

Noteworthy New Titles

Environmental Law

Trends in International Environmental Law. By the Editors of the *Harvard Law Review*. Washington D.C.: ABA Section of International Law and Practice, 1992. Pp. 189. (Softbound). Reviewed by Ann L. Abramson.

This work is a timely reminder of the need to create an effective system of global responsibility for our environmental problems. The authors evaluate the components of the current international environmental law regime: customary law, treaties, institutions, and extraterritorial application of domestic environmental law. The question underlying their inquiry is whether and to what degree international law and institutions can overcome two fundamental obstacles: the reluctance of states to cede sovereignty and conflicting state interests.

According to the authors, international custom plays at most a peripheral role in international environmental protection. By contrast, international treaties play a far more important role. Nevertheless, the authors warn that treaties alone are insufficient because protocols often cannot be concluded in time to prevent irreversible environmental degradation. Thus, treaties should be augmented with provisions calling for each country to formulate domestic environmental regulations while international protocols are being negotiated. In addition, the authors note the difficulty of obtaining ratifications and subsequently enforcing international environmental treaties in the face of sovereignty concerns and economic pressures. They suggest placing greater reliance on international agencies to monitor treaty compliance and to generate pressure to enhance treaty enforcement.

International institutions are effective only to the extent that they follow legitimate decision-making processes. The authors argue that improvements in the decision-making procedures of such institutions will increase cooperation, but will not save the planet. States must be willing to commit financial and technical resources to solve global environmental problems.

Lastly, the authors examine the possibility of extraterritorial environmental regulation that subjects the activities of one country to the more stringent environmental standards of another. They acknowledge the appeal of this option given the limited effectiveness of the public international system, but they argue that extraterritorial regulation by states with strong environmental regimes is at best an interim supplement to the development of each state's own regulatory regime.

The analysis of these legal developments is thorough and convincing. The book's extensive bibliography should also prove useful to readers.

Focus on European Environmental Law. By Ludwig Kramer. London: Sweet & Maxwell, 1992. Pp. xii, 321. (Hardbound). Reviewed by Ann L. Abramson.

This volume contains fourteen articles focusing on European environmental law. Dr. Kramer, Judge at the Landgericht (state Supreme Court) in Kiel and Head of Legal Matters and Application of Community Law in DGXI of the European Commission, assembled these articles because he believed that a discussion of European environmental law and policy is more necessary now than ever.

The selections in this book developed from various articles, conference papers, and books written from 1988 to 1991. The selections have been comprehensively updated to incorporate the latest developments in European Community environmental law. The Table of Authorities lists the original title of the articles and the publications in which they first appeared. Many have been translated from German or French. A helpful index appears at the end of the volume. The articles range in subject matter from a discussion of the nature of the EC as neither state nor international organization to specifics of EC law, including the Treaty of Rome, the Single European Act, specific Community directives, and the "Polluter Pays" Principle. Articles also describe Community environmental policy, how Community environmental legislation is generated, and the monitoring and enforcement of such legislation. Dr. Kramer has created a selection that yields quite a comprehensive treatment of European Community environmental law. As such, it is a welcome addition to the literature of international environmental law.

Historical

Moore's Introduction to English Canon Law. By Timothy Briden and Brian Hanson. New York: Mowbray, 1992. Pp. xviii, 157. (Hardbound). Reviewed by Monika Lahiri.

The authors of this volume present a compelling discussion of the role of canon law in the governance of England. The work begins by tracing the historical development of the Church of England from its initial break with Rome under King Henry VIII to modern times. As the authors point out, secular and canon law in England influence one another because the Church of England is established by law. The authors investigate the complexities that arise from a system in which the Monarch is regarded as both head of state and head of the church.

Rich with history, this discussion expounds upon the many facets of English canon law, including such topics as sacraments, dispensation, church property, worship, ecclesiastical courts, and legal proceedings. The last two topics focus on the similarities and differences between the practices of ecclesiastical and secular courts. The authors also track the gradual growth of religious tolerance but also note that discrimination still exists. A final section discusses the relationship between the Church of England and churches that are not established by law.

The Buried Mirror: Reflections on Spain and the New World. By Carlos Fuentes. New York: Houghton Mifflin Company, 1992. Pp. 399. (Hardbound). Reviewed by Victoria Graff.

This work examines the development of Latin American cultural heritage during the past five hundred years. By alternately describing the history of the Spanish and the history of Indians, Blacks, and Europeans in the New World, the author presents mirrored images of Spain and Latin America. On this quincentennial of Columbus' voyage, he asserts that all Latin Americans should acknowledge and celebrate the common bond of their cultural heritage in spite of the economic and political crises that divide the region.

Fuentes first traces the rise and fall of the Spanish Empire and suggests that the repeated conquests by outsiders were possible because of the regionalism that divided Spain's population. Modern Spain's mixed ethnic and cultural heritage reflects this history, as can be seen in Spanish art, architecture, and traditions such as Flamenco and the bullfight.

Fuentes then holds up the mirror between the two continents. When the Spaniards came to Peru in 1532, they found the Indians at war amongst themselves. Fuentes argues that this division contributed to their downfall in the same way that Spain's own regionalism had repeatedly rendered it vulnerable to invasion. The subsequent continuous arrival of European and African peoples formed a diverse population similar to that on the Iberian peninsula. This immigration pattern also effected an influx of distinct cultural influences that Fuentes traces from early Spain to the United States today.

Fuentes enhances his presentation with photographs that include Indian ruins, political figures, and the works of Spanish and Latin American painters. The work concludes with several extensive genealogical tables of the royal houses that have ruled Spain since the time of Columbus.

The Arab-Israel Conflict and Its Resolution: Selected Documents. Edited by Ruth Lapidoth and Moshe Hirsch. Dordrecht: Martinus Nijhoff, 1992. Pp. xvi, 387. (Hardbound). Reviewed by Kenneth E. Rudolf.

Beginning with the Zionist Program adopted by the first Zionist Congress in August 1897, Lapidoth and Hirsch provide a documentary history of the Arab-Israel conflict. Their volume includes U.N. resolutions, which comprise the majority of the 79 items, legislative documents, such as Israel's 1950 Law of Return, and diplomatic items, such as the 1975 Agreement between Israel and Egypt concerning the Sinai. All documents are in English; foreign-language documents have been translated. Except for a brief preface, the documents are presented without any commentary. The most recent document included in the collection is the General Assembly resolution of December 16, 1991 on Zionism.

The editors, a professor and a teaching assistant at the Hebrew University of Jerusalem, began collecting these documents for use in a seminar on the Arab-Israel conflict. Anyone interested in Arab-Israel relations will find this book a convenient collection of primary sources relating to the topic.

Human Rights in the European Community

Human Rights and the European Community: A Critical Overview. By Andrew Clapham. Baden-Baden: Nomos Verlagsgesellschaft, 1991. Pp. vii, 272. (Hardbound). Reviewed by Monika Lahiri.

This work offers a comprehensive overview of the role of the European Community in the protection and promotion of human rights. The author identifies four primary areas in which human rights interact with Community affairs, each of which he believes must be approached from a different legal perspective.

The first area concerns those freedoms guaranteed by national governments. Although great strides have been made toward the incorporation of Community-guaranteed rights by member states, more remains to be done. According to Clapham, the rights found in the European Convention on Human Rights should be incorporated into the legal orders of member states.

The second area focuses on rights which protect against acts of the various Community institutions. To date, the Community has not established legal protections equal to those found in the individual states. Nevertheless, the author asserts that the Community does offer member citizens considerable protection against its own institutions and agents.

The final two areas encompass the rights of non-EC citizens and the specific rights that the Community should or does grant to its citizens. With respect to these issues, Clapham notes the enormous potential of the Community to influence the worldwide human rights movement. By adopting progressive measures, he argues, the Community can gain greater respect from its members and from foreign nations.

Yet the author also criticizes the Community for taking a state actor approach to the human rights problem. According to Clapham the Community has lost sight of the real threats faced by the victims of human rights abuses by focusing only on the actions of member states. He argues that Community human rights legislation should apply to private actors as well as to member states. The drive toward the total economic integration of 1992 entails technological change, the introduction of new transnational actors, and new controls. Without the implementation of new rights and remedies, Clapham argues, many in the Community will be unable to reap the benefits that 1992 has to offer.

Clapham augments his presentation with appendices containing selected texts on human rights and the European Community as well as excerpts from European Court of Human Rights opinions.

The European Convention for the Protection of Human Rights: International Protection versus National Restrictions. Edited by Mireille Delmas-Marty; translation directed and edited by Christine Chodkiewicz. Dordrecht, The Netherlands and Boston: Nijhoff, 1992. Pp. xv, 346. (Hardbound).
Reviewed by Francine L. Alfandary.

This collection of essays is the nineteenth volume in the International Studies in Human Rights series. Part I discusses various aspects of the European Convention: terrorism, alien controls, the press, and "public morals." Part II compares the effect of the European Convention on the domestic laws of various signatory nations. Although the essays are informative and wide-ranging, they are hobbled by awkward translations.

Unequal Migrants: The European Community's Unequal Treatment of Migrants and Refugees. Coventry and London: Centre for Research in Ethnic Relations; Joint Council for the Welfare of Immigrants, 1989. (Policy Papers in Ethnic Relations: No. 13.) Pp. 51. (Paperback).
Reviewed by Kenneth E. Rudolf.

Unequal Migrants, a short report introduced by Paul Boateng, M.P., details immigration policy in the European Community and its member states before 1990. More polemic than objective, the report describes how EC member states were considering stringent immigration legislation to deny entry to non-EC nationals at the same time that the member states were opening their borders to EC nationals. Although couched in terms of security, particularly the need to control the flow of narcotics, this policy adversely affects Third-World residents who try to enter Western Europe. The report also describes how member states coordinate their immigration policies through private consultations which are not part of the EC bureaucracy and are thus immune from open political debate.

The New World Order

The Future of Liberal Revolution. By Bruce A. Ackerman. New Haven: Yale University Press, 1992. Pp. viii, 145. (Hardbound). Reviewed by Laura K. Chalk.

Professor Ackerman presents an excitingly fresh perspective on what the end of the Cold War and the Eastern European revolutions of 1989 can mean for the future of liberalism throughout the world. Professor Ackerman obtained much of his material during a sabbatical in Germany, and parts of the book were presented in articles and speeches in that country.

One of the central themes of this book is the urgency of time. If postrevolutionary liberal leaders act quickly, they may use the moral capital they have accumulated to convert the principles of their revolutions into more stable and enduring governance structures capable of sustaining liberal democracies. Ackerman proposes that this be accomplished through the formulation and popular approval of constitutions in actions analogous to that of the American framers. He next suggests additional means of establishing and legitimizing the liberal vision of freedom and equality using a rich range of contemporary historical examples from post-World War II Germany to the Solidarity movement in Poland. Ackerman proposes that it is crucial to resist the temptation to zealously pursue a corrective backlash against the deposed government and its collaborators. Finally, he urges that new liberal pioneers should also consider judicial review as a mechanism to achieve lasting democratic change.

Professor Ackerman emphasizes throughout that the reformations in Eastern Europe are portentous because they resurrect the idea that revolution can achieve liberal democratic ends, not only Marxist goals. He also emphasizes that the West should rethink prevailing understandings of both

revolution and liberalism in order to move beyond its current self-congratulatory stage to a new era of social justice and democracy.

Some spectators view the amazing revolutionary events of 1989 as the end of history. *The Future of Liberal Revolution* proposes that if we are willing to learn the lessons of that year, the history of liberal democracy may be on the threshold of a new beginning.

Whose New World Order: What Role for the United Nations? Edited by Mara Bustelo and Philip Alston. Sydney: The Federation Press, 1991. Pp. xiv, 157. (Paperback). Reviewed by Laura K. Chalk.

Philip Alston, one of the co-editors of and contributors to this work, is Director of the Centre for International and Public Law and a former professor at the Harvard Law School. He and his partner Mara Bustelo compiled this collection of essays from papers presented at a major conference on the subject held in Canberra in May of 1991. A contribution from Sir Brian Urquhart, a former senior official with the U.N. Secretariat, is also included.

With the end of the last decade came the end of the Cold War that had dominated international law and politics for forty years. The Gulf Crisis followed closely on the heels of this stirring phenomenon and highlighted just what the new East-West spirit of cooperation might mean for the future of our global society. Many people spoke hopefully of a "new world order" with concomitant promises of greater justice and well-being for all. Others subjected the new world order to both widely varying interpretations and a good deal of cynicism. Nevertheless, most people agree that the United Nations will play a larger role in the new international regime than it did during the Cold War.

These essays offer a comprehensive set of predictions and suggestions on what the United Nations' role should be in the years ahead. The book's organizational structure leads the reader on a visionary tour of this most prominent international organization. The book includes sections on international peace and security, dispute settlement, international law, economic and social issues, and the makeup and procedures of the United Nations itself. Each essay presents a distinct focus, yet the result is a coherent picture of where the United Nations has been since 1946 and where it may go in the future if it can muster sufficient will and cooperative spirit.

Two speeches by (then) Secretary-General Javier Perez de Cuellar and a declaration by the Group of Seven on the new world order and the United Nations place in it follow the essays.

International Courts for the Twenty-first Century. Edited by Mark W. Janis. Boston: Nijhoff, 1992. Pp. xvi, 261. (Hardbound). Reviewed by Dan L. Wade.

With this compilation of thirteen essays on international courts, three of which he has authored, Professor Janis, William F. Starr Professor of Law at the University of Connecticut School of Law, has published another highly useful introductory work for students of international law. (In addition to his general introductory text on international law, see *European Human Rights Law*, University of Connecticut Law School Foundation Press, 1990 and *The Influence of Religion on the Development of International Law*, Nijhoff, 1991).

International Courts arises from the International Courts Project which according to the editorial preface is "structured to play a part in the United Nations Decade of International Law (1990-1999) and to contribute to the progressive development of international adjudication in the 21st Century by researching, drafting, documenting and propagating new conventions, statutes and model codes, and amendments to existing instruments, which will improve and create new international courts and arbitral tribunals."

The essays in this volume were presented at the inaugural meeting of the Project held May 28-31, 1991 at the Max-Planck-Institut für ausländisches und öffentliches Recht und Völkerrecht in Heidelberg, Germany. The editor has divided his work into three parts. First, the classical universal institutions, covering the Hague Peace Conferences of 1899 and 1907, the International Court of Justice, and the Hague Permanent Court of Arbitration. Second, the regional international courts, focusing on the Court of Justice of the European Communities, the European Court of Human Rights, and the Inter-American Court of Human Rights. Third, specialized international tribunals and procedures, discussing international claims tribunals, the CSCE dispute settlement system, the need for the creation of an international court of criminal justice, the Secretary-General's Trust Fund to assist states in the settlement of disputes through the International Court of Justice, and the Law of the Sea Tribunal.

The book has extensive footnotes and a subject index to aid the reader. It is an important introduction to international courts for students of international law.

Self-Determination in the New World Order. By Morton H. Halperin and David J. Scheffer with Patricia L. Small. Washington, D.C.: Carnegie Endowment for International Peace, 1992. Pp. xiv, 178. (Hardbound). Reviewed by Peter Samuelson.

Since the end of the Cold War the international community has faced growing demands from groups within existing states who seek independence, autonomy, or greater protection of minority rights in the name of "self-determination." The authors present a compelling argument that the United States and international responses to those groups have been inadequate.

During the Cold War, the United States and the international community viewed self-determination movements with great skepticism, resisting most for fear that any change in borders would bring instability. Examining the response to the breakup of the Soviet Union, the crisis in Yugoslavia, and the Kurdish and Shiite movements in Iraq, the authors argue that outdated Cold War perspectives continue to dominate the international community's approach to self-determination movements.

The authors argue that bloodshed in Yugoslavia and some of the Soviet successor states underscores the need for an activist, multilateral approach to self-determination movements: the international community should respond to threats to peace when they arise and mediate conflicts before they become threats to peace. The United States and the international community should condition support for or recognition of a self-determination movement upon adherence to certain conditions, including democratic principles, international law, non-use of force, and human rights. The authors also explore a number of responses to threats of armed conflict, from monitoring and diplomatic intervention to economic sanctions and collective military intervention.

The authors acknowledge the practical difficulties of resolving some self-determination claims, which can involve centuries-old ethnic feuds, and the political difficulties of achieving consensus among U.N. Security Council members who themselves face self-determination crises. Nonetheless, the authors argue that self-determination is not a self-regulating process; only a coordinated and principled international approach can promote democratic principles and prevent further violence.

Redefining the CSCE: Challenges and Opportunities in the New Europe.

Edited by Ian M. Cuthbertson. New York: Institute for East-West Studies; Helsinki: Finnish Institute for International Affairs; Boulder: Distributed by Westview Press, 1992. Pp. xiii, 307. (Softbound). Reviewed by Dan L. Wade.

The ten essays in this book resulted from a conference of the same title held in Helsinki on May 21-22, 1992 and co-hosted by the Institute for East-West Studies and the Institute of International Affairs. The essayists are primarily research fellows, government officials, and professors, but also include a policy advisor in the Secretariat General of the European Commis-

sion, the Vice President of the Commission of the European Community, and the Director of the CSCE Secretariat. The essayists set forth their views, aspirations, and recommendations for how the 52-member Conference on Security and Cooperation in Europe should respond and evolve in the face of the end of the Cold War and the increasing disintegration in Eastern Europe. The editor and the respective institutes are to be congratulated for producing this volume in such a timely fashion.

United States Foreign Policy

Making American Foreign Policy: President-Congress Relations from the Second World War to Vietnam. By Philip J. Briggs. Lanham, Maryland: University Press of America, 1991. Pp. 279. (Hardbound). Reviewed by Charles C. Correll, Jr.

In this narrative Dr. Briggs examines the crucial relationship between the President and the Congress in the making of American foreign policy. He utilizes the case study method to discern common themes that have emerged in the thirty-year period considered. The work focuses on distinct events through chapters on the resolutions of 1943, the formation of NATO (1949), the Pact of Madrid (1953), policy between the U.S. and China (1955), the Eisenhower Doctrine (1957), the Nuclear Test Ban Treaty, and the War Powers Resolution (1973).

One of the book's major themes is the usefulness of bipartisanship in overcoming the President-Congress conflict in making foreign policy. Indeed, the author's first and last case studies provide a striking contrast in the bipartisan dealings between the President and Congress. The case study on the 1943 Resolutions indicates that President Roosevelt worked closely with Republican Senator Vandenberg to end the nation's commitment to isolationism. On the other hand, the case study on the War Powers Resolution shows a Republican president vetoing legislation passed by a Democratic Congress to enforce the congressional consultation that the previous era's bipartisanship achieved voluntarily. Dr. Briggs concludes that the War Powers Act has not achieved the cooperative spirit that is so vital to the conduct of foreign policy in America.

Dr. Briggs coherently analyzes each case and provides clear conclusions at the end of each chapter. Useful documents appear in the appendices. Dr. Briggs' book provides a serviceable starting point for any reader wishing to examine the complex yet crucial relationship between the President and the Congress in the making of American foreign policy.

Changing Our Ways. Carnegie Endowment National Commission on America and the New World. Washington, D.C.: Carnegie Endowment for International Peace, 1992. Pp. 90. (Softbound). Reviewed by Patricia L. Small.

Changing Our Ways, authored by a 21-member bipartisan commission assembled by the Carnegie Endowment for International Peace, urges a fundamental shift in U.S. foreign policy priorities. Released in July 1992, the report sets forth a series of detailed policy recommendations proposed by the group, composed of former government officials, military leaders, academics, and representatives from business and labor.

Underlying the report's recommendations are certain fundamental principles: that U.S. foreign policy must be founded on a renewal of domestic strength, that U.S. interests require continued American leadership in the world, and that the United States must lead by promoting collective action. In addition to outlining broad goals for U.S. leadership, the Commission presents a host of specific policy changes. The report is most persuasive in its treatment of a range of global issues, including environmental degradation, population growth, refugee flows, and humanitarian crises. The Commission places the United States "among the laggards, not the leaders" in its response to these issues, and argues that the United States must address these issues in order to preserve its security and economic performance and to maintain international stability.

One of the Commission's boldest proposals is its endorsement of "full-cost pricing," an adequate integration of environmental costs into decisions on economic production. The Commission also advocates a comprehensive multilateral response to refugee problems, including updating the 1951 Refugee Convention, increasing funding to the U.N. High Commission for Refugees, and promoting voluntary repatriation. Noting that U.N. estimates predict growth from the current population of 5.4 billion to between 11.2 and 20 billion by the year 2100, the Commission calls for universal access to voluntary family planning services by the year 2000.

In addition, the Commission suggests that the United States should act "more as catalyst than commander" in the military arena by promoting international and regional responses to threats to peace while retaining the option to act unilaterally. In addition to a significant reduction in U.S. defense spending and a substantial cut in world military expenditures, the report calls for a shift in U.S. foreign aid policies away from military grants and credits to developmental, technical, and educational concerns. The Commission advocates a doubling of present levels of aid by the year 2000 to \$31.5 billion (in 1990 dollars). More important, it recommends that aid be linked to records

on political and economic reforms, environmental standards, and weapons proliferation.

The report is among the most comprehensive studies of U.S. foreign policy priorities to emerge since the Cold War's end. Perhaps more important than the goals it outlines is its recognition that achieving these goals will require a sustained, unified national effort. The first task, the Commission argues, is to build a consensus on foreign policy goals. Not only must the United States change its foreign policy, the U.S. government and the American people must change their ways of thinking about engagement abroad and renewal at home.