

BOOK REVIEWS

“THE RULE OF LAW ON THE INTERNATIONAL PLANE”

by John E. Read

THE W. M. MARTIN LECTURES, 1960; CLARKE IRWIN & COMPANY LIMITED;
1961; PP. VII, 56, \$3.00.

The most experienced international lawyer in Canada has given us his view from the mountain-top. John Read, a one-time Dalhousie Law School dean and Legal Adviser to the Department of External Affairs, and then, for eleven years, a member of the International Court of Justice, stands far above most other Canadians in the field in the richness of his background. Add to that richness a sly, puckish humour, as much Yankee as Maritime, a willingness to call a spade by its right and dirty name, a healthy realism that stems from his days as a senior civil servant and a not so ivory tower judge, and there is here a complex of qualities, brilliant and prismatic in the lights they are able to throw on the search for the rule of law on the international plane.

Given as the W. M. Martin Lectures at the University of Saskatchewan in 1960, this is a slender volume only in its pages. What Judge Read is searching for is some pattern of explanation about law in the international order, viewed first through the historical perspectives of a don, second through the negotiating and advisory eyes of the foreign office lawyer and third, through the creative, reflective vision of the international judge. All three talents and attitudes break through the prose and give variety and depth to his lucid statement of the main obstacles to the achievement of supremacy for law in the international order.

It is Judge Read's principal view that the story of international law had its happier beginnings in the "conformity" (his word) created out of the "rubble of Christendom" which marked the end of the wars of religion and the rise of modern nation states in the 16th and 17th centuries. When Grotius tried to find some minimum rules of the game by which the new sovereigns would live together in some kind of early-modern "co-existence" he could behave like the father of international law only because there was a ready mother in the Christian conscience. The whole of western Europe was fief to its history and in that history the Judaic-Christian values, Greek ideals and Roman law

and organization, all merged into a great stream whose waters and sediment created modern Europe and our world.

International law, therefore, declares Judge Read, had this initial western-Christian conformity as the underlying social framework and that conformity continued down to the emergence in our own day of states and peoples taking their place on the high road of history but now without all of these links to our values and our past. Or, if they have these links, they were links achieved and forged often like shackles in the expansion of empires and the creation of colonies and some of these shackles hurt and have led to rejection of some of the very values they were supposed to have brought with them to the peoples of Asia and Africa. So the era of western-Christian society, and its international law which was presumed to be universal, is now replaced and challenged by a time of many cultures where "law" is in fact "universal" but not conforming. This paradox of extension to new sovereign states of the role of law, but diminution of a common rule of law, because the substructure of a common social order does not yet exist, dominates Judge Read's thought and concern.

For him the most significant agency for the extension of the rule of law is the International Court of Justice. But he sees any movement toward the "new Jerusalem" dependent, as the medieval common law from Bracton onwards was dependent, on institutions, acceptance and social co-ordination. The International Court of Justice is, he believes, not too far removed in its function and form, from the common law courts of the mid-thirteenth century Britain searching for a centralized order. In a world that has begun the slow process of taming power, and constitutionalizing the relations of the sovereign subjects of international order, particularly through the organic effects of the U.N. Charter on all states, the Court offers one instrument to encourage the role and rule of law and to accelerate that constitutionalizing process.

Judge Read proposes two reforms to the present Court and its procedures. He would modify Article 34 (1) of the Statutes which provides that "only states may be parties in cases before the Court" by permitting the United Nations and the Specialized Agencies under certain conditions to be such parties. No doubt he would include other international organizations under some appropriate formula. Second, Judge Read would establish special or regional chambers of the Court "with flexible rules, designed to sit any place in the world, and to deal with disputes with the consent of the parties." There would be two advantages here—(1) small tribunals have mobility and would be able to do on-site investigations which are not now possible and (2) the business of the Court could be speeded up with the full Court acting as a final appellate tribunal for its chambers. He would also increase the term of the judges to twelve years with no right to be re-elected, thus giving a long term of independence to the judge and thereby strengthening the dignity and independence of this judicial office.

But Judge Read is a realist. He is only too well aware of how far the divisions between East and West make impossible the settling of great issues by the judicial process. The bi-polarization of power has changed the nature of the game and the rule of law in the day of the atom and the rocket almost gives rise to a *de minimis curat lex*. Even so, the international lawyer will not be too impatient. The setbacks since 1914 are partly compensated for by the new era of inter-state constitutional advances made possible and even necessary by the stalemate of terror. Judge Read offers no grand panaceas but he is more sanguine than often are frightened amateurs about the capacity of East and West to negotiate and to find common ground. And if a former negotiator and a judge who had to live with the East around the bargaining tables as well as in the Judges' Library at the Hague should feel this much hope, then who are we to settle for less.

MAXWELL COHEN

“INTERNATIONAL GOVERNMENTAL ORGANIZATION, CONSTITUTIONAL DOCUMENTS”

by Amos J. Peaslee

TWO VOLUMES, REVISED SECOND EDITION, 1961, MARTINUS NIJHOFF,
PP. LVIII, 1962, 82.50 GUILDERS.

Collectors of documents, accurate and annotated, have a special claim on the affections of scholars, practitioners and librarians. Who has not struggled in the days before Amos Peaslee produced his first edition in 1955, of multi-national organization charters—running from the International Chestnut Commission to the United Nations where so many chestnuts are tossed in the name of peace—to find the treaty or the memorandum, the statute or the protocol, creating or amending one of the scores of legal webs now threading the affairs of mankind. The best of foreign offices may have the best of indexes and, perhaps, a few great libraries, sophisticated in the ways of international documentation, could extract on short notice a vagrant constitution. But these are luxuries available only to great powers or great schools. For the rest of us the average of resources requires more than average effort to find the document in issue.

Peaslee, having placed us all in his debt in 1955, now is an even greater creditor with this 1961 edition which includes amendments or new documents for 38 of the organizations listed in the first edition as well as the notes and full charters of 35 entirely new organizations not previously included. Moreover, as he points out in his foreword, “Some organizations for which the first edition had only a note, are now included with the texts of their basic documents and a fuller summary.” . . . “Organizations for which there is an entry in the first edition but not in the present one, have either a note or a cross reference to the principal organization.”

The richness of this feast at the table of international institutions can be tasted by scanning the contents of both volumes, listing 122 organizations. In the case of the principal inter-governmental organizations, their basic instruments arise in a variety of ways: 36 from “Conventions”, 23 from “Statutes”, 23 from “Agreements”, 13 from “Treaties”, 11 from “Constitutions”, 3 each from “Resolutions”, “Charters” and “Terms of Reference”, 2 each from “Regulations”, “Pacts” and “Protocols”, 1 from an “Arrangement” and 1 from a “Scheme”.

In the first edition Mr. Peaslee had an interesting and valuable general summary of the entire structure and contents of the volumes dealing with the

form of the constitutional instruments; ages of the organizations and the documents; a summary of functions; a summary of the organs of the various institutions; a listing of the number of members by organizations; a summary of the financial support; their relations with other international organizations; and the place of the headquarters of all the institutions dealt with.

In the second edition this valuable summary is now repeated and augmented in the form of a series of tables dealing with much the same materials but in a more complete and useful manner. For example, Table I classifies the organizations for all main types of constitutional documents. Table II gives the ages, membership, financial support and headquarters. Table III is an ingenious summary of functions divided into political; legal; economic, food-agriculture; social; educational, scientific, cultural, transport and communications. Table IV breaks down the entire list according to their main organs—"plenary", "executive", "other" and "secretariat". While Table V sets out the membership in the specialized agencies of the United Nations as well as in the U.N. itself. Table VI joins the alphabet of political shorthand by giving the established abbreviations under which many of these multi-mouthful are known. Finally one section locates the number of organizations' headquarters by cities; it will not be too surprising to learn that London has 14, Paris 12, Geneva 13, all topped by Washington with 15.

Mr. Peaslee has been as much concerned with the exotic minor institutions as he has been with the great ones and their charters. The Inter-American Tropical Tuna Commission and the International Olive Oil Council all have their place in this massive scheme to demonstrate in two volumes the scope of the universal embrace in this generation.

From the student's point of view there are two or three observations to be made about the situation since 1955 when the First Edition appeared. Some very significant institutions and instruments came into being after that date. The Antarctica Treaty Organization, the Benelux Economic Union, the Central Treaty Organization, the Council for Mutual Economic Aid (uniting the Soviet bloc into a kind of eastern OEEC) the European Atomic Energy Community and above all, the European Economic Community with its competitive British afterthought, the European Free Trade Association. To these may be added the French Community, the major amendments to G.A.T.T., the Inter-American Development Bank, the International Atomic Energy Agency, the International Development Association, the International Sugar Council, the Latin-American Free Trade Association, the Warsaw Treaty Organization and others.

Moreover, the editor's introductory notes are more detailed than in the first edition and the bibliographies more extensive and helpful as well as more up to date. Finally, the indexing omits the volume numbers and gives only the page and since the paging is continuous throughout the two volumes this

is something of a handicap to its efficient use. Moreover, as with the first edition, the index merely refers to the institution or organization under generic heads of a geographical, functional character and it does not pretend to be an analytical index of any serious proportions. It would have been of great help to the user of these fine volumes if time and money had been spent on a truly analytical index uniting many of the patterns that the student of comparative organizations is interested in discovering. As it is he must now read the fine print in the documents and search for himself and while this is good for his soul and perhaps not too bad for teaching him the elements of careful reading and sound homework, it is—on balance—a pity that a deeper and wider approach to indexing was not employed with its time-saving, analytical benefits.

With all, these are among the most valuable collections of their kind and together with Mr. Peaslee's parallel collection of the constitutions of states, the men of law and government now long have had a major research ally in his private efforts.

MAXWELL COHEN