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Book Reviews

EDITED BY A.U. de SAPERE

United States, Common Market and International Antitrust: A Comparative Guide

By Barry Hawk. New York: Law & Business, 1979. Pp. xv, 946.

Professor Hawk's nine-hundred-page book is obviously a labor of love and a most timely one. International antitrust has come of age apace with the interlocking of national economies. United States antitrust law, a foundation of our nation's economic system, has increasingly been applied to a variety of international transactions affecting United States commerce, although notable instances of the "extraterritorial" application of our domestic law have drawn strong protests from abroad. Meanwhile, some of our most important trading partners, the nations of the European Economic Communities, have, as an integral part of their ambitious joint undertaking, fashioned a system of competition law that rivals ours in stringency and sophistication. Still another effort, this one conducted on a global level, finds the industrialized and the developing nations struggling to articulate codes for the definition of restrictive business practices. Professor Hawk gives each of these subjects the detailed treatment which it deserves.

The bulk of the volume is split between the United States and the EEC regimes. Part One deals with the application of United States antitrust law to international trade and investment arrangements, including "horizontal" and "vertical" agreements, transfers of technology, acquisitions, mergers and joint ventures. While basic antitrust concepts are discussed, the focus of the discussion is on those distinct and bedeviling issues which are posed when the potential target of our domestic law is an international transaction. When, for example, should the Sherman Act be deemed applicable to overseas activity? The author traces at length and comments upon this continuing debate, which has run from *A* (*American Banana* in 1909) to *T* (*Timberlane* in 1976), but has not yet reached *Z*, its satisfactory resolution. In the era of OPEC, the author also devotes due attention to the special problems created by cartels which are conducted or assisted by foreign governments who do not share our enthusiasm for competition: thus, the "act of state" doctrine, foreign sovereign compulsion, and the defense of sovereign immunity. The challenges attendant to obtaining discovery in United States antitrust cases abroad and to the shaping of relief in the foreign commerce context are also

given substantial treatment. A final chapter discusses miscellaneous statutes concerning international unfair trade practices, such as Section 337 of the Tariff Act of 1930, as amended, and the antidumping laws.

Part Two is an extensive discussion of Common Market competition law. This entails a review of the EEC's antitrust policies and, more specifically, of the jurisprudence developed under competition law Articles 85 and 86 of the Treaty of Rome, as well as that relating to Articles 30 and 36 (which pertain to the free movement of goods). Professor Hawk brings to the material on foreign law a familiarity derived from years of study. The familiarity enables him to relate U.S. and EEC antitrust principles to each other conceptually without blurring the distinctiveness of each.

The citation to references—case law, commentary and other materials, published and unpublished—is, like the rest of the volume, painstaking and exhaustive. Indeed, the book's wealth of analysis may overwhelm the reader who seeks either casual legal reading or a quick answer to a legal problem. However, many of the fascinating issues concerned do not lend themselves to quick answers. This is a very welcome contribution to the literature.

MARK R. JOELSON
WASHINGTON, D.C.

Russia and the United States

By Nikolai V. Sivachev and Nikolai N. Yakovlev. Chicago: The University of Chicago Press, 1979. Pp. vii, 269. Index. $12.95.

Professors Sivachev and Yakovlev had a unique opportunity in authoring this book. Commissioned by the University of Chicago Press to be part of its series on foreign perspective of United States foreign policy, the authors were invited to describe to American readers the Soviet view of our policy toward Russia. Unfortunately their message is that America's antipathy toward post-revolutionary Russia amply justifies both the Soviet people's strong fear of the United States and their reliance on military strength to protect their own interests. The book does not encourage a belief that an improvement in Soviet-United States relations is likely to occur in the near future.

Both authors are specialists on American history and have written extensively on the subject. Their familiarity with American attitudes toward Russia, evidenced by numerous references to the works of American scholars and a whole card file of anti-Soviet remarks by American politicians and diplomats, is impressive. It may be that much of the antagonism in *Russia and the United States* is a reaction by the authors to the anti-Soviet tenor of the American sources they have studied. On the other hand, the fact that the manuscript for this book was approved by the Academic Council of the

History Department at the University of Moscow indicates it does not merely reflect the authors' own views. Approved publications in a communist state normally are accurate reflections of current official attitudes. The greatest value of this book is its report of those attitudes.

An underlying, but repeatedly surfacing theme of the book, is the justification for a Russian attitude of hostility to the West. This appears most particularly in the description of United States-Soviet relations during World War II. In June 1941, when Nazi Germany had so ruthlessly attacked Russia, the authors cite as a typical American view Senator Harry Truman's statement, "If we see that Germany is winning the war, we ought to help Russia and if Russia is winning, we ought to help Germany, and in that way, let them kill as many as possible." The fulfillment of Truman's wish, with Russia losing a significant portion of its entire population in the war, was due, the book explains, at least partially to the West's efforts in encouraging Hitler to make his major offensive eastward and its refusal to open a western front until Russia had already destroyed most of Germany's military power. The book discounts the effectiveness of American strategic bombing and our "less than modest" achievements on the ground after D-Day.

In light of the fact that Americans view World War II as the high point of our foreign relations with modern Russia, this attitude of the authors is a most discouraging one. The postwar period, with its open antagonism and arms race, is seen by them as a necessary defensive response on Russia's part to America's buildup of its strategic nuclear power. They appear less than candid, however, in excluding all direct reference to the contemporaneous expansion of Soviet military might and less than modest in describing the launching of Sputnik as "the day of enlightenment" when "the premise on which the course of [U.S.] relations with the U.S.S.R. was built—belief in the indisputable scientific and technological superiority of the United States—was overturned."

In fact, the book is disappointing because it, in large part, limits itself to responding to selected American criticisms of Russia. Almost nothing is said about the Iron Curtain, the effect of Stalin's death, Soviet intervention in Hungary and Czechoslovakia, the Cuban missile crisis, or the development of a tripolar foreign policy due to China's refusal to follow the Soviet lead since the 1950's. It is also disappointing in that it contains few suggestions for improving United States-Soviet foreign relations in the future. The reader is left with the fear that this too may reflect official Soviet attitudes.

JOHN A. EVANS
FINDLAY, OHIO

Reference Manual on Doing Business in Latin America

Edited by Donald R. Shea, Frank W. Swacker, Robert J. Radway and Stanley T. Stairs. Milwaukee: Center for Latin America, University of Wisconsin. 1979. Pp. 210. $30; $20 Paper.

This compact volume, written and edited by lawyers with extensive experience in the practical aspects of counseling investors in Latin American enterprises, is a handy source of useful reference material. It also contains a number of studies of considerable interest to the neophyte and the seasoned practitioner as well. In addition to a checklist for investors in foreign countries, bibliographical material and identification of sources for information and assistance with respect to trade and investment in Latin America, this manual contains articles on various substantive topics, appendices which include materials on arbitration under the Inter-American Convention on International Commercial Arbitration and forms relating to export credit insurance. There is a glossary that will be of particular assistance to beginners in the field.

The articles include a discussion of private sector capital mobilization with particular emphasis on the family groups operating in Mexican industry which is of special interest; it is to be hoped that in a later edition of this manual the economic structures of other Latin American countries will be revealed in similar detail. The discussion of the corporation laws of Ecuador and Brazil and of the possibilities for the protection of minority interests in corporate enterprises in those countries is particularly timely and relevant.

To the lawyer embarking upon his first experience in Latin American trade or investments, this volume will be a godsend. To the practitioner whose every day fare consists of such matters, it will be a welcome and convenient reference guide.

RICHARD C. ALLISON
NEW YORK CITY

Israel, the West Bank and International Law

By Allan Gerson. London: Frank Cass & Co., Ltd., 1978. Pp. 285. $25.

Dr. Gerson has written an authoritative and seminal study of the Israeli occupation of the West Bank and international law. This excellent and concise study utilizes historical and legal analysis and extensive interviews throughout Israel and the West Bank. In four chapters, he analyzes: military occupation and international law in general; history of the Palestine controversy (the Arab-Israeli conflict); the operation of the Israeli occupation of

the West Bank (its "management"); and aspects of resolving the occupation (its "disposition").

Acknowledging at the outset of his study that "the conclusion of peace treaties between former belligerents remains a precarious exercise to be engaged in with the greatest of wariness," (p. xxii) Gerson proposes a mode of settling the future of the West Bank, one he terms "trustee-occupancy." (p. 238) He suggests autonomy be extended to West Bank institutions with Israel remaining as an occupant with the obligations of a trustee, but sovereignty would not be granted to a fully independent Palestinian state on the West Bank.

The significance of Gerson's work is not solely in that proposal, since events may have already doomed it to futility, but also in the identification and discussion of a major stumbling bloc to implementing a workable solution: the Arab-Soviet view that an agreement reached during any occupation is invalid under international law and can be terminated lawfully as soon as the military balance allows it.

By raising the problem of imposed treaties and then linking this to the settlement of the Arab-Israeli conflict, Gerson has engaged in more than mere polemics; he has concentrated on the crux of the issue as it exists currently. His discussion highlights the variables to be considered in fashioning proper procedures, thus leading to viable policy options, and avoiding the transformation of a precarious exercise of diplomacy into an illusory one.

From a policy perspective, as well as a juridical one, all imposed settlements are fraught with danger. Yet it is often noted by historians, stability in the Middle East and elsewhere has been possible only when imposed by outsiders—states other than the immediate actors in a particular region. Herein lies the dilemma to which the international community needs to fashion a solution within the existing legal parameters and thus, ensure that such a solution is just and lasting.

This study is a must for all practitioners and students of public international law and foreign policy concerned with the Middle East and for all those who do not believe that history and public policy analysis begin with the events headlined in the morning newspaper.

STUART S. MALAWER
MCLEAN, VIRGINIA

International Instruments for Nuclear Technology Transfer

By L. Manning Muntzing. La Grange Park, Illinois: American Nuclear Society, 1978, Pp. xii, 639. $49.

Current events continue to make nuclear technology and its transfer a subject of serious political and economic concern and so it can perhaps be said that this book (prepared under the auspices of the Section of International Law of the ABA), the first comprehensive review and analysis of the area, is, at the very least, timely. The volume's stated purpose is to gather together the various international treaties and agreements relating to the transfer of nuclear technology and to compare the nuclear export policies of the major supplier nations.

The first two chapters briefly describe the modes of nuclear technology transfer, discuss general principles of the law of treaties in the context of such transfers and analyze the major international instruments governing the area—the Statute of the International Atomic Energy Agency (IAEA) and the Treaty for the Non-Proliferation of Nuclear Weapons (NPT). The important issues confronting IAEA members, NPT parties and other states entering into nuclear transfer agreements are discussed. These include methods for the exchange of information, the transfer of materials, equipment and supplies and restrictions on such transfer, the establishment of safeguards systems and their implementation, the role of the IAEA, remedies for breach, dispute settlement, and termination, duration and amendment of the agreements.

The remaining chapters review and analyze agreements concluded by the six states that are the major suppliers of nuclear technology and which have pursued somewhat different policies with respect to nuclear commerce—Canada, France, Federal Republic of Germany, Union of Soviet Socialist Republics, the United Kingdom and the United States. The nuclear export policy of each is summarized and representative treaties and agreements are examined within the framework of issues derived from the analysis of the IAEA Statute and NPT.

Perhaps the book's only shortcoming is that the textual material is limited (75 pp.) and sometimes too brief—leaving further analysis and comparison to the reader. The major portion of the volume is devoted to a reproduction of the IAEA Statute, NPT, other relevant multilateral instruments and a selection of nuclear transfer treaties concluded by each of the supplier countries, thus making it a useful compilation of source material. Further, the book is of interest and value to practitioners because it is solely a legal analysis of nuclear transfers and avoids the quagmire of economic, political and social issues about which much has been written and which tend to obscure the legal aspects of such transfers and also because the framework within

which the various treaties are analyzed provides a good introduction and a useful approach to the complexities of nuclear technology transfer.

DONALD E. KARL
LOS ANGELES

Contemporary International Law: A Concise Introduction

By Werner Levi. Boulder, Colorado: Westview Press, 1979. Pp. 391. $22.

Professor Levi's "concise" text is a thought-provoking analysis of the history, present status, and future of public international law. To students of the processes by which states attempt to govern themselves, a careful reading should be a rewarding experience. However, the author's style renders a casual reading impossible.

Although Professor Levi punctuates his analysis with frequent references to judicial and arbitral decisions, his work is not intended to serve as a practical day-to-day reference for lawyers with commercial international practices. It is designed, rather, as a textbook for students of public international law. In the words of the publisher, Professor Levi is "emphasizing the linkage between politics and law and clarifying the function of international law as a control upon state behavior and a means of communication in the international community."

After an introductory chapter tracing the history of international law, the author divides his text into ten parts, covering subjects such as "The Nature and Function of International Law," "The Jurisdiction of States," and "The Pacific Settlement of International Disputes." In each area he focuses upon the relationship between international law and the political interests of the states which make up the international community.

Professor Levi champions the legal regulation of behavior as "the only possible foundation of coexistence." But he emphasizes that mere creation of law does not necessarily achieve the sought after regulation of state behavior. He attributes this to an inherent conflict between the sovereignty of states and the promulgation of binding international laws. Regarding human rights, for example, he states:

> The innumerable declarations since the end of World War II internationalizing human rights, dignity, and welfare should therefore not lead to premature euphoria. Individuals are, in principle, still not subjects of international law. Improvement in the status of the individual only means that there are more rights now than in the past which the individual's state can claim from another state on behalf of the individual. The political motivations behind the advancement of human rights by states can help explain why these rights are, in fact, faring increasingly worse rather than better in the contemporary world.

Nevertheless, Professor Levi concludes that the international legal system is gradually strengthening at the expense of state independence:

> However sovereignty or law are interpreted, the contradiction cannot be evaded that sovereignty expresses the wish not to be bound and law is a binding restraint upon behavior. As growing interaction among states sharpens the dichotomy between the two concepts, law is emerging victorious. The evidence shows that the substance of sovereignty is thinning and the volume of law is fattening.
>
> It could not have been otherwise. For the ultimate result of sovereignty is anarchy.

F. WALTER BISTLINE, JR.
DALLAS

Droit International Public

By Nguyen Quoc Dinh. Paris: Librairie Générale de Droit et de Jurisprudence, 1975. Pp. 776; *Supplement avec mise a jour.* Edited by Patrick Daillier and Alain Pellet. Paris: Librairie Générale de Droit et de Jurisprudence, 1977, Pp. 131.

Droit International Public is one of the most comprehensive manuals of the general principles of international public law to date. It is a basic reference book and would be an excellent text. It includes important aspects of change in the concepts of international law related to action by international or regional organizations, and the increasing multiplicity of juridical concepts related to traditional categories such as maritime law.

It would seem, however, that a book as comprehensive as *Droit International Public* should explore the unique legislative and juridical provisions of the European Economic Community since the possibility of direct intervention in nonbelligerent matters is a departure from the principle of sovereignty which still operates even in the case of international and regional organizations. The short paragraph on page 27 of the *Supplement* does not explore the matter adequately, due perhaps to the untimely death of the author.

One regrets, too, the absence of a table of contents and a cross-reference index for the *Supplement.*

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