REVIEWS AND NOTICES

International Governmental Organizations: Constitutional Documents. By AMOS J. PEASLEE. Volume I, African Postal Union to Intergovernmental Maritime Consultative Organization: pp. xxiii, 719. Volume II, International Bank for Reconstruction and Development to World Meteorological Organization: pp. xv, 845. The Hague: Martinus Nijhoff. New York: Justice House. 1956. ($15.00 U.S. a set).

The structure of international relations over the past eighty years has progressively moved to increasingly complex forms of permanent institutions embracing many states and in some cases the world "community". Indeed so extensive and varied are these multilateral arrangements covering political, military, economic, administrative and other phases of international life, that the study of international organizations long has been a distinct field in itself. Modern students of international law have been faced with a growing dilemma arising out of the plethora of materials directly and indirectlty affecing the legal position of states because of membership in these organizations. Today no textbook in the field of international law can avoid incorporating the legal consequences to states of such membership as part of the description of the variety of rights and duties now determining state behaviour.

For a time there was a danger that the traditional textbook approach to international law tended to develop a split in the literature between the classical questions with which writers have been concerned for three hundred years—jurisdiction, recognition, state responsibility, etc.—and the issues and problems presented by membership in the new agencies of international cooperation. At least two significant types of legal problems have emerged, the first dealing with the effects on members states of their membership and conversely the nature of the jurisdiction exercised over them by the organization; the second concerned with the internal constitutional arrangements in these organizations particularly the authority of the various organs that carry on the functions of the institution.

In effect there now has developed a body of international law of very great interest and growing refinement that amounts to a

kind of international constitutional law or the constitutional law of international organizations. While a number of scholars have identified this development over the years, no one has perhaps made so sharp a contribution in defining the process and the issues as Wilfred Jenks whose article on the legal problems of international organizations[1] summarized the nature of the constitutional questions presented in the charters of so many of the new postwar organizations and suggested patterns in their common legal development. Similarly, Jenks in 1954 brought to our attention that the "scope of international law" itself had changed because of these new institutions, and the obligations they created, and thus there was a great need to integrate in modern writings these fresh areas of legal experience with the older classical doctrines.[2]

One of the major difficulties, however, in studying these new legal frames for multi-state behaviour is that the treaties setting up the organizations are not always easily accessible although of course, the United Nations Treaty Series and the publication of treaties by the leading member states are available in many libraries. Nevertheless the magnitude and range of these institutional arrangements often need to be viewed as a whole, and in a comparative way, and it is difficult to do this for purposes of research where there are over five score organizations involved with their constitutions to be found in the various treaty series. It was for these reasons that Mr. Peaslee undertook to bring together in two volumes the main international organizations summarizing their history, functions, membership, financial support, relations with other organizations and setting out in full the treaty or agreement itself. Mr. Peaslee's inspiration for this undertaking came from a conference on international organization in 1946 where he was left with ideas for two projects that he has now happily brought to completion. The first published in 1950, entitled "The Constitutions of Nations", brought together in a single effort the texts of the constitutions of the sovereign nations of the world and has proven to be a very helpful compilation and research tool.

The present volumes deal with 108 international organizations of varying degrees of political and social importance, as well as of legal obligation, for the participating states. From the African Postal Union to the World Meteorological Organization it is striking to reflect, after viewing the list, how extraordinarily varied have become the matters now subject to multilateral interest and how diverse are the legal and administrative techniques to be found in these constitutional documents for executing the international will. Putting aside those organizations that are primarily concerned with studies and reportage the significant feature of this

[1] (1945), 22 Brit. Y. B. Int. L. 1.
[2] The Sco pe of International Law (1954), 31 Brit. Y. B. Int. L. 1.

development has been the extraordinary flowering of state obligations, particularly in political, resources conservation and co-operative administration. For it is not too often remembered that one of the effects of membership in some organizations is to create *by membership alone* the possibility of *involuntary obligations* for member states, that is to say duties which they must perform because a majority of the members of the organization, or that organ having the legal power to demand performance, have so voted to command a new norm of member-state behaviour. For example, article 25 of the United Nations Charter requires member states to carry out the obligations created by a decision of the Security Council. Article 5 of the North Atlantic Treaty Organization provides that an armed attack against one or more of the members "shall be considered an attack against them all" with automatic obligations following—although the members have an "out" because article 5 also provides a measure of individual determination as to the action each member state may take to restore and maintain the security of the North Atlantic area. It is possible, indeed, to consider the range of international organizations and their obligations as a kind of spectrum moving from the loosest and least burdensome legally—such as the Arab League in political organizations, or the International Exhibitions Bureau for administrative and economic matters—to the U.N. Charter and N.A.T.O. at the other end of the spectrum. Equally rigorous obligations are found in the technical requirements imposed upon members by the decisions of the organization in the case of I.C.A.O. and W.H.O. whose regulations can affect the operation of aircraft or of port health authorities whether a particular member state has agreed to these regulations or not.

Of course, there are wide gaps between the written constitutional obligation and its practical and legal effect in the work-a-day political world. For example, article 25 of the U.N. Charter is rendered relatively meaningless because of the way in which the veto has evolved to block decisions of the Security Council. Similarly, it is said that the regulations of the International Monetary Fund have been by-passed by many states that are technically violators of their obligations under that constitution.

Nevertheless, so striking is the advance in international co-operation and co-ordination that the failures of some of these new instrumentalities to work as well as their designers had hoped for is far less significant than the emergence of new constitutional patterns for the permanent regulation of inter-state behaviour. The student of international law and relations now finds himself deeply concerned with the constitutional problems of these organizations and indeed there is the danger that this new field will lead to an excessive specialization of interest to the detriment of de-

velopment in the older and still significant doctrinal problems of classical international law. One has only to mention, for example, the fascinating issue of "domestic jurisdiction" under article 2(7) of the U.N. Charter as it has evolved, say, in the South African Apartheid case, the allegations of slave labour in the Soviet Union, the Algerian and Hungarian problems, to see how deep are the ramifications of membership in the United Nations for older notions of state sovereignty.

The pattern of the future leads to more international machinery rather than less. This is true whether the Soviet Union and its allies and satellites choose to participate or to remain outside as they have done with respect to many of these institutions. Mr. Peaslee has performed a professionally valuable service in assembling for scholar, practitioner and foreign office all of these "constitutional" documents in a single accessible two-volume edition where the eye can catch at a glance the legal patterns that are now enmeshing the globe.

MAXWELL COHEN*

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The Sale of Flats. By E. F. GEORGE. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Ltd. 1957. Pp. xvi, 197. ($4.75)

It is now possible to *purchase* individual apartments or flats in co-operative apartment buildings in many Canadian cities. Since the war, this practice of selling apartments has grown in Europe, South Africa, the United States and indeed throughout the world. The lack of domestic help, the high cost of building and the trend towards more compact town development have caused many people to give up their houses and move into apartments. However, the desire of people not to lose their status of property owners and to acquire some security against high rents has helped to create the demand to *purchase* apartments. In England this has been accepted as a permanent feature of the way of life and it would appear that this form of property ownership is also in Canada to stay. As there is almost no writing on this subject except for a few recent articles in legal periodicals, lawyers interested in the technique of the sale of apartments will welcome this book.

Mr. George is a joint editor of The Conveyancer and Property Lawyer and those who are acquainted with the high quality of that journal will quite rightly expect to find in this book a careful, lucid, easy to read and practical approach to the subject with an

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abundance of helpful precedents. In this, they will not be disappointed. The book is small. It contains some seventy pages of text with over one hundred pages of precedents. Much of the text has particular reference to English conditions and statutes as the book is written for English lawyers. However, Canadian lawyers interested in this new form of conveyancing will find it also to be both instructive and helpful.

The two principal methods of buying flats or apartments and variations on these methods are discussed. These methods are firstly, a conveyance of the freehold of the apartment, or as one writer described it as a conveyance of land without earth[1] and secondly, a sale of a share or shares of a company which owns an apartment building which entitles the purchaser to a long term renewable lease of one of the apartments at a rent equivalent to the carrying charges. In this method the purchaser is, of course, merely a lessee. For obvious reasons the conveyance of a freehold apartment is much less complicated if it is self-contained and possesses its own separate entrance from the street and its own heating system. Where any part of the stairs or passageways are used in common with other persons or if there is a central heating plant or other services necessary, then from a drafting aspect, it is desirable that the grant of the flat should be by way of a lease. In discussing this, the author draws attention to the fact that the supply of services such as central heating and hot water is different in kind from the rights, such as to repair and maintain common parts of the building. The right to services is a personal right and not of the class of liberties, privileges, easements, rights and advantages capable of being accessory or appurtenant to land. Therefore, where there is a lease with the supply of services, there must be some form of management to be responsible for and to supervise these services. This usually takes the form of a management company, the members of which are the lessees or apartment owners. The author also points out the importance in conveyances or long term leases of easements, positive covenants, such as covenants to support, insure and repair and their enforcement and the rule against perpetuities as it relates to positive covenants and the right of entry and re-entry. No attempt is made to discuss exhaustively any relevant principles of law. Such a discussion may be found in any good text on real property. The book, apart from the precedents, is essentially in the nature of a check list or remembrancer. The precedents, however, cover in detail and often in the alternative every aspect of the subject. After the author has drawn attention to all matters which should be considered in this type of conveyancing, it comes as a pleasant sur-

[1] Tolson, "Land Without Earth"—Freehold Flats in English Law (1950), 14 Conveyancer 350.

prise that the precedents for the actual conveyancing and necessary agreements are not unduly complicated or lengthy. The book is invaluable and Mr. George is to be commended for such a clear and practical explanation of this new conveyancing technique.

JOHN D. HONSBERGER*

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Chapters in the History of French Law. By WALTER S. JOHNSON, Q.C., LL.D. Montreal: Law Faculty, McGill University. 1957. Pp. 278 (mimeographed). ($5.00)

Dr. Johnson is well known to readers of this Review and of other legal periodicals as a scholar who has focussed an exploratory and discerning eye down many a lane of legal thinking. He has consistently displayed a quick interest in the history of the sources of Quebec legal institutions and is eminently qualified to write a book on the history of French law.[1]

In the book under review, the author paints in broad brush strokes the story of French law: from the druid-legislators of ancient Gaul to the absolute king-legislator in the high noon of the French monarchy. A more than nodding acquaintance with this period is invaluable to the Quebec lawyer and student, for it is French law, such as it had developed to 1760, which is the common law of the Province of Quebec today, the Civil Code of 1866 having enacted it substantially as it then was.

To anyone familiar with the field, no new ground will be found to be covered. Dr. Johnson will be the first to admit, however, that his intention was in no way to plough new ground, but, rather, to summarize the findings, to evaluate them, and to present them to an English-speaking audience.

The author is at particular pains to point out the evolutionary processes at work in the development of law. He sees this development in terms of an "upward march of humanity" and in his Foreword expressly states that such is the theme of his work. It would also seem from this Foreword that the author wishes as large a common-law audience as possible; his motive, no doubt, being that from understanding will come appreciation.

Much of the opportuneness of the book rests in its having been written in English, nothing comparable being available in this field to those reading only that language. The presentation of his material in a chronological manner, dwelling on the *plateaux* into which historians traditionally divide the subject, is that best suited to

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[1] Many will remember an earlier work, *Early French Justice* (1934).

the temper of the reader wishing to cross the threshhold of an unknown field. An index is provided.

This book is no mere manual. Those acquainted with Dr. Johnson's writings in other fields will intuitively reject that suggestion. It is, by and large, narration on the grand scale, at times diffuse, but withal well organized. Copious footnotes will delight those few, among whom the reviewer must confess himself, who enjoy footnotes in the Gibbon tradition.

As the author has not intended his work to be a definitive one in the field, it would be mere carping to note the omissions of certain aspects of his subject. As its title suggests, we are here being given chapters, and chapters only, of French legal history. As a result, the book thus has a certain lack of balance, for example, only fifty of the two-hundred and seventy-eight pages are specifically devoted to the period 1500 to 1789.

Inescapable from the role of the conscientious historian is the moral assessment of the facts of history. The value judgments interspersed throughout the work are coloured by its theme, that is, that the evolution of law has been, in the main, progressive and is to be equated with the growth of civilization.

This book should commend itself to the Canadian lawyer trained in the common law as it will broaden his understanding of the legal heritage which his Quebec *confrères* enjoy; he will no doubt be delighted to find that there is much in common in the origins of both the civil and the common law.

This work should also be of some use to the student of comparative law who wishes a first reader in the story of French law.

Professor Baudouin, in the Preface, notes that Dr. Johnson has performed a *tour de force*, in that though an English-speaking person writing in English on French juridical concepts and institutions, he has dealt with them in such a way that they retain the French flavour and spirit. Such a work, he believes, will serve to broaden the juridical culture of this country.

That, I agree, is the chief merit of Dr. Johnson's work.

CHARLES E. BISSONNETTE*

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Derecho Internacional Privado. Par JULIAN G. VERPLAETSE, S.J.D., docteur en droit. Madrid: Estades, Artes Graficas. 1954. Pp. ix, 743. (Prix non mentionné).

L'excellent ouvrage de M. Verplaetse montre, dans le domaine des conflits de lois et de juridictions, l'utilité de la méthode com-

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parée. On utilise, certes, cette méthode depuis déjà longtemps; mais, dans le passé, les auteurs en limitaient trop souvent l'application à certaines matières déterminées et à certains systèmes juridiques "voisins". Les auteurs français citaient volontiers les solutions du droit belge ou du droit allemand. Les auteurs anglais commentaient abondamment la doctrine et la jurisprudence des autres pays de *common law*. Rarement des contacts s'établissaient entre les deux grandes familles juridiques occidentales: le droit civil et le *common law*.

Il est encourageant de constater, depuis quelques années, des tentatives sérieuses de rapprochement—au moins sur le plan doctrinal—entre ces deux systèmes de droit. Le Traité de M. Henri Batiffol,[1] la création, à Paris, d'un cours, au niveau du doctorat, de droit international privé comparé, le nombre croissant des thèses de droit comparé[2] sont des indices significatifs d'un nouvel esprit dont la science juridique canadienne ne peut que profiter. C'est dans cette ligne de pensée que s'inscrit l'ouvrage de M. Verplaetse. Sa formation juridique le préparait d'ailleurs admirablement à cette tâche. Docteur en *common law* et docteur en droit civil, familier des deux courants de pensée, des deux techniques juridiques, l'auteur pouvait, en toute aisance, aborder sous cet aspect les problèmes du droit international privé.[3]

L'auteur est trop modeste lorsque, dans l'introduction,[4] il écrit: "Se presenta el estudio como una clasificaciôn de matérial, queriendo ser tan sôlo instrumento de trabajo, reseña del Derecho actual y contribuciôn para su futura adaptaciôn técnica." Son ouvrage est beaucoup plus qu'un instrument de travail, une revue du droit actuel. Il s'agit véritablement d'un traité de droit international privé comparé.

Dans une première partie, intitulée: *Fundamentación*, l'auteur analyse, à la lumière du droit comparé, les multiples définitions, le contenu et les sources, nationales ou internationales, du droit international privé. Puis, dans une étude historique de la matière, il signale la contribution originale de chacune des grandes écoles qui ont marqué l'évolution du droit international privé.

La seconde partie offre au lecteur une théorie générale du droit international privé. L'auteur présente une étude comparée des divers éléments de rattachement et des questions fondamentales, tels les qualifications, le renvoi, l'ordre public et la fraude à la loi. Enfin, dans une dernière partie, consacrée à la pratique du droit

[1] Traité élémentaire de Droit international privé (2e éd., 1955).

[2] Voir, entre autres, P. Benjamin, Le Divorce et la Séparation de corps et leurs effets en droit international privé français et anglais (1955). C. Choquette, Le droit international privé anglais et canadien du divorce et des nullités de mariage (1954). Thése dactylographiée.

[3] Voir, du même auteur, une autre étude comparée, intitulée: La Fraude à la loi en droit international privé (1938).

[4] A la page VII.

international privé, l'auteur examine les questions de compétence législative et juridictionnelle dans les relations privées touchant notamment le droit civil, le droit commercial, le droit maritime et aérien. Chaque problème, replacé d'abord dans son contexte historique, est ensuite repris à la lumière des diverses qualifications opérées par les systèmes juridiques considérés.

Cette oeuvre de synthèse où se rencontrent le *common law* et le droit civil européen et latino-américain, est de nature à intéresser les juristes canadiens. Et nous ne pouvons que formuler le voeu que cet ouvrage soit traduit, soit en langue française, soit en langue anglaise afin de le rendre davantage accessible dans les milieux juridiques français, anglo-américains et canadiens.

PAUL-A. CRÉPEAU*

Books Received

The mention of a book in the following list does not preclude a detailed review in a later issue.

Academy Lectures on Lie Detection. Compiled and edited by V. A. LEONARD, Professor of Police Science and Administration, The State College of Washington, Pullman, Washington. Springfield, Illinois: Charles C. Thomas. Toronto: The Ryerson Press. 1957. Pp. ix, 99. (No price given)

Digest of Canadian Patent Law. By HAROLD G. FOX, M.A., Ph.D., Litt. D. Toronto: The Carswell Company Limited. 1957. Pp. xix, 265. ($10.00)

The International Protection of Trade Union Freedom. By C. WILFRED JENKS, LL.D., Cantab. Published under the auspices of The London Institute of World Affairs. New York: Frederick A. Praeger Inc. Pp. xl, 592. ($15.00)

Modern Equity: The Principles of Equity. By HAROLD GREVILLE HANBURY, D.C.L. Seventh Edition. London: Stevens & Sons Limited. Toronto: The Carswell Company Limited. 1957. Pp. xlii, 683. ($13.50)

Municipal Law. By CHARLES S. RHYNE. Washington: National Institute of Municipal Law Officers. 1957. Pp. xxi, 1125. (No price given)

Police Writing. By E. CAROLINE GABARD and JOHN P. KENNEDY. Springfield, Illinois: Charles C. Thomas. Toronto: The Ryerson Press. 1957. Pp. xii, 93. (No price given)

Principles of the Law of Contract. By J. F. WILSON, M.A. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Limited. 1957. Pp. xxxvi, 530. ($6.75)

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Salmond on the Law of Torts. Twelfth edition by R. F. V. HEUSTON, M.A. London: Sweet & Maxwell Limited. Toronto: The Carswell Company Limited. 1957. Pp. lix, 795. ($10.00)

Some Comparative Aspects of Irish Law. By ALFRED GASTON DONALDSON. Duke University Commonwealth-Studies Center. Durham, N.C.: Duke University Press. London: Cambridge University Press. 1957. Pp. xii, 293. ($6.00 U.S.)

Without My Wig. By G. D. ROBERTS, Q.C. With a foreword by A. P. HERBERT. London: Macmillan & Co. Ltd. Toronto: The Macmillan Company of Canada Limited. 1957. Pp xi, 286. ($5.00)

Annual Meeting of The Canadian Bar Association

The Report of the Annual Meeting of The Canadian Bar Association held at Banff, Alberta, in September 1957, has been received and will be published in the first issue of The Canadian Bar Journal.