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Books Received

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BOOKS RECEIVED

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY (Asbjørn Eide et al. eds.) Oslo: Scandinavian University Press, 1992.

This book methodically examines the Universal Declaration of Human Rights with a chapter devoted to each article of the Declaration. Its chapters are written by human rights specialists from Denmark, Finland, Iceland, Norway and Sweden. The authors include directors and senior fellows at human rights institutes, members of the United Nations Centre for Human Rights and the Assistant Secretary-General of the United Nations responsible for human rights, Jan Mårtenson.

The first chapter provides a brief outline of the United Nations drafting history. The second chapter introduces the declaration — its significance and impact, its historical roots and its contemporary appraisals. Then, beginning with the Preamble, each chapter traces an article's historical background, *travaux préparatoires*, subsequent normative developments and follow-up measures undertaken with regard to performance and compliance of various countries.

Reflecting the array of contributing authors, chapters vary by depth of treatment and approach. In addition, most of the chapters are punctuated with the positions and performance of the Nordic countries with respect to the Declaration.

TRANSNATIONAL ENVIRONMENTAL LAW AND ITS IMPACT ON CORPORATE BEHAVIOR (Eric J. Urbani et al. eds.) Irvington-on-Hudson: Transnational Juris Publications, 1994.

This book reproduces a symposium on the practical effects of environmental laws and institutions on worldwide business development that was presented by the Fletcher School of Law and Diplomacy and the law firm of Goodwin, Procter & Hoar. The symposium focuses on how corporations are dealing with stricter global environmental standards and recent attempts at market-based environmental regulation. The pieces cover various pertinent issues including compliance, enforcement, international treaties and health issues, and range from case studies to panel discussions.

Examples of some of the pieces are *The Impact of Changing International Institutions on environmental Law and Corporate Responsibility* by Alfred P. Rubin; *Case Study: Environmental Legislation in Czechoslovakia* by Jan Marecek; *Environmental Enforcement and Economic Realities* by E. Donald Elliot; *Panel Discussion: Media and Environmen-*

tal Issues moderated by W. David Stephenson; *The Impact of International Environmental Treaties and Agreements on Corporate Strategies* by Judith T. Kildow; and *Protecting the Ozone Layer: A Revolutionary Approach to Evolutionary Treaties* by William R. Moomaw.

PETER H.F. BEKKER, THE LEGAL POSITION OF INTERGOVERNMENTAL ORGANIZATIONS: A FUNCTIONAL NECESSITY ANALYSIS OF THEIR LEGAL STATUS AND IMMUNITIES. Dordrecht: Martinus Nijhoff Publishers, 1994.

This book examines the legal status of privileges and immunities as applied to intergovernmental organizations. Noting the lack of a consistently applied framework for analyzing the privileges and immunities of international organizations, Bekker advocates the "functional necessity" concept, which focuses on an organization's functions and purposes. After a brief history of the development and current status of the legal position of international organizations, Bekker spends the bulk of his text outlining the 3 steps of the functional necessity analysis.

The first step, which Bekker terms "Identification," consists of identifying the purposes and functional needs of international organizations, a prerequisite for Bekker to any examination of the issue of privileges and immunities. "Selection," Bekker's second step, deals with the relationship between the legal status and the privileges and immunities of international organizations. Bekker gives a brief summary of the reasons behind the granting of organizational immunities, as well as their legal sources. The third step, "Extent," analyzes the scope and extent of those immunities and privileges in light of an organization's "official activity." Bekker asserts that the functional concept grants organizational immunities when the organization's functions and purposes demand it, and sets limits beyond which there is no justifiable reason to grant them. In the final chapter, Bekker applies the three steps of the functional necessity analysis to the British litigation surrounding the International Tin Council.

JOXERRAMON BENGOETXEA, THE LEGAL REASONING OF THE EUROPEAN COURT OF JUSTICE: TOWARDS A EUROPEAN JURISPRUDENCE. Oxford: Clarendon Press, 1993.

This book studies the legal reasoning that the European Court of Justice has adopted in its interpretation and application of the law of the European Communities. The work aspires neither to advance a new

theory of law nor to tackle the substance of European Community law. It strives rather to apply recent developments in jurisprudence to the law of the European Communities, with a view to determining how the Court has reconstructed that law into a coherent system.

Bengoetxea argues that the Court has frequently taken on the mantle of social action, particularly in periods where the Communities' political arms have not adequately pursued the closed union demanded by the constituent Treaties. Its arguments must nevertheless adopt a legal form because of the forum and the audience to which it is bound.

Part I examines the law of the European Communities from the perspective of several classical schools of analytical jurisprudence. Bengoetxea settles on the legal justification approach. Part II elaborates the theory of legal justification and analyzes cases to create a consistent story of how the European Court of Justice has justified its decisions. This rational reconstruction reveals two lines of justification, distinguishing between what are termed clear cases and hard cases.

Bengoetxea does not claim predictive value for his model of justification. The model's purpose is to serve as a *regula* by which the Court's justification in individual cases can be said to be strongly or weakly justified by reference to the Court's own standards. Avoiding the sticky topic of the appropriateness of the legal justifications for the European moral and cultural audience, Bengoetxea sets forth a means to evaluate the internal coherence of the system reconstructed by the Court of Justice.

HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE (Kathleen E. Mahoney & Paul Mahoney eds.). Dordrecht: Martinus Nijhoff Publishers, 1993.

This is a book with a mission. This anthology grew from papers submitted at an international human rights conference in Banff, Alberta convened to explore themes of interdependence and solidarity. Since the conference was endeavoring to create a human rights community from disparate groups, several of the more interesting selections in this book are written by non-academics, although several well-known scholars are also represented, including Catherine MacKinnon and Christine Chinkin. The book is similarly inclusive in the breadth of topics covered, discussing both widely recognized, if not enforced, human rights such as nondiscrimination in novel contexts as well as evolving human rights areas including the right to food, the right to health, the right to environment, refugees, and development. Perhaps most intriguing is the section on new threats to human rights from technology, which discusses both the threat

posed to privacy from electronic information gathering and the threat to the public from private monopolies on information.

The all-inclusive approach of this book succeeds in bringing several issues to the reader's attention, but, in accordance with the underlying agenda of the conference, attempts to refrain from imposing any hierarchy on what inevitably are competing values. Unfortunately, this approach merely evades conflict, and appears disingenuous in light of the participants' assumption that the institutions they are challenging have inherently patriarchal, racist, and classist tendencies. This stance limits the book's usefulness to practitioners and may turn off newcomers to the area of human rights.

ROGER S. CLARK, THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAM: FORMULATION OF STANDARDS AND EFFORTS AT THEIR IMPLEMENTATION. Philadelphia: University of Pennsylvania Press, 1994.

This the first work to undertake a detailed examination of UN action in the criminal justice area since 1945. The book is primarily a history of UN action and policy, seen from the author's viewpoint as a former member of the UN Committee.

The book is divided into four parts. Part One provides a detailed history of the development of the Program, including the recent reorganization pursuant to General Assembly Resolution 46/152. Clark examines each of the organs which make up the Program in an effort to establish a unifying structure. He also attempts to show how the units have worked together to create a sub-structure of non-legislated normative instruments.

Part Two examines the standard-setting resolutions issued by the United Nations system. Clark briefly looks at every instrument passed to date, commenting on factors which make each significant. He then addresses the process by which each resolution was drafted, highlighting strengths and weaknesses in the process. Part Three looks at selected resolutions in even more detail, delving into their philosophy, substance, and results. In addition, Clark examines several Model Treaties in the criminal justice area. He suggests that, in many ways, treaties such as these represent a more viable solution since they allow more room to tailor provisions to the views of the two parties. However, establishing a comprehensive network of such treaties is a significant exercise in diplomacy.

Finally, Part Four looks at implementation, both past and future, by examining the Committee on Crime Prevention and the Commission

which replaced it. Clark is reserved in his hopes for its success, given its limited resources and Secretariat support, and concludes that the greatest challenge for the Commission will be to remain non-politicized.

PAUL J.I.M. DE WAART, DYNAMICS OF SELF-DETERMINATION IN PALESTINE: PROTECTION OF PEOPLES AS A HUMAN RIGHT. New York: E.J. Brill, 1994.

Professor de Waart has written a concise analysis of the Arab-Israeli territorial dispute in the light of the right to self-determination. A series of annexes contain a valuable collection of basic legal documents concerning the Israeli-Palestinian conflict. De Waart concludes that the international community, particularly the United Nations, has failed to recognize the Palestinian right to self-determination under modern international law.

The United Nations' decision-making processes contain a strong element of negotiation. As a result, it is not always in a position to protect the interests of non-self-governing peoples, such as the Palestinians, against those of member states. Chapter One outlines the power of negotiation in maintaining international peace and security, settling disputes, and supervising non-self-governing territories, and illustrates how emerging principles of good governance and democratization are restraining that power. It concludes that the Israeli-Palestinian conflict has become a striking example of inadequate regional and UN governance, due primarily to a misunderstanding of the legal status of the Arab state and the Palestinian right to self-determination.

Chapters Two through Four define this right and apply its principles to the Palestinian territorial claims. Holding that self-determination has become a universally recognized collective human right, de Waart suggests that a code of conduct such as the International Bill of Human Rights, which includes the principle of self-determination as a protection against oppression, may provide a framework for the settlement of conflicting territorial claims to Palestine. Such a code would provide a model for the settlement of similar future claims, avoiding a repetition of the misery inflicted on the Palestinian region by United Nations neglect.