

BOOK REVIEWS

INTERNATIONAL LAW ON ECONOMIC DEVELOPMENT—LEGAL ASPECTS OF THE NEW INTERNATIONAL ECONOMIC ORDER. By Dr. Milan Bulajić. Beograd, Yugoslavia, 1980. Pp. viii, 210.

The eminent Yugoslav jurist and diplomat, Dr. Milan Bulajić, has enriched the legal literature with his important study of the New International Economic Order. He is well-acquainted with the topic both from a theoretical point of view and as a participant in various international conferences on the problems of economic development.

According to Dr. Bulajić, the establishment of a new international economic order is necessary due to the present phase of unbalanced development in the world. He sees it as a priority task of the world community to insure peace, progress, and security. The establishment of such an economic order, in Dr. Bulajić's view, is not presently possible through international law created by colonial metropolises and industrially developed countries without the participation of the great majority of the independent countries figuring on the political map of the contemporary world, the members of the United Nations. Time and increased efforts are further required to change the existing international order, that is, the international code of conduct.

Dr. Bulajić stresses that objections to the effect that discussions on the international legal aspects of a new international economic order are premature ignore the reality that negotiations on and the formulation of international conventions and codes of conduct presently under way will both determine and prejudice the legal basis for the new international economic order. In particular this is demonstrated by the experience of the Third United Nations Conference on the Law of the Sea and the universally adopted principle of "the common heritage of mankind."

The optimum target of the developing countries in these negotiations is the establishment of a universal law binding on all international subjects. To better understand this, Dr. Bulajić cites that the lack of trust on the part of developing countries in international law is the result of their experience as colonies which, for centuries, were in a position of dependence and exploitation.

Nonaligned and developing countries have a real interest in

the development of a new international law in general and of international law on economic development in particular. The need is left to apply the basic principle of a nonaligned policy in international law given that experience has shown that developing countries should turn more to themselves. Those countries ought further to consider the adoption of a code of conduct in their mutual relations. More precisely, they should adopt the Group of 77 draft of the International Code of Conduct for the Transfer of Technology and the Set of Principles and Rules on the Restrictive Business Practice and raise them to the level of international legal norms in their mutual relations and in relations with developed countries. No consensus on the part of the developed countries is required. Such action would strengthen the position of developing countries in the protection of their own development interests and in the preparation of a new international law corresponding to a new international economic order. In this respect the industrialized countries themselves provide the example of adopting conventions and rules of mutual relations as, for instance, the law of the European Economic Community.

Dr. Bulajić concludes that within the framework of the Organization of the United Nations the issues of institutional solutions, codification, and progressive development are posed very seriously and require urgent decisions. The true question concerns where the solution ought to be sought: either in the establishment of new bodies, in view of the strong opposition to the proliferation of new bodies of the United Nations, or in the new role of the United Nations International Law Commission, the United Nations Commission on International Trade Law, and particularly the new role of the Legal (Sixth) Committee of the United Nations General Assembly.

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THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE. Edited by R.St.J. MacDonald, D.M. Johnston, and G.L. Morris. Alphen and den Rijn, Netherlands: Sijthoff & Noordhoff, 1978. Pp. 708. \$92.50/Dfl. 185.00.

This volume, opening valuable new vistas, focuses on the creation and components of a "welfare world," a welfare state at the global level of human affairs, that is, what can be called a new international human welfare order that overlaps the New International Economic Order¹ so titled in Third World and United Nations parlance. Furthermore, in addition to its concern for structures and institutions, it supports the idea of an international human welfare policy and, specifically, certain policies in several distinct problem areas. To this vision it links international law, in this instance, a strong affirmative comprehensive version of international law as effective "living" law (law with a capital L) and particular laws from the body of an expanding international law. It proposes increments to that *corpus* from practice, litigation, and also legislation by treaty negotiation and even enactment. If, by virtue of its brevity, this summary does any injustice to the meaty content of the publication, it aims at least to convey the tenor.

The tome itself is composed of twenty-five contributions from various legal scholars, lawyer-administrators, political scientists, and economists, mainly Canadians, a German, an American (who may in fact be a Canadian national), and a distinguished international civil servant of Belgian nationality. Notwithstanding the reach of the subject matter, no Third World author is personally represented by a chapter, although the works of Asian and African experts are cited. Collectively the contributors have filled the book with description, analysis, argumentation, prescription, and advocacy, revealing an impressive array of concepts and evaluations.

The diversity of chapters, even under the same thematic umbrella and within a single binding physically uniting them, confronts the reviewer with obvious problems, not the least of which is how to state in so short a critique relevant generalizations which are reasonably applicable to the separate contributions and at the same time reasonably applicable to the entire volume, avoiding as far as possible distortion of any one writer's approach,

1. For the origins of this phrase, see Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (1974).

thrust or thesis. This reviewer has found the assignment challenging but has responded conservatively, by paying most attention to the introductory essay by the editors on "The International Law of Human Welfare: Concept, Experience, and Priorities" and to some, but not all of the chapters in each of the four parts. In my opinion the volume amounts to at least two books in one (and well it should at the incredible price of \$92.50); the first book being concerned with law and the second with policy.

According to the topics covered by the chapters in the volume, welfare issues at the global level consist of the promotion of human rights, control of barbarism, "La Femme Nouvelle," migration and resettlement, protection of the welfare of migrant workers, protection of the ordinary traveller, economic development, the New International Economic Order, foreign investment, producer cartels as "trade unions of the Third World," employment, transfer and promotion of technology, nation and city in demographic perspective, food-population equation, public health, energy, prevention of crime and treatment of offenders, and organized responses to natural disasters. At a higher level of abstraction the issues highlight equality, basic needs, human dignity, redistribution, and international justice. For several, but not all, of the authors the territorial and political context for the pursuit of these issues is the present North-South alignment.

The basic premise that comes through page after page is that human beings are the be and end all of welfare. Human beings exist at no particular level—local, national, or global—but seek welfare or the conditions of well-being and justice from all sources directly or indirectly. No one level is exclusively segregated from another. Essentially indivisible, the structure of welfare is neither horizontal nor vertical, but instead has both dimensions with a mix of levels and segments. They subsume almost infinite combinations and permutations of needs, expectations, programs, services, discontentment, and satisfaction among various populations within territorial units, who at the same time populate the international community. The authors seem fully aware of "linkage" among levels, a truly constructive use of this currently over-worked term. For the editors, the international sphere of human welfare is composed of the national and local subsets converging through shared perceptions of human development and in particular physical and psychic needs. On this basis they foresee the emergence of the welfare world, with welfare taking its place

alongside collective security, economic development, and decolonization as genuine concerns of the international system.

Law, no less than philosophy and policy, is a major stone in the foundation of the human welfare paradigm. As institution and instrument, it is also germane to the realization of goals. On this point the authors are in agreement. As for any particular model or program of international law they might prefer, it is fair to observe that for them the traditional, minimal, deferential, strict constructionist model is insufficient given the tasks and processes involved in international human welfare experiences. This model is basically state-centered, reducing other actors to the equivalent of second-class citizens. It is a state-to-state law and generally neglects individuals. It confers no rights on individuals (or virtually none) and, in any case, tends to be technically neutral or indifferent towards persons. The range of its concerns appears limited, although each is important, for example, the legal principle of non-intervention or the rules relating to treaties. The results are more closely associated with the *status quo* than with change. The non-intervention norm serves to protect from outside interference human rights in states that respect and implement them, but at the same time serves to protect from outside interference the regime that follows a consistent pattern of gross violation. In any case, the overall impotence of this version of law requires no elaboration.

The authors lean towards other models or programs of international law that are dynamic, activist, policy-oriented, of a liberal constructionist character, and maximalist with reference to regulation of public and, in some measure, private sectors. They show sympathy for a more robust international law program that is attuned to the implementation of economic and social rights and accommodates what has become known as the "third generation" human rights that figure heavily in the North-South relationships. A limited policy-oriented model may still emphasize states' rights, obligations, and responsibilities, but it also contains implied competence and powers for states and other institutions to promote, support, and even execute policies and priorities enjoying worldwide consensus. While the law itself may confer no rights on individuals as distinct from states, rules and practice allow for exceptions, exemptions, and derogations, say with respect to a fundamental law of non-intervention. It is also prone to accept internationalization of matters otherwise considered exclusively, or

essentially, domestic or internal. There is also a degree of leniency where the foreign policy of a nation supports humanitarian or welfare policies that fall into the gray area between intervention and non-intervention, where interdependence prevails and subtle penetration of domestic jurisdictions lurks.

Several authors describe either in outline or detail the performance of public international organizations servicing human welfare policy. The United Nations and its specialized agencies have had a commitment to the evolution of social policy from their start. This volume records how slowly these entities proceed and how laborious is the existing negotiation processes within their environment. The contributors are pragmatic about augmenting the institutional and political capabilities for law-making, enforcement, and promotional purposes. Some of them see positive alternatives, and more flexible ways for an appropriate international law to evolve. Their inclination is towards affording states and persons, especially the "have-nots" and victims, greater access to supportive international organizations but without doing wholesale violence to the principles of sovereignty and non-intervention or to the sanctity of international obligations.

Through the evolution of the international legal order in response to basic needs, the editors believe that the gap between the welfare world and welfare at national and local levels can be closed. Closing the gap might require a more elaborate regime of personal rights derived from international instruments and protected through international means. Whether such a development will see international law become a proto-constitutional law can only be speculation at this juncture.

The riches of this volume justify no random criticisms of the particulars. The Gold chapter on the transfer of technology, which is of special interest to the reviewer, needs a sharper edge, but that is not to say that it was not illuminating. However considerable the accomplishments of these authors (individually and in the aggregate), the volume clearly points up the desirability of a comparable treatise by one author. There is a great deal more to be written about an international law of human rights and human welfare.

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BOOKS RECEIVED

EUROPEAN LAW AND THE INDIVIDUAL. Edited by F.J. Jacobs. New York and Amsterdam: North Holland Publishing Co., 1976. Pp. xi, 211. \$27.00.

This work contains revised versions of ten papers offered by lawyers attending a workshop sponsored in 1975 by the University of London's Institute of Advanced Legal Studies. The theme is the place of the individual within the law of the European Economic Community. The papers focus on the social and labor aspects of EEC law and can be divided into two groups: those dealing with substantive issues of law, and those dealing with remedies. Topics include the promotion of freedom of movement within the EEC (with reference to both laborers and professionals), the territorial and personal scope of EEC Treaty provisions which extend legal protection to private individuals, the extent to which private individuals should have direct access to transnational tribunals, and fundamental rights under EEC law.

AN INTRODUCTION TO ENGLISH LEGAL HISTORY (2d ed.). By J.H. Baker. London: Butterworth's, 1979. Pp. xxx, 477.

This second edition of Baker's historical introduction to English law substantially revises the first edition in order to provide greater scope and clarity. The author maintains that the study of law cannot confine itself to the mere learning of rules but must also strive to understand the evolution of those rules. Part I of the book begins with an examination of early pre-Norman custom and communal justice, covers the development of common law and equity courts, and evaluates the role of the legislature and the judiciary. Part II takes up the history of the law of real property, and the development of the modern concepts of tort law and contract law.

REPORT ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA. By the Inter-American Commission on Human Rights. Washington, D.C.: General Secretariat Organization of American States, 1980. Pp. iii, 226. \$12.00, paper.

This report was presented and adopted by the Inter-American Commission on Human Rights in April of 1980. The publication presents a detailed description of what the Commission has characterized as serious violations of human rights. The Commission presents a number of documented case studies as well as other evidence offered as support of the Commission's conclusion that a pattern of serious, generalized and systematic violations of basic human rights and freedoms was effectuated in the Republic of Argentina during the period covered by the Commission's report—1975 to 1979. The list of rights said to have been abridged by the Argentinian government includes political rights, the right to a fair trial, due process, the right to life and the right to personal freedom. The Commission concludes the report by suggesting that the Government of Argentina remedy past rights violations by adopting a list of fifteen recommendations proposed by the Commission.

INTERNATIONAL CORPORATE TAXATION. By Philip F. Postlewaite. Colorado Springs, Colorado: McGraw-Hill Book Co., Inc., 1980. Pp. xxviii, 363. \$60.00.

The author of this book addresses himself to specific topics that are of importance to the study of international corporate taxation. The text is written from a United States perspective and discussion is restricted to tax consequences of transactions carried out by and occurring between corporations and their shareholders. Particular attention is paid to United States taxation of foreign source income of both domestic and foreign corporations. The author's stated purpose is to provide a synthesis of materials in the area. In many ways the book is designed to aid both lawyers and accountants in the area of tax planning. A wealth of footnotes referring the reader to other sources is provided to facilitate further research. The author also promises to provide periodic supplements with comments on current cases, rulings and regulations.

THE TARNISHED GOLDEN DOOR: CIVIL RIGHTS ISSUES IN IMMIGRATION. By the United States Commission on Civil Rights. Washington D.C.: U.S. Government Printing Office, 1980. Pp. ix, 158. Paper.

This publication is a report by the United States Commission on Civil Rights issued pursuant to Congressional mandate. The book is based on a Commission hearing in Washington, D.C. in November of 1978. The report examines the current immigration system and the civil rights issues that arise as a result of the friction that exists between the immigration system and the public of the United States. Discriminatory practices in United States immigration laws, the immigration process, employment sanctions, and the Immigration and Naturalization Service's investigation of misconduct complaints are examined. The Commission finds that United States immigration laws are in some respects discriminatory, and that the practices and procedures for the enforcement of current immigration laws result in the denial of the rights of both aliens and United States citizens. The Commission concludes the report by recommending that remedial legislative and administrative action be undertaken. The publication is well documented with statistical data concerning current immigration practices, and includes an appendix of current visa applications.

EUROPEAN PROTECTION OF HUMAN RIGHTS: THE PRACTICE OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS ON THE ADMISSIBILITY OF APPLICATIONS FROM INDIVIDUALS AND STATES. By Laurids Mikaelson. Alpen aan den Rijn, The Netherlands: Sijthoff & Noordhoff International Publishers BV, 1980. Pp. xiii, 273. \$42.50.

In this book, its European author describes in detail the practice and procedure used by the European Commission of Human Rights in deciding whether or not to admit applications from states and individuals. Of all applications brought before the Commission, less than three per cent have been declared admissible. This book is designed to help future applicants meet the complex procedural requirements of admissibility before the Commission. An examination of both procedural and substantive grounds for inadmissibility is included as well as treatment of admissibility in

general. The growth of national and international efforts to protect human rights is also discussed, as is the individual right of petition. The author concludes the book with suggestions and a group of appendixes designed to facilitate successful application before the Commission.

AN INTERNATIONAL CRIMINAL COURT: A STEP TOWARD WORLD PEACE—A DOCUMENTARY HISTORY AND ANALYSIS. By Benjamin Ferencz. New York: Oceana Publications, Inc., 1980. Two volumes, pp. xvii, 538; x, 674. \$77.50.

This 'documentary history and analysis' is a comprehensive two-volume collection consisting of roughly eighty percent documents and twenty percent history and analysis. Mr. Ferencz's thesis is that our international fifty-year struggle to establish a world criminal court may be nearing fruition. Volume I, subtitled "Half a Century of Hope," details efforts from the Hague Conferences through the world wars, and includes the beginnings of work on terrorism and war crimes; the emphasis throughout is on the caution and lack of rapidity of these developments. Volume II, "The Beginning of Wisdom," describes the great and progressive step of the establishment of genocide as an international crime against humanity, but also discusses the abrupt 'deep freeze' imposed upon this progress by the cold war. This hiatus was exacerbated by the U.S. situation in Viet Nam, so that only recently has further growth been evidenced. Discussions and legal developments spurred by South Africa's insistence on a policy of apartheid and by the Iranian seizure of Americans as hostages lead Mr. Ferencz to draw a conclusion of optimism about the future of the world criminal court.

REGULATION OF FOREIGN LAWYERS (2d ed.). By Sydney M. Cone III. [Chicago]: American Bar Association Section of International Law, 1980. Pp. 58. \$5.00, paper.

The American Bar Association has presented in this fifty-eight page pamphlet a basic reference for practitioners in interna-

tional law. The first half of the work outlines requirements to be met by foreign lawyers seeking to practice in any of nine representative American jurisdictions. The second part notes the regulation of American attorneys in practice abroad, detailing the rules of nine nations and the European Economic Community. The pamphlet includes some basic native-language legal terms. It is usefully footnoted and contains a brief but apparently adequate bibliography.

ASSISTANCE TO RACIST REGIMES IN SOUTHERN AFRICA: IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS. By Ahmed M. Khalifa. New York: United Nations, 1979. E/CN.4/Sub. 2/383/Rev.2. Pp. 41. \$4.00, paper.

Mr. Khalifa, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, has presented here a thorough and revealing study report which ultimately condemns all nations who are hesitant to fully enact the United Nations resolutions regarding apartheid in South Africa. Following a review of military and economic assistance to South Africa, with sections specifically treating 'Rhodesia' and Namibia, Mr. Khalifa calls upon the nations of the West to institute a total and mandatory arms embargo and to cut off all relations (economic, diplomatic, etc.) with the offensive regime. He emphasizes the influence which could be exerted by national and international labor organizations, and the need for assistance (moral and material) to the freedom fighters. Mr. Khalifa concludes that the situation is urgent, as it imminently threatens world peace and stability. Khalifa's careful and rational study compels the frightening belief that the solution must be immediate and complete implementation of the full measures envisaged under Charter article 41.

THE ENGLISH LEGAL SYSTEM (5th ed.). By R. J. Walker. London: Butterworth's, 1980. Pp. xlvi, 679. \$43.85.

This update of a very basic and much-relied-upon work includes such new developments as the Criminal Law Act of 1977

and its repercussions, sections on the European Court and European Community legislation, the European Convention on Human Rights, and over one hundred new cases. The volume can serve many purposes: its statutory and case tables make it a ready reference on fine and specific points of law; its text-like organization and lingual clarity make it a valuable teaching/learning tool; and its readability and cogency make it an accessible work for the casually interested. The book deals in some detail with every major aspect of English law, and is complete with multitudinous footnotes and a twenty-three page index, making it a compact and useful guide to the English legal system.

OF LAW AND NATIONS: BETWEEN POWER POLITICS AND HUMAN HOPES. By Julius Stone. Buffalo, New York: William S. Hein & Co., Inc., 1974. Pp. xiv, 484. \$37.50.

Mr. Stone's book presents a scholarly, interdisciplinary approach to international law. He cautions against the kind of dreamy idealism which seems so often to infect students and practitioners in this field. Taking as his basis the Charter of the United Nations, Stone chides us not to ask the impossible—the Charter forbids international hostilities, yet there have been more than one hundred such incidents since its coming into being—but still to insist on and strive for an international legal regime. Writing in a quasi-philosophical tone and citing sources ranging from Jenks and Brownlie to Niebuhr and Bronowski, Stone stresses the broader meaning to be found in international law, the foundations in ethical principles. He develops significant considerations in a variety of areas, from science to history to law, in an effort to establish the relevance to our future and survival of a legal order. The work, which includes a complete and excellent index, is a thought-provoking and wide-ranging study of the field.

A CURRENT BIBLIOGRAPHY OF INTERNATIONAL LAW. J.G. Merrills. London: Butterworth, 1978. Pp. xx, 277. \$12.78.

The author has endeavored in this work to present a concise survey of current writing in the study of international law. The

listed references include periodical literature produced between 1960 and 1977, the date of publication. Although the emphasis is on periodical literature, the author has also included references to important primary sources of international law. With the exception of the primary sources in chapter one, the entries are arranged in chronological order. Each entry includes a brief abstract of the reference cited. The author has included a detailed table of contents which is cross referenced to direct the reader to the appropriate sections of the book. Some of the topics surveyed encompass the areas of statehood, jurisdiction, the law of the sea, human rights, the law of treaties, and the law of war. This sampling is by no means inclusive and the reader should find Merrills' bibliography to be a useful starting point in most areas of international law research. Only substantial works published in English have been listed; very short articles and case notes are excluded.

TERMINATION OF TREATIES: THE CONSTITUTIONAL ALLOCATION OF POWERS. Materials compiled by the United States Senate Committee on Foreign Relations. Washington, D.C.: U.S. Government Printing Office, 1979. Pp. vi, 423. \$4.75, paper.

In response to President Carter's December 15, 1978 announcement concerning recognition of the People's Republic of China and termination of the Mutual Defense Treaty with the Republic of China, the Senate Foreign Relations Committee recognized the differing opinions of leading American jurists on the question of whether the President may terminate a treaty by his own authority or whether the participation of the Senate is required. This publication is a compilation of law review articles, Congressional and Senate reports, and various government documents which discuss the President's role in the recognition of foreign governments and in the suspension, modification, and termination of international agreements to which the United States is a party. The stated purpose of the Committee in compiling these documents was to assist the Senate in related foreign policy matters. Therefore, each document or article reflects only its own view and not that of the Committee. This useful survey of legal thought on the Constitutional status of treaties also contains an extensive listing of past United States withdrawals from bilateral and multilateral agreements to which the United States was party.

CONFRONTATION IN THE AMERICAN-SOVIET RELATIONSHIP: CAN IT BE MANAGED? Edited by Bernard A. Ramundo. Proceedings of the Law Professor Workshop in conjunction with the Annual Meeting of the American Bar Association, New York City, August 2-3, 1978. The American Bar Association, 1980. Pp. iv, 123. Paper.

This publication, sponsored by the American Bar Association's Standing Committee on Education About Law and National Security, has assembled papers presented by leading American authorities in American-Soviet relations. American-Soviet relations in the areas of trade, arms control, and human rights are examined in light of the Carter Administration's growing trend toward confrontation with the Soviet direction in foreign policy. The various authors have focused their discussion on American "management" of Soviet power as a means of dealing with the continuing state of conflict in the American-Soviet relationship.

HUMAN RIGHTS IN THE UNITED STATES AND THE UNITED KINGDOM: A COLLOQUIUM. Palace of Westminster, November 27-28, 1978. New York: American Association for the International Commission of Jurists, 1979. Pp. 66. Paper.

This publication contains the record of a colloquium on the role of human rights in the formulation of the foreign policies of the United Kingdom and the United States. The Conference, initiated by the International Association for the International Commission of Jurists, brought together leading experts from both the American and British governments, interested parliamentarians, and selected representatives of non-governmental human rights organizations. The object of the London Conference was to focus on human rights situations where there is a conflict between the needs of human rights protection and the needs of foreign policy. The papers presented herein examine the role of government departments, legislatures, and international organizations in the implementation of human rights protection through foreign policy. The implementation of human rights in bilateral and multilateral foreign aid is given special consideration. Each paper is followed by a question and answer discussion of the human rights issue presented therein.

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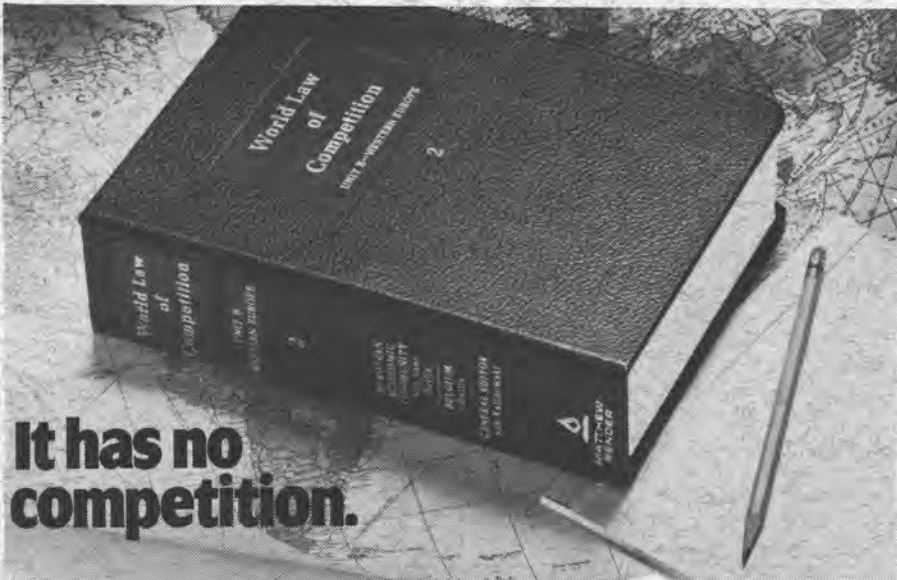
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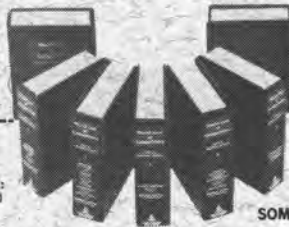
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