BOOK REVIEWS

The Emerging International Law of Development: A New Dimension of International Economic Law

By F.V. Garcia-Amador. New York: Oceana Publications, Inc., 1990, pp. viii, 286, $50.00.

Third World dissatisfaction with the existing international economic order and the legal framework within which it operates led to calls in the early 1960s for changes in the legal rules governing global economic relations.[1] In concert with the United Nations and its related agencies, developing countries (DCs) lobbied for the establishment of a new international legal order that would be more responsive to the problems of global economic inequality and underdevelopment. The international law of development (ILD) is the offspring of these efforts.

Hardly more than an intellectual acorn some twenty years ago, ILD has now grown into a mighty oak.[2] Indeed, Maurice Flory, the distinguished French publicist, whose role in the elaboration of this law cannot be contested,[3] recently remarked that ILD "has left the uncertainties of an adventurous youth to rejoin the serenity of mature disciplines"[4] and "[t]hose who launched this expression about twenty years ago did not then imagine that it would be long-lived."[5] Yet during this period, ILD has had to contend with a barrage of critical commentaries from a somewhat hostile and skeptical community of publicists.[6] These

1. *See generally* Bhagwati, *Introduction*, in THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE 5–6 (J. Bhagwati ed. 1977). Demands for change date back to the first United Nations Conference on Trade and Development (UNCTAD) in 1964. For more on UNCTAD's role in this revisionary movement, see *Introduction*, in LEGAL ASPECTS OF THE NEW INTERNATIONAL ECONOMIC ORDER 1, 4 (K. Hossain ed. 1980).

2. In describing the vast jurisprudence that has arisen under rule 10b-5 of the Securities and Exchange Act of 1934, Justice (later Chief Justice) Rehnquist invoked the metaphor of a legislative acorn that grew into a mighty judicial oak. *See* Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737 (1975).

3. *See generally* M. FLORY, DROIT INTERNATIONAL DU DEVELOPPEMENT (1977); LA FORMATION DES NORMES EN DROIT INTERNATIONAL DU DÉVELOPPEMENT (M. Flory, A. Mahiou & J. Henry eds. 1984).

4. *See* Flory, *A North-South Legal Dialogue: The International Law of Development*, in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 11 (F. Snyder & P. Slinn eds. 1987).

5. *Id.* at 23.

6. Prosper Weil, for one, has expressed fears that ILD will contribute to the undermining and destabilization of established principles of international law. *See* Weil, *Towards Relative Normativity in International Law*, 77 AM. J. INT'L L. 413 (1983). This view is also shared by another French publicist, Monique Chemiller-Gendreau, who snorts at the very idea of an ILD, dismissing it as a

attacks should hardly be surprising for a law whose principles and norms are still undergoing progressive development.

Much of the criticism is centered on the precise scope and implications of ILD. Is it a mere dimension of international economic law, as Garcia-Amador sees it (p. 48), or an autonomous branch of international law, as its proponents would have it?[7] Is it, as Professor Allott inquires, a law that is still *in posse* or one that is now finally *in esse?*[8] Could it be that ILD is being confused with the search for a new international economic order, as Maurice Flory suggests?[9] Or, perhaps the debate over the nature and scope of ILD simply reflects differences in traditions in legal scholarship between a common law tradition of "pragmatism, concerned to emphasize the binding and enforceable nature of international legal rules as 'value-free' norms" and "the more theoretical French tradition, interested in developing a conception of international law as an important mechanism in the dynamic of political, economic and social change."[10] A measure of the worth of any work of legal scholarship on ILD is the extent to which it attempts to shed light on these controversial doctrinal issues that have divided the legal community. Happily, Garcia-Amador's *The Emerging International Law of Development* rises to the occasion. In fewer than 300 pages, the author, a legal scholar of international stature, successfully provides a clear overview of the increasingly complex subject of ILD.

In the opening chapter, Garcia-Amador situates the subject in the context of an international law that has been in a state of flux since the middle of the nineteenth century when it began a gradual movement away from its parochial preoccupation with issues of peaceful coexistence[11] to embrace issues of international

myth—a contemporary form of liberal ideology that is legally incompatible with other basic concepts of international law. In her view, development law and the rhetoric that has been built around it engenders "an ideology, no longer in the sense of an intention of modifying reality but of *a conceptual distortion of reality*" (emphasis in original). Chemiller-Gendreau, *Relations Between the Ideology of Development and Development of Law,* in INTERNATIONAL LAW AND DEVELOPMENT: COMPARATIVE PERSPECTIVES 57 (F. Snyder & P. Slinn eds. 1987). Guy Feuer, on the other hand, disputes the characterization of ILD as a part of a dream world or an imaginary world. Feuer, *The Role of Resolutions in the Creation of General Rules in the International Law of Development,* in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 137, 138 (F. Snyder & P. Slinn eds. 1987).

7. *See generally* PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW (K. Hossain & S. Chowdhury eds. 1984); LEGAL ASPECTS OF THE NEW INTERNATIONAL ECONOMIC ORDER (K. Hossain ed. 1980).

8. *See* Allott, *The Law of Development and the Development of Law,* in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 69, 83 (F. Snyder & P. Slinn eds. 1987).

9. *See* Flory, *supra* note 4, at 22.

10. *See* Snyder & Slinn, *Introduction,* in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 1 (F. Snyder & P. Slinn eds. 1987). The book is an outgrowth of an Anglo-French symposium on "Aspects of the International Law of Development" whose principal objective, according to the editors, was to bring under one roof leading legal scholars in the field of international development law in Britain and France in order "to explore recent trends in the theory and practice of the law of development with special reference to its international legal aspects." *Id.*

11. Judge Bedjaoui has referred to this old law as the "law of coexistence and indifference." *See* M. BEDJAOUI, TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER 127 (1979).

economic cooperation. From here on international law became Janus-faced, with one side representing the law of coexistence and the other the law of cooperation.[12] The expansion of traditional international law not only contributed to a broadening of its scope; it also gave rise to a new set of State obligations and responsibilities where the emphasis was on "duties to do something with a view to protecting, by means of positive actions, the common interests of State and the international community as a whole" (p. 3). The shift from the law of coexistence to the law of cooperation also brought with it new techniques and methodologies for the elaboration of international law. To the classic practice of bilateral negotiations and treaties was added the practice of multilateral negotiations and agreements as well as the consensus resolutions of international institutions (p. 3). These new principles, norms and techniques emerging in connection with the promotion of development provide the framework for the emerging ILD. This embryonic law, the author is quick to add, is not an autonomous body of law. Rather ILD is but a tributary of international economic law, which in turn has been determined primarily by developments in the field of international economic cooperation.

Chapters 2 through 5 of *The Emerging International Law of Development* are devoted to a discussion of the doctrinal bases of ILD. Chapter 2 examines its constituent elements and its normative system, while chapters 3 through 5 discuss the various principles and norms subsumed under ILD. ILD is made up of two basic constituent elements: the right to development and the duty to cooperate for development. The source of these rights can be traced to provisions in articles 55 and 56 of the United Nations Charter.[13] The right to development has always raised two questions: (a) whether it is an individual or collective right of states; and (b) whether it has the character of *jus cogens*.[14] The bifurcation of the right to development is not contested by legal scholars, Garcia-Amador included. Such, however, is not the case with the claim that ILD has now risen to the level of a peremptory norm of international law. In categorically rejecting this claim,

12. Garcia-Amador credits Wolfgang Friedmann and Roling for first noticing this shifting emphasis in the law of nations. And it is to Friedmann that Garcia-Amador also traces the paternity of ILD (p. 33). Peter Slinn, on the other hand, seems to think that ILD is Gallic in origin and that French legal scholars have been in the forefront of popularizing this expression in their extensive writings. *See* Slinn, *Differing Approaches to the Relationship Between International Law and Development*, in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 27, 33 (F. Snyder & P. Slinn eds. 1987). On this point, he and Garcia-Amador are in agreement (pp. 33–34). For some frequently cited studies of ILD by French legal scholars, see generally A. PELLET, LE DROIT INTERNATIONAL DU DÉVELOPPEMENT (1978); M. BENNOUNA, DROIT INTERNATIONAL DU DÉVELOPPEMENT, TIERS MONDE ET INTERPELLATION DU DROIT INTERNATIONAL (1978); M. BENCHIKH, DROIT INTERNATIONAL DU SOUS-DÉVELOPPEMENT, NOUVEL ORDRE DANS LA DÉPENDENCE (1983); G. FEUER & H. CASSIN, DROIT INTERNATIONAL DU DÉVELOPPEMENT (1985).

13. For a contrary view, see Bedjaoui, *Some Unorthodox Reflections on the "Right to Development,"* in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 87, 94 (F. Snyder & P. Slinn eds. 1987).

14. *Id.* at 93 (the right to development is a corollary of the right to life and like the latter derives from *jus cogens*). *See also* article 52 of the Vienna Convention on the Law of Treaties.

Garcia-Amador situates himself squarely within the mainstream of legal thinking on this question. Similarly, in his treatment of the duty to cooperate for development, Garcia-Amador eschews ideological cant for doctrinal orthodoxy. He contests the presentation of this duty as an obligation that is legally binding on the Member States of the United Nations and, in particular, the industrialized countries. Drawing on the *travaux préparatoires* of the Charter, he concludes that the obligations and responsibilities mentioned in articles 55 and 56 are directed mainly at the United Nations *qua* Organization rather than the individual Member States. Article 56, according to this interpretation, "establishes and defines the function of the United Nations in the broad field of international economic and social cooperation" (p. 61), and while it commits Member States to act in concert with the Organization to promote development, these commitments were not intended to be read as binding obligations. They are, at best, moral and political in nature.

Those who may have forgotten that the duty to cooperate is double-edged are graciously reminded by the author that it is; that it imposes symmetrical responsibilities on both developed and developing countries. When the duty is viewed through its *vertical* component, the onus is on the industrialized countries to cooperate with DCs and the United Nations. But when it is viewed horizontally, the burden shifts to the DCs that now have the duty to cooperate *among* themselves. Garcia-Amador views this hardly-talked-about horizontal cooperation as a corollary of DCs' *primary* responsibility in the development process and links it to the idea of *la solidarité sud-sud,* a kind of Third World solidarity (p. 71).

The author discusses at some length the normative system of ILD underscoring those features that distinguish ILD from traditional international law and that, incidentally, continue to provoke much debate in international law circles. Perhaps the most distinctive and unique feature of ILD is the "duality of norms" or "plurality of norms" as Garcia-Amador prefers to call it (p. 41). It has been described as a legal technique that enables DCs to obtain the benefit of preferential treatment.[15] A second distinctive feature of ILD is the commitment to promoting development. As Flory points out, ILD "is not neutral in content, since it implies purposiveness and even a result."[16]

In chapters 3 through 5 the essential components of the right to development are listed: preferential treatment for DCs; stabilization of export earnings of DCs; permanent sovereignty over natural resources including the nationalization, expropriation, and transfer of ownership of foreign property and compensation; right of every State to benefit from science and technology; entitlement of DCs to development assistance; participatory equality of DCs in international eco-

15. *See* Flory, *supra* note 4, at 23.

16. *See id.* at 11. Professor Feuer echoes this assessment of ILD when he states that it is not purely and simply a branch of traditional international law but "a collection of *specific* and *finalized* rules, the object of which is to regulate . . . international action, both public and private, in favour of the development of the Third World." *See* Feuer, *supra* note 6, at 137.

nomic relations; and common heritage of mankind. One need not dwell on these components of the right to development as they are fairly well known to students of ILD. Curiously, Professor Garcia-Amador chooses to describe them merely as "claims" put forward by DCs. One is not quite sure where "claims" belong in the hierarchy of normative prescriptions.[17] Presumably, the choice of nomenclature is deliberate and intended to underscore the view that these "claims" lack the character of legal rules. After all, it is quite evident from the title of his book that Garcia-Amador considers ILD as a law still in formation. But the question needs to be asked whether these "claims," at least, qualify as principles? This is no mere quibble. The disagreement over whether ILD is *lex lata* or *de lege ferenda* centers on the characterization that one gives to its basic norms: whether to treat them as policies or principles or legal rules.[18] Given the author's stature in international law, his definition of the basic norms of ILD is bound to carry some weight.

Garcia-Amador ends his compelling study of the evolution of ILD with two basic criticisms. First, he is critical of the fact that positions embraced by DCs that favor the establishment of a new international legal order are sometimes grounded on erroneous or distorted images of traditional international law. For instance, DCs' position on the principle of permanent sovereignty over natural resources or their critical attitude toward the question of compensation for expropriated or nationalized foreign-owned property is anything but novel. The principle of compensation in the wake of expropriation not only antedates the attempts for a new international legal order but it "has been repeatedly acknowledged in diplomatic practice and international case law, including the jurisprudence of the World Court" (p. 202).[19] Against this backdrop, it becomes clear that the DCs are reinventing the wheel on this question. Little wonder that ILD has been dismissed in certain quarters as a mystifying concept that should be abandoned altogether![20]

Also criticized is the tendency of DCs to take radical positions that are often inconsistent with practice.[21] This gap between words and conduct is particularly

17. Professor Allott identifies three classes of particularity in normative prescriptions within each legal system: *policies* that set out in very broad terms a program to which specific norms and provisions will seek to work, that are nonobligatory and do not seek to lay down precise legal norms; *principles* that make direct reference to legal expectations although they do not necessarily shape specific legal behavior; and *rules* that are shaped by principles and do impose recognizable obligations. *See* Allott, *supra* note 8, at 76.

18. *Id.*

19. Garcia-Amador describes the Third World approach to the State's power to nationalize as embodying a "kind of emotional renaissance of the classic Bodinian concept of absolute sovereignty" (pp. 205–06). For a contrasting viewpoint, see, e.g., Hossain, *Introduction*, in PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW ix, xi (K. Hossain & S. Chowdhury eds. 1984); O. SCHACHTER, SHARING THE WORLD'S RESOURCES 172 (1977).

20. *See* Chemiller-Gendreau, *supra* note 6, at 57.

21. The late Judge Guy Lacharrière had also expressed similar reservation regarding the gap between rhetoric and practice characteristic of the Third World approach to international law. *See*

noticeable in DCs' whole approach to the question of the international validity of State contracts with foreign private corporations. On the one hand, DCs have always insisted that contracts of this kind should be governed by the domestic law of the State concerned. Yet, on the other hand, they have allowed the "insertion of choice-of-law clauses removing the contractual relationship, wholly or in part, from domestic law, plus the commitment to submit to (international) arbitration disputes arising between the contracting State and the foreign corporation. . . ." (p. 214).

But what accounts for this alleged gap between words and practice? Is one to infer from this a lack of seriousness behind the calls put forth by DCs for a new international legal order? Or, a retreat, perhaps, from avowed principles? Garcia-Amador appears to attribute this gap to "a certain lack of political realism" (p. 216) on the part of DCs. Indeed, this perceived inconsistency between public pronouncements and private conduct brusquely underscores the political and economic weakness of DCs vis-à-vis the industrialized world. It is a fact of contemporary global relations, and a particularly harsh one at that, that the Western industrialized countries control the world economy and through it the international legal order. It is nothing short of naiveté to expect to transform the legal order without correspondingly changing the enveloping economic system. In our view, the arrival of the millenium of a new international legal order is likely to be delayed until there has been a fundamental restructuring of global power relations. In the meanwhile, DCs will have to make the best of a bad situation, and this may require *inter alia* entering into international arrangements that, as some now contend, compromise their reformist rhetoric. This accommodation it would seem is the price DCs pay for participating in a global economic order over which they exert little or no influence.

The Emerging International Law of Development is a balanced presentation of the many sides to the ILD debate. While the author is generally sympathetic to the movement to reform international law, he nevertheless qualifies this support with the timely warning against the tendency "to propose changes in the traditional law on the basis of erroneous or distorted images of its principles and institutions" (p. 219). His advice that change should not be embarked upon just for the sake of change but only when it is necessary and justifiable is well-taken. Garcia-Amador's book contributes enormously to furthering discussion on a new international legal order and deserves to be read by every international lawyer.

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Lacharrière, *The International Law of Development: Words and Conduct* in INTERNATIONAL LAW OF DEVELOPMENT: COMPARATIVE PERSPECTIVES 41, 47 (F. Snyder & P. Slinn eds. 1987).

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Letterman's Law of Private International Business

By G. Gregory Letterman. Rochester, N.Y.: The Lawyers Cooperative Publishing Co., 1990 (to be supplemented annually), 3 vols., $238.50.

At the close of World War II, even before some of the treaties that would formalize changes in territory and sovereignty were signed, Rand McNally & Company published a new World Atlas. It showed the contours of the political world as redrawn by the war, especially in Europe. Moreover, as a special feature, the Atlas included a "Polar World Map" that the publishers thought offered a much-needed "new approach to the earth."

> The current Global War is rapidly forcing us to revise many of our pat, smug concepts inherited from the past and unconsciously accepted as fixed and final. Whether we know it or not, when we see something new, we judge it and limit it by the unconscious content of our minds, collected throughout our life from past patterns, experiences, and the accumulated experience of our forefathers. From time to time radically new elements are thrust upon us that require the uprooting and changing of old concepts. Among these ideas destined for the scrap pile is that of a predominantly east and west world, with Europe essentially east of the United States and Asia to the westward . . . .[1]

With this introduction, the Atlas presented a world map that had the North Pole at its center. It thus emphasized, among other things, the closeness of Asia to the United States by the northerly (polar) route made possible by air travel. (That world map also showed a distorted Madagascar nearly the same size as Greenland and a Tasmania about the size of France.)

Now, forty-five years later, some of the most familiar contours of the political world that emerged from World War II, especially in Europe, are undergoing tumultuous changes. With these changes come new opportunities for persons eager to be involved in private international business, as well as new challenges for those who do not welcome, but cannot avoid, such involvement. Just as there was a special need at the close of the war for a World Atlas showing the new and changing contours of the political world, there is a similar special need now for guidance in this changing business world.

In his three-volume *Law of Private International Business,* Greg Letterman sets out to provide such guidance. He remarks in the introductory pages that "[w]ith this reference, the reader can gain an understanding of the general topography of the land mass identified as 'the law of private international business'[2] and can generally locate himself or herself with regards to a particular legal issue at some reasonably definitive point on that land mass" (pp. vii–viii).

1. RAND MCNALLY & CO., WORLD ATLAS 12 (int'l ed. 1946).

2. He defines "private international business" widely: "any commercial transaction or activity in which (a) private persons or parties of different nationalities are involved or (b) private parties, monies, or commodities located in different countries or which are transferred across national boundaries for the purpose of carrying out the commercial activity are involved" (pp. vi–vii).

Letterman himself thus likens the product of his labors to "a large-scale map" (p. vii), but in several respects it resembles more closely an atlas. Its main text (chapters 3–15) comprises an up-to-date general survey that, like a large-scale map, is designed to be comprehensive enough to be useful to the intended audience,[3] but not so detailed as to be unmanageable. However, Letterman's book also includes five "national case studies" that bring into sharper detail just what shape the issues discussed in the main text take in the case of business dealings with some of the United States' most important trading partners—Canada, China, the EEC, Japan, and Mexico. Moreover, as in the Rand McNally Atlas produced at the close of the war, Letterman takes the project a step further by offering a special perspective that he considers significant: he continually emphasizes, often explicitly, but sometimes merely by the structure of his presentation, the importance of the context—particularly the cultural context and the practical context—in which the issues of international business law arise. Without an appreciation of such context, he claims, practitioners and those they serve will be ill-prepared to seize the opportunities, or meet the challenges, of the rapidly changing world of international business.

This emphasis on the importance of context makes its opening appearance in chapter 1, entitled "Description and Comparison of National Legal Systems and Business Cultures." After repeating the now-obligatory chastisement of Americans for knowing so little of other languages and illustrating their propensity for intercultural blundering generally, Letterman proceeds to offer a capsulized history and critique of the common law systems, followed by similar exercises for civil (codified), religious, traditional, Soviet, and other types of legal systems. The busy practitioner—frantic for an answer to a question raised by the client in a telephone call from the airport—might consider these discussions to be irrelevant or overly time-consuming detours. "Only once!" would probably be Letterman's response; the American practitioner who attempts to advise on issues or transactions involving another legal system, even another common law system, without studying at least the broad contours of that system and the main forces that have shaped it, does so at his or her peril.[4]

In the second chapter Letterman provides a mini-encyclopedia of entities concerned in one way or another with international business law. The entries (most of which include addresses and telephone numbers) cover United States Government agencies and embassies, embassies of other states located in the United States, bar and other

3. "[T]his reference is written for businesspersons, general legal practitioners and students of the law who do not, and do not expect to, spend their professional lives largely or exclusively dealing with matters relating to private international business" (p. vii).

4. "For Americans who engage in international business matters for the first time, there are many differences in attitude and practice that distinguish international dealings from the domestic dealings with which they are most familiar. Many of those differences are obvious. Many are purely mechanical or procedural differences. Nevertheless, a failure to be aware of them and to act on them can, and often has, resulted in disaster" (p. 5).

professional associations, U.S. and non-U.S. chambers of commerce, and numerous international organizations, agreements, and tribunals.

Having presented these two introductory chapters—the first establishing an outline of the broad legal and cultural context in which questions of international business law may arise and the second providing a kind of "gazetteer" and extensive "legend" for use in reading the "map" that follows—Letterman then sets about surveying the law of private international business. The discussion is structured along fairly traditional lines that reflect many areas of concern in carrying out such business. The coverage includes:

- exports, imports, and trade remedies (chapters 3–5);
- international financial transactions, investments, sales of goods and services, and exploitation of natural resources (chapters 6–10);
- transnational litigation, patents and copyrights, technology transfer, franchising, international tax issues, and immigration and labor law (chapters 11–14); and
- foreign corrupt practices, boycotts, special trading relationships with certain countries, and antitrust and competition law bearing on international business (chapter 15).

In discussing each of these topics Letterman explains the statutory and regulatory (or treaty) framework, details the procedural requirements, and gives references to other sources of information (more detailed "maps"). In some cases, the key requisite forms (for example, export license application forms) are reproduced for illustration. Letterman thus gives close attention to the nuts and bolts of achieving business goals and, in so doing, lays out the practical context in which the practitioner must act. He tells the reader the rules and why they exist; who (for example, what governmental authority) controls their implementation; how one satisfies the relevant criteria; when one should take certain actions; and where one goes for help.

In undertaking this survey, Letterman draws on an apparently wide range of experience in guiding international business clients past potential or actual obstacles. This is an important contribution. The map that he draws in this main part of the reference is undeniably *his* map, in that it provides a quite personalized survey of the territory, seen through the eyes of one who has observed (and perhaps not always avoided?) numerous pitfalls and traps. Because of this, much of the writing reveals an eagerness and excitement both in passing along the information and in illustrating its application in actual practice. Letterman's signature as an enthusiastic mapmaker is clearly evident.

This personalization has two consequences, one welcome and one not. On the one hand, Letterman delivers generously on his understated promise, made in the Introduction, to present the information "as painlessly as possible—while even possibly and occasionally offering some small amusement or pleasure" (p. viii). He peppers several of the discussions with quips, metaphors, and horror stories that bring his point out clearly and make the reading enjoyable. On the other

hand, one gets the impression that in his eagerness he sometimes loses sight of the paramount importance of organizational clarity in a reference of this type, especially one of this size. In some chapters the presentation would be improved by more visible structuring. What the mapmaker and printer achieve by using different colors, shadings, and typeface on a map, Letterman and his publisher could have achieved by adding subheadings, separating items in lists rather than running them together in long unbroken paragraphs, and, in general, providing more signals as to just where the reader is on the "land mass" being surveyed. In some cases the larger cultural and historical context is not adequately separated from the detailed practical context.

This cloud over clarity of the presentation is hardly surprising considering that the two main goals Letterman apparently has set for himself—comprehensiveness and timeliness—compete with each other, especially in a period, as this is, of rapid change and development in the rules and practice of international business. The silver lining to that cloud is that the reader—like the traveler studying a map that is chock-a-block with information, but that has fewer visual aids than the traveller might like—constantly comes across information or views (Letterman obviously enjoys expressing his views) that bring liveliness and connectedness to the materials. In addition, the usefulness of the book is enhanced by a detailed eighty-two-page topical index and a twenty-four-page glossary of abbreviations and terms.

In sum, *Letterman's Law of Private International Business* has much to recommend it. Its main text achieves Letterman's goal of providing a comprehensive, but manageable, "map" of the world of private international business law. Its last chapter offers several useful country-specific "maps," and the coverage of this portion of the book in particular is to be expanded as part of the annual issuance of supplements and updates. Its encyclopedic glossary and extensive index give valuable guidance to the user in locating the portions of the text pertinent to a particular problem. All these aspects make the book a highly useful reference for businesspersons and practitioners. Moreover, like the Rand McNally World Atlas issued in the midst of political turmoil and restructuring forty-five years ago, Letterman's book offers a special feature that makes it particularly stimulating and timely now—his strong emphasis on the importance of understanding and appreciating the wider context, both cultural and practical, in which the issues of international business law arise.

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Internationales Vertragsrecht

By Christoph Reithmann and Dieter Martiny. Cologne: Verlag Dr. Otto Schmidt KG, 4th ed. 1988, pp. lxvii, 1154, DM320.00.

The transnational attorney faces numerous challenges, not least the need to research and comprehend foreign legal systems. While some degree of collaboration between lawyers trained in different legal traditions will always be necessary, the right reference book can be an invaluable aid to the attorney involved in complex transactions raising questions of foreign law. A recent book offers the prospect of just such hope to those who have a reading knowledge of the German language.

Reithmann and Martiny's *Internationales Vertragsrecht (International Contract Law)* is an enormously useful guide to the myriad issues that arise in the context of international contracts. In one handy volume the authors have managed to encompass the vast majority of legal issues that arise in such cases, as well as to address an array of topics likely to appeal to practitioners in certain specialties, such as transportation law. More important than the mere breadth of coverage, however, is the astonishing depth of detail that the authors have managed to incorporate into their volume. For the transnational lawyer who has the linguistic skill to use it, then *Internationales Vertragsrecht* is a reference work of unsurpassed value.

The book is written in a style similar to that of German commentaries, which is the root both of its strength and of its weakness. It is well organized and easily accessible, thanks to a detailed table of contents and index. The body of the book itself consists of explanatory text penned by seven German legal experts, and includes excerpts of various statutes and international conventions, as well as extensive bibliographies. The densely written, sophisticated text itself appears in numbered paragraphs that contain cross-references to other parts of the book, as well as frequent citations to authority (including German code provisions, case law from various jurisdictions, and decisions of international arbitral tribunals). For some readers, the German tradition of employing cryptic abbreviations may present initial difficulties, although the book contains an adequate key to decipher all abbreviations, and they are used in this book to a far lesser degree than in other familiar German commentaries, such as Palandt's *Bürgerliches Gesetzbuch.*

Special mention must be made of the bibliographies contained in *Internationales Vertragsrecht,* for they constitute a unique and valuable addition to the transnational lawyer's library. Consistently throughout the book the authors supplement each substantive discussion with extensive bibliographic references to relevant books and articles. The authors have clearly done their homework, for the bibliographies demonstrate remarkable familiarity with the international literature concerning the many subjects addressed. In most cases bibliographies

contain references to comparative studies and to literature from a variety of countries, *in addition to* references to German materials. While the emphasis is on European countries (East and West, and particularly, members of the European Economic Community), there are extensive references to literature concerning the United States, Canada, and Japan. For example, the basic section on corporate and other forms of business enterprise discusses, in detail, not only German law and the role of international (including EEC) conventions, but also the laws of Austria, Belgium, England, France, Italy, Liechtenstein, the Netherlands, Spain, Switzerland, and the United States, and contains further bibliographic references to the laws of more than twenty other countries. While much of the literature cited is in the German language, references to English and other EEC-language materials are common.

This multiculturality is worth emphasizing: while the book may have been written with the German practitioner in mind, its appeal is vastly broader. *Internationales Vertragsrecht* enables the reader not only to grasp the intricacies of German law, but also to cope with the complexities of transnational transactions. The text frequently takes a comparative approach to its subject matter in a way that is extremely focused and practical. For example, the discussions of formation of contract and retention of title zero in on the decisive differences among the legal systems under consideration, in addition to giving a general overview of the subject. Often, too, French and English translations of German legal terms are provided in order to facilitate the reader's understanding. The authors' unique approach, combining precise text with bibliography, makes the book ideal for the attorney who needs to "get up to speed" quickly.

As far as its contents are concerned, few readers will be disappointed. The book is divided into seven parts. Part 1, in which the problems of determining applicable law are addressed, starts out by taking a close look at the 1980 European Convention on the Law Applicable to Contracts, before turning to an analysis of the intricacies of German private international law (conflict of laws). In this context, it is fair to state that Dr. Martiny succeeds in making the incomprehensible very nearly comprehensible to the foreigner.

Parts 2, 3, and 4 likewise concern issues of applicable law, but in a more concrete context. Part 2, for example, works through the basic German law of obligations, and addresses such issues as formation of contract (including "battle of the forms"), standard contract terms (*AGB* rules), validity, interpretation of contracts, precontractual liability *(culpa in contrahendo),* performance and breach, excuse, burden of proof in contractual cases, assignment of claims, and assumption of duties. In Part 3, unjust enrichment and *negotiorum gestio* are examined, and Part 4 undertakes to expose the mysteries of "mandatory law" in international contracts, focusing on the role of legal rules designed to protect the weaker contracting party or to further important policies of the forum.

The first one-third of *Internationales Vertragsrecht,* which concerns these various issues of private international law, is likely to prove perplexing at times for the American reader, largely because American-trained lawyers are less accustomed to thinking about international conflict of laws issues than are those trained in civil law systems. For this reason alone, it would be possible to recommend this book for use by American lawyers who have frequent contact with lawyers from civil law jurisdictions. There is, however, an even more compelling reason for recommending Reithmann and Martiny's book, namely the startling range of specific contractual issues addressed in parts 5, 6, and 7.

Part 5, which makes up the middle third of the book, is a sort of contractual candy store in which twenty-six different types of contracts are examined in detail. These contracts range from the lowly sale of goods to the exotic publishing and film production contracts. The chapter on sale of goods, for example, covers everything from the various uniform laws, namely, the two 1964 Hague Uniform Laws (International Sale of Goods and Formation of Contract) and the 1980 United Nations Convention on Contracts for the International Sale of Goods, to products liability, to passage of risk. The special problems of currency and language risk are also addressed. A separate chapter looks at contracts with consumers.

Following an in-depth look at sales contracts, the authors provide chapters on various contractual aspects of real property (e.g., sale, lease, mortgage, and development), of services (e.g., employment, construction, and other types of service), and of finance (e.g., bank loans, guarantees, and insurance). Of special importance for the transnational practitioner are the chapters on licensing, commercial agency, distribution, and cooperation contracts. These chapters also discuss German and EEC antitrust implications of such contracts. Finally, the subject of transportation is covered in chapters focusing on various aspects of air, sea, road, and rail transport. A chapter on the contract for legal services is likely to be of interest to many.

The final third of the book is comprised of two separate, but no less significant, topics. In part 6 the authors focus on various aspects of agency authority and contractual capacity. Of particular importance here are the chapters on business enterprises, on power of attorney *(Vollmacht),* and on the limitations on capacity of married persons and minors. The topic of corporate authority is thoroughly explored, with a good analysis of the differences between U.S. and continental law. Part 7 completes the volume by taking an exhaustive look at the essential topic of international dispute resolution, with particular emphasis on the status of choice of forum clauses in Germany and other European countries, and on international arbitration.

It would be prudent to bear in mind the limitations of *Internationales Vertragsrecht,* along with its strengths. Not all topics of interest to the transnational lawyer are explored. For example, the free movement of persons in the EEC is

addressed, but not the immigration status of non-EEC nationals. Neither does the book devote its attention to questions of tax law, although some bibliographies refer to issues of taxation. The exclusion of these subjects from the scope of the book can be easily justified, since they are complex regulatory fields that are only incidentally contractual. Another limitation of the volume is that it does not provide a systematic analysis of legal issues arising in connection with contracting in the former German Democratic Republic. This gap can be readily explained by reference to the recent, rapid changes in Germany, but it is nonetheless an unfortunate gap, and one the authors will surely fill in their next edition. Finally, readers should note that *Internationales Vertragsrecht* does not contain a systematic introduction to the law of the EEC that would suffice to meet the needs of the novice. Rather, the discussion of EEC law permeates the entire book, as it arguably should, and presumes familiarity with underlying institutional issues.

On the whole, Reithmann and Martiny's book cannot be viewed as a substitute for having one's own copy of the *BGB* (for those who are so inclined), nor for having other reference works that track EEC or other national law developments. It can and ought, however, to be viewed as the Rosetta Stone of transnational contracts, as a key that enables the user to decipher many, many legal riddles. The authors revel in complex details, without ever neglecting to lay the foundation necessary for the reader to appreciate them. Their sophisticated approach to complex problems is welcome in a world where international and comparative literature too often settles into platitudes.

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Women's Legal Rights: International Covenants an Alternative to ERA?

By Malvina Halberstam and Elizabeth F. Defeis. New York: Transnational Publishers, Inc., 1987, pp. 99, $35.00.

Both Professor Halberstam and Dean Defeis are well-known authors in the areas of international law, constitutional law, and human rights, especially the rights of women. This brief volume does a number of things that make it of interest to activists and to scholars in all of these fields.

Among the features of this study are a concise review of the history of the movement for women's rights in the United States and an analysis of the ways further progress could be made. The existing federal and state law is summarized

and discussed, and the federal constitution is analyzed with respect to the status of women's rights: due process, equal protection, the nineteenth amendment, freedom of association, the commerce clause, and more. In the authors' view, gender-based discrimination not only persists de facto in the United States, but efforts, to date, through domestic legal mechanisms have been inadequate to give promise of rapid change in this state of affairs. The federal equal rights amendment has not been ratified (though many states have such a provision in their constitutions); the Supreme Court has not placed gender-based discrimination at the level of requiring strict scrutiny.

As a different approach, the authors press for ratification of the Convention on the Elimination of All Forms of Discrimination Against Women without the reservations, largely based on states' rights, urged by the Department of State. To avoid conflict between the Convention's very broad bans on *all* discrimination, public and private, and the United States Constitution's protection of freedom of association, the authors do suggest a reservation on this point. They argue persuasively not only for the logic of this approach, and for its important potential substantive impact, but also for its legitimacy and legality.

The book is a useful, activist study, well written, readable, and as noted, persuasive. One small reviewer's note: Though not noted by the authors, the cited international documents concerning women are conveniently collected in a five-volume loose-leaf work by this writer.*

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Droit des Affaires 1990

By Barthélémy Mercadal. Paris: Editions Juridique Lefebre, 1989, pp. 1606, F450.

Droit des Affaires (Business Law) brings to light the conceptual and structural differences between American business law and its French counterpart. French business law, and perhaps the French legal system as well, is structurally cohesive, centrally controlled, and goal oriented. Comparing this book to similar American treatises, the latter appear fragmented, arbitrarily focusing on some areas while leaving others untouched. For example, there are American treatises

*R. TAUBENFELD & H. TAUBENFELD, INTERNATIONAL TREATIES, DECLARATIONS, AND OTHER ACTS CONCERNING SEX-BASED DISCRIMINATION AND THE RIGHTS OF WOMEN IN INTERNATIONAL LAW (1978 to date).

on secured transactions, corporations, or sales. In the United States, comprehensive books on business law are usually written on a prelaw or college level, and their approach tends to be superficial. By contrast, *Droit des Affaires* offers a comprehensive, practical, and in-depth treatment of the subject.

Thematically, the book is divided into thirty-five master chapters, presented in alphabetical order. The topics range from administrative acts *(actes administratives)* to sales *(vente)*. American readers will find much more than they might expect to find in a book devoted to business law. For instance, pages 1425–1438 deal with the law of tort *(responsabilité civile delictuelle)*. There are also chapters about copyright law *(droit d'auteur)*, dispute resolution *(contentieux)*, insurance *(assurance)*, ownership *(propriété)*, and payment *(paiement)*.

This treatise is written like an encyclopedia of French business law. The approach is completely practical. For instance, although evidence is quintessentially a procedural topic, it has its own chapter *(preuve)*. This inclusion stems from an awareness of the importance and strategic value of anticipating evidentiary considerations before actual litigation. The author provides important details regarding the different evidentiary weight *(force probante)* accorded public records *(actes authentiques)*, private instruments *(actes sous seing privé)*, and other documents *(autres écrits)*. For example, on page 1279, privileged information is discussed along with supporting case law.

Business attorneys interested in France might want to take a close look at the chapter on debt collection *(recouvrement des créances)*. Among the most effective French devices are the judicial temporary mortgage *(hypothéque judiciaire provisire)* (p. 1394) and the judicial fines for noncompliance with a judgment *(astreintes)* (p. 1405).

In general, civil law authors do not write extensively about agency, which they generally consider as a subsection of contract law. Common law authors, in contrast, tend to view this area with greater circumspection and devote whole volumes to it. Symmetrically, a common law curriculum usually offers agency as a special subject, while the same is not true of civil law schools. *Droit des Affaires* follows the civil law practice of underplaying the notion of agency *(mandat)*, which is discussed in twelve pages, while 143 pages are devoted to the topic of payment. Perhaps there is no logical reason for the different degree of attention that this topic commands in each legal system. The real cause may lie in some intractable custom or practice originated centuries ago. Nevertheless, a *mandataire* in France is almost the exact counterpart of an agent in the United States and the kinds of problems that these people create or solve are quite similar. Additionally, the kindred topic of distribution contracts is treated in detail (pp. 679–714).

Not only will foreign readers profit from focusing on specific topics, they will also benefit from reading the chapter entitled *Lois et Réglements* (Laws and Regulations) (pp. 1031–1090). The American reader can use this section as a road map to discover the main sources of French business law, how they are implemented and interpreted, their relative value. Another chapter of particular interest to any person with a business connection in France is the chapter on international contracts *(contracts internatio-*

naux) (pp. 651–669). This chapter explains important issues such as French notions of public policy *(ordre public)* and conflict of laws.

The book contains about 1600 pages of tight print, organized around a system of numbered paragraphs. Cross-references are abundant, and each page is replete with hard information, expounded in a clear, direct, and well-documented manner. The table of contents *(liste des rubriques)* is surprisingly brief. In fact, only the general title of each chapter is listed, without any breakdown. An analytical table of contents would improve the book's utility, particularly for foreign readers who would not necessarily categorize issues in the same manner as the French.

At a more general level, *Droit des Affaires* belongs to the modern generation of European legal writing, characterized by an international approach. While remaining a book on French law, references to other legal systems, including the United States', are frequent and methodical. An awareness of the European Common Market is always present. Unfortunately, few American business law scholars go beyond the UCC to refer to the *Code de Commerce,* nor do they concern themselves with what foreign courts have to say. Such an international outlook is not common in American legal writing, probably because American scholars tend to be monocultural and monolingual. Concededly, this is the price to be paid for belonging to a dominant culture and speaking a dominant language.

Professor Mercadal, of the Conservatoire National des Arts et Métiers in Paris, brings a wealth of experience to his work. *Droit des Affaires* provides a key with which to access the whole system of French business law. Yearly updating make it a very reliable tool. Moreover, it is well suited not only for academic research, but also for corporate attorneys interested in French and the European Community. Another valuable feature is the regular inclusion of *points sensibles,* a section that highlights danger areas.

Professor Mercadal's book disproves the general view that civil law authors concentrate on scholarly writing as their primary source of authority. Indeed, this book includes more case law references than most American texts. American readers will not find lengthy case excerpts, as they would in many American texts. Instead they will encounter a brief paragraph or two in support of the preceding text. This committed way of writing helps the foreign reader considerably by providing a better focus.

As already mentioned, the structural differences between U.S. and French business law are considerable. A question to be answered elsewhere is whether these structural differences translate into different outcomes when each system is applied to the same set of facts. It might well be that in spite of their different appearances, French and American business laws tend to solve similar cases in similar ways.

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