

ICSID “club” (it is unclear whether Parra is a “club” proponent), but that wish does not appear to be close to fulfillment.

The most important suggestion that Parra appears to endorse for ICSID reform (he does not take a clear stand) is that made by Professor Gabrielle Kaufmann-Kohler to address the need to “harmonize the jurisprudence of investment treaty tribunals”: the establishment of a permanent consultative body from which an ICSID tribunal could request guidance on legal issues, thereby achieving consistency without appellate overview.<sup>6</sup> The curious thing about Parra’s apparent endorsement of this reform (leaving aside its very unlikely implementation, despite there being, as he notes, a procedural mechanism for it under Article 6(3) of the ICSID Convention) is that such a reform would be at odds with what Aron Broches himself envisioned as a reality of the ICSID system. As Parra explained in chapter 3, Broches fully appreciated the risk of contradictory decisions based on similar facts, but viewed this risk as “inherent in any system of ad hoc arbitration”; Broches stated that averting the risk through a standing tribunal “was clearly impractical in the present context” (p. 42). Moreover, as Parra noted in chapter 4, in discussing the regional consultative meetings on the preliminary draft of the Convention, several experts criticized a mechanism to create uniformity as leading to “unnecessary delay and confusion,” compromising the “authority of arbitral tribunals” and possibly providing “an occasion for a State to espouse its national’s case” (p. 63).

The above comments regarding the second half of Parra’s *History* are not offered as criticisms, but instead as matters one wishes that Parra had addressed with greater attention or vigor. That, however, would have entailed his writing a slightly different book, and the investment arbitration community should be very grateful for *The History of ICSID* that it now has in hand.

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<sup>6</sup> See Gabrielle Kaufmann-Kohler, *Annulment of ICSID Awards in Contract and Treaty Arbitrations: Are There Differences? in ANNULMENT OF ICSID AWARDS* 189, 221 (Emmanuel Gaillard & Yas Banifatemi eds., 2004).

*U.S. International Lawyers in the Interwar Years: A Forgotten Crusade*. By Hatsue Shinohara. Cambridge, New York: Cambridge University Press, 2012. Pp. xi, 248. Index. \$103.

Hatsue Shinohara is a professor of international relations at the Graduate School of Asia-Pacific Studies at Waseda University, Japan. Shinohara began her latest book, *U.S. International Lawyers in the Interwar Years: A Forgotten Crusade*, while she was studying towards a doctoral degree in history at the University of Chicago. She published a Japanese version of the book in 2003.<sup>1</sup>

The English title of Shinohara’s latest book may be too broad in one respect and too narrow in another. It is perhaps too broad in that the work does not describe American international lawyers in general, but, by and large, focuses on American academics. Her principal sources are law review articles and scholarly books. Conversely, the title may be a bit too narrow in that the book covers not only events of the interwar years (1919–1939), but also events of the Second World War (through 1945).

Shinohara’s central analytical proposition is that American international lawyers of the interwar years can be divided into two opposing camps: traditionalists and reformers. Traditionalists were generally positivists who respected state sovereignty. Reformers, though not exactly naturalist lawyers, believed in an international community that could and should sometimes trump state sovereignty; they also favored international organizations. Shinohara provides many detailed accounts of the academic literature to capture the traditionalist/reformer dichotomy. However, she fails to explore adequately international law skepticism, which was so influential in the United States during the interwar era. The debacles of the First World War and Woodrow Wilson’s ill-conceived campaign for the League of Nations had sunk the popularity of international law so low that it fell to depths where it had never been before in the

<sup>1</sup> SHINOHARA, HATSUE. SENSO NO HO KARA HEIWA NO HO HE-SENKAN-KI NO AMERIKA KOKUSAIHO GAKUSHA [FORGOTTEN CRUSADE: THE AMERICAN SCHOLARS OF INTERNATIONAL LAW IN THE INTERWAR PERIOD]. Tokyo: University of Tokyo Press, 2003.

United States, depths from which the discipline today is still struggling to reemerge. Shinohara's focus on the debates among the relatively few American friends of international law, 1919–1939, perhaps gives an exaggerated sense of these debates' importance.

Moreover, in focusing only on the two decades after the First World War, Shinohara gives little attention to the earlier eras of American dreams for and involvement in international law. The traditionalist/reformer debate of her period was deeply imbedded in a long-standing tradition of international law. Questions about the role international law should play in international relations and in U.S. foreign policy date back to Revolutionary America in the late eighteenth century, to the New American Republic in the early nineteenth century, and to the more mature and powerful United States of the mid- and late-nineteenth century. The controversies that Shinohara discovers in the interwar years were already almost 150 years old. The disagreement about whether international law should be seen as a means of protecting state sovereignty or as a way of promoting international cooperation and organization goes back in time to the earliest American international law jurists and publicists, such as James Kent, John Marshall, Joseph Story, and Henry Wheaton, and the equally early American international law utopians, such as David Low Dodge, Noah Worcester, William Ladd, and Elihu Burritt.

Though her study is largely academic, Shinohara does reach out to the political world in two fashions. First, and most important, she weaves Japanese diplomatic history into the book, showing how the Japanese government viewed international law and especially how it reacted to American and Western concern about Japanese imperialism in China and elsewhere in Asia. Second, she shows how American academics at the time of World War II began to be drawn into the U.S. government. Shinohara's account of how academics—notably Quincy Wright and Manley Hudson—helped to formulate the structure of the anticipated post-World War II international political system is especially fascinating. Her discussion demonstrates how the academic international law debate from 1919 to 1939 contributed

to events that occurred from 1939 to 1945 and led to post-war international organization.

One might raise a few technical quibbles with Shinohara's text. First, it is not at all clear that there was, in fact, a clear objective division between traditionalists and reformers. Shinohara ranks as traditionalists such figures as: Philip Marshall Brown, David Jayne Hill, Charles Cheney Hyde, Robert Lansing, John Bassett Moore, Elihu Root, and James Brown Scott. As reformers she includes: Edwin Borchard, Charles Fenwick, James Garner, Manley Hudson, Paul Reinsch, and Quincy Wright. However, it is hard to think that all those in her traditionalist camp were as pessimistic about the utility of international law as some, say Edwin Borchard, in the reformer group. All of the author's principals were sophisticated lawyers and scholars who were cognizant of international law's limitations as well as to its potential.

Second, it would have been interesting to compare the Japanese international law tradition with that of the United States. Why was there nothing comparable to the U.S. reformist group in Japan in the interwar period? What were the roots and preconceptions of Japanese international lawyers before 1919? Could academic exchanges between Japanese and American international lawyers have done more to avoid and mitigate the horrors of World War II?

Shinohara's new book is a useful contribution to an understanding of the American tradition of international law. It is especially welcome as it provides a viewpoint from outside the United States. Americans too often forget that our approach to international law may seem unusual to others.

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## BOOKS RECEIVED

### *International Law—General*

Abi-Saab, Georges. *Le Développement du Droit International*. Paris: Presses Universitaires de France, 2013. Pp. xi, 362.

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