

BOOK REVIEWS

Documentary History of the Uniform Law for International Sales

By John O. Honnold. Deventer, The Netherlands, and Boston: Kluwer Law & Taxation Publishers, 1989, pp. xii, 881, \$150.

A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary

By H. Holtzmann & J. Neuhaus. Deventer, The Netherlands, and Boston: Kluwer Law & Taxation Publishers and T.M.C. Asser Instituut, 1989, pp. xi, 1307, \$250.

The most successful of the proposals made by the United Nations Commission on International Trade Law (UNCITRAL) have been in the areas of international sales and international commercial arbitration. The U.N. Convention on Contracts for the International Sale of Goods came into force in January 1988, and less than two years later there are twenty Contracting States. As for arbitration, the U.N. Commission has published the 1976 UNCITRAL Arbitration Rules and proposed, more recently, the 1985 Model Law on International Commercial Arbitration. Enterprises throughout the world choose to submit disputes to arbitration under the Arbitration Rules, and the Model Law has already served as the basis for arbitration legislation in Canada and several individual states in the United States.

With the success of these UNCITRAL proposals has come a demand for aids to analysis. Documents generated in the drafting process are a natural source to look to, but the more important documents are scattered in the UNCITRAL *Yearbooks*, some of which are out of print, while the less important languish in mimeographed form in a few selected libraries. For those lucky enough to have access to these background documents, there remains the problem of finding what one wants in the unindexed documents. The two books reviewed here should solve these problems. Although different in scope and format, both books reproduce most of the published background documents and provide guides that allow the reader to explore this rich source.

Publication of Professor John O. Honnold's *Documentary History of the Uniform Law for International Sales* complements his widely-used treatise on the

Sales Convention published in 1982.¹ This new volume reproduces photographically the most important documents from the 1980 Vienna conference's *Official Records* and the *UNCITRAL Yearbooks*. Professor Honnold introduces each document with a statement of its setting in the drafting process and a brief summary of the document's contents. In the margins next to the documents he adds citations to the relevant articles of the official convention text. These marginal annotations are then collected in a table at the end of the volume. A topical index supplements the table, and a concordance of the various drafts appears at the end of the volume's Introduction. The convention text appears in all six official U.N. languages; all the other documents are reproduced only in English.

Only frequent use with specific issues in mind will properly test Professor Honnold's volume. The results of my own preliminary tests testify to its value. Just prior to receiving the volume, for example, I had prepared a lecture on the concept of "good faith" as used in article 7(1). Searching thoroughly for relevant references in the unindexed *Official Records* and the individual *Yearbooks* took several days. Using the table and index in Professor Honnold's volume after the lecture, I was pleased to find that I had discovered all the relevant materials on my own—and to conclude that my future research will take far less time! In subsequent searches I have discovered minor glitches in the table's references but nothing serious enough to mislead.

Readers should be warned, however, that Professor Honnold has not included all potentially relevant documents published in the *Official Records* and *Yearbooks*. The most important of these documents are those that deal with final provisions in Part IV (articles 89–101) of the Convention² and those reports by the Secretary General analyzing comments by Governments and other international bodies on drafts (other than the final 1978 UNCITRAL draft) prepared by the Commission's Working Group on International Sales.³ These omitted docu-

1. J. HONNOLD, *UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION* (Kluwer Law & Taxation Publishers 1982).

2. These documents include the following:

(1) *Summary Records of the 11th-12th Plenary Meetings*, U.N. Doc. A/CONF.97/SR.11-12, reprinted in *UNITED NATIONS CONFERENCE ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, OFFICIAL RECORDS*, U.N. Doc. A/CONF. 97/19 (1981) (Sales No. E.82.V.5) [hereinafter *OFFICIAL RECORDS*] 228–33. (2) *Report of the Second Committee*, U.N. Doc. A/CONF.97/C.2/12, reprinted in *OFFICIAL RECORDS* 141–50. (3) *Summary Records of the 1st-6th meetings of the Second Committee*, U.N. Doc. A/CONF.97/C.2/SR.1-6, reprinted in *OFFICIAL RECORDS* 434–59. (4) *Draft Convention on Contracts for the International Sale of Goods: Draft Articles concerning implementation, declarations, reservations and other final clauses, prepared by the Secretary-General*, U.N. Doc. A/CONF.97/6 (31 Oct. 1979), reprinted in *OFFICIAL RECORDS* 66–70. (5) *Report of the Secretary-General: draft convention on the international sale of goods; draft articles concerning implementation and other final clauses*, U.N. Doc. A/CN.9/135 (15 April 1977), reprinted in [1977] *VIII UNCITRAL YEARBOOK* 164–68.

3. These documents include the following:

(1) *Report of the Secretary-General: analytical compilation of comments by Governments and international organizations on the draft Convention on the Formation of Contracts for the International Sale of Goods as adopted by the Working Group on the International Sale of Goods and on the draft of a uniform law for the unification of certain rules relating to validity of contracts*

ments are clearly less important than those included and it is debatable whether the added pages needed to include them would be sufficiently useful to justify the added cost. With little additional cost, however, Professor Honnold could have included a table listing (perhaps with annotations) all the documents omitted.

Faced with fewer documents, Mr. Holtzmann and Mr. Neuhaus can afford to include all relevant documents in their *Guide to the UNCITRAL Model Law on International Commercial Arbitration* (see pp. 22–23). Rather than reproduce the UNCITRAL documents as a whole,⁴ however, the authors organize excerpts from these documents under the relevant article of the Model Law, with discussion of policies and topics ultimately not dealt with by the Model Law appended at the end of the volume. The result is by no means a cut-and-paste job: in addition to editorial annotations of the excerpts, the authors introduce each article with

for the international sale of goods prepared by the International Institute for the Unification of Private Law, U.N. Doc. A/CN.9/146 & Add. 1–4 (26 April 1978), reprinted in [1978] IX UNCITRAL YEARBOOK 127–46.

(2) *Working papers submitted to the Working Group on the International Sale of Goods at its ninth session*, U.N. Doc. A/CN.9/WG.2/WP.27 (16 Aug. 1977), reprinted in [1978] IX UNCITRAL YEARBOOK 85–105.

(3) *Report of the Secretary-General: analysis of comments by Governments and international organizations on the draft convention on the international sale of goods as adopted by the Working Group on the International Sale of Goods*, U.N. Doc. A/CN.9/126 (7 April 1977), reprinted in [1977] VIII UNCITRAL YEARBOOK 142–63.

(4) *Comments by Governments and international organizations on the draft convention on the international sale of goods*, U.N. Doc. A/CN.9/125 & Add. 1-3 (22 March 1977), reprinted in [1977] VIII UNCITRAL YEARBOOK 109–42.

(5) *Text of comments and proposals of representatives on the revised text of a uniform law on the international sale of goods as approved or deferred for further consideration by the Working Group at its first five sessions*, U.N. Doc. A/CN.9/100, annex II (18 Feb. 1975), reprinted in [1975] VI UNCITRAL YEARBOOK 70–87.

(6) *Text of comments and proposals by representatives on articles 71 to 101*, U.N. Doc. A/CN.9/87, Annex III (27 Nov. 1973), reprinted in [1974] V UNCITRAL YEARBOOK 65–79.

(7) *Text of comments and proposals by representatives on articles 56 to 70*, U.N. Doc. A/CN.9/87, Annex II (16 Nov. 1972), reprinted in [1974] V UNCITRAL YEARBOOK 60–65.

(8) *Analysis of comments and proposals relating to articles 1–17 of the Uniform Law on the International Sale of Goods (ULIS): note by the Secretary-General*, U.N. Doc. A/CN.9/WG.2/WP.11 (20 Dec. 1971), reprinted in [1972] III UNCITRAL YEARBOOK 69–77.

(9) *Analysis of comments and proposals relating to articles 18–55 of the Uniform Law on the International Sale of Goods (ULIS): note by the Secretary-General*, U.N. Doc. A/CN.9/WG.2/WP.10 (3 Dec. 1971), reprinted in [1972] II UNCITRAL YEARBOOK 54–69.

(10) *Analysis of comments and proposals relating to articles 1–17 of the Uniform Law on the International Sale of Goods (ULIS) 1964: note by the Secretary-General*, U.N. Doc. A/CN.9/WG.2/WP.6 (n.d.), reprinted in [1971] II UNCITRAL YEARBOOK 37–50.

(11) *Analysis of replies and comments by governments on the Hague Conventions of 1964: report of the Secretary-General*, U.N. Doc. A/CN.9/31 (n.d.), reprinted in [1968–1970] I UNCITRAL YEARBOOK 159–76.

It is difficult to assess the importance of the omission of these documents. Presumably, to the extent the comments included in the documents influenced deliberations, they are incorporated implicitly into the Commission and Working Group reports reprinted in the Honnold volume.

4. A task already carried out in I. Kavass & A. Liivak eds., *THE UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION: A DOCUMENTARY HISTORY* (Buffalo, N.Y.: W.S. Hein, 1985) (2 vols., loose-leaf).

commentary analyzing the issues reported in the excerpts. This Commentary focuses almost exclusively on the final text and the background documents, usually eschewing references to national arbitration legislation or secondary material. The Commentary, however, is not merely a summary of the debates. The authors do not hesitate to suggest their own readings of the final text, especially on matters they think were left ambiguous by the Commission. Given the authors' long experience and participation in the 1985 UNCITRAL meeting at which the Model Law was adopted (p. 16 n.52), their Commentary will no doubt be given significant weight both for its summary of the *travaux préparatoires* and its interpretation of the final text.

As with Professor Honnold's *Documentary History*, the Holtzmann-Neuhaus *Guide* must ultimately prove itself in practice. My own preliminary tests have illustrated how useful the volume can be. I was recently asked to construe the scope of the terms "rules of law" and "law" as they appear in article 28 (Rules applicable to substance of dispute) of the Model Law. This article provides that the parties' choice of "rules of law" will be enforced (art. 28(1)), but that if they fail to choose, the arbitral tribunal will itself determine the applicable "law" (art. 28(2)). The Commentary meticulously sets out the drafting history. It calls attention (pp. 766–67) to the Working Group decision that "rules of law" would not include "general legal principles or case law developed in arbitration awards" (i.e., sources commonly associated with the concept of *lex mercatoria*) and the decision of the full Commission to retain the text despite arguments for restricting the term's scope. The Commentary goes on to argue (p. 768), however, that parties should be entitled to choose virtually any set of rules, presumably including ascertainable rules of *lex mercatoria*. Without explicitly saying so, the authors suggest that the drafting history is inconclusive and their broad reading of the text should be preferred for the policy reasons given. The Commentary then notes (pp. 769–70), without editorial comment, that use of the term "law" in article 28(2) represents a decision to restrict the arbitral tribunal's discretion by requiring the tribunal to go through a choice-of-law analysis to select an existing national law. In sum, both the drafting history and the Commentary helped me significantly in my interpretation of article 28.

As aids to analysis, therefore, I anticipate both the Honnold *Documentary History* and the Holtzmann-Neuhaus *Guide* will satisfy demand. The legitimacy of this demand, however, deserves some reflection.

In the absence of the two volumes, a case could be made for limiting the *travaux préparatoires* one may consult. One might, for example, exclude reference to documents other than those contained in the *Official Records* of the 1980 Vienna conference or to the report of the UNCITRAL meeting at which the Model Law was adopted. There are indications in the drafting histories that at least some delegates had a narrow concept of *travaux préparatoires*. Despite the precedent of an official Commentary for the 1974 Limitations Convention,⁵ informal con-

5. *Commentary on the Convention on the Limitation Period in the International Sale of Goods*, U.N. Doc. A/CONF.63/17 (27 June 1978), reprinted in [1978] X UNCITRAL YEARBOOK 145.

sultations at the 1980 conference suggested that there was insufficient support for an official Commentary to be prepared by the UNCITRAL Secretariat for fear that it might contradict the deliberations at the conference without the opportunity for review by delegates.⁶ Similarly, in the Model Law deliberations the few references to the *travaux préparatoires* appear to be limited to the report of the final Commission deliberations (p. 76 para. 19; p. 994 para. 57).

There are, moreover, several political concerns that suggest limiting reference to background documents. Not all States that become parties to the Sales Convention or enact the Model Law will have participated in the deliberations reported in the UNCITRAL documents. The Commission itself consists of thirty-six States (only twenty-nine until 1973) elected periodically and its Working Group on International Sales was even smaller. In the public international law sphere, a State's nonparticipation in the negotiations leading up to a multilateral convention is a reason to limit reference to the *travaux préparatoires*.⁷ Whether the Sales Convention, with its supplementary rules for commercial contracts, should be considered a multilateral convention within this stricture is, however, doubtful.

For the Model Law this concern takes a slightly different form because an enacting State will presumably generate its own *travaux préparatoires*. This local legislative history may or may not take into account the UNCITRAL deliberations. Mr. Holtzmann and Mr. Neuhaus express (pp. 15–16) the hope that these local *travaux préparatoires* will be brief in deference to the expertise of UNCITRAL and the desire for uniformity. But, as even they concede (p. 16), local jurisdictions may treat the Model Law like any other domestic law and limit reference to *travaux préparatoires* under domestic rules of statutory interpretation.⁸ One solution, not mentioned by the authors, is that found in the Canadian legislation, which expressly states the UNCITRAL documents that may be consulted. Section 4(2) of the Canadian federal Commercial Arbitration Act, for example, provides:

In interpreting the Code, recourse may be had to—

- (a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session, held from June 3 to 21, 1985; and
- (b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law.⁹

6. See Winship, *A Note on the Commentary of the 1980 Vienna Convention*, 18 INT'L LAW. 37 (1984).

7. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 325, reporters' note 1 (1986).

8. For discussion of present national attitudes towards the use of legislative history, see Honnold, *Uniform Words and Uniform Application. The 1980 Sales Convention and International Juridical Practice*, in EINHEITLICHES KAUFRECHT UND NATIONALES OBLIGATIONRECHT 115, 129-34 (P. Schlechtriem ed., Baden-Baden: Nomos 1987).

9. Commercial Arbitration Act, CAN. STAT. ch. 22, § 4(2) (1986). Cf. Section 6 of the British Columbia International Commercial Arbitration Act:

A further political concern is with the language of the *travaux préparatoires*. With the exception of the six language versions of the Sales Convention official text, the Honnold and Holtzmann-Neuhaus volumes reproduce only the English-language versions of the background documents. English may have become the informally acknowledged *lingua franca* in the economic world of international trade, but in the political world of the United Nations the formal equality of the six official languages is maintained. As a consequence, recourse to only the English-language version of the *travaux préparatoires* may be practical, but limiting the number of such documents that may be consulted may be politically expedient.

Finally, there is a very practical concern about access to the *travaux préparatoires*. The greater resources of attorneys in North America and Western Europe compared to the more limited resources of attorneys in other parts of the world may give the former an advantage in searching out these background documents. Publication of the Honnold and Holtzmann-Neuhaus volumes should limit this strategic advantage, but even with the publication of these volumes the high price asked by the publisher may limit distribution outside North America and Western Europe.¹⁰

King Canute did not successfully order the tide to stop, and any attempt to stop recourse to these background documents, especially after the publication of the Honnold and Holtzmann-Neuhaus volumes, is doomed. Given this reality, publication of the two volumes at least makes the *travaux* more readily available in those jurisdictions likely to make use of them. Eager users of the volumes should be warned, however, as Professor Honnold has written elsewhere,¹¹ that “legislative history (like vintage wine) calls for discretion.”

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In construing a provision of this Act, a court or arbitral tribunal may refer to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Arbitration Law and shall give these documents the weight that is appropriate in the circumstances.

B.C. REV. STAT. ch. 14, § 6 (1986).

10. A word in defense of the high prices should be recorded. The price for the Honnold volume should be compared with the price for the nine UNCITRAL *Yearbooks* and the six *Official Records* (one for each official U.N. language) that a library would otherwise have to acquire. To this should be added Professor Honnold's very useful introductions, concordance of drafts, table of legislative references, and topical index—guides through the raw material not found elsewhere. While the Holtzmann-Neuhaus volume incorporates fewer *Yearbooks* and no *Official Records*, it does include Commentary on the Model Law that goes well beyond a summary of the background debates. It should be compared, in other words, with both Professor Honnold's *Documentary History* and his 1982 treatise.

11. J. HONNOLD, *supra* note 1, at 119. For general discussion of the use of the legislative history of the Sales Convention, see *id.* at 114–20.

U.S. International Antitrust Enforcement: A Practical Guide to the Justice Department Guidelines

By Joseph P. Griffin, Washington, D.C., Bureau of National Affairs, 1989, pp. 200, \$95.00 (also available as part of BNA's Corporate Practice Series).

Mr. Griffin's excellent summation of the application of antitrust laws to international trade in the context of the Department of Justice's 1988 *Antitrust Enforcement Guidelines for International Operations* will be of much interest and aid to lawyers and businessmen in this difficult area of the law. Mr. Griffin, a member of a prominent New York and Washington law firm, has had much experience in international antitrust practice, and he is a recent Chairman of the ABA Section of International Law and Practice.

The Antitrust Division of the Department of Justice was severely criticized for what many considered slack enforcement during the Reagan Administration. The new head of the Division, James F. Rill, a respected antitrust practitioner and a past Chairman of the ABA Section of Antitrust Law, has promised a strong enforcement of the antitrust laws and we may see a new pattern emerging in the Bush Administration. Mr. Rill has said that while guidelines are helpful, good cases are the root of effective antitrust policy. Nonetheless, Mr. Rill has indicated that he will follow the guidelines, both in the international field and in connection with mergers. Moreover, Attorney General Dick Thornburgh has particularly expressed his support for the Department's International Guidelines.

In this time of reassessment of government antitrust policy, Mr. Griffin and the BNA have given us under one cover, in addition to Mr. Griffin's commentary, a number of pertinent and up-to-date documents in this field that furnish part of the procedural background for evaluating international commercial activities that may raise questions under antitrust laws. These documents include not only the Justice Department's International, Merger and Vertical Guidelines, but also the Department of Commerce's Guidelines for the Issuance of Export Certificates of Review, advisory opinion procedures for both the Justice Department and the Federal Trade Commission, the OECD's Antitrust Notification and Consultation procedure, and U.S. Antitrust Agreements with Canada, Australia, and West Germany. Additionally, the antitrust provisions of the European Community's Treaty of Rome, the text of EC opinions in the *Wood Pulp* (involving, inter alia, a U.S. Webb-Pomerene Association), and four foreign blocking statutes are appended. The blocking statutes provide for the neutralization of U.S. and other antitrust processes and orders applying to nationals of the blocking statute country.

Mr. Griffin's commentary, and the documents included, will be especially helpful in negotiations with the Department of Justice, setting out the views of the Justice Department and also a review of pertinent cases. Mr. Griffin points out that the International Guidelines are not binding and that the Justice

Department has emphasized that they are not a restatement of the law but only represent Justice Department policy. One of the main drawbacks of the Guidelines, in this reviewer's opinion, is that the Guidelines do not often bolster policy statements with judicial authority and that the Guidelines often depart from case precedent without so indicating. As Mr. Griffin notes, the Federal Trade Commission and the International Trade Commission must also be considered. The FTC has not issued any international guidelines of its own and has not commented on the Justice Department's Guidelines. The ITC has an antitrust role to the extent that it administers section 337 of the Tariff Act of 1930, which prohibits unfair methods of competition and unfair acts in the importation of articles into the United States. Mr. Griffin also comments on topics omitted from the Justice Department's International Guidelines, including international aviation, international ocean shipping, Justice Department investigations, and the act of state doctrine in connection with jurisdiction. Mr. Griffin also notes that U.S. export trade receives little attention.

Mr. Griffin discusses developments in jurisdiction at considerably more length than does the Department of Justice in the International Guidelines and with more case citations. Jurisdiction over persons and conduct outside of the United States is an area of the law that has been the subject of much judicial scrutiny and controversy in the United States and in foreign nations ever since Judge Learned Hand in the famous *Alcoa*¹ case enunciated the "effects doctrine" that activity outside of the United States that has a "direct and substantial" effect on U.S. commerce is subject to the jurisdiction of U.S. courts. Subsequently, the Restatement (Second) of the Foreign Relations Law of the United States (1965) in section 18 added the "reasonably foreseeable" effect concept and the Second Circuit in the *National Bank of Canada*² case added "anticompetitive" effect.

The Ninth Circuit in the 1976 *Timberlane*³ case would have added or substituted a "jurisdictional rule of reason" test. This approach was endorsed in the Restatement (Third) of the Foreign Relations Law of the United States (1987) and is the subject of proposed legislation. While some other circuits have gone along with this idea, others have rejected it, and the Foreign Trade Antitrust Improvement Act of 1982 goes back to the "direct, substantial and reasonably foreseeable" test, at least as to U.S. export trade and, according to the House Report on the legislation, also as to wholly foreign transactions that affect domestic commerce or a domestic competitor. The Justice Department's International Guidelines adopt the amended *Alcoa* test for import as well as export commerce.

Mr. Griffin also comments on the enforcement policy set out in the International Guidelines in substantive areas in which the rules may apply to domestic as well as foreign commerce: monopolization, joint ventures, distribution, and

1. *United States v. Aluminum Co. of Am. (ALCOA)*, 148 F.2d 416 (2d Cir. 1945).

2. *National Bank of Canada v. Interbank Card Ass'n*, 666 F.2d 6 (2d Cir. 1981).

3. *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597 (9th Cir. 1976).

technology licensing. In considering the concerns of foreign governments on the application of U.S. antitrust law to foreign activities, Mr. Griffin mentions the *Wood Pulp*⁴ decision in which the European Court of Justice held that U.S. and other foreign firms selling their products in the Common Market were subject to the jurisdiction of the European Community despite not having any offices, agents, or subsidiaries in the Common Market. Mr. Griffin does not agree with the then head of the Antitrust Division, Charles F. Rule (when the International Guidelines were issued), that the European Court effects doctrine is "very close or indistinguishable from" the U.S. effects doctrine. In one of the few instances where this reviewer disagrees with Mr. Griffin, the two doctrines do seem very much alike.

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The New GATT Round of Multilateral Trade Negotiations, Legal and Economic Problems

Edited by Ernst-Ulrich Petersmann and Meinhard Hilf. Deventer, The Netherlands, and Boston: Kluwer Law and Taxation Publishers, 1988, pp. 597, \$144.

The "Studies in Transnational Economic Law" series started in 1980 with a study of the legal problems of codes of conduct of multilateral enterprises. In 1988, with four volumes existing, two new ones appeared: Volume 6, *The Law of International Trade Finance*, edited by Norbert Horn, and Volume 5, the subject of this review.

The New GATT Round of Multilateral Trade Negotiations, Legal and Economic Problems, was the subject of an academic conference organized at the Center for Interdisciplinary Research at Bielefeld, Germany, on June 11-12, 1987. The book bearing the same title reproduces a majority of the revised papers and shorter comments of the conference and includes twenty-five contributions of many of the best-known GATT specialists. As the editors point out in their foreword, all contributions, although diverse in their approach, have a common theme: How can the multilateral GATT legal system, which all countries need in order to increase their national welfare through trade, be strengthened further?

The book is organized into three parts, the first of which addresses "Constitutional Problems of the GATT Multilateral Trade System." Part II presents ten contributions on "Strengthening Existing GATT Rules and Disciplines." Part III

4. A. Ahlström Osakeyhtiö v. Commission of the Eur. Communities, Eur. Ct. of Justice, Nos. 89/85, Common Mkt. Rep. (CCH) ¶ 14,191 (1988).

*Author: FOREIGN COMMERCE AND THE ANTITRUST LAWS (3d ed. 1982 & Supp. 1989); *The New Justice Department Guidelines for International Operations*, 29 VA. J. INT'L L. 295 (1989).

contains nine articles devoted to problems related to "Negotiating Additional GATT Rules and Disciplines."

The honor of presenting the first paper was given to one of the world's most esteemed GATT specialists, Professor John H. Jackson of the University of Michigan Law School. In "Strengthening the International Legal Framework of the GATT-MTN System: Reform Proposals for the New GATT Round," Professor Jackson discusses legal and analytical problems that form a basis for the more specific matters addressed later in Parts II and III. He examines GATT law and indicates legal problems of the Agreement that might be resolved in the 1986-launched Uruguay Round, such as systemic constitutional problems ("the constitutional structure of GATT is clearly defective"), institutional legal issues, trade policy issues, and legal issues relating to the addition of trade in services to the GATT system. In his thought-provoking article, Professor Jackson considers the possibility of fundamentally rebuilding the GATT system, leaving the reader somewhat skeptical about the future of GATT. Comments by the late Professor Pieter VerLoren van Themaat, of Utrecht, former Advocate-General at the Court of Justice of the European Communities, support Professor Jackson's opinions regarding a basic reconstruction of the GATT system.

The longest article in the book is "Strengthening the Domestic Legal Framework of the GATT Multilateral Trade System: Possibilities and Problems of Making GATT Rules Effective in Domestic Legal Systems," by Ernst-Ulrich Petersmann, Counsellor in the Legal Office of the GATT Secretariat. In his attempt to present a constitutional analysis of the liberal GATT trade system from the perspective of domestic trade law and policy, Dr. Petersmann stresses the need for mutually consistent national and international liberal trade rules. He illustrates the importance and the functions of GATT constraints on national trade policies and discusses why further constraints on national trade policy powers, which he considers necessary, might be easier to achieve at the international level than at the national level. In Part IV of the five-part article, Dr. Petersmann examines at length various means of constitutional constraints and transforms them into concrete reform proposals. In his comment, Professor Giorgio Sacerdoti, University of Bergamo, includes several additional proposals for improving the institutional framework of the panel procedure.

Part I of the book concludes with an article by Professor Richard Blackhurst, Director of Economic Research and Analysis, GATT, on "Strengthening GATT Surveillance of Trade-Related Policies," supplemented by a short comment by Professor H.J. Bourgeois, Director in the Legal Service, EC Commission. Professor Blackhurst compares GATT's experience with policy surveillance to the experience of the International Monetary Fund and the OECD. His proposals for strengthening GATT's policy surveillance activities related to the Balance-of-Payments Committee, to the surveillance of the MTN Codes, and to new surveillance activities, including tripartite country examinations similar to those used in the OECD's Economic Development and Review Committee.

In Part II, Robert E. Hudec from the University of Minnesota Law School presents a "Critical Appraisal of the Case Against Discriminatory Trade Measures." Through his analysis of the economic and political consequences of discriminatory tariffs and quantitative restrictions, Professor Hudec concludes that industrial tariffs of all developed countries should be reduced to zero until the end of the century and that in the long run the authority for country-specific quantitative restrictions in GATT article XIII should be abolished. Singapore's UN-Representative See Chak Mun adds critical comments to these propositions. In one of the shorter contributions that follows, Professor Bourgeois places the GATT rules for industrial subsidies and countervailing duties into the context of the Uruguay Round, using critical remarks on the existing rules as a basis for developing reform ideas. Klaus Kautzor-Schroeder, GATT, amplifies Professor Bourgeois's article when he highlights several subjects for the negotiations agenda in the subsidies field. Stefan Tangermann, Professor at the Institute of Agricultural Economics, University of Göttingen, Clayton Yeutter, former U.S. Trade Representative, now Secretary of Agriculture, Washington, D.C., and Brigid Gavin, Graduate Institute of International Studies, Geneva, offer contributions related to GATT and agriculture. For the purpose of multilateral trade negotiations, Professor Tangermann fosters the new "super rule" approach on the basis of the producer subsidy equivalent (PSE) concept of measuring overall agricultural support levels. Remaining cautious about the use of PSEs as an instrument of multilateral negotiations, Gavin outlines the new agricultural policy stance from an EEC perspective. Yeutter adds some remarks on the U.S. negotiating proposal on agriculture in the Uruguay Round, the text of which is reproduced in an appendix.

Meinhard Hilf, from the University of Bielefeld Law School, and Ernst-Ulrich Petersmann present two articles on the GATT dispute settlement system. Professor Hilf compares dispute settlement rules in other international economic organizations and in international treaties and provides proposals for strengthening the GATT procedures. These relate to whether GATT dispute settlement procedures should be exclusive and to the difficult situation of developing countries regarding the complicated dispute settlement procedures. "On the Use of Arbitration in GATT," Dr. Petersmann's second contribution to this volume, focuses on several shortcomings of the dispute settlement proceedings as contained in article XXIII of the GATT, and supports some of the arbitration-related proposals submitted to the Negotiation Group on Dispute Settlement. Dr. Petersmann adds concrete proposals for possible negotiations in "Understanding on the Use of Arbitration in GATT." A. Jane Bradley, Fletcher School of Law and Diplomacy, Tufts University, former legal advisor to the U.S. Delegation to the GATT, concludes Part II of the revised book by covering a special issue in the field of dispute settlement. In "Implementing the Results of GATT Panel Proceedings: An Area for Uruguay Round Consideration," Bradley examines how several contracting parties, as the losing respondents in a panel, implemented the results of the panel

proceedings. On the basis of procedural developments related to dispute settlement since the Tokyo Round, she makes proposals for the actual negotiations on panel recommendations.

The last portion of the book is directed to the negotiation of additional GATT rules and disciplines. Dr. Frieder Roessler, Senior Counsellor in the Legal Office of the GATT Secretariat, writes on "The Relationship Between the World Trade Order and the International Monetary System." His article contains thoughtful remarks on the relationship between the IMF provisions on exchange controls for trade purposes and GATT, as well as discussion of the evolution and use of GATT's balance-of-payments provisions. The comments by Pierre-Louis Girard, Ambassador, Permanent Representative of Switzerland to GATT, bolster Roessler's arguments on the inoperability of GATT's balance-of-payments provisions.

The next group of contributions analyzes the problem of coordination of international trade and competition policies. This section contains an article by Mitsuo Matsushita, Professor of Law at the University of Tokyo, and shorter notes by Dr. Herwig Schloegel, Head of Trade Policy Analysis Division, Federal Ministry of Economics, Germany, Mark Koulen, GATT, and Rodney de C. Grey, former Ambassador and Representative of Canada to GATT. Grey's note explains that the system of contingency protection, which consists of measures against unfair trade and safeguard measures, conflicts with the concept of competition policy. Other contributions focus mainly on the relationship between voluntary export restraints and competition policy aspects.

The last two articles are dedicated to the relatively new subject of trade in services. Dr. Raymond Krommenacker, GATT Counsellor and Lecturer at the Institute d'Études Politiques of Paris, writes on the necessity of development "From Interest-Lateralism to Reasoned Multilateralism in the Context of the Servicization of the Economy." After looking at the attitudes of contracting parties towards multilateral negotiations on trade in services, he discusses the program of the Group of Negotiations on Services and addresses several crucial issues, including national treatment, state intervention, transparency, dispute settlement, and the special situation of developing countries. A comment written by Wedige von Dewitz, Director, Head of the GATT Division, Federal Ministry of Economics, Germany, further develops some of these issues. The book concludes with a stimulating article by Professor Claus-Dieter Ehlermann, University of Hamburg, Spokesman of the EC Commission, former Director-General of the Legal Service of the EC Commission, and Dr. Gianluigi Campogrande, member of the Legal Service of the EC Commission. The authors examine the extent to which the EEC rules on services may serve as a model for negotiating worldwide rules. Initially, they stress the differences between the EEC system and the current GATT situation that make the EEC system a difficult model to transpose. Secondly, Ehlermann and Campogrande point out that the political and legal experiences of the Community can be useful for the Uruguay negotiations. An appendix prepared by Ernst-Ulrich Petersmann includes useful

primary source materials. The book has a comprehensive index and a reference list of GATT articles.

The New GATT Round of Multilateral Trade Negotiations is a marvel. Under the leitmotif of the Uruguay Round, readers are offered twenty-five variations, each following its own ideas, all contributing to the composition of an elaborate mosaic. The work of experienced practitioners and highly regarded scholars provides a multifarious picture of the actual state of GATT law, its history, and its possible future. The Uruguay Round of Multilateral Trade Negotiations is scheduled to end in 1990. Far beyond that date this book will remain a valuable and informative study of GATT law and a pleasure to read.

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EEC Strict Liability in 1992— The New Product Liability Rules

Edited by Patrick E. Thieffry and G. Marc Whitehead. New York: Practising Law Institute (Dep't ES, 810 7th Ave., New York, NY), 1989, pp. 272 (softbound), \$45.00.

This Practising Law Institute publication presents all the practitioner needs to know about EEC Directive 85/374 on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Liability for Defective Products. The reason the publication is so complete is that only a few countries have passed legislation to implement the Directive. In addition, there has not been sufficient experience in those Member States that have passed enabling legislation to see any concrete results.

The first two chapters, by Co-Chairmen Patrick E. Thieffry and G. Marc Whitehead, respectively, provide a broad overview of the Directive and a rather detailed description of the practical implications of the Directive. The reader therefore can be selective in his reading after the first two articles. Although the Thieffry and Whitehead articles are overlapping and at times redundant, both articles must be read to obtain a clear understanding of the complete coverage and the specific implications of the Directive.

The reader will learn that a Directive, as opposed to Merger Rules or a uniform law (Brussels Convention), is the traditional instrument for the approximation of the Member State's law. Directives are proposed by the Commission for adoption

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by the Council and, once adopted, require the Member States to implement their provisions through national statutes, with minor variations allowed.

Directive 85/374 provides for strict liability of the manufacturer, seller, or importer of defective products. The Directive's purpose is to take away from the victim the burden of proving the producer's fault. A victim is only required to prove the damage, the defect, and the causation, but never the producer's fault. To ensure its effectiveness, the Directive adopts a very broad definition of the responsible person. The Directive refers only to defective, not dangerous, products. A product is defective if it does not provide the safety that one can legitimately expect. Damages caused by death or bodily injury are the Directive's main subject matter.

The Directive also provides for the defenses of exonerating circumstances, limitations period, and financial gap. Jurisdiction under the Directive will lie either where the accident took place or in the State in which the product was manufactured.

Seven other authors with European backgrounds discuss the implementation of the EEC rules in the major trading nations and provide valuable background analysis. The book is well annotated and complemented with useful appendices, including EEC and state statutory material. It represents good value and a practitioner-oriented introduction into subject matter that is considered nearly revolutionary in Europe.

American manufacturers are not likely to be surprised by this new substantive product liability system that does not significantly differ from that of the United States. As Mr. Thieffry concludes in his article, however, the Directive is unlikely to result in a liability crisis similar to that in the United States because the features of the crisis in the United States, such as extensive discovery, adversarial hearings, the jury system, treble and punitive damages, and mandatory health insurance systems, do not exist in Europe.

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