BOOK REVIEWS

UNITED NATIONS LAW MAKING—CULTURAL AND IDEOLOGICAL RELATIVISM AND INTERNATIONAL LAW MAKING FOR AN ERA OF TRANSITION (1984). By Edward McWhinney. United Nations Educational Scientific and Cultural Organization, Paris. Pp. xi+274.

THIS SLIM volume[1] under review is the third in the series called *New Challenges to International Law* initiated by the United Nations Educational, Scientific and Cultural Organization in 1979 with a view to encouraging critical reflection on contemporary international law adapting itself to the changing demands and realities of the present day world community. It deals with the processes of adaptation of the international normative system in the public order to a new one which C. Wilfred Jenks preferred to redesignate as "A Common Law of Mankind". Not only does it analyse the processes and arenas of world community law making activity and the spatial and temporal dimensions of new international law, but also examines critically the role of the actors involved in particular of the United Nations which has indeed been the centre of the post-1945 structure of the inter-state system. Particular attention has been paid in this regard to the role of the Security Council, General Assembly, International Law Commission (ILC), International Court of Justice (ICJ) and Secretary-General.

The author has ably handled a very complex subject of international law making in the present era of hazardous conditions of multipolar world community which is characterised by ideological pluralism and the North-South and East-West encounter. He highlights contemporary international law values and its imperative jural postulates culled out from authoritative decisions of the General Assembly, Security Council and principal agencies of the UN specialised agencies, the judgments and advisory opinions of ICJ, the self-legislation of multitudinous treaties as well as from state acts. The imperatives he enumerates are the self-determination of people's economic sovereignty or economic self-determination with a movement for the New International Economic Order, outlawry of the use of force, common heritage of mankind, new world information and communication order, and human dignity and human rights.

In a world community undergoing fundamental, political, social, economic and technological changes in our times law making indeed involves plurality

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1. Edward McWhinney, *United Nations Law Making—Cultural and Ideological Relativism and International Law Making for an Era of Transition* (1984).

of processes, arenas and actors representing different ethnic-cultural and ideological systems, and congeries of different legal relationships. Without underestimating the conflicting value systems and dimensions in the behaviour of states, the author finds in operation a process of progressive development of contemporary international doctrine and practice to bring them into accord with radically new societal conditions and demands of a vastly expanded world community. The transformation of an "old" classical international law to a "new" one is achieved, according to him, through the dialectical processes and political give-and-take in the UN bodies, conferences, and international actors involved in the law making. Even though he may be accused of presenting broad generalisations, his approach is of a legal pragmatist and eclecticist, and he applies comparative scientific-legal method with a view to establishing the thesis that our era of transition is producing its own "living law" by an increasing transcultural and inter-systemic consensus.

In the meticulously planned and stimulating 11 chapters of the book, the author delves most interestingly into the dialectic process of international law making by a swiftly pulsating interplay of rising and falling norms of international behaviour, and the informed judgment according to decision making elites in different arenas, events in the society and its challenges.

The author questions not only the closed categories and hierarchical ranking of formal sources of international law as enumerated in article 38 of the statute of the ICJ, but also the doctrinnaire and judicial approach and favours the legal realist approach in international law making in order to take cognisance of the creative process, the creative factors, and the end product of those creative factors operating through the creative process. He then proceeds to highlight legal contradictions both between competing legal systems and between different time epochs. Evidently, he de-emphasises juridical formalism and the quest for an *a priori* category of legal sources. This makes him more sympathetic of the view point of the Third World countries which have been pressing for a creative legislative function for ILC and international codifying treaties.

McWhinney has high expectations from ILC as well as from ICJ in respect of reshaping, reformulation and interpretation of international law in order to meet new conditions. He is rightly critical of the politicisation of elections to these bodies and their composition comprising mostly foreign ministry legal advisers rather than politically more independent legal luminaries. He argues well to drive home his point that even when states reach out to universities or to private legal practice for their nominees to ILC and therefrom to ICJ, they tend to choose persons "already enfeoffed to their own national governments by long years on government retainer...."[2] In contrast to the composition of these bodies in the late forties with distinguished legal scholars of superb academic qualifications (for example, J.L. Brierley, J.P.A. Francois, Manley Hudson, V.M. Koretsky and Georges Scelle), the trend set in now is to pack

2. *Id.* at 100.

them with government spokesmen. Hence these institutions have failed to have hold and imaginative initiatives to bring about an authentic juridical order.

The ICJ itself continued to suffer until early 1980s because of its widely held reputation of being a "whiteman's tribunal" after its unfortunate judgment in *South West Africa, Second Phase* in 1966. But the author finds a perceptible transition in this multi-cultural, multi-systematic tribunal from an essentially positivistic to more consciously legislative and policy oriented tribunal. This seems to be borne out by the most recent judgment of the ICJ in *Nicaragua* v. *United States of America* concerning military and para-military activities in and against Nicaragua.[3] During the last two decades the ICJ has indeed succeeded to some extent in correcting its old image of being biased against the developing Third World countries. The author remains consistent in championing the Third World views. He is very critical of the Security Council paralysed by the veto power of five states oligarchy and writes off its role in the law making. He views General Assembly resolutions as parliamentary legislation and justifies the right of nations to turn to alternative law making methods and processes in order to fill up the gap otherwise created by the Charter system. He appreciates the increasing pragmatism of the General Assembly with its new Third World members dominating to assume the peace making role and produce resolutions laying down peremptory norms of a global law.

The book comes at an appropriate time of current disillusionment with international law and organisation when some super powers have been launching a campaign of UN brashing and crippling it financially. The author takes a long view of legal development on the high ground of theory and presents interesting glimpses of encouraging ideas and many dimensions of international law. Its value lies primarily in its concise and balanced analysis, unconventional approach to the law creating process, and objective validation of international law in a diversified process of world order. The book is indeed indispensable for any lawyer or social scientist concerned with the development and future of international law (not just law making).

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3. *ICJ Communique*, No. 8618 (27 June 1986).

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