

1978

Book Reviews

Recommended Citation

Book Reviews, 12 INT'L L. 943 (1978)

<https://scholar.smu.edu/til/vol12/iss4/23>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Book Reviews

The Panama Canal Controversy

By Paul B. Ryan; Hoover Institution Press, Stanford University, Stanford, California: 1977. pp.xi and 198. Index. \$6.50

Reviewed by ALWYN V. FREEMAN

In his *The Path between the Seas*,* William Manchester tracked the historical development of the project for a canal across the Isthmus and its superb consummation by the United States. With that familiar history as the backdrop, *The Panama Canal Controversy* reviews the long campaign of Panamanian Politicians to seize control of the waterway and to eject the United States from the Canal Zone. Going back more than a half dozen decades—almost before the ink had dried on the 1903 treaty—the stridency of the claim grew shriller, culminating in the treaties of 1977 to which the Senate gave its consent last April after a heated and extended floor discussion.

It is to be regretted that the debates, over what could well prove to be the most critical foreign policy issue since World War II, became embroiled in presidential politics. Ryan's book—written in contemplation of Senate action—critically explores the impact of the treaties on this nation's future security. Hanging over any appraisal of the merits and shortcomings of the treaties, of course, is a gathering obstacle to our Navy's role in defending the sea lanes which link the United States with its overseas allies and to vital sources of supply: the Kremlin's enormous program of naval construction directed at nothing less than worldwide political hegemony, a transparent plan to control the maritime choke-points essential to our survival as a free nation. Nothing that has occurred since the Senate acted diminishes in any degree the grim warning which the book raises. Its author, at present a research associate at the Hoover Institution, and a retired Navy captain who served as an officer

*Reviewed in the Spring issue, 1978 of the *International Lawyer*.

in three wars, also happens to be a highly trained historian. All major aspects of the controversy on the Canal are expertly probed in a realistic, detached evaluation. With an impressive array of facts, Ryan makes short shrift of the rather ridiculous argument that the Canal no longer is necessary to the defense of this nation [one sample: the hundreds upon hundreds of smaller supply and support vessels which have traversed the Canal to the aid of ships "which can't go through"]; that its commercial significance is of a secondary order; and that the agreements would usher in a new era of respect and understanding between the United States and our neighbors to the south.

A recurrent thread in the recent Senate debate was the loud insistence of proponents that there would be an outbreak of violence against the Canal and the Zone if the treaties were not approved. That contention ignored the fact that these agreements offer no assurance that, after a respectable interlude, riots may not be instigated, anyway, to compel an earlier withdrawal by our government. While a failure to ratify might possibly have accelerated the date for uprisings, ratification did not necessarily erase the risk of conflict in the Canal. Ryan would be the first to acknowledge that a change in the Canal regime was long overdue; but his thesis—and here he has plenty of honest company—is that the provisions in these treaties are so fraught with peril for this nation's future survival that, as originally submitted to the Senate, they should have been rejected out of hand.

While the various amendments and reservations which laboriously emerged from the Senate chamber sought to rectify some of the more glaring defects of the treaties—defects which could and should have been expunged in the negotiating stage—it seems clear that Ryan's position would be no different today. The correctives would do little to shake his conviction that we shall live to rue the bargain we have bought from a mini-nation which remains a prime target for subversion and which lacks the means to defend either its own independence or one of the world's coveted resources. For the United States to have retained an effective measure of defence over the Canal was hardly a goal to be ashamed of, not for a nation which gave the people of Panama their sovereignty, a sense of international stability and a degree of sanitation and prosperity which has few peers in the chronology of comparable relationships.

It is difficult to dismiss Ryan's carefully mounted case that the eventual beneficiary of the treaties we have approved could well be the USSR, acting through its Cuban surrogate. Equally disturbing is the evidence he marshals that by these instruments the United States has turned over an enormously valuable asset to a Torrijos who, during a visit to Tripoli announced he had come to seek Quaddafi's help in his "struggle" with the United States; a Torrijos who had promised Libya a potential foothold in Latin America in exchange for military assistance and economic support to help Panama pay off

its mounting foreign debts; a Torrijos who has openly proclaimed his ties with the Soviet Union, to which he described his troubles with the United States as a "struggle for national liberation"; and a Torrijos to whom the USSR gave propaganda support by constantly orchestrating the theme that the United States presence and the military bases in Panama were illegal and that Panama's demands were just. That Torrijos's growing links with the Soviet Union have not been chimerical was confirmed by the signing of an economic agreement in Panama City on July 19, 1977—Moscow's initial move to broaden a hitherto unthinkable presence near the Canal.

The book is tautly written and magnetic in style. One puts it down with deep forboding, a sense of futility and the unverifiable suspicion that had Ryan's arguments been carefully pondered by treaty supporters on the Senate floor, the final votes could well have tilted in the other direction. The minority floor leader, Senator Robert Griffin [along with Senator James Allen and other opponents] saw very clearly the pitfalls which Ryan had exposed. Although he labored diligently, he was unable to avert what appeared to him to be a tragic miscalculation by his colleagues.

Whether the dire consequences foreseen by the author ever materialize will depend in the last analysis on whether this nation and its leaders have the will and the stomach to shed our paralyzing Vietnam syndrome and to act once again as a world power with global responsibilities. Unhappily, we have been repeating all the myopic errors of the 1930s, which led inexorably to the most calamitous war in history. But in the 1980s there will be no time to build up a deficient military, to rehabilitate a battered intelligence system or to regain that control of the seas which is the linchpin of our survival. Surely, abandoning one strategic area of the world after another to a relentless Soviet expansionism is hardly the path to peace. Or would our false prophets have us forget the lesson of 1938, oblivious to the truth that for the first time since 1812 this nation may be unable, because of the Soviet's enormous striking force, to project its strength beyond its own territory, leaving the foreign field exposed to Soviet domination?

International Private Trade

By Andreas F. Lowenfeld.* Part I in a series of books on *International Economic Law*, by Andreas F. Lowenfeld and Thomas Ehrlich.† (New York: Matthew Bender & Co., 1975. pp. xii, 129 text, 131-302 documentary supplement, table of cases and index. Price \$8.50).

Reviewed by NAJEEB SAMIE‡

The book is intended for use by both students and practitioners. While this particular volume was originw, as the preface indicates it may aEconomic Law, as the preface indicates it may also be used for courses in Commercial Law and Conflicts of Law.

The distinctive quality of the volume lies in its analytical effort and the moderate use of case study. Professor Lowenfeld is to be credited for his thoughtful integration of text and cases, followed by their analysis in the problem-question form. This approach, which the author has adopted throughout the book, has proven to be ideal for students. While the author suggests that the book may also be useful to professionals, it is more of an introduction to the whole field of International Economic Law and, as such, fails to provide answers to complex problems faced by practitioners.

International Private Trade is divided into five sections. Section One consists of an "Introduction" of four pages outlining the types of legal problems most commonly found in international commercial transactions. Section Two, "The Documentary Sale," covers 36 pages mainly devoted to cases and analyses of the technical terms used in international trade. There are four

*Professor of Law, New York University School of Law

†Dean and Professor of Law, Stanford University School of Law.

‡A graduate student at N.Y.U. School of Law).

leading cases presented: *Biddell Bros. v. Horst*,¹ *Seaver v. Lindsay Light Co.*,² *C. Sharpe & Co. v. Nosawa & Co.*³ and *The Julia*.⁴ This section is directly related to the book's documentary supplement containing many contract clauses and agreements of everyday use. The well-posed and thoughtful questions from Professor Lowenfeld at the end of each case help the student understand the issues involved to a great extent.

Section Three, "Excuse for Nonperformance," consists of 19 pages. The first half contains a reproduction of *Tsakiroglou & Co., Ltd. v. Noble Thoil GmbH*,⁵ one of the leading cases for nonperformance. The remainder of this section comprises Professor Lowenfeld's questions on the *Tsakiroglou* case, recent developments covering the problem, and a comparison of relevant U.S. and German law governing nonperformance. Students in particular will benefit from the author's well-formulated questions which enhance one's understanding of the issues in this decision.

Section Four, in 26 pages, deals with "Dispute Settlement in International Sales Transactions." This section, especially, may be potentially useful to practitioners. The author has presented both the American and British views on jurisdiction over absent defendants, planning for disputes, arbitration clauses and choice of forum clauses. While different aspects of international arbitration are discussed in great detail, it is surprising that no mention is made of the International Convention on the Settlement of Investment Disputes (ICSID convention). Throughout this section the author has discussed the decisions in many different cases, giving the most comprehensive treatment to *The Bremen v. Zapata Offshore Co.*⁶ and *Wilko v. Swan*.⁷

The last section, "The Letter of Credit Transaction," explains what a letter of credit is, the method of payment and the role of banks. It offers further discussion of "irrevocability" and "strict compliance." This section follows the same format as the preceding ones and is mainly based on five major cases: *Urquhart Lindsay & Co., Ltd. v. Eastern Bank, Ltd.*,⁸ *Maurice O'Mera Co. v. National Park Bank of New York*,⁹ *Sztejn v. J. Henry Shroder Banking Corp.*,¹⁰ *J.H. Rayner & Co., Ltd. v. Hambro's Bank, Ltd.*,¹¹ and *Dixon, Irmaos & CIA., Ltd. v. Chase National Bank of the City of New York*.¹² Pro-

¹[1911] 1 K.B. 934 (Court of Appeals).

²233 N.Y. 273, 135 N.E. 329 (1922).

³[1917] 2 K.B. 814 (King's Bench Division).

⁴[1949] A.C. 293 (House of Lords); 82 Lloyd's List L.R. 270.

⁵[1962] A.C. 93 (House of Lords).

⁶407 U.S. 1 (1972).

⁷346 U.S. 427 (1953).

⁸[1922] 1 K.B. 318 (King's Bench Division).

⁹239 N.Y. 386, 146 N.E. 636 (1925).

¹⁰177 Misc. 719, 31 N.Y.2d 631 (Sup. Ct. N.Y. Co. 1941).

¹¹[1943] 1 K.B. 36 (Court of Appeals).

¹²144 F.2d 759 (2nd Cir. 1944), *cert. denied*, 324 U.S. 850 (1945).

fessor Lowenfeld's same scheme of discussion-oriented questions makes the understanding of the cases much easier for students, but this section might not be helpful to someone looking for more than an introduction. The rest of the publication consists mainly of a separate Documentary Supplement of 156 pages.

In a nutshell, *International Private Trade* is a commendable introductory case book on international commercial transactions, while its analytic approach makes it a highly successful teaching tool.

American International Law Cases

1783-1968. War, Belligerency and Neutrality (Continued). Dobbs Ferry, New York: Oceana Publications, Inc. 1978. Vol. 18, pp. xiv and 492. \$35.00. Volume 19, pp. xiv and 496. \$35.00

Compiled and Edited by Francis Deak

Reviewed by ALWYN V. FREEMAN

These two volumes continue the monumental project initiated under the direction of the late Francis Deak and carried forward until now by Frank S. Ruddy. When completed, the collection will consist of over 20 volumes, making it the most exhaustive presentation of national judicial decisions on questions of public international law ever compiled anywhere. Whereas the series begun by the late Sir Hirsch Lauterpacht as the *Annual Digest of Public International Law Cases* (now the *International Law Reports*) contains selected representative decisions from both international and national tribunals, the Deak compilation reproduces, under appropriate subheadings, the entire body of jurisprudence in the United States dealing with the law of nations, and in the original, textually complete, judgment form.

The obvious utility of this series cannot be overstated. In the first place, by categorizing the multitude of decisions relating to specific subjects, research time is reduced to a minimum. In the second place, and more important, any lawyer or author who has tried to dig through the discouraging mass of opinions in the federal judicial hierarchy knows how tremendously useful an organized compilation of this kind can be. It makes immediately accessible to the profession a mine of resources which could demand weeks and months to uncover. One is startled at the sheer number of cases in which the courts of this nation have dealt with problems of international law, not merely on the federal level, but as well by the courts of almost every State in the union. Armed with this set, the Lauterpacht reports and the Hackworth and Whiteman Digests, a

practicing international lawyer has the tools to make a substantial attack on most legal issues in which he may become involved.

Decisions in Volume 18 deal with definitions, the laws of war, of belligerency and belligerent occupation, and piracy. Volume 19, pursuing those subjects further, adds cases on the effects of war on treaties, on private rights, on alien enemies and their property, and the complex area of economic warfare and trading with the enemy.

A number of old friends are encountered in these pages, including *In re Yamashita*, *U.S. v. Anderson*, *U.S. v. Berrigen* (Volume 18); *Ex parte Colonna*, *Society for the Propagation of the Gospel v. New Haven*, *Techt v. Hughes*, and, among many others, *Williams v. Bruffy* (Vol. 19). One cannot reread Mr. Justice Murphy's devastating dissent in *Yamashita*—probably his most brilliant moment on the court—without being convinced that the majority was completely misled in its reasoning, inducing a result that was dead wrong on the law.

Considering the cost of professional publications in today's market, the handsome volumes in this matched set are a bargain. Beyond this, they are well-nigh indispensable both to academicians and the practicing bar. They should be in every law library and in every busy lawyer's office.

Legal Implications of Remote Sensing from Outer Space

N.M. Matte and H. De Saussure, Editors. Sijthoff International Publishing Co., Leyden, The Netherlands: 1976. pp.xiv and 197.DFL \$49, \$18.00

Reviewed by ALWYN V. FREEMAN

This rather exotically titled volume contains the papers presented at a conference held in Montreal in October, 1975. Organized by the Institute of Air and Space Law of McGill University, the symposium also constituted a combined regional meeting of the Canadian Branch of the International Law Association and the American Society of International Law. As one has come to expect from the Institute, the symposium brought together an array of talent with much experience in a domain which has long been identified too frequently with the theoretical and the philosophical. But nobody can peruse these papers without being impressed with the extremely important practical aspects of the subject. What seemed *avant-garde* is present reality. Future shock is now; and this ensemble of concise papers gives us a small taste of what lies ahead.

The 21 papers collected here fall into five related topics. The first deals with various technical applications of remote sensing from outer space. Stephen E. Doyle discusses satellite sensing and its implications for international cooperation. Lawrence W. Morley describes what remote sensing satellites actually measure and the sensitivity of this information; while G.C.M. Reijnen appraises legality problems of such activity. André W. Stoeber's paper investigates, in a necessarily once-over-lightly fashion, supplemented by a provocative series of questions and answers, the law of remote sensing of earth resources.

Following this general immersion into what, for many, is still a murky pool, the second group of papers deals with the impact of remote sensing on the

economic development of Western Europe and Latin America. Here we enter a highly promising realm: the seeking out of this planet's natural resources by a technology that can accelerate in a quantum measure the identifying and locating of elusive potentials of growth.

The current status of remote sensing in Europe as well as the current state of its art is the subject of a fine overview by Michel Bourély, which also sketches the activities of members of the European Space Agency under the 1975 convention. The activities of Western Europe in remote sensing by satellites is briefly summarized by Isabelle Diederiks-Verschoor. Eugène Pépin's paper contains what is little more than an outline of general principles espoused by France (and the USSR) on satellite sensing of the earth's resources. A Latin American position on space sensing of natural resources with emphasis on its political aspects is submitted by Aldo Armando Cocca. Professor Stephen Gorove offers a much more substantial treatment of the legal and economic implications of outer space sensing for Latin America, appropriately noting the importance of the technology to the threatening shortage of foodstuffs and raw materials.

Three remaining topics address various problems of international collaboration in this area, including: (1) the world-wide utilization and dissemination of data acquired through this technology, with papers by Eilene Galloway, S. Neil Hosenball, George S. Robinson and Gennady P. Zhukov (who examines some of the problems of legal regulation of the use of information on remote sensing); (2) The possibility of an integrated North American Landsat program (discussed in papers by Carl Q. Christol, Jean-Claude Henein, Monroe Leigh and Erik B. Wang; and (3) the role of the United Nations as a framework for consensus and international agreement (Ambassador Peter Jankowitsch, Martin Menter and Marvin Robinson); and the Intelset Arrangements (David Leive).

The volume is a most useful compendium of current thinking and developments in a highly sophisticated area. Not only for those unfamiliar with the legal implications of outer space sensing and its jargon, but for those exposed to this discipline, it is a timely and welcome publication.

Instruments of Economic Integration in Latin America and in the Caribbean

Inter-American Institute of International Legal Studies. Oceana Publications, Inc., Dobbs Ferry, New York: 1976. 2 Volumes. xv and 837 pp. \$37.50 each.

Reviewed by ALWYN V. FREEMAN

In 1968 the Inter-American Institute of International Legal Studies published a collection of instruments relating to the economic integration of Latin America. The present publication, which was prepared with the collaboration of the Department of Legal Studies of the OAS Secretariat, is an updated, expanded and substantial revision of the earlier one. It includes the more recent documents relating to the integration processes already in existence as well as those pertaining to the two new subregional integration processes: Andean Economic Integration and the Caribbean Community. This is supplemented by the basic instruments for development of the River Platte Basin.

The value of the Institute's project is that it assembles the basic documents on integration in a convenient package greatly facilitating research and consultation by those working in this field. If the collection had been limited to the major pieces of international legislation on Latin American economic integration, it would have been a creditable achievement; but the publication does not stop there, including also the regulations adopted by various implementing committees; and resolutions and decisions by LAFTA's Council of Ministers and various advisory commissions on a wide variety of subjects (e.g., management and labor affairs, the treatment of foreign capital and trademarks, patents, licenses and royalties). Some 25 instruments pertaining to the Central American Common Market are reproduced, relative to free trade, equalization of import charges, the industrial regimes (creating a Central American Bank for Economic Integration, a Central American Clearing House and the establishment of a Central American Monetary Union) and a variety of other mat-

ters, such as the importation of vehicles by highway, uniform road signs, a Central American Institute of Industrial Research and Telecommunications.

A selection of the more important Inter-American instruments including the agreement establishing the Inter-American Development Bank (with its regulations on the financing of exports of capital goods, and its resolutions on the pre-investment fund for Latin-American integration), the Charter of Punta del Este and a number of resolutions approved at meetings of the Inter-American Economic and Social Council, complete the presentation.

The Institute's Secretary-General, F.V. Garcia Amador, and his associates who participated in this venture are to be commended for successfully executing a highly useful assignment. Oceana Publications has been in the forefront of publishers putting worthwhile materials of this kind within the grasp of the practitioner, whose research facilities are often limited. It, too, deserves our appreciation for these volumes.