BOOK REVIEWS

The Law-Making Functions of the Specialised Agencies of the United Nations by C. H. ALEXANDROWICZ (Angus and Robertson, 1973), pp. 1-181. Recommended retail price $9.95. (ISBN 0 207 12740 9). *The United Nations: Confrontation or Consensus? The limits of voting-power* by ALAN WATT. (The Australian Institute of International Affairs, 1974), pp. i-xvi, 1-126. Recommended retail price $3.75. (ISBN 0 909992 07 X).

"No problem is so big that you can't run away from it."

Charlie Brown

It is now almost thirty years since the World War II constitutions of the specialized agencies were concluded. Efforts were made at that time to deal positively with one of the two most exasperating problems confronting those who are convinced that it is through such global agencies that the interests of mankind can best be promoted: how to make key decisions of such organizations binding on member states. Had these efforts been successful, the other problem—that of enforcement—would have remained, but the power and corresponding responsibility of the states participating in the collective decision-making process might well have resulted in a radical advance in the development of world order.

In the upshot, the compromise reached and embodied in the constitutions of many of these organizations was that treaties on appropriate subjects could be negotiated (subject to ratification by individual states) under the auspices of the organization, and that various organs of the organization might also adopt "standards" or "regulations" or take decisions on certain matters which would be binding on member states unless they opted out. Generally such conventions, decisions, regulations and the like need not be adopted unanimously but by a simple or qualified majority. Still further forms of decision-making such as "resolutions" which were not stated to have any special force were also included in the powers of these organizations. Thus, subject to a few exceptions, such as the binding force attaching to certain decisions of the Security Council of the United Nations under Article 25 of the Charter, and certain decisions dealing with the internal workings of the organizations, the constitutions of the post-war global bodies do not attach binding force to their decisions. In brief, the traditional notion that a sovereign state cannot be bound without its consent, was maintained.

Thirty years later, many people consider that the effectiveness of the specialized agencies has been severely limited by this restriction on the impact of their decisions. In the interval, the old notion of the sovereignty of the nation state has been buttressed by nationalistic third world states, and it will not be easy to effect a policy change in favour of ceding some areas of sovereignty to global organizations.

Accordingly, those who believe that certain vital areas should be placed or remain under the control of global authorities must first look at ways of utilizing or manipulating existing procedures. It was from this viewpoint that I read two recent books published in 1973 and 1974 under the auspices of The Australian Institute of International Affairs.

The first is *The Law-Making Functions of the Specialised Agencies of the United Nations* by Dr C. H. Alexandrowicz. The introduction looked promising since Dr Alexandrowicz makes the point that in response to scientific and technological developments the specialized agencies have had to generate new rules of law-making, and suggests that they have been assisted in achieving this result by developing and borrowing from each other certain procedures and mechanisms. The approach adopted by Dr Alexandrowicz is comparative and descriptive, but as is often the case in comparative studies, it makes dull reading. It is a pity that the author did not feel able, for example, to flesh out the arguments against his own conclusion (with which this reviewer agrees) that ILO Conventions do not bind states automatically as legislation of the organization (page 26). It would also have been interesting and relevant to know whether the *traveaux préparatoires* of the conference which drafted conventions establishing the specialized agencies such as UNESCO and FAO drew on the older precedents of the ILO and UPU, and whether the UNESCO Protocol setting up a Conciliation and Good Offices Commission in respect of interstate disputes about the implementation of the Convention against Discrimination in Education 1960 drew on ILO precedents or was an independent development. It is pertinent at this point to mention that an irritating feature of the book is the absence of, or inadequate, references to the published texts of conventions and other material cited in the text.

Dr Alexandrowicz takes as his reference point the sources of international law as laid down in Article 38 of the Statute of the International Court of Justice. Essentially his interest is in fitting various types of decisions taken by international organizations into his own classification of legislation and quasi-legislation with a view to demonstrating that the agencies can generate rules of customary international law. In his own language, international legislation comprises "instruments generated unilaterally by a legislative or quasi-legislative organ" as distinct from "contractual formations of a multilateral character" (page 4), *i.e.* treaties drawn up under the auspices of a specialized agency. Quasi-legislation is defined as rules "adopted by a majority of votes" by state members of a specialized agency (page 4). Such rules we are told, are not binding on dissenting members. There is nothing new here. One reads on in the hope that the classification adopted by the author is going to demonstrate his thesis that the agencies are responding to international needs. Alas, on the basis of the constituent instruments and the accepted practice of the parties, his classification of the "standards" of ICAO or the Conventions of the ILO as quasi-legislation does no more than confirm the accepted doctrine. This doctrine postulates that none of these decisions bind of their own force a state which does

not wish to be bound by them. Most international lawyers accept the further point that these decisions may, as evidence of state practice, assist in the establishment of a rule of customary international law, so that Dr Alexandrowicz's conclusions to this effect hardly break new ground.

The brief chapter on "General Principles of Law" is equally disappointing. Picking up the view expressed by writers such as Dr Jenks, the author suggests that there is solid ground for arguing that the procedures of the specialized agencies generate "general principles of law recognized by civilized nations " (page 88). This is an interesting and controversial issue deserving detailed treatment. The author explains that the effect of this practice leads to pressure on member countries and uniform municipal law-making. He claims that at an advanced stage this creates jurisprudential uniformity. The example he selects, "abuse of right", is illustrated by reference to radio communication (which he acknowledges was an example which has been advanced by Sir Hersch Lauterpacht) (page 90) and by reference to Article XIII of the GATT which deals with loss of benefits. The author suggests that the principle of abuse of right would be relevant here as a test of whether Article XIII should apply. Clearly such a test would be useful, but surely the important point, given the author's premise that abuse of right is a general principle of law, is to establish whether GATT practice has in fact established it as a test. One is left uncertain whether the author considers that GATT supports the existence of such a right or whether he considers GATT should, through practice, seek to establish it.

To conclude, the book fails because it does not, beyond a superficial level, attempt to explore the author's claim that although "the obsession with the paramount nature of sovereignty still reigns supreme in power politics, the law of the Specialised Agencies, in so far as it follows in the wake of scientific and technical progress, has tended to intensify methods of functional co-operation and promote a measure of world integration" (page 161).

The United Nations: Confrontation or consensus? The limits of voting-power provides the complete contrast to the work of Dr Alexandrowicz. Sir Alan Watt holds a law degree but insists that he does not regard himself as an international lawyer. Certainly his chapter on the Legal Effects of Resolutions of the United Nations General Assembly can be criticized on the basis that it amounts to not much more than a summary of the conflicting views on this issue. Nonetheless, his analysis reveals an understanding of the legal issue and as he says, his purpose is not to reach a viewpoint on that thorny issue, but to use it as an example of how the "third world" countries have used their voting power in efforts to force their views on a powerful dissident minority.

The importance of this book for the international lawyer, as well as the political scientist, is that unlike Dr Alexandrowicz, Sir Alan suggests a way of tackling the central problem mentioned at the beginning of this review, that is, can global organizations be used effectively to deal with the current need to control population, energy resources, food

resources and so on. Taking the United Nations as his main model, he argues that the democratic notion of one man one vote is proving unworkable in international organizations. As Harland Cleveland suggests in a recent article "the more voting there is the less action there is".[1] Sir Alan proposes that one way through the difficulties of obtaining action from "talk shops" is to use the device of consensus. By this procedure no formal vote is cast when taking decisions, the advantage is that nations are not forced to take a public stand on embarrassing issues and thus can be persuaded to swallow decisions (whatever their legal impact on states) which might otherwise be unacceptable.

There are dangers in this approach: the consensus often amounts to no more than generalizations meaning all things to all nations; a modified form of the old unanimity principle in which unanimity of those vitally concerned is necessary together with acquiescence by those less directly affected. The advantage lies in that the procedure minimizes the likelihood of confrontations between different groupings, and the resulting stalemate. The procedure was developed during the 1960's, and its use in current forums such as the Seabed Committee lend weight to Sir Alan's view that where there is a common interest in global action to deal with international problems the consensus procedure may help in securing action as opposed to confrontation. In the development of his theme Sir Alan explores, *inter alia*, the principle of the sovereign equality of states and what has appeared to be an exceptionally successful use of the weapon of confrontation in the anticolonial policies of the third world countries.

What is stimulating about *Confrontation or Consensus* for any lawyer cynical about the development of effective global controls, is that it forces a re-examination of the possible legal techniques for dealing with international problems within an organizational framework. Clearly there are limits on the effectiveness of consensus. For example, it leaves unanswered the problem which Dr Alexandrowicz's book exposes; that is, how can states be persuaded to yield a portion of their traditional sovereignty for the common good? Nonetheless, the use of consensus as a negotiating technique in highly charged forums such as the Seabed Committee and the Security Council justify Sir Alan's thesis that it deserves serious consideration as an alternative to stalemate. For the lawyer what needs to be added to the procedure if it gains acceptance as the working method in international organizations is the acceptance of a rule that, for what it is worth, in any important area of concern, the consensus should constitute a binding obligation on the states parties. Such a rule might make it more difficult to achieve a generally agreed form of words, but it would also indicate a willingness on the part of the sovereign state to accept international control as necessary if man is to survive. This step has been taken in the European Communities, and it remains to be seen whether governments have the courage or are forced by necessity to move to this point on a global basis.

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[1] New York Times Magazine, May 4, 1975.

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