

BOOK REVIEW

INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE.

By Burns H. Weston.¹ (Volume 9, Procedural Aspects of International Law Series.) Syracuse, N.Y.: Syracuse University Press. 1971. Pp. xv, 237. \$10.50.

The post World War II period, which marked the end of colonialism, has also brought to the fore concomitant problems; one such problem results from the nationalization of alien property. Claims and counter-claims between the capital exporting countries and the countries taking over foreign properties have been settled by different means, the most frequent of which at present is that of lump sum settlements, reached under bilateral agreements. France, among other Western powers, has in this manner settled the claims of her property interests "damaged, destroyed or divested by nationalization, and other deprivative measures"² undertaken by other countries (among these are several East European states, Cuba and Egypt). In each instance, the French government established a claims settlement commission to compensate the affected French property interests. It is these commissions and their decisions that Professor Weston studies and analyzes in his work.

The study is unique, for this is the first serious attempt to inquire into this important subject. But in this reviewer's opinion, the significance of the study is further enhanced by Professor Weston's technique in analyzing the French practice. He provides a policy-oriented framework to bring order to this otherwise unwieldy and highly confusing maze of commissions' decisions.

This technique offers Professor Weston the use of an appropriate methodology to sift the material, treat it systematically and present it in such a fashion as to assist a researcher and scholar as well as a decision maker in drawing useful comparisons over time, and thereby contributing to the development of the "Law of International Claims." Additionally, it facilitates the performance of the essential intellectual tasks as enumerated by the "New Haven School": clarification of the goals of decision; description of the trends; analysis of the conditioning factors; projection of probable future development; and

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² B. WESTON, INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE [hereinafter cited as WESTON] 4 (1971).

appraisal and recommendation of alternatives and strategies that contribute to the realization of preferred goals.³ More specifically, this approach allows Professor Weston to analyze the commissions' decisions in the context of the claimant's objectives,⁴ base-values,⁵ strategies,⁶ situations affecting claimant eligibility,⁷ and outcomes of the claims.⁸

Apparently an argument can be made that the uninitiated might find it hard to follow the contents of the work, because of what the editor of the Procedural Aspects of International Law (PAIL) series, Professor Richard Lillich refers to as the "possible hazards of specialized language and innovative organization."⁹ But if the reader takes the necessary time with the book (and it is no *Love Story*, nor was it conceived to be read in one sitting), he will find the merit in Professor Weston's deliberate choice in (1) using functional, precise and relatively norm-free terminology, thereby avoiding the ambiguities inherent in traditional legal vocabulary (although he almost always refers to traditional terminology as well); and (2) parting with the traditional organization, which would have imposed serious constraints on the author, especially in view of the disorganized nature of his material.

Professors McDougal and Lasswell, the co-founders of the New Haven School have in a recent article¹⁰ eloquently articulated the need for "a more configurative, hence viable, jurisprudence of international law." This suggests a more contextual and multi-method framework for studying international legal problems.¹¹ A careful reading of Professor Weston's book should reveal the usefulness of following their recommendations. It provides a sharper focus for discussing pertinent issues such as: what transpired; under what circumstances, why, with what immediate outcome and the long range effects on international legal order; and what alternatives should be recommended to strengthen this order.

Professor Weston was handicapped in collecting the pertinent data for the book. There was an initial difficulty caused

³ For a recent articulation, see McDougal, Lasswell and Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188, 197 (1968).

⁴ WESTON at 95-147.

⁵ *Id.* at 156-57.

⁶ *Id.* at 158-59.

⁷ *Id.* at 147-56.

⁸ *Id.* at 159-82.

⁹ *Id.* at viii.

¹⁰ McDougal, Lasswell and Reisman, *supra* note 3, at 188.

¹¹ *Id.* at 298-99.

by the policy of the French government not to publish the commissions' decisions. To this was added the non-accessibility to the author of "a number of probative documents" on file with the French Foreign Ministry.¹² However, these hurdles seem to have been overcome by the author's painstaking research extending over a period of three years, including two summers in France, during which time he translated thousands of commissions' unpublished decisions and interviewed a large number of key figures, both government officials and private practitioners. It seems that the author's hope of having caught "sufficiently the spirit of French commission practice"¹³ has been amply fulfilled.

At the outset Professor Weston provides the necessary historical background,¹⁴ followed by a discussion of the enabling legislation establishing the commission, the "Statutory Instruments," and the rules of procedure of each commission,¹⁵ and finally, a thorough analysis of the commissions' decisions.¹⁶ The texts of the various lump sum agreements which are pertinent to the study are translated and conveniently contained in the Appendix.¹⁷

Professor Weston's analysis leads him to the conclusion that the commissions have performed "most of their basic missions generally with distinction,"¹⁸ that they have displayed a "generally unparochial perspective,"¹⁹ that their decisions are remarkably uniform²⁰ and have been consistent with "customary international law, as well as with the comparative American and British practice."²¹ He convincingly makes the point that while these commissions obviously have been "instruments of the French legal order," they nevertheless should be regarded as "decision-making agents of the international legal order"²² as well. In fact, it is primarily the latter function which prompts us to pay special attention to these commissions and other similar national or domestic instruments, whose decisions when placed "side by side . . . from country to country,

¹² WESTON at 6.

¹³ *Id.*

¹⁴ *Id.* at 9-38.

¹⁵ *Id.* at 39-69.

¹⁶ *Id.* at 71-182.

¹⁷ *Id.* at 191-224.

¹⁸ *Id.* at 187.

¹⁹ *Id.* at 189.

²⁰ *Id.* at 188.

²¹ *Id.* at 189.

²² *Id.* at 183.

help form over time that synthesis which is in large measure what we today call international law."²³

Professor Weston's criticism of the French practice mainly concerns the commissions' procedures, specifically their emphasis on secrecy with the resulting lack of public accountability²⁴ and their slow administration causing prolonged delays.²⁵ However, this reviewer would have liked to see Professor Weston include in his appraisal an examination of how these commissions' decisions are likely to affect the world community expectations on the standard for compensation which traditionally has been that of prompt, adequate, and effective payment.²⁶ He would have also preferred more extensive comparisons,²⁷ and further recommendations, with the author exploring in his own words "the world order policy implications" of such recommendations. But perhaps this is beyond the scope of the present work; hopefully, the author has saved such comparisons and recommendations for the next study, which he has promised us.²⁸

Most appropriately, this study, as volume 9 of the PAIL series forms part of a broader project, which in the words of its able director, Professor Richard Lillich, "involves a definitive examination of the lump sum compensation agreements settling claims for the taking of private property rights which have been included by Eastern and Western countries since World War II. . . ."²⁹ Works already completed and published directly on this point include Professor Lillich's analysis of the post-war British practice,³⁰ and those forthcoming include one by Professor Isi Foighel surveying the post-war Danish practice,³¹ one by Professor Lillich on the practice of the Foreign Claims Settlement Commission of the United States,³² and one co-authored by Professors Lillich and Weston, entitled *International Claims: Their Settlement by Lump Sum Agreements*.³³

²³ *Id.* at 4.

²⁴ *Id.* at 184-85.

²⁵ *Id.* at 185-86.

²⁶ However, see *id.* at 30-33 for Weston's discussion of the extent to which the decisions of the French claims commissions conform to the traditional standard.

²⁷ However, see, e.g., *id.* at 14-16, 39, 83, 89-90, 129, 177 for Weston's comparisons of the French practice with similar practices of Great Britain and the United States.

²⁸ *Infra*, note 33 and the text accompanying it.

²⁹ Lillich, *The Procedural Aspects of International Law Institute*, 4 INT'L LAWYER 740, 746 (1970).

³⁰ R. LILLICH, *INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE* (1967).

³¹ Mentioned in WESTON at 5 note 13.

³² Mentioned in *id.* at 5 note 11.

³³ Mentioned in *id.* at 38 note 134.

The book is written in a clear style and given the tedious nature of the material, it is no mean achievement that the work is quite readable. This study, which Professor Lillich has aptly described as being "so rich in material and so rewarding in insights,"³⁴ is a worthy addition to the growing literature of both the New Haven School and the Procedural Aspects of International Law Series.

Ved P. Nanda

³⁴ *Supra* note 9.

BOOK NOTES

FIFTEEN MEN ON A POWDER KEG: A HISTORY OF THE U.N. SECURITY COUNCIL. Andrew Boyd. New York: Stein and Day, 1971. 383 pp. \$8.95. Andrew Boyd takes the reader on a fantastic voyage through the channels and reefs of the ocean of power within the United Nations, the mysterious Security Council. One begins to understand the apparent ambiguities of the actions of the various members of the august body, the seemingly illogical changes of position, the ever-moving balance of power. Beyond this, there is an exceptional analysis of U.N. action and inaction in the major and minor crises of the last two decades, and perceptive insights on the possible course of the planet and its "governing" body in the coming years.

POWDER KEG must be considered a primary reference point for anyone professionally affected by the U.N. and a primer for anyone interested in the politics and diplomacy of multinational existence.

REVOLUTION THROUGH PEACE. Dom Helder Camara, A. McLean translation. New York: Harper and Row, 1971. xix, 149 pp. \$5.95. This book is one in the series—World Perspectives. The series is dedicated to defining the essential nature of man by developing a new consciousness which will enable man to direct his evolution toward fulfillment rather than destruction. Contemporary problems are studied in an effort to contribute to an awakening and understanding of the interrelationship between man's knowledge and his existence.

This volume is a message by Archbishop Helder Camara which calls for a peaceful revolution through reform of existing social structures in Latin America and the International Community. His goal is human dignity in both the spiritual and temporal order. A special call is pronounced urging youth to commit themselves to the brotherhood of man, and to free humanity from the madness of war and the madness that widens the gulf between the developed and the underdeveloped worlds.

Although the phraseology is consistently Christian, this writing is not a religious book. It carries a Christian philosophy but more than that, it offers specific and definitive objectives pursuant to the goal of an integrated and developed Latin America.

THIS ENDANGERED PLANET. Richard A. Falk. New York: Random House, Inc., 1971. 495 pp. \$8.95. The environmental crisis is not

confined to the highly technological Western nations, but rather has assumed global dimensions. Nor is technology the only threat to the world. Mr. Falk enumerates four principal threats to the planet Earth: (1) The war system; (2) Overpopulation; (2) The depletion of natural resources; and (4) The deterioration of the entire environment, so that it is approaching the point where it will on longer be life-sustaining.

The author, in recapitulating several of his earlier theories concerning stability in international affairs, calls for an "ecological politics" in which "man in nature" will replace the image of "man versus nature", which has motivated and encouraged our abuse of the Earth.

Two alternate images of the future are presented to support the need for radical changes in philosophical, economic and political systems. One foresees a continuation of present values and practices, in which we descend from "The Politics of Despair" through "The Politics of Catastrophe" to "The Twenty-First Century—An Era of Annihilation." The other image, predicated upon a world which has come to grips with the present crises, foresees decades of "Awareness," "Mobilization," and "Transformation" leading to "The 21st Century—The Era of World Harmony".

CRIMES OF WAR. Richard A. Falk, Gabriel Kolko, and Robert Jay Lifton, editors. New York: Random House, Inc., 1971. xvi, 575 pp. \$10.00. This volume is a multifaceted exposure to the element of responsibility in war crimes. The editors have presented the legal framework, the political setting, and the psychological and ethical context of the Vietnam War Crimes. The book lends itself not to acceptance, but rather to an understanding of contemporary atrocities. It significantly probes present realities that most often are viewed as history.

The section on legal framework covers treaties and documentation on prohibitions of war crimes dating from Petersburg, 1868 to Vietnam, 1970. Political documents focus primarily on atrocities committed in Vietnam both in combat and prison settings. The psychological and ethical context includes contributions by prestigious writers and concerns itself largely with an examination of societal guilt and the agonizing experience of atrocity.

The editors of this book have gathered an impressive collection of documents and sensitive writings (many firsthand experiences) to illustrate the void of idealism and the senseless struggle of the Vietnam War. It is *in toto* a plea for an intelli-

gent commitment to humane government: but in relating so vividly the crimes it decries, the reader is often benumbed by the experience. However, it may well be necessary to experience the impact of the problem as being the first step in the solution.

THE FUTURE OF THE OCEANS. Wolfgang Friedmann. New York: George Braziller, Inc., 1971. 132 pp. \$5.95 (hard cover), \$2.45 (paperbound). Seventy-one percent of the earth's surface lies under the oceans. In the water, and on and beneath the ocean floor there exists resources of food, oil, natural gas, and minerals in quantities to stagger the imagination. The U.N. General Assembly has resolved that these shall be the common heritage of mankind and has called for an international regime to administer the area. **THE FUTURE OF THE OCEANS** presents basic concepts and data pertinent to this sea world, and in readable fashion, surveys recent developments as nations reach out to exploit these resources. The author, believing that "freedom of the seas cannot remain a *laissez-faire* freedom" urges prompt action to reverse the current trend toward offshore appropriation by coastal nations. The work is an excellent checklist in preparation for the 1973 U.N. Conference on the Law of the Sea, and includes a discussion of the draft convention submitted by the United States to the United Nations Seabed Committee in August 1970.

THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE. S. Houston Lay and Howard J. Taubenfeld. Chicago: The University of Chicago Press, 1970. 333 pp. \$17.50. The burgeoning space activities within the last decade have precipitated much interest in the law of outer space. This study, written with the assistance of the American Bar Association and the National Aeronautics and Space Administration, analyzes the present law controlling man's activities in outer space and on the celestial bodies. Although not intended as a draft code of law governing space activities, it is a comprehensive look at the subject. Particularly useful is the chapter on "Natural Resources, Pollution, and the Law of Activities in Space", which should have considerable effect on future policy making. The book is well organized and should serve as a valuable reference on the law of outer space.

THE ART OF THE POSSIBLE: DIPLOMATIC ALTERNATIVES IN THE MIDDLE EAST. M. Reisman. Princeton, New Jersey: Princeton University Press, 1970. 158 pp. \$1.95. Professor Reisman reviews briefly but with keen understanding the innumerable complexi-

ties which beset the entire Middle East. He presents us with a highly readable and extremely challenging analysis of the present situation, setting out of his four-fold proposals for achieving the minimum order so vital for the establishment of peace. In the past, diplomacy has failed. But now, "within the limits of feasibility and possibility, there is . . . room for creative diplomacy. If the rewards for success are not great, the penalty for failure may be enormous." The world today is far too interdependent for any political conflagration to be confined to a particular region, and a confrontation or collision in the Middle East could easily destroy the whole world. Professor Reisman's approach is fresh and innovative; his alternatives challenging and provocative.

INTERNATIONAL LAW. Charles S. Rhyne. Washington, D.C.: CLB Publishers, 656 pp. \$22.50. The review of a legal text is difficult at best, and even more so when the subject is international law. Anyone who has ever endured such a course has little desire to ever again see such a tome, and professors either prefer to write their own texts or find fault with any text in print. However, please accept the heartfelt enthusiasm which follows.

To list the degrees and accomplishments of Professor Rhyne would require several pages; instead his work in preparing this text is eloquent testimony. The format follows the citation system found in most state codes, forcing the neophyte to think as a lawyer and permitting the professional to employ the text efficiently. Without belaboring the point, the text covers fully the historical context so essential in international law and gets on to the present state of the art, covering in sufficient depth the major treaties, documents, agencies, and trends affecting international law today.

INTERNATIONAL LAW must be considered imperative as a text and important as a tool.

THE PENTAGON PAPERS. Neil Sheehan, Hedrick Smith, E. W. Kenworthy and Fox Butterfield. New York: The New York Times and Bantam Books, Inc., 1971. 677 pp. \$2.95 (paperback). In mid-1967, Robert S. McNamara, then Secretary of Defense, commissioned the Pentagon papers. A massive top-secret history of the United States' involvement in Indochina, the Pentagon papers have been the subject of much controversy both as to the actual content, and as to the legality of their printing.

The 47-volume study attempts to encompass American involvement in Indochina from World War II to the start of the Paris peace talks in May, 1968.

On June 30, 1971, the U.S. Supreme Court freed the news-

papers to continue the publication of these papers, which had been labeled by the Government as harmful and irreparably injurious to the nation's defense and security.

Written by a team of anonymous government historians, this compilation of the memoranda, cablegrams, and orders of the principal actors shows the four-administration commitment to a non-Communist Vietnam and an ultimate frustration in doing so.

The history project was to be "encyclopedic and objective" according to Mr. McNamara but the actual candid form which evolved renders it most readable. The organization of this compilation is chronological but lacks consistency and an overall conclusion. Perhaps one must read *THE PENTAGON PAPERS* in the encyclopedic manner for it is based on documentary records and not a unified, cohesive story which would result from combining interviews to fill the gaps in the documents. But this also allows the documents to be revealed without the embarrassed rationalizations and interpretations so ever-present in government policy matters.

This compilation obtained by *The New York Times* does lack the four volumes on the secret diplomacy of the Johnson administration. But despite this limitation it does in its printed form disclose a vast amount of information concerning the American commitment to South Vietnam and the manner of operation of the United States government. The Pentagon account stated that at various times the highest administration officials not only kept information about their real purposes from the press and Congress, but at times actually misled the public media on grounds of the necessity for secrecy and expediency.

As an inside view of the decision-making process this work merits considerable attention, but the approach of the various chapters differs as the individual authors vary in style and analysis. Although fragmentary, the effect is to give the public a new source of information. In this respect it is more complete and informative than any information the public has to date.

OF LAW AND MAN. Shlomo Shoham editor. New York: Sabra Books, 1971. 387 pp. \$8.95. This work is a compilation of writings in tribute to Justice Haim H. Cohn, an Israeli Supreme Court Justice whose respect for law and human rights has earned him international acclaim. The subject matter of the selections varies from the philosophical or religious to the legal particulars involved in international, civil, and criminal problems. There is an underlying directive throughout the book

which encourages better and more humane legal systems. From the readings a great deal can be gleaned about the rules of law and the practices of law which are employed by different nations (especially Israel). Most often the essays treat the subject matter in an analytical fashion and for this reason are of interest to those who are concerned with learning more about international relations and politics as well as those who are professional legalists.

AGGRESSION: OUR ASIAN DISASTER. W. L. Standard. New York: Random House, Inc., 1971. 228 pp. \$6.95. The illegality of the United States' involvement in the war in Vietnam is developed clearly and logically with the documentation of United States' violations under the U.N. Charter, the SEATO Treaty, the Nuremberg Principles, and the United States' own Federal Constitution and with numerous quotations and excerpts from public pronouncements and writings. Included also is a brief survey of campus unrest, domestic disapproval and the United States world-wide military complex. With great forthrightness Mr. Standard presents the view that the war in Vietnam can only be endlessly protracted and that its only solution is the total withdrawal of the United States from Indochina. The writing is fresh and vigorous with a keenly aware factual analysis.

THE JAMES EARL RAY EXTRADITION FILE. U.S. DEP'T OF STATE. New York: The Lemma Publishing Corp., 1971. 134 pp. \$17.50. Collected in this volume are the documents used by the U.S. State Department to effect the extradition of James Earl Ray, who was sought in the United States to stand trial for the murder of Dr. Martin Luther King, Jr.

The petitioning process is traced from Shelby County, Tennessee to Great Britain where Ray had fled. Included are 34 petitions, documents, and depositions developed to show sufficient cause for Ray's extradition. Affidavits from F.B.I. experts, statements of Memphis police officers, and eyewitness statements, are supplemented by technical depositions taken from the physician who performed the autopsy on Dr. King and from a surveyor who mapped the bullet's trajectory. Also included are the drawings, diagrams and photographs which were appended to the various affidavits.

While much of the text consists of repetitious statements and dry certifications, as might be expected from such a collection of documents, the publisher correctly points out that since Ray pleaded guilty to the murder charge and therefore no testimony was heard, the book represents "the most complete file of evidence against him [Ray] published to date".

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