

MODERN TRENDS IN TREATY LAW. By Kaye Holloway. [London: Stevens & Sons. Dobbs Ferry, N.Y., U.S.A.: Oceana Publications. 1967. xx + 738 pp.].

The United Nations' International Law Commission had in the past few years devoted high priority to the codification of the law of treaties and completed its prolonged consideration of this topic in 1966. At the time of writing this review, an International Conference of Plenipotentiaries¹ is meeting in Vienna to examine the final draft articles on The Law of Treaties as formulated by the International Law Commission (I.L.C.) with the view, hopefully, that States may be able to conclude a multilateral convention on the law of treaties on the basis of the recommendations of the Commission. Considering the interest in treaty law which has thus been generated, the appearance of works such as the present one is not only to be anticipated but should be gratefully received in the expectation that they will help scholars appreciate the myriad of problems in this area and to understand the significance of the work of the Commission.

The contents of this book are compartmentalised into three parts: Book One is entitled "Recent Developments in Treaty-Making", Book Two: "A Comparative Study of Constitutional Law and Practice of States in Relation to the Effective Validity of Treaty Obligations", and Book Three: "A Reappraisal of Reservations and the Three Modes of International 'Legislation'. Customary, Convention, and Judicial". The work is best in Book Two where a comprehensive examination of the relevant provisions of constitutions of more than thirty nations is undertaken.

1. See General Assembly Resolution 2166 (XXI) of 5 December 1966. The General Assembly decided that the Conference shall have two sessions, the first session early in 1968, and the second early in 1969.

The author has made a serious effort to present the various problems not just as treaty problems *per se* but in relation to the general processes of international law. This attempt of the author is commendable for not enough writers seek to relate their subject matter (whether it be custom, treaties, etc.) to other modes of creating international law prescriptions. Therefore, although the book is chiefly an examination of trends in *treaty law* there is much in it that the traditionalist would not expect in such a work. To illustrate, in Book III (dealing with the thorny question of reservations) there is more than a perfunctory discussion of the nature of Custom (see: Chapter XX: Formation and Ascertainment of International Custom) where the author considers such issues as whether custom is creative of law or evidentiary of it (and concludes "it both creates legal norms and evidences their existence based on an established practice": p. 553). The author justifies discussion of Custom as well as The Court's Role in the Development of International Law (Book III, Part III) by pointing out that a mere restatement of the problem of reservations "would fail to bring into relief the true implications of the scope and importance of reservations without an inquiry into the specific modes by which rules of international law are created or 'generated' and developed." (p. v). The value of the book is considerably diminished by the author's handling of the work of the International Law Commission. The reviewer finds it necessary to recall that, after a period of appointment and resignations of several Special Rapporteurs, the Commission began the serious task of drafting the articles on Law of Treaties at its Fourteenth Session in 1962 (under the Special Rapporteurship of Sir Humphrey Waldock). It is also necessary to recall that:

- in 1962 (14th Session) Articles 1-29 were drafted;²
- in 1963 (15th Session) Articles 30-54 were drafted;³
- in 1964 (16th Session) Articles 55-73 were drafted;⁴
- in 1965 (17th Session, first part) Articles 1-29 were revised;⁵ and
- in 1966 (17th Session, second part, and 18th Session) the remainder of the Articles were re-examined, and the entire draft finally completed.⁶

In this book the author makes frequent references to the work of the International Law Commission. One would expect any writer on *modern trends* in treaty law to do so. The first Chapter of the book deals with "The Commission's Approach to Codification of Treaty Law" where the author emphasises the importance of the work of the Commission, and considers the approaches of the Commission and the scope of its work to be of primary importance. (pp. 20/21).

Most unfortunately, however, the information contained in this book about the I.L.C.'s formulations pertain almost exclusively to the 1962 and 1963 (Fourteenth and Fifteenth Sessions) drafts and to the Commission's work prior to these dates. The reviewer was unable to find any references whatever anywhere in the book to:—

- (a) the important articles drafted in 1964 (Sixteenth Session) or
- (b) the revision of the articles in 1965 and 1966 (Seventeenth and Eighteenth Sessions).

It seems safe to infer that the book was completed around 1962-1963 and that delay in publication accounts for the omission of references to the results of the Commission's 1964, 1965 and 1966 Sessions. There are parts of the work where even the work of the Commission at its Fifteenth Session (1963) has not been utilised fully and the author explains, for instance "the Commission's Report of its 15th Session reached the present writer after Book II had been drafted." (p. 441, fn. 2). Indeed, in the Chapter on the legal value and importance of signature, we are told (p. 63, fn. 71) that the Report of the Commission's Fourteenth Session (1962) "reached the author after the Chapter on signature had been drafted. For reasons inherent in the nature of this study, the order of developments was left unchanged."

2. For its Report, see General Assembly Official Records: 17th Session, Suppl. No. 9 (A/5209).

3. For its Report, see General Assembly Official Records: 18th Session, Suppl. No. 9 (A/5509).

4. For its Report, see General Assembly Official Records: 19th Session, Suppl. No. 9 (A/5809).

6. For its Report, see General Assembly Official Records: 20th Session, Suppl. No. 9 (A/6009).

6. For its Report, see General Assembly Official Records: 21st Session, Suppl. No. 9 (A/6309 Rev. 1).

It is not the criticism of this reviewer that there has been such a delay between completion of the work and publication and that, consequently, a major and important portion of the Commission's work has been left untouched. A host of factors, often beyond the control of a scholar, could lead to such a situation and this is a risk which any author is confronted with when writing in a field that is fluid and fast-developing. What, however, needs criticism is that nowhere in the book is the attention of the reader drawn to the fact that the references to the codification of the International Law Commission are incomplete and that most of the references are to the articles prior to their being re-examined, revised (in light of comments by Governments) and finalised. It is, indeed, rather surprising that in the Preface (dated February 1967, that is, *well after all* the work of the Commission had been completed) the author has not used the opportunity to point this out to the reader. The unfortunate result is that unless the reader is extremely familiar with the different phases of the work of the International Law Commission, there is a strong likelihood of him being misled. For instance, there are frequent references in the book to the Commission's "latest formulation" or to "the latest draft articles" or the Commission's "latest approach". A reader not informed of the Commission's 1964, 1965 and 1966 reports might well believe that those are, in fact, the "latest" words of the Commission on those topics.