

1981

Book Reviews

Recommended Citation

Book Reviews, 15 INT'L L. 161 (1981)

<https://scholar.smu.edu/til/vol15/iss1/13>

This Bibliography 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

EDITED BY A. U. de SAPERE

Private Investors Abroad— Problems and Solutions in International Business in 1979

Edited by Martha L. Landwehr. New York: Matthew Bender & Co., 1979.
Pp. 365. Index and Casetable. \$32.50.

This volume consists of the lectures delivered at a symposium conducted by the International and Comparative Law Center of the Southwestern Legal Foundation in Dallas in June, 1979. It is the latest in a series that began in 1959. The 1979 collection consists of thirteen articles of consistently superior quality.

Special attention is given to recent developments in antitrust jurisprudence. One article discusses the international regulation of restrictive business practices through the promulgation and implementation of codes of conduct. Another discusses trends in the interpretation of Articles 85 and 86 of the Treaty of Rome, which focus on distribution, licensing and abuses of dominant positions. There is also a position paper which sets forth the positive benefits to the United States of foreign direct investment and which laments governmental restraints on trade and investment.

The volume also reflects the currently high expectations for commercial relations between the United States and the People's Republic of China. (PRC). Articles discuss new institutions and modes for trading with, and investing in, the PRC, and one piece analyzes post-normalization relations. The articles reflect a balanced and objective approach to the prospects for future economic relations between the two nations. Too often Americans have tended to react emotionally to events in the PRC, with emotions running from euphoria to bitter disappointment.

Several articles deal with penal law problems. One discusses the proposed federal criminal code, and although this chapter is of interest and deals with the thorny problems of extraterritoriality and international double jeopardy, a significant portion of its content has greater domestic application. In an excellent piece, a practical program for corporate compliance with the For-

eign Corrupt Practices Act is suggested.

Other articles include: a discussion of the International Energy Agency's work; a critical analysis of the 1978 *Rolimpex* decision by the House of Lords wherein a Polish state enterprise successfully pleaded that Polish government prohibitions on the export of sugar constituted a force majeure; and a review of American jurisprudence abroad, showing specific instances of the exportation of U.S. juridical principles.

The work also contains an article which offers spirited support for the role of human rights factors in the United States' foreign policy decision-making process, including foreign trade and investment. The volume concludes with a piece on equity participation and indigenization laws in the developing world. The piece discusses the genesis of such laws while giving examples of selected foreign investment dilution legislation. As this discussion is bound with the broader topic of political risk assessment and prevention, one would hope that the Foundation will follow this presentation with another on how to cope with political risks inherent in investing in the developing world.

This collection should serve as a valuable reference tool. However, the volume's strength may also be its weakness. It reflects contemporary thought on the legal issues of the day. As its timeliness diminishes, so may its utility.

LEO H. PHILLIPS, JR.
Washington, D.C.

Ocean Oil and Gas Drilling and the Law

By Peter N. Swan. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1979. Pp. 462. \$45.00.

The decreasing availability of easily extractable hydrocarbon reserves, the insatiable thirst of industry and the increasing global demand for petroleum products have made it necessary to explore for and develop more environmentally hostile offshore oil drilling locations. Offshore oil and gas exploitation activities in the Persian Gulf, the South China Sea, the Caspian Sea, the North Sea and off the coasts of Alaska, Brazil, Indonesia, Nigeria and Venezuela are indicative of the desperate attempts by industry and governments to develop energy resources to sustain an industrial society.

Offshore developments have made complex technological demands on industry. The interaction of industry and governments has given rise to serious domestic and international legal issues and problems relating to safety and the protection of the environment.

Ocean Oil and Gas Drilling and the Law presents a comprehensive review of the legal problems in the development of offshore oil resources with particular emphasis on American law. The scarcity of literature on this topic underscores the importance of this book. Although offshore activities are world-

wide, the author placed particular emphasis on the North Sea and, to a lesser extent, on the Gulf of Alaska.

The book has four parts. Part One deals with offshore oil and gas technology for exploration, construction and production. While the author attempts valiantly to simplify the technical narrative, the complexity of the technical terminology makes reading rather difficult. Part Two is an extensive discussion of proprietary considerations in exploring, drilling for and producing oil and gas offshore, such as joint operating agreements, construction contracts, financing and insurance. Part Three relates to public international law, thoroughly analyzing international legal problems involving the continental shelf, the economic zone and the Law of the Sea Conference, administrative law, state regulation and the Deepwater Ports Acts and regulatory restraints in the United Kingdom and Norway relating to licensing and safety. Part Four discusses civil liability under manufacturers' warranties, and from collisions, personal injury and death cases and oil pollution. The author justifiably elects to exclude such topics as mineral rights, general petroleum law, creditors' rights, bankruptcy, liquidation and taxation.

Professor Swan provides detailed information about the public law—both national and international—that affects the allocation of natural resources and the transfer of mineral rights to the private sector through licensing, leasing and participation agreements; international treaties concerning jurisdiction over the continental shelf and its resources; legislation in the United States, Norway and the United Kingdom regulating offshore activities including licensing, safety and oil pollution; and he provides detailed treatment of the private law pertaining to construction contracts, financing, insurance and maritime law.

Professor Swan's book is a significant contribution of immense practical value to the legal profession.

ZUHAYR A. MOGHRABI
New York City

Corporate Law of the Netherlands and the Netherlands Antilles

By S. W. Van Der Meer. Zwolle, Holland; W.E.J. Tjeenk Willink B.V. 1979. Pp. 128. Index. Dfl. 30.

This book consists solely of translations those Articles that provide for incorporation in The Netherlands' Civil Code and in The Netherlands Antilles' Commercial Code. The Netherlands allows for two types of corporation, while The Netherlands Antilles provides for only one.

This seventh edition is little changed from its predecessor, although it does include all amendments to the laws through those enacted in The Netherlands

on May 25, 1978 (SB 269) and in The Netherlands Antilles on August 31, 1978 (PB 272). The most significant change has been the provision in The Netherlands that the capital of a corporation of either type (BV or NV) shall be at least 35,000 guilders.

In this book, there is little to praise or to criticize. It does not set out to be a guide to the interpretation of the corporate law of these two jurisdictions. Nor is it a guide to corporation formation and to the uses to which corporations may be put.

The book's introduction is sparse and identical to that contained in the previous, September 1975 edition. The 1975 introduction said that The Netherlands' Civil Code was being revised and modernized, with the revision to take effect in 1976. Such a statement in 1980 is hardly relevant and does little to inspire enthusiasm for the new edition. Even a mere translation deserves an up-to-date and apposite comment. The introduction does, however, warn that, "the original text certainly was no literary beauty and little could be done to improve upon the style in translating." Nevertheless, much could be done to explain some of the Netherlands concepts.

For example, although the reader is warned that translation of *Bestuurder* to "Director" and of *Commisaris* to "controlling officer" is not quite satisfactory, nothing is done to explain the differences. Consequently, the use of this book is limited. It can only be a source of the original law, in translation, to supplement professional advisers, tax planning works or corporate law textbooks.

The author and publishers would have done better to concentrate on producing a foreign lawyer's guide to the corporate law of these two territories. From practical experience in The Netherlands Antilles, for example, one learns that the employment of a local lawyer is necessary. Although the need for this local participation may be deduced from the translation of the text, the practitioner would like to be told quickly and might prefer a book in which the original material appeared as an appendix to a more complete explanation and commentary.

No doubt the book has its place. It is difficult to say exactly where that place is. Certainly it is not on the desk of a practicing corporate or tax lawyer. So much more practical information is needed, for example, on the length of time taken to form a company in The Netherlands Antilles or in The Netherlands. (The time varies considerably.)

Information about the choosing of a name and the establishment of nominee shareholders and directors for a new corporation also is needed. We would like to know all of these things, but we would look in vain in the present volume.

JOHN G. GOLDSWORTH
London

Managing Ocean Resources: A Primer

Edited by Robert L. Friedheim. Boulder, Colorado: Westview Press, 1979.
Pp. 202. \$16.50.

The "freedom of the seas" doctrine, espoused by Hugo Grotius at the end of the seventeenth century, remained a foundation of ocean law through the first half of the twentieth century. However, the continued adequacy of this doctrine today is questioned because of new and expanded uses of the ocean, as well as recognition that the oceans are no longer limitless nor infinitely renewable. Changes in legal doctrine are based on the scientific, political, ecological, and economic changes and advances which promote increased ocean use. These changes require management and regulation to prevent "too rapid depletion of non-renewable resources, or inadvertent destruction of renewable resources."

The editor describes this work as "a citizen's guide to the ocean." This guide consists of thirteen essays divided into four parts.

Part I is an introduction to ocean space, and it contains an essay on the physics, chemistry, and biology of the ocean, and an essay on the legal and economic background of the ocean. Part II considers some technological problems of ocean management and contains essays on a geological study of the continental borderland; the ocean as a source of energy; and use of remote sensing from outer space to aid development of the ocean. Part III considers legal, economic and political problems of ocean management, including consideration of ocean enclosure, ecology, the international attempts at ocean management through the Law of The Sea Conference, and such specific problems of ocean management as marine mammals and marine transportation. Part IV is a call for an institutionalized national ocean policy in the United States.

It is the stated purpose of the editor to provide a view of the ocean, its attributes and the problems of managing its uses "to interested laymen, students, and specialists in one aspect of the oceans, who are willing to admit ignorance in other aspects of ocean affairs." While the text provided (202 pages) is too brief to cover any area in depth, and though some might question the editor's description of this work as "an essential resource base for intelligent ocean-management decisions," the book does provide an introduction to and background for some of the myriad problems in different sciences relating to use and management of the oceans. A six-page bibliography is particularly useful to those whose interest in a particular area requires more in-depth study.

The essays in this book, from eleven specialists in different disciplines, evolved out of a conference in 1977 sponsored by the Institute for Marine and Coastal Studies of The University of Southern California.

STANLEY B. ROSENFELD
Boston

Human Rights and the South African Legal Order

By John Dugard. Princeton, New Jersey: Princeton University Press, 1978.

Following World War II, the victorious powers inspired the formation of a new world body, the United Nations. Its charter and the preamble to it stressed the need to promote and protect fundamental freedoms—freedoms which all people everywhere were entitled to have and enjoy.

The South African wartime leader, General Jan Christiaan Smuts contributed significantly to this preamble. Leading a racist society in his homeland, he was able, like many world statesmen, to hold visionary views in the international arena. In the post war period, Smuts was moving, albeit slowly, toward some change in the racial policies of his government.

His changes, however, were rejected by whites in South Africa. In 1948, Afrikaner nationalists who opposed South African entry into World War II on the Allied side, who were pro-German and had embraced the *Herrenvolk* ideology of the Nazis, swept Smuts out of power. This same Nationalist party has been returned to power by the all white electorate (with increasing majorities) since then. The party has ruled South Africa without interruption for 32 years. In that time (despite overseas and Nationalist Party propaganda to the contrary), the basic apartheid policy has not changed, except to become more brutal. John Dugard's book clearly demonstrates this in the legal arena.

Dugard has not experienced a government in South Africa that was not Afrikaner nationalist in origin. Born and educated in South Africa, Dugard is the youngest law dean of the most prestigious law school—the Witwatersrand University Law School in Johannesburg. He is part and parcel of the privileged white society ruling over white and black in South Africa. (There are 22 million blacks in South Africa and 4 million whites, and the all-white electorate is only 2 million strong). The Afrikaner minority among the whites dominates the scene in all areas of government and administration.

This domination, as Dugard's book shows, is as ruthless as it is powerful. However, the ever increasing resistance of the majority black population will end white rule in South Africa. The blacks will succeed, I think, before the century has run out. Apartheid, like white rule in Rhodesia, will soon be swept aside. Time is running out for racists in that unhappy land south of Zimbabwe and at the southern tip of Africa.

Dugard's treatise is an excellent one. Writing with simplicity and clarity, he shows precisely how the government joins with the courts in maintaining law and order and how the status quo is retained. The author's statements are well thought out and well documented. His writing is fluid, and the book makes easy reading, rare for a legal work. It is an honest and authoritative study which will be widely used and quoted.

At all times Dugard strives to maintain a perspective, a world view, and he seeks to show that the scene in his homeland should not be seen in isolation. This makes it an important and valuable study for all students, activists and jurists interested in furthering human rights and the rule of law.

The author draws on experiences of lawyers and administrators in many parts of the world. He is able to show that as the world outside South Africa has moved toward the implementation of the principles and practices envisioned by the United Nations Charter and the Universal Declaration of Human Rights, South Africa has moved backward.

In 1966, the International Covenant on Civil and Political Rights was adopted. The European Convention on Human Rights and Fundamental Freedoms has become law in Europe. Millions of Europeans now enjoy the protection of an International Bill of Human Rights¹ which consists of the following:

Universal Declaration of Human Rights

International Covenant on Economic, Social and Cultural Rights

International Covenant on Civil and Political Rights

Optional Protocol to the International Covenant on Civil and Political Rights

All around the world, more and more people are made aware of these rights, and they demand them. The American Indians and other minorities in the United States rightly draw the world's attention to the violation of their rights by authorities in the United States, just as in the People's Republic of China, the Soviet Union and in other Eastern bloc countries, dissidents hold up their governments to condemnation when these rights and fundamental freedoms are trampled upon by their governments.

The International Bill of Human Rights is more widely recognized today than ever. While progress is slow, the movement to protect and promote these rights and freedoms grows in strength. Nowhere in the world today are these rights more flagrantly violated than in South Africa. There, in statutes and in the courts, they are flouted daily. This is what makes South Africa horribly unique. Page after page of Dugard's book shows how authorities in South Africa treat every clause and principle of the International Bill with the utmost contempt.

In the 1950s, The International Commission of Jurists (ICJ), a nongovernmental organization with its headquarters in Geneva, moved with speed and energy to foster world respect for the Rule of Law. With the determination for which Sean MacBride, its one time secretary general is renowned, the organization expanded the Rule of Law concept to include not only limited procedural protection but also protection of substantive rights.

Dugard quotes with approval the ICJ Declaration of Delhi of 1959, which "recognizes that the Rule of Law is a dynamic concept . . . which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society but also to establish social, economic, educational and cultural conditions under which a persons legitimate aspirations and dignity be established."

¹The International Bill of Human Rights is available from the American Association of the International Commission of Jurists, 77 U.N. Plaza, New York, New York, 10017.

Dugard's vision is wide. He places the position of South Africa against the backdrop of events around the world; events pertinent and of concern to lawyers in the field of human rights.

Using South Africa as a yardstick, Dugard measures compliance with the Rule of Law in the United States and elsewhere. He cites studies, court decisions and legal pronouncements, constitutional provisions and statutes illustrating the respect, or lack of it, for the International Bill of Human Rights. This procedure is particularly interesting for a lawyer in the United States and of importance to international lawyers and scholars. Surprisingly, the United States' experience has much similarity with the South African one. Examples are given by the author, including the issue of school segregation. In the United States today, many blacks claim, with some justification, that *Plessy v. Ferguson*² is still the practice here. Yet there is no doubt that the courts and society are moving to enforce the 1954 decision of *Brown v. Board of Education*.³ This movement may not be with all deliberate speed, but the movement is still in the right direction.

Today in South Africa, *Plessy* is considered too radical. Separate and unequal is the law and practice. The 1976 Soweto school riots in which hundreds of blacks were killed, and the recent school boycott in April 1980 are testimony to the intransigence of the government and the increasing opposition to it by the black majority.

When the Appellate Division—South Africa's highest court—upheld the principle of equality before the law in *Rex v. Lusu*,⁴ the government immediately administered a legislative rebuke, empowering the relevant authority to enforce inequality of treatment.⁵ Separate but equal as a doctrine became, by legislative fiat, the separate but unequal doctrine.

In addition, the legislature enacted laws changing the construction of the Appellate Division, and new judges were appointed. The decisions of the liberal Centlivres court were upset by the new Steyn court. Now the court did not *declare* the law. It *chose* to prefer one interpretation to another. It adopted interpretations which had serious human consequences. However harsh and unjust these consequences were, the court preferred upholding government policy.⁶ [See Minister of Interior v. Lockhat and others—1961(2)SA 587 AD and see Chapter 10 on Race, Security and the Judges.]

When South Africa introduced its Prohibition of Mixed Marriages Act of 1949, and the Immorality Act of 1957, government spokesmen justified these laws, *inter alia*, by reference to the United States experience. Some thirty states in the United States had similar laws. It was only in 1967 in *Loving v. Virginia*⁷ that the U.S. Supreme Court declared unconstitutional the Virginia statute preventing mixed marriage. Some states formally retain these laws on

²163 U.S. 537 (1896).

³347 U.S. 483 (1954), *enforced*, 349 U.S. 294 (1955).

⁴[1953(2)] 484 AD (S. Africa).

⁵Reservation of Separate Amenities Act 49 of 1953.

⁶See *Minister of Interior v. Lockhat*, [1961(2)] 587 AD (S. Africa). Also see ch. 10 of Dugard's book, entitled *Race, Security and the Judges*.

⁷388 U.S. 1 (1967).

their statute books, proscribing fornication and prohibiting extramarital intercourse between whites and blacks.

A more awful example of similarity between the United States and South Africa is the death penalty. South Africa carries out 47 percent of the world's judicial executions. Of 2740 persons executed in South Africa over a given period, less than 100 were white. The racial factor is clearly in evidence. Is the position different in the United States? The U.S. Supreme Court in *Furman v. Georgia*⁸ recognized that where the death penalty is involved the racial question is a factor that cannot be ignored. The death penalty has not been abolished in the United States. The twelve-year unofficial moratorium on capital punishment in the United States, interrupted by the death by firing squad of Gary Gilmore, ended in May 1979 with the electrocution of John Spenkelink.⁹

Whipping as a punishment in the United States was only abolished in 1968.¹⁰ The federal court of appeals held that whipping offends the Eighth Amendment's prohibition on cruel and unusual punishment. In South Africa, the authorities set the example of violence to the nation's oppressed people. Dugard refers to sources showing that in 1964, 16,887 persons received 79,038 strokes, but he says that whipping is now less popular. When public flogging was practiced in Namibia, the present Chief Justice delivered a judgment outlawing it. *Public flogging was going too far.*

Dugard's text describes the curtailment of one freedom after another with a detailed analysis of the law and the infringements on liberty upheld by a Supreme Court which, more often than not, chooses to decide in favor of the government. The text confirms the view of Sean MacBride in his commentary to the ICJ book, *Erosion of the Rule of Law in South Africa* (1968), that, "the courts are more executive minded than the executive."¹¹

On the question of the alleged threat of communists and communism, Dugard draws attention to the United States' attempt, after World War II, to isolate and confine this ideology by criminal prosecution, registration and the imposition of civil disabilities on people thought to be communist. South Africans enthusiastically adopted and expanded on the United States precedent and were ruthless in their never ceasing determination to end the spread of these ideas.

"Freed from the resistance of judicial reviews and backed by a submissive white electorate the South African government has been able to pursue its course of silencing radical opposition with a measure of success that would have won the admiration of the late Senator McCarthy," Dugard writes.

Dugard refers to the prohibition on freedom of movement and the decision of the U.S. Supreme Court in *Aptheker v. Secretary of State*.¹² Despite the

⁸408 U.S. 238 (1972).

⁹See Ramsey Clark's gripping account of the 65 hours before Spenkelink's death, and of the last ditch appeal on his behalf, arrogantly brushed aside by the authorities. *THE NATION*, Oct. 27, 1979.

¹⁰Jackson v. Bishop, 404 F.2d 571 (1968).

¹¹See ch. 9 of Dugard's text.

¹²387 U.S. 500 (1964).

Supreme Court's decision then, the present Carter Administration threatened to interfere with the freedom of movement of the United States' Olympic athletes who might have wished to travel to Moscow against the wishes of the President. A further threat was made concerning the right of Americans to travel to Iran to see relatives illegally held hostage there. The 1950 experiences of actor/singer Paul Robeson, playwright Arthur Miller and Nobel Prize winner Linus Pauling are history, but Americans may witness new threats to their liberty. We cannot afford to be smug about conditions in South Africa being foreign and alien to our way of life. We, particularly as lawyers, must always be on guard to protect against any encroachment on our liberty.

Dugard again and again sets out, in irrefutable fashion, the erosion of freedoms and disregard of the rule of law in South Africa, where there never was any constitutional guarantee of personal freedom. He describes the common law in South Africa, where a person enjoys all those freedoms not denied by statute. He then proceeds to enumerate with dramatic illustrations from the case law, the numerous court decisions on statutes which strike down the freedom of people—statutes so far reaching and embracing that there is little freedom left, if any at all.¹³

Of the 1967 Terrorism Act, the Association of the Bar of the City of New York said in December 1967, "This Act offends basic concepts of justice, due process and the rule of law accepted by civilized nations and violates the Declaration of Human Rights." The extraordinary provisions of the Criminal Procedure Act of 1955 with their summary and unfair clauses in favor of the state, and the Internal Security Act of 1976 are yet other examples of the draconian measures operating in South Africa.

These laws give the police absolute power and give an unrestricted license to the authorities to proceed ruthlessly in an arbitrary and capricious manner. Deaths in detention are referred to by Dugard, but he does not deal at any length with this tragic consequence of the justice system. More than forty detainees are known to have died while in detention. The best known in this country was Steve Biko. These deaths are the ultimate exercise of power by the police over these powerless prisoners.

On the chance of a fair trial the author details the "highly visible, discriminatory set of rules of procedure constructed for the South African political trial, rules that seriously undermine the value of the political trial as a process of judicial authentication."

Referring in contrast to the Warren Court, Dugard says it embarked on extensions of liberty by means of the due process provisions of the Bill of Rights whereas the South African legislature set about opposing liberty by procedural means. However, Dugard does not refer to the Burger Court's erosions of the Warren Court's decisions.

¹³See, e.g., The Emergency legislation; the Public Safety Act of 1953; the 1960 (Sharpsville) Emergency Decrees (still in force in the Transkei 20 years later); the provisions for 90-day detention of people without charge or trial, extended to 180 days by the General Law Amendment Act of 1963 and to indefinite detention by the Terrorism Act of 1967.

In summarizing the practice of liberty by due process provisions in South Africa the author concludes, with justification, that, "In this respect, as in the case of equality before the law, the South African legislature has moved backward."

Dugard's book is a handy working tool for all those people engaged in exploring this exciting field of law and in gaining liberty for all people. It provides an unusual and valuable perspective. It sets out the state of liberty and the lack of it in South Africa and in other countries.

Dugard is a sought-after speaker in South Africa and an activist in race relations. He is a leading figure in the fifty-year-old South African Institute of Race Relations. Like all outspoken white liberals he has been subjected to intimidation and harassment designed to keep him inside the accepted framework. Afrikaner nationalists like to promote the "Helen Suzman image"—and Dugard fits into that promotion. Parliamentarian Helen Suzman has been a courageous and consistent critic of every aspect of government policy. While the government resents the criticism, it welcomes her opposition. She is held up as a symbol illustrating their tolerance and their regard for democratic ideals.

The very care with which Dugard chooses every word is indicative of the intimidating and repressive force of the government. He is guarded in his criticism, yet he remains provocative. He advocates changes, but all the changes he proposes are designed to bring about improvement of the system. As every aware South African, and many others know, the white rulers in South Africa will neither surrender power voluntarily, nor sacrifice their long enjoyed privileges without a struggle. Peaceful change is something we all hope for, yet the difference between hope and reality must be appreciated.

In talking of change, Dugard writes in his last paragraph:

If faith is to be restored in the South African legal system while there is yet time, sweeping changes will need to be made to the entire edifice of the law. A new Constitution with a Bill of Rights to provide legal safeguards for individual liberty, anti-discrimination laws to educate an unenlightened and prejudiced people, and a concerned and courageous legal profession committed to the enforcement of human rights, are the very minimum requirements. But white South Africans, including white lawyers, have shown a deep resistance to change and there is little likelihood of a voluntary surrender of power, power that for the most part is entrenched in the apartheid legal order. It is more likely that a Bill of Rights and anti-discrimination laws, the twentieth century's instruments for the protection and relief of minority groups will grow in popularity and appeal only as the white population comes to see itself as a political minority. But by then, the new majority, reared on the apartheid legal order, may find such a system inexpedient.

It is unfortunate that so able a writer and scholar as Dugard fails to present the laws and traditions of the black people of South Africa. He cursorily dismissed this subject in a paragraph:

Contemporary Roman-Dutch law is not the only common law in force in South Africa. In some instances, tribalized Africans may have recourse to African customary law which regulates, inter alia, customary marriages, succession, and guardianship. As the present study is concerned largely with the law governing relationships between state and individual which falls outside the scope of African customary law, no further reference will be made to this system.

However, Dugard describes tellingly how blacks, in turn, reject the white man's law:

The legal order of apartheid has brought not only white South Africa into disrepute. It has undermined faith and confidence in the whole South African legal system. Whites who prosper under laws designed to maintain their privileged position seldom pause to ponder on the image of the South African legal system among blacks. For blacks it is not a body of rules which preserves domestic security and advances commercial opportunity but a discriminatory order which promotes personal insecurity and denies material advancement. For blacks it is not a body of rules which their elected representatives have conceived in Parliament, but a reprehensible system imposed without consultation and enforced by an array of instruments of coercion—the army, the police, and the legal-administrative machine. It is therefore small wonder that blacks do not share the admiration of the white South African for the majesty of South African law, the mysteries of the Roman-Dutch tradition, and the impartiality of the South African judiciary and administration.

The contribution of blacks to South African society has still to be recognized. It seems that this will only be done under black rule.

Dugard's criticisms and suggestions for change are neither novel nor revolutionary. In the climate in which he writes more positive suggestions would be dangerous.

All South Africans, Americans and others abroad would do well to recall that part of the Universal Declaration of Human Rights which reads:

It is essential, if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

Revolution in South Africa is around the corner.

JOEL CARLSON
Great Neck, New York

Dictionary of Legal, Commercial and Political Terms, Vol. I, English-German

By Clara-Erika Dietl; Anneliese A. Moss; and Egon Lorenz. Munich, Germany: C.H. Beck'sche Verlagsbuchhandlung (Oscar Beck). Sold in the United States by Matthew Bender Co., 1979. Pp. 926. \$125.

This is Volume One of the second edition of the out-of-print dictionary compiled by the late Professor Erdsiek and the present coauthor, Clara-Erika Dietl. The work has taken more than 10 years to prepare. The second, German-English, volume is expected sometime within the next year or two. This dictionary spans three linguistic and legal systems—English, American and German—making a careful and useful distinction between English and American usages. As the most complete work of its kind, it should prove a

welcome resource to meet the ever increasing translation demands of scholars, practitioners, and social scientists.

The dictionary is thorough and well-structured, providing an accurate compilation of German terms and explanations for highly technical English and American words and phrases. This is no small challenge because for many technical English and American concepts there are no precise equivalents in German. The dictionary is commendably thorough in its explanation of peculiarly Anglo-American concepts such as "trusts" (two full pages are devoted to this idea and its many variations in U.S. and English practice); and in its brave attempt to explain the "rule of reason" in U.S. antitrust law, a task that defies definitive treatment even in (American) English.

To translate concepts for which no precise equivalent exists is the translator's most difficult task. The second-most difficult translations are those of terms that are nearly equivalent but which carry different connotations. The authors handled this problem skillfully through the use of short explanatory notes. In one note, for example, the dictionary provides a precise and understandable explanation of *stare decisis* for the German reader.

There are hazards, nevertheless, because the reader's knowledge of his own legal system can lead him to make assumptions that are not true for the other system. The comprehensive term "security interest," for example, is appropriately defined as an interest in movables, immovables or as a right which provides security. A reader familiar with the German legal concept of security devices, however, might make the assumption that it is important in Anglo-American law which party holds title to the collateral. While "security interests" are functionally comparable to German security devices, the technical parameters in the two legal systems are completely different. This problem cannot be solved in a dictionary, but some additional explanatory notes might help, even if they were only placed in footnotes.

The cross-indexing is well done, enabling the reader to find answers quickly, and avoiding a jumble of terminology. It is unfortunate, however, that the dictionary does not contain a table of contents. The casual user might have trouble locating the footnotes and may not realize that an extensive list of standard American and British abbreviations starts on page 867 of the work. The footnotes are especially helpful for those conducting more thorough research. They are to be found in a separate section behind the text, although they are all very brief and easily could have been placed at the bottoms of the pages.

While primarily designed for the German attorney, the *Dictionary of Legal, Commercial and Political Terms* also will be a valuable resource tool for English speaking attorneys.

DUDLEY H. CHAPMAN
NANCY CAYWOOD
DR. HEINZ DIELMANN
Washington, D.C.

The Discipline of Law

By Lord Denning. Woburn, Massachusetts: Butterworths, 1979. Pp. 331. \$21.95 (hardback), \$12.35 (paperback).

On his eightieth birthday in 1979, Lord Denning remarked that he was the longest-sitting judge in the history of British jurisprudence. Considering the centuries encompassed by that record, it is a happy circumstance that Lord Denning has the most brilliant, innovative and inquiring mind of any English judge within memory. *The Discipline of Law* is a look at the changes that have occurred in the common law over the past thirty-five years; many of those adaptations to modern circumstances occurred in the opinions set down by Lord Denning.

Educated at Oxford, Lord Denning was seen as a future Lord of Appeal while still in law school. Appointed first to King's Bench in 1944, Lord Denning moved to the Court of Appeal in 1947, and to the House of Lords as Lord of Appeal in Ordinary in 1957. Since 1962 he has been Master of the Rolls, which makes him the presiding judge of the Civil Court of Appeal, the final arbiter of English law except for the few cases taken to the House of Lords.

The Discipline of Law is a very personal reprise of some of Lord Denning's major decisions, tied together with retrospective thoughts on the impact of these opinions, the motivation leading to them and the questions they have left unanswered, together with just enough autobiographical material to leave the reader desirous of learning more about this remarkable jurist. As his theme for this volume Lord Denning has taken "that the principles of law laid down by the judges of the nineteenth century—however suited to social conditions of the time—are not suited to the social necessities and social opinion of the twentieth century. They should be moulded and shaped to meet the needs and opinion of today." And for a man described as leading "a one-man crusade to free the Court of Appeal from the shackles of *stare decisis*" it is fitting that he has adopted as his text a quote from his opinion in *Packer v. Packer*:¹ "What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything that has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both."

This volume is a pithy, amusing, erudite and endlessly fascinating examination of seven general legal topics: the construction of documents, including the proper use of language and the interpretation of statutes, wills and contracts; misuse of ministerial powers and how the courts have moved to protect personal freedom in a quasi-socialist state; standing to litigate; regulation of non-governmental bodies; modification of the strict common law doctrines; the expansion of the concept of negligence and the impact of

¹[1954] P. 15 at 22; [1953] W.L.R. 33; [1953] 2 All E.R. 127 (C.A.).

the *Hedley Byrne*² decision; and finally, the appropriate use of precedent. It is a highly readable volume recommended to all who are interested in legal topics.

Lord Denning is the commanding figure of British law today. *The Discipline of Law* is a fitting reminder of his contribution to the common law and its significant continuing role in the lives of all who live under its rule.

MALCOLM HAWK
Dallas

The Italian Practice of International Law: Second Series (1887-1918)

By Societa Italiana per L'Organizzazione Internazionale Consiglio Nazionale Delle Ricerche. Volume I. Dobbs Ferry, New York: Oceana Publications, 1979. Pp. 656. \$40.00 per volume.

The first volume in the second series* of *The Italian Practice of International Law* is a casebook of practice before the era of multilateral diplomacy and international organizations, and, of course, before fascism.

The cases or incidents are arranged under the general headings of: I, "General Problems of International Law"; II, "Jus Non Scriptum"; III, "The Law of International Transactions"; IV, "International Legal Facts"; V, "International Persons"; VI, "International Unions, Institutions and Organizations"; VII, "Agents of International Persons."

The volume is of great historical interest since it contains documents relating to various matters, most of which are exchanges of notes. It also contains a list of laws putting various treaties into effect.

One may suppose that the factual presentation represents the Italian positivist approach to international law, since there is no theoretical content to the book. An analysis of the conformity of practice to theory, and an expansion of the work to include cases from 1918 to the present, would be of considerable interest.

The Foreword and the Table of Contents (which is very detailed) are in Italian, French, English and Spanish. The text is in Italian, with some French notes included. A cumulative index for the series will be published, too.

SHEILA M. GREENE
Phoenix

²[1964] A.C. 465, 486, 502; [1963] W.L.R. 101; [1963] 2 All E.R. 575.

*As of October 15, 1980, four volumes of the series had been published. The fifth volume is expected to be published before the end of 1980.

International Financial Law

Edited by Robert S. Rendell. London: Euromoney Publications Limited, 1980. Pp. 319.

Under the skillful editorship of Robert Rendell, Euromoney Publications has produced an extremely useful addition for the international practitioner's bookshelf. Written by a diverse group of well-qualified commentators, *International Financial Law* presents a well-rounded look at a multi-faceted topic.

The text is divided into three parts. Part One deals with private international lending and is divided into eight chapters covering sovereign immunity under both United States and English law, the regulation of both international lending by American banks and foreign bank operations in the United States, and a detailed discussion of term lending in the international markets (including analyses of syndications and participations, project financing, and the peculiarities of the Eurodollar market). Drawing heavily upon the major New York City law firms for authorship, these chapters provide a sound and highly readable discussion of the law of private international lending. The section is especially successful in the manner in which each chapter builds upon preceding ones so that the text flows smoothly from subject to subject.

Part Two examines international capital transfers, with particular emphasis on regulations in the United States, the Common Market, Latin America and Japan, and on examinations of the roles played by international mutual funds, Middle Eastern financial institutions, the Overseas Private Investment Corporation (OPIC) and political risk insurance. The authors include attorneys from Japan, the United Kingdom and the United States, including representatives of the Securities Exchange Commission (SEC), OPIC and the Department of Commerce. Although the chapters here do not flow as naturally as those in Part One, a nice symmetry is preserved in the various discussions of regulatory systems, and the remaining subjects bear sufficient relationship to the overall topic to maintain the book's continuity.

Part Three contains specific chapters on the International Monetary Fund, the World Bank, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank and the Ex-Im Bank, as well as general chapters on European and Japanese export credit agencies. In most cases, the analyses are written by officials (or former officials) of the financial institutions examined. Each provides a working introduction to the policies and procedures of the subject institution.

The book's strongest feature is the manner in which a number of complex topics are handled in a concise and easily understandable fashion, without sacrificing the substantive depth necessary for practical use. Mr. Rendell is to be congratulated for the text's cohesiveness and the pains obviously taken to cross-reference the chapters and to eliminate overlapping.

F. WALTER BISTLINE, JR.
Dallas

Foreign Investment in the United States 1980: Legal Issues and Techniques

Edited by J. Eugene Marans, Peter C. Williams and Joseph P. Griffin. District of Columbia Bar, 1980; Pp. 797. \$42 (D.C. bar members); \$52 (non-members).

The District of Columbia Bar's International Law Division has revised and expanded its popular 1977 manual on foreign investment restrictions in the United States. The updated manual comprehensively covers the basic issues and techniques that should be considered when either a prospective seller or a prospective buyer is assessing the legal implications of a substantial direct or portfolio investment in the United States. It is the only publication on this broad subject that fully surveys all state as well as federal restrictions.

The first edition sold out soon after publication. This excellent effort should do likewise. As foreign investment in the United States continues to increase, surpassing the 1979 level of \$12.5 billion, so too will the issues identified and explained in the manual arise in an increasingly greater number of transactions. Thus, the manual will be a useful primer not only for the practitioner specializing in international and investment matters but also for any lawyer with a commercial and business practice.

The manual first surveys rules generally affecting foreign investment, e.g. antitrust, tax, employee visa classification and state tender offer laws. Next, the manual reviews limitations on foreign investment in specific industries such as agriculture, aviation, banking, communications, defense, and energy and minerals. Finally, the manual contains an exhaustive state-by-state survey of limitations on foreign investment, ranging from land ownership to control of insurance companies and public utilities.

One of the manual's most interesting and thorough analyses concerns foreign investment in the United States banking industry. This chapter reviews the International Banking Act of 1979 (12 U.S.C. §§ 3101 *et seq.* (1976)), which enables foreign banks to operate, under certain conditions, branches or agencies in the United States. The text then surveys the conditions that a foreign entity must satisfy in order to obtain a charter as a state or national bank. Finally, the chapter discusses banking merger, control and holding company problems of particular relevance to foreign interests.

The manual's antitrust chapter is both sophisticated and practical. Of particular utility is the brief analysis of each of the twelve major foreign acquisitions and four foreign joint ventures challenged by either the Justice Department or the Federal Trade Commission.

Of comparable utility to the general corporate practitioner is the manual's discussion of federal taxation on foreign investment and investors. It reviews, among other things, the tax treatment of a foreign corporation's United States and non-United States source income and the criteria for determining for tax purposes whether a foreign investor is engaged in a United States trade or business, as well as the implications of the various United States tax treaties.

In short, the manual is a valuable addition to any corporate law library because of its scope, clarity, thoroughness and timeliness. And when a foreign investment problem suddenly arises, the practitioner will be especially thankful that the full range of relevant issues is covered in a single volume.

ALEXANDER W. SIERCK
Washington, D.C.

The Multinational Corporation Regulatory Guidebook: A Review and Outlook Report on International Organization Activities Impacting International Business

Washington, D.C.: International Business-Government Counsellors, 1980.
Pp. 1980.

While no international regulatory environment yet exists to govern the foreign business practices of large and small companies, and binding rules are now enforced only by individual governments, a widely diffused body of legal data is currently emerging. This is of singular significance to the legal counsel and executives of multinational enterprises. Although primarily only voluntary rules exist now, mandatory international legislation, codes or treaties adopted and enforced by national legislation might well emerge later.

The Multinational Corporation Regulatory Guidebook presents a straightforward review, in outline form, of recent activities of various international organizations impacting on international business. Specifically, it summarizes draft codes, resolutions, model laws and other output of public international organizations responding to such international business problems as restrictive business practices, illicit payments, technology transfer and trans-border data flows.

The core of this short and excellent project is chapter four, entitled "International Organizations." It summarizes the activities of such organizations as: the Organization for Economic Cooperation and Development (OECD) and its "Guideline for Multinational Enterprises" and other guidelines relating to national treatment and government incentives; the United Nations Conference on Trade and Development (UNCTAD) and its "Code of Conduct on Restrictive Business Practices" and its work on a transfer of technology code; the United Nations Commission on Transnational Corporations (UNCTC) and its "Corrupt Practices Code"; the Council of Europe and its "Convention on Data Protection"; the International Labor Organization (ILO) and its "Employment/Industrial Relations Code"; and the Organization of the American States (OAS) and its resolution on a MNC Code of Conduct. Among other organizations discussed are the UN Con-

ference on Science and Technology for Development (UNCSTD), the World Intellectual Property Organization (WIPO), the European Communities and the UN Industrial Development Organization (UNIDO).

Glaring because of their omission are the work of the Andean Group (the Andean Foreign Investment Code), which greatly supports the publisher's proposition that the international or regional codes may well wind up as binding domestic law; the UN Commission on International Trade Law (UNCITRAL) and its draft convention concerning international sales contracts; the International Monetary Fund (IMF); the General Agreement on Tariffs and Trade (GATT); the International Chamber of Commerce (ICC); specific sector international regulatory bodies in fisheries and nuclear energy; and more detailed treatment of the United Nations regional commissions.

The style of the book, in outline form, certainly does not make this technical and wide-ranging subject easy to comprehend. However, the information provided throughout and in the appendices is extremely valuable. In identifying and synthesizing the diverse data, the reader is indebted to the International Business-Government Counsellors which has provided a fine introductory work concerning the current, nascent international regulatory environment of international business. One might suggest that in a future edition of this work or in a supplement to it, the publishers provide a reproduction of the most significant data cited and, perhaps, an edited collection of readings further analyzing the topics under discussion. Nevertheless, this book is highly recommended to all those involved with the international regulation of international business.

STUART S. MALAWER
McLean, Virginia

