which in reality is the basis of Islam). It is rooted in classical thought but has little to do with twentieth century thinking in Europe. 'Abduh, although he had learnt French, was not familiar with the present-day trends in theology in Europe and had no inkling of modern dialectic in philosophy or of modern concepts of history. That remains to this day the tragedy of Islam.

Islamic reformers do not know modern thought; and modern thinkers do no not know the heart of Islam. It is only when we produce a *Muslim* Barth, a *Muslim* Tillich, a *Muslim* Maritain, a *Muslim* Swedenborg, or a *Muslim* Bonhoeffer that reform may be seen on the horizon. But not till then.

Rida (1805-1935), 'Abduh's pupil, was a prolific writer. A Syrian by extraction, he made Cairo his home and came under the influence of his Master. His most enduring contributions to fame are the thirty-five volumes of the *al-Manār (The Lighthouse)*—a periodical devoted to Islam in all its aspects which may well be considered an extensive commentary on the Koranic sciences. 'Abduh mastered French at the age of 44, and wrote: "No one can claim any knowledge enabling him to serve his country... unless he knows a European language." (cited at 154). But Rida acquired no European language, and yet his interpretation of Islam is fascinating in its Islamic spirit and sound reasoning.

The book is an excellent example of a thesis laid into a cellar to mature and become an elegant vintage. (I hope my Muslim brothers will forgive this impious simile.) It is full of sound sense, modesty combined with learning, and objectivity with understanding. The printing is excellent. I have discovered only one misprint which shall remain undivulged. Mr. Kerr's book deserves to be prescribed for all higher examinations in Islamic Law, and will be read with profit by all those who concern themselves with the vexed question of Islamic reform.

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THE JOURNAL OF WORLD TRADE LAW issued its first number early this year and was dated January-February 1967. It is the first major effort in English in the publication of periodic literature solely devoted to the law of world trade. The Editorial Advisory Board consists of some eminent western specialists in this field.

The development of law adequate to encompass problems of world trade at a truly global level would clearly need to comprehend

*Author, *Outlines of Muhammadan Law* (3d ed. 1964).

the trade patterns and policies of the communist countries, and of the developing countries, in addition to those prevalent in the advanced countries of the West. The legal aspects of international trade in the communist countries have received of late considerable thought and attention, and there have also been mutual academic exchanges in this area between the legal scholars of the East and the West. But similar academic attention to the law of international trade is yet to take institutional roots and forms in the developing countries, and in many law schools therein the subject is still to be recognized as deserving and capable of an autonomous status. In this context, it is hoped that the appearance of a journal solely devoted to world trade law may provide an impetus to legal scholars for similar efforts in the developing countries such as India.

It may well be true that, international trade will continue to grow whether or not helpful developments in international law of trade are attainable. For neither complete isolation (economic or political), nor absolute self-sufficiency have been conditions characterizing any viable politically organized unit. Merchants are not usually known to wait for the green signal of lawyers in the endeavours to expand their trade, be it within the country or abroad. Nonetheless, there is perhaps considerable truth in the familiar observation that legal technicalities and delays are a nightmare to businessmen — and that they indeed tend to identify law only with its "technicalities" and "delays." The burden rests, therefore, squarely and heavily on the legal profession and the law schools—and perhaps also on the legislators and administrators — to foster a better understanding of the elements of flexibility and adaptability in the methods, institutions, principls and procedures characteristic of law, and thereby to demonstrate that law can be an important instrumentality facilitating, rather than frustrating, commercial and industrial growth.

There are, however, some inherent difficulties impeding the evolution of a world trade law. Under currently established legal traditions, it would appear that the "sources" (as well as the instrumentalities and the general complexion) of trade law are apt basically to differ, depending on whether the trade is *within* a country or between or among countries. Within the territorial jurisdiction of a state, considerations of public interest or "public order" tend to be overriding. In other words, although the movement of men, money and goods within the country is ordinarily free, the instrumentalities of law and of policy (viz. legislation, taxation and administrative regulation) are readily available and effective in upholding what may be deemed by established state authorities as "exigencies of public interest." This has the result that the "sources" of trade law within the country would include all rules promulgated from time to time by state instrumentalities regulating trade in public interest. On the other hand, as the

reach of such instrumentalities stops at the territorial frontier of the state, such rules cannot, with equal finality or effectiveness, be regarded as "sources" of law for transactions prima facie extending beyond the reach of any single state's exclusive jurisdiction — that is, for international trade transactions.

However, as a matter of fact, states do seek by their regulatory and tax laws to reach even international transactions, or at any rate those aspects of international transactions which lie within their jurisdiction. In this regard, states indeed appear to vie with each other in devising ever ingenious legal ways and criteria for extending and asserting their jurisdiction over international transactions. The result is that every international transaction would then come to be subjected to multiple state burdens, and the movement of international trade is apt thereby to be discouraged and hampered by delay, uncertainty, loss and insecurity. The problem of multiple burdens may appear even in a federal state, though federal constitutions usually keep the burdens at a minimum. But in international trade, and transactions straddling more than one sovereign jurisdiction, the problem attains serious proportions.

The crux of the problem is that national interests and policies of states in the economic and commercial sphere (even as in the political) overlap and conflict. There is need for some restraint, mutual adjustment and a minimal awareness of emergent norms of international economic order. The well-being of world economy and commerce is as vital to each state as its own national economy and it is folly to imagine that the one can be preserved effectively while the other can be sacrificed with impunity. National economic and commercial policies should be permeated by a sense of international responsibility. The international impact of national policies should be realized, and states must refrain from measures that result in unnecessary and avoidable damage to other states or their nationals. The post-World War II period has seen some commendable developments in the direction of improving the climate and conditions of international trade of which the G.A.T.T. and the I.M.F. are two outstanding examples.

In addition to the foregoing public law aspects of the problem there are also some private law aspects. Each country has its own private law system and to an international transaction, by its nature related to more than one country, norms of divergent legal orders may apply. While private international law rules may help to subsume such transactions under "one law or another," it cannot be overlooked that these rules emanate from municipal laws of many countries. Legal scholars, therefore, have long been working towards greater "harmonization, codification, unification" of the salient rules of private international law over the past forty years and perhaps more. "The path was littered with draft conventions," observed Clive M. Schmitthoff,

> which had not materialized but, on the whole, there had been real and substantial progress in the field of unification of various branches of international trade, in particular in the field of carriage by sea, air and rail, and that of negotiable instruments. During the past ten years, this development appeared to have been accelerated: there were Incoterms, the Uniform Customs and Practice relating to Commercial Credits, ECE's Standard Contracts and the General Conditions of Delivery, of Comecon. There had also been progress in the field of arbitration and settlement of international commercial disputes: there were the New York and Geneva Conventions. All these developments had produced a remarkable degree of similarity.[1]

In the wake of this development, it would seem now possible to canvass for an "autonomous law of international trade" which may be said to be derived mainly from two sources: international commercial custom and international legislation.[2] International commercial custom consists of commercial practices, usages or standards which are so widely used that conformity with them is almost axiomatic. It also includes standards which are formulated by international agencies, such as the International Chamber of Commerce, U. N. Economic Commission of Europe, or international trade associations. "International legislation" is a convenient though not correct, expression to indicate normative regulations devised internationally and introduced into municipal law by legislation. It is carried out by two methods: the adoption by states of a multilateral convention, or the formulation of uniform model law which may be adopted by a state unilaterally. Conventions unifying certain aspects of international commercial law may be divisible into two categories: those between countries of planned economy and those between countries of different economic structure.

And yet, despite the growth of a considerable body of "international commercial custom" or of "international legislation," one must be wary of assessing the existence and efficacy of a stable international legal regime over international trade. There is still a long way to go, and the path is still neither easy nor smooth.

Amidst the diversity of municipal laws and of conflicting national policies, the challenge to eke out and identify the law of international trade is indeed a formidable one. Yet, strenuous efforts continue to be made. A recent one is that of the International Association of Legal Science which was promoted with the financial support of the UNESCO, to explore, through research and colloquia, the problematics of international trade law from comparative perspectives. One of its colloquia, held in September 1962, was directed to a problem of considerable difficulty and far-reaching significance: to formulate what may be called "the sources of the law of international trade with special reference to East-West trade." Distinguished representatives from Communist and Western countries participated in it. In the

1. Schmitthoff, (ed.) *The Sources of the Law of International Trade* 282 (1964).
2. *Id.* at 16-17.

course of discussions, it was suggested that the time seemed ripe for the legal problems of international trade being investigated at higher levels of the United Nations Organization. On 15th December, 1966, the General Assembly unanimously adopted the report of the Sixth Committee which substantially approved the proposals submitted by the Secretary-General, and decided to establish the United Nations Commission for International Trade Law (on the lines of the International Law Commission) consisting of twenty-nine experts drawn from different groups of countries. Its purpose will be to maintain close contact with the U. N. Conference on Trade and Development (UNCTAD) and to report to the General Assembly its recommendations for furthering of harmonization and unification of private law relating to international trade. As indicated in its editorial introduction the *Journal* under review, has apparently been launched under the inspiration of the aforesaid major institutional development, with a view to promoting discussion of the legal problems relating to international trade.

Dean Graveson has stated lucidly the sense in which we can meaningfully and fruitfully talk of the "law" of international trade, and work toward its development. His exposition of the relevance of the notion of law to world trade is worth recapitulating as it may enable us to better appreciate the aims of the *Journal* here under review : He observes :

> [L]ife consists of many worlds, and few of us inhabit only one. To understand the scope and problems of the world of merchants, it is necessary to pay that world a visit of inspection, even if one has no wish to become one of its citizens. *Lawyers are above all under this rigid duty of knowledge*....Law, in commerce as elsewhere, exists not for its own sake. It has no purpose of its own. It exists only to achieve purposes external to itself....(It is) the lawyer's constant task of providing the most efficient legal means of achieving extra-legal purposes and satisfying extra-legal needs. In the field of international commerce, those purposes and needs change as does a growing child. They are adjusted under the impact of political and economic theories. They are conditioned in part by the various grouping of states. But constantly they are dominated by the basic concern of commerce for its own existence, its survival and its progress; by the demand of merchants for quick and effective method of reaching results, and by the somewhat idealized ambition for simplicity in transactions. The lawyers do their best to help, though the obstacles are not always easy to surmount...
>
> Legal processes, however, take time to devise, as even lawyers themselves well realize. Businessmen would quickly go out of business if they always waited for formal legal solutions to their difficulties. From time immemorial merchants have been making law for themselves by the simple method of experimenting with new commercial practices and accepting as obligatory those that seemed best fitted to meet their needs. What is desirable, however, in the interest of certainty and its own development is that this living and growing body of customary law should be known and recorded.[3]

3. *Id.* at v-vi. (Emphasis added).

Debate may continue unabated over questions whether new questions or old questions in new forms—What are the "sources" of international trade law? Is there an "autonomous" law of international trade? Which of the two sources (international commercial custom and international legislation) has precedence over the other? When does usage become custom? What is the permissible extent of "party autonomy?" What are the differences and similarities between institutions and practices of Western and Eastern countries relevant to international trade? But what seems above all necessary for the legal scholar is "*knowledge*" *of realities*—of the actual contemporary needs, and practices of those involved in international trade (be they governments or private businessmen, sellers or buyers, producers or consumers, bankers, customers or carriers), of the changing economic and political situation of the many countries participating in international trade. Admittedly the factual substratum of international trade is bewildering in its complexity, diversity, depth and changefulness, and none can ever claim to know enough of it. All the same, one ought to turn to all available sources of true and reliable information for guidance in the task of designing legal methods, institutions and processes for the solution of intricate problems of international trade law, at the national and international levels.

From this standpoint, the *Journal* has made an excellent beginning, and is commendable for the nature and extent of its coverage, and for the choice of subjects (no less than for the authors). The *Journal* opens with an article on Japan's foreign trade, by Mr. Yoshio Ohara, which presents a well-documented statement of Japan's national interests and of the measures taken in furtherance thereof by that great Asian country, with a substantial stake in foreign trade, occupying a high position among the industrialized countries of the world and maintaining peaceful relations with East and West after having made a spectacular recovery from destruction and defeat during World War II. The author is well-qualified to present an exhaustive statement of the local laws presently in force pertaining to foreign trade as well as their commercial and economic substratum. The second article by Mr. T. H. H. Skeet is on a subject, vast in its scope but central to the realities and problems of international trade and movement of goods—viz., the international oil industry and supplies. This takes the viewpoint of the private enterpreneur who is endeavouring to meet a real and lasting international need—world demand for oil, a commodity which has to be moved internationally, if it is to be supplied at all. The subject, in view of its scope, had to be handled tersely, but the author makes on the whole a fine job of it. While it may not make clear many things for the beginner, there is considerable information of recent date that would be of the initiated. The last

article by Emile Mennens is on the European Economic Community—an outstanding experiment of recent years, which while seeking to solve some problems of international trade, creates many others. It raises the question of impact of movements for regional organization or world trade. The viewpoint therein presented on the problems of international trade is of considerable interest to students of law in general and of international commercial law in particular. The article also throws light on how international politics can sometimes very substantially and directly affect the choice and effects of legal methods to resolve such problems. A shorter article by Stanley Metzger (a veteran writer on matters of law of international trade) on U.S.-Canada Agreement on Automotive Products (1965) is very spicy, and quite revealing of the underlying interplay of interests (governmental and private) which prompted the conclusion of the Agreement. Metzger's critical evaluation of the impact of the Agreement on international trade is quite justified. A very useful account then follows, of the U.N. Commission on International Trade Law. Following up a reference made to it in the Editorial Introduction, this note, appearing almost at the close of this issue of the *Journal*, explains fully the nature, background and functions of the Commission, and its efforts to maintain a close liason with other institutions and agencies working on kindred problems.

It would be presumptuous for the present reviewer to criticize or evaluate the contents of any of the foregoing articles, for the simple reason that the learned authors know very much more about their subjects than the present reviewer. There is, however, no room for doubt that the first number is an unequivocal success. Reading through it was a pleasant and rewarding experience.

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