinarily, to make reparation, including in appropriate circumstances restitution or compensation for loss or injury." The Restatement takes also into account unilateral remedies, and the increasing resort by private persons to international or national remedies. It may be hoped that in her forthcoming book on *Judicial Remedies in International Law* the author would be able to take this development into account.

3. Dr. Kaikobad (LL.B., Karachi, Ph.D., London) presents a legal reappraisal of the Shatt-al-Arab river boundary between Iran and Iraq, based on unpublished material found in the Records and Library of the British Government's India Office in London. The author does not consider a river boundary along one bank of the river, as claimed by Iraq, invalid, and rejects the Iranian claim relying on the more modern doctrine of a boundary following the main navigation channel (the thalweg), as this claim was inconsistent with prior treaties between the parties. Similarly he rejects the Iranian abrogation in 1969 of the 1937 delimitation treaty, which was based on a fundamental change of circumstances, because—according to the author—the relevant provisions of the law of treaties do not apply to boundary delimitations that are designed to establish a permanent treaty regime. On the other hand, Iraq agreed in 1975 to accept a thalweg boundary in exchange for an Iranian promise to cease assistance to Kurdish rebellion against Iraq. When Iraq in 1980 abrogated the 1975 treaty, it claimed that Iran had violated its obligation not to support the Kurds and that Iraq was entitled to terminate the treaty because of a material breach by Iran. The author does not accept this argument, and invokes a provision in the 1975 treaty that "the land and river frontiers shall be inviolable, permanent and final." The author also rejects the argument that the hostilities that broke out between Iraq and Iran terminated the boundary treaty of 1975, as a boundary agreement is not

subject to annulment by war (though it may be suspended in certain respects for the duration of the war), and as the law of the United Nations prohibits the use of force to acquire a territory. He points out that unilateral changes of boundary line by force are invalid, even when such changes resulted from a use of force in self-defense. Thus neither Iraq nor Iran could claim that in repelling an aggression it was entitled to occupy and annex the other State's territory.

The article is well documented, and on every issue precedents established in disputes between other countries are carefully considered. The author has even included relevant cases before United States courts (pp. 93–94), though not all cases cited were actually—as claimed—decisions of the U.S. Supreme Court.

4. Mr. Hutchinson (University College, London) was able to deal with several law of the sea issues under the rather limited title, "The Seaward Limit to Continental Shelf Jurisdiction in Customary International Law." The author's piece is a *tour de force*: on the one hand, in principle he dismisses the two relevant treaties—the 1958 Convention on the Continental Shelf (as applicable only to fifty-four States) and the 1982 Convention on the Law of the Sea (as not in force and not likely to come into force soon); on the other hand, he relies on practice of States and judicial decisions that were only incidentally concerned with the issue at hand. This left the author with an almost free hand to speculate about the question whether there is a customary international law on the subject. Consequently, his essay is not only a discussion of an important substantive issue, but also a study of the process of creating a new principle of international law. It provides the author with an opportunity of exploring the role played by concordant national legislation, by the International Law Commission, and by an international multipartite (but not universal) convention (the 1958 one). He relies on the new doctrines about crystallization of customary rules of international law through the work of international conferences and codificatory conventions, which have been applied by the International Court of Justice in recent cases.

The author discusses in great detail the problems caused by the criterion of exploitability embodied in article 1 of the 1958 Convention (the continental shelf extends as far as "the depth of the superjacent waters admits of the exploitation of the natural resources" of the seabed and subsoil of the submarine areas adjacent to the coast), and by the shift to the "continental margin" made by the 1982 Convention (article 76) and the automatic extension of that margin to the distance of 200 miles from the baseline from which the breadth of the territorial sea is measured, regardless of the depth of the seabed at that distance. Outside the 200-mile distance, according to the author, only a conditional consensus developed, and the situation remained confused. Nevertheless, "it is quite likely that Article 76 of the [1982] Convention, although not yet wholly reflecting the position at customary law, will act as clear and authoritative guide for future state practice" (p. 188). Thus, states with claims to broad continental margins will be the final winners.

As the author devotes most of the essay to the rule-development process, he did not have a chance to consider the big remaining question: the problems relating to the convoluted formula for determining the outer boundary of the margin (which is merely mentioned on p. 179), and the role to be played by a special international commission in such determination (see Annex II of the 1982 Convention). Some of the author's propositions are controversial, but the final conclusions are likely to stand the test of future developments.

5. The careful study by Ms. Louise Doswald-Beck (University College, London) of "The Legal Validity of Military Intervention by Invitation of the Government" is primarily based on an analysis of practice of States, as evidenced by interventionist activities of some States and the reaction of them by other States, especially as indicated by their statements in the General Assembly and the Security Council of the United Nations.

This essay contains several analytical parts, as well as a large number of condensed case studies. In considering the question who is entitled to issue an invitation on behalf of a State, the author grapples with various issues of recognition and concludes that in civil strife situations the normal practice is to continue to recognize the old regime until a new, recognizable regime seems to be firmly in de facto control of the country. She considers that the principle of self-determination means only that the individuals controlling the government should come from a domestic group and should not be imposed from outside. What matters is the lack of foreign interference, not the quality of internal government. Similarly, the principle of inadmissibility of interference in the internal affairs of States is designed primarily to protect the State from interference, not the people.

The author makes a distinction between military assistance in time of peace and military aid to government during civil strife, and concludes that a State may not validly aid another government to suppress a rebellion, especially if the rebellion is widespread and is in a position to overthrow the government. Intervention to prop up a beleaguered government is thus illegal.

The author dismisses lightly various excuses for intervention, and disposes of the right of counterintervention in a footnote (p. 210, n.100). She considers that a treaty between two countries allowing intervention in certain circumstances may possibly be void by reason of *jus cogens*. Her final conclusion is that the principle of nonintervention recognizes the fact that most interventions are for the benefit of the intervening country, and not the State or people in the throes of civil strife. It is in the interest of most States of the world, which are at the mercy of big powers, to strengthen the norm against military interference. The law is developing in that direction, despite some recent violations.

6. Most writers on the international protection of human rights consider primarily violations of those rights by governments. M. Forde (University College, Dublin), on the other hand, discusses the less researched topic of "Non-Governmental Interferences with Human Rights." The author points out

that individuals and private groups frequently interfere with other persons' personal and property rights, or discriminate against them, and that protection against such interferences is desirable. After a short survey of domestic constitutional provisions and practice in various countries, including the United States, the author concludes that they differ considerably, only few countries providing some protection to individuals against violations of their civil rights by other individuals. The author notes that international conventions for the protection of human rights usually are restricted to governmental action, or violations by officials or persons in fact acting on behalf of the State, and do not provide redress against individuals. At most, a government can be held responsible for the absence of legislation prohibiting private conduct violating human rights of others, which are guaranteed by an international agreement, or for a governmental act that permits or condones such an act. While a few provisions of international human rights conventions might be interpreted as providing for State responsibility for some private acts, or even for individuals' direct responsibility (e.g., the Genocide Convention), the author concludes that the existing international instruments were designed to deal only with the protection against governmental acts, direct or indirect, and that protection against individual acts violating basic human rights would require additional instruments, similar to the draft now being prepared by the International Law Commission with respect to State liability for injurious consequences arising out of (ultrahazardous) acts not prohibited by international law.

It may be regretted that the author does not provide any clear indication of what the scope of the proposed international instrument should be; e.g., whether it should provide for domestic or international remedies; whether it should be restricted, at the beginning, to certain specific subjects where the need is greatest (racial or sex discrimination, compensation for victims of crimes, labor union conflicts), or should deal with the problem across the board; or whether it should be done only regionally (e.g., in Europe) or globally through the United Nations. Without such further elaboration, it is not clear what—according to the author—can or should be done, as he admits that States are reluctant to accept additional obligations in this field.

As usual, this volume of the *British Year Book* contains a series of essays exploring in depth new areas of international law, hitherto sidestepped by other authors. It constitutes a valuable addition to an international lawyer's library. Whether these lawyers are professors, government officials, or private practitioners, they are likely to discover in this volume some items of importance for their practice or teaching.

Louis B. Sohn
Woodruff Professor of International Law
School of Law, University of Georgia

