BOOK REVIEWS

The Present State of International Law and Other Essays Written in Honour of the Centenary Celebration of the International Law Association 1873-1973

EDITED BY PROFESSOR MAARTEN BOS, KLUWER, THE NETHERLANDS, 1973, xi and 392 pages, price: 60 Guilders.

The International Law Association was founded in 1873 in Brussels under the name of "Association for the Reform and Codification of the Law of Nations". In 1973 it celebrated its centenary, once again in Brussels, under the name by which it has been known since 1895. To mark this centenary, a volume containing 22 essays was published under the title of "The present state of international law and other essays", edited by Professor M Bos, a past president of the Association.

The essays fall into two parts. In the first part, Professor Olmstead, current president of the Association, Lord Wilberforce, chairman of its Executive Council, and Professor Munch, review the development, administration and work of the International Law Association, respectively. The picture which emerges from these essays is one of which the present leadership can be justifiably proud. The International Law Association must be one of the few international organizations of lawyers which can truly claim to be above the ideological and other divisions which plague the world today. Amongst its 42 national branches are counted not only the United States, and USSR, but also countries such as Spain, India, China (Taiwan), Pakistan, Bangladesh, the two German States, and, of course, Australia.

As can be expected, the centre of gravity of the Association still revolves around the North Atlantic Basin in Europe and North America. But the growth of interest in the Association has led to some of its more recent bi-annual conferences being held outside this area. In 1964 a conference was held in Tokyo, followed by Buenos Aires in 1968 and Delhi in 1974. It is pleasing to note from Lord Wilberforce's essay that the "proximate hopes" of the Executive Council extend, inter alia, to Australia.

The most notable contribution of the Association to the development of international law are the York-Antwerp Rules of 1877 (as Professor Munch informs us, the York part of the Rules actually pre-dated the foundation of the Association) and The Hague Rules of 1921. Since then the Association has made many more suggestions for the codification and clarification of

international law, but with less obvious direct impact. This is not surprising: certainly since 1945 the development of international rules has been largely the work of United Nations agencies, such as the International Law Commission and UNCITRAL, or special inter-governmental committees.

This observation, of course, does not necessarily denigrate the work of the International Law Association. If the direct influence of private organizations is less obvious today, the indirect influence it can exercise upon the development of international law still remains profound. As Professor Munch tells us, the work of the Committee on International Water Resources Law which eventually led to the Helsinki Rules of 1966 as a restatement of the rules covering the use of water resources other than for the purposes of navigation, was used by India and Pakistan as the basis of their 1960 Treaty on the Indus River Basin.

In the second and more substantial part of the volume the chairman and/or rapporteurs of the various international committees of the Association advise the reader of the present state of that part of international law which their committee is working in. Without going into each of these essays in detail, some general observations can be made.

One is struck, when reading the essays on the great issues of public international law such as the joint essay of Maître Cochaux and Professor Radojkovic on peaceful coexistence—of Professor Humphrey on the international law of human rights and of Professor Baxter on the law of war, respectively, by the pessimism of these authors. The first named observe rightly that the quest for peaceful coexistence through the United Nations has been subverted by the abuse of the veto power of the great powers of the Security Council. Professor Humphrey points out that despite the existence of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, "majorities are still intolerant and people are still being discriminated against because of their race, sex, language and other attributes". But Professor Humphrey is too pessimistic when he concludes his essay with the words (at p. 105):

"One thing is certain. The increasing contemporary interest in, and concern for, human rights does not necessarily mean that the men and women of the middle twentieth century are more enlightened than their ancestors were or their descendants may turn out to be. Concern for the rights of the individual is more likely to be, as it has usually been in history, a sign that his rights are in special jeopardy and of a deep social malaise."

It is difficult to see how today human rights are in greater jeopardy than they were during the ages that slavery was a legal institution. Nor was there any talk of human rights when conquered people, as late as the nineteenth century, were as a matter of course exterminated. Is there not a greater likelihood that even those who pay only lip service to human rights today are reluctantly compelled to do so because of the growing acceptance internationally of the idea that such rights ought to exist even if often they are only imperfectly realized or even completely denied?

Much of international law also suffers from the inevitable time lag. Rules laboriously drawn up to solve the particular problems of one era are seen to be irrelevant in the next. As Professor Baxter points out in his essay on the law of war, the Geneva Conventions of 1949, which looked back towards World War II, were not adequate to deal with subsequent wars in Korea and particularly with the Vietnam War. Here one must agree that pessimism

is justified. Today's wars, like the European religious wars of the seventeenth century, are struggles fought between ideologies for supremacy and not between eighteenth century gentlemen who fought over the right of related dynasties to inherit a few European acres. It seems incongruous to write rules as if it were a boxing match when in the opinion of each combatant truth is at stake and error must be utterly destroyed even if the means are foul. In contrast to these essays the essay by Professor Sohn on the Charter of the United Nations, which assures us that the United Nations is still alive and working administratively reasonably well, seems almost banal when that body fails to face up to the issues of life and death of this planet.

The essay by Dr Bouchez on the law of the sea is of great topical interest in view of the conference currently being held at Caracas. This will have to deal with what so far has been the insoluble problem of defining the rights of coastal states to control the exploitation of the economic resources of the adjacent ocean and seabed. Dr Bouchez favours a solution, which prima facie appears eminently reasonable, namely a restricted zone of exclusive jurisdiction combined with preferential rights granted to the coastal state within an additional zone to be allotted by an international agency. As regards the natural resources beyond the limit of national jurisdiction he puts forward the proposal of the Deep Sea Mining Committee (now known as the Law of the Sea Committee) of the International Law Association submitted to its 1972 New York Conference (at p 179)—

"(i) All States have the right to take part in the exploration of the international area and the exploitation of resources, including the renewable and the non-renewable as well (active participation).

(ii) All States shall pay part of the revenue obtained from the exploitation of the resources of the international area to an international fund. The proceeds so acquired, or part of it, should be distributed amongst developing states and those states that have not been granted any or any substantial exclusive rights of exploitation in the international area (passive participation).

(iii) All States shall be entitled to participate in fundamental scientific research of the international area and to take cognizance of the results of such research."

The difficulty with both proposals is, of course, that they presuppose the existence of international agencies with power to allocate the preferential rights to coastal states and to collect and distribute the revenues from the international area. Indeed, the final plea of Dr Bouchez is for the establishment of "appropriate international machinery entrusted with far-reaching functions and powers". Recent history gives us little hope for the early establishment of such machinery.

The essay on air law by Professor Bin Cheng and Mr Austin offers a good example of how the slow deliberation of international lawyers can be overtaken by events. Much of the essay is devoted to the attempts to control hijacking by international conventions. As the authors acknowledge, not much progress has been made so far. However, in the meanwhile the problem has largely evaporated, not so much by legal rules but by scientific methods of prevention. Aviation liability is another sad chapter in attempts at international unification of the law and the inept attempts to placate the unreasonable attitude of the United States are rightly criticized. In contrast the area of space law as Professor Goedhuis demonstrated in his essay, offers a ray of hope. As he points out the development of international law is not only motivated by realism but also by a modicum of idealism. This is undoubtedly stronger

when one stands at the threshold as with space and no nation is asked to surrender something it already holds. As long as the United States and the USSR are the sole explorers of outer space, they can agree, like Spain and Portugal in the sixteenth century, to divide the unknown between them or even to hold it in common for the benefit of mankind.

Of the remaining essays, of particular interest are those on monetary law by Dr Guisan, showing how the International Law Association has pioneered draft conventions in this area which recently found fruition in the European Convention on Foreign Monetary Obligations of 1967 and the European Convention on the Place of Payment of Monetary Obligations of 1972, the very learned and extensive essay by Professor Kahn on foreign investments in developing countries and the joint essay by Professor Domke and Dr Glossner on international commercial arbitration. Of great interest also is a short essay by Professor O'Connell, the present Director of Studies of the Association, on state succession. In contrast to most of the other authors, Professor O'Connell does not so much review the work of the Committee on Succession to Treaties as offer a reasoned and persuasive criticism of the International Law Commission's 1972 Report and Draft Articles on that topic.

The final essays in the volume are devoted to what has regretfully been overlooked at times by the International Law Association: the growing area of international private law and conflict of laws. Notably the authors of these essays are not chairmen or rapporteurs of international committees. Dr Jessup further defines his concept of trans-national law. Judge Argúas writes on the very interesting but rather localized Montevideo Treaties of 1889 and 1940 and their influence on the unification of private international law in South America. Professor Reese writes on the second edition of the Restatement of the Conflict of Laws in the United States, for which he was largely responsible. This, of course, is a primarily domestic United States problem, but presumably by example relevant to the international community. Finally, Mr van Hoogstraten finishes up with a survey of the work of The Hague Conference on Private International Law. He shows quite convincingly how The Hague Conference is rapidly losing its exclusively European and civil law character by the growing interest of non-European and common law countries. Unfortunately the essay was written clearly some time ago. Otherwise he would have mentioned the recent accession of Australia to its membership to buttress his argument.

The volume is a useful addition to the library of anyone interested in the current state of international law. For members of the Association the price is $3.50, for the others the book is available at the price of 60 Guilders from the publishers: Kluwer BV, Deventer, The Netherlands.

The reviewer, in his capacity as Secretary of the Australian Branch, still has some copies available for members who have joined recently, or may join, since the book was distributed from London.

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