

BOOK REVIEW

CANADIAN PERSPECTIVES IN INTERNATIONAL LAW AND ORGANISATION. Edited by R. St. J. Macdonald, Gerald L. Morris and Douglas M. Johnston. University of Toronto Press, 1974.

On 21st July 1975 the Canadian Secretary of State for External Affairs announced that Canada wished to postpone the Fifth United Nations Congress on The Prevention of Crime and the Treatment of Offenders which was scheduled to have been held in Toronto in the following September. In explaining this decision, the Secretary of State spoke of "the steady deterioration of the atmosphere in which international conferences are held" and, in particular, the "excessive confrontation on issues that are not related to the subject matter of conferences." It is inappropriate here to examine any more deeply the background to this move but it provides a significant indication of the attitude of the present Canadian government to its involvement in international organisations and, one ventures, to its outlook on the international legal order generally. For the time being at least, its view is one of considerable pessimism.

In this light, it is of particular interest to read such a recent and comprehensive study of Canadian involvement in the international legal scene as *Canadian Perspectives in International Law and Organisation*. The editors of this massive volume (some 960 pages) have collected together 38 contributions from leading Canadian academic international lawyers, legal practitioners and government officials. The articles combine to encompass a vast scope covering Canadian views and practices concerning almost every aspect of international law and much of Canada's involvement in international organisations.

Because of this great width of coverage and the variety of background which the authors represent, this book would be more than a useful addition to the library of an historian, a political scientist or, for that matter, anyone interested in world affairs. For this reason its worth as a work of international law is substantially increased for it is obvious that the attitude of any country to the various questions of international law must necessarily be viewed in the context of its overall foreign policy both past and present.

The contributed chapters are too numerous for all of them to be fully summarised and commented upon here. Moreover, some of them pertain to problems which are largely regional, such as those concerning the International Joint Commission and Canada-United States boundary relations (at p. 522) and the Great Lakes Region (at p. 500). While these are interesting in themselves, they have a limited value for the New Zealand reader. This is not so, however, as far as many of the articles are concerned, since they provide a host of invaluable insights into New Zealand attitudes and involvement in international law, notwithstanding the overall Canadian slant.

From the first chapter, "Canada and the International Legal Order: an Inside Perspective" by Maxwell Cohen, one cannot help but make numerous comparisons between New Zealand's background, attitudes and approaches in the field of international relations — particularly where international law is involved — and those attributed to Canada. For example, the Canadian experience in developing its own international identity bears many similarities to that of New Zealand (even if corresponding New Zealand developments have occurred somewhat more sedately). In particular, the history of the countries' respective relationships with Britain provides a striking parallel as is well illustrated by the following excerpt which, with the appropriate alterations could well describe part of New Zealand's constitutional history:

. . . at one and the same time the movement from 'colony to nation' required a search for political and 'constitutional' solutions within the imperial system which slowly transformed dependence to independence . . . That process trained Canadians to obtain in peace what their revolutionary cousins in the United States sought and only realized with war: responsible government, representative and essentially independent in the management of local life from a centralized, distant control.

Eventually, of course, this independence extended in both countries to management of international affairs with the decline in force of the *inter se* doctrine. In Cohen's view this particular course of development in Canada (coupled with the process by which the country became a union of the various original colonies) has given scholars, officials and politicians there a special kind of outlook in international affairs; what he calls "a fused, prismatic perception of the international legal order or orders to which they belong". This outlook, Cohen suggests, has enabled these people "quickly to assume multiple roles in the international legal order". If this view is justified, it is interesting to consider whether the analysis is applicable to the New Zealand situation. Although in New Zealand there was no similar process of uniting various separate colonies, the remainder of Cohen's basic premise applies, so that perhaps our generally enthusiastic outlook and active participation in international matters over the last 30 or so years can be attributed in part to our constitutional history.

The adoption, or at least the influence, of the common law in both countries is another similarity which has led to comparable approaches to certain international law questions. This is true for example, of private international law and also in respect of the rules governing the relationship between (public) international law and domestic law. Therefore, the chapters dealing with these questions provide analyses and comments which are of direct relevance to New Zealand. Macdonald's paper on the international/domestic law relationship, apart from its discussion of the problems raised by the federal system of government, amounts to a very full guide to the law as it would probably apply in New Zealand.

Several other contributions are also of direct relevance to New Zealand as descriptions of current practices in, and approaches to, international law, not because of a shared constitutional or common law background, but simply because they are generally accepted in the international community, certainly in New Zealand. The chapters on Canadian practices on recognition, sovereign, diplomatic and consular immunities, state responsibility, extradition and asylum, and treaty making, all fall into this category. They reflect approaches which would certainly be familiar to legal officials in New Zealand's Foreign Ministry. Indeed, J. A. Beesley's paper on the role of the Canadian Ministry's legal adviser (and his staff) and that of A. E. Gotlieb on treaty-making trends in Canada together provide an excellent description of the work of Foreign Affairs legal officers and, allowing for the Canadians' greater manpower and other resources, could be referring to their New Zealand counterpart.

Still another area which readily invites comparison is the law of the sea. Both countries have very long coastlines and therefore extensive maritime interests which range over fisheries (especially with regard to the unwelcome activities of foreign operators), control over exploitation of the continental shelf and protection of the marine environment. Moreover, the positions of the two countries on these and other issues at the Law of the Sea Conference are remarkably similar. The chapters dealing with law of the sea questions are of value then not only as an indication of Canadian thinking on the subject but also as useful background to the New Zealand perspective.

Related to the law of the sea is the question of polar regions. Canada's preoccupation with the Arctic particularly with regard to the protection of its environment resembles New Zealand's concerns with the Antarctic environment. (Canadian concern with the Arctic environment is touched upon in chapter 18.)

There are several other chapters containing discussion relevant to topics which are currently "live" to some extent or other in New Zealand foreign policy thinking and therefore warrant examination by the New Zealand reader. Among these, disarmament and arms control would probably rank most highly in New Zealand at present but international environmental law and legal aspects of international peace-keeping, the U.N. programme for the promotion of human rights, international arbitration and intellectual property are all matters with which Foreign Ministry lawyers have to concern themselves from time to time although some have greater importance attached to them than others.

The final chapter, which is written by the editors, surveys the position of international law in Canada and particularly its influence in Canadian policy-making, ending with suggestions and recommendations directed at strengthening that position. Here too there is much of relevance for New Zealand. There are those who consider that legal factors are not given sufficient weight in the formulation of New Zealand's foreign policy and no doubt it would be of considerable interest to

them to see the anxiety with which the editors view the present Canadian government's attitude to international law:

We are unable to discern a strong pattern of concern for the development of international law, under the present administration, except where it would serve Canada's immediate national interests. There does not appear to be much interest in the development of a legal regime as such.

Against the background of concern of this nature, it is especially interesting to recall the statement of the Secretary of State for External Affairs which was referred to at the beginning of this review and the rather pessimistic view of the international legal order that it indicated. Perhaps this offers yet another basis for comparison with New Zealand.

CRAIG BROWN.

