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Book Reviews

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BOOK REVIEWS

Contractual Adaptation and Conflict Resolution

By Martin Bartels, Volume 8 in *Studies in Transnational Law of Natural Resources*, published for the Institut für Ausländisches und Internationales Wirtschaftsrecht at Frankfurt am Main; translated and edited in English by James E. Silva, Kluwer Law and Taxation Publishers, Deventer, Netherlands, and Alfred Metzner Verlag, Frankfurt am Main, 1985, pp. 187, DM 120.- /U.S.\$ 42.

This book is one of the end products of an ambitious research project on mineral concession agreements pursued by a group of scholars at the *Institut für Ausländisches und Internationales Wirtschaftsrecht* at Frankfurt am Main over a period of many years, and it is the most accessible one to a foreign readership. It is based on a study of 109 venture contracts (identified in an appendix) for the mining of metals entered into among the governments of 39 developing nations and foreign investors. Its aim is to “examine methods of formulating [such] contracts so as to avoid potential conflicts or to provide a means for the resolution of disputes which do arise” (p. 11).

The author accordingly treats stabilization clauses (Ch. 2, pp. 15–26), automatic adaptation devices (Ch. 3, pp. 27–33), unilateral adaptation methods (mainly assignment and termination (Ch. 4, pp. 34–50)), bilateral adaptation by revision (Ch. 5, pp. 51–76), and intervention by third parties, i.e., conciliation and arbitration (Ch. 6, pp. 77–171). Since most of the contracts reviewed contain arbitration clauses, it is not surprising that about one fourth of the book is devoted to arbitral procedures.

Dr. Bartels interestingly observes that “[i]t is only in the most exceptional cases that arbitration clauses correspond exactly to the model clauses suggested by the institutions” (p. 96). This is remarkable given the fact that the agreements which are analyzed most commonly provide for ICC or ICSID arbitration, “practically to the exclusion of other institutions” (p. 97). Parties to contracts of this nature, which are typically long-term in character and relate to important fixed investments, or parties to contracts of any other kind, deviate from the patterns recommended by institutions at their peril (*cf.* note 182 at p. 119, where the author for reasons of confidentiality explicitly refrains from disclosing certain agreements whose arbitration clauses have been found to be so defective); indeed there do undoubtedly exist many more clearly “pathological” arbitration agreements than one would imagine. (In this reviewer’s opinion many authors of arbitration

clauses lack the most basic knowledge of the international arbitral process and of drafting techniques required in providing for it. A massive educational effort is needed in the area.) The present book may, it is hoped, serve as an eye-opener in this and many other respects even if one may question certain specific pieces of advice offered by the author on the subject (such as the suggestion that proceedings ought to be located in the host country by agreement at the outset (p. 142)).

The oft-recurring problems of low-level, immediate and fast resolution of technical and accounting disputes by means of experts are duly noted (pp. 101–106), but while the correct characterization of such determinations is made (i.e., that they become “part of the contract itself” (p. 104 *in fine*)), the relationship between expert decisions and arbitration is not treated in adequate depth, nor is sufficient emphasis placed on the deterrent and settlement-inspiring effect of the lack of a mechanism to resolve minor disputes. Similarly, the author very correctly observes that failure to include proper multiparty dispute-resolution rules is a notable deficiency in most ventures of the kind reflected in the agreements subject to scrutiny in this book and results in a “disjointedness in proceedings examining common facts” under various project contracts “and may eventually lead to a loss of confidence in international arbitration” (p. 144); yet the solutions to the problems which are outlined in the book go only half way to resolving them and include the regrettably erroneous assumption that ICSID is empowered to consent to a multilateral arbitration clause which does not relate exclusively to an investment (p. 149). There are other inadvertencies in the treatment of arbitration (such as the statement that it is usual for the ICC Court of Arbitration to provide a clerk of the minutes (pp. 152–53) and the description of the purpose and effect of ICC Terms of Reference (p. 152)). However, these points are of minor importance. The text as a whole, so far as it deals with arbitral law and associated aspects (including governing law), is authoritative, well documented, and practically oriented. It is eminently suited to the needs of the practicing attorney by having a format which permits it to be brought along on distant travels.

The initial chapter of the book is devoted to a useful and balanced survey and analysis of the manifold contractual provisions (stabilization clauses) by which investors have sought to secure the continuance in effect of the main legislative framework affecting the investment, sometimes extending to all relevant laws in the host state. Mindful of the fact that, notwithstanding such desires to achieve long-term certainty and predictability “[h]ardly a venture contract survives its originally foreseen period of duration without some alteration” (p. 71), the author examines at considerable length the various attempts that have been made to create contractual procedures for revision. He also briefly summarizes some case studies of such revision which have become public knowledge.

It is a fact of life that many long-term contracts of this nature are continuously renegotiated. Attempts to predetermine contractually the parameters and implementation methods for such a process are, however, bound to fail. The author recognizes the difficulties inherent in such an exercise (*cf.* p. 72) and resigns to concluding basically that the issues are extra-legal and that legal arguments are of strategic use only (p. 76). This no doubt is correct.

Dr. Bartels has produced an empirically based scholarly study which is intelligent, discerning, exceedingly well documented, and—within the bounds of its predetermined format—exhaustive and up-to-date. Practicing attorneys working on contracts among foreign governments and private investors will find his book of immediate and constructive use in their day-to-day labor to structure and elaborate related transactions. The latter become increasingly complex as the geographical and topical areas in which they occur multiply and as the underlying investments, because of their growth in size, require participation of an increasing number of investors joining forces in divergent, *ad hoc* group combinations.

J. Gillis Wetter
White & Case
Stockholm

Survey of International Arbitration Sites

By the American Arbitration Association, New York, 1984, pp. 108, \$15.00.

A useful handbook for both the litigator and the draftsman, this American Arbitration Association (AAA) Survey was inspired by J. Steward McLendon, former Associate General Counsel of Exxon Corporation. It summarizes both the legal and practical aspects of conducting arbitration proceedings in nine different cities which are often designated as “neutral sites”—Geneva, Hong Kong, Kuala Lumpur, London, New York City, Paris, and Stockholm.

The principal focus of the text is on the contractual selection of the arbitration site either before or after a dispute has arisen. This is more than a matter of physical convenience. In the absence of other contractual provisions to the contrary, the parties’ selection of the site will also determine the rules of procedure for the arbitration hearing and may determine the substantive law as well. The discussion of the nine sites contained in the Survey

will enlighten the practitioner concerning the factors to be considered in making this critical choice.

Except for Kuala Lumpur, all of the cities discussed in this Survey are located in countries which have signed the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This Convention binds the signatory countries to give summary recognition to the validity of contractual arbitration provisions and to grant summary enforcement of awards made in other Convention countries. Beyond this important treaty underpinning, the nine cities display a certain basic similarity in the rules applicable to the arbitration machinery. However, the differences are significant enough occasionally to influence the site selection process.

Arbitration in each of the nine cities is analyzed from the standpoint of enforcement of the arbitration agreement, appointment/challenge of arbitrators, hearings, provisional remedies, and the enforcement/challenge of awards. In addition, the Survey furnishes current information on such mundane matters as currency exchange, hotel rates, and entry/exit requirements.

Site selection may also be influenced by the availability of arbitration services offered by the prominent international organizations headquartered or operating in these cities. The parties to a contract containing an arbitration clause are not required to provide for institutional arbitration, but in practice such entities as the International Chamber of Commerce (ICC) have succeeded in generating significant amounts of arbitration activity from businessmen and attorneys who are more comfortable with institutional arbitration than with the *ad hoc* variety. The Survey includes fee schedules and cost information for the ICC, the AAA, and other arbitral institutions. Some of this information casts doubt on the conventional view that arbitration is less costly than litigation.

Mr. McClendon has appended to the Survey a short overview of the "Practical Considerations for the Use of Arbitration Clauses in International Contracts," which compares arbitration and litigation, considers the rules of the various arbitration institutions and discusses specifically the services offered by the ICC and the London Court of International Arbitration. Mr. McClendon also quotes the various contractual arbitration clauses "recommended" by these institutions but does not discuss the potential dangers of using these boilerplate provisions, which fail to address such basic matters as choice of substantive law, the site of the hearing, the availability of discovery, the use of live witnesses and rights of cross-examination. The careful practitioner will not use these clauses without first thoughtfully considering their modification or expansion to fit the needs of his client.

This Survey meets the need for a concise and efficient reference book in

the field of international arbitration. It will be an important addition to the international lawyer's working library.

Francis J. Higgins
Bell, Boyd & Lloyd
Chicago

Dispute Resolution in Australia-Japan Transactions

By Michael Pryles and Kazuo Iwasaki, The Law Book Company, Limited, Australia, 1983, pp. xxix, 185, Aus. \$17.50.

This is a terrific little book for United States litigators with an international practice. I point this out at the start because, although the title accurately describes the subject matter, it does not completely reflect the true value of the book's contents.

Professor Iwasaki, of Ehime University in Japan, and Mr. Pryles, a barrister who teaches at Monash University in Australia, have written a comparative study of litigation and arbitration involving international transactions in their two countries. Since Japan follows the civil law and Australia adheres to the common law, the book also serves as a good introduction to the different approaches to dispute resolution found in the two systems.

A United States lawyer reading the work will find himself supplying yet another viewpoint and comparing the variations within the common law system between the United States, on the one hand, and Australia with its strong family resemblance to England, on the other. On still another level, some Americans with special interests in federal-state relationships, will no doubt be intrigued by the passing references to issues of Australian federalism.

The authors begin with a discussion of the extent to which Australian and Japanese courts exercise in personam jurisdiction over foreign parties. Neither have moved as far as long arm jurisdiction in, for example, California and New York, although Australia seems generally more inclined than Japan to apply its domestic laws to transactions involving nonresidents.

The next section of the book examines choice-of-law rules as applied to international contracts. Japanese law on the subject has been codified and focuses on only a few factors. Australian law is mostly judge-made and follows English principles in a wider search for the "proper" law. Both respect party autonomy to select a governing law, within limits. The use of *depeçage*—i.e., the application of the laws of more than one nation to

different parts of the same contract—has barely developed in Australia and is apparently unknown in Japan.

In the next-to-last portion of their joint effort, Messrs. Pryles and Iwasaki cover recognition and enforcement of foreign judgments. This important subject rarely receives such extended treatment and detailed analysis. United States lawyers are accustomed to the idea that judgments of other jurisdictions ordinarily should be enforced either under the command of “full faith and credit” or in the furtherance of “comity”. However, absent a treaty or former colonial connection, other countries generally are not so receptive to the judgments of foreign courts. In this regard, it is useful to remember that the United States is not a party to a single treaty providing for enforcement abroad of the judgments of its courts.

The book concludes with an interesting comparative description of the enforcement of international arbitration agreements and foreign arbitral awards. There appear to have been comparatively few cases in either country, but the discussion is an illuminating contribution to the general body of work undertaken in recent years by the International Council for Commercial Arbitration and the United Nations Commission on International Trade Law.

There are helpful tables of authorities and an index. The volume is not padded with appendices. The materials on both Australian and Japanese law are written in clear, workmanlike English.

In summary, any lawyer whose clients have interests in Australia or Japan will find this book well worth its unusually modest cost. And there should be an even wider audience to appreciate it as one of the rare works which deal with some of the complicated issues that commonly confront international litigators on a day-to-day basis.

Michael Marks Cohen*
Burlingham, Underwood & Lord
New York

*Co-Chairman, International Commercial Arbitration Committee, ABA Section on International Law and Practice.

International Law and the New States of Africa

By Yilma Makonnen, available from UNIPUB, 205 East 42nd Street, New York, NY 10017, 1983, pp. 575, \$37.95.

Yilma Makonnen's *International Law and the New States of Africa* is a resounding affirmation of a universal law of nations. The book is a scholarly analysis of the place of the East African states in the theory and practice of international law. Its focus is the fourth of its eight chapters, where Makonnen elaborates the Nyerere or optional doctrine of state succession. The doctrine was employed first in 1961 by Julius Nyerere of Tanganyika and later by the other East African states after their decolonizations as a legal justification for assuming some, though not all, of the treaty commitments made by their predecessor colonial regime, Great Britain. Well over half of the volume is devoted to developing the theoretical debate surrounding the Nyerere doctrine and presenting the practice of the East African nations as successor states. By design, Makonnen addresses only state succession and not the succession of governments.

Makonnen's favorite antagonist is the late D.P. O'Connell, whose two 1967 volumes on *State Succession in Municipal Law and International Law* are often cited for their insistence that the then-newly-decolonized African states were bound by a continuity doctrine of state succession to honor most, if not all, of the treaties made by their colonial masters. One of Makonnen's main themes is that the international law of the nineteenth and twentieth centuries was narrowly positivist and Euro-centric and wrongfully excluded non-European nations from its ambit. He rejects O'Connell's continuity doctrine insofar as O'Connell used it to attempt to perpetuate treaties subordinating African nations to European arrangements.

Throughout the book, but especially in the early chapters, Makonnen effectively links the pre-positivist law of nations to post-World War II international law. He identifies both the law of nations of the seventeenth and eighteenth centuries and modern international law with a universalist perspective. Unlike the positivist viewpoint, this earlier and more recent law includes a natural presumption that all nations, African and Asian as well as European and American, have a common right to formulate international legal rules.

The book makes a strong case for the optional doctrine of state succession. Makonnen defines state succession as a "change of sovereignty with regard to a given territory" (p. 122). He shows how most successor states, including the United States after our successful revolution against Great Britain, insisted upon a clean slate free of the treaty obligations of predecessor states. Makonnen's detailed examination of the practice of the decolonized East African states paints a picture of new states attempting to make a

thoughtful accounting of which treaties to keep in force, an accounting generally accepted by other countries.

Rather more controversially, Makonnen extends the optional doctrine even to treaties settling territorial boundaries. Such an extension may be both questionable in theory and hazardous as a suggestion. No matter how historically arbitrary the present territorial limits of the African states, one wonders if significant territorial revisions can be achieved in Africa with any less bloodshed than they have been on other continents.

Makonnen stresses that in developing the optional doctrine of state succession, the East African states have striven to lend a new substance to international law, even while repudiating some international agreements. They were careful not to tear the fabric of international law, a fabric that, thin though it may be, sometimes helps protect the weak from the strong. As such, international law means a good deal to the developing states, for which Makonnen is a worthy spokesman. He is also an able and effective international lawyer who in his book has helped sew the fabric of international law a bit tighter than it was before.

Mark W. Janis
Professor of Law
University of Connecticut
School of Law

Proceedings of the 27th Colloquium on the Law of Outer Space

Compiled by the International Institute of Space Law of the International Astronautical Federation, New York, American Institute of Aeronautics and Astronautics, 1985, pp. xiii, 413, \$50.00.

Astrobusiness: A Guide to the Commerce and Law of Outer Space

By Edward Ridley Finch, Jr., and Amanda Lee Moore, New York, Praeger, 1985, Pp. xvi, 141, index, \$29.95.

That the field of space law has come of age is amply demonstrated by these two recent volumes, one drawing on a quarter-century's tradition of international law studies and the other reflecting entrepreneurial applications now possible for the first time.

The International Institute of Space Law's 27th Colloquium on the Law of Outer Space was held October 7-13, 1984 in Lausanne, Switzerland. The papers collected in this Proceedings vary widely in formality and scope, but the average quality is extremely high. The four sessions and addendum at the colloquium are organized around six major topics.

The first session contains twenty-one papers exploring the interactions between space law and domestic law, especially in the context of the 1967 Outer Space Treaty Article VI requirement for continuing governmental supervision of the outer space activities of nationals. Among the best papers, a review article by Art Dula, Chairman of the Aerospace Law Committee, of the ABA Section of International Law and Practice, provides an excellent summary of this area as well as a compilation of estimates of the market size of space applications. Harry Marshall, of the U.S. Department of State, analyzes the relevant 1984 legislation (the Land Remote Sensing Commercialization Act, the Commercial Space Launch Act, and various tax initiatives), and Peter Nescos, of McGill University, outlines the parallel international obligations affecting commercial development. The Land Remote Sensing Commercialization Act is examined in greater detail from both United States and Soviet perspectives by Richard DalBello, of the U.S. Office of Technology Assessment, and Professor Youri Kolossov of the Soviet Union. A more theoretical pair of West/East papers (Professor Harry Almond, of the National War College, and Professor Jiri Malernovsky, of the University of Birno, Czechoslovakia) deal with the role of the non-space nations in the creation of "customary" international law. Other related papers cover particular historical episodes, the space law involvements of particular countries, militarization and space object debris.

The second session covers (jointly) protection of intellectual property and use of nuclear power sources in outer space. With respect to the former topic, particularly helpful papers of the six presented include Herb Ling's discussion of NASA joint-endeavor agreements for materials processing in space and Professor Charles Okolie's treatment of patent protection under international law for outer space activities. Additional topics discussed include the creation of a space development bank, specific licensing and copyright problems, and other international intellectual property protection options. With respect to the nuclear-power topic, two of the four papers are especially useful to the field: Professor Cesareo Espada's (of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS)), review of the Subcommittee's findings on nuclear power sources and the Soviet writer Andrei Terekhov's investigation of weaknesses in current space object registration requirements. Other papers in this session examined the fall of Cosmos 954 and the hazardous nature generally of nuclear power sources.

The third session of the colloquium concerns itself with the legal aspects of large space structures. Of the thirteen papers devoted to this daily less problematic subject, those of particular help to the involved attorney are: the treatment by Professor Stephen Gorove, President of the Association of the United States Members of the International Institute of Space Law, of space station liability and damages issues; Dr. Ernst Fagan's investigation of legal issues surrounding large space structures on celestial bodies; and the critique of militarization of manned space stations by Professor Hamilton De Saussure of the University of Akron. Other large space structure issues touched on during the session were the need for a new international agreement, jurisdictional problems, and the possible development of an idiosyncratic "astrolaw" to govern such entities.

The fourth formal session of the colloquium deals with the conditions essential for maintaining outer space for "peaceful uses" (the determining language of the 1967 Outer Space Treaty and the source of the name of the COPUOS organization nearly a decade before). Of the sixteen papers offered here, two deserve special mention: Professor Carl Christol's article on the anti-satellite satellite (ASAT) controversy and Dr. Amanda Lee Moore's review of potential harmful influences. Other topics treated during the session include various disarmament and demilitarization proposals, as well as the long-standing divergence in interpretation of "peaceful" as nonmilitary or simply nonaggressive.

The colloquium concludes each year with a roundtable discussion of a short series of papers integrating technological and legal issues. In 1984, the topic was protection of the space environment. Among the seven papers presented, Nandasiri Jasentuliyana, of the United Nations Outer Space Affairs Division, provides an excellent summary of environmental impacts of space activities and E.A. Roth, of the European Space Operations Center, gives an excellent technical presentation of the potential for collisions in geostationary orbit.

Astrobusiness: A Guide to the Commerce and Law of Outer Space shows how rapidly space enterprises have moved from fantasy to finance. Ambassador Finch, founder of the Aerospace Law Committee, and Dr. Moore have given a superb distillation of the facts and issues in the field. Their brief book serves as an excellent introduction for the practitioner new to the area as well as a useful reference resource for the experienced.

The monograph is exceptionally well laid out and treats in turn: the principal commercial uses of space, including communications, remote sensing, materials processing and energy generation; structures for commercial operations, from Spacelab to the space station and beyond; sources of space transportation services, reviewing the new private launch services as well as the governmental options; risks and liabilities of commercial

enterprises in space and the volatile satellite insurance industry; and sources of capital for financing space business ventures.

United States domestic space law is reviewed in some detail, including a helpful guide to the maze of regulatory agency involvement (NASA, FCC, and Departments of Transportation, State, Commerce, and Defense) that still exists despite the Department of Transportation's role as "lead agency." Existing international space law and international organizations involved in space enterprises are also briskly and effectively discussed.

The last chapter in the book deals with the looming issue of space militarization, but it is followed by several appendices that will receive frequent paging. The first is an annotated list of publications and other data sources in the space enterprises field. Next is a copy of the Presidential Executive Order promoting commercial expendable launch vehicle (ELV) activities. The third contains a list, organized by application area, of more than three hundred fifty companies directly involved in commercial space activities. The final appendix provides a comparative listing of factors affecting purchase of launch services among the major carriers.

The author's expertise and enthusiasm make this book as enjoyable as it is timely. It is hoped that *Astrobusiness* will receive frequent updates in this rapidly developing field.

Edward S. Binkowski
Strategic Comaps, Inc.
New York

EEC Brief

By Gregg Mules, Locksley Press Ltd., Belfast, 1985; distributed in United States by Fred B. Rothman & Co., Littleton, Colorado and W.W. Gaunt & Sons Inc., Homes Beach, Fla.; 2 vols., loose-leaf, pp. 950, \$60, Annual Update Service \$60.

This two volume loose-leaf publication first appeared in 1979. It has been substantially expanded and updated since then. The volumes are divided into self-contained sections which have no page numbers. However, there is an elaborate system for the numbering of paragraphs, and the volumes contain cross-references to paragraph numbers. Each section is copiously footnoted. A glossary of frequently used terms is included at the end of the second volume.

Volume 1 commences with a historical introduction to the European Economic Community (EEC). Relations among the legal orders of interna-

tional law, EEC law, and the national laws of Ireland and the United Kingdom are then examined. The bulk of Volume 1 is devoted to analyses of the EEC's various organs: the Commission, Economic and Social Committee, European Parliament, Council of Ministers, European Council, European Court of Justice, and Court of Auditors. The volume concludes with a chapter on Free Movement of Goods, Persons, Services and Capital.

Volume 2 covers major areas of law, practice, and policy, including: Company Law, Competition Law, Transport, Labour Law, Public Health, Environment, Consumer Protection, and Funding.

The author, a prominent solicitor in Northern Ireland, states that his goal was to produce a handbook of EEC law, practice, and policy "tailored to the needs of business, professional, public and academic sectors" (Vol. 1, Preface). Mr. Myles has achieved his goal with great insight and thoroughness. The volumes combine fascinating analyses of highly complex political and social issues with a wealth of extremely helpful practical detail, such as the names, responsibilities, and telex numbers of EEC officials.

The two sections likely to be of special interest to United States lawyers are those on Company Law and Competition Law. The Company Law section discusses eight Directives and Draft Directives which cover topics including: Employee Participation and Company Structure; Disclosure and Validity; Consolidated Accounts; and Qualifications of Auditors. It also discusses five Draft Regulations and Draft Conventions on: Mutual Recognition of Companies; International Mergers; Bankruptcy; A Statute for European Companies; and European Cooperation Grouping. Each of these thirteen discussions is footnoted copiously to source documents and to commentaries. The section on Competition Law is concise. Nonetheless, the important points are covered and the more than three hundred footnotes provide significant supporting information. The discussion is perceptive and accurate.

These volumes will be an invaluable asset for those who are directly involved in the operation and enforcement of EEC law. Those not directly involved with the EEC should find these volumes to be an intriguing examination of the most successful attempt in recent times at international integration and harmonization. These volumes explain why the EEC is not yet a United States of Europe and why it may never achieve the degree of integration achieved under the United States Constitution.

Joseph P. Griffin
Wald, Harkrader & Ross
London

The Iran-United States Claims Tribunal 1981–1983

Edited by Richard B. Lillich, ed., University of Virginia Press, Charlottesville, Virginia, 1985, pp. 175, \$25.00.

In a collection of seven articles, the book provides a history of the Iran-United States Claims Tribunal and an evaluation of its work to date and attempts to place the Tribunal's decisions in perspective.

In the first article "Developments at the Iran-United States Claims Tribunal: 1981–1983," by David P. Stewart, Administrator for Iranian Claims, Office of the Legal Advisor, U.S. Department of State, and Laura Sherman, after a basic introduction to the origin of the Iran crisis, review the process for establishing the Iran-United States Claims Tribunal within the framework of the Algiers Accords. A concise description of the fundamental structure and jurisdiction of the Tribunal is presented, followed by a brief comment on the Tribunal's activities in the first year, such as selection of arbitrators, dividing itself into Chambers, the slow pace in which the Tribunal issues awards, and the significant accomplishments when deciding two major interpretative cases.

Stewart and Sherman cite some of the significant cases concerning jurisdictional issues and explain in detail the problem of proving nationality and ownership, the scope of permissible counterclaims, the question of unjust enrichment, and the still unsolved problem of exclusion according to paragraph 11 of the General Declaration. The authors finally review some of the most important substantive decisions of the Tribunal concerning awards of interest and arbitration costs, the issue of Iranian control of entities, contract issues, questions concerning Iranian exchange controls, and evidentiary standards.

The second article, "The Iran-United States Claims Tribunal: Private Rights and State Responsibility," by David Lloyd Jones, Fellow of Downing College, Cambridge, examines the Tribunal's function and character. Unfortunately, the question whether the Tribunal is an alternative forum for the resolution of private law claims, a forum for the resolution of interstate disputes, or a hybrid, remains unanswered. The author examines the relevance of the Tribunal's character to the applicability of public international law in the determination of disputes, to the remedies the Tribunal may award, to questions of qualifying nationality of claimants, and to the relationship between the Tribunal and municipal courts.

Andreas F. Lowenfeld, Professor at New York University School of Law, in the third article, "The Iran-United States Claims Tribunal: An Interim Appraisal" presents suggestions concerning procedures, necessary qualities of arbitrators, and how to cope with legal issues that seem likely to arise before the Tribunal. His review is based solely on the awards, directives,

and orders issued by the Tribunal. He attempts to explain why and how the Tribunal uses a series of test cases to deal with the problem of choice-of-forum clauses in contracts and illustrates in detail the different kinds of clauses and their results.

Louis B. Sohn, Professor of International Law, University of Georgia School of Law, the author of the fourth article, "The Iran-United States Claims Tribunal: Jurisprudential Contributions to the Development of International Law," focuses on one issue: "what contribution has the Iran-United States Claims Tribunal made to the development of International Law?" The author asks the further question of whether or not the Claims Tribunal has followed traditional rules or has it blazed new trails? The conclusion drawn by Professor Sohn is that the Tribunal has been very careful about issues of jurisdiction, but on issues of procedure and substance is less conservative and at times is not hesitant to improvise to fit unprecedented situations. The author uses the issue of double nationality as an example of this improvisation by the Tribunal.

Article five, "The Elaboration of Substantive Legal Norms and Arbitral Adjudication: The Case of The Iran-United States Claims Tribunal," by Thomas E. Carbonneau, Associate Professor of Law, Tulane University School of Law, initially presents an optimistic view that the claims arbitration may have implications for normal commercial law principles having a transnational legal dimension. The author discusses the universally or generally accepted legal principles which form a basis for the claims arbitration. The bulk of the article is a treatise on *force majeure* and duty to mitigate damages, but does not draw any conclusions concerning these two issues with regard to the legal issues arising from the Iranian revolution. The author concludes that the claims tribunal devotes very little, if any, attention to the controlling legal principles and their adjudicatory status. He further says that the awards rendered by the Tribunal have been especially devoid of substantive legal content and, as a result, incapable of having much precedential value.

The sixth and shortest article "The Iran-United States Claims Tribunal: A Practitioner's Perspective," by Brice M. Clagett, a partner at the Washington, D.C. firm of Covington & Burling, begins by stating that the Tribunal created by the Claims Settlement Agreement was the answer to the international lawyer's prayer, *i.e.*, it provides a forum. The author also recognizes that another benefit of the Settlement Agreement is that, but for the Settlement Agreement, claims which would have qualified under an exception to sovereign immunity, would have had their attachments held improper under the Foreign Sovereign Immunities Act. Mr. Clagett believes that the main problem created by the Settlement Agreement for the private practitioner is the secrecy requirement. This provision prevents claimants from having knowledge of prior claims which would allow them

properly to evaluate and present their claims. The secrecy provision allows Iran to take inconsistent positions because it has the advantage of knowing about all the claims while individual United States claimants do not. Mr. Clagett's final recommendation, therefore, is that cooperative self-help among claimants is of critical importance.

The concluding article, "The Hostage Crisis and Domestic Litigation, an Overview," by Michael F. Hertz, Appellate Litigation Counsel, Civil Division, U.S. Department of Justice, should be the first article the reader of this book turns to. By breaking the Iranian litigation into four periods with fairly definite dividing lines, Mr. Hertz provides the best overview of the Iranian litigation and allows the reader to grasp the many important legal issues which the Iranian litigation raises. The four periods Mr. Hertz identifies are: (1) the first period consists of litigation pending against Iran in United States courts at the time the hostages were seized and Iranian property blocked in November 1979; (2) the second period starts with the blocking of Iran's assets and the filing of over four hundred lawsuits against Iran and ends with the release of the hostages in January of 1981; (3) the third begins in January 1981 and ends with the decision in *Dames & Moore v. Regan* and includes efforts to free Iran's assets and suspend litigation that could be presented to the Tribunal; (4) the final period is the post-*Dames & Moore* litigation, including fifth-amendment "taking" claims against the United States. Each period is treated distinctly by the author and provides the practitioner with a concise and accurate picture of the Iranian litigation.

The book may serve as a research tool because it brings together authoritative and factual information and provides an analysis of the functioning of the Iran-United States Claims Tribunal.

Wayne H. Rusch
Berliner & Maloney
Washington, D.C.

Doing Business in Canada

By Stikeman, Elliott, Matthew Bender & Co., Inc., Albany, New York, 1985, pp. xxxiv, 2233, \$240.00.

Until the release of *Doing Business in Canada*, earlier this year, the international legal literature has lacked a comprehensive current treatise advising lawyers and businessmen on the legal aspects of investing and doing business in Canada. The three-volume loose-leaf series, prepared by the members of the Canadian law firm of Stikeman, Elliott, consists of a new publication based on an earlier nineteen-chapter, two-volume series issued

originally in 1979 but kept current only to 1980, until discontinued by the previous publisher. It is divided into four major parts, with each part being comprised of several chapters. The four major topic divisions are: Government, Legal System and Business Environment; General Private and Commercial Law; Business Organizations; and Regulation of Business. The publication is both timely and worthwhile in light of the increased awareness of Canada in the United States business community. Any criticisms of the publication are of a minor nature and are set forth herein as possible improvements to the next supplement. The publication represents an extensive and ambitious undertaking and would serve as an excellent reference set for one's library. The comprehensive analysis of Canadian law is well written and organized showing a thorough consideration of the legal issues involved for the foreign investor in Canada.

The introductory chapter in the predecessor volume, on Canada as a place to do business, which largely summarized the contents of the work, has been replaced by an extremely brief introduction to the political system and economic and business environment in Canada at the date of writing. In a more generic manner than its predecessor, Chapter 2 of the new work consists of a fifty-seven-page summary of Canadian constitutional law (amended significantly from the first work due to the patriation of the Canadian Constitution in 1982) and an outline of the framework, institutions, and distribution of federal and provincial constitutional competence. This chapter provides a succinct overview to the foreign reader of the Canadian legislative process.

Chapter 3 of the predecessor work, entitled "Special Factors to be Considered by Foreign Business," has helpfully been separated into chapters on Immigration and Regulation of Foreign Investment with tax and corporate matters inserted into subsequent substantive chapters on the topics. The new text devotes thirty-nine pages to the controversial Foreign Investment Review Act which was replaced, effective June 30, 1985, by the Investment Canada Act, a wholesale revision of foreign investment regulation in Canada, rendering the text to be primarily of historical interest. It is the reviewers' understanding that a new chapter on "Investment Canada" has been prepared and is at the publisher for inclusion in the next supplement. The remainder of the chapter on foreign investment restrictions in specific industries, and a separate chapter on the regulation of specific businesses, provide a useful checklist of proscribed areas for the foreign investor.

As noted, Immigration has been elevated to a separate chapter and organized in a manner that deals with the most significant aspects of Canada's immigration system. The reader should, however, expect no practical insight into finding a path through the administrative morass of the immigration system, which undertaking would, although helpful, arguably extend beyond the scope of the project.

The single largest and most comprehensive section of the work deals with federal (income and excise) taxation and provincial and municipal taxes. Proposed amendments in the recent federal budget, statutory changes in federal tax rates (noted elsewhere in the text), and such provincial developments as the repeal of the Quebec Succession Duty Act will ensure early revision to this chapter.

While the chapter on Import/Export was written before the implementation of new rules for establishing value for duty of imported goods under the Customs Acts and the effectiveness of the Special Import Measures Act (which adopts new procedures in dumping actions), reference is made to salient aspects of these now-operative statutory amendments that serve as guidelines for the reader.

Part II of the work canvasses general, private, and commercial law principles including contracts, property, trusts, commercial instruments and intellectual property, which unlike the previous work are drawn into separate chapters. Of particular assistance in areas of exclusive provincial competence such as contracts and property are the guiding principles of civil law in Quebec and of the common law elsewhere in Canada. While the chapter on intellectual property (unfortunately still lacking an explanation of the registered user provisions of the Trademarks Act or the compulsory license provisions of the Patent Act) is essentially as it appeared in the earlier edition, those on trusts and bankruptcy have been expanded, the latter to include consideration of the broader issues of creditors' rights generally.

A new and interesting chapter on the confused area of Canadian conflicts of law has been added, at a time, in light of recent decisions,¹ when Canadians are particularly sensitive to attempts at extraterritorial application of foreign laws in Canada. The recent federal blocking statute, memorandum of understanding on antitrust matters, criminal assistance treaty, amendments to the Ontario rules of civil procedure, and the relatively underdeveloped state of private international law in Canada should assure regular amendments to this chapter.

Part III deals with Business Organizations. What was a single chapter on establishing a business enterprise in Canada has been expanded to give more detailed consideration in particular to partnerships and corporations, with a focus on such features as a federal corporation law and such requirements of Canadian corporate operations as the mandate of a majority of resident Canadian directors.

New and useful chapters include one on Accounting and another on Government Disclosure Requirements. The former is particularly helpful in its outline of the standards of the Canadian Institute of Chartered Account-

1. *E.g.*, Spencer, (1983) 145 DLR (3d) 344 (Ont. C.A.), leave to appeal granted by Canadian Supreme Court, May 17, 1983.

tants, and the latter because it contains a compilation of often-used forms, reports, notices, and returns prescribed by various Canadian jurisdictions.

The chapter on franchising has been reorganized and presents a broad overview of this area of Canadian market activity. The chapter on competition law in Canada has been expanded and reorganized along the lines of substantive offenses. The chapter on securities regulation in Canada provides a clearer approach to the subject than its predecessor; but a more extensive cross-referencing to provincial requirements other than Ontario, a more detailed analysis of prospectus and registration exemptions, and some insight into the functioning of stock exchanges in Canada would make welcome additions to the materials.

The predecessor chapter on labor law now includes employment considerations. The promise of the latter is largely unfulfilled since the chapter concentrates almost exclusively on labor relations matters and in dealing with employment touches only on legislation and not on the not insubstantial body of common law that has developed in the area.

Environmental law has evolved from a "Developing Area of Legislation," dealing with areas beyond water and air pollution analyzed in the predecessor work. A useful list of principal pollution statutes is appended. Also now separated out for treatment is a chapter on Consumer Protection together with an analysis of product liability law in Canada which comprises the largest part of this new chapter. What appeared underdeveloped to the reviewers here are product safety standards and strict liability in Canada.

The chapter on language legislation remains very similar to its predecessor notwithstanding a number of judicial decisions on the enforceability of the legislation, none of which are cited.

It is the reviewers' understanding that two chapters on Banking and Property have been prepared and are currently at the publisher for inclusion in the next supplement. In light of the present turmoil in the financial community over the Government's initiatives concerning re-regulation, this chapter on Banking should prove interesting and useful to the foreign investor in Canada. The chapter on Property should also be an indispensable tool and source for foreign counsel.

The thirty chapters outlining the various areas of law within each topical division provide, in general, an excellent overview of the law for that particular topic with appropriate statutory and case references. The publication is intended as an overview of the Canadian commercial legal system and not as an in-depth independent analysis of each area of law dealt with. The analysis provided does highlight those areas which are most frequently encountered when doing business or representing clients doing business in Canada. It provides sufficient analysis of the issues that should be considered prior to making an investment in Canada. The treatise does not, however, provide the reader with appropriate references to other literature,

should the reader desire to make an in-depth examination of a particular area. Suggested improvement for subsequent supplements to the publication would be to add a "Selective Bibliography" at the end of each chapter listing the appropriate or leading texts, services, and periodical literature of the area. A bibliography would increase the value of the service to the non-Canadian lawyer and businessperson, who in many cases would not know where to refer to when wanting to make a more detailed examination of a particular area before proceeding with an investment or retaining Canadian counsel.

The publication would be a welcome addition not only to law libraries but also to all lawyers who represent clients doing business in Canada and to those businesses themselves. It gives the private law firm an excellent resource on the Canadian legal system without the necessity of making an expensive investment which would be necessary to build a comparable Canadian reference system of independent materials. In addition, it will serve as a valuable aid for lawyers when advising clients and will create an awareness of the issues and improve competence when dealing with foreign counsel in Canada. Provided that the publication is kept up-to-date through regular supplements and that some of the initial chapters are expanded, the publication will be a good preliminary tool for practitioners, academics, and businesses when looking at the legal aspects of the Canadian business climate. The book should become a requisite resource to all lawyers representing prospective investors in Canada.

Shelly P. Battram*
Reynolds, Beeby, Magnuson & Kenny
Detroit, Michigan

Barry M. Fisher*
Goodman & Carr
Toronto, Canada

*Co-Chairs of the Committee on Canadian Law, ABA Section on International Law and Practice

India: Limited Avenues to an Unlimited Market

Business International, New York, N.Y., 1985, pp. 247 & Apps., pp. 44, \$485.00 (less 25% to colleges and universities).

Business Collaborations in India

By H.P. Agrawal, Aruna Publications, 4/8 Asaf Ali Road, New Delhi 110 002, India, 1984 (3d ed.), pp. 208 & Apps., pp. 700, Rs. 230/\$50.00; plus a supplement; *Investment Guidelines for Indians Abroad*, 1984, pp. 58 & Apps., pp. 42, Rs. 35.

Investing in India: A Guide to Entrepreneurs

Indian Investment Centre, New York, N.Y., 1983 ed., pp. 80 & Annexes, pp. 136, \$10.00.

As the climate for the private sector in India has improved since 1980 and as official relations between India and the United States have become more cordial, the prospect of United States corporations doing business with or in India has regained some of its earlier allure. Fortunately, the last five years has also witnessed the publication of a spate of books and reports dealing with various aspects of doing business in India. Although each of those publications has its weaknesses and although, even taken as a whole, they do not obviate careful planning based on a detailed and up-to-date knowledge of the culture and regulatory practices applicable to the particular area or sector under contemplation,¹ they do provide a wealth of general background information and more specific data that can be immensely valuable to United States businesspersons and lawyers. Three of those publications are reviewed below.

With respect to providing a general feeling for the nature of the market, business climate, and regulatory morass facing foreigners, perhaps the best source—though by far the most expensive—is *India: Limited Avenues to an Unlimited Market*, a special research report prepared by the staff of Business

1. For example, regulatory practices change without notice. In addition, the Government of India's 1985-88 import and export policy, announced in April of this year, could drastically affect costs and must be considered. Also, the recently completed agreement between the United States and India regarding technology transfer in the electronics and telecommunications fields might be relevant to a given project.

International. This book suffers at times from discussions that are generic rather than India-specific, and it exhibits on occasion an unrealistic reliance on market statistics. Nevertheless, it contains a genuinely useful overview of the current business climate in India and numerous examples, and some more detailed case studies, of actual business experiences (positive and negative) in India, which were compiled on the basis of interviews with enterprises from a variety of countries. Those examples and case studies add welcome realism to the discussion and sharpen the reader's focus.

The book begins with the obligatory statistics regarding the immense size and potential of the Indian market. After that Introduction, Chapter I ("What India Offers") describes various possible business opportunities for foreign firms, including: facilitating trade to the Soviet Bloc; utilizing India's pool of educated personnel for staffing in other developing countries; participating in the markets for industrial goods and technology, luxury consumer goods, and agribusiness; and sourcing from India. Here, as elsewhere, the large Indian cooperative sector is virtually ignored; one wonders whether that is justified.

Chapter II ("What India Needs") contains a brief description of India's economic and industrial priorities and policy, including predictions about the contents of India's Seventh Five-Year Plan (1985-86 through 1989-90). The critical importance of India's restrictive regulatory system, including the Foreign Exchange Regulation Act (FERA) and the Monopolies and Restrictive Trade Practices Act ("MRTP Act"),² is discussed, and the fact that India's private sector has an intense interest in maintaining and manipulating that system is identified.³ Prognostications are made regarding which sectors will be high-growth and which will be the key industries for the private sector (including the list of government-favored areas for foreign collaboration).

Chapter III discusses, sometimes only generally, various possible types of business relationships, from equity investments to selling in India to employing abroad Indian managers. The important possibility of involving nonresidents of Indian origin in equity positions is raised briefly, but not in any detail.⁴ Interesting information is provided with respect to the political climate regarding effective foreign control of minority-owned affiliates.

2. For the texts of those and other Indian laws relevant to foreign collaboration and doing business in India, see R. Rosen, ed., *COMMERCIAL BUSINESS AND TRADE LAWS: INDIA*, Oceana Publications, Inc., Dobbs Ferry, N.Y., 1982, ca. pp. 500, \$125.00. That book, which contains a brief introductory chapter describing various aspects of India's legal and regulatory framework, is scheduled to be revised in 1985. See also the appendices to H.P. Agrawal, *BUSINESS COLLABORATIONS IN INDIA* (3d ed. 1984), for the texts of various resolutions, regulations, and tax treaties.

3. *Accord INDIA: LIMITED AVENUES TO AN UNLIMITED MARKET* 219 (1985).

4. See *infra* text preceding note 12.

Summary "boxes" are provided with respect to Government Guidelines for Foreign Collaborations, Patent & Trademark Rules, and Import Policy. The Free Trade Zones and 100% Export-Oriented Units are described, and there is a sobering discussion about working with the agricultural sector. The difficulties posed by the possibility of corruption—which the book predicts will increase in the future—are glossed over, in particular for United States firms: the statement, for example, that "most of the resulting headaches [from corruption] would be the distributor's rather than the principal's"⁵ does not do justice to the reach of the Foreign Corrupt Practices Act.

Chapter IV also includes much generalized advice about structuring business relationships, choosing an agent, etc. The emphasis on the absolutely critical importance of the choice of an Indian collaborator (in whatever role) is well placed, and there is substantial discussion about making that choice. Similarly, the importance of an appropriate strategy for proper governmental relations is made clear. As in the previous chapter, some advice that might relate to corruption should be viewed with caution, e.g., the admonition to "[w]ork with influence peddlers,"⁶ the advice regarding hiring relatives of powerful relatives,⁷ and the statement that "international firms . . . can afford to overlook occasional problems [with corruption]."⁸ The process of involving top management positively in decisions to do business in or with India is emphasized, and a few cultural hints of varying wisdom are provided.⁹ Finally, the discussion of disinvestment, though brief, is a useful reminder for planning purposes.

Chapter V consists of case studies of such business relationships and approaches as joint ventures, licensing, and purchasing. It is not explained how the case studies were selected or how thoroughly verified they were. The case studies highlight issues such as labor relations and dealing with the ubiquitous red tape. Again, the book's approach toward corruption is not terribly helpful as far as United States businesses are concerned: two large Japanese companies are cited for the proposition that corruption is not a problem because it "happens everywhere" and "is a fact of life."¹⁰

Chapter VI ("Longer-Term Opportunities and Threats") contains some interesting predictions but generally is not particularly insightful or provocative. It does suggest that countertrade is likely to become more common in

5. INDIA: LIMITED AVENUES TO AN UNLIMITED MARKET 103 (1985).

6. *Id.* at 158.

7. *Id.* at 159-60.

8. *Id.* at 164.

9. For example, the book advises that, in order "to minimize culture shock" associated with Bombay's busy airport and the drive into Bombay from that airport, a top executive should "go to New Delhi first and transit to Bombay, preferably at night." *Id.* at 132.

10. *Id.* at 191 & 193.

Indian trade. The chapter also documents the increasing role that Japan (with a 24.1 percent average annual increase from 1970–71 to 1982–83) and Western Europe (a 21.3 percent average annual increase over that period) have played in Indian trade and are likely to continue to play (in contrast, the annual increase for the United States over that period averaged only 9.7 percent).

Finally, a Postscript provides comments from various foreign businesses operating in India. The moral of those messages (*i.e.*, focus on long-term profit in India) probably unduly ignores the possibility of short-term profit, *e.g.*, via sale of technology or inputs. The four appendices contain, respectively: brief descriptions of the Companies Act of 1956, FERA, and the MRTP Act;¹¹ brief profiles of selected major industries; a list of approximately one hundred forty companies with foreign equity levels higher than the normal ceiling of 40 percent; and an illustrative list of areas for foreign collaboration.

H. P. Agrawal's *Business Collaborations in India* (together with its supplement, *Investment Guidelines for Indians Abroad*) contrasts with the preceding book in that Agrawal's book contains substantial historical and legal details and is primarily useful to a lawyer involved in planning or in dealing with Indian counsel or to a business executive who must make policy and legal arguments to the Indian Government or who otherwise desires a fairly detailed sense of the Indian regulatory system. For those purposes, this book may be the best available.

Agrawal's book is divided into four parts. Part I contains a description of India: languages, religions, geographic areas, political subdivisions, transportation systems, etc. Although one must not assume to be able to understand the vast variety and cultural complexities of the Indian subcontinent from such an overview, this chapter is not a bad "nutshell" as those things go.

Part Two (chs. 2–7) discusses India's industrial policy and regulations. Chapter 2 describes the evolution and historical background of India's industrial policy in a useful manner, and some documentation is appended. The discussion contains relatively recent information about location of industries and policies regarding foreign investment, but it does not include the 1985 changes. Chapter 3 contains more details regarding the Indian Government's policy toward foreign collaboration, including a discussion of the FERA guidelines (which are included among the voluminous appendices). Chapter 4 provides a useful step-by-step description of the procedure, *i.e.*, the process of obtaining the many requisite government approvals, for establishing an industrial enterprise with foreign collaboration. The

11. See *supra* note 2.

remaining chapters deal (in a quite detailed manner) with repatriation and remittance facilities (5), financial institutions (6), and Free Trade Zones (7).

Part Three (chs. 8–17) provides an important overview of Indian tax law relating to foreign collaborations. Tax considerations being what they are, these materials can be immensely useful. If nothing else, they allow a United States lawyer the opportunity to gain sufficient basic Indian tax information to be able to work intelligently with Indian tax counsel or chartered accountants. The appendices contain, *inter alia*, the texts of India's tax treaties, which allows one to compare the treatment accorded different jurisdictions (e.g., to notice the favorable treatment available for French firms) and to plan accordingly (assuming the collaboration could emanate from more than one country).

Part Four (ch. 18) deals with drafting foreign collaboration agreements (licensing, joint ventures, supply of plant and machinery, other). The textual discussion provides some useful information and advice with respect to certain types of clauses, but relying on that generalized advice in a particular situation—or on the draft agreement and specimen clauses contained in the appendices—would obviously be imprudent.

Agrawal's supplement, *Investment Guidelines for Indians Abroad*, provides a useful introduction to the tax and other incentives available to Indians residing abroad for investing in India. Because many such persons maintain very close ties to India and because involving such persons in foreign investments in India can offer benefits to non-Indian investors, the supplement is of potential interest to non-Indians contemplating investing in India.

Investing in India: A Guide to Entrepreneurs, prepared and distributed by the Indian Investment Centre [IIC] (a Government of India organization), provides a more abbreviated and less current summary of the legal environment facing foreign collaborators than does Agrawal's book.¹² Moreover, the IIC's book tends to describe the black letter law and appears to assume that the actual environment in which the Indian Government regulates and businesses operate is straightforward and unencumbered by unwritten administrative policies and practices. Such, of course, is not the case. Nevertheless, the book contains useful summaries of various aspects of the legal framework and is almost certainly worth obtaining.

12. See also Singhania & Co., *FOREIGN COLLABORATIONS AND INVESTMENTS IN INDIA: LAW AND PROCEDURE* (Feb. 1985) (pp. 26 & App. (pp. 38)). This publication, which was prepared by an Indian law firm, covers most of the topics covered by the IIC book, though usually in less detail (in some instances, it provides different details). The Singhania publication does not parrot the Government's line (as the IIC book tends to do) and is more up-to-date than the IIC book. It can be requested from Singhania & Co., B-92 Himalaya House, 23 Kasturba Gandhi Marg, New Delhi 110001, India.

After descriptions of India and its resources (ch. I) and the Indian economy (ch. II), chapters III and IV describe industrial policy and industrial licensing, respectively. Chapter V describes the rules regarding technology transfer and payments therefor. Chapter VI provides a seven-page overview of the rules promoting investment by nonresidents of Indian origin. The remaining chapters are as follows: VII—Facilities and Incentives for Exporting Units; VIII—Tax Incentive and Tax Rates; IX—Corporate Sector and Finance (including a description of the banking system); and X—Manpower and Labour Legislation. The twenty-two annexes contain lists of industries and items subject to different forms of special treatment, as well as a myriad of application forms for various types of government approval or licenses (again, of course, one should not assume that those lists and forms are current).

As do Business International's and Agrawal's books, the IIC book is helpful in demythicizing the prospect of doing business in India and thus should lead to more informed business and legal planning with respect to that massive and mystical market.

Daniel B. Magraw
Associate Professor of Law
University of Colorado
Boulder, Colorado

Business Transactions in Germany (FRG)

Edited by Bernd Rüster. Albany, N.Y.: Matthew Bender/München: C.H. Beck, 1983, 4 vols. (loose-leaf). U.S. \$400.00, DM 958.00.

With over forty thousand lawyers in the Federal Republic of Germany,¹ many of them engaged in business transactions involving United States enterprises, U.S. lawyers frequently find themselves counseling clients about transactions with this advanced scientific and technological society. Because the German language poses a barrier to many of these American attorneys, a good, readily available English language text on German law is required—one that not only provides a basic understanding of the German legal system, but informs readers of the detail and significance of the German laws that potentially affect their clients' transnational business transactions. In *Business Transactions in Germany (FRG)*, readers will find a richly informative and practical treatment of current German law affecting

1. RÜSTER, *Preface*, I BUSINESS TRANSACTIONS IN GERMANY (FRG) iv (B. Ruster, ed. 1983).

foreign investment, trade, and transactions, as well as explanations of the fundamentals of the German legal system. Although other works have been published on the German legal system in English,² none is as current or as easily obtainable as this one.³ This four-volume work joins the impressive spate of recent "Doing Business in..." books,⁴ which offer practitioners and comparatists valuable information about and insight into the workings of a foreign legal system.

Written by over thirty leading German law authorities affiliated with either large multinational enterprises or reputable German law firms, the three textual volumes are divided into four parts addressing the government and legal system, general private and commercial law, business organization, and regulation of business. An index is provided, and the fourth volume contains English translations of important statutes. Some eleven of the forty chapters are not included in this initial release, but they are reserved for such topics as the Foreign Trade Act, family law and estates, bankruptcy and insolvency, stock companies (AG), and cooperative associations, and will appear in future supplements.

What is provided in these pages reflects a fairly broad treatment of "doing business" subjects. Chapters are dedicated to such useful topics as: litigating in the civil courts, arbitration, contract law, agency and distributorship, real estate law, industrial property and copyright, conflict of laws, consumer protection, the law of corporations and other business organization forms (several chapters), labor law (including chapters on contracts, shop constitution, litigation, and co-determination), taxation, accounting, antitrust and unfair competition (two chapters), product liability, banking, and insurance.

Any work of this magnitude and this many authors is bound to be flawed in some aspect or another. Depending on the interest and experience of readers, there may be desire for greater depth in one area and less in another, overlapping treatments and omissions of topics, or individual chapters may be uneven in quality when measured against the standard of the whole. Given these kinds of potential difficulties, much credit is due Dr. Bernd Rüster, who served as General Editor and effectively organized this forty chapter work coordinating its thirty-plus authors from all over Ger-

2. E. J. COHN, *MANUAL OF GERMAN LAW* (1971); MUELLER, STIEFEL & BRUCHER, *DOING BUSINESS IN GERMANY—A LEGAL MANUAL* (8th ed., 1978); HORN, KOTZ & LESER, *GERMAN PRIVATE AND COMMERCIAL LAW* (1982).

3. Of course, those who have a knowledge of German—and in particular, its legal terminology—can find a wealth of material published in Germany. Some of these publications are easily available through book distributors.

4. *E.g.*, *DOING BUSINESS IN CANADA* (Stikeman, Elliott ed. 1985), which is also reviewed in this issue, see *supra*; and *DOING BUSINESS IN FRANCE* (2 vols.) (S.M. Borde et Associes ed. 1983), which was reviewed in the last issue at 19 INT'L LAW 1029 (1985).

many. Translation problems are kept to a minimum, the tone of providing useful legal information to foreign lawyers is relatively consistent, and overlap and omissions are minor and can be cured in subsequent supplements.

Since such supplements are contemplated, the following suggestions for improvement are offered. *First*, issues of concern to U.S. lawyers often involve how to litigate American-German disputes in U.S. courts, including how to serve German companies and citizens in Germany, how to gather evidence there, as well as German recognition and enforcement of foreign judgments. These topics are sparsely or, in some cases, not treated in these volumes, and there is no indication they will be in future releases. Similarly, American lawyers are frequently interested in the degree to which their clients as foreign defendants may be exposed to the jurisdiction of a German court. Little mention, much less guidance, is offered on this point. *Second*, while the relationship between German and European Community law remains an area of dynamic development and some discussion of it is scattered throughout various chapters, additional clarification of its significance would be useful, especially for the novice to whom this area of law is often enigmatic. *Third*, while the index is helpful and detailed, a transaction/problem-oriented one supplementing the present topic-oriented one would aid practitioners. *Last*, the cost—albeit not excessive for practice books these days—places it beyond the budget reach of many law school and Bar libraries as well as most small- to medium-sized law firms. Unless a law firm or business has a specific and current need for this information or a library has patrons for these kinds of books, the current price makes inaccessible the useful information in this set. That, of course, is unfortunate, because although Germany is one of the United States' most important trading partners and closest allies, many lawyers remain ignorant of its legal system for lack of English language materials.

Business Transactions in Germany (FRG) begins to bridge that gap by making available a work from which an understanding of this complex and different legal system can be obtained. This publication also marks a promising collaboration between major legal publishers—Matthew Bender (U.S.) and C.H. Beck (FRG)—which hopefully will spawn other such works.

Robert E. Lutz
Professor of Law
Southwestern University
School of Law
Los Angeles, California

