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The Development of International Law by the European Court of Human Rights

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The Development of International Law by the European Court of Human Rights

tion, multi-disciplinary practice, multi-jurisdictional practice, the international mobility of lawyers, networks, and branch offices.

The Nations covered in this edition are Belgium, Canada, Denmark, France, Germany, Greece, Hong Kong, India, Italy, Japan, Netherlands, New Zealand, Sweden, the United Kingdom, and the United States. The Nations to be provided in forthcoming updates are Australia, Austria, Finland, Norway, Singapore, Switzerland, Lichtenstein, Iceland, Ireland, Luxembourg, Poland, Portugal, Romania, Russia, and Spain.

The book also includes excerpts from the Code of Conduct for Lawyers in the European Community with a supplementary explanatory memo, relevant European Economic Community Council Directives, excerpts from the International Code of Ethics of the International Bar Association, the United States Model Rules of Professional Conduct, and the American Bar Association Model Code of Professional Responsibility.

This work would be of aid to a practicing international lawyer, however it is by no means all inclusive. The summaries of each Nation's legal system will help one to gain a broad understanding of their methods of practice, but in order to actually be competent practicing in another Nation, a wise lawyer would employ much more than this text.

Rob Buford

MERRILLS, J.G.; THE DEVELOPMENT OF INTERNATIONAL LAW BY THE EUROPEAN COURT OF HUMAN RIGHTS; Manchester University Press, Manchester, UK (1993);(\$79.95); ISBN: 0-7190-3737-9; 265 pp. (hardcover) Index.

According to J.G. Merrills, "the key to decision-making in the field of human rights is . . . the spirit and philosophy which animate the work of the judge." Merrills' aim in *The Development of International Law by the European Court of Human Rights* is to demonstrate how the judges of the Strasbourg Court approach the task of interpreting the principles of human rights laid down in the European Convention, and effectively, how these interpretations contribute to the internationalization of human rights law.

Merrills begins his analysis with a chapter describing how the Court functions as an international institution, walking the reader through the procedures which confer jurisdiction on the Court. He explains that once the European Commission on Human Rights has accepted a petition filed by one Contracting Party against another Contracting Party, it seeks a friendly settlement of the dispute. If this

fails, the Commission files a report of the facts and a preliminary opinion on the merits with the Committee of Ministers of the Council of Europe. If the Parties accept jurisdiction, either through compulsory jurisdiction or a case referral, the Court proceeds with the case. Merrills places particular emphasis on the role of the judge and the limited applicability of *stare decisis* in the European Court's analytical jurisprudence.

Contrary to Common Law systems, the European Court of Human Rights follows the European tradition of a single collective court judgment. This does not permit the expression of an individual judge's views. Quoting a judge from the International Court, Merrills states that reconciliation of divergent viewpoints causes the Court's draft judgments to suffer "the fate of a whale attacked by a school of killer-whales which tear big chunks of flesh from its body." In effect, potentially sweeping decisions of the Court are typically watered down through compromise. Merrills explains how the Court has shifted from the historical single-sentence judgments to ordinary language in its judgments. The latter approach allows for a more universal comprehension of the Court's ruling.

The next three chapters deal with the Court's conception of the Strasbourg system and its methods of interpretation. Describing the Commission as the "defender of the public interest," Merrills discusses the role of the individual applicant in the European Court of Human Rights. Although individual applicants technically do not have standing in the Court, the Commission has fought to establish precedent granting individuals the right to provide the Court with their own observations. Citing the Vienna Convention on Treaties, Merrills states that the Convention should be interpreted according to the text and the ordinary meaning of its terms.

In order to interpret the purpose of the Convention, Merrills analyzes the applicability of the teleological school of interpretation. Merrills' discussion of the "effectiveness principle" is particularly interesting when compared with the rigid jurisprudential interpretation often found in American Law textbooks. While interpreting the meaning of specific provisions in the Convention, the Court prefers a "practical and effective" interpretation, as opposed to a "formal" one. Merrills uses the *Airey* case as an example of his observations. In *Airey*, the Court reviewed a High Court of Ireland case which denied a woman free access to the courts when it failed to provide her with counsel for her judicial separation case. Noting that divorce is not legal in Ireland, the Court stated that "the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective . . . particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial."

In Chapter Six, Merrills analyzes the Court's democratic procedur-

al guarantees such as free elections, the right of access to the courts, the principle of legality, judicial safeguards, freedom of expression, freedom of assembly and freedom of association. Although Merrills' analysis provides insights throughout the book, his keen analysis of relevant Court decisions in this chapter eclipses the complexity of the subjects discussed therein.

In the final chapters of the book, Merrills shifts his focus from a micro study of the Court itself to the broader concepts of democratic values, general principles of law, international law, and ideology as they relate to human rights in the European Court of Human Rights. Here, Merrills debates the competing ideologies of judicial restraint and activism. After much analysis, he concludes that the Court has generally adopted an activist approach towards the Convention, based on his observation that statements of judicial ideology typically found in dissenting judgments articulate the case for restraint. He then debates the differences between tough conservatism and benevolent liberalism before concluding that both surface intermittently in the European Court of Human Rights.

This book is absolutely essential for the specialist in human rights law. Although the book focuses primarily on the European Court of Human Rights as a legal institution, Merrills' analogies help the reader to understand otherwise highly technical terms. Merrills concludes the book by stating that the Court "has done far more, and through an ever-growing jurisprudence, has provided a remarkable demonstration of the role which courts can play in the elucidation and development of international law." As a reader, you can expect to find this principle echoed throughout the entire book.

Sandra Jamison

WESTERN APPROACHES TO EASTERN EUROPE; Edited by Ivo John Lederer; Council of Foreign Relations Press, New York (1992); ISBN 0-87609-130-3; 107pp. (softcover).

The three essays included in this volume are revised versions of papers prepared for a symposium entitled "The United States and Eastern Europe" held in New York City on September 10-11, 1991 by the Council on Foreign Relations. The essays chosen cover various aspects of the political and economic challenges facing the former Soviet satellites of Eastern and Central Europe and enlighten the reader as to how this region should be handled by the United States and the West.

Mr. Lederer starts the work off with an introduction that gives a general overview of the political and economical climate in Eastern