

INTERNATIONAL LAW IN A CHANGING WORLD. [Dobbs Ferry, N.Y.: Oceana. 1963. vii + 125 pp. U.S.\$4.00]

INTERNATIONAL LAW, TRADE AND FINANCE. By Stanley D. Metzger. [Dobbs Ferry, N.Y.: Oceana. 1962. vii + 184 pp. U.S.\$6.00]

INTERNATIONAL BUSINESS TECHNIQUES : LEGAL AND FINANCIAL ASPECTS. By Carol McCormick Crosswell. [Dobbs Ferry, N.Y.: Oceana. 1963. xxi + 361 pp. U.S.\$10.00]

SOME NEWLY ESTABLISHED ASIAN STATES AND THE DEVELOPMENT OF INTERNATIONAL LAW. By J. J. G. Syatauw. [The Hague: Martinus Nijhoff. 1961. xii + 249 pp. D.fl. 19.]

NEUTRALISM AND NONALIGNMENT : THE NEW STATES IN WORLD AFFAIRS. Ed. Laurence W. Martin. [New York: Praeger; London: Pall Mall. 1963. xxi + 250 pp. £1 15s. 0d.]

AFRICA AND WORLD ORDER. By Norman J. Padelford and Rupert Emerson. [New York: Praeger; London: Pall Mall. 1963. xx + 152 pp. 12s. 6d.]

“The development of the law is not an end to be sought for itself, but is a means by which other ends may be attained in an orderly and lasting way. When the international society becomes able to agree on the ends to be sought in dealing with some of the complex problems which face it, practical solutions can be worked out, with all necessary adjustments and compromises. These solutions can thus be given a legal form so as to govern the conduct of States.” These words of Hammarskjöld, in an address on ‘Liberty and Law in International Life’ delivered to the American Bar Association in 1955, may be taken as the keynote of any study of *International Law in a Changing World*, for it is no use creating a magnificent superstructure of law and legal forms and machinery, if those to whom the law is addressed are not agreed on the ends which it is intended to serve. It is unwise, therefore, to “attempt to set law against power. [We must seek] rather to find within the limits of power the elements of common interest on the basis of which joint action and agreed standards [can] be established” (Schachter on ‘Dag Hammarskjöld and the Relation of Law to Politics’ in the same collection).

Perhaps one of the most glaring examples of the impact of a changing world upon international law is to be seen in the vast increase in the number of international institutions, particularly since 1945 — as Professor Ago points out (‘The State and International Organisation’) there are now more institutions than States. At the same time, international law ‘is coming to include many of the problems faced by private citizens or business enterprises’ (Dean, ‘The Importance of International Law in the Maintenance of Peace’). The significance of this development is well illustrated in Professor Metzger’s *International Law, Trade and Finance*. The learned author points out how State economic activities have broadened the scope of international law where trade and finance are concerned and discusses such matters as regional markets; the impact of anti-trust laws on foreign commerce; exchange controls — after all one of the earliest claims protected by treaties in the field of international economic law was that foreign traders could depart with the profits of their trading; the protection of foreign investment — a matter which is increasingly vital in an era of aid to under-developed countries, most of which have strong nationalist movements which would like to take over foreign economic interests; and, of increasing importance today, liability of nuclear-powered vessels as compared with the tendency to limit liability for aircraft accidents in international air transport. The basis of Professor Metzger’s approach is the recognition that international law and society are dynamic and that legal limitations upon the freedom of action by the State cannot be finalised and catalogued for all time, especially as there are bound to be various factors, some of which may be highly emotional, that will militate against State willingness to curtail freedom of action: ‘it would be sensible to acknowledge this fact rather than recoil from it, and to find cooperative enterprises designed to

harness international energies rather than to be preoccupied with attempts to create legal limitations upon a nation's freedom of action unrelated to such enterprises.'

Closely associated with the subject of Professor Metzger's study is Miss Crosswell's survey of the legal and financial aspects of *International Business Techniques*. Although her monograph is primarily directed to the interests of the United States lawyer and investor, any investor, regardless of nationality, will be interested in such matters as United States policy on and guarantees for foreign investment. In any case, every financier is concerned in the measures of tax relief and other incentive measures offered by investment areas, and will find the chapters on doing business in India and Japan particularly rewarding. For those whose financial activities are more likely to be in the field of the European Common Market than in under-developed areas, Miss Crosswell's discussion on the nature of the Common Market and EFTA, as well as on taxation in the Common Market countries will prove most useful. The combined effect of Professor Metzger's *International Law, Trade and Finance* and Miss Crosswell's *International Business Techniques* is to confirm the complexity of modern international financial life compared with the comparatively uncomplicated position before 1914. The obstacles in the way of the financier seeking to invest abroad, and then hindering his freedom to enjoy the profits of his investment are increasing daily. The scope for the specialist in international economic law is constantly growing and these two books will prove of unquestioned assistance in helping him to guide his client through the labyrinth.

Dr. Jenks in his contribution to *International Law in a Changing World* ('Law, Freedom and Welfare in Action for Peace,') tends to agree with Metzger. He draws attention to a certain hesitancy on the part of newly-established States in their attitude to international law, which 'calls for a larger perspective in the attitude of the older States, which have been apt to regard international law as a projection of their own values, and for a mature acceptance by the newer States of responsibility for helping to uphold and promote the development of common legal standards which the interests of the whole world require.'

Generally speaking, when reference is made to *International Law in a Changing World* one tends to have in mind the impact of the newly independent States. As Professor Pal reminds us, in an essay bearing that title: 'The Great Powers are no longer alone responsible for the creation of international law. It is essential that all States, whatever their social and political systems, their geographical location or level of development, should be given a chance to participate in the creation of international law adapted to the world of today.' How this has happened, and is still happening, is examined by Dr. Syatauw in his *Some Newly Established Asian States and the Development of International Law*. The States selected are Burma, Ceylon, India and Indonesia, all of which had been former colonial territories, were among the original sponsors of the Bandung Conference idea, and, unlike Pakistan, the fifth participant in the Colombo Conference of 1954, all are unaligned.

The significance of this last characteristic in a wider context than the newly established States of Asia is examined in the collection of essays by American scholars edited by Mr. Martin under the title of *Neutrality and Nonalignment*, the most significant characteristic of which is the general recognition that neutrality, nonalignment and nationalism are not synonymous with communism or anti-Americanism. Two quotations will suffice to illustrate the wind of change in American thought on this subject: 'It is as unreasonable for an ally like Portugal to expect to retain its weight in the alliance, if it becomes a liability, as it should be for an uncommitted nation to expect favors when its policies are harmful to the West. Nor should one fall into the error of believing that the services rendered by a neutralist have to be comparable in kind to those of an ally, or that the moral value of having neutralist friends is wholly ephemeral because it has hitherto been exaggerated' (Martin, 'A Conservative View of the New States'). 'Whether the middle-class revolutions in the underdeveloped countries will establish "national democracies" as temporary way stations on the road to Communism, or whether they will establish authentic middle-class regimes that will "compromise with imperialism and domestic reaction"... will depend in large measure upon the reception they receive from the United States. And American reaction will, in turn, largely depend upon how we perceive the situation and identify the interests of the West with the aspirations of these revolutionary middle-class movements' (Aspaturian, 'Revolutionary Change and the Strategy of the Status Quo').

Dr. Syatauw makes a point with regard to the Asian outlook upon life which tends to be ignored by European States and commentators. A different sense of time prevails in the Orient. It is not surprising, therefore, that Asians regarded their returning Western masters after 1945 as equally illegal occupants as the Japanese — after all, three centuries are equally ephemeral in the timeless history of Asia. In so far as the 'well-established' rules of international law accepted and imposed by the 'imperialist powers' are concerned, the new nations have to a reasonably large extent abided by them, although there have been numerous 'moments in which their practices aroused the anger of other States which charged them with violations'. Frequently, these 'violations' are as much the result of 'misunderstanding and inexperience' as of 'resentment and disagreement'. Nationalism plays its part and emotion and tradition frequently have their own values. It is perhaps not surprising that in the process Christian and Western concepts on property and obligation do not prove irrevocably acceptable. For this reason there is little point in propaganda on behalf of world government or a universal philosophy for man, and 'to bring all these elements under the aegis of traditional international law which purports to have all answers for all problems, is to demand the impossible.'

Dr. Syatauw discusses the inter-relationship of *Some Newly Established Asian States and the Development of International Law* by way of an analysis of the Burma-China boundary disputes, the Kashmir conflict, the attitude of Indonesia to the law of the sea — this is before the claim to change the name of the Indian Ocean, and peaceful coexistence — a concept which in Asia, unlike that in East-West relations, extends to friend and potential enemy alike and is intended to be permanent. He concludes that much Asian thought on international law will be conditioned by the fact that during the period of modern international law, since Grotius, they were unable to make any contribution since they were not 'States' in the western sense or were colonies. However, if the older States refer to historical factors in the development of international law they must expect the Asians to refer to factors in their own ancient times — in somewhat the same way as France and Britain referred to feudal practices in the *Minquiers and Ecrehos* dispute. A further conditioning factor is to be found in the colonial history of the Asian States. It was reliance upon rules of international law, in the formation of which they alone had any say, that the Western powers established their colonial administrations, maintained them and denied legal personality to the Asian territories or any legal right of self-determination to their peoples.

While there has been a tendency to look at the problem from the point of view of rejection of accepted principles, there is the equally important counterpart to be considered. It cannot be denied that new States, and not only those in Asia, have made positive contributions to legal principles with regard to the relationship of former colonial territories and the imperial power, as well as to the role of international organisations in the liquidation of colonialism. At the same time, they have elevated the concept of self-determination into a legal principle, even though they might not always concede it to their own minorities. Finally, they have helped in providing legal form for the vague ideology of peaceful coexistence. To a certain extent it may be said that the impact upon international law of the arrival of new independent sovereign States of Asia may be compared with that of the breakdown of feudalism and the Holy Roman Empire in Europe. In addition, through the medium of such bodies as the Asian Legal Consultative Committee, we may see a new regional international law developing that will be at least as important as that of Latin America. Associated with this is the drive for leadership by Indonesia which during the Malaysian crisis found expression in Dr. Soekarno's adaptation of the Monroe Doctrine.

When discussing the impact of new States upon international law, reference is usually made to Asia. The fact that there is a larger number of new States in Africa is generally overlooked. This is partly due to the fact that these States are younger, have not fallen across the international frontier between East and West, and did not present the same type of problem since they had not been occupied during the Second World War and had not the same experience of internal self-government and agitation for independence. Nevertheless, as has been made clear in their attitude to Portugal and South Africa, the African States are now determined to make their views heard and will play an increasingly important part on the world stage. In understanding some of the background for their present attitude, *Africa and World Order*, reprinted from a 1962 issue of *International Organization*, will prove most useful and its timing is most apposite. In this Praeger Paperback are

to be found essays on Pan-Africanism; African unification movements; the Commonwealth and Africa; the Congo; and Africa and the United Nations. Together they emphasise the point made by the editors: 'Emergent Africa is testing the strengths and weaknesses of the international order as they have not been tested before. The issues being raised are of inescapable concern to all nations and people.'

It is perhaps as well to close this survey of some of the recent literature on international law in a changing world with a quotation from Syatauw:

'If ever a fair appraisal of practices can be made, it should be made with a clear understanding of the ambitions, claims and expectations of those who are the subject of observation and discussion. The important question is, therefore, *what* the Asian [and African] nations themselves think. The question as to what they *should* think can only be considered after having made oneself acquainted with the answers to the first question. It may well be that a discussion of the second question will be very critical of the outcome of the first one. So be it, if only that criticism has been arrived at after due consideration has been given to what the Asian [and African] states think themselves. Then the result can only be to the benefit of these Asian [and African] nations. On the other hand, if criticism is poured out over these countries without regard for their own attitude, nor for the compulsion of certain facts, criticism will only cause more resentment. Especially an attitude of ill-concealed self-righteousness on the part of older states who claim that they themselves abide by "established rules of international law", implying that the new states act as irresponsible young member of a family of nations, arouses angry protests from these young nations and not always without justification. If anything, these new nations have quickly discovered that international relations today are carried out primarily on the basis of hard facts, and that there is much lip service and hypocrisy. A more realistic approach to international relations is desirable in all parties concerned.'