

BOOK REVIEW

AN INTRODUCTION TO INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA. By S.A. Williams and A.L.C. de Mestral. Toronto & Vancouver: Butterworths, 1987. Pp. 437. \$49.95.

In the last several years, a number of good American,¹ British,² and now Canadian introductory works to public international law have made their initial appearance or have been updated. The book under review is, however, distinctive from its foreign counterparts in that it represents international law from a Canadian perspective or as its subtitle denotes, "Chiefly as Interpreted and Applied in Canada." It is a work primarily intended for students of law, political science, international relations, and for the general practitioner of law. The first edition of this book, published in 1979, was closely related to and intended as a companion to the third edition of Professor J.-G. Castel's *International Law*.³ This new edition stands entirely on its own and does not follow the earlier sequence of subjects covered, nor does it rely heavily in its reference to the Castel book, although both authors have collaborated with others in a new edition of the latter book.⁴ Because of the new direction taken by the authors, and of course due to the growth of international law during the past eight years, this new work has been substantially revised and expanded.

Professor Williams, of Osgoode Hall Law School, York University, and Professor de Mestral of McGill University's Faculty of Law, are writing primarily for the Canadian reader, but the non-Canadian reader is also a beneficiary by receiving information on Canadian practice and viewpoint not readily accessible elsewhere. They have written, in a stimulating, clear and readable manner, a good comprehensive commentary

1. E.g., M.W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW (1988); T. BURGENTHAL AND H. G. MAIER, PUBLIC INTERNATIONAL LAW (1985) (Nutshell series).

2. E.g., M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW (6th ed. 1987); D.H. OTT, PUBLIC INTERNATIONAL LAW IN THE MODERN WORLD (1987); N.A.M. GREEN, INTERNATIONAL LAW (3d ed. 1987); M.N. SHAW, INTERNATIONAL LAW (2d ed. 1986); R.M.M. WALLACE, INTERNATIONAL LAW: A STUDENT INTRODUCTION (1986).

3. J.-G. CASTEL, INTERNATIONAL LAW (3rd ed. 1976).

4. H.M. KINDRED, J.-G. CASTEL, W.C. GRAHAM, I.A. VLASIC, D.J. FLEMING, A.L.C. DE MESTRAL AND S.A. WILLIAMS, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA (1987).

on what has become the traditional substantive topics on the present state of international law.

Even with the expansion of this edition, space has precluded the author's coverage of the law relating to armed conflicts, the interrelated humanitarian law, the law of neutrality and disarmament. At the end of each of the twenty chapters there is a selected bibliography comprised of books published in Canada followed by those published elsewhere, and articles appearing in Canadian journals or books, followed by those published in foreign journals. Presentation of topical areas is fairly conventional as concerns selection and sequence. There is a good balance in the treatment of subjects between straightforward description and analysis.

The opening chapters deal with the definition, nature, sources and development of international law, as well as international law's relationship to domestic law. The modest discussion of early contributors to international law (for example, Gentili, Suarez, de Vattel and Bynkershoek) could have mentioned the titles of their works and citations to the *Classics of International Law*.⁵

As most students and others who read daily newspapers form preconceived notions about the lack of enforceability of the international legal system or its effectiveness, the subsection on sanctions could have shown additional outside references either in the footnotes or in the selected bibliography to alleviate that initial skepticism.

The authors set out the law of the United Kingdom and Canada in its reception of customary international law and its place in the municipal system. This relationship is of historical significance to American readers in that British public law was received into the British North American colonies and is still binding on Canada unless altered by statute or not followed by the Supreme Court of Canada. Canada's Constitution Act of 1982 implicitly incorporates many rules and standards of international law including conventional international law dealing with human rights. Since 1982, Canadian courts in applying the *Canadian Charter of Rights and Freedoms* have cited with approval the European Convention on the Protection of Human Rights and Fundamental Freedoms and decisions of the European Court of Human Rights, although Canada is not a party to that Convention. Chapters on the subjects of international law, concepts of recognition, and state succession precede the topics of territory, state jurisdiction over persons, state immunity,

5. The CLASSICS OF INTERNATIONAL LAW refers to the 22-volume series published by the Carnegie Endowment for International Peace, 1911-1950, under the general editorship of James Brown Scott. The classical writers included Ayala, Belli, Bynkershoek, Gentili, Da Lengnano Grotius, Pufendorf, Rachel, Suarez, Textor, Vattel, De Vitoria, Wheaton, Wolff and Zouche. The original CLASSICS were published in Latin with English translations.

and diplomatic and related immunities. The Canadian approach to restrictive state immunity was not clear cut until the enactment of the State Immunity Act in 1982. Canadian courts, it seems, have not gone as far as American courts in applying the act of state doctrine, and Canadian bankers are watching developments for any sign that loans to foreign states will be characterized as other than a "commercial activity."

In 1977, Canada implemented the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963) through the Diplomatic and Consular Privileges and Immunities Act. Discussion centers on an outline of both Conventions, and Canadian practices under the Act. The subject of state responsibility covers the types of injuries, the customary law, and due to the absence of "hard law" in the form of a multilateral treaty, various approaches towards compensation. Occasionally, the authors seem to forget that this edition of their book stands on its own. This is evidenced by their reference to the Greenpeace III incident,⁶ in which they omit the relevant dates and instead refer the reader to the third edition of Castel.

The chapter on the law of the sea deals with the numerous developments that have taken place since 1958 under the subjects of high seas, international straits, pollution zones, exclusive economic zone, continental shelf, contiguous zone, deep seabed and internal waters, and territorial sea. With respect to the territorial sea, the authors remind readers of various Canadian statutes operative in the zone. On the subject of the Canadian Arctic Archipelago, the authors reflect that "[a]t the Third United Nations Conference on the Law of the Sea, Canada reserved the right to invoke archipelagic status for the waters of the Arctic, and indeed, the claim on the basis of a water-land ratio of zero point nine to one (0.9:1) is better than that of all archipelagic states."⁷

The authors relate that the exclusive economic zone set out in Part V of the 1982 Convention on the Law of the Sea reflects customary international law,⁸ yet Canada has still not resolved its differences with France over fishing rights off the French islands of St. Pierre and Miquelon.⁹ Why do the authors say that "[g]iven the intensely political character of many law of the sea issues, the opinions of publicists have not had the same determinative influence that they have enjoyed in some other areas of international law," and then add a list of authors who have written with particular authority?¹⁰ There is a useful list¹¹ of the Canadian

6. S.A. WILLIAMS AND A.L.C. DE MESTRAL, AN INTRODUCTION TO INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA 192-93 (1988).

7. *Id.* at 237.

8. *Id.* at 206.

9. *Fishing for a Fight*, TIME, May 2, 1988, at 51.

10. WILLIAMS AND DE MESTRAL, *supra* note 6, at 207.

legislation covering various areas of the marine environment. It could have been more helpful if assertions made by Canada through the exercise of the Royal Prerogative had also been included. As expected, the complex position concerning Canadian historic waters uses sensitive careful language.

A very short chapter on airspace, outer space and communications highlights the 1978 incident involving disintegration of the Soviet satellite Cosmos 954 over the Northwest Territories and the continuing problem of gaining acceptance of a precise upper limit to national airspace. "International Law of Fisheries" reviews the various fisheries commissions set up in the first sixty years of this century and Canada's active role during the Third Law of the Sea Conference. Some of the issues to arise out of the 1982 Convention as regards fishing are pointed out. Two examples are: to what extent are coastal states sharing their surplus fish stocks, and whether they consider themselves obligated to do so until the Convention enters into force.

Under the topic of international environmental law, one finds a description of the multilateral measures taken as well as the problems outstanding. The topic of nationality provides the authors an opportunity to show domestic implementation of the international rules in various Canadian statutes such as the Citizenship Act and the Maritime Code Act. Here a survey of international case law is descriptive rather than analytical. Interestingly, the *Canadian Charter of Rights and Freedoms* may have altered the Secretary of State for External Affairs authority in exercising the Royal Prerogative to withhold a passport. The introduction to human rights is standard fare in tracing the development of the subject on the universal plane and within the regional organizations. Canada's attitude towards human rights in both its legislative record and court decisions have been in harmony with international instruments although the drafters of The *Canadian Charter* created some startling differences in their choice of language.

After briefly studying the substantive issues in extradition and rendition (the surrender of fugitives from other parts of the Commonwealth), the authors canvas The Law of Treaties in detail. Herein the impact of the 1969 Vienna Convention on The Law of Treaties is fully measured. Due to certain distinctly Canadian constitutional problems, there are thoughtful comments on important issues concerning capacity of constituent units of federated states to participate in the treaty process, treaty implementation, and questionable "inter agency" agreements, characterized as "nonbinding gentlemen's agreements" between departments of

11. *Id.* at 209.

the Canadian Government, excluding External Affairs, and departments of other governments. Because more of these informal written understandings are currently concluded than treaties, Professors Williams and de Mestral provide the comprehensive statement on their status and practice from the Department of External Affairs Manual of Administrative Procedures. The authors hint at the novel problems that arise in Canada and abroad, given the practice of Canadian provincial governments concluding agreements with other nations.

Under the heading of international economic arrangements, the authors restrict their examination to interstate relationships, surveying bilateral agreements, naming the Framework Agreement or *Accord Cadre*, and the foremost multilateral trade agreement, G.A.T.T. They also provide a brief glimpse of the International Monetary Fund, the World Bank, the Organization for Economic Cooperation and Development, free trade areas, commodity agreements, and the new international economic order. There is reference to the various adopted codes of conduct as well as those in the process of negotiation, and a statement on the law applicable to international commercial transactions.

The last portion of the book concentrates on pacific settlement and regulation of disputes. It covers the mechanisms of negotiation, good offices, mediation, conciliation and fact finding. Notification and consultation are singled out as mechanisms for dispute avoidance. The settlement machinery of international organizations is noted, in addition to adjudication of international disputes (with mention of cases to which Canada was a party) in the International Court of Justice, and through arbitration.

I have no reservations in recommending this quality book as a good introductory treatise on international law, especially for those who seek to view a Canadian orientation.

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