

four in the Security Council, the Indian and Argentinian judges were re-elected, and the following new judges elected: Guy Ladreit de Lacharrière, (France) Sir Robert Jennings (UK) and Kéba Mbaye (Senegal). Sir Robert will require little introduction to Australian international lawyers: see 76 AJIL 364 (1982). M. de Lacharrière was formerly a legal advisor to the Quai d'Orsay, the French foreign office, and played a major role in the preparation of the French position in the Nuclear Tests Case. Readers may be interested in his article on that case: Commentaires sur la position juridique de la France a l'égard de la liceité de ses expériences nucléaires [1973] Annuaire française de droit international 335, where M. de Lacharrière discusses, inter alia, France's failure to appear before the Court, and her subsequent withdrawal of her declaration accepting the Court's jurisdiction under the optional clause, article.

In March 1982, after the death of the Egyptian judge, Judge Abdullah El-Erian, elections were held to fill this vacancy on the court. Ambassador Mohammad Bedjaoui, a distinguished Algerian international lawyer, was elected. M. Bedjaoui has written widely on a number of important questions, including the New International Economic Order. M. de Lacharrière has also recently been appointed to a seven member GATT panel to advise on problems affecting the international trading system during the 1980's: Australian Financial Review, 24 November 1983, 8.

D.F.

NEUTRALITY AND THE IRAQUI - IRAN WAR

The reports to the effect that France is proceeding to, or has in fact, delivered certain Super Etendard aeroplanes to Iraq, and the possible reactions by Iran if her shipping in the Gulf is attacked, perhaps through the use of Exocet missiles, is of great concern not only in relation to the war itself, but also in relation to shipping generally within the Gulf. In 1959, in his important work, Legal Controls of International Conflict (Sydney, 1959 at 402), Professor Julius Stone observed: "Neutrality as an institution is threatened from forces of belligerent and neutral encroachment as well as neutral retreat". The Hague Convention No.13, 1907, Article 6, incorporates what was believed to be the customary rule forbidding the supply by a neutral to a belligerent of "war ships, ammunition or war material of any kind whatsoever". The old rules on neutrality do not seem to have recovered from the decision of the Roosevelt administration to become the "arsenal of the democracies" and help Great Britain before United States entry into the Second World War. The succession of deviations away from the old standards applicable to a neutral may now be sufficient to say that those old rules no longer apply.

D F

DISARMAMENT

The Vatican has indicated it would be prepared to undertake a mediation role between the U.S. and the USSR after the Soviet withdrawal from the medium arms limitation talks. The Vatican has already accepted a role in the resolution of international disputes; for example it is apparently still involved in the attempted resolution of the dispute between Chile and Argentina after the latter denounced the award formally made by Queen Elizabeth II in the Beagle Channel Arbitration.

D.F.

EXTRADITION OR SELF HELP

The lawfulness of an arrest is a matter for the law of the state in which the arrest takes place. If the Government of State A believes that a person present in State B should be brought before the jurisdiction of State A to be tried, the sole permissible method is by seeking extradition, for example under a treaty or by some ad hoc arrangement. Extradition, however, may be difficult

and some times impossible. Thus, individuals and even the agents of Governments, may resort to self help. A recent example was the arrest by U.S. bounty hunters of one Sidney Jaffe in Canada. He was subsequently taken to Florida, tried and imprisoned for violation of the state's Uniform Land Sales Practices Law. Canada has of course formally protested and petitioned for a writ of habeas corpus in a U.S. District Court which is awaiting hearing. The U.S. Secretary of State has unsuccessfully sought parole from the State Parole Board describing the arrest a breach of international law (Time, 8 August 1983, page 59). Perhaps one of the most celebrated affairs of the kidnapping was that of Adolf Eichman (Attorney General of Israel v. Eichman 1961 36 ILR 5). His kidnapping took place in Argentina and after U.N. intervention the dispute between Argentina and Israel was amicably settled. The Israeli court held that Eichman could not deny the jurisdiction of the court because the kidnapping was illegal under international law. It would seem that only the injured state may demand the liberty of the person concerned - see Ex parte Elliott [1949] 1 All E 373; Kerr v. Illinois 119 US 436 (1886) re Argoud (1964) 45 ILR 90. In the latter case, French police, after a tip off, arrested Argoud who had been kidnapped in West Germany and who was found bound and gagged in Paris. He had previously been sentenced to death in absentia by a French military court because of his role in an attempted coup against President de Gaulle. Germany did not make a claim for reparations and the French Court held that the illegality could not be raised as a bar to jurisdiction by Argoud. In the Jacob affair Nazi Germany returned a Jewish German who had been kidnapped by German agents in Switzerland. In the Joly Affair in 1937 the French victim of a theft in French crossed into Belgium and arrested Joly whom he believed had committed the theft - on the intervention of the Procureur de la Republique the French court released him.

A recent annotation of U.S. federal cases on the jurisdiction of these courts where a defendant has been abducted in a foreign country may be found at 64 ALR Fed.292.

In the case against Klaus Barbie in France, it has been reported that Barbie will seek to refer the method whereby he was sent to France to the European Commission on Human Rights. However, as he was put on an aeroplane for France by authorities of the state concerned, this is not a case of self help.

D F

INTERNATIONAL CRIME

The U.S. government has apologized to the French government concerning the shielding of Klaus Barbie (see above) from prosecution. Barbie is now awaiting trial for war crimes in occupied Lyon during the second world war. According to the Justice Department report released on 16 August, Barbie was recruited for U.S. intelligence work in ignorance of his alleged crimes against ordinary civilians; the fault of his U.S. superior officers was in protecting him once his reputation as the "butcher of Lyons" became known - The Economist 20 August 1983, 23. None of those U.S. officers will be prosecuted because of the relevant U.S. statute of limitations. The affair raises the following points:-

- . The content of international crime;
- . international responsibility for the obstruction of justice;
- . the vicarious responsibility of a state for the acts of its servants;
- . the question whether those servants have themselves committed an international crime which may be prosecuted by other states.