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Book Review. Cases and Materials on the Law and Institutions of the Atlantic Area by Eric Stein and Peter Hay

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BOOK REVIEWS


Classical international law was essentially shaped some centuries ago by the need of newly developing European nation-states for regularized patterns governing interaction:

The international community is variously called “the family of nations” or “the society of states.” One may define its beginnings as a selective community with a provincial outlook, even if one starts only with the modern period generally dated from the work of Grotius in 1625 or from the Peace of Westphalia in 1648. It was a European and Christian community into which the Islamic, much less the Hindu and Buddhist, world’s were not admitted. The Western Hemisphere (including what is now the United States) had only colonial membership.1

The question of the existence of any legal restraints whatever among nations which frequently acted as though they were in a Hobbesian state of nature could not be ignored. Grotius himself noted in 1625: “[I]n our day, as in former times, there is no lack of men who view this branch of law with contempt as having no reality outside of an empty name.”2 This fundamental issue is still the subject of modern commentary:

[Discussion of International Law, unaffected by the trend of recent legal writing in other fields, has persisted in its preoccupation with high level abstractions. It is time that attempts were made to bridge the gap between the realities of practice and the arid legalisms of the literature.]3

The political and economic realities of the post-war world are rapidly altering traditional concepts of interstate relations. As late as 1953 Charles Rousseau could devote a mere 35 out of 750 pages in his Droit international public, the standard French treatise in its field, to “Collectivities inter-

2. 2 Grotius, De Jure Belli ac Pacis 9 (Carnegie ed. 1925); quoted in Jessup, op. cit. supra note 1, at 4.
3. Coudert & Lans, Direct Foreign Investment in Underdeveloped Countries: Some Practical Problems, 11 LAW & CONTEMP. PROB. 741, 742 (1946); quoted in Jessup, op. cit supra note 1, at 3-4.
"étatiques." Questions of war and neutrality, by contrast, absorb 197 pages; the section "La guerre maritime" alone is 73 pages in length.

Major changes in the structure of the international community have been caused by the rapid rise of former colonies to a position of parity with their European parents. Membership in the United Nations, for example, has expanded rapidly since the end of 1955, and now is well above 100. In 1960 alone 16 African states were admitted. 4 Equally important, the members of the North Atlantic Community, threatened with Communist domination and aware of their shrinking importance in the modern world, have in the last two decades drawn closer together. This process has in part taken the form of internal legislation resulting from increased awareness of the interdependence of domestic economies. More interesting, however, is the creation of unprecedented international and supranational institutions charged with regulating many aspects of world relations. Recent developments, having completely transformed the traditional patterns of international law, are through the facilitating of an increasing intercourse among states making this new jurisprudence of growing importance to a generation of American lawyers trained to deal primarily with domestic matters:

International law is not new but its principles are little known and little used. To most lawyers international law is just as mysterious a subject as administrative and tax law were a few years ago. Today, as distances in our nation have shrunk and federal activity increased, all lawyers deal constantly with administrative and tax law. In a short time, for the same reasons, we must all be just as conversant with international law. 5

The obvious urgent need for a work of depth and large scope dealing with this new and developing body of law has been satisfied beyond all expectations by Cases and Materials on the Law and Institutions of the Atlantic Area. The volume of documents alone is a welcome contribution in a field where English translations are frequently non-existent or inadequate and where sources are widely scattered. But the text itself is undoubtedly the best work of its kind I have encountered. Although of substantial size and very closely printed, the book contains important information and stimulating ideas in almost unbelievable density. One finds little wasted space. In covering heroically broad areas of the law the editors have prevented any taint of superficiality through probing complex problems briefly but in great depth; little use is made of elemen-

4. This development and its effect on international law are dealt with in Valladao, Démocratisation et socialisation du droit international: L'impact latino-américain et afro-asiatique (1962). See also Alvarez, Le droit international nouveau: Son acceptation — son étude (1960).

tary materials and trivial generalities are avoided. The reader is continually motivated to explore more thoroughly issues raised but not resolved in the text. Since the editors have stressed the comparative and jurisprudential aspects of their materials, the work can profitably be read by many without specific interest in the substantive law expounded. The extensive discussions of international commercial relations, from theoretical as well as institutional viewpoints, should prove valuable to economists.

A statement by Thomas Jefferson appropriately establishes the theme of the book:

I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.

Almost exclusively, modern developments hold the attention of the editors. Little material appearing earlier than 1950 is included, and many of the excerpts bear the dates 1962 or 1963.

The introductory chapter, a concentrated comparative study of the constitutional aspects of treaty law, deals with such problems as the internal effects of international obligations and judicial review of treaty legality. For example, Missouri v. Holland is contrasted with the 1957 German Concordat case, which holds a local statute enacted by a subdivision of a federal state superior to a treaty obligation. The pertinent laws of the United States, the EEC members, Britain, and the European neutrals are explored in some detail.

After presenting materials dealing with the legislative and executive institutions of the European Communities, the editors examine judicial control on national, supranational, and international levels. Civil law administrative courts as well as the German and Italian constitutional

6. Comparison—the comparative method—has acquired a new function in those fields of national law which are subject to the law-making powers of the new European institutions: it has become a standard tool of the law-maker as he makes law for not one, but a number of legal systems grouped together into a legal "community," and of the judge as he applies that law. We have sought to take note of this new function and in addition to include comparisons with solutions of the same or similar problems in American law. Our objective has been not just to bring out similarities and differences but also to identify American interests, private and governmental, in the various activities of the new institutions, and to explore the possibilities of common solutions on an Atlantic and even wider level. Stein & Hay, Cases and Materials on the Law and Institutions of the Atlantic Area iii (1963).

7. Ibid.
courts are discussed. An introduction is provided to the Communities' Court of Justice and to the International Court of Justice.

The generous selections on international trade and commercial policy demonstrate the increasing complexity of world markets and make manifest the need for further study in this area. The section contains valuable economic material by such authors as Meade, Viner, and Kindleberger. In their treatment of "world-wide" controls the editors include substantial portions of the 1962 International Wheat Agreement and several cases concerning the International Monetary Fund. The pertinent aspect of the European regional markets are dealt with in detail, and problems involving their internal and external tariffs are carefully examined. An extensive analysis of United States commercial policy concludes the chapter.

In the mixed economies of the Atlantic Area the regulation of industrial competition has important effects on both productive efficiency and social organization. Although the United States has had antitrust controls for almost three quarters of a century, European governments have only recently adopted parallel measures. The editors devote almost 100 pages to fruitful comparative studies in this area, emphasizing the contrasting patterns evident in the developing laws of the different Communities and the interaction between controls of the supranational bodies and those of the member states. The confused relationships between antitrust regulations and foreign commerce are also examined.

The EEC represents an attempt to increase productive and distributive efficiency through molding the once independent economies of six nations into a viable unit. The goal, involving alteration of basic economic patterns, necessarily implies a transitional period of dislocation inevitably causing serious injury to non-competitive firms. The editors carefully explore the mechanics of the adjustments effected and anticipated, tracing with special emphasis the progressive freeing of the supply of services and of capital movements.

The substantial governmental interference in the life of the individual required for the functioning of the modern state can only be justified by its ability to provide him with higher standards of well-being. The editors in a long chapter devoted to economic and social coordination scrutinize the record of the European Communities with regard to welfare measures. Government reaction to the crisis caused by coal surpluses in the latter years of the last decade is thoroughly studied. Notes dealing with United States and United Nations attitudes and policies in his area are appended.

Interest in international protection of civil liberties, aroused especially by atrocities perpetrated during the Nazi regime, resulted in the establishment in 1950 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The international institutions thus created,
to which, in some instances, the individual may appeal directly, are examined at length. Especially welcome are the discussion of limitation of Convention applicability through reservations by adhering states and the careful treatment of the nascent jurisprudence of the Court of Human Rights.

The final chapter deals with the institutions of and the problems confronting the North Atlantic Treaty Organization. The successful combination of political commentary with jurisprudential and statutory materials permits simultaneous development of the several important facets of the common defense policy. In a concluding section the editors consider the possibility of closer ties among the states of western Europe and between these nations and the United States.

The value of this work can hardly be overestimated. It will prove a stimulating text in a variety of classroom situations. In addition, it should be widely read as the most authoritative compilation of material relating to a new expanding field of the law.

Robert L. Birmingham


The title of these three volumes by Mr. Werne of the New York bar suggests that this extensive work was designed primarily for the administrator of a collective bargaining agreement. It should be noted, however, that the material contained in these volumes is at least as valuable to the negotiator of a collective bargaining agreement. In fact, each chapter contains a section entitled "What the Clause Should Contain." Although sample contract clauses are not usually set forth in this section of the chapter, the negotiator is advised as to the items that should be covered in the section of the collective bargaining agreement which deals with the subject matter that the author is discussing in that chapter. Pitfalls to be avoided by the negotiator are also pointed out.

Most of the advice given seems to be directed to management representatives, though there is substantial material which would be of assistance to a union negotiator. Some of the provisions suggested by the author, however, would undoubtedly not be acceptable to most union representatives, at least in the absence of substantial concessions made by management on other issues.

The three volumes which comprise Administration of the Labor Contract are divided into five major parts. Each volume in the set contains over