

'PEACE COEXISTENCE' AND SOVIET-WESTERN INTERNATIONAL LAW. By
E. McWhinney. [Leyden: Sythoff. 1964. 135 pp. D.Fls. 17.90].

INTERNATIONAL LAW TODAY AND TOMORROW. By Oliver J. Lissitzyn.
[Dobbs Ferry: Oceana. 1965. x + 133 pp. \$4.00].

Professor McWhinney has made a name for himself as perhaps the leading western exponent of the legal character of coexistence and his interpretation of the Soviet approach as expounded in the *Revue Générale* led to a formal reply from some of the leading Soviet international lawyers, which together with his counter-reply is printed as an appendix to this work.

Traditionally there has been reference to an English and a continental approach to international law, to which there was added a Latin-American approach. More recently, reference has been made to Afro-Asian, Muslim, Soviet and other types of international law, and Professor McWhinney suggests "that international law at the present-day is not, as official policy-makers may sometimes represent in their public statements, one single, comprehensive or over-arching, body of authoritative rules or propositions, but rather a congeries of separate and distinct bodies of more or less authoritative rules" (p. 24). One might have accepted this suggestion more readily if he had pointed out that these various bodies of rules have much in common and constantly overlap, with the consequence that each may be modifying the other and so contributing to the development of a new universal law.

If one accepts the *Pancha Shilah* as being largely coterminous with the principles of coexistence — as distinct from the new emanation of this concept as friendly relations — they "represent a catalogue of abstract, cardinal principles with which Western jurists can have no quarrel as such; for indeed their ultimate sources are to be found in the mainsprings of Western conceptions of international law. The basic problem, in connection with the Soviet campaign of recent years on behalf of Peaceful Coexistence, is in the failure to elaborate and develop and explain these cardinal and *primary* principles in terms of concrete *secondary* principles immediately utilisable in terms of current problem-solving" (p. 36).

It would be interesting to know whether current Soviet statesman would agree wholly with the view that "Soviet International legal science views with extreme disfavour the United Nations and related agencies like the World Court, either as locations for general norm-making competence in international law, or even as particularly useful arenas substantial political manoeuvring for Cold War gain or for that matter for East-West meeting wish a view to fundamental negotiation for accommodation" (p. 53). Recognition of the limitations of the United Nations and the Court and acceptance of more traditional methods of diplomacy as likely to produce more effective and satisfactory results does not necessarily justify such a comment. It is also perhaps unfortunate that Professor McWhinney insists on describing Judges Koretsky and Winniarski as "the two Soviet Bloc judges" on the basis of their altitude to the advisory opinion on United Nations Expenses (pp. 58-60), particularly in view of their differing attitudes to the problem of South West Africa.

Professor McWhinney indicates the dangers inherent in allowing the present bloc system with its emphasis on coexistence to harden into a rigid balance, which may come like the Concert of Europe to believe in little besides preservation of the *status quo*. He considers there may be "good reason to believe that the apparent genesis of an empirically-based, inter-Bloc law represents not just a temporary truce between two great military antagonists, but that it is something in the way of a continuing, evolving process with the number and range of the 'rules of the game' continuing to expand all the time, and with their degree of explicitness and concreteness also improving constantly" (p. 115), and he goes so far as to suggest that the rules of this inter-Bloc law are being more constantly observed than has been the case with the traditional rules of international law in the past.

Closely connected with, but going wider than, Professor McWhinney's interpretation of the legal significance of peaceful coexistence is Professor Lissitzyn's *International Law Today and Tomorrow* in which the author examines the function of certain rules of international law today, as well as the problem of the Soviet attitude to international law, and that of the less developed nations. Perhaps the most important point coming from the author's survey of existing international law is that, "by 1960, no nation felt able to oppose a declaration that self-determination and independence are inalienable rights of people" — General Assembly Resolution 1514 (XV), 14 Dec. 1960 (p. 45).

As to the Soviet attitude, Professor Lissitzyn draws attention to the legal theories which imply a rejection of existing law and the development of a new one under Soviet influence, containing as legal norms concepts like self-determination, anti-colonialism and coexistence, which the Western States are somewhat hesitant to accept (p. 57). While he is not prepared to accept the view that the Soviet Union breaks treaties more regularly than other States, the learned author agrees that "Soviet manipulation of the norms of international law to justify and implement Soviet policy has been so unrestrained and often seemingly so oblivious of the requirements of reciprocity and consistency as to create an impression, particularly in the

Western countries, of cynicism and lack of good faith" (p. 59), but "there has also been much routine observance of international law by the Soviet Union."

Whatever criticisms there may be of the Soviet acceptance of international law, it cannot be ignored that non-Communist States still enter into treaty relations with it, and "such agreements are based not on 'mutual trust', but on recognition of common or mutual interests and the expectation that self-interest will induce both sides to honor their commitments" (p. 68) — the same basis, by and large, as treaties between non-Communist States. He feels that if the present *detente* between the West and the Soviet Union continues, there may well be a relaxation in the Soviet attitude — there might equally be a relaxation in the Western attitude as to what constitutes international law.

As for the undeveloped States, "none . . . officially denies the existence or the binding force of international law" (p. 72), although "there is a perceptible current discontent with traditional international law" (p. 73). There is a clear agitation among them for change in such matters as, for example, the legal status of foreign investments, the width of the territorial sea, sovereign immunity, succession, boundaries, unilateral treaties, and the like, on all of which they tend to support a less restrictive view of their obligations. In this approach they seem to support Soviet views of international law, although many of them "seem to espouse the Soviet-sponsored slogan of 'peaceful coexistence', principally as a weapon in their struggle against 'colonialism' in all its forms" (p. 103).

Professor Lissitzyn rightly points out that divergences in an approach to law do not mean necessarily a breakdown in the legal order, although they may militate against the achievement of a world public order acceptable to the West as it exists today. After all, "conflicts of interest do not prevent mutually acceptable regulation of transnational activities in the areas of international relations where there is some community of interest, however limited. . . . Both universal and particular international law may be expected to grow in scope and complexity as the volume and variety of transnational activities increase. Universal agreement on ideological goals and ethical values is not a prerequisite for the existence — or even the growth — of international law" (p. 110).

Shortly after the War H. A. Smith published his *Crisis in the Law of Nations*, to be followed shortly thereafter by Dr. Jessup's *Transnational Law*. The impact of these works has been far-reaching indeed. We are at present going through a new crisis in international law, and it may be that the works under review, particularly that by Professor Lissitzyn, may well have a similar impact.