

BOOK REVIEWS

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Courts and Tribunals: A Comparative Study

Attila Racz, Philadelphia, Heyden & Son Ltd., 1980, 246 pp., \$22.00. Budapest Akademiai Kiado, 1980. Translated by Miklos Zehery, revised by Imre Gombos, 1979.

The study of courts and tribunals written by Attila Racz, suggests as many questions as it may answer in relation to the administration of justice in the socialist states of Eastern Europe and in Russia. The shift in the basis of law in the socialist countries was made before an adequate codification, compilation and dissemination system was developed, such as the West Key system of the United States, and perhaps before adequate codification of customary law in the countries concerned. There was also a linguistic impediment to uniform justice under the old regimes. Eastern Europe was for the most part the Austro-Hungarian Empire until 1918, comprised of Austria, Hungary, Rumania, Yugoslavia, Bosnia, Herzegovina, Serbia, and Trieste. Russia was also linguistically diverse, not only from province to province, but within the Russian language itself, which had a formal level for ecclesiastical use and a colloquial level for ordinary business. The countries were also administratively diverse. The provinces of the Austro-Hungarian Empire were under ministers as were the Russian provinces. In addition, though Hungary was privileged under the Empire due to its independence from the time of Saint Stephen, it was briefly and violently communistic in 1918. The countries of Eastern Europe were not so until 1945.

Presently, in the socialist countries of the East, the unification of justice depends upon similarity of court structure and uniformity of rules, as well as upon uniform application of the law and the rules. The problem of unity as well as that of specialized courts and procedures may reflect the former military government of those territories, as well as a reaction against the diversity of justice and its unevenness under the old regime.

Special attention is given in those countries to military courts and to the extent of their jurisdiction. They are usually permanent courts, unlike the United States, and in Russia their jurisdiction extends to security problems and to civil aviation. The concepts of unity of power and primacy of production reflect the military psychology, which is a system geared to a specific purpose to be accomplished. In the West it exists usually only in cases of national emergency.

The number of solutions regarding procedure and competence which have been tried for cases of economic problems and labor disputes suggests that both areas pose numerous problems. The present tendency seems to be to have the ordinary court system deal with all but minor cases of infringement.

Minor infringements of labor regulations or of the social code are dealt with by the courts, which developed in the Soviet army at the time of the Revolution. The members were elected irrespective of legal qualifications. The institution was then extended to economic bodies and social units, such as residences. All courts were to be transformed into such a system, but that has not transpired, since uniformity of administration of justice is difficult to maintain in the absence of a formal legal formation. The social courts may not detain or imprison, but their public nature, inviting comments of members of the local unit, their informal procedure, and their power to rebuke or to impose sanctions such as demotion in the case of labor problems, might raise some problems about what is called common barratry in Anglo-Saxon law.

The fact that they may not detain or imprison suggests that they are indeed *soviets* or councils. There is a provision for judicial review, which may revoke or modify the action of the social court in question.

In order to read *Courts and Tribunals*, it is necessary to define the terms used within the context of socialist ideology. A point of reference for Western legal scholars and our tradition of social organization would be *Natural Law* by Dr. Heinrich Rommen, 1932. Laws exist to govern various types of regimes. Precedent is set according to general moral and legal principles which have been promulgated and tested. Socialist law has as its basis unity of power. The term "bourgeois law" used by Mr. Racz seems confusing. There were ten French Revolutions, and the French Constitution of 1791, cited by Mr. Racz really established a constitutional monarchy. The subsequent events resemble the Hungarian Revolution of 1848, in which previous efforts made under Szechenyi to plan for more freedom in a reasonable way were interrupted by the return to Hungary of Pulski in 1848, and the subsequent revolution.

The role of supreme courts in the socialist countries is to supervise the legality of legislative acts as well as of court procedure. It is of interest to U.S. students of Constitutional law, since our Supreme Court makes decisions regarding constitutionality only in the event a case is brought before it. In addition, there is no separation of powers, since in theory the people

are the supreme authority, and differentiation, such as special courts or even arbitration, presents the problem of division of power.

It would be helpful for students in the West to have a case book of the laws and the procedures of courts, and especially of the social courts, in the various countries, as well as texts of rules of procedure and evidence, in order to determine the conformity of theory to practice. Transcripts of actual cases would probably be desirable, since the basis of law is quite different.

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Behavioral and Quantitative Perspectives on Terrorism

Edited by Yonah Alexander and John M. Gleason, Pergamon Press, 1981.
396 pp. \$35.00.

Control of Terrorism: International Documents

Edited by Yonah Alexander, Marjorie Ann Browne and Allen S. Nanes,
Crane Russak, 1979. 215 pp. \$17.50.

International Terrorism in the Contemporary World

Edited by Marius H. Livingston with Lee Bruce Kress and Marie G.
Wanek, Greenwood Press, 1978. 522 pp.

The Morality of Terrorism: Religious and Secular Justifications

Edited by David C. Rapoport and Yonah Alexander, Pergamon Press, 1982. 377 pp.

Terrorism: Theory and Practice

Edited by Yonah Alexander, David Carlton and Paul Wilkinson, Westview Press, 1979. 280 pp. \$20.00.

The U.S. Government Response to Terrorism: In Search of an Effective Strategy

By William Regis Farrell, Westview Press, 1982. 142 pp. \$20.00.

Victims of Terrorism

Edited by Frank M. Ochberg and David Soskis, Westview Press, 1982. 201 pp. \$20.00.

The problems and ramifications of international terrorism are of growing concern to the international lawyer, who must provide sound advice and counsel to his or her international clients. This trend is evidenced by recent articles in *The International Lawyer* (Vol. 16-1, Winter 1982). The U.S. government's *Disorders and Terrorism: Report of the Task Force on Disorders and Terrorism* declares: "Many nations have recognized the great potential for terrorism; the terrorist is now the spearhead of a developing theory and practice of surrogate warfare." This developing theory and practice has also spawned its own growing body of literature. While the literature is of an increasingly higher quality, its usefulness to lawyers, political scientists and others who help share government and business decisions varies widely.

The most useful of the books under review is clearly Alexander, Browne and Nanes' *Control of Terrorism*. It is a comprehensive collection of historical, contemporary and draft multilateral treaties; U.N. General Assembly

and Security Council resolutions; and the still-born Bonn Summit Declaration of 1978. Included are the texts of the leading ICAO treaties dealing with terrorism, which were signed in Tokyo (1963), The Hague (1970) and Montreal (1979), respectively. The book reproduces the texts of the various documents without annotation, summary or discussion. However, there are some introductory paragraphs. Also, the editors provide copies of a number of the official U.S. proclamations concerning some of the agreements, as well as copies of the reservation submitted by certain nations which ratified the agreements. Unfortunately, the editors have not provided a summary or topical index. This limits the volume's usefulness as a research tool. Nevertheless, Alexander and his colleagues have performed a very useful and necessary service by collecting these documents into a single, reasonably priced book. This collection should be, at a minimum, in every law, academic, and professional library.

The next most useful book, for the general international practitioner, is Livingston, Kress and Wanek's *International Terrorism in the Contemporary World*. This volume presents forty-five essays and speeches given or compiled at a 1979 international symposium at New Jersey's Glassboro State College entitled "Terrorism in the Contemporary World." This symposium was organized by the late Marious Livingston, chairman of the college's history department, who was the principal editor of this book at the time of his passing. Participants in the symposium included political scientists, historians, lawyers, congressmen, journalists, scholars, and representatives of the Departments of Defense and State.

The value of this collection lies in the breadth of the articles and the qualifications of the authors. The seven groups of articles open with a series of overview pieces, including excellent summaries by J. Bowyer Bell, an expert on twentieth-century revolutionary movements with the Institute of War and Peace, and Edward Mickolus, a specialist with the CIA and author of the leading bibliography on terrorism. Part two includes articles on terrorist methods and activities in selected countries, including Ireland, the USSR, the U.S. and the Middle East. Other parts contain articles on the psychological, military and historical aspects of international terrorism. Another group of articles on the political consequences of terrorism touches on such topics as hostage survival, the use of intelligence, manipulation of the democratic process, and the role of the media. The authors include H.H.A. Cooper, who was a staff director of the Task Force on Disorders and Terrorism; Robert Friedlander, a well-known international law professor; and Brooks McClure, an international security advisor with U.S.I.A.

Perhaps the most useful selection of articles for the lawyer is the collection on the legal problems of terrorism. The articles discuss the potential control of international terrorism through application of the laws of war, an international criminal code or an international criminal court. Other articles examine the problems surrounding aerial hijacking, hostage-taking and the political offense exception. A final article looks at the American policy

responses to terrorism. While these articles do not have the scope of the American Society of International Law book on the *Legal Aspects of International Terrorism*, by Murphy and Evans, they do provide an excellent overview and supplement.

Another good introduction and overview of the subject is *Terrorism: Theory and Practice*. Its collection of articles, penned by an outstanding group of experts including federal counterintelligence specialists, touch on the major causes, perpetrators, and issues of terrorism. Although shorter than the collection discussed above, this book is more theoretical in its approach. Thus, it should appeal to the more scholarly lawyer. This is not to denigrate its important contribution to any professional library. And, like the earlier collection, this book contains a lengthy and thorough bibliography.

The other four books under review are the most recent and highly welcome additions to the body of literature on terrorism. The contributors, many of whom appeared in the two collections discussed above, number among themselves the top experts in the field. For example, Frank Ochberg, editor of *Victims of Terrorism*, was psychiatric advisor to the F.B.I. and the National Security Council. His contributors include senior special agents with the F.B.I., director of psychological services for the New York Police Department, and a number of psychiatrists, psychologists and sociologists experienced in the field of victimology. The two other books, *Behavioral and Quantitative Perspectives on Terrorism* and *The Morality of Terrorism*, list a similarly impressive roster of authors and articles.

In each instance, these books add to the limited but growing body of knowledge on terrorism. Unfortunately, the quality of these three books are their shortcoming for the practicing lawyer. Unless the lawyer has a special requirement, he or she will find each of these volumes too specialized for his or her needs. Each is not a general introduction but a series of detailed explorations into very narrow areas of study. Thus, these books, regardless of their quality, are useful only to the most interested or specialized practitioner.

The final book, *The U.S. Government Response to Terrorism*, is the only volume under review written by a single author. Dr. W.R. Farrell is a lieutenant colonel in the U.S. Air Force and is currently deputy chief of the Security Division of the Joint Chiefs of Staff. The book stems from Dr. Farrell's long experience with the U.S. government's efforts to combat terrorism. His work is heavily footnoted and has useful a bibliography and index.

Dr. Farrell's work opens with an operational definition of terrorism, which is "a purposeful human political activity, primarily directed toward the creation of a general climate of fear and designed to influence . . . other human beings and, through them, some course of events" (p. 121). He then examines the organizational context of any response. Two chapters detail the U.S. government's organization structure for coping with terrorism. The description includes flow charts and detailed organizational descrip-

tions. One of these chapters focuses on the organizational capabilities of the American armed forces. Part of this chapter discusses the legal restrictions which tend to hinder the use of the military in the suppression of terrorism (e.g., the restrictions of the *Posse Comitatus Act*). The author puts these ideas together and he examines how the entire "organization" operates.

Dr. Farrell's central finding, which confirms what we always suspect, is that the American counter-terrorism efforts are highly decentralized. The resulting organizational problems include lack of centralized control, inter-agency rivalry, and inability to provide an efficient comprehensive response. The author's proposals for change, however, are not radically different. In essence, Dr. Farrell sees the Departmental Group on Terrorism, so long as it has "a clear and continuous mandate from the White House" (p. 126), as the best vehicle presently available. According to the author, "Coordination alone is not enough. The direction and authority to implement must go hand in glove with any response." (p. 126) However, this development has yet to evidence itself within the Reagan administration. Thus, although this book is highly focused, its currency and the importance of its topic should make *The U.S. Government Response to Terrorism* necessary reading for all lawyers in public policy positions.

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International Trade Practice

Harvey Kaye, Paulo Plaia, Jr., Michael A. Hertzberg (Shepard's/McGraw-Hill, 1981, 2 vols., Index.)

John Foster Dulles—The Road To Power

Dr. Ronald W. Pruessen, Published by The Fall Press, 1982, \$19.95.

International Law Studies

Richard B. Lillich and John Norton Moore, International Law Studies, U.S. Naval War College, Vol. 62 (1980).

International Trade and Practice

From the casual newspaper reader to the experienced international trade lawyer, international trade in the 1980s is recognized as one of the growth areas of law practice, as well as a central facet of American foreign policy. The International Trade Commission (ITC) is one of the U.S. government agencies which is a major actor in the field of import remedies. The authors of *International Trade Practice* have produced a work of immense importance, filling a vacuum in the field of international trade law. It is of particular significance to the practitioner involved in this highly complicated field of import remedies and practice before the ITC.

This two-volume series reviews in clear and concise language the import remedies available to American firms and parties injured by imports. In particular, it is a study of the relevant legislation, regulations, decisions of the ITC and related agencies, and court decisions. It describes actions and procedures under § 337 of the Tariff Act of 1930, which regulates "unfair import practices," particularly those involving patent and trademark infringement by foreign manufacturers. The authors treat two additional remedies available to counter "unfair practices," that is, antidumping and countervailing duties, which were first enacted in 1921 and 1890, respectively. These remedies concern "dumping" of products in the U.S. by foreign firms and export subsidies provided by foreign governments to their firms. The authors subsequently consider escape clause actions (§ 201 of the 1974 Trade Act) and "market disruption" actions (§ 406 of the Trade Act of 1974). These actions are available even though there is nothing "unfair" concerning the product entering the United States, but they allow relief solely because of injury suffered by U.S. industries. The work concludes with a treatment of the Generalized System of Preferences (GSP). The two volumes contain substantial material in the appendix and are intended to be updated periodically.

The particular strength of this work, to this reviewer, is the emphasis on the procedural and technical aspects of practice before the ITC. The authors very clearly discuss the various trade statutes, including the most recent developments enacted by the Trade Agreements Act of 1979, for example, judicial review. The 1979 act implements the MTN Codes of that year, which negotiated under the auspices of GATT, concluded the "Tokyo Round" of negotiation.

It ought to be pointed out that in addition to those remedies covered by the authors, other import remedies are available also. For example, both "retaliation" under § 301 of the Tariff Act of 1930 and "relief" under § 22 of the Agricultural Adjustment Act are available. These actions bring into play activities of other agencies in addition to the ITC, for example, the Office of the U.S. Trade Representative and the Department of Agriculture. In addition to import relief, other aspects of international trade practice

concern the practitioner of international trade, for example, the overlapping jurisdiction of the various congressional committees and executive agencies (Departments of Treasury, Agriculture, Commerce, etc.) in the formation of import policy and negotiation of trade agreements. These agencies are of particular concern in the implementation of import trade policy as well as its formation. Unfortunately, they are not adequately treated, nor are, of course, the more recent changes in appellate review enacted after publication of these volumes.

The authors have produced an exceedingly fine product on the very narrow area subjected to treatment. It is a must for all those involved in the practice of international trade law before the ITC.

The Road to Power

More and more often the question is asked, "Why can't we have a secretary of state who can stay in office, and while in office, make sound foreign policy?" In the last 20 years, with one exception (Henry Kissinger, of course), there has been a succession of nonentities (Rogers, Rusk, Vance, Muskie) as secretaries of state, and they have left marks on foreign policy equivalent to their statures. If the events of the year 1982 represent anything, it is the increasing importance of foreign affairs, the decreasing significance of the American foreign policy influence on events, and consequently, the dire need to reassess the office of the American secretary of state.

Published this year, Ronald W. Pruessen's *John Foster Dulles—The Road to Power*, in many ways answers, perhaps unintentionally, the questions: why does American foreign policy often appear to be out of touch with events; why does it often have the imprint of amateurism; and why is the secretary of state often innocent of any professional and substantial expertise in the field. This volume, which chronicles the life of one of our strongest secretaries of state, amply illustrates a core problem of American diplomacy and foreign policy during the postwar years, a time pockmarked by glittering failures and missed opportunities. Many secretaries of state have come from elite Wall Street law firms and have brought to the office only a limited experience and an even more restricted intellectual perspective and world view. Such narrow-mindedness, as with John Foster Dulles, was further distorted by ideological blindness, reflecting a mixture of turn-of-the-century religiosity and mid-century anti-communism.

Ronald W. Pruessen, who earned a Ph.D. in history from the University of Pennsylvania, presents a sound historical biography of Dulles up to 1952. He lays the groundwork for the further development of his themes in a yet unpublished, second volume covering Dulles' years as secretary of state from 1952-1960.

Pruessen declares in the introduction that, "Diplomacy was an avocation for Dulles. . .whereas law was an almost lifelong vocation." (p. xiii) For the author, Dulles is "a quintessential figure in American foreign affairs. His life and career offer evidence in microcosm of many of the . . .events that have shaped the United States relations with the rest of the world." (p. xiv)

The author points out that Dulles was fundamentally an international business lawyer, educated at Princeton and the Sorbonne, the managing partner of Sullivan and Cromwell, and the grandson and nephew of former secretaries of state. In the 1920s, Dulles "went beyond just thinking about international affairs to the more demanding task of writing and speaking about them." (p.103) In the 1930s and 1940s, "he revealed personal characteristics that became hallmarks of his political style in years to come—a mixture of honesty, dishonesty, caution and opportunism." (p. 227)

The author describes how Dulles' law practice involved counselling German firms and others doing business in Nazi Germany in the 1930s. Certainly, a strange occurrence for the man who spoke out for Christianity and anti-communism shortly thereafter and for the subsequent two decades. The author quotes Dulles as not believing in international law. (p. 273) Again, very strange for the moralist and religious standard bearer of his generation.

The author concludes that Dulles "stands out, though not apart" from other secretaries of state. (p. 509) He further concludes that "the intrinsic shallowness of Dulles' programs for dealing with the global crisis of the twentieth century suggests "a mind of ultimately conservative character." (p. 504) It appears to this reviewer that Dulles' proposals were ultimately a failure to transcend the foreign policy populism of his time, and his rationalizations were at best infantile intellectualism. These failures are all the more glaring since the experience Dulles brought to public life held so much promise for so many.

The author more than adequately performs the yeoman task of the historical biographer. His second volume, dealing with Dulles' years as secretary of state, should trace and expound in greater detail and commentary on how the trends and forces culminated and impacted on his performance as secretary of state. Hopefully, the author will determine whether or not Dulles' well-known image is deserved, which it appears to be, and will draw lessons to be learned for the formation and conduct of American foreign policy for the 1980s.

International Law Studies

Richard B. Lillich and John Norton Moore, on behalf of the Naval War College, have selected readings from the prior issues of the *Naval War College Review* and produced a two-volume set on public international law. Volume two has recently been released. It contains an introduction by Pro-

fessor Lillich with passing remarks on the Entebbe raid and, as expected, international human rights.

Selections in this volume concern three broad areas: the use of force, human rights, and general international legal issues. By far the largest section is on the use of force and treats topics such as coercion, laws of warfare, prisoners of war, and executive authority to use force abroad. Authors of the selections include Rosenne, Fenwick, Baxter, Tucker and Briggs. As one would say, they are "the big ones."

The selections concerning human rights have articles by Hauser, Sohn, and Goldie. The section on general international legal issues includes selections from McDougal, Baldwin, MacChesney, and Evans and treats such topics as jurisdiction, status of armed forces abroad, and recognition.

The readings in the volume are essentially in the mainstream of international law writing of the last two decades, that is, with emphasis on legal doctrine and to a minimal extent, its relevance to foreign policy and national security. The volume represents, in a certain sense, the best and worst of international law scholarship, with its general and overall emphasis on doctrinal and textual controversies.

While the selections are well written, this reviewer feels that such writing contains a great deal of legal sterility because it offers very little policy relevance, especially as international law relates empirically to the foreign policy process. Nevertheless, this work should be useful for any student of international law seeking a carefully edited collection of works by leading scholars treating important issues.

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