

only aim at giving some reasonable explanation how the accident *may* have occurred without his negligence . . .”⁵

On the whole, however, Mr. Horsley has been successful in overcoming the weaknesses characteristic of the format he chose to use. He has selected cases wisely, summarized them accurately, and in some sections synthesized them brilliantly. To increase the usefulness of the book outside Ontario (and, indeed, inside as well) he has included many references to the statutes and cases of other provinces, including a penetrating discussion of the “gross negligence for guest passengers” cases, which have no counterpart in Ontario at all. He has not hesitated to offer criticism when appropriate. Best of all, Mr. Horsley writes well. The profession will be pleased with his book.

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THE CANADIAN YEARBOOK OF INTERNATIONAL LAW

Edited by C. B. BOURNE. Vancouver: University of British Columbia.
Volume I, 1963. Pp. 325.

This is the first of what, as the name indicates, is intended to be an annual publication under the auspices of the Canadian branch of the International Law Association. All the members of the Board of Editors and the authors of the articles in this first volume are distinguished jurists on the law faculties of Canadian universities.

The work consists of eight articles (six in English, two in French), notes and comments, and reviews of recent books on international law or international affairs.

Professor Maxwell Cohen, Director of the Institute of Air and Space Law at McGill University, in an article entitled “Some Main Directions of International Law: A Canadian Perspective”, indicates certain areas of international affairs in which rapidly changing social and political conditions, scientific advances and industrial development call for modifications of and innovations in the rules of international law. He presents a challenge to Canadian statesmen, administrators and jurists by pointing out that by reason of our bi-cultural inheritance, our geographical situation and our varied experience, Canadians are qualified to make valuable contributions towards the solutions of many pressing problems. We have learned lessons from our participation in the management of boundary and trans-boundary lakes and rivers, such as the St. Lawrence Seaway and the Columbia River, that may serve as a guide in issues arising on the Congo, the Niger and the Nile. We have been parties to measures for the

5. Fleming, *The Law of Torts*, 2nd. ed., p. 278.

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conservation and exploration of the resources of the seas, we have been involved in questions of sovereignty over the Arctic, its open waters and its rotating ice pack, and we have been concerned with claims to air space and problems in many other areas of political and legal interest providing boundless scope and demand for the energy and skill of legally trained minds. "This yearbook," he says, "is now a witness to the readiness of the Canadian contingent to bear its due share of the intellectual and research responsibilities implied in the common enterprise of searching for and fashioning a world of minimum order."

Among the factors which have stimulated the growth of international legal experience, he deals with the Charter of the United Nations, the emergence of new states, and, contrary to Soviet warnings, their acceptance of classical international law despite its western origins, and the increasing importance that population pressures have given to the necessity of international planning in the conservation and exploitation of food and other natural resources.

He is impressed by the apparent unfairness of one segment of a region's population having an income of a billion dollars a year from oil resources while neighbors are wholly without any such source of income, but he refrains from any suggestion that it is also unfair to have one segment of the world's people exercising measures of population control while other segments refuse, or at any rate fail to adopt any such measures.

The article by Professor Edward McWhinney of the University of Toronto is entitled "Soviet and Western International Law and the Cold War in the Era of Bi-polarity", with a sub-title, "Inter-Bloc Law in a Nuclear Age". These formidable titles should not mislead anyone to expect a detailed exposition and comparison of the rules of international law as approved by the Soviet Union with those accepted by the Western powers. The purpose of the author is not to deal with differences in detail, but rather to indicate the fundamental difference in viewpoint by making clear that Soviet doctrines of international law are specially tailored to support Soviet policies in international affairs. Its doctrines are regarded as instruments to be used to attain national objectives.

Soviet policy makers having chosen bi-lateral treaties as their main method of conducting their relationship with the West, their jurists have emphasized the principle of *pacta servanda* as an assurance that the Western parties to those treaties would observe their provisions. On the other hand, the jurists had to seek for some rational principle that would enable the Soviet Union to escape from obligations arising under treaties made prior to the 1917 revolution. Hence they developed a series of special exceptions to the *pacta servanda* principle, under which "unequal treaties" are not to be regarded as binding.

The Soviet distrust of the United Nations, arising from the fact that it was formerly dominated by Western powers, has resulted in a politically defensive policy, and a legally restrictive interpretation of the Charter as

being no more than a limited treaty, and not as a base for a comprehensive world law.

Professor McWhinney sees the development of certain Cold War "rules of the game," and finds instances where a common East-West interest outweighs the differences. He derives certain principles from the East-West confrontations. He speaks, for example, of the principle of bi-polarity—the division of the world into two great power blocs, with the Soviet Union exercising hegemony in one, the United States in the other; the blocs adopting an agreed position with relation to those states, neutral or neutralized, which do not properly come within either. And, in an interesting and convincing manner, he uses the Cuban crisis as a case study to illustrate the operation of the principle. While bi-polarity may be the dominant characteristic of political organization of the world community today, there are indications of a countervailing trend towards poly-polarity, or several other power groupings, which will involve the development of new "rules of the game", and present a challenge which can only be met with the collaboration of jurists trained in comparative legal research.

A stimulating, thought-provoking article.

The status in international law of "Canadian Inland Waters of the Atlantic Provinces and the Bay of Fundy Incident" is examined by G. V. La Forest of the Faculty of Law, University of New Brunswick. As a result of the penetration in 1962 of a Russian fishing fleet into the Bay of Fundy, the question arose whether the bay is part of the open sea, in which case Canada could not prevent fishing there, or whether it forms part of Canada's inland waters, over which it can exercise the same degree of control as over its land areas.

In numerous dealings, both international and municipal, from 1686, Great Britain invariably and unequivocally took the position that the bays in the Atlantic region of what is now Canada were integral parts of colonial territory, and from 1867 various statutes, both federal and provincial, claimed and enforced exclusive jurisdiction over all such bays, except those in which United States, by a convention of 1818, acquired the right to fish.

Since Newfoundland has become part of Canada, and since the International Court of Justice in the *Anglo-Norwegian Fisheries* case approved of the "straight baselines" method of delimiting territorial waters, Canada has now a strong case for making far more extensive claims than previously. Lines could and should be drawn closing off the whole Gulf of St. Lawrence as Canadian national waters. If Canada is to press these claims, it should take steps to assert them clearly by indicating "straight baselines" on charts to which due publicity should be given.

One of the most, if not the most, interesting of recent international disputes, was that arising out of the operation by the Consolidated Mining & Smelting Company of Canada, Limited, of its smelter at Trail, British

Columbia. Sulphur Dioxide gas drifted from the plant down the Columbia River Valley, causing damage to landowners in the State of Washington. If such landowners were to receive any relief, principles analogous to those involved in the national law of nuisance would have to be applied. No claim of such nature had ever been made at international law. On a proposal by the United States, concurred in by Canada, the matter was referred to the International Joint Commission, which made an exhaustive investigation involving field surveys by experts, oral and documentary evidence and arguments by counsel. One of the Canadian counsel was John E. Read, later a judge of the International Court of Justice. Now, in an article entitled "The Trail Smelter Dispute" he describes in brief the nature and extent of the claims, the institution and cause of the proceedings, the legal principles and procedural difficulties involved, and the conclusions of a three-man tribunal set up by a convention of 1935 which finally held Canada responsible for the damage.

Gerald F. Fitzgerald, in an article entitled "The Development of International Rules Concerning Offences and Certain Other Acts Committed on Board Aircraft," describes the Rome Convention, drafted by the Legal Committee of the International Civil Aviation Organization, to deal with the serious problems arising from the absence of uniform international rules concerning offences and other acts committed on board aircraft. For example, what state, if any, has jurisdiction in respect of an act committed on an aircraft flying over the high seas, or at high speed and altitude over several states in a short period of time?

The first part of the convention deals with problems of jurisdiction, and the duties and rights of state parties to the convention. The second part is concerned with the power, duties and liabilities of the commander and crew of the aircraft in relation to acts committed on board affecting discipline or the safety of the aircraft, its passengers or cargo. The new rules will, when the convention is adopted, afford a welcome relief to law officers, who will no longer be haunted by the specter of crimes going unpunished; and to airlines and their air crews, who will be given an opportunity to control passengers who jeopardize safety, good order and discipline.

L. G. Jahnke of the Faculty of Law, University of British Columbia, under the title, "The European Economic Community and the Most-Favoured-Nation Clause," considers whether the mutual obligations of the members of the Community to each other under the Treaty of Rome can be reconciled with their most-favoured-nation obligations under treaties with non-member nations.

Although the Permanent Court of International Justice decided in 1922 that Austria's most-favoured-nation obligations precluded her entering into a specific customs union with Germany, Professor Jahnke is of the opinion that a member of a customs union which stops short of becoming a political union is bound by its most-favoured-nation obligations. However, he points out that even if a customs union is an implied exception to the most-favoured-nation clause, the exception cannot arise before the

customs union becomes a reality, and the European Economic Community will not be fully established for another seven years. In the meantime, therefore, other states now entitled to most-favoured-nation treatment from a member of the Community will be able to demand it. The importance of this entitlement is, however, minimized by the facts that commercial treaties are usually for short periods, with special provisions for early denunciation, that a breach involves retaliation in kind, and that tariff arrangements with most trading nations are now regulated by the General Agreement on Tariffs and Trade, which specifically provides for customs unions, and permits some derogation from most-favoured-nation clauses on certain conditions.

Certain members of the United Nations, Russia and France among them, having been opposed to U.N. peacekeeping operations in the Middle East and The Congo, refused to pay any share of the cost of the operations. The General Assembly sought the opinion of the International Court of Justice, which in an advisory opinion held that the cost of the operations were "expenses of the organisation", over which the General Assembly has unlimited jurisdiction. It would follow, therefore, that the recalcitrant members would be liable to pay a share of such cost. Nine judges of the Court concurred in this opinion, while five dissented.

A. Donat Pharand writes a penetrating analysis of the opinion, and, with certain reservations, concludes that it is persuasive and authoritative, and a significant contribution to international jurisprudence. Authoritative it undoubtedly is, at least in the sense that there is no tribunal to which any appeal can be taken. However, not all portions of the reasons are persuasive. For example, to interpret the Middle East situation as a "mere dispute", on which at most the General Assembly could make recommendations, rather than a "threat to the peace" which could be dealt with only by the Security Council, might be regarded as a deliberate distortion of fact deemed necessary in order to arrive at a desired result.

In a well-documented article Jacques-Yvan Morin, Professor à la Faculte de Droit de L'Universite de Montreal, and membre de la Cour Permanente d'Arbitrage, examines carefully the rules of international law relevant to Canadian territorial waters.

He refers to the wide diversity in character of Canadian water areas, and the consequent difficulty of finding a uniform solution to the problems arising therefrom. Exceptions exceed the rule. History provides a clue to the diversity. Great Britain represented Canada on the international stage until 1926. Her interests were best served by freedom of sea and of fishing. Hence limitation to three miles. Canada would not have enacted customs laws of twelve miles if British policy had predominated. From accession of international personality, Canada has advanced more extensive claims, both in respect to interior waters, territorial waters and historic bays.

Lakes and rivers often form part of international boundaries, in which case they are known as boundary waters, while other rivers may cut across

one or more such boundaries, and are known as international rivers. These boundary and international waters are the source of many conflicting claims by the riparian states. Where a river is at an international boundary, is the boundary the middle of the stream, the middle of its deepest channel, one of its banks, or elsewhere? What rights have the riparian states to navigate, or to use the waters for irrigation, development of power, or other purposes? Have non-riparian states any rights? Where a stream flows across a border, can the state on the upper reaches obstruct or divert water to lessen that which reaches the lower state? Can the latter obstruct the flow and cause flooding of land in the former's territory? Professor Andre Patry of Laval Université discusses in an illuminating article, "La Regime des Cours d'Eau Internationaux", the history of attempts to find a satisfactory answer to these and other related questions.

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CRIMINAL INTERROGATIONS AND CONFESSIONS

By FRED E. INBAU and JOHN E. REID. Baltimore: The Williams & Wilkins Company. 1962. Pp. viii, 214. \$6.50 (U.S.).

This book, written by Professor Inbau of Northwestern University, who was formerly Director of the Chicago Police Scientific Crime Detection Laboratory, and by Mr. Reid, who is Director of John E. Reid and Associates, and who was formerly a staff member of the said laboratory, will prove of value and interest to all those who are in any way concerned with the administration of criminal justice. The book is a complete revision and enlargement of material previously published in the earlier editions of the author's book, *Lie Detection and Criminal Interrogation*.

The book is divided into three parts:

- (1) Criminal Interrogation.
- (2) The Law Governing Criminal Interrogations and Confessions.
- (3) Criminal Interrogation—A Practical Necessity.

The first 139 pages deal with criminal interrogation, and emphasize such matters as the importance of privacy during the process of interrogation, and tactics and techniques for the interrogation of suspects whose guilt is definite or reasonably certain, on the one hand, and of suspects whose guilt is doubtful or uncertain, on the other. Many suggestions of a psychological nature are dealt with in this part, and these will be of significance, both to police officers and to lawyers.

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