

## BOOK REVIEWS

**International Court of Justice, Yearbook 1965-1966 (1966) No. 20**

154 pp.;

**Bibliography of the International Court of Justice prepared by the Library of the Court No. 19, 1964-1965 (1966),**

61 pp. with Indexes, pp. i-xx.

The International Court of Justice Yearbook and Bibliography are invaluable sources of reference for anyone interested in international law. These two handbooks provide a comprehensive survey of the Court's activities and responsibilities, plus a list of recent bibliographical references received by the Registry during the year.

Until last year both books were printed under one cover, but separate publication was found more convenient. The Yearbook is prepared by the Registry, and the Bibliography by the Court's private library.

As the publishers point out, the Bibliography may contain omissions. Titles listed are limited to those which have come to the knowledge of the Registry during the previous 12 months; thus it would be risky to rely on the Court's bibliographies for exhaustive lists. But for most purposes the annual Bibliography remains an invaluable source of information on works connected with the Court.

The Yearbook gives a handy everyman's guide to the workings of the International Court. In a short introduction, with the appropriate use of extracts from the United Nations Charter and the Statute of the International Court of Justice, details are given of the Court's formation. Other chapters deal systematically with organization, jurisdiction, administration and finances. In Chapter VI a valuable index to the Court's activities is provided by a general list of cases dealt with since the Court's inception, plus a summary of the principal decisions given by the former Permanent Court of International Justice.

Chapter II contains a "Who's Who" of the judges serving in the Court during the year before publication, giving formidable lists of positions previously occupied by the eminent legal men elected to this International body. The 1965-1966 Handbook leads off with the biography of Australian Sir Percy Spender, who finished eight years' service with the Court in 1966, and was President from March 1964 until his retirement.

Sir Percy cast the deciding vote in the Court's controversial judgment in the *South West Africa Cases* (1966 I.C.J. Reports, p. 6) last year. The decision, and the history of the six year cases which were finally decided by one vote is briefly outlined in Chapter V of the Yearbook.

In 1960 Ethiopia and Liberia instituted actions to discover whether the mandate over South West Africa was still in force and, if so, con-

tending that South Africa had violated the mandate by establishing military bases in the territory and by imposing its own policy of apartheid on the people of South West Africa.

The long-drawn-out case came to be popularly regarded as almost a test case for the legality of apartheid. In the Court's final decision, it held that the two countries had not established any legal right or interest appertaining to them in the subject-matter of their claims.

In the final decision the court deadlocked seven to seven and Sir Percy Spender was called upon to exercise his vote as President. The result, an eight to seven vote dismissing Ethiopia's and Liberia's complaints.

The report in the Yearbook sets out the legal reasoning behind the Court's decision.

Ethiopia and Liberia had appeared before the Court in their capacity as former members of the League of Nations and the rights they claimed were those with which members of the League were said to have been invested. The Court ruled that at the time of the League, individual States had no right of direct intervention relative to mandatories, this being the prerogative of the League organs.

On page 86 the Yearbook states: "Had individual members of the League possessed the rights which the Applicants claimed them to have had, the position of a mandatory caught between the different expression of view of some 40 or 50 States would have been untenable."

The Yearbook's summary also sets out why the Court dismissed the contention that the ruling given in the case in 1962 already established the Applicants' legal right or interest: "While the 1962 Judgment decided that the Applicants were entitled to invoke the jurisdictional clause of the Mandate", the Yearbook reads, "it remained for them, on the merits, to establish that they had such a right or interest in the carrying out of the provisions which they invoked as to entitle them to the pronouncements and declarations they were seeking from the Court. There was no contradiction between a decision that the Applicants had the capacity to invoke the jurisdictional clause and a decision that the Applicants had not established the legal basis of their claim to the merits".

The *South West Africa Case* was the only judgment the Court delivered between 1 August 1965, and 31 July 1966. Forty hearings or public sittings and 54 private meetings were held during this time and two Orders made. The Judgment delivered on 18 July 1966, left only one case still pending at the end of July, the *Barcelona Traction, Light and Power Company Limited* (New Application: 1962).

## International Law Chiefly as Interpreted and Applied in Canada

By J.-G. CASTEL,

TORONTO UNIVERSITY OF TORONTO PRESS 1965, pp. xxii, 1402.

Professor J.-G. Castel of Osgoode Hall Law School, Toronto, has prepared a book of cases, materials and editorial notes on public international law which he modestly describes as being "designed for use by Canadian law students in an introductory course on international law". He goes on to suggest that the book "should also prove helpful to students of political science and to diplomatic officials who represent or deal with the Canadian Government". But this is not just another book of "cases and materials" useful for students and of limited value for others. Rather, it is a valuable contribution to the contemporary literature on international law with a particular emphasis on Canadian experience.

In 1938, Professors N. A. M. MacKenzie and L. H. Laing prepared a casebook entitled *Canada and the Law of Nations*, a pioneer work which was much narrower in scope of content than the book under review. The earlier publication has been unavailable for over a decade and, indeed, a successor publication would have been justified almost two decades ago. Therefore, it is an understatement to say that Professor Castel's book fills a serious gap in the field.

Like other contemporary writers and compilers in the field of international law, Professor Castel has had to deal with the serious problem of information retrieval and selection posed by the overwhelming mass of available materials. He has wisely kept the contents of the book within the scope of its title. Therefore, the book does not give a complete presentation of the theoretical side of international law and the reader who is in search of other than traditional theoretical materials will be well advised to look elsewhere for his enjoyment. Nevertheless the teacher who wants his students to learn the basic principles before they embark on "policy-oriented" excursions will find this book most useful. These excursions—which are not to be decried—are for the later phases of studies in international law. Again, the practitioner, the diplomat and the civil servant who wish to know international law as interpreted and applied in the Canadian milieu will be grateful that they will not have to separate *lex lata* from an ore-mass containing also detailed theories *de lege ferenda*. Their pre-occupation is more often than not with the law as it is rather than with what it might, or should be. Is the theoretician, then, to cast this volume aside as beneath his notice? Quite the contrary! For here he will find otherwise hard-to-obtain useful information on Canadian law and practice which, for the purpose of developing his theories, he will want to compare with similar information on the law and practice of other countries.

It is stated in the preface that, in citing secondary sources, the author has placed emphasis upon material appearing in periodicals which are generally available in all Canadian law schools. Some of the secondary sources are, in appearance, modest, but, on close examination, surprisingly productive of useful material. For example, the frequent references to, and reproduction of material from, *External Affairs*, bears witness to the wisdom of having the officials of the Department of External Affairs set down in systematic form some of their functions (e.g., procedure for extradition) in which the practising lawyer has an interest. Other valuable information of this kind is now published in *The Canadian Yearbook of International Law* which contains sections on Canadian practice in international law as reflected in public statements and also in public correspondence and statements of the Canadian Department of External Affairs.

Professor Castel has arranged the material in his book under the following traditional headings: Definitions, nature and sources of international law; authority and application of international law in Canadian courts; the domain of international law; the subjects or persons of international law; forms of State jurisdiction—territorial and personal; the territory of States; nationality and individuals in international law; extent of State jurisdiction; the law of treaties; State responsibility and international claims; pacific settlement of international disputes; forcible or coercive means of settlement, and neutrality.

The author has exercised his selective powers in such a way as to dovetail Canadian and non-Canadian elements. The reader who finds hitherto scattered Canadian material pulled together will be surprised at its extent and quality. The Canadian content is particularly heavy in discussions on: The "Dominion" of Canada as an international entity (pp. 99-117); polar regions-Arctic (pp. 236-57); land frontiers of Canada (pp. 279-93); maritime frontiers (pp. 294-376); the Great Lakes-The Chicago Diversion-Boundary Waters (pp. 376-433); nationality and individuals in international law (pp. 450-553); extent of state jurisdiction—territoriality and extra-territoriality of laws (pp. 554-810) and international agreements (pp. 811-936). Some specific items with a Canadian content may now be examined.

There has been considerable Canadian-American experience in the field of boundary and trans-boundary waters. This subject is treated in great detail (pp. 376-433). There is a surprisingly long list of Acts and Treaties between Canada and the United States dealing with boundary waters, a description of the Boundary Waters Treaty of 1909 between Canada and the United States, a description of the International Joint Commission established under that Treaty, and a survey of boundary waters. The whole is accompanied by explanatory notes, texts of relevant treaty material, aide-mémoires, bibliographical references, extracts from books, law reviews, journals and relevant court decisions. The abundant literature on these questions will please the specialist in international water law, which has known a remarkable development in the last two decades. Emerging nations will find

in the volume many precedents for the prevention or solution of disputes over shared water resources. No doubt a later edition of the volume will include the International Law Association's Helsinki Principles on International Rivers (1966) to whose development Canadian members of the Association made a contribution.

In dealing with customary and conventional limitations upon the jurisdiction of States the author presents much Canadian material on privileges and immunities. This material will be very useful for diplomats, consular officials and international personnel having relations with the Canadian Government or Canadian courts.

Being a maritime country, Canada has had its share of cases involving "public ships", one of the most recent involving the arrest of some Cuban ships (*Flota Maritima Browning de Cuba S.A. v. The Republic of Cuba* (1962), S.C.R. 598; (1962), 34 D.L.R. (2d) 629). Here Professor Castel points out that "the case is very important because this is the first time the Supreme Court has acknowledged the modern distinction between the operations of a State in its sovereign capacity while carrying on objectives of a national character and its operations of a commercial nature directed toward the achieving of a monetary profit. It is unfortunate however that, although at the time of arrest the ships were being equipped to carry goods or passengers, the court was of the opinion that, since there was no evidence that they might ultimately be used for this purpose by the Cuban Government, they were employed for public purposes only and thus immune from arrest by application of the traditional rule...". In this regard, the author observes that the "Court did not have to express any opinion as to whether the doctrine of State immunity should equally apply to property used for commercial purposes only, but the language employed by Ritchie, J... indicates that the Supreme Court might be prepared to adopt a different rule when commercial transactions are involved" (p. 686).

Rights, duties, privileges and immunities of foreign diplomats and consuls are examined at length (pp. 708-68) and the texts of the Vienna Conventions of 1961 and 1963 are included. The procedure followed by the Canadian Department of External Affairs relating to the arrival of Ambassadors designate and diplomatic personnel is set out in such detail that a sample form of notification of arrival to be presented to the Secretary of State for External Affairs is given.

Like some other federal states Canada faces the perennial problem of treaty implementation in respect of subjects over which there are competing claims for jurisdiction between the Federal Government and the Provincial Governments. The story of this conflict is well told through appropriate cases whose names are familiar to the student of Canadian constitutional law. The practising lawyer will be happy to find a reference to the proof of treaties in Canadian courts (pp. 833-4), while the budding diplomat or potential international civil servant will find reproduced samples of the following: Order-in-Council authorizing the issuance of an Instrument of Full Power (p. 827); Instrument of Full Power (p. 827); Order-in-Council authorizing the

issuance of an Instrument of Ratification (p. 828) and Instrument of Ratification (p. 829), documents that exist, but are seldom seen outside diplomatic circles or the confines of international organizations.

Even the casual reader will be fascinated by the variety of Canadian experience in international law. Here are some random examples: (i) Case of the prisoner of war who escaped in a mail bag only to be brought before criminal court for having stolen cigarettes, gum and perfume (all of which he used) (*R. v. Brosig*, [1945] 2 D.L.R. 233); and (ii) The case of the Member of Parliament who turned to spying for a foreign power (*Rose v. R.* (1947), 88 Can. C.C. 114). Mention may also be made of cases on the status of Indians, thus: *R. v. Syliboy*, [1929] 1 D.L.R. 307 (possession of fur felts in contravention of a Provincial statute); *R. v. St. Catherines Milling & Lumber Company* 10 O.R. 196 (Rights of Indians to a legally recognized tenure of defined lands); *Francis v. R.*, [1956] 3 D.L.R. (2d) 641 (Claim for return of duty paid on electrical equipment brought across border).

Appendices to the volume include material on Canadian citizenship, immigration, Canada's international representation, a list of relevant federal statutory orders and regulations and a list of the multilateral treaties to which Canada is a party. There is a useful and detailed selected bibliography (pp. 1376-84), an index of cases (pp. 1385-90) and a subject index (pp. 1391-1402).

Professor Castel has shown great enterprise in preparing this book. It is hoped that the users will inform him of their experience in applying it in the class-room and in practice outside the class-room. While desiring primarily to prepare a teaching aid, the author has nevertheless succeeded in producing a work that will find a useful place on the practitioner's shelf. Even if many practitioners will but rarely have occasion to use the book on a bread-and-butter basis, it will afford many hours of pleasant and enlightening reading for the person who aspires to be a citizen of the world. When our neighbour is, today, mankind of every description, it behoves us to know the framework of our legal relationships with the States in which he lives.

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*(This review was written in a private capacity.)*

**The Indian Year Book of International Affairs, 1964 Vol. XIII Part II. Studies in the History of the Law of Nations (Grotian Society Papers).**

The Grotian Society was formed in 1960 by a group of international lawyers seeking to revive the study of the history of international law. This special supplement to the Indian Year Book of International Affairs brings together some of its papers. Distinguished authors from six countries write on such subjects as "Rationalism and Voluntarism in the Fathers of International Law," "Gentili On the Qualities of the Ideal Ambassador," "G. F. de Martens on Asian Treaty Practice," "The Contribution of the League of Nations to International Law" and "The Law of Nations and the Rhetorical Tradition of Legal Reasoning."

The papers are of a high standard and should prove of interest not only to students of international law but also to students of international politics. The concerns of the classical international lawyers were essentially the same as those of the contemporary social scientists who devote themselves to "the theory of international politics". It is by immersing themselves in the sort of issues treated in this volume that the latter can best provide their subject with the historical and philosophical depth it seems so often to lack.

HEDLEY BULL

**Dr. Ch. Boasson, Approaches to the Study of International Relations; Foreword by Professor Dr. B. V. A. Roeling, Assen: Van Gorcum & Co., N.V., 1963, 100 pp.**

International relations have been subjected to systematic theoretical analysis for some 25 years now. Most of these theories have been based on the generalization of particular factors, for example, power and national interest. All these approaches have provided insights and have contributed to a greater understanding of the processes of international relations.

In the greater part of his valuable and distinguished study, Dr. Boasson summarizes and criticizes these different approaches: historical, geographical, legal, economic, political and sociological. In his words: "This paper will not so much attempt to join in the debate, not soon to be ended anyhow, as to what is proper 'theory' for the field, or what are hopeful suggestions; it will rather accept several approaches as fruitful and probably inevitable" (p. 2). On the same page: "The paper will above all attempt to re-think what I believe to be admirable points of view, and in doing so to reconsider *difficulties* in the appreciation of acceptable and admissible theory."

Dr. Boasson accepts the fact that the present theoretical outlook is essentially that of political science, but asks whether this orientation is basically sound or whether it is fundamentally misleading; political science refers back to elements and aspects of psychology, philosophy and economics and, probably more than to any other discipline, to sociology. He maintains that no generally accepted theory of international relations has yet been developed. Rather, there is what he calls an international relations "interest", which presents theoretical problems to the developing social sciences. Further, before a unified theory or a clearly agreed delimited field for the disciplined study of international relations can come about, many more questions need to be asked.

GAIL CLEMENTS



*The Strategy of World Order.* A set of materials edited by Richard A. Falk and Saul H. Mendlovitz, in four volumes: Volume I, *Toward a Theory of War Prevention* (Foreword by Harold D. Lasswell), 394 pp.; Volume II, *International Law* (Foreword by Wolfgang Friedmann), 382 pp.; Volume III, *The United Nations* (Foreword by Oscar Schachter), 848 pp.; Volume IV, *Disarmament and Economic Development* (Foreword by J. David Singer), 672 pp. New York: The World Law Fund 1966.

The Editors of this important collection of materials, and the World Law Fund, as publisher, are to be congratulated upon a remarkable achievement. Scholars in the fields of international relations, political science, international law, arms control and disarmament, and peace research must forever remain in their debt, while no major library can afford to be without these four volumes on its shelves.

According to the prospectus issued by the World Law Fund, the set of volumes is "intended primarily for courses or seminars dealing with problems of world order", while each volume is however "sufficiently autonomous" to be "used alone as well as in combination with any of the others". After a careful perusal of the whole of the contents, the reviewer is able fully to endorse the statements in the prospectus. The materials assembled, consisting of the systematically arranged writings of a large number of distinguished specialists and experts, are admirably suited for University lectures or tutorial discussions, in which questions of world order arise, and each volume can be used separately for instruction specifically related to its subject-matter, yet at the same time, two and more volumes can be employed together where a course or seminar extends over a field wider than that covered by a single volume.

One general observation may be made at the outset. The writings selected by the Editors for inclusion in these four volumes are characterized by a forward-looking approach; in this way, students are introduced to all that breaks fresh ground and is up-to-date in the particular areas covered. Moreover, a multi-disciplinary insight is provided, the authors represented being not only lawyers, but sociologists, historians, political theorists, scientists, international administrators, and deterrence analysts. Nothing on such a scale, or covering so wide a range has previously been attempted in the domain of the theory of international relations.

Perhaps the best volume is that on the United Nations, Volume III. With its aid, a student of world affairs can acquire an accurate understanding of the structure and working of that Organization, and of the multitude of new developments during the last decade, certain of which were not foreseen by the draftsmen of the United Nations Charter. Volume IV presents a valuable conspectus of modern thinking on questions of arms control and disarmament, while Volume II is

refreshing with its up-to-date collection of writings on international law, on a level far removed from much of the stereotyped methodology and analysis that are still with us, as a heritage from the world of pre-war days. Volume I is indispensable for all those engaged in peace research.

It remains only to mention that each volume is well served with an admirable Foreword by an eminent authority.

J.G.S.

*Proceedings of the International Peace Research Association, Inaugural Conference.* Assen: Van Gorcum & Co., N.V., 1966, 372 pp.

This volume, in the series of International Peace Research Association "Studies in Peace Research", contains a record of the Association's inaugural conference at the University of Groningen, Netherlands, 2-5 July 1965. The papers presented to the Conference are also reprinted, conveniently arranged in seven sections or divisions as follows: I. On International Integration. II. On Conflicts. III. On the United Nations. IV. On Disarmament. V. On Non-violence. VI. On Peace Research. VII. Research Plans.

The conference was attended by 73 participants from 23 countries. In future years, it will probably be regarded as a milestone in the development of peace research upon a multi-disciplinary basis, reflecting a purely scientific approach, entirely unconnected with nationalistic conceptions.

All the papers submitted were worthy of the occasion. This high standard is particularly encouraging for the future of peace research, while it shows also a concerted determination to achieve practical results.

This is a book which can be strongly recommended for study by all scholars in the field of world affairs.

J.G.S.