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Book Review. Public Money Sources for Overseas Trade and Investment by John E. Loomis

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Is natural justice, as viewed by a majority in the General Assembly, to be considered a source of international law as against the positive sources of treaties and custom?

"India's International Disputes" deserves special mention; by it Dr. Bains has made an extremely valuable contribution to the literature of international law.

L. M. BLOOMFIELD

Of the Bar of Quebec, Montreal.

Public Money Sources for Overseas Trade and Investment. By John E. Loomis. Washington, D.C.: The Bureau of National Affairs, Inc. 1963. Pp. xii, 243. (\$16.50 U.S.).

PUBLIC CAPITAL, provided by governments or public institutions to other governments or to private persons, has played a very important part in the world economy in the last twenty years. In the first years after the Second World War, it accounted for almost all international capital movements; though its relative importance (as well as its absolute size, but to a less extent) has diminished considerably since then, it still accounts for a major part of the investment capital moving across national borders. What is usually referred to as "public capital" does not always consist of funds provided by governments out of their national budgets. In many cases, the public institutions involved may, and do, float bonds or other securities in the capital market, thus tapping private sources of capital sometimes to a considerable extent. This is true, for instance, of the World Bank and of the newly created Inter-American Development Bank (I.A.D.B.) in Washington. The "public" character of the capital seems then to depend on the institution providing it rather than on its original source.

In the last six or seven years, the number of separate institutions providing public capital or other forms of assistance to investors, private and public, has considerably increased. In addition to the International Bank for Reconstruction and Development (I.B.R.D.), three new international agencies have appeared, two of them affiliated with it (the International Finance Corporation [I.F.C.] and the International Development Association [I.D.A.]) and one independent agency of a regional character (the Inter-American Development Bank). At the same time, several national agencies of the major capital-exporting countries are providing loans or other assistance out of public funds. The book under review is designed

as a manual dealing with those agencies which may assist United States foreign investors. Of the six institutions described, all located in Washington, D.C., four are international (I.B.R.D., I.F.C., I.D.A., and I.A.D.B.) and two are agencies of the United States Government (the Export-Import Bank of Washington and the Agency for International Development [A.I.D.]).

The author is now a practising attorney in Washington, after having been associated with the Development Loan Fund (now a branch of A.I.D.). His familiarity with the problems and procedures of public financing of private investment makes it possible for him to describe with great clarity those aspects of the operation of the above named agencies which are of interest to the persons who come into contact with them: investors and traders, engineers and equipment suppliers, lawyers and economic consultants. The book under review is not intended as a theoretical study of the legal, political or economic problems of public financing of foreign investment but as a "road map" to assist the persons who may wish to request the assistance of the agencies described. Its coverage, therefore, ranges from a consideration of the policies and purposes of each of the agencies described to a detailed formulation of the precise items that are to be included in applications to be filed with any of them.

When dealing with each of the agencies involved (and, in the case of A.I.D., with each of its separate programmes), the author starts with a short introductory section, covering its history, location and the funds available to it, moves on to a list of the criteria it uses in its operations, then to a discussion of the types of countries and projects that are eligible for assistance, deals further with its procurement policies and the extent of its collaboration with other institutions, public and private, and closes his discussion with a list of the information required in applications to be submitted to the particular agency and a table of its commitments, credits or guarantees, as of the middle of 1962.

Mr. Loomis prefaces his discussion of the individual agencies and programmes with an introductory chapter which deals with the types of assistance provided by the agencies and the operative factors and differences in their respective lending policies. Though all these agencies are primarily lending institutions, some of them also provide certain other kinds of assistance to private investors or governments. Thus, the Export-Import Bank and A.I.D. provide guarantees, the former to cover risks related to export trade transactions only, the

latter to cover investment risks either of certain specific types (inconvertibility, expropriation, war and insurrection) or all kinds of risks to which investments are subject (though only for part of the amount invested). Most of the agencies may provide some assistance with respect to pre-investment surveys by governments, but only A.I.D., under its newly instituted investment survey programme, may undertake to finance surveys by private investors, which may or may not result in investments abroad. Finally, while the financing activities of these agencies are generally limited to lending, I.F.C. is in a position to make direct (equity) investments as well.

It cannot be contested, however, that, with one or two possible exceptions, the other activities of the agencies under discussion are secondary in importance when compared to their lending function. The loans these agencies provide are of several kinds, ranging from the "hard" loans, on more or less business terms, provided by the World Bank or the Export-Import Bank, to the "soft" loans, with long repayment terms and low rates of interest (or no interest at all), which are provided to governments by A.I.D. and I.D.A. It is interesting to note that all the loans to private investors are of the "hard" type and that even the rate of interest charged by most of these agencies was until recently identical. On another point there is almost complete unanimity among these agencies: they are not supposed to compete to any extent with private agencies and institutions.

Apart from this, there are several differences in the loan policies of the institutions described in the book under review. The operations of most of them are concentrated in the less developed areas, but while some of them are or are designed to be of a worldwide character and thus may offer loans to enterprises located almost anywhere, others are regionally constituted (e.g., I.A.D.B.) and can finance investments within their region only. With the exception of the Export-Import Bank, which also finances export trade transactions, all these agencies concentrate on financing investment transactions. Industrial, manufacturing or processing projects are especially favoured in the case of loans to private investors, while governments are particularly assisted with economic and social development projects. Procurement policies differ among the institutions reviewed: the two United States agencies "tie" their financing to procurement of goods made in the United States, while the international agencies generally follow a "worldwide" policy with few limitations on procurement. Finally, while all of these agencies

are willing to finance the foreign exchange costs of a specific project, some of them are also prepared to finance some of the local currency costs. Thus, the World Bank loans will generally cover only foreign exchange costs and the same is true of I.D.A. However, I.F.C. makes no such distinction, while I.A.D.B. possesses a considerable amount of Latin American currencies, in addition to United States dollars, so that it can provide both. A.I.D. generally refuses to finance the local currency costs of approved projects, but foreign currencies may be made available to investors under one particular programme administered by this agency, namely, the so-called Cooley Loan programme which disposes of funds in foreign currencies accumulated by the United States through the sale abroad of surplus agricultural commodities.

These random notes make evident the variety of operative factors and of the terms and conditions under which public capital may be available to private investors or foreign governments. This variety is partly a matter of chance, but it serves a useful function by making possible an increased and more flexible coverage of the diverse needs that are to be found in this field. When one takes into consideration the activities of the Special Fund as well as the aid provided in the form of grants by A.I.D. and the corresponding agencies of other governments, it becomes evident that the combination of all these forms of aid with respect to a particular project or programme initiated by a government or by a private investor, presents certain undeniable advantages over the alternative of rigidly determined forms and conditions of assistance. Nevertheless, these advantages are not sufficient to justify the confusion and overlapping of competences between agencies which exist in this field and which are important obstacles to the efficient use of the limited means available to assist the governments of developing countries and the prospective investors in them.

Though most of the individual agencies have attempted to provide some guidance to the persons coming into contact with them, in the form of handbooks or manuals of instruction, there has been no up-to-date comprehensive guide covering more than one of the agencies involved, thus making possible some comparison of the problems, the advantages and the disadvantages which they present to each prospective applicant. The book under review is intended to cover this gap and it does so successfully because of its good organization and the clarity in its exposition. It cannot provide, of course, full guidance as to the details of each possible situation, neither does

it attempt any critical discussion of the existing agencies and methods and of the possible alternatives. Its great usefulness lies in that it provides a guide by means of which an individual investor can determine the more promising directions to follow. It is to be hoped that some provision will be made for supplements or additions to cover future developments, since this particular field evolves so rapidly that any description is bound to be soon outdated.

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The Public Order of the Oceans. A Contemporary International Law of the Sea. By Myres S. McDougal and William T. Burke. New Haven and London: Yale University Press, 1962. Pp. xxv, 1226. (U.S. \$15.00).

IN PROJECTING, in a series of detailed studies in international law theory and practice, his own special programme for the development of a scientific, "policy-oriented" jurisprudence, Professor Myres S. McDougal of the Yale Law School has been frank in characterising the principal inadequacies, as he sees them, of contemporary, classical theory of international law. Among these defects, he stresses the all too frequent over-emphasis on technical rules, unrelated to policies, as factors in guiding and shaping decisions; the over-emphasis, in other quarters, on naked power as a factor in decision; the general failure to achieve comprehensive description of the participants in the world power process; and, beyond that, the failure to achieve comprehensive description of the techniques of policy formulation and application in that process.

In the present work, Professor McDougal and his thoughtful and scholarly collaborator, Professor William T. Burke (now of Ohio State University), recognise at the outset that the International Law of the Sea is an important part of a more comprehensive process of decision, embracing and affecting the whole earth-space arena. The more detailed organisation of their inquiry, however, is focussed upon the varying concentrations of interests traditionally described (as McDougal and Burke believe, in a somewhat illusory geographic reference) in the familiar concepts of internal waters, territorial sea, contiguous zones, and high seas.

In what way, in their execution of their work, have Professors McDougal and Burke been successful in achieving their objective of a "policy-oriented jurisprudence;" and in what particular directions