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## Book Reviews

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## BOOK REVIEWS

EDITED BY A.U. DE SAPERE

### **The Modern International Law of Outer Space**

By Carl Q. Christol. Pergamon Press, Elmsford, NY, 1982. Pp. 932. Index. \$85.00.

Carl Q. Christol, professor of international law at the University of Southern California, has written the most comprehensive book on the public international law of outer space to date. A wealth of information on negotiating histories, current debates in international organizations and the latest research has been beautifully organized with closely reasoned legal-political analyses. These analyses cover the space law treaties in force, the 1979 agreement on the moon, the orbit/spectrum resource, direct television broadcasting, remote sensing, nuclear power sources and space transportation systems.

The 932 pages are admirably bound in brown with gold lettering by Pergamon Press. Sixteen chapters are broken down into as many as eleven parts. The appendices are not only the texts of cited documents, but also lists of the states which have signed, acceded or ratified the space treaties and the members of the UN Committee on the Peaceful Uses of Outer Space (COPUOS). For some reason, however, the book is in typeset rather than print. Material of this importance and price deserves to be printed—a feature which would make using the footnotes and index much easier.

As explained in the Preface, Professor Christol identifies the interests, values, wants and needs of those states, persons and institutions in the development of space law for each subject. This allows for an assessment of the policies which give meaning and direction to an emerging field of law. A carefully detailed negotiating history is given to advance understanding of substantive principles and rules of law and to provide guidance when questions of meaning arise. For issues not yet in formal agreement, examination of the outlook of states and private scholars serves as a starting point for interpretation of meaning and future prospects.

Along the way, Professor Christol emphasizes several important elements for successful rules in the use of space and its resources. These include: (1) the needs to be met for negotiations such as the need to reach understanding on sharing space resources and benefits as opposed to fixing exclusive rights (p. 9); (2) the realization that attempts to establish a political legal regime to facilitate peaceful and orderly exploration, use and exploitation of the space environment and its resources mandates decisions by community process to assure common sharing of benefits by specific procedural and substantive decisions (p. 10); (3) the areas of past experience providing suitable guidance in the formation of new international legal regimes and the creation of new international organizations as under the 1979 agreement on the moon (p. 418); and (4) the importance of self-interest in supporting an international order in order to maximize national wants, needs, interests and values (p. 593).

The legal regime for various space activities is presented very thoroughly, with analysis of the 1979 agreement on the moon in chapters 8 and 9 particularly so. As in other chapters, Professor Christol introduces the state of the art in technology, explains policy issues, identifies the international organizations and forums involved and sets out the negotiating history. His review of various negotiating texts should be read carefully with the final formal agreement nearby to avoid confusion. Christol finds an existing momentum in the demonstration of the feasibility of exploiting space-based solar energy and the natural resources of the moon. Under such circumstances, he feels it "may not be too soon . . . to give further attention to the facts, problems and policies that have been examined here." Certainly the 1979 agreement is not yet widely adhered to. Only four states have ratified and among the eleven signatories, only France and India could be considered "space-resource states." Given this fact, an additional paragraph would have been helpful to direct the reader to the applicable principles for non-parties, e.g. the U.S. and USSR.

Given the pace at which space law changes, future editions or an annual update of this book would be most welcome. The practitioner should be aware of changes which have already occurred since June 1982. For example, the discussion on the geostationary orbit in chapter 11 has been superseded by new language in the 1982 International Telecommunication Convention. The first part of the administrative radio conference on the orbit has been postponed until 1985. There is also new numbering for the articles, resolutions and recommendations of the ITU documents. As another example, principles on international direct television broadcast satellites were adopted by the 1982 UN General Assembly in Resolution 37/92 after the tradition of consensus was broken in the Special Political Committee and by a vote of 107 in favor, 13 against, and 13 abstaining.

Given the scope of Professor Christol's work, suggestions for changes and additional material are minor ones. Chapter 11 could use a short paragraph on the earth exploration satellites service which covers remote sens-

ing and meteorological satellites and which has attracted little controversy in comparison with the fixed and broadcast satellites. In addition, the connection needs to be made more clearly between the effect of ITU studies and standard setting concerning the transmission of electric power by radio frequency from space objects (p. 591) and the actual establishment of solar power satellites (chapter 9). Finally, the term "dialogue" (p. 584) describing the claims by the equatorial states to the geostationary orbit and the response of other states seems wholly inaccurate considering how emphatically the claims have been refuted before the UN, the ITU and every other forum each time they are raised.

Professor Christol has made an excellent historical presentation of modern international space law with an identification of needs for future consideration. The technical review and legislative history should be most helpful to practitioner and scholar alike. His use of "political-legal" variables reminds one of the complexities in negotiations and raises several provocative issues. However, the very sophistication of the analysis, while scholarly, requires the closest reading and often masks the underlying theme rather than illuminates it. In sum, *The Modern International Law of Outer Space* has all the information of a key research tool while highlighting the premises, policies and practices to be resolved for the continued peaceful use of the space environment and its natural resources.

AMANDA LEE MOORE  
New York City

## Guide Pratique: Article 177 CEE

By Roger-Michel Chevallier and Dominique Maidini. Luxembourg: Office for Official Publications of the European Communities, 1982. v, 121. Index, Table of Cases. BF240.

From time to time the European Communities publish works of practical use to lawyers. The present guide is an example.

The authors of this handbook have rendered a great service to attorneys practicing EEC law. While the guide, written in French, is designed to be used primarily by French practitioners and judges, who according to the authors have shown a certain reticence in the use of the procedure provided by article 177 of the Treaty of Rome, it is in fact a valuable aid to all lawyers considering to take advantage of the possibility of this procedure. The guide is intended to facilitate the practitioners task and to provide an easy to follow roadmap.

Article 177 provides for a procedure whereby the Court of Justice in Luxembourg has jurisdiction to give preliminary rulings concerning:

- a) interpretation of the Treaty;
- b) validity and interpretation of acts of the institutions of the Community, and
- c) interpretation of the statutes of bodies established by an act of the Council of Ministers when those statutes so provide.

Any national court of a member state may request such a preliminary ruling. Courts from which there is no appeal are required to bring issues of interpretation of EEC law falling within the above parameters to the Court of Justice. In this way the Treaty tries to prevent differing interpretations of Community law.

The first half of the guide takes the reader through the birth of a question requiring a preliminary ruling: the question, who should bring it and the procedure for bringing it before the Court of Justice. The second half describes the reply to a request by taking the reader through the procedures before the court, both written and oral, and mentions the attendant fees and expenses. The court's reply is examined: including a discussion of the court's determination of its competence, the court's method of dealing with the questions presented, and finally the authors consider the application of the court's ruling. This last point is important since in this type of procedure the court is not considering (at least in theory) the facts of the case and does not reach an enforceable judgment. Rather the court limits its ruling to an interpretation in a Community context of a particular legal provision.

The guide provides in an annex certain helpful hints (actually prepared by the court's staff) which when followed help to expedite the court's handling of its case load in an efficient and rapid manner.

As the authors state in their conclusion, article 177 creates and preserves the character of the Community as a community of law in which—despite all the differences of the states—all the citizens, all the entrepreneurs and all the member states have the same rights and obligations.

THAD W. SIMONS, JR.  
Brussels

## **A Guide to Doing Business on the Arabian Peninsula**

By Quentin Fleming. New York: Amacom. 1981. Pp.150. \$30.

This book is a straightforward and informative primer on doing business in the Arabian Gulf. The author, who has worked extensively in the Middle East, describes the business climate and the cultural differences which are likely to affect any American undertaking there. He provides a country-by-country overview of the eight countries in the Gulf, a directory of

sources of available information on each country, an impressive bibliography of background and commercial reading, chapters on Islamic and U.S. law, and a discussion of other considerations fundamental to doing business in the Arab world.

The book highlights the potential business opportunities that abound in the Gulf. The possibilities of expanding into the Arab world are many, and virtually unexplored by comparison with better known segments of the international market. The author discusses the particular problems associated with doing business in the Muslim world, but they are by no means overwhelming and should not deter the entrepreneurial businessman. The opportunities for technology, services, industry and construction are only limited by the staggering revenues at the disposal of the Gulf countries. Many of the governments offer incentives to attract private investment, and unlike lesser developed countries in other parts of the world, they can afford to pay for the development that they want.

The boom of the seventies may be over, but the assets available to the Gulf nations are plentiful from any financial perspective. As long as the developed world continues to rely on oil for most of its energy needs, the Arab countries will remain a force to be reckoned with on the world market. The United States has had longstanding ties with the Arab world; the American business community should not lag behind in showing its interest in this exciting market.

LISA DESOTO  
Washington, D.C.

## United States Space Law—National and International Regulation

Compiled and edited by Stephen Gorove. London, Rome, New York: Oceana Publications, Inc. 1981. 2 vols. Pp. unnumbered sequentially. \$85 per volume.

These two books contain the legislation of the United States relating to outer space, the pertinent regulations, several cases (*U.S. v. Causby*; *U.S. v. Cordova*, and *Piggott v. Boeing*) and the treaties and international agreements which the United States has ratified. Except for the cases, they do not contain materials that relate to terrestrial air space—the air law of the United States.

Professor Gorove provides a brief introduction to his collection of documents, but does not provide editorial or explanatory comment. He points out that in future volumes he may undertake to provide additional cases (because those he has chosen are selective rather than comprehensive), for-

eign case law, and agreements and materials in which foreign states may be a party, but which the United States has not ratified.

A preface to the collection prepared by S. Neil Hosenball (General Counsel of the National Aeronautics and Space Administration) and Richard A. Reeves of the same agency, describes briefly (in sixteen pages) the subject matter of the documents in the book.

While the materials of this collection come from public sources and are available elsewhere, the collection provides a useful compendium of much of the law that concerns United States activities in outer space. Unfortunately, its size prevents the editor from including the valuable staff and committee prints prepared in the Congress of the United States on the subject. Most regrettably it does not contain the conference and committee reports, particularly those regarding the adoption of the treaties. These provide the legislative perceptions and opinions of witnesses concerning the treaties when they were submitted for the Senate's advice and consent to ratification by the president, and, in the case of the testimony on the Outer Space Treaty of 1967 are of great importance in understanding the United States position and policy regarding that treaty.

The book collection can be recommended for all who have a concern with United States outer space policies and activities, particularly as a source for materials, otherwise difficult to locate. It will however need continuing renewal with respect to cases, new agreements and changes in legislation.

HARRY H. ALMOND, JR.  
National War College  
Washington, D.C.

## **The Law of Transnational Business Transactions (vol. 1)**

By Ved P. Nanda (ed.). New York, Clark Boardman Company, 1981. Pp. xxii, 631-.

The publisher states that this is the first volume of a series which will focus on "parallel business and legal developments in the industrialized nations of the world." One hopes that future volumes will also devote some of their attention to developments in the "newly industrializing" and "developing" countries. A quick perusal of any paper's business section will demonstrate their importance to U.S. businesses and attorneys. As a first of the series, the book lays an excellent foundation. Volume 1 is not just a "how-to" collection of boiler-plate. Rather, the editor, who is director of the International Legal Studies Program at the University of Denver

College of Law, has included articles which analyze selected aspects of international business both practically and theoretically. With this bifocal vision, the authors examine issues facing every international business lawyer.

Naturally enough, the first selection reviews the various forms in which an American firm can do business overseas. This article is well organized and concise, beginning with business forms such as agencies and distributorships and culminating with the vastly more complex foreign subsidiaries and joint ventures. By presenting his analysis in this form, the author, Ralph Lake, an American currently practicing in London, traces the growth patterns of many firms' overseas operations.

An important theme running through the article, indeed throughout the whole book, is that an American practitioner should never depend solely on his own research when operating overseas. The assistance and close participation of knowledgeable local counsel through out an international transaction will save time, effort, and capital.

The licensing of technology, either as part of a sale of goods or independently, is an important and growing element of world trade. Robert J. Peters has written two articles (the second as co-author) analyzing such technology transfers. The first is an overview of the risks and benefits of those transactions. It focuses the readers attention on a valuable, but often overlooked fact: technology is a corporate asset. As such it can be marketed like any other product in a company's line.

The companion place in a comprehensive analysis of technology transfer agreements. It first examines the various business forms applicable to technology transfers, e.g., licenses, joint development projects, joint ventures. However, in most technology transfers, mere sale or license of the technology will not guarantee its successful exploitation by the purchaser/licensee. The article describes some of the additional elements (e.g., component sales, training, managerial assistance) that often constitute elements of a technology transfer and how an agreement can control them. Finally, draft forms for patent licenses and technology transfer are included.

Of continuing interest to American business men and their lawyers is the impact of antitrust rules on their operations. This volume devotes several articles to these issues. Antitrust is examined intensely from the U.S. and Common Market viewpoints. There is a comprehensive analysis of the jurisdictional aspects and extraterritorial application of U.S. antitrust regulation. The EEC's case law is reviewed, as is their "single enterprise theory," which is a technique for "lifting" (somewhat less painful than piercing) corporate veils.

The book's editor contributed an article describing the state of U.S. law on choice of law provisions, and forum selection. The right to choose one forum in the event of a dispute is too often overlooked. Professor Nanda leads us through the intricacies of U.S. rulings. Notwithstanding such clauses, however, many jurisdictions require disputes in specified areas to



be litigated in their courts. The volume also includes excellent papers concerning U.S. taxation of foreign residents, natural resources investment, U.S. boycott law and selected contract clauses.

This volume will be useful to experienced practitioners, lawyers representing clients internationally for the first time, and students of international business transactions. With the promised updates and future volumes in the series, the *Law of Transnational Business Transactions* will be a valuable addition to library shelves.

IAN BRUCE BIRD  
Buenos Aires

### **Parry & Hardy: EEC Law (2nd ed.)**

By Anthony Parry and James Dinnage. London-Rome-New York: Oceana Publications, 1981 Pp. lvi, 484, Appendices, Index. \$50.00.

This second edition of *Parry & Hardy: EEC Law* brings the first volume of 1973 up to date as of January 1, 1981. It thus includes the accession of Greece to the European Economic Community as its tenth member. The work, written by two British barristers, represents a quite comprehensive treatment of the European Economic Community, its treaties, structure, institutions and policies and, as such, is a very useful aid to the practitioner who has had only a casual exposure to the Community as an organization and its policies and practices.

The book consists essentially of six parts and contains an introduction, a description of the institutions of the Community as well as treatments of the Community legal order and court of Justice, the foundations of the Community and its so called "Four Freedoms," the policies of the Community and its external relations.

Despite its title, however, this work emphasizes less the substantive law of the Community than its structure and institutions. To be sure, it contains numerous references to the substantive law of the Community and to interpretations of various articles of the Treaty of Rome by the European Court of Justice, but anyone seeking a precis of the current state of Community law on a particular subject would have to consult other sources. However, this does not mean to detract from the usefulness of this work as a comprehensive treatment of the framework within which the institutions and the law of the EEC can be understood. From the point of view of the American practitioner, I have found that it places the Community and its functions in excellent perspective.

What may be of greatest interest to the American practitioner are the chapters on the structure and procedure of the European Court of Justice,

the scope of its jurisdiction and the effect of its judgments. It might be noted, in this connection, that United States companies have had frequent occasion to appear as defendants before that court for various alleged transgressions of the Treaty of Rome.

Of more academic interest to the American reader would be the part dealing with the supremacy and direct applicability of Community law, in particular, since such a reader may tend to view the law of the Community as a sort of overriding federal law, similar in effect to the federal law of the United States. In this connection, it is interesting to observe the manner in which the European Court of Justice has enunciated the view that the Community "constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights" and established further that "according to the spirit, the general scheme and the working of the Treaty, certain provisions must be interpreted as producing direct effects and creating individual rights which national courts must protect."

As far as the institutions of the Community are concerned, it should be noted that these institutions actually serve three communities rather than one, such three communities consisting of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community. Subsequent to the establishment of the latter two communities, a merger or fusion treaty was entered into pursuant to which a single commission began to exercise the functions of the High Authority of the Coal and Steel Community and the other two commissions and a single council of ministers began to exercise the function of the council of ministers of each of the three communities. The instrumentalities located in Brussels thus in effect serve three separate communities, the membership of which is not identical.

Accordingly, anyone interested in the manner in which the Community was established, how its policies are being carried out and enforced and in the interrelationship between national law and Community law would do well to review this work.

ENNO W. ERCKLENTZ, JR.  
New York City

## **The Falkland Island Dispute in International Law and Politics: A Documentary Sourcebook**

By Raphael Perl. New York, Oceana Publications, 1983. Pp. xii, 722. \$45.00.

The dispute between Great Britain and Argentina over the sovereignty of the Falkland Islands has caused a rush of scholars to the challenge of discussing the merits of this issue in terms of international law. The modes of acquisitions of territories in international law have been examined by the scholars but yet the near unanimous opinion is that no agreement exists as to the modes of acquiring territory "in international law." Only scholars have recognized methods that states can acquire territories, but the inhabitants of the concerned territories are unaware of these theoretical distinctions. This is the irony of this dispute!

This work is a collection of the key documents involved in this dispute with an introduction and an annotated historical chronology. In the introduction the author has recounted the history of the dispute, the positions of the two states involved and an analysis of the argument in relation to decisions of the International Court of Justice and other bodies of this nature. This is a very good analysis of the dispute which, in turn, gives meaning to the documents which are included in the volume. The author concludes that the chances of the United Nations finding that "the Falklanders have a right to determine the sovereignty status appear bleak." (p. 40) Obviously, there is no clear cut "legal" answer to this dispute. No answer will be found that will not hurt some three thousand individuals who have invested a number of years of their lives in making a living and who, if attempted to go elsewhere, would not be greeted or given the chance to reach a similar status in life as they now enjoy. It is certainly unfortunate that nations will appeal to "law" when disputes or injuries to national honor that took place years before, are called into question.

In its broad outlines, the history of the dispute is well known but many of the details are in dispute. Did the Argentine government in 1816 intend to turn the islands into a frontier garrison and penal settlement? This raises the question for scholars whether this meets the criteria of settlement, under international law. The individuals sent to the Falkland Islands by Argentina revolted in 1832 but the revolt was crushed by the Argentine government. The British moved in. It is significant that in this period when scholars in international law expend so much attention on human rights that no one asked what happened to these original settlers and whether they became absorbed into the settlement later established by the British on the island, or did these prisoners return to Argentina? Did the British displace any actual settlement? The author has pointed out a number of discrepancies in the facts as given by both sides. It would be interesting if those who

are putting forth the arguments for both sides would or could determine the motives of those Argentines who have settled on the Falkland Islands after the British established permanent settlements. Do they believe that they would be better off under the British flag than the Argentine flag?

The author has discussed in this introduction the role of the United States in this dispute and its obligations if there be any, under the Rio Treaty to defend Argentina or the application of the Monroe Doctrine to the dispute. Does the Monroe doctrine apply in this dispute or are there facts which make the Doctrine inapplicable? But are such considerations political or legal? The author does not express his views on these issues.

The documents collected in this volume are those that are perceived as having a bearing on the dispute beginning with the Papal Bull of Alexandria VI of 1493 and extending through the various treaties and notes and UN Resolutions adopted since that date. Examining the list of documents, the predominant number have been generated since 1960, as this question has come under diplomatic examination.

It appears that all the major documents to the dispute including selections from the debates of the Security Council in April, 1982, are included and that upon the examination of them in this volume, one would still be left with no absolute resolution of the issue. Many of the documents shed light upon the history of the area and the life and economics of the islands. The reply of Lewis Vernet, the Argentine governor of the Falkland Islands to the charges of the United States involving the seizures of American Whaling vessels and the action of the United States Navy has for these reasons a special interest. This is a tedious, but humanly interesting, document. The governor traces the history of the islands and the actions of other nations in the area and argues the consequences of these actions. One judges from this reply that he was well informed of the history of the area including the voyages of discovery. But more importantly, this document reveals an attitude towards the European nations similar to that expressed today by the Third World countries. The governor of the Malvinas writes in 1832, "Certainly if we were to attend to the practices observed by covetous Europe, in former hapless Ages, in arrogating to herself the Sovereignty of Countries whether inhabited or desert" (p. 241) or "Europe did not follow any other measure in the usurpation, (which she gilded with the name of Colonization), of the spacious Regions of the New World" (p. 242) are but two examples of his opinions of the contemporary practices and attitudes of the European nations.

What is the validity of these UN Resolutions as well as those of other international bodies such as the Inter-American Juridical Committee? The UN General Assembly has consistently sided with Argentina in the dispute but one may question the soundness of the support when viewing the history of those states who dogmatically supports that country. Is a Resolution of the General Assembly reached after a deliberate consideration of all factors or do states reach their position on political considerations only? Legal

scholars will continue to discuss the matter in abstract terms without reaching any firm conclusion.

The bibliography is very useful and includes works on original voyages, as well as articles and books published in Argentina. An index to the work would have been useful.

The author is an international law specialist in the Library of Congress who made this collection of documents at the request of a senator for the congressional discussions on the role of this country in the dispute. His introduction shows great insight in the many facets of this dispute and is, in the opinion of this reviewer, the best presentation available in the literature. The completeness of this collection and the convenience of having these documents collected in one source, contributes to the value of this volume in any international law collection.

ERWIN C. SURRENCY  
Athens, Georgia

## **Saudi Business and Labor Law, Its Interpretation and Application**

By A. Lerrick and Q.J. Mian. London: Graham & Trotman, Ltd. 1982.  
Pp. 289. \$150.

This book is an excellent synopsis of much of the basic business and labor law presently existing in the Kingdom of Saudi Arabia. The singularly most difficult obstacle for lawyers dealing in the Middle East is that many books on the region are either practically useless discussions of Sharia history and theory or simply consist of compiled copies of laws, decrees and regulations—often in bad translation. Finally there is an English language treatment that clearly explains and discusses many Saudi legal areas that are frequently of vital concern to lawyers and the business interests they represent. For a lawyer new to the Region, the book is an outstanding introduction. For the experienced, reading it can effectively bring into a comprehensive form many of the bits and pieces of understanding accumulated over a period of time.

Although the book's title indicates two major sections, the six chapters actually deal with four areas. They are labor relations, forms of business organization and agency, *diyah*<sup>1</sup> and dispute settlement, including both trial and arbitration.

As befits the substantial impact on business activity in Saudi Arabia, labor law occupies almost a third of the narrative. *Diyah* has the briefest

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<sup>1</sup>"Blood money"—a private right vested in a decedent's heirs.

portion with only about fourteen pages. This is appropriate for a work so clearly intended to be an easily read reference for businessmen and their legal counsel.

The coverage of business associations is compact but thorough. There are separate discussions devoted to the different types of agency and a description of the various business forms with an emphasis on the limited liability company since it is the one most frequently used in joint enterprises between Saudi nationals and foreign interests.

While resolution procedures for labor disputes are specifically discussed in conjunction with the treatment of labor law, the last one-third of the book is devoted to the wide range of commercial dispute mechanisms, including the Sharia court system, that exist in the Kingdom. Arbitration receives very good coverage together with a long list of arbitrations clauses.

The book does not explicitly treat the concept of contract. Islamic jurisprudence takes a very literal approach to a contract, tempered with an effort to ascertain the parties' true intentions and a policy of simply prohibiting anything proscribed by Islam or a government regulation. This may be why contract was not given a specific discussion. However, while the book frequently discusses how particular problems of contract are handled in the context of other areas, it would have been interesting to have an idea of how a Saudi court might handle issues such as liquidated damages.

The only serious flaw in the book is the way judicial decisions are frequently accorded precedential value. At a couple of points, there are references to "case law" as being either supportive of, or opposed to, a legal proposition. Despite the concept of *Ijtihad*<sup>2</sup> plus a natural effort within any legal system to achieve consistency, reliance upon this as a form of *Stare Decisis* could be dangerous. The Sharia system is not based on case law. Since there are no rules for following precedent, a judge (*qadi*) is not bound by either his own prior decisions or decisions of higher courts.<sup>3</sup> The same basic approach is taken by the various specialized commissions. However, the book's frequent use of actual cases, if taken by the reader only as examples, provides a very helpful dimension, giving flesh to legal structure.

This is not a book for the armchair international lawyer. It is a well written tool for a practitioner whose activity presently encompasses, or soon will, business transactions and investments in the Kingdom of Saudi Arabia.

STANLEY SANTIRE  
Houston, Texas

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<sup>2</sup>Islamic principle of personal reasoning.

<sup>3</sup>Shamma, *Law and Lawyers in Saudi Arabia*, 14 INT'L AND COMP. L.Q. 1035 and Seaman, *Islamic Law and Modern Government: Saudi Arabia Supplements the Sharia to Regulate Development*, 18 COLUMBIA J. OF TRANSNAT'L L. 441.

## **Antitrust and American Business Abroad**

By James Atwood and Kingman Brewster. 2nd ed. New York: McGraw-Hill Publishing Co. 1981. Two-volume text. Pp. 359 and 355.

## **Foreign Commerce and the Antitrust Laws**

By Wilbur Fugate. 3rd ed. Boston: Little Brown and Company. 1982. Two-volume text. Pp. 427 and 460.

It has now been a quarter century since Kingman Brewster<sup>1</sup> and Wilbur Fugate<sup>2</sup> first published their respective treatises on the application of United States antitrust law to international business transactions. Despite the many major developments that have occurred in the area of international trade,<sup>3</sup> both treatises have passed the test of continued extensive use by the legal profession. These recent editions remain true to earlier ones in terms of focus and scope and have maintained the standard of excellence. Thus, this review may and will dispense with the customary paragraphs of critical praise, which would only be redundant of so much that has already been written about these works.

Rather it will be the function of this review to compare and contrast the strengths of these treatises and make recommendations as to how each can be best used to meet varying legal reference and research needs.

Both works start from the premise that the reader has a basic understanding of United States antitrust laws and concern themselves with the application of those laws to international business transactions.<sup>4</sup> The fundamental point of departure between the two treatises is their approach.

The Atwood-Brewster approach is policy oriented. It is more academic, more questioning than is Fugate's. Greater emphasis is placed on the reasons and rationale than there is on exhaustive discussion of case law. Because of this emphasis, a practitioner should be able to read the relevant sections of the Atwood-Brewster treatise and be in a position to spot issues in his or her own practice.

The strength of the Fugate treatise lies in its comprehensive treatment of

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<sup>1</sup>K. BREWSTER, *ANTITRUST AND AMERICAN BUSINESS ABROAD* (1958).

<sup>2</sup>W. FUGATE, *FOREIGN COMMERCE AND THE ANTITRUST LAWS* (1958).

<sup>3</sup>Fugate updated his treatise in 1973. W. FUGATE, *FOREIGN COMMERCE AND THE ANTITRUST LAWS* (re. ed. 1973).

<sup>4</sup>Neither the Atwood-Brewster nor the Fugate text provide a thorough comparison of U.S. antitrust law to the antitrust laws of other countries. One treatise providing such a comparison is B. HAWK, *UNITED STATES, COMMON MARKET AND INTERNATIONAL ANTITRUST* (1979).

the relevant law and its wealth of citations to statutes, rules, regulation and decisions, as well as to other secondary materials. As a result the Fugate treatise is likely to be more useful in a litigation context and be an excellent starting point for brief writing.

Both the Atwood-Brewster and Fugate treatises have grown to two volumes reflecting the increase in importance of the subject and the magnitude of the changes that have occurred. Atwood-Brewster begins by leading the reader through a maze of policy considerations from many different perspectives. This is followed by a one-hundred page analytical introduction to the relevant statutes and international antitrust rules as well as to the historical development of their application. After only a brief introduction to the relevant antitrust statutes, Fugate delves into questions of jurisdiction discussing in great detail all of the relevant case law and secondary materials. Atwood-Brewster also devote a major section of their treatise to jurisdiction and related issues. The analysis in Atwood-Brewster is thorough, but opinionated.

Both treatises deal with traditional international business arrangements such as patent and trademark licensing, foreign related joint ventures and acquisitions, as well as other legal issues impacting multinational corporations. Fugate provides several chapters dealing with the application of the antitrust laws to international trade practices organized in a manner which most antitrust practitioners are familiar—per se offense, Rule of Reason, monopoly in foreign trade and the application of section 7 of the Clayton Act.

Atwood-Brewster devote an entire section in their book to administration of law issues such as allocation of law enforcement responsibilities between the Department of Justice and the Federal Trade Commission. The impact of subpoenas and document requests are examined from both the foreign and domestic perspective. Fugate tends to weave these issues throughout his treatise rather than treat them in a separate section.

Atwood-Brewster devote the last section of their book to a proposal of amendment of the United States antitrust laws to clarify their jurisdictional reach. Fugate's treatise does not propose changes to the antitrust laws, but does recognize the controversy involving jurisdiction.

After the publication date of both of these treatises Congress passed the Export Trading Company Act of 1982.<sup>5</sup> Title IV of that act does clarify the jurisdictional reach of the antitrust laws in a manner similar to that proposed by Atwood-Brewster.

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<sup>5</sup>Pub. L. No. 97-290. Relevant positions are printed at [4 Federal Laws] TRADE REG. REP. (CCH) ¶¶ 25,117, 25,245, 27,000-32; see CONG. REC. H8341 (daily ed. Oct. 1, 1982) (The Conference Committee Report on the Export Trading Company Act of 1982).



We believe that both are excellent treatises containing complimentary strengths. Go to Atwood-Brewster to identify issues and conflicts; go to Fugate for an overview of where the weight of authority lies. A good law library should have both treatises.

DAVID N. GOLDSWEIG  
KENNETH D. ENBORG  
Detroit, Michigan