

BOOK REVIEW**INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND
APPLIED IN CANADA**

J.G. Castel, 3rd Edition, Toronto: Butterworths, 1976.

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The Canadian student of international law appears to a large extent to be the poor parent in the family of common law lawyers. Thus, he is often look at with contempt by his brother and sister lawyers. These ones, fed on the Austinian tradition, believe that international law is not "hard" law and does not deserve, as such, an importance equal to that of other subjects in the legal field of study. Besides, and unlike the situation in other fields, there is very little co-operation among Canadian international lawyers to undertake a comprehensive study of the Canadian position in international law and relations and develop a Canadian perspective or jurisprudence in this respect. As a consequence, the Canadian student of international law can only resent the absence of Canadian materials to be used in relation to an introductory or advanced course in his field of study. He must, therefore, rely to a great extent on British, American or French materials and "convert" their approach to the Canadian context. In this respect, it should be noted that although transnational by definition, international law principles are developed and received by sovereign states and that the interests of these states as well as their jurisprudential background influence their participation in the development of an international legal system. Canada in this matter still has a great deal to do.

The above developments explain that the Canadian student of international law, in his loneliness comparable to that of E.A. Poe's "Gallant Knight"¹ endlessly awaits the publication of new materials in his area of study seeking for "Eldorado" with great expectancy.

Professor Castel's third edition of "International Law, Cases and Materials as Chiefly Interpreted in Canada" purports to fulfill this expectancy and remedy the lack of international law materials in Canada.

As its title indicates, Professor Castel has followed the practice developed in the United States by Professor C. Hyde as early as

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1 E.A. Poe, Eldorado.

1922.² Hence, his new casebook puts an emphasis on "the problems which most frequently arise in the Canadian practice of international law and conduct of international relations".³ The reader will thus find in this work an abundance of Canadian cases and documents as well as a great deal of other relevant materials from various origins.

The organization of Professor Castel's book is rather classical in scope: Definitions, nature and sources of international law [ch. 1]; Authority and application of international law [ch. 2]; The domain of international law [ch. 3]; subjects of international law [ch. 6]; Nationality and individuals in international law [ch. 7]; Extent of State jurisdiction [ch. 8]; The law of treaties [ch. 11]; State responsibility [ch. 12]; Peaceful settlement of international disputes [ch. 13]. However, the author also explores some relatively new areas of international law, such as the international protection of the environment [ch. 9]; as well as the conservation of the living resources of the sea and air [ch. 10].

The thirteen chapters of the book [1251 pages altogether] are preceded by a table of cases and followed by a short selected Canadian bibliography which is designed to complete the reading list found in relation to each individual chapter of the book. Finally, comes an index which, unfortunately, is somewhat insufficiently detailed. Still it is helpful for the reader to find his way through the jungle of materials with which he is confronted.

Seen as a whole, Professor Castel's work is thus an invaluable addition to Canadian literature in international law and his efforts deserve to be praised in this respect. The student of international law will find in this book a comprehensive survey of international law problems (traditional as well as current ones) and of the Canadian answers thereto.

However, a number of questions can be raised in relation to this monumental piece of work with a view to suggesting some corrections for a future edition: Thus, from a purely technical viewpoint, Professor Castel's work presents some elements of confusion which force the reader to constantly shift back and forth from chapter to chapter in order to acquire a precise picture of a given area. This problem arises especially with respect to chapters 2 and 11 as well as to chapters 6 and 8. In these divisions the breakdown of topics seems rather controversial. It seems, for instance, that the question of the relationship between treaties and municipal law should logically be

2 C.C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, 1922, 2 vol.

3 See Preface.

covered in chapter 2, if, but not only, for the purpose of maintaining a certain balance between the proportions of these respective chapters [12 pages for chapter 2 vs. 158 for chapter 11]. This is a point which will be re-emphasized later. Also, Professor Castel covers the questions of the right of innocent passage through straits under existing principles of international law as well as the new concept of transit right through straits under the R.S.N.T. [pp. 255-261] before dealing with the notion of innocent passage itself [pp. 558-579 and 585-591]. Along the same lines, the concept of patrimonial sea [pp. 269-278] is developed before the notions of high seas [pp. 617-645] and contiguous zone (pp. 591-617). In more than one instance, repetitions and even contradictions result from the problems that the author seems to have encountered in the organization of the materials presented. This is notably so with respect to the question of the legal status of Arctic waters. In this particular case, however, the confusion noted can be partially explained on the basis of a lack of consistency in the Canadian position on this question.

From a more substantive viewpoint, one can regret, in certain areas, the insufficiency of personal notes which could tie the various parts of the book together so as to provide a useful thread for the reader to follow and explain the choice of materials gathered.

In this respect, and although a certain subjectivity is inevitable in compilations such as the one under review, a certain unbalance in the scope of the constituent chapters of the book is to be noted. Thus, if essential topics such as those covered in chapters 1, 2, 3 total only 46 pages, others such as those dealing with environmental protection (chapters 10 and 11) amount to some 200 pages. This disproportion seems hardly in accordance with the express goal of the author to provide for a book "which is designed for use by Canadian law students in an introductory course in international law".⁴ One cannot help to think here that the author has been forced for quantitative reasons, linked to publishing exigencies, to neglect fundamental areas of international law and give in to the temptation of covering current topics.

Although this approach has the obvious advantage of being more lively than a classical study of international law under the European model, a number of problems may be foreseen in relation to it. Thus, the danger is that students may not realize the necessity of exploring the substance of the introductory chapters in which the core principles of international law are laid out. On the contrary, they may concentrate on questions which are less legal than political.

4 *Ibid.*

and which intensity fluctuates with the state of international relations. In this respect, it is noteworthy that only a few pages have been devoted to international terrorism [pp. 194-199, 201-203 and 718-711].

Again, it is submitted with respect to sources of international law, that the choice of cases presented to illustrate the conditions necessary to the crystalization of a custom would benefit from a few modifications. Indeed, the excerpts from cases reported here⁵ are all negative examples of the existence of such conditions and in each case the establishment of a general or regional custom is rejected. It appears here that the inclusion of a case such as the "right of passage" case⁶ would have offered simultaneously an example where the I.C.J. recognized the existence of a custom which had developed from the practice of states and the non existence of another. At this point, it must be emphasized that if customs do not play anymore a primary role in the international law making process "(w)hat gives international custom its special value and its superiority over conventional institutions is the fact that, developing by spontaneous practice, it reflects a deeply felt community of law."⁷

Moreover, a number of errors of a more or less serious nature can be identified throughout the book. For instance, the reference on p. 252 is not in relation to regulations adopted pursuant to the *Fisheries Act* and covering Hudson Bay as alleged, but related to regulations concerning the pilotage district of Montreal.⁸ Again, no regulations adopted in pursuant to *The Whaling [Convention] Act* can be found in the 1973 S.O.R. as indicated on p. 886. Also, a careful examination of the table of cases will show that excerpts from the *Scott* case, on the reciprocal enforcement of maintenance orders, can be found on p. 924. In fact, the said excerpts are located on p. 928 when a mere mention of the *Scott* case is to be found on p. 924. Besides, the reference on p. 924 indicates that this case was decided in 1952 where the judgement of the Supreme Court was rendered in 1955 and reported in 1956. In the same veine, a glimpse at the index under the heading of "Terrorism" refers to p. 1074 of the book in which the reader will find no mention of this question.

Finally, the prohibitive price of the book under review (\$40) may in itself discourage students from electing an optional course which

5 North Sea Continental Shelf cases (*Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands*), 1969; Asylum case, (*Columbia v. Peru*), 1950; *The Steamship Lotus*, (*France v. Turkey*) 1927

6 *Right of Passage over Indian Territory (Portugal v. India)*, 1960.

7 De Visscher, *Theory and Reality in Public International Law*, 1968, 161.

8 S.O.R., 1955, Vol. II, pp. 1433 and 1440.

is often considered to have little practical relevance for the common law lawyer. This is a criticism which is more directed to the publisher than to the author and one can only wish that a more competitive price would make this work available to all students.

In the final analysis, it is submitted that in spite of the aforementioned weaknesses, Professor Castel's new casebook is a major contribution to the publication of Canadian materials in international law. Let us hope that his valuable example will be followed by other Canadian specialists, both anglophone and francophone, so that some day a true Canadian philosophy in international law and organization will result.

Over the mountains of the moon
And down the valley of the shadow,
Ride, boldly ride, the shade replied
if you seek for Eldorado".⁹

⁹ See note 1.