

Book Reviews

EDITED BY A. U. deSAPERE

A Lawyer's Guide to International Business Transactions

Edited by Walter S. Surrey and Don Wallace, Jr. Philadelphia: American Law Institute—ABA Committee on Continuing Professional Education, 1977. Volume I. \$35.

International Business Transactions is a comprehensive reference book that contains useful information for the practicing international lawyer.

Since 1963 when the First Edition was published, the laws and regulations involving international legal matters have changed dramatically, and the duties and responsibilities of practicing lawyers have developed beyond the traditional concepts of simply interpreting the law and providing advice. *International Business Transactions* helps in fulfilling these duties and responsibilities.

The text material, edited by Surrey and Wallace, has been contributed by members of the bar, law professors and U.S. government officials who are specialists in their respective areas. The content is clear, concise and comprehensive, and with the numerous references, citations and extensive bibliographies the reader is provided with a wealth of information. This is particularly beneficial to international lawyers who seek practical as well as technical information and varying viewpoints.

This volume, which is Part I of a complete publication that will involve four parts, deals with the law governing international trade and includes sections on the "Trade Agreements Program of the United States," the "General Agreement on Tariffs and Trade," the "Antidumping Law of the United States," "Countervailing Duties," "Export Controls," "Trade with the Soviet Union and Eastern Europe," "Trade with the People's Republic of China," "Treasury Regulation of Foreign Assets and Trade" and the "Buy American Act and Other Buy National Programs." In the coming months, it is planned that three other parts will be published, Part II covering "International Finance," Part III "International Investment" and Part IV "Regional and New Developments." The publication of these four parts is an ambitious undertaking and a worthy contribution to continuing legal education.

The section on "Trade with the People's Republic of China" is timely in light of recent developments, and the extensive bibliography together with commentary by Benjamin Fishburne III, a member of the District of Columbia Bar, gives the reader a good understanding of the important issues.

Fishburne explains the legal barriers to trade with the People's Republic of China, i.e., U.S. private claims against the PRC and the PRC's assets frozen in the United States, and the lack of most-favored-nation treatment of the PRC.

The section on trade with the Soviet Union and Eastern Europe by Daniel Stein of the U.S. Department of Commerce includes information concerning foreign trade organizations, financing restrictions, ministries of trade, state planning committees and related matters that will undoubtedly be of interest to the practicing lawyer.

The editors and contributing authors are to be commended for one of the most comprehensive and up-to-date works in the field and one that is surely to be consulted by a wide range of legal practitioners and others concerned with international legal matters.

RICHARD J. PILIERO
NEW YORK CITY

International Human Rights Law and Practice: The Roles of the United Nations, the Private Sector, the Government, and Their Lawyers

Edited by James C. Tuttle. Philadelphia: International Printing Company.,
Rev. ed. 1978. Pp. iii, 255. \$15.

As a rule, transcripts fail to catch the intellectual excitement, interest and subtleties of a trial. The same can be said of many reports of professional meetings, which all too often come on as flat and uninspiring. This book is an exception.

Most of it appeared as part of the materials for the well-attended April 25-26, 1978 National Institute on International Human Rights Law and Practice in Washington, sponsored by the ABA's Section of International Law. The *Revised Edition* represents an updated version of papers delivered plus the transcribed keynote address of Allard K. Lowenstein, U.S. Ambassador to the United Nations for Special Political Affairs, a panel discussion chaired by Professor Louis Henkin, and final comments by Henry T. King, chairman of the Section, and Bruno Bitker.

International human rights law has been a broad topic. The Institute, and the resulting *Revised Edition*, have selectively covered current issues and trends in a readable 260 pages. As an excellent collection of essays, panel discussions, and addresses the *Revised Edition* lacks the organization and coherence of a text or treatise, but this deficiency is more than matched by its practicality and spontaneity.

The first part of the *Revised Edition* introduces the topic with an overview essay by Professor Richard B. Bilder. Professor Virginia Leary examines the thorny issue of implementation of international human rights as an interference into the domestic affairs of a state as prohibited by the U.N. Charter. Professor James C.N. Paul discusses problems of interfacing international human rights law with traditional African legal systems.

Part II, "International Implementation of Human Rights Law," begins with Professor Antonio Cassese's analysis of roles lawyers can play in public proceedings before the U.N. Subcommission on the Prevention of Discrimination and Protection of Minorities and the confidential complaint procedures of the United Nations Economic and Social Council's Resolution 1503. After outlining the structure of the Inter-American Commission on Human Rights, Professor Tom J. Farer and James P. Rowles describe how to bring a complaint before the Commission. Theo C. van Boven, Director of the U.N. Division of Human Rights, notes that procedures are "still rudimentary" in his essay on selection of the appropriate forum within the U.N. Professor Alan M. Dershowitz's paper on "Representing Dissidents Abroad" urges a well-coordinated strategy that includes knowledge of the detaining state's law and an appreciation of the possibility of employing quiet diplomacy instead of public confrontation.

Professor Richard B. Lillich's essay on the role of domestic courts in promoting international human rights norms begins the third part, "Domestic Implementation of International Human Rights Law." David Carliner outlines the impact of U.S. immigration laws on persons seeking refuge or asylum because of persecution abroad. Essays by Professor Paul M. Neuhauser and Timothy Smith discuss procedures for stockholder action to force corporations, by appropriate shareholder resolutions under the SEC proposal rule or other methods, to cease dealing with foreign governments that violate human rights. Sample forms are included.

The last part, "U.S. Governmental Activity in International Human Rights Law," views its topic from the perspectives of the Congress, by Congressman Donald M. Fraser; the Executive, by Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs; the Senate Foreign Relations Committee, prepared by Senator Hubert H. Humphrey before his death; and a lobbyist's view, by Edward F. Snyder of the Friends Committee on National Legislation.

The *Revised Edition* necessarily omits some parts of the burgeoning field from its coverage. The theoretical basis of the problem with international human rights—national treatment, the developing international minimum standard, and the emerging norm of direct protection of individuals under international law, with the underlying jurisprudential clash between monism and dualism—could have been sketched. Only scant attention was paid to other regional arrangements such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. The *Revised Edition*

had only a few passing comments on the law of armed conflict, whose 1977 draft Protocols expand on the 1949 Geneva Conventions. Mention might have also been made of the friendship-commerce-navigation treaties that have guaranteed certain rights to aliens for a long time, or the importation of international human rights standards into bilateral treaties, trust territory organic law, or national constitutions.

Perhaps because of the short lead time, the Carter administration's message to the Senate urging ratification of the four human rights conventions, with reservations, did not receive full analysis. The issues of necessary national legislation, reservations, the role of the United States Constitution and the conventions, and the states' roles, if any, in this process, were not explored in depth. These are likely to become important domestic issues in the ratification debates. In the area of representation of individuals whose human rights have been violated, the very real case of representing one's own nationals abroad might have been addressed, with all the knotty problems of espousal, continuous nationality and exhaustion of local remedies that this sort of claim involves.

The comments on gaps in coverage have been listed, not in derogation of an excellent Institute and its resulting *Revised Edition*, but to point out the complexities of this field. The great contribution of the *Revised Edition* to legal scholarship is its overview of human rights law, its practical advice to lawyers with this kind of case, and above all its enthusiasm and positive approach to what Mr. Bitker correctly characterized as "the third and in some ways the most crucial period in American history respecting human rights." It is a book that should be consulted by lawyers with a practice in international law, by teachers in the field, and by their students.

GEORGE K. WALKER
WINSTON-SALEM

European Law Review 1977

Edited by Alan Dashwood. London: Sweet & Maxwell, 1977. Pp. 499. \$73.50.

Few observers would have envisioned the degree of economic integration being experienced in the European Economic Community (EEC) in the years following its creation by the Treaty of Rome. There is extensive activity toward economic and social integration, and the impending establishment of the European Monetary System fortifies the deep commitment of the Member States to the EEC. However, there is still a fragile relationship between the institutions of the EEC and the Member States resulting in a cautious, but wise, approach to the solutions of EEC legal problems.

It is a pleasure to read this highly informative and scholarly *European Law Review*. It contains leading articles on various subjects, and current surveys of the laws in the EEC and the Member States, all accompanied by an extensive and perceptive case analysis and citations.

The current surveys of the laws deal with institutional and jurisdictional questions, the internal and external authority of the EEC and its legal order, the customs union, free movement of workers and social security, freedom of establishment and freedom to provide services, company law, free movement of capital and payments, taxation, religious freedom and equality of opportunity, fisheries conservation measures, coal and steel, atomic energy, agriculture and transport. This dazzling array of review also contains references and commentary on various Conventions such as the European Convention on Human Rights, Jurisdiction, Trademarks, Enforcement of Judgments, etc.

The major articles consist of the following topics: the concurrent liability in EEC law concerns the extent to which the liability of the EEC is affected by the fact that there is concurrent liability on the part of a national authority; EEC law and the United Kingdom occupational pension schemes, relating to the application of EEC law on equal pay for men and women; enforceability of EEC-EFTA Free Trade Agreements; free movement of EEC nationals, subject to the limitations based on public policy, public security and public health; the International Air Transport Association, airline rate-fixing and the EEC competitive rules; the doctrines of proportionality and nondiscrimination: in the *Skimmed Milk Powder* case, the Court of Justice declared to be invalid a unanimously adopted regulation by the Council of Ministers, the highest organ in the EEC, on the grounds that it contravened the principle of nondiscrimination and proportionality; and finally, the proposed EEC Convention on Bankruptcy, dealing with creditor and debtor protection, jurisdiction, choice of law, current contracts, preferential and secured creditors and modes of enforcement.

The authors of the *European Law Review* treat such complex subjects with deceptive ease. Of particular importance is the historical analysis of each respective subject matter. The wealth of information and case analysis should be of immense value to the legal profession and student of comparative law.

ZUHAYR A. MOGHRABI
NEW YORK CITY

A Balance Sheet of the Quadripartite Agreement on Berlin: Evaluation and Documentation

By Honore M. Catudal, Jr. Berlin, Germany: Berlin Verlag, 1978. Pp. 303.
\$18.50.

With a minimum of polemic, and supported by detailed research, Mr. Catudal's book (the second of a two-part series) provides an evaluation of the successes and failures of the Quadripartite Agreement on Berlin since its adoption in June 1972. Berlin, since the close of World War II, has acted as a barometer of relations between the Soviet Union and the West; and implementation of the Agreement has, since 1972, proved an effective gauge of the status of "detente" between the powers.

As Kenneth Rush, the United States delegate to the Quadripartite negotiations, stresses in his detailed foreword, the crucial issue facing the negotiators was the relationship—legal, political, economic, financial and cultural—between West Berlin and the Federal Republic of Germany (and indirectly, therefore, the role of the Allies in supervising and protecting that relationship). Ideological confrontation was focused most intensely on the issue of access to West Berlin from the FRG. Understandably, road, rail, air and telecommunications problems occupy much of Mr. Catudal's attention.

This book provides a comprehensive picture of the events leading up to and the personalities involved in the adoption of the Agreement, and a detailed analysis of the language of the Agreement itself and the intricacies of its implementation. In sum, his work is a very readable overview of the shift from a test of political will in the 1950s and 1960s to the implementation of a framework for normalization of relations with the Soviet Union and establishment of the current relative equilibrium of power interests in Europe.

NICHOLAS CLEMENTS
NEW YORK CITY

Law and Judicial Systems of Nations

Edited by Charles S. Rhyne. Washington, D.C.: World Peace Through Law Center, 1978. Pp. 916. \$35.

One hundred and forty-four scholars deal with selected areas of law and the judicial systems of each of their respective nations. Each nation is explored within the following categorical framework:

1. Practicing Lawyers and Organization of The Bar;
2. Legal Education;
3. Courts of Justice; and
4. Legal System.

This third revised edition, edited by Charles S. Rhyne, president of the World Peace Through Law Center, provides an interesting source of information to the international lawyer, scholar, and representative. The information contained therein will offer the reader a foundation of understanding of each system and legal mechanism employed in the daily struggle to maintain civilization in a civilized manner.

The World Peace Through Law Center is an international nonprofit, non-political, and nongovernmental organization of judges, lawyers, and legal scholars from 148 countries. Organized in 1963 at a meeting in Athens, Greece, sponsored by the American Bar Association, the Center now consists of: the World Association of Judges, the World Association of Lawyers, the World Association of Law Professors and the World Association of Law Students. It is devoted to the continued development of international law and legal institutions. Through its biennial World Conferences, continuing research, action programs, and publications, the Center has made an important contribution to the growth of law and legal institutions by focusing on areas and problems of international concern to all peoples.

ALEXANDER D. CHRISOPOULOS
DEARBORN, MICHIGAN

Immigrating to the United States: Who Is Allowed? What Is Required? How to Do It.

By Dan P. Danilov. Vancouver, British Columbia: Self-Counsel Press, Inc., 1978. Pp. 238. \$4.95.

In *Immigrating to the U.S.A.*, Dan P. Danilov has analyzed and summarized the practical problems involved in obtaining citizenship in the United States. It is a comprehensive handbook, in paperback, of the technical aspects of current immigration law, regulations, procedures and quotas. Categories of persons who may immigrate and the procedures they must follow are treated thoroughly. Included are examples of forms to be completed, particularly helpful to persons who may not speak English. The author also discusses nonimmigrant visas, adjustment to the status of permanent resident, naturalization and illegal entry.

Immigrating to the U.S.A. is the only handbook of its kind. It fills a need for immigration information since it summarizes much late information. It

would be invaluable for law students and attorneys, and should be recommended for libraries of U.S. consulates and government, business, and schools abroad, foreign students' offices in colleges and universities in this country, as well as for churches and agencies dealing with citizenship matters. Persons who are aware of proper procedures are less likely to become entangled in bureaucratic red tape.

Mr. Danilov might next consider a handbook of laws and regulations which govern visitors and foreign nationals who are residents of the United States.

SHEILA M. GREENE
PHOENIX

Model Double Taxation Convention on Income and Capital

By the Organization for Economic Cooperation and Development (OECD) Committee on Fiscal Affairs. Paris, France: Organization for Economic Cooperation and Development, 1977. Pp. 216. \$12.50.

The Model Double Taxation Convention was adopted by the OECD on April 11, 1977. It follows the 1963 Draft Treaty, the value of which is reflected in the fact that by January 1, 1977, there were 179 bilateral conventions between OECD member states, many of which were based upon the Draft. With this background the 1977 Model cannot fail to exert a similar influence over the content and form of future conventions on income and capital. This book contains the text of the Model followed by a detailed commentary of explanation and interpretation. It is important to note that the Fiscal Committee considers that existing treaties should be interpreted in the spirit of these recent commentaries. At the time of publication of the 1963 Draft, the Committee forecast amendments were to be made in the future: these are now incorporated in the Model.

Since the book consists solely of Model and commentary with an introduction, a review of the book must be substantially a review of the treaty. Unfortunately, a detailed analysis of each change would be inappropriate here, but to illustrate the nature of what has been achieved, Article 9 concerning the Taxation of Associated Enterprises may be considered. The "arms length bargaining" principle, to be applied to transactions between associated enterprises in different Contracting States as provided in Article 9 (1), follows the provision of the 1963 Draft and repeats the wide definition of "associated enterprises" which has been adopted by the EEC in its proposal for a Council Directive on Arbitration Procedures. The 1977 Model goes further than the 1963 Draft. Article 9 (2) provides for the adjustment of an enterprise's tax-

ation when an associate in another Contracting State has its profit reallocated on the arms length principle. Without such a provision the adjustment would not be automatic and economic double taxation could occur. However, the Model omits any statement on how the adjustment should be made and does not provide for any "secondary adjustments" (that is, adjustments which would be required if, following an "arms length principle" adjustment, actual profits were transferred and taxed on that transfer by, for example, withholding tax).

Between countries with considerable investments in each other, greater deviation from the Model can be expected when actual conventions are negotiated; for example, the provisions of Article 10 concerned with dividends contains no model to accommodate the imputation system of corporation tax and the tax credit which is available in one Contracting State on a dividend paid to an individual in the other Contracting State.

However, despite actual and theoretical variations, the Model remains, as the Draft did before it, a major source of reference on Double Tax Conventions on Income and Capital which practitioners can expect tax authorities to use as a basis for negotiations.

J. G. GOLDSWORTH
LONDON

The Tax Benefit Position of Selected Income Groups in OECD Member Countries

By the Organization for Economic Cooperation and Development (OECD)
Committee on Fiscal Affairs. Paris, France: Organization for Economic
Cooperation and Development, 1978. Pp. 123. \$8.75.

The latest in a series of statistical studies by the OECD examines the effect of taxes and social welfare programs on the disposable income of the "average production worker" in various OECD countries. As might be expected, the study verified that income and social security taxes were the largest factors affecting the difference between gross earnings and disposable income. What is interesting, however, is the fact that disposable income as a percentage of the average production worker's gross earnings varied from a high of 99 percent in France, to a low of 67 percent in Turkey, with the United States about in the middle with 83 percent. The study also reviewed the tax treatment of wives who enter the labor force and tax or cash benefits for dependent children.

Although the study is aimed at governments who are evaluating their tax policies, the information would be helpful to a corporate personnel director

who had to evaluate the tax effect on compensation levels in various countries. The study does not, however, take into account the nontaxable forms of compensation that are traditional in many OECD member countries that would tend to compensate for the high marginal tax rates in some of the countries covered.

THEODORE L. BANKS
GLENVIEW, ILLINOIS

The Taxation of Collective Investment Institutions

By the Organization for Economic Cooperation and Development (OECD) Committee on Fiscal Affairs. Paris, France: The Organization for Economic Cooperation and Development, 1977. Pp. 63. \$6.

This report surveys the current policies of OECD member countries with respect to the taxation of investors in collective investment institutions (CIIs) such as investment funds, investment companies, mutual funds and other similar entities which manage portfolios of securities for the benefit of their investors. The report also proposes a régime for the elimination of double taxation of such investors based upon the assumption that an investor in a CII should pay the same amount of tax as a direct portfolio investor. The régime applies only to CII investments in stocks and bonds and to the levying of income and capital gains taxes on the revenues from such investments and it is assumed that all involved states are linked by double taxation conventions based upon the OECD Model Double Taxation Convention on Income and Capital.

The régime is designed to apply in the most complicated situation, i.e., where the state in which the CII is established, the state in which the capital of the CII is invested ("source state") and the state in which participants in the CII reside ("participant state") are three different countries. The regime accords CIIs, whether or not recognized as separate legal entities under national laws, the status of treaty subjects under double taxation conventions though CIIs are not subjected to actual taxation.

The régime requires some modifications to incorporate both capital gains taxes and interest income from bonds and debentures and to adapt to the situation involving a state or states that do not impose a withholding tax on Collective Investment Institutions (CIIs).

The report recommends that the régime be implemented by expanding existing bilateral treaties relating to double taxation, an approach that would require substantial changes in national legislation and in such bilateral treaties, especially in the areas of treatment of distributions from CIIs, im-

sition of withholding taxes, and actual taxation of CIIs. Nonetheless, the report is cognizant of the difficulties in implementing the régime and the régime does provide a useful framework for the analysis of the taxation of CIIs and their participants and the elimination of inequities in such taxation.

DONALD E. KARL
LOS ANGELES

Comparative Law: Western European and Latin American Legal Systems

By John Henry Merryman and David S. Clark. Indianapolis, Indiana: Bobbs-Merrill, 1978. Pp. xlv, 1272. \$23.

The impression made on an English lawyer by this book, in the Contemporary Legal Education Series, is that, if the thirty or more other books in the series approach the standard of this, the American law student is fortunate indeed. The stated aim here is to introduce the student to the legal systems of the civil law. We can interpret "student" in the broad sense; for the work will stimulate any lawyer wanting to refresh himself by looking at systems outside his own. The authors do not, as many writers do, stop at France and Germany, but take in Italy and Spain, and Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Peru and Venezuela. We have therefore something like an A to Z of civil law systems, happily beginning, in almost the first sentence, with Aristotle, and ending in the last, with Zajtay.

After an "Introduction to Comparative Law," we are taken through the civil law tradition up to and including the eighteenth century revolutions. A discussion of legal science, particularly in Germany, follows, with accounts of codification in Chile, Colombia and Mexico. The structure of contemporary civil law systems, in their constitutional and institutional aspects, is then examined. A chapter comparing legal education, the legal professions, and legal aid in the different countries includes an analysis of the difficulties of a continental lawyer in an American law school. The judicial process, including the interpretation of the laws, and civil and criminal procedure, is studied before the authors lead us to a survey of the rules of law themselves. Detailed examination is not possible; but we are given an account of the organization of the rules, of the impulses behind the major civil codes, and of their structure, and a brief look at torts, contracts, commercial law and property. The chapter on Agrarian Reform shows the legal responses to that social issue. Concluding chapters, of special value to practitioners, deal with Private Foreign Investment and Pleading and Proof of Foreign Law. Some

fifty statistical tables, of remarkable resourcefulness, include one which elicits the surprising fact that the poorest nations are the most litigious.

Apart from the texts of a number of judgments (in English), the book largely consists of excerpts from the writings of leading comparative lawyers, linked by an occasional Note. The method necessarily involves some repetition, but reiteration never harmed a beginner. And all may enjoy a few elegant variations, akin to the experience of listening to the same piece of music conducted by diverse, but not diverging masters: the Academic Festival Overture, say, or better—given the object of encouraging an interest in comparative law early in life—*The Rites of Spring*.

SIR WILLIAM DALE
LONDON

Law as Process: An Anthropological Approach

By Sally Falk Moore. London: Routledge & Kegan Paul, 1978. Pp. 270. \$15.

This is a collection of papers originally published in different sources, dealing with law as a cultural phenomenon. The author is law-trained and experienced, but writes here as an anthropologist to anthropologists. The discourse proceeds at a level of abstraction that is very taxing to an uninitiated reader. Nevertheless, the book contains some rewarding insights, and a great deal of fascinating description of rules, customs and regulatory practices of various preindustrial (mostly African) societies. The central theme of the book, in the author's words, is "that the same social processes that prevent the total regulation of a society also reshape and transform efforts at partial regulation." In words more familiar to lawyers, the theme is the necessity—even the inevitability—of the gap between the law in the books and the law in action. The book suggests that legal anthropologists have learned some things about the limits of law as a regularizing social process that should be more widely known by lawyers. One may hope that Professor Moore will soon recast some of the ideas of this book into language appropriate for the law reviews.

ROBERT C. CASAD
LAWRENCE, KANSAS

OAS Mining and Petroleum Legislation of Latin America and the Caribbean

Compiled and edited by the General Legal Division, Department of Legal Affairs of the General Secretariat of the Organization of American States. New York: Oceana Publications, Inc., 1979. Pp. 629. \$75.

This publication is a new Organization of American States (OAS) authorized looseleaf service summarizing the basic mining and petroleum legislation for twenty-four Latin American and Caribbean members of the Organization of American States. It consists of twenty-four individual booklets, each dedicated to a respective member state, setting forth a summary of the basic mining and petroleum legislation as of December 31, 1976. A *First Supplement* is also included containing additions and changes that have occurred since December 31, 1976, which together with the basic publication presents a summary of the constitutional, statutory and regulatory provisions on mining and petroleum in force in each country on June 30, 1978. It is planned that the publication will be updated by annual supplements.

Each booklet is divided into two sections, one containing applicable mining legislation, the other petroleum legislation. As would be expected not all laws and regulations that might affect mining or petroleum operations are included but the material is quite complete within the specified areas. Background, basic legislation, general provisions as well as the contractual formalities of both mining and petroleum laws are included. The topics included under mining legislation are quite extensive and include such matters as exploration, exploitation, processing plants, smelting, quarries, contracts, taxation, concessions, safety, registration, royalties and other charges. Petroleum legislation includes like topics applicable to petroleum legislation of the respective countries including exploitation licenses, oil mining leases, concessions, association contracts, transportation, refining, and taxation. Where applicable there are summaries of the legislation creating state companies together with a brief description of general principles and the operation and organization of petroleum activities. Each summary contains ample citations to the law or regulation under review.

This publication is most useful and is an excellent compilation of each country's mining and petroleum laws. It is arranged in a manner that permits ready comparison between the laws and regulations of the various countries. Of course it lacks the detail and contains the risks that any summary necessarily entails. However, it is an excellent starting point for any practitioner interested in the area, permitting a broad overview in a handy and easily accessible manner. As its writers indicate in their explanatory notes, in any

specific undertaking local counsel should be consulted to determine the details of the particular legislation, regulations or jurisprudence as well as to ascertain what changes may have taken place since publication.

C. W. BAISLEY
CORAL GABLES, FLORIDA