Book Reviews

EDITED BY A. U. de SAPERE

The British Year Book of International Law 1978

Edited by R. Y. Jennings and Ian Brownlie. Oxford: Clarendon Press, 1979. Pp. 454. Index. $79.00

This, the forty-ninth volume of the Year Book, contains extended examinations of two international disputes that raise points of general importance—the issue of the boundary of the continental shelf in the English Channel and the South-Western Approaches, and the Western Sahara "decolonization" case, in which Spain, Morocco, Mauretania and Algeria had a part.

The United Kingdom and France had referred the continental shelf issue to an ad hoc Court of Arbitration, which came to a unanimous conclusion on the boundary. In his analysis for the Year Book, Dr. D. W. Bowett notes that the decision marked the first time an international tribunal had dealt specifically with the effect of islands on a continental shelf boundary. Also new is the Arbitration Court's analysis of the relationship between the rule of customary international law and Article 6 of the 1958 Convention on the Continental Shelf.[1]

Spain having declined an offer by Morocco to refer the status of the Western Sahara to the International Court of Justice for adjudication, the decolonization matter was referred by the United Nations General Assembly to the court for an advisory opinion.[2] In his Year Book analysis, Malcolm Shaw criticizes some aspects of the court's approach but welcomes the court's declaration that territories inhabited by socially or politically-organized groups are not *terra nullius*.

Elsewhere in the Year Book, Dr. Hans Blix discusses the rules on "Area Bombardment" adopted by the Conference on Humanitarian Law in Armed Conflicts as its First Protocol (1977).[3] Other articles analyze the current state

[1] 15 U.S.T. 471, T.I.A.S. No. 5578.
[2] 14 INT'L LEGAL MATS. 69 (1975); 14 INT'L LEGAL MATS. 1355 (1975).
[3] 16 INT'L LEGAL MATS. 1391 (1977).

of "international legislation," mainly the output of international organizations; the access of land-locked states to the sea; the legal effect of "interpretive declarations" as opposed to reservations attached to treaties; and the status of the Sinai II Agreements of 1975 and the Panama Canal treaties of 1977.[4]

There follow sections reporting 1978 British court decisions on questions of public and private international law; decisions by the European Court of Human Rights on the European Convention on Human Rights;[5] and 1977 decisions by the Court of Justice of the European Communities.

A new feature of the Year Book is a compilation of indexed materials that show the practice of the United Kingdom (for 1978) in international law matters. Some of this material is not generally available, and the section is a valuable addition to the Year Book.

Nearly thirty books are reviewed. Much of the contents of the Year Book will be of interest to American, as well as British, lawyers, and the style of the contributors is such that the volume can almost be read straight through with pleasure.

SIR WILLIAM DALE
London

---

[4] 14 INT'L LEGAL MATS. 1450 (1975); 16 INT'L LEGAL MATS. 1021 (1977). These are examined within the context of Article 46 of the Vienna Convention on the Law of Treaties, 8 INT'L LEGAL MATS. 679 (1969) dealing with treaties *ultra vires* under internal law.

[5] Including Ireland v. United Kingdom, 17 INT'L LEGAL MATS. 680 (1978), on the question of what amounts to "inhuman treatment" under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome, November 4, 1950.

The Effective Management of Resources: The International Politics of the North Sea

Edited by C.M. Mason. London: Francis Pinter Ltd., 1979.

The evolution, interaction, and in some respects degeneration of regimes for management of the resources of the North Sea is the subject of this collection of studies done by members of The North Sea Study Group of the Scottish Branch of the Royal Institute of International Affairs (Chatham House).

The book is composed of seven separate studies (one per chapter) on four North Sea issues. An introductory chapter attempts to tie together the diverse elements of the succeeding material. C.M. Mason, chairman of the study group and editor, is the author of some of the material on North Sea oil and gas exploitation. The other contributors are persons of various disciplines, mainly from Scottish universities.

Four chapters, almost fifty percent of the book, deal with national and international management of the oil and gas resources of the North Sea, leaving one chapter each to the other three issues: regulation of fisheries, protection of the environment, and problems of security and policing. In my view this disproportion is excessive in terms of the interest and long-term significance of the issues involved.

The studies span the period 1963 to 1978, a time in which fundamental developments affecting offshore resources were taking effect. The book provides analyses of how these developments have changed preexisting regimes for the management of North Sea resources and have caused new national and international regimes to emerge.

Extension of coastal state jurisdiction to include wide bands of continental shelf and marginal sea has been the most significant and pervasive of the new developments. The authors concentrate on the special interests of Norway and the United Kingdom in the fisheries and seabed resources of the newly acquired zones and the impetus for national as opposed to international management of these resources. The northern expansion of the European Economic Community, by the accession of Denmark, the United Kingdom, and Ireland (but not Norway) to the Treaty of Rome was another significant development, creating pressures to internationalize regimes. Chapter VI in the book contains a particularly interesting analysis of the interaction of EEC law and policy with the national fisheries interests of the coastal states primarily concerned, Norway, United Kingdom and Ireland.

The piecemeal approach to control of pollution is examined in a chapter which leaves the reader bewildered by the multiplicity of existing and proposed treaties on this subject and with an unanswered question as to how effectively international and national rules will be enforced. This study also examines the difficulty within the EEC of imposing environmental standards which do not unduly disrupt competitive patterns.

The book's last chapter discusses the new problems of security and policing that have arisen from intensification of offshore activity and extension of

coastal state jurisdiction. It concludes that the civil authorities of coastal states must be equipped and trained to police the resources because military forces should not be diverted from their primary security functions.

Considering the modest record of past years in achieving effective international regimes for the management of offshore resources, in the North Sea as elsewhere, these studies tempt one to believe that extension of coastal state jurisdiction can only result in improvement. However, these studies present the fact of interdependence and suggest the need to harmonize national regimes, even though the main burden of enforcement is likely to remain the responsibility of individual coastal states.

T.P. HEFFELFINGER
San Francisco

The Concept of Law in English-Speaking Africa

By Chijioke Ogwurike. New York: NOK Publishers International, 1979. Pp. 205. $15.95.

This text is designed to introduce African law students to the historical development of jurisprudence in those parts of Africa which have passed from independence through British colonization to independence once again, and to convince them to accept the author's concept of law for use in English-speaking Africa.

Ogwurike's theories will disturb many lawyers trained in the Anglo-American tradition. Although a barrister-at-law of Gray's Inn in London, Ogwurike (who now practices in Nigeria) rejects the rule of binding precedent fundamental to British jurisprudence:

> [T]oo much adherence to precedent may lead to injustice and hardship in particular cases. In 20th century Africa it undoubtedly restricts progress and the development of the law to suit the realities of the modern and developing new independent countries.

Citing authorities as diverse as Holmes and Marx, Ogwurike argues that:

> The powers of a judge . . . to overrule . . . outmoded precedents, are the yardstick for measuring his contribution to social changes through the law. A judicial technique which imposes an obligation on the courts to follow relevant decisions of superior courts as a matter of law, tends to curb the judge's potentiality as a law-making agent . . . It may promote certainty and stability in the law, but it certainly does not enhance radical social change through the action of judges in court.

Unsettling though it may be, "radical social change through the action of judges" is the author's goal. After examining various theories of law, Ogwurike concludes, with Marx and Engels, that "economics is the base and that law is its superstructure."

In his view, the departing British left power "in the hands of a selected group" concerned with "their own economic and political interests and those of their erstwhile colonial masters," rather than with the "interests of the working class and the peasants." This ruling minority "creates law in accordance with the ideology of its class, which hitherto is involved with budding capitalism and which is not strictly in harmony with the socioeconomic facts and the desires of the masses." What the masses desire is "to break away from the rigid capitalist economy of the West and move toward socialism." The law should facilitate this by concerning itself "with what is desirable, in the sense of fulfilling human desires generally." In other words, "law must function for the greatest happiness of the majority, i.e., the peasants and the workers."

African students may find Ogwurike's views less radical than British or American readers because the legal system criticized is not historically their own, but rather one imposed during a colonial period. In any event, the text provides both a concise description of the development of Anglo-American jurisprudence and a thought provoking challenge to some of its basic precepts.

F. WALTER BISTLINE, JR.
Dallas

The Legal Status of the Land Berlin: A Survey After the Quadripartite Agreement

By Ernest R. Zivier; Translated into English by Paul S. Ulrich. Berlin: Berlin Verlag, 1980. Pp. xvi, 379.

The Quadripartite Agreement of September 3, 1971,[1] between the United States, France, Great Britain and the Soviet Union concerning the legal status of the Land Berlin is of particular interest to international lawyers and political scientists delving into the problems of postwar Germany. Until the early 1960s Berlin played a key role in international relations and in internal German politics inasmuch as it symbolized the hope that both parts of Germany and of Berlin might be reunited. Hopes that Berlin might again become the capital of a united Germany dimmed in August 1961 when the non-Soviet-occupied sectors of Berlin were sealed off from the Eastern territory by the Berlin Wall.

The book reviewed here is an updated version of the third edition of the original work in German (1977). However, the author and the translator state in the Preface (XVI) that several parts of the original have been shortened because they were outdated or would be of only marginal interest for a foreign reader.

[1]Quadripartite Agreement on Berlin, Sept. 3, 1971, 24 U.S.T. 283, T.I.A.S. No. 7551.

The author traces the legal status of Berlin through various developments beginning with the London Protocols of 1944, which provided for the establishment of four zones of occupation in Germany, with the special area of Greater Berlin to be occupied jointly by all four powers. The text consists of three parts: I. Historical Survey (pp. 1-36); II. The Berlin Status As A Legal Problem (pp. 37-148); and III. The Quadripartite Agreement (pp. 149-238). Only 88 pages of the text are devoted to analysis of the Quadripartite Agreement. However, more than one hundred pages of documentation (pp. 239-363) supplement the text.

The author correctly stresses that the Quadripartite Agreement and the accompanying regulations agreed upon by the competent German authorities establish no new legal status for Berlin and provide no definite solution to the Berlin question (p. 149). In particular, the legal ties between West Germany and West Berlin are unchanged. According to him the Quadripartite Agreement nevertheless results in a change of the situation because the limitation of these ties has now become the subject of an international treaty between the Western Powers and the Soviet Union, and thus the Soviet Union has implicitly recognized that the ties between West Germany and West Berlin are to be maintained and developed (189). Unfortunately the practice of the following years has not confirmed such benevolent Soviet attitude.

The most interesting parts of the book deal with: the ties of Berlin to the Federal Republic of Germany in practice (pp. 74-109); the nature of the legal relationship between West Germany and Berlin (pp. 110-131); the legal status of the non-Soviet-occupied sectors of Berlin (pp.182-89); foreign relations (pp. 194-205); and transit traffic and telecommunications to Berlin (pp. 206-220).

On the whole this book provides a well-rounded picture and subtle legal analysis of the events leading to the Quadripartite Agreement, and of its application in practice.

ARMINS RUSIS
Bladensburg, Maryland

Protection of War Victims: Protocol to the 1949 Geneva Convention

By Howard S. Levie. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1979-80. Volume I, pp. xxxii, 542; Volume II, pp. xi, 545. No index. $45 per volume.

The 1977 Protocols to the 1949 Geneva Convention for the Protection of War Victims will have an impact on the customary norms, if not the treaty law, for regulation of armed conflict. One of the primary sources for explication of Protocol I, which deals with conflicts of an international nature, will be Professor Levie's projected four-volume series of documents and com-

mentary. Two volumes have been published, with final volumes to come in 1981.

Along with the Swiss government's 17-volume *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977,* the Levie series should become a part of the professional library of all institutions and government agencies that deal with these problems. While valuable primary references, these series are not intended for the general law office or a government field agency.

As Professor Levie's introduction in Volume I emphasizes, his series does not publish every document connected with the four-session, 125-nation diplomatic conference that produced the Protocols. Even the *Official Records* are not complete, according to his preface to Volume II. His series may include documents not in the official set, and there are "[m]inor differences in wording, punctuation, spelling, [and] capitalization. . . . Apparently . . . some minor editing, not always understandable, was done either by the Conference Secretariat or by the Swiss Political Department" in the *Official Records* set. None of the differences appears critical, but the careful researcher should consult both sources if available.

Volume I begins with U.S. Ambassador George H. Aldrich's foreword, which praises the International Committee of the Red Cross (ICRC) for its long-term humanitarian efforts and promotion of the diplomatic conference that produced the Protocols. He also praised the United States for its strong support for and contribution to the conference. Professor Levie's introduction, also in Volume I, is a useful history of the conference and must be read before using the primary sources. Documents relating to Protocol I's Part I, the General Provisions of Articles 1-7; and to the initial portion of Protocol I, Part II, dealing with the Wounded, Sick and Shipwrecked, Articles 8-20; are reproduced in Volume I.

Volume II concludes Part II of Protocol I, Articles 21-34, and includes most of Part III, Methods and Means of Warfare: Combatant and Prisoner-of-War Status, Articles 35-44.

Volume III will publish materials relating to the remaining Protocol I, Part III Articles, and begins some documentation of Part IV, Civilian Population, Articles 48-67. The final volume will complete the materials on Part IV, Civilian Population (Articles 68-79). It also will include materials on the provisions relating to execution of the 1949 Convention and the Protocol (Part V, Articles 80-91); on Final Provisions; and on the two Annexes to the Protocol. An index also will be provided.

Prefaces included in Volumes II-IV should be examined closely when using any of the series because developments since publication of preceding volumes may be included.

The real value of this series becomes apparent when research focuses on a particular article. Professor Levie has included the text of all Articles in Protocol I; and with respect to those Articles selected for complete treatment, he has included the ICRC draft proposals; nations' proposals made at the

diplomatic conference; discussions on the substance of the Articles; "relevant portions" of reports by organs of the diplomatic conference and its committees; the original proposal for the Article; the Article as adopted; and occasional editorial notes by the author. No editorial notes were included in the first three volumes, however. All but Prof. Levie's first volume cross-reference to the *Official Records* of the conference. A researcher seeking information about Protocol I, Articles 1-20 has the dreary task of going through the 17 volume *Official Records,* which are arranged chronologically, rather than in the convenient modular grouping of papers in Professor Levie's compilation. His series, although it cites to the volume and starting pages for documents in the *Official Records,* does not cross-reference to pages within long documents, a help for the more precise researcher. As a result, users of long documents must consult the *Official Records* for page citations. This defect could be remedied in later editions of *Protection of War Victims* by "star-paging" as is done in the *Supreme Court Reporter* or in the *Lawyer's Edition* of the *Supreme Court Reports.*

The editor has, however, done an excellent job of preparing these important primary materials for the researcher confronted with ambiguities in the Protocols that are not resolved by construing the provisions according to their ordinary meaning or the object and purpose of the Protocol. While not stimulating bedside reading, the series is an excellent addition to the primary source materials for the law of armed conflict.

GEORGE K. WALKER
Winston-Salem, N.C.

Book IV, Acts and Documents of the Thirteenth Session, Conference on Private International Law

Bureau Permanent de la Conference. The Hague: Imprimerie Nationale, 1979. Pp. 440. 200 guilders.

Agency or Contrats d'Intermédiaire, is *Book IV* of the *Acts and Documents of the Thirteenth Session* of the Hague Conference on Private International Law. The other volumes are *Book I, Miscellaneous Matters*; *Book II, Matrimonial Property Régimes*; and *Book III, Marriage.* The text is in both French and English in double columns on the same page. The minutes are in the language used by the speaker.

The Convention[1] was drawn up because of the increasing importance of

[1]Draft Convention on the Law Applicable to Agency, done at The Hague, June 16, 1977, 16 INT'L LEGAL MATS. 775 (1977).

agency in international law. Agency law has become an acute problem in the field of conflict of laws because of the different concepts of agency in civil law and in common law countries.

"The Report on the Law Applicable to Agency," by Michel Pelichet, pages 9-31 of Book IV, is a masterpiece in the field of comparative law, especially because there are few formal treatises about agency in private international law.

Following the German 1868 definition of the dichotomy between contract and representation in civil law countries, Pelichet discusses the distinction between internal and external relationships and the effect of that distinction on consecutive contracts and on the codifications in Germany, Switzerland, Scandinavia, the Netherlands, Poland, the Soviet Union and Czechoslovakia. He also considers the principle of mandate of the other civil law countries and the notion of agency under common law, the doctrine of identity and the concept of estoppel by conduct.

According to the Convention, traditional conflict of law rules apply in the absence of a designation of forum. They apply, however, to a limited conception of agency, the *contrat d'intermédiaires,* under which a party by contract acquires the status of agent in the conclusion of other commercial operations. The term "agent" has been translated in the Convention as *intermediaire,* a term that encompasses the traditional *représentant* and the *commissionaire.*[2]

The Convention concerns itself primarily with the internal relationships between principal and agent and the effects of the agent's authority. It excludes anything concerned with judicial agency, agency by law and agency relationships that are subject to the law pertaining to the contract entered into between the agent and the third party.

The relationships between principal and agent that are considered include remuneration, noncompetition, termination (breach) and compensation for loss of goodwill.

The Convention, set out on pp. 371-376 of Book IV, was signed on March 14, 1978. It may defer to other international instruments and is in effect for consecutive five year periods if not renounced.

Book IV includes questionnaires sent to member states, minutes, draft amendments and the text of the Convention draft, as well as an explanatory report by I.G.F. Karsten which defines agency and agents as the terms apply in the articles of the Convention. I highly recommend to law students both Mr. Pelichet's report and Mr. Karsten's report.

SHEILA M. GREENE
Phoenix

[2] *Commissionaire* is defined at I DALLOZ, DICTIONNAIRE DE DROIT (1966); *Représentant* is defined at II DALLOZ, DICTIONNAIRE DE DROIT (1966).

Law of the Sea: Neglected Issues

Edited by John King Gamble, Jr. Hawaii: The Law of the Sea Institute, University of Hawaii, 1979. Pp. 545, $17.50. Available from the Institute: 2540 Dole St. Honolulu, HA. 96822.

This volume includes the proceedings of the Twelfth Annual Conference of the Law of the Sea Institute, held at The Hague in October 1978. It contains all of the major papers delivered at the conference; the commentaries on the papers that were offered by predesignated discussants; and a transcript of the question and answer sessions that followed the commentaries. Some of the papers are accompanied by bibliographies.

The "neglected issues" to which the title refers are several important problem areas which, for one reason or another, were not dealt with at the Third United Nations Law of the Sea Conference. A listing of the paper subjects reflects the nature and scope of the issues: Resources of the Deep Sea Other than Manganese Nodules; Legal Problems Relating to the Extraction of (Nonnodule) Resources; Unilateral Claims for the Use of Ocean Airspace; Airspace Over Extended Jurisdictional Zones; The Continental Shelf-Issues in the "Eastern" Arctic Ocean and the North American Arctic Ocean; Regimes for Living and Mineral Resources in the Antarctic; Legal Issues Regarding Towing of Icebergs; The Freedom of Ocean Shipping and Commercial Viability; International Regulation of Ocean Floating Energy Platforms; The Relation of Ocean Energy to Ocean Food; Oil Storage in Laid-up Tankers (The Japanese Plan); Military Implications of the Changing Law of the Sea; and Sea Use Planning in the North Sea.

These papers are well crafted and thought provoking. They should provide a valuable research source for persons facing problems touching the areas covered. Accordingly, major libraries should try to obtain a copy of this volume, for these are difficult issues of global importance that will attract increasingly wider attention.

ROBERT C. CASAD
San Francisco

International Law in Historical Perspective, Volume IX

By Dr. J. H. W. Verzijl. Sijthoff & Noordhoff, 1978. Pp. 547. Index.

Verzijl's work is volume IX of the series of volumes under the title above. This volume is devoted to the laws of war from a historical standpoint.

The volume is strictly a reference material, well indexed as to both names and subjects. A rather complete table of contents also assists the reader in finding subtopics under eight primary chapter topics which treat the follow-

ing compartments of the laws of war: general (concepts and) subjects, opening of hostilities, land warfare, naval warfare, air and space warfare, humanitarian laws of war, trials of war criminals, and termination of hostilities.

The author makes considerable use of annotations and citations to both international and national authorities and decisions on international law. Perhaps the author's most detailed work in the volume is Chapter VII, concerning the trial of war criminals, in which he provides many citations to all of the major war crimes trials during the closing stages of and following World War II. He lists and cites each trial held before the international military tribunals at Nuremberg and at Tokyo. On alleged American war crimes, the author cites to Friedman's writings and briefly alludes to the nuclear bombardment of two Japanese cities by U.S. aircraft and to the latter day courts-martial trials of W. Calley and E. Medina. Verzijl, an emeritus professor at the University of Utrecht, briefly analyzes and sets forth pertinent portions of the principal criminal Nazi wartime orders from the German high command. Then he selectively reviews the history of the nine German concentration-extermination death camps, beginning with Dachau, the first camp to be established in Germany and in operation from March 1933 to August 1945.

This ninth volume of the series would prove especially valuable to the brief or memorial writer seeking a wide array of ideas and citations with a clearly historical overview approach. Such a user would need, however, to resort to the texts of other materials as cited in this digest volume.

JAMES C. TUTTLE
Troy, Michigan

Alternatives in Deepsea Mining

Edited by Scott Allen and John P. Craven. Hawaii: The Law of the Sea Institute, University of Hawaii, 1979. Pp. 83, $10. Appendix. Available from The Law of the Sea Institute, University of Hawaii.

> *Something there is that doesn't love a wall,*
> . . .
> *Before I built a wall I'd ask to know*
> *What I was walling in or walling out . . .*
>
> ROBERT FROST

This book explores thoroughly the complex and potentially explosive issues in deepsea mining negotiations. The major points were presented during a workshop on "Alternatives in Deepsea Mining" which took place December 11-14, 1978, in Hawaii. The Law of the Sea Institute, a project sponsored in part by the University of Hawaii Sea Grant College Program, created and directed the workshop.

This well-documented and perceptive book is a valuable contribution to the international community involved in deepsea mining. Perhaps the correct question to ask about such a syllabus is whether or not enough good data is presented here to justify purchasing it. This reviewer thinks there is.

ALEXANDER D. CHRISOPOULOS
Arlington, Virginia