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Book Review

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International Law Chiefly as Interpreted and Applied in Canada (4th ed.). Hugh M. Kindred, Jean-Gabriel Castel, Donald J. Fleming, William C. Graham, Armand L.C. deMestral, Ivan A. Vlastic, and Sharon A. Williams. Toronto: Emond Montgomery Publications, Ltd., 1987. 958 pages.

*Reviewed by Sidney Picker, Jr. **

As its title indicates, this is a comprehensive examination of international law as seen both by Canada (as a subject of, and therefore one of the players in, the international legal arena) and by Canadian scholars. Its seven authors are justifiably well-known and well-respected members of Canadian law faculties. This is the fourth edition of the book, and the first to be co-authored. The three previous editions, the most recent of which was published in 1976,¹ were written by Professor Castel alone.²

According to its authors this casebook is designed principally for the use of Canadian law students.³ However, as a U.S. professor of international law at a U.S. university, this reviewer has considered the book from the perspective and for an audience south of that cliché-riddled "world's longest undefended border." From that perspective, the book is also of remarkable value to U.S. students of international law and to U.S. international legal scholars who too often are conditioned to think of international law within the context of the U.S. legal system. Indeed, U.S. law students are trained to recognize the role of international law within the U.S. legal system and to appreciate the interplay of international law and U.S. Constitutional Law. Very little in U.S. international legal education asks students to consider similar issues within the context of another country's domestic legal system.

While U.S. international law students and scholars are exposed to

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¹ J. CASTEL, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* (3d ed. 1976).

² Two of the current edition's co-authors, Professors Williams and deMestral, had earlier written a textbook on the same subject. S. WILLIAMS & A. DEMESTRAL, *AN INTRODUCTION TO INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* (1979). As noted by reviewers, the book was intended as a textual companion to Castel's 3rd edition casebook. Fleming, *Book Review*, 30 *U.N.B. L.J./REVUE DE DROIT U.N.B.* 299 (1980); Legault & Mathys, *Book Review*, LVIII *THE CANADIAN BAR REVIEW/LA REVUE DU BARREAU CANADIEN* 706 (1980); Weiss, *Book Review*, 43 *MOD. L. REV.* 605 (1980).

³ H. KINDRED, J. CASTEL, D. FLEMING, W. GRAHAM, A. DEMESTRAL, I. VLASIC & S. WILLIAMS, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED IN CANADA* iii (4th ed. 1987) [hereinafter *INTERNATIONAL LAW*].

foreign legal perceptions of international law as seen from the Soviet Union, socialist states, Third World countries or civil law systems,⁴ "foreign" rarely includes Canada unless those perceptions directly and materially affect U.S. interests. For example, in the case of Canada's Arctic Waters Pollution Prevention Act,⁵ or selected international trade issues.⁶

The foregoing is all the more surprising given Canada's geographic location as well as its paramount economic relationship to the United States. No country is of greater strategic, political, socio-economic or financial importance to the United States than Canada.⁷ It is therefore appropriate and necessary, for U.S. international law students and scholars to understand Canadian perspectives of international law and to familiarize themselves with what Americans might call "Canadian Foreign Relations Law."

Furthermore, even if Canada were not so geopolitically significant to the United States, this book would be significant to U.S. international law students for *comparative* law purposes. The principal value of comparative law in any country is the insight it provides into one's own legal system by dispassionately examining foreign alternatives. However, if the foreign legal system, and the culture to which it is applied, is so alien to the student that he or she cannot relate to it, the value of the comparison may be lost. In this respect, Canada's legal system is pedagogically ideal to use as a basis of comparison for U.S. law students. Sharing the same mother country, Canada and the United States necessarily share substantially the same legal heritage, the common law system of England. Therefore, U.S. international law students will have a better grasp of Canadian perspectives than they will of most other countries. Furthermore, unlike England or even the present day United Kingdom and many of her other international offspring, Canada's is a *federal* system (provinces in lieu of states), and therefore the U.S. student, accustomed to the application of international law within the U.S. federal system, can come to understand it better by examining the similar but nevertheless distinctly different Canadian alternative. In addition, for the U.S. student there is no substantial language, cultural or historic barrier to understanding Canadian perspectives. Hence, while sufficiently *foreign* to offer a basis for comparison, Canada's is not so *alien* a society that Americans cannot relate to or understand it. Thus, for the U.S. international

⁴ See, for example, TRANSNATIONAL LEGAL PROBLEMS MATERIALS AND TEXT 376-401 (3d ed. 1986).

⁵ 1 R.S.C. ch. A-12 (1985). Arctic Shipping Pollution Prevention Regulations, CAN. CONS. REGS., chs. 353-56 (1978).

⁶ For example, Agreement Concerning Automotive Products, Jan. 16, 1965, United States-Canada, 17 U.S.T. 1372, T.I.A.S. No. 6093 [hereinafter Auto Pact]. See J. JACKSON & W. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 467-75 (2d ed. 1986) for discussion of the Auto Pact.

⁷ For example, each country is the principal international trade (both in terms of imports and exports) as well as investment partner of the other.

or foreign relations law student or scholar, an examination of the Canadian legal system offers a near-ideal basis for comparative studies.

The casebook is well organized. While for the most part the book follows a relatively conventional format for the presentation of international law materials, it begins with an examination of the *subjects* of international law (states, international organizations, and the like)⁸ rather than the more traditional *sources* of international law⁹ on the ground that the student of international law must first understand who the players are in the international arena who, under this legal regime, have rights and obligations before determining how those rights and obligations are established.¹⁰

More interesting than the overall organization of the casebook is the organization within each chapter. Whenever relevant or appropriate, the authors successfully integrate international legal principles with Canadian practice or Canadian implementation. Thus, the student is simultaneously exposed both to international law principles and to distinctly Canadian approaches. For example, in Chapter 3, which includes the sources of international law, the section on "Treaties" begins each subsection with materials from traditional public international sources such as treaties or international court opinions, followed immediately by Canadian practice. Hence, an international discussion of treaty-making begins with the relevant sections of the Vienna Convention on the Law of Treaties¹¹ followed immediately thereafter by "Treaty-Making Powers in Canada."¹² The latter in turn considers Canadian constitutional authority as well as federal and provincial powers (e.g., whether and to what extent the power to conclude international agreements rests with the federal rather than provincial governments,¹³ and treaty implementation within the federal/provincial context¹⁴). The material on treaty interpretation similarly begins with international materials (the relevant provisions of the Vienna Convention on the Law of Treaties as well as an international arbitration decision)¹⁵ followed immediately by text and case material relating to treaty interpretation in Canadian courts.¹⁶ Because, unlike the United States, there is no such concept as a "self-exe-

⁸ INTERNATIONAL LAW, *supra* note 3, at 10-108.

⁹ Sources of international law (including creation and ascertainment) are found in Chapter 3, immediately following the discussion of subjects. *Id.* at 109-203.

¹⁰ See *id.* at 10-11; see also Quigley, Book Review, 36 AM. J. COMP. L. 804 (1988).

¹¹ INTERNATIONAL LAW, *supra* note 3, at 120-22.

¹² *Id.* at 122-29. Quoting from a Canadian Department of External Affairs paper, the opening discussion progresses logically by steps from treaty-making principles in international law, to treaty-making principles relating to foreign federated states (referring to Switzerland, the United States, West Germany and the Soviet Union), and to Canada.

¹³ *Id.* at 125-26.

¹⁴ *Id.* at 130.

¹⁵ *Id.* at 154-58. The Convention provisions set forth are articles 31 and 32, while the decision is *The David J. Adams*.

¹⁶ INTERNATIONAL LAW, *supra* note 3, at 158-161.

cuting treaty" in Canada, all Canadian treaties require implementing legislation to give them domestic legal effect.¹⁷ Treaty interpretation therefore always raises questions regarding the appropriate rules for statutory interpretation, which, in further contrast with the United States, poses an interesting dilemma for Canada, which excludes any examination of legislative history when interpreting statutes.¹⁸

The chapter on "Application of International Law"¹⁹ is organized in reverse order from that found in many international law books, beginning with extensive materials on *national* application within Canada followed thereafter by materials relating to *international* application, from adjudication ("World Court"²⁰ documents and discussion) to negotiation.²¹ By reversing the order, students are more immediately aware of the practical and immediate application of international law in fora with which they are already familiar. Too often, when initial emphasis is placed on the World Court or other international dispute resolution bodies, students thereafter dismiss *all* dispute resolution processes involving international law as irrelevant to all in the legal profession, save foreign office legal advisors.

Aside from the subtle emphasis shift achieved by order reversal, the materials on Canadian application provide the U.S. international law student and scholar with an opportunity to consider how their sibling state treats customary international as well as treaty law and the relationship of such law to legislative acts in contravention of either. In Canada, without the U.S. concept of self-executing treaties or a supremacy clause in its constitution, provincial as well as federal statutory law may prevail over any contrary international law, whether treaty, customary or general principles.²²

Understandably, the book emphasizes subjects of particular interest to Canada. Thus, one-fourth of the space allocated to "State Jurisdiction over Territory"²³ is devoted to polar materials.²⁴ Similarly, "Extraterritorial Jurisdiction" not only includes materials relating to the United States' aggressive assertions affecting Canada, as well as Canadian and

¹⁷ Furthermore, under the Canadian Constitution, there is no equivalent to the American Constitution's article VI, the "Supremacy Clause." Therefore, implementation of a treaty dealing with a subject which Constitutionally falls within the jurisdiction of provincial legislation, requires separate provincial, not federal parliamentary, legislation. *Id.* at 130.

¹⁸ *Id.* at 158.

¹⁹ *Id.* at 204-70.

²⁰ The authors use the phrase "World Court" carefully rather than colloquially to encompass not only the current International Court of Justice but also its predecessor, the Permanent Court of International Justice. *Id.* at 241-42.

²¹ *Id.* at 241-70.

²² In particular, for an interesting discussion of whether Canadian legislative authorities have the power to enact legislation in contravention of either customary or conventional international law see *id.* at 216-20.

²³ *Id.* at 358-418.

²⁴ *Id.* at 378-94.

EC reactions,²⁵ but also a recognition of special Canadian assertions, principally the Canadian Arctic Waters Pollution Prevention Act.²⁶ Furthermore, comparatively extensive coverage is offered to human rights, in part because Canada, unlike the United States, is a signatory to the principal multilateral human rights treaties.²⁷ Included are excerpts or summaries of four cases against Canada under the Optional Protocol to the International Covenant on Civil and Political Rights, to which Canada, but not the United States, is a party.²⁸

Though basically satisfactory, the research scholar should be cautioned that the index to the book includes occasional lapses. For example, because the Canadian Arctic Waters Pollution Prevention Act is not referred to by name in the section on customary international law,²⁹ one would not find a reference to it in the index.³⁰ While the book also lacks a separate documentary supplement, primary documents normally found in the supplements to U.S. casebooks are included in relevant chapters within the body of the book. The mechanical necessity of working simultaneously with two separate books is thus avoided.

Perhaps the principal omission a U.S. international lawyer might note is the need for more materials relating to the Canada-U.S. economic relationship. In particular, a subsequent edition of the book could include materials relating to the recently executed and implemented Canada-U.S. Free Trade Agreement,³¹ particularly its principal dispute settlement provisions.³² (The current edition was published before the Free Trade Agreement was signed.)

The book is a valuable addition to the collection of pedagogical and research materials available to Canadian international law students and scholars, but more important, it should become an increasingly used resource for their U.S. counterparts. In particular, U.S. international law professors may find it profitable to place the book on their law school libraries' *Reserve* desks and assign selected portions for their courses on international law.

²⁵ *Id.* at 508-39. Included are materials relating to U.S. export controls, EC political and judicial responses to U.S. export controls, U.S., EC and Canadian case decisions relating to extraterritorial application of U.S. legislation, Canadian legislative responses to U.S. assertions, and Canada-U.S. agreements relating to jurisdiction.

²⁶ The Act is referred to in the following contexts: The assertion of jurisdiction as in accord with customary international law. *INTERNATIONAL LAW*, *supra* note 3, at 176; Canadian withdrawal of I.C.J. jurisdiction to decide cases relating to the Act; *Id.* at 254-55; Legal status of Arctic regions. *Id.* at 385; Extraterritorial prescriptive jurisdiction. *Id.* at 509; see excerpts from the Arctic Waters Pollution Prevention Act. *Id.* at 807.

²⁷ See *id.* at 635-701.

²⁸ See *id.* at 665-78 for excerpts of A.D. Case, Lovelace Case, Pinkney Case and MacIsaac Case.

²⁹ *Id.* at 176.

³⁰ *Id.* at 946 col. 1.

³¹ Free Trade Agreement, Jan. 2, 1988, United States-Canada, 27 I.L.M. 293 (1988).

³² *Id.*, chs. 18 and 19.

