vaguely defined 'abusive' exercise of the right.[4]

I first take issue with Govaere's argument because, even assuming that the Court may invalidate a national intellectual property law consistent with Article 36, she ignores the difficulty inherent in defining a universal function of intellectual property that would transcend the conflicting theoretical approaches to the field. The debate over the boundaries of trademark protection illustrates this proposition. Traditional trademark theory holds that marks serve to minimize the likelihood of consumer confusion as to product source and prohibits the use of a mark in connection with competing products only. The 'dilution' theory challenges this notion and prohibits the use of a mark on non-competing goods on the ground that such use 'dilutes' the mark's selling power and its hold on the consumer.[5] This debate has been raging among academics and the courts, with Member State courts interpreting national laws differently according to which theory they follow. If a Member State court issued an injunction against the use of a mark on non-competing goods based on a dilution analysis, the Court would be required under Govaere's test to select a European trademark theory to determine whether the national law as applied should be upheld. On what basis would the Court pick one theory over another?

Likewise, a country may reject the utilitarian theory of copyright (advocated by Govaere), according to which facts are so necessary to the development of knowledge that copyright may not attach to them. A country may instead follow a labour or a personality theory, under which an author who invested resources or personal commitment in uncovering facts is entitled to copyright protection.[6] On what basis may the Court conclude that the 'essential function' of the right should be different?

Further, even a single theory of intellectual property may provide alternative definitions of the boundaries of intellectual property. For example, law and economics holds that law-makers should determine 'with respect to each type of intellectual product, the combination of entitlements that would result in economic gains that exceed by the maximum amount the attendant efficiency losses'.[7] Suppose a law-maker decided to grant copyright on facts as a trade-off for, say, shortening the life of copyright to five years? Would the Court impose a different 'bundle of entitlements' on the Member State?

In the end, Govaere's argument fails because it requires the Court to harmonize *de facto* the intellectual property laws of the Member States. If the Court defined a European purpose for intellectual property rights, it would force Member States to adopt essentially similar laws. The Court may tinker, as it does, with intellectual property protection for the sake of free trade, but it cannot thrust itself as the all-empowering theorist of intellectual property and harmonize the field through the back door. Govaere explains that political resistance from the Member States will prevent harmonization in the foreseeable future (at 48). Absent harmonization, though, what we see may just be all that we can get.

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4 *RTE and ITP*, Joined Cases C-241/91P and C-242/91P (Magill appeal), at 135-150.

5 See, e.g., T. Martino, *Trademark Dilution* (1986), at 26; Schechter, 'The Rational Basis of Trademark Protection', 40 *Harv. L. Rev.* (1927) 813.

6 On the labour theory, see Hughes, 'The Philosophy of Intellectual Property', 77 *Georgetown L.J.* (1988) 287, at 296-314. On the personality theory, see M. Radin, *Reinterpreting Property* (1993), at 36-44.

7 Fisher, 'Reconstructing the Fair Use Doctrine', 101 *Harv. L. Rev.* (1988) 1659, at 1704.

Lowenfeld, Andreas F. *International Litigation and the Quest for Reasonableness: Essays in Private International Law*. New York: Oxford University Press, 1996. Pp. xxvii, 239. Index. § 65.

Is it possible to identify a universally acceptable standard of reasonableness in the multifarious world of private international litigation? Andreas Lowenfeld, Professor of

International Law at New York University, answers decidedly 'yes'. His premise is that it is possible to locate factors leading to a reasonableness standard applicable in certain legal disputes that would be acceptable to courts in both sovereign states and the international community at large. To accomplish this daunting task, Professor Lowenfeld begins by rejecting the rigid rules that maintain a sharp distinction between public and private international law. Rather, he defines international law as 'a set of standards to which states adhere or ought to adhere' (at 80).

This book explores the grey areas of international litigation where private and public interests, and sometimes the interests of several states, collide. These are cases that cry out for the application of common sense (or what the *Restatement* calls 'reasonableness') and for the rejection of rigid rules to settle international disputes due to unfair outcomes in the past. By analysing a sometimes daunting number of cases, Lowenfeld covers the demanding territory of jurisdictional disputes (both to prescribe and to adjudicate), choice of law and forum problems, transnational discovery disputes involving Americans and enforcement of foreign judgments. He examines the relation of national law to international agreements in these areas. Case illustrations are adeptly set within their proper historical and legal context so that the reader does not get lost in exploring the jungles of civil procedure, conflicts of laws, contracts, and international treaties, conventions, custom and practices. Each chapter begins with a paradigmatic case, a brief historical overview and explanation of the related field of law, and is then followed by skilful contrasts and comparisons of international law decisions from several countries.

The book is intentionally heavy on illustrations and light on principles. In a work which presumes the existence of a reasonableness standard, it is often a struggle to unveil it. The author claims that these converging principles of common sense, or this 'shared approach to international law', is not linked to specific substantive values. There are, however, several islands throughout the book where Professor Lowenfeld relieves his reader by grounding the standard of reasonableness. In judicial jurisdictional disputes Lowenfeld states that 'the cause of action matters, the alternate fora matter, the reasonable expectations of the parties matter, the layers in a product liability suit between the defendant and the end-product matter' (at 79). In short, an assessment of all of the relevant factors is necessary for a reasonable decision. Lowenfeld's approach is either to critique the existent jurisprudence by explaining how a case should have been reasonably decided, or to endorse a decision, particularly when it was consistent with the *Restatement Third of the Foreign Relations Law* (to which the author was associated for close to a decade). As the book progresses, the reader is convinced that the *Restatement* has insights worthy of further exploration. The book's strength lies in the careful selection of international cases, the structure of each chapter, and the comparisons to the *Restatement* and international laws interlaced throughout. The reader revisits 'old familiars' (cases such as *Helicopteros*, *Shaffer*, *Interhandel*, *BSI*, and *Freddie Laker* litigation) as well as lesser known international cases, ranging from German to Japanese courts, thus providing fresh perspectives. The chapters on the Hague Evidence Convention and developments regarding discovery blocking statutes are lucid, with helpful lessons for litigators and legal theoreticians (e.g., the author calls for a focus on the purpose in the search for information rather than a sovereign rights emphasis). In fields of international economy, Lowenfeld successfully asserts that there is greater consensus on substance and techniques of dispute settlement, particularly when courts factor in the practical consequences for individuals, companies and states.

Lowenfeld quickly updates the reader's knowledge-base in each area he explores. By grouping cases from several countries, one sees how international doctrine has developed in a particular area. The logical, and sometimes unexpected, response of the reader is to question which state of the law (in Europe, North America, and occasionally Asia) is more reasonable. The problem in this book is that the reasonableness analysis is, in the final score, too mercurial to provide a true standard. Had the author provided

at least a brief introduction to his unifying principles early in the book instead of waiting until the end, the abundant details of the numerous (excessive?) case studies could have been more easily assimilated into a theoretical framework. It is thus advisable to read the last chapter as a kind of preface.

Lowenfeld's ongoing quest is for less territoriality and broad judgment international law as 'reasonable expectations, genuine links, the duty to evaluate and balance, the distinction between overlap in regulation and direct conflict and between potential conflict and actual clash' (at 230). After all the effort the reader has made to reach this point in the argument, the final conclusion seems a bit underwhelming.

The question one must ask at the end of this book is whether a more unifying principle for a 'shared approach to international law' has emerged? Alas, in the absence of the author providing more in-depth guidance in developing an operational definition for such a principle, this reviewer's answer is a regrettable 'no'. In the end, Lowenfeld's principle of reasonableness is less a rejection of absolute values in international law than a plea for sound judgment and informed thinking; he calls for judges to consider factors beyond the balance of abstract sovereign interests. Despite Lowenfeld's sincere call for more cooperation and less unilateral decision-making posing as sovereign principles of law, it seems likely that the 'reasonableness-shared interests' exercise will inevitably come down in favour of sovereign interests, without a more refined test of balance.

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B.G. Ramcharan, *The Principle of Legality in International Human Rights Institutions.* The Hague: Kluwer Law International, 1997. Pp. Dfl 225, US§ 140, UK£ 88

This book is a collection of legal opinions, legal analyses, notes for the file and statements of a legalistic nature relating to the UN's human rights programme. The formal 'legal opinions' are those of the UN's Legal Counsel and are reprinted from the *United Nations Juridical Yearbook*, where such documents are eventually collected and published. Much of the rest of the material would seem to have been drafted by the author during his time as special assistant to a succession of heads of the United Nations human rights secretariat (known from 1946 to 1982 as the Division of Human Rights, from 1982 to 1997 as the Centre for Human Rights and now as the Office of the High Commissioner for Human Rights). Ramcharan started as an assistant to Marc Schreiber in the mid-1970s, moved on to assist Theo van Boven during his relatively short but highly productive and somewhat stormy tenure from 1977 to 1982, and then worked for Kurt Hemdl during much of the 1980s. Despite the major differences in approach and policy orientation of these directors, Ramcharan exercised considerable influence under each of them. That was a result not only of a tireless disposition to work and a capacity to insinuate his ideas into many different places, but also from his mastery of the legal dimensions of the work. These legal opinions and other materials offer a useful insight into some of the issues that preoccupied the United Nations in those days and provide an indication of how far things have moved, at least in some respects.

The procedural issues range from the competence of different UN organs, through questions of membership in them, credentials of delegations and their entitlement to participate in meetings, to the adoption of the agenda, the provision of documentation, procedures, voting, etc. More substantive issues include the drafting of treaties, the exercise of the good offices role, fact-finding, direct contacts, communications, non-governmental organizations, state responsibility and the nationality of claims.

The book hardly makes for riveting reading; indeed it is heavy going for the most part. The title itself is somewhat misleading since the book contains almost nothing about the principle of legality *per se*. From a brief discussion of the role of international law, legal analysis, and the rule of law, the author slips imperceptibly into references to the principle of legality, but the content of that principle and how it differs from the other aspects noted is not explained. A more accurate title might have been 'The Interplay