REVIEWS

"PEACEFUL COEXISTENCE" AND SOVIET-WESTERN INTERNATIONAL LAW. By Edward McWhinney. A. W. Sythoff- Leyden. 1964. Pp. 135.

Professor McWhinney's "*Peaceful Coexistence*" *and Soviet-Western International Law* is an application of the American Legal Realist approach to Soviet theory and practice of "Peaceful Coexistence." The author interprets it in the wider frame of Soviet positions on international law in general. He has also examined Western reactions to this current Soviet campaign for "Coexistence," both in legal doctrine and political confrontations with Soviet Block representatives. The trend from Bipolarity which marked the world community after the Second World War, to Polypolarity (*i.e.*, the increasing centrifugal tendencies within each power Bloc) which is evidenced today, has also been discussed.

Professor McWhinney makes a note of present tendency of Soviet international law doctrine to break away from the influences of the Stalinist era and Marxian dogmatism and to move towards active participation in changing it so as to correlate it to actual realities of international life. This situation can well be compared to the thinking of American international lawyers (like Professor McDougal) who are equally critical of the overemphasis on technical rules, unrelated to policies, as factors in guiding and shaping authoritative decisions.

By applying the Realist approach to the Cuban crisis of October, 1962, the learned author has very well illustrated the fact that the failure to appreciate the mutli-facedness of the situation leads to its varied legal characterizations—each such characterization having its own particular set of rules appropriate for application for the solution of the case. Was it simply an U.S.-Cuban conflict or a Soviet-U.S. confrontation like many others ? If it fell in the first category, only the inter-American, regional legal rules would have been applicable ; whereas in the latter case, the right of self-defence under customary international law or under article 51 of the U.N. Charter could have been invoked.

The United States Government was at pains to stress that it was merely a regional problem and therefore the right of self-defence was not invoked by them. But Professor McWhinney points out that there was a certain element of archness in the U.S. Administration's *ex post facto* legal rationalization of the protective measures actually taken to resolve the Cuban crisis.[1] President Kennedy's first reaction was of expressly recognizing the threat to Western security and cold war military balance and also of calling into aid Western defensive measures.

1. McWhinney, "*Peaceful Coexistence*" *and Soviet-Western International Law* 22 (1964) [hereinafter cited as *McWhinney*].

The author seems to approve it and consider it as the true basis of the United States Executive decision and also as accurately depicting the cold war legal issues at stake.

The Soviet Union preferred to conduct its relations with the West outside the United Nations, through bilateral negotiations or treaties or summit meetings. The author is of the view that the United States' acquiescence in bypassing the United Nations machinery is perhaps a part of United States Policy, manifested in the practical conduct of relations with the Soviet Union, in dispensing with middle men, in favour of direct person-to-person dealings; and in the desire for facilitating or accelerating the actual resolution of the crisis in any manner possible. The Partial Test Ban Treaty of July 1963, has been cited as another illustration of the fruitfulness of direct negotiations between the two Bloc leaders or their trusted lieutenants.

The author is of the view that "Peaceful Coexistence" had its modern origins in the 1956 biennial reunion of the International Law Association, through the Yugoslavs. The Soviet jurists have uniformly looked with disfavour to this Yugoslav origin of the doctrine and have attempted to trace its lineage from the writings of Lenin himself.

The Soviet definition of "Peaceful Coexistence" has been woven around the well-known "Panchashila" doctrine enunciated by the Prime Ministers of India and China in 1954. To it have been added some other principles fancied by the Soviets, *e.g.*, "States shall be represented in international organization with consideration for the fact of the existence at present of three large political groupings."[2] The author rightly points out that the basic problem, in connection with the Soviet campaign in behalf of "Peaceful Coexistence,"is in the failure to elaborate, develop and explain these highly generalized primary principles in terms of concrete secondary principles immediately utilizable for solving actual problems of East-West tension. It may even be, as the author hints, that this abstraction of the Five Principles has obscured the conflicting or changing Soviet approaches to the role of international law in the cold war era. The author thinks that at least two different approaches are clearly discernible—the moderate, passive doctrine of Khrushchev of accommodation with the West, and the dynamic, neo-Stalinist doctrine of Professor Korovin and others. It is the moderate position which seems to reflect the law-in-action.

In the same vein, the author discusses the Soviet attitude to international law and the United Nations and the approach of the Soviet judges on the World Court in Charter interpretation, and also the Soviet preference for East-West summit meetings over the United Nations machinery. The Soviet hierarchial ranking of international law sources which gives primacy to bilateral treaties (which could be based on a *quid pro quo*) and the policy behind it has also been examined. The Soviets

2. *McWhinney* 35.

do not support the application of *clausula rebus sic stantibus*; rather they would ingeniously pick and choose, from among their own old treaty obligations, only those which are dictated by the practical needs of the Soviet policy-makers.

It is difficult for anybody to resist the inference, as the author has himself stressed, that Soviet views on international law have so often been the handmaiden of policy-makers. If that is so, one may not totally agree with Professor McWhinney in giving a legal base to the Soviet reaction in the Cuban affair,[3] *viz.*, U.S. action being accepted as a reasonable defensive counter-measure, in an area of Western military-defensive interests and outside the accepted Soviet sphere of interests. The Soviet acquiescence was guided more by the considerations of practical politics (as it always is) than by any recognition of the American right of reprisal or self-defence. Similarly, one may hesitate to infer "inter-Block" law from the practice which has been guided solely by military considerations and power politics.

The condition of Bipolarity is itself being challenged and threatened by tendencies towards Polypolarity. The Sino-Soviet ideological conflicts, Tito's Revisionism and Italian Toglitti's many paths to Socialism, and in the West the attitude of President de Gaulle to create a separate and independent leadership for France in Western Europe are casting deep shadows on the Bloc leadership of the United States and the Soviet Union. The growing solidarity of the Afro-Asian states and their non-aligned character is again a significant factor not to be overlooked. In the face of these developments, the hegemony of the twin Bloc leaders seems to be dwindling and so would the efficacy of the so-called "inter-Bloc Law."

However, the efforts of Professor McWhinney to delineate the common ground between the Western and Soviet international law approaches so as to be helpful in the solution of East-West differences, have to be highly commended. It can only be hoped that the Soviet jurists and policy-makers would reciprocate in a similar fashion and in the same spirit.

So far as the immediate future is concerned, probably Professor McWhinney is right in concluding that the new international law is to be based on accommodation of Soviet-Western differences and proper recognition of the aspirations of the developing and new countries.[4] But if the present power balance is disturbed and there is a shift from Bipolarity to Polypolarity (as it has actually been accentuated ever since this book was published), probably all the bases and assumptions of the author would become false. The vocabulary used by Professor McWhinney is rather terse for the uninitiated. The actual import of several phrases which he uses in special senses (like Polypolarity,

3. *McWhinney* 84, 85.
4. *Id.* at 126.

Polycentrism, Pluralism, Mondialism, Realpolitik, etc.) could probably be better appreciated if they were accompanied by adequate explanations in the footnotes or the appendix.

However, this small book gives much food for serious thought and prompts one to study and evaluate the Soviet approaches to international law (which is practically absent in the Free World countries, except the U.S.A. and probably Canada). It is a remarkable illustration of the application of American Realism in the field of international law.

S. K. Agarwala *

ELEMENTS OF INDIAN INCOME-TAX. By Ram Niwas Lakhotia. Calcutta: Asha Publishing House, P-16, C.I.T. Road, Calcutta-14. Ninth Edition. 1965. Pp. 415. Rs. 8/-.

TAXATION OF COMPANIES AND THEIR OFFICERS. By Ram Niwas Lakhotia. Calcutta: Asha Publishing House, P-16, C.I.T. Road, Calcutta-14. 1965. Rs. 30/-.

Mr. Lakhotia in *Elements of Indian Income-Tax* makes a shaky beginning with an account of history of income taxation in India. He gives a much too brief summary of the statutory provisions of the new income tax statute. In his desire for being brief he has said almost nothing of the developments of this branch of law. The incomplete definition of "income" given by him,[1] the description of the residence of various types of income tax assessees,[2] the attempted summary of the tests and conditions for determination of residence of various persons,[3] and the treatment of the topic of exemption of income from property held under a charitable trust are disappointing and leave the reader ignorant of the important changes made both by statute and judicial precedents. He has singularly failed to point out that the new income tax legislation has effected important changes by way of narrowing down the scope of the exemption, firstly, by insertion of the words "not involving the carrying on of any activity for profit" at the end of the definition, and secondly, by insisting upon actual expenditure of the trust income for charitable purposes.

The adoption of the short notes technique in preference to analysis of the growth of the law and refusal to refer to case law will not help even the student for whom the book is intended. The chief merit of the book lies in the problems and their solutions for the advantage of the students, who, for various reasons for some of which they are not

* M.A., LL.M. (Luck.), LL.M. (Harv.), LL.D. (Luck.); Reader in Law, Muslim University, Aligarh.

1. Lakhotia, *Elements of Indian Income-Tax* 17 *et seq.* (9th ed. 1965) [hereinafter cited as *Lakhotia*].

2. *Lakhotia* 29.

3. *Lakhotia* ch. 3.