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Book Reviews and Notes

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Book Reviews and Notes

With this issue The International Lawyer introduces a new and regular department—book reviews and notes, directly under the Editor-in-Chief. It also includes a list of books received during the preceding quarter. It is hoped that each issue will include full-length reviews in addition to book notes. We shall try to deal with a wide range of books affecting international and comparative law. Emphasis will be on current or recent publications.

If an author, or his friends or associates, feels that a book has been unjustly or unfairly reviewed, he is invited to make use of our department of communications, where brief letters from ruffled writers may appear from time to time.

THE STRATEGY OF WORLD ORDER. By Richard A. Falk and Saul H. Mendlovitz (eds.). Vol. I: *Toward a Theory of War Prevention*. Foreword by Harold D. Lasswell. Pp. xx, 394. Vol. II: *International Law*. Foreword by Wolfgang Friedmann. Pp. xiv, 382. Vol. III: *The United Nations*. Foreword by Oscar Schachter. Pp. xv, 848. Vol. IV: *Disarmament and Economic Development*. Foreword by J. David Singer. Pp. xv, 672. New York: World Law Fund. 1966. \$14.00. \$10.00, paperback.

A "systematic study of world order" is presented by Professors Falk (Princeton) and Mendlovitz (Rutgers) in a collection of approximately 116 articles or documents by 94 authors, aggregating 2296 pages divided into four volumes. The articles are drawn mostly from the writings of American scholars dating from 1942 to the present.

Any perusal of the volumes convinces the reader that the favorite phraseology of the editors includes such words as "system," "strategy," and "policy." Possibly their key word is "systematic" which they have defined as "bringing all relevant intellectual skills to bear and . . . using all the accumulated knowledge on the subject" (I, p. vii). That, obviously, is an ambitious undertaking, for

which the editors are to be applauded; but this reviewer must express his great regret that the editors did not take their own phraseology sufficiently seriously to include an index, systematic or otherwise, to any of the volumes or to the set as a whole. Much of the material may, therefore, lie entombed in the various volumes through the inability of the reader to find it except by careful study of the table of contents. Of course, an index covering the writings of 94 separate authors would have been difficult to compile, but no more so than the index that is normally included with any modern law review.

In developing the materials in Vol. III on the United Nations, which occupy 848 pages of the total 2296, the authors have drawn on the South-West African case in the World Court. So far as this reviewer could determine from checking the text, Professor Falk failed to mention that he had served as counsel to Liberia and Ethiopia in the development of that case. He presented extensive extracts from the argument by Mr. Gross, the Counsel-in-Chief for the African applicants, on the international norm against racial discrimination (III, pp. 75-90) and summarized in seven lines of type the South African view denying such a norm (III, p. 78). Understandably, the volume does not report that the ICJ did not reach this point in its final judgment last July, for it held that Professor Falk's clients did not present a legal case or controversy of the type envisaged by the adjudication clause of the 1920 mandate agreement with South Africa.

Professors Falk and Mendlovitz quote themselves *in extenso* in three of the four volumes, including articles written for other publications or contained in other anthologies which they have edited. The editors have also prepared introductions of varying lengths to each of the articles or documents and have appended review questions at the end for the pondering of the reader.

In these pages Professors Falk and Mendlovitz candidly lay bare for all to read their concepts of international law in "the strategy of world order." Among these concepts are the following:

1. "The intellectual venture that underlies this book" is specified as follows:

For we feel that radical change is an apt subject for study, that we are able to plan for the radical reordering of international society, and that it is not *necessarily* the case that radical change can only be the cause or consequence of disaster. We feel somewhat encouraged in this view by the course of revolutionary

experiences in domestic societies, as well as by the inherent rationality of engaging in an enterprise of thought devoted to specifying the altered conditions for the survival of mankind in an altered world environment" (I, p. 231).

2. International law is approached as both "a source of order" and "as an instrument of conflict in international relations" (II, p. 1).

3. Falk and Mendlovitz are sympathetic to the attitudes of Communist states and the Afro-Asian bloc who are said to have reasons to be "somewhat suspicious of the international legal system since its basic doctrine was generated to support capitalist economic values and to legitimize the assertion of colonial title" (II, p. 3).

4. The authors find that private enterprise in foreign investment is a "good example" of why the Afro-Asian states are "resentful of legal rules which they perceive as the residue of the colonial system" (II, p. 170). Their discussion of private international investment is limited to the following point:

These modernizing societies often resort to radical techniques to obtain capital needed for their program. Large holdings of private property are especially vulnerable to control, even confiscation. Expropriation, confiscatory taxation, laws prohibiting repatriation of profits are among the risks assumed by the investor in such a society (II, p. 182).

5. Falk and Mendlovitz apparently find no difficulty in arguing that "within the area of human rights there exists an overwhelming consensus of states that insists upon coercive action by the United Nations" (III, p. 358), and, on the other hand, in recognizing that a "newly independent state may not want to entrust the ICJ with competence to decide the extent to which it succeeds to obligations inherited from its period of colonial servitude" (III, p. 438).

6. They conclude,

The support of Asia, Africa and Latin America for a new international order would seem to depend more upon their conviction that it would help solve their domestic, economic and social problems arising from poverty, disease, and over-population than upon their fear that otherwise a nuclear war is likely to bring about a global catastrophe (IV, p. 489).

The above gives the intellectual flavor and conditioning employed by Falk and Mendlovitz in the selection and arrangement

of the reprinted materials. In many cases the articles are themselves thought-provoking, especially in the case of the materials on the problems of disarmament and the prevention of war, where excellent materials are presented by Thomas Schelling, Adrian S. Fisher, and others. In other instances the Falk and Mendlovitz flavoring dominates the entire development of data and their interpretation. This reviewer can readily perceive why some of the newer nations—with their preferences for power and resources and their reluctance to engage the international responsibility of the state—may prefer the counseling of lawyers subscribing to the strategy of world order à la Falk and Mendlovitz.

CLIFFORD J. HYNNING

BLUEPRINT FOR PEACE. By Richard N. Gardner. New York: McGraw-Hill Co. 1966. Pp. vi, 404. \$7.95.

Richard Gardner, international legal scholar and former State Department official, has compiled and summarized the reports and recommendations of 30 committees at the White House Conference on International Cooperation held November 29 to December 1, 1965, as a means of implementing the United Nations resolution designating 1965 as "International Cooperation Year."

Each committee focused on three main questions: 1) Where do we stand in this particular area of international cooperation? 2) What should be our goals in this area in the years ahead? and 3) How may we best achieve these goals?

The author's introduction stresses the immediate need for international cooperation caused by the tremendous advance of modern science. These advances have given an "unprecedented stage of interdependence." Even the most powerful nation cannot act alone to promote its security and welfare. It must cooperate with other nations to control its destiny. The author suggests that the State Department's policy planning staff play a more effective role and be strengthened by one- or two-year appointments of scholars and professional men.

Mr. Gardner has combined in one volume the summarized reports and recommendations of the White House Conference on International Cooperation. Perhaps the most serious deficiency of the Conference was the lack of any meaningful confrontation of the different proposals for action. It would have been better if the

author had written a constructive criticism of the recommendations of the committees.

HARRY A. INMAN

TAXATION IN FRANCE. Harvard Law School, International Tax Program. Chicago: Commerce Clearing House, Inc. 1966. Pp. 1241. \$25.00.

Martin Norr of the Harvard international tax staff and Pierre Kerlan, French correspondent for this volume and chief of the treaties section in the French Ministry of Finance and Economic Affairs, have presented the first systematic study in English of the entire structure of French taxation. The work underscores the heavy reliance of France on taxes based on production and consumption, as opposed to income, and analyzes in detail the very important French value-added tax, which succeeded the production tax, and the tax on services and the local tax. As a result of an extension of exemptions or reductions granted on a selective basis, the French tax system encourages exports, modernization, and research. The volume contains detailed summaries of constitutional legal provisions and economic developments affecting taxation, particularly in the light of the recent economic expansion of France following World War II and the Marshall Plan into a highly developed industrial, commercial, and social welfare state. The work is divided into three parts: part 1 gives a summary of the entire tax system; part 2 is concerned with the income tax; while part 3 deals with the value-added tax, the tax on services, and the local taxes and various complementary taxes. Undoubtedly the work will be of great value to any lawyers advising businessmen on operating under the French tax system. It may also be of great interest to other states that are envious of the French miracle. It is only a little over a decade when the crises of the French franc and the Bank of France were recurrent items in the financial pages and of critical interest to tourists to France. Again the franc has become a hard currency as it was before World War I. The French tax system played an important role in bringing about that change, which was signaled by the ending of the Indo-Chinese and Algerian wars.

LEGAL ADVISERS AND INTERNATIONAL ORGANIZATIONS. By H. C. L. Merillat. New York: Oceana Publications. 1966. Pp. 124.

The executive director of the American Society of International Law reports on the conference held at the Rockefeller Foundation's villa, Servelloni, in Bellagio, Italy, in August, 1965, of approximately 20 persons who were then or had recently been official legal advisers to international organizations and were scholars who are particularly interested in such organizations. The report is divided in two parts—the first part is a summary of the conference in terms of the structure and role of legal services, the capacity and personality of international organizations, the formation and effects of consensus, and compliance with decisions of international organizations. The second part consists of ten statements on the structure and procedure of legal services in such international organizations as the Council of Europe, Councils and executives of the European Communities, the Inter-American Development Bank, the International Atomic Agency, the World Bank, the International Labor Office, the International Monetary Fund, the Organization of American States, and the United Nations itself.

These international organizations have experienced a dramatic growth in numbers and the scope of their activities substantially within a single generation and primarily since the ending of World War II. Another characteristic is that the organizations do not constitute one clearly identifiable "client," as the foreign ministry of a government might be for a national legal adviser, but lawyers working for these international organizations are consulted by a broad range of officials and organs. This requires that legal advisers in international organizations also possess many of the skills of a diplomat. The kinds of tasks performed by legal advisers for international organizations fall into housekeeping and private law transactions; some particular substantive branch of the law with which the organization is particularly concerned, such as labor law or aviation; the law of international institutions in the drafting of international documents ranging from treaties to specific agreements. All of the organizations are concerned with the development of general rules of international law relating to recognition, state succession, responsibility of states, and the law of treaties.