which appears in the end to have surpassed the author's capacity (nor has his success in communicating been helped by some very approximate proofreading by the Kansai University Press). But these difficulties—with which one can fully sympathise—are not, however, sufficient to justify an almost obsessive reliance on American source material and a failure to give adequate weight to State *practice* in preference to some rather dated academic commentary and equally dated pronouncements by the UN General Assembly.

Coming as it does from a Japanese author, however, the work has interest for its treatment of the *Shimoda* case (little by way of commentary, but the full text of the district court's judgment is reprinted in English as an appendix) and the "Three Non-Nuclear Principles" of Japan, which the author admits go beyond the Japanese Constitution but claims nevertheless have "some international effect" despite their unique and unilateral character.

There is also a brief and somewhat superficial discussion of the anti-nuclear policies of the present New Zealand government and of the South Pacific nuclear-free zone. But one cannot agree with the author's contention (in connection with the Falklands conflict and the Treaty of Tlatelolco) that the status of the Latin American nuclear-free zone is not sufficiently guaranteed and observed as long as the nuclear-weapon States maintain their policy of neither confirming nor denying the presence of nuclear weapons on board their naval vessels.

F. D. BERMAN

State Immunity: Some Recent Developments. By CHRISTOPHER H. SCHREUER. Hersch Lauterpacht Memorial Lectures. [Cambridge: Grotius Publications. 1988. 260 + xxii pp. £28/$55]

IN this series of memorial lectures the author appropriately begins his discussion of recent developments concerning State immunity with a reference to Professor Hersch Lauterpacht's article published in the 1951 *British Year Book of International Law*. The author, like Lauterpacht an alumnus of Vienna University, is Professor of International Law at Salzburg University. He notes that in the 35 years since Lauterpacht described "the archaic and cumbersome doctrine" as "of controversial validity and usefulness" there has been a decisive trend towards the restrictive rule of immunity which he favoured. The passage of time has, however, produced a diversification of sources, rules and case law which might be less acceptable. The resulting complexity of the modern position is bewildering. In addition to the national legislation in the United States, United Kingdom, Canada, Australia and other common law jurisdictions, the European Convention on State Immunity and the draft articles prepared by the International Law Commission, a student of State immunity now needs to familiarise himself with the decisions of domestic courts. The table of contents of the book under review covers 17 jurisdictions, though it revealingly demonstrates the unequal distribution of State practice with nearly five out of the eight-page list being taken up with decisions of United States courts and the inclusion of only four reported decisions of courts outside Western Europe and North America.

The task does not end here. On the evidence of the present book, to

understand the modern law of State immunity the reader requires more than a passing acquaintance with commercial arbitration and bank loan and finance documentation, a familiarity with court procedure and the interlocutory, merits and enforcement phases of litigation, and a general appreciation of the structure and jurisdiction of both common and civil law courts. As the author warns, the law of State immunity is in danger of falling apart and becoming "a matter of comparative rather than international law".

The present work consequently provides a most welcome, readable and reasonably up-to-date description of the modern position. Commercial transactions, torts, arbitration, State entities and enforcement are examined in separate chapters, each of which first provides a juxtaposition of the different wording in the legislation defining the non-immune situations subject to local jurisdiction, followed by a description of the case law and an analysis of the criteria employed in drawing the line between governmental immune and private non-immune conduct.

Professor Schreuer's critique of recent developments is guided by a strong conviction that a uniform restrictive rule will provide justice and a "day in court" for the private litigant and long-term advantage to the foreign State by fostering trust between trading partners and cutting hidden risk premiums charged for deals with sovereign parties. He therefore scans his material to detect a single rule uniformly applied. He has reasonable success in the torts chapter where, apart from United States courts, there is little case law, and in the chapter on State entities where the problem is usually settled arbitrarily by drawing the definition of a State to embrace or exclude all State entities. But his method works less well in relation to commercial activities—"how elusive and vague this concept remains"—arbitration—"court decisions and other material are particularly difficult to analyse"—and enforcement "all this leads to the conclusion that situations in which a successful litigant is left without an effective remedy for enforcement are likely to remain common".

In the chapter on commercial transactions, like many previous commentators, Schreuer discards the "nature or purpose" test since it depends on the particular court's choice of focus and selection of facts. He offers instead a checklist of indicators of the commerciality of a transaction: the trading experience and expectations of the parties, the commercial setting and use of private law forms. (Incidentally, *Practical Concepts* was reversed on appeal.) It is questionable whether these will produce any greater uniformity of court decision than the test which he discards. In the chapter on torts he notes that legislative enactment has abandoned the restrictive limitation to private non-governmental torts which the case law of civil law countries still supports (though on occasion with different results). He sees here a possibility of redress for terrorist attack and human rights violation, but one vigorously controlled at present by the widely employed jurisdictional requirement that the tortious act and consequent damage take place within the local court's jurisdiction.

Despite the recent trend towards privatisation and the advocacy by both Russian and Chinese leaders of the utility of capitalist methods in certain parts of the economy, it seems likely that many countries will continue for decades to operate under different political structures and at different stages of economic development. In these circumstances is the international lawyer correct in regarding a

uniform restrictive rule as attainable or even desirable? Should he not concern himself more with procedural safeguards to ensure that the foreign State has adequate notice of the local laws and opportunity to stipulate alternative treaty performance if desired? He will still need to identify the matters of State which are non-justiciable under any legal system, or those which by reason of the inherent nature of the international order are reserved exclusively to international competence or the foreign State's own courts. But a State's use of private law forms and willingness to waive immunity in many transactions suggest that this hard core is still considerably smaller than present practice acknowledges. The reports of Professor Brownlie to the Institute of International Law foreshadow some of these developments.

In any event the effectiveness of the restrictive trend remains to be assessed. Enforcement against the assets of a foreign State of judgments obtained in domestic courts is still a rarity. It will probably take a further 35 years with many more developments before stability in this area will be achieved. In this state of flux disagreement with some of the author's propositions is inevitable. Surely his argument, that measures for economic development should be as privileged as military activities, overlooks the immediate danger of physical injury where the latter are obstructed? Is not his assumption that the establishment of and co-operation in inter-governmental organisations must necessarily be classified as a public and immune activity, irrespective of the economic goal and purpose of the organisation, far too sweeping (p.21)? Does it not provide ammunition for all who see the proliferation of inter-governmental organisations as a conspiracy to extend unbridled State power? Is he right to treat all public acts committed by a State on foreign territory as illegal unless done with the local State's consent (p.54)? Does a visiting sovereign who keeps up with his home business by signing a treaty or legislative act into effect do so with the consent of the local State?

These and many more problems illustrate the range and depth of erudition of Schreuer's study. The book is published to the high standard of Grotius publications but a list of national legislation, primary and secondary, might usefully supplement the treaty and case lists, bibliography and index supplied.

HAZEL FOX

International Trade and the Tokyo Round Negotiation. By G. R. WINHAM. [Princeton: Princeton University Press. 1987. xiv + 449 pp. £30·10. Paperback £9·10]

THIS important work by a political scientist fills a gap which cannot easily be met in the international law literature. It looks to what should be the "*travaux préparatoires*" to the conclusions of the last major multinational trade negotiations. It serves as a substitute for the official documentation which one would hope could be available on the process of drafting of the 1979 agreements and protocols additional to the GATT itself. Winham undertakes a painstaking attempt to describe the negotiations as they actually happened, which can only mean reliance, to a large measure, on interviews and other unattributable or unverifiable sources. While there may be limits to the direct use a lawyer can make of such work, I have no doubt that he must be aware of how much it can yield.