The Standard of 'Civilization' in International Society, by Gerrit Gong, Oxford, Clarendon Press, 1984, xiii + 267 (including Index) (hardback A$95).

The Expansion of International Society, edited by Hedley Bull and Adam Watson, Oxford, Clarendon Press, 1984, xi + 479 (including Index) (hardback A$105; paperback A$44).

These two books are of great interest to international lawyers working in the context of a changed international system which has raised all kinds of challenges to the previously accepted structure of international law. Both studies are concerned with the fundamental changes to the Grotian system which structured the political and legal relations of European States with one another, and, through their political and economic dominance of other States in the nineteenth and twentieth centuries, those of other States also.

Gong's work is particularly interesting for those concerned with the work of the International Court of Justice, since its Statute (unchanged from that of the Permanent Court in 1920) authorizes the Court to apply general principles of law recognized by civilized nations (Art. 38(1)). The application by the European nations of the standard of "civilization" as a qualifying test for States seeking admission to the Europe-dominated international system in the nineteenth and early twentieth century is not, Gong states, only of historical significance but a continuing factor in the modern evolution of international society (p. 4).

In its most highly developed form the standard of civilization had 5 requirements:

1. a 'civilized' state guarantees basic rights, i.e. life, dignity, and property; freedom of travel, commerce, and religion, especially that of foreign nationals;
2. a 'civilized' state exists as an organized political bureaucracy with some efficiency in running the state machinery, and with some capacity to organize for self-defence;
3. a 'civilized' state adheres to generally accepted international law, including the laws of war; it also maintains a domestic system of courts, codes and published laws which guarantee legal justice for all within its jurisdiction, foreigners and native citizens alike;
4. a 'civilized' state fulfils the obligations of the international system by maintaining adequate and permanent avenues for diplomatic interchange and communication;
5. a 'civilized' state by and large conforms to the accepted norms and practices of the 'civilized' international society, e.g., suttee, polygamy, and slavery were considered 'uncivilized', and therefore unacceptable.

This standard of civilization, Gong comments, reflected the norms of the liberal European civilization: countries which did not follow the norms were held, by circular logic, not to be "civilized" (pp. 14-15). He goes on to show how the adoption of these standards meant the compromise or

surrender of their own historic standards of civilization by non-European countries such as China, Japan and Siam.

The book first traces the historical process through which the standard of "civilization" was defined and then provides a detailed exposition of the transition of China, Japan and Siam from their own "world order" into the new International Society by virtue of their gradual adoption of the standards imposed by the dominant Europeans. Russia, the Ottoman Empire and Abyssinia are also treated, though in less detail.

The most interesting chapter for the international lawyer is that concerning the standard of "civilization" and International Law. Gong treats in detail four specific areas of international law which were directly influenced by the standard of "civilization". The first of these was that of minimum requirements, such as a minimum of efficiency in the administration, and of independence in the judiciary from the executive, and adequate protection for the life, liberty, dignity and property of foreigners. These were enforced by the regime of capitulations from which the non-European States could not escape until their internal regimes were seen to meet these requirements and which were exacted by the use of unequal treaties, such as the Treaty of Nanking, imposed by a threat to bombard Nanking, and which established fixed and low tariff rates and exterritoriality. Second was the issue of the sources of international law, now embarrassingly embalmed in Article 38(1) of the ICJ Statute, and third were the standards of "civilized" warfare. A fourth area was the idea of the "sacred trust of civilization" reflected in the mandate system. Gong expressly accepts the ICJ's 1966 judgment in the *South West Africa* case that this concept in the mandate for South West Africa was a moral claim not given legal substance. Although he mentions the dissenting opinions, he does not consider the evolution of that concept as at least some dissenters did—his acceptance is supported by the early history of the concept from 1885 (the Berlin Conference). While the history of a concept is illuminating, it can never, for legal interpretation, be the only, or necessarily the major, factor. A close reading of Jessup's Dissenting Opinion on the necessary dynamism of constitutional concepts is a necessary counterpart to this approach.

As a statement of common precepts, interests and norms, the old standard of "civilization" has clearly fallen into disrepute. What now takes its place? Gong suggests two possibilities: human rights or non-discrimination, which has some intriguing parallels to the old minimum requirements standard, and the standard of modernity, which relates to improving the standard of living through increasing use of contemporary technology and possible evolution of a contemporary cosmopolitan culture (pp. 90-92). A less likely candidate is the claim for equitable redistribution of economic wealth, for although the non-Western States now have the numbers to ensure adoption of these norms by international organizations, the West still has the economic and military strength to resist their imposition.

Gong's concluding question, "How can international norms be delineated and promulgated without infringing on legitimate cultural sovereignty?" neatly encapsulates the contemporary international lawyer's task. For all the careful argument and illuminating historical detail on the emergence of the standard of civilization, Gong's book ultimately gives little indication of the direction in which to look for an answer to that question.

The Expansion of International Society edited by the late Hedley Bull and Adam Watson takes up a closely related theme. A collection of essays by 23 authors, it is presented in four sections: European International Society and the Outside World; The Entry of non-European States into International Society; The Challenge of Western Dominance, and The New International Society. There is a wealth of historical material and much astute comment in the volume by scholars of penetration, though to the international lawyer it is disappointing to find that the last of these sections is much the smallest. There is a useful Introduction and Conclusion by the editors which enforces the book's thematic coherence, though in such a rich offering there are many dissonances, as well as harmonies. Moreover it is, as the Editors concede, a view from a particular, for the most part Western, standpoint (p. 9). It is not however myopic: the disarray in the international system today is

> by no means to be ascribed solely, or perhaps even mainly, to the presence within it of new Asian and African States, or to their attempts to change the rules by which it operates . . . [it] is to be found in factors that would be having their effect on the Western, industrialized world, even if it had not to cope with the problem of adjusting itself to a resurgent Third World: the ideological divisions arising out of the Russian Revolution, the terrible legacy of the two World Wars, the tensions arising out of rapid technological, economic and social change, the impact of nuclear weapons (p. 433).

A basically pessimistic view of the possible development of a world culture by Adda Bozeman is balanced by a lively and more optimistic view by Ronald Dore. Michael Palliser's very useful survey of the degree of general acceptance of the norms of diplomatic conduct has as its counterpoint Dore's perceptive comment that the

> whole culture of diplomatic intercourse, of bilateral talks, international conferences, nobbling in the lobbies, and partying in reception rooms—the arts of chairmanship, of cocktail party charm and conference rhetoric, of knowing when to be incisive and when to bore the time away

is all part of Western culture, absorbed by middle-class Westerners in their childhood and applied with the confidence endowed by wearing the halo of a nation high in the prestige scale (pp. 421-422). The less practised, less confident representatives of the poorer States may well prefer to retreat

to a nativist nationalism which bodes ill for the development of a world culture and equally for the evolution of an international system turned away from nationalism. Ian Brownlie's contribution on the law of nations is disappointingly brief: his comments that the concept of legality has become overstretched in international law and that objectives are set which would be over-optimistic for any kind of legal system (p. 368) could have been the subject of the chapter in itself.

Missing in the collection is a serious treatment of the question of statehood although the editors conclude that "much of the world is under the sway of states that are not states in the strict sense, but only by courtesy" (p. 430). Does the concept of "State" need redefinition? Is the classical inter-State system of international law being modified or replaced? These are questions which are raised but not answered.

This book provides excellent in-depth studies of particular regions (China, Islam, Africa and others) and is recommended for serious research into the background of the contemporary debate on the adaptability of the international legal system. The production of both books is of the high standard one would expect of Clarendon Press, though the relegation of all the footnotes in the collective volume to the back is an unnecessary annoyance.

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