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Book Review. International Claims: Their Settlement by Lump Sum Agreements by R. B. Lillich and B. H. Weston

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and private enterprise in mixed economies can be ensured by law "is the most crucial of the many problems set by the inquiry." Turkey is offered as a country which has given more attention to public/private balance than others.

Like many of Friedmann's earlier works, this one has set forth the relevant questions to enable one to begin to come to grips with the underlying problems. Scholars, government officials, businessmen, and others concerned with public policy will find this book to be an excellent starting point. It is sad to note that this is the last of Wolfgang Friedmann's books before his untimely death.

ROBERT F. MEAGHER

International Claims: Their Settlement by Lump Sum Agreements. Part I: The Commentary; Part II: The Agreements. By Richard B. Lillich and Burns H. Weston. Charlottesville: University Press of Virginia, 1975. Pp. Part I: xxii, 372. Indexes; Part II: xxxi, 372. Appendixes. \$37.50 for the set.

International claims arising out of nationalizations or other state action affecting foreign-owned property have frequently been settled in recent years through agreements providing for payment of a lump sum to the claimant state, to be distributed by it to the persons concerned. Building on their earlier studies of national claims commissions, Lillich and Weston have now written what will long remain the definitive work on this method of settlement of international claims.

The authors set themselves, and successfully discharged, a threefold task: to collect and publish all postwar lump sum agreements; to show that such agreements constitute an important source of contemporary international law; and to analyze the procedural and substantive rules found in them.

The principal study (entitled, in old-fashioned manner, "The Commentary") takes up most of the first volume. It consists of a general chapter on the legal significance of lump sum agreements and four chapters reviewing in detail their provisions on eligibility of claimants, the substantive bases and types of claims, and the assessment of compensation.

The second part and a last-minute Appendix to the first part contain English texts of 139 lump sum agreements, with notes and citations. Although the authors prudently warn that they may have missed a few agreements, their collection of these hard-to-find texts constitutes in itself a signal service to the legal profession and to chanceries the world round.

The authors cogently attack what they call "the *sui generis-lex specialis* theory" typified by the International Court of Justice statement in the *Barcelona Traction* case, that lump sum agreements are merely "specific agreements . . . reached to meet specific situations" so that no legal conclusions relevant to other situations can be drawn from them. (One must admit that this case becomes an object of almost obsessive concern in the book.) Since this view has never been developed in detail by its supporters, Lillich and Weston build up a series of possible doctrinal argu-

ments which they duly proceed to knock down. Greater stress on the affirmative aspects of their argument might have been more effective. Still, their basic position is persuasive: lump sum agreements represent an established pattern of recent state practice, thus qualifying as "evidence of a general practice accepted as law." They should therefore "be treated no differently than any other expression of 'international law'" (p. 262). The last sentence is most significant. The authors object to the relegation of lump sum agreements to second class legal status, but only to assert that their "provisions, like all prescriptions that are invoked for precedential purposes, always must be subjected to systematic contextual and value analysis" (p. 263).

The detailed review of the agreements demonstrates that, with some (important) exceptions, the principles applied by them are generally consistent with those established in earlier years by international tribunals. Thus, traditional rules are applied to the nationality of claims, with few innovations (*e.g.*, some qualifications to the rules on corporate nationality, less restrictive treatment of shareholders' claims). In most instances, the exercise of national jurisdiction has been given effect only as to assets within the territory of the acting state. Most importantly, practice confirms that some compensation is normally paid for takings of foreign-owned property, but the compensation is generally partial and reflects the "special circumstances" in each case.

While Lillich and Weston strive clearly to distinguish between their findings, the statement of traditional legal rules, and their own policy preferences, a confusing interaction is not always avoided. In trying to draw detailed legal conclusions from deliberately obscure texts, the authors appear on occasion to be forcing their material, making it tell more than it can. They elegantly describe the risk they took: "As with any intellectual or scientific endeavor which strives toward the explicit ordering of actual but imperfectly revealed experience, there comes a point where, for lack of 'hard data' and sufficient general knowledge, one can strain too far to infer established patterns and trends" (p. 112). As a result, their analytical-inductive study, which often produces clear and useful conclusions, leads sometimes to less convincing findings because an adequate factual basis for induction is lacking (especially in view of the continuing lack of information on the background and application of many of the agreements) or because the texts they construe deliberately avoid traditional concepts and distinctions.

Admittedly, a sophisticated analysis of traditional law could not be undertaken here. However, use of the "customary norms" as the study's basic frame of reference unduly overstates the certainty and clarity of these norms; this is unavoidably reflected in the study's conclusions. For example, the authors make discrete findings as to each of the three "elements" of the official U.S. position on compensation; they conclude that lump sum agreement practice tends to uphold the "effectiveness" requirement and largely to disregard the "promptness" and "adequacy" requirements (pp. 208-47, 254-60). Yet, given the dubious validity of that basic

position as a statement of established law and the intimate interconnection of these "elements" (as the authors acknowledge), how useful can these "findings" be?

The assumption which appears to underlie the entire study and to some extent colors the interpretation of the agreements is that, by and large, the traditional principles concerning the treatment of foreign property remain relevant and indeed, with a few changes, quite viable today. Even the gross inadequacy (by classical standards) of the compensation paid is largely attributed to differences as to methods of valuation. The significance of this last factor (and the usefulness of the authors' pioneering earlier work in this area) cannot be gainsaid. But it is one thing to argue that better understanding and skillful manipulation of valuation standards may help to bring about a reconciliation of otherwise antithetical positions; it is quite another to attribute the antithesis to differences in such standards. It all comes down to the need for close "systematic contextual and value analysis" of the current state of the entire field, a task which, it is to be hoped, the authors, jointly or severally, will undertake.

The book for the most part is written in readable, frequently elegant, style. With commendable honesty, the authors expressly revise several statements and positions taken in their earlier studies. Their desire for precision leads them sometimes to jargon and heavy sentence construction; these, combined with overdetailed explanations and citations, put them, now and then, on the wrong side of the line that separates learning from pedantry. That is the price to be paid for comprehensive analysis of a difficult topic.

A. A. FATOUROS

International Regulation of Multinational Corporations. By Don Wallace, Jr. New York, Washington, and London: Praeger Publishers, 1976. Pp. xii, 233. \$17.50.

Professor Wallace has written a useful analysis of the several proposals for international regulation of multinational corporations, but his book suffers somewhat from being spread too thin. It seeks to deal with the nature of the international economy in the post-Bretton Woods era, the charges against and the justifications of the MNC,¹ its role in matters of trade, investment and monetary policy, and the numerous issues involved in international agreement and even international administration. Moreover, it was written before the June 21, 1976 Declarations, Guidelines and Decisions of the Organisation for Economic Cooperation and Development, and before the UN Commission on Transnational Corporations had organized its work looking toward a code of conduct dealing with TNCs. For a work which deals as explicitly with details of proposed regulatory schemes as does this one, the timing is unfortunate. Nonetheless, the book is a useful review of issues and relationships, much of which will be relevant both to interpretation and administration of the OECD Guide-

¹ The terms Multinational Corporation (MNC) and Transnational Corporation (TNC) are herein used interchangeably.