

Book Review

Canadian Treaty-Making. By A. E. Gotlieb. Toronto: Butterworths. 1968. Pp. xi, 107. \$7.50.

It is pleasant to review this book by an author who extended me considerable courtesy in a briefing which his division in External Affairs gave me on the Canadian system of treaty recording, and who was at the time writing it. The impression made upon me of the efficiency of that system, which I have since proposed to Caribbean countries, is of a measure with the quality of the book, which organizes with clarity the somewhat intractable material in an area where legal theory and administrative practices are not easily reconciled.

The work is a manual on the procedures of Canada in the making of treaties, and it stops short of a discussion of Canadian practices in the matter of reservations, and refrains from entering upon Canadian policy in respect of the theory of treaty law in matters such as *jus cogens*. Nor does it go into depth in those areas of constitutional law respecting treaties which have been considered by Canadian courts, and by the Privy Council in respect of Canada, in particular in the distinction between legislative enactment and legislative approval of a treaty.

The use made of statistics is the most fascinating as well as the most original virtue of the book, and here implications are to be drawn for international practice generally. I was surprised at how few treaties have been called by that name, and that this is as true of the period 1919-1945 as from 1945, and also of the proportion of treaties and agreements which do not require ratification, or which come into force on approval — and again, how consistent this has been since the External Affairs Department was founded in 1909. Another statistic which I found interesting is that of the total number of treaties made by Canada compared with the total number of treaties which the United Kingdom had applied to even the most important colonial territories prior to independence. Between 1946-1965 Canada concluded 730 treaties, and other research indicates that it is a successor to several hundred British treaties. The treaty lists supplied by Whitehall to the newly independent States, and covering a period from 1654 to 1960 or later contain less than 500 treaties.

As a contribution to comparative federalism this study is also interesting. It discloses that the constitutional inhibitions on treaty implementation in federal States has not brought about a significantly worse treaty making record than in the case of many non-federal States, and that, at least statistically, Canada seems to have largely circumvented the problem by the procedures discussed in the book. But Canada, like Australia, has been reticent about private law treaties, many of which are important in facilitating international commercial transactions, and this may be, as in Australia, due to the inertia of a federal system. A quantitative rather than a qualitative examination is thus not entirely revealing. Incidentally, Australia is listed on page 74 with the United States as a federal State in which the federal legislature can implement treaties. Australian practice has been so reticent that in fact Australia and Canada seem to be in much the same constitutional position, and the same procedures tend to be followed.

The Ihlen Declaration¹ may not warrant the conclusion that there is a general rule about oral treaties, and the author refrains from entering into the labyrinths of tacit agreements and agreements made in excess of power. He does consider that many inter-departmental agreements are not governed by international law, and then hints at the problem whether the Provinces could be sued if they enter into them. He has no doubt that the Provinces have no direct treaty power.

There is a schedule of instruments concerned with treaty-making.

A competent officer of every Foreign Ministry should be inspired by this book to undertake a comparable survey. Then international lawyers would have a clearer picture than they now have of the trends in treaty-making practice.

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¹ At p. 22.

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