the chapter on "Tax Considerations" and Harry S. Bray, Q.C., Director, Ontario Securities Commission, who is the author of the chapter dealing with recent developments in Ontario securities legislation.

Each chapter is to a certain extent an essay on its own, and, perhaps inevitably in a work having so many contributors, there is a certain amount of repetition especially in the initial chapters where basic corporate concepts are introduced. Occasionally authors dealing with the concepts in later chapters refer to these in terms which would seem to indicate that they were unaware that the subject had been dealt with previously in the book.

The chapter on constitutional aspects of Canadian companies by Professor Ziegel is well written and the treatment of the subject matter perhaps is more advanced than most of the other chapters in that the author assumes a basic knowledge of constitutional law as well as company law. Because of this it will also be of interest and helpful to those primarily interested in constitutional law.

It is interesting to note the emphasis of the book in devoting separate chapters to recent Ontario Securities legislation, to mutual funds, and to access to corporate information. Although these matters have been the subject of discussion for many years in the United States, it is only now that we in Canada are catching up to our Southern neighbors in these areas. It is from these chapters as well as the ones dealing with corporate acquisitions that the practising lawyer will perhaps derive the greatest benefit from the book.

One feature that will immediately strike the reader is that three of the chapters are written in French: Chapter 4 deals with the interaction between the Civil Law and Common Law in Quebec; Chapter 7 deals with the objects and powers of companies in that province; and chapter 13 deals with the comparative aspects of management control by the shareholders.

On the whole the book will prove to be of great assistance to both students and lawyers alike and one can only hope that with its publication will commence a new era in the development in Canadian company law.

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MODERN TRENDS IN TREATY LAW. By Kaye Holloway. Dobbs Ferry, N.Y.: Oceana Publications, 1967. Pp. xx and 732.

Discussion on the Law of Treaties is almost at a point of culmination. On October 26, 1967, the Sixth (Legal) Committee of the United Nations General Assembly approved a draft resolution for adoption by the General Assembly which recommended acceptance of Austria's invitation to hold the international conference of plenipotentiaries on the Law of Treaties in Vienna, the first session to be held in March, 1968.[1] *Modern Trends in Treaty Law* is the newest, freshest bit of work on the problem

1 *United Nations Monthly Chronicle*, November, 1967, 56.

outside of the efforts of the International Law Commission.[2] The very timeliness of the book adds immeasurably to its value whether or not the conference as proposed does materialize at such an early date. The conference will discuss the final text of 75 draft articles on the Law of Treaties prepared by the Commission and completed on July 18, 1966.[3]

Kaye Holloway's study is divided into three books. Book One examines recent developments in treaty-making practice. Have recent developments changed the legal significance of the old formal steps in the process—signature, ratification, accession and acceptance? Basically, her conclusion is:

> An essential feature of developments in the technique of treaty-making is the simplification and relaxation of the traditional procedures through the adoption of more flexible and less formal methods of assuming treaty obligations and the use of a loose terminology.[4]

In Book Two, the author examines in depth the basic problem of whether or not municipal law constitutional provisions of a state have any real bearing on the validity of a treaty obligation entered into by an agent of the state. In other words, can the state withdraw from its international obligation by arguing that its agent did not have the authority to enter into the treaty? Her conclusion is that international law determines the validity of treaty obligations and municipal constitutional provisions are largely irrelevant in this determination. The evidence marshalled is truly impressive. She presents an analysis of about 40 national constitutions, a survey of doctrine and national case law, a study of state practice and so on.

In Book Three the problem of reservations is examined. In the broad context of the Law of Treaties as a whole, how does the existence of reservations affect the taking on of international legal obligations? What is the precise effect of excluding acceptance of offending clauses while generally adhering to the treaty?

Three general comments may be made of the book: firstly, its substance is often *lex ferenda* (the law which it is desired to establish) whereas the tone is deceptively that of *lex lata* (the law that is in force); secondly, the method of footnoting and general source reference leaves much to be desired and in some cases provides no clue for the later researcher; thirdly, it is sometimes difficult to understand what the author is trying to say and even more difficult to understand what relevance a particular part has to the main theme of the book. To each of these general comments in turn.

Lex ferenda and lex lata confused

Time and again international tribunals and municipal courts have pointed out the necessity of separating out the *lex lata* from the *lex ferenda* in writings of a publicist on international law. In determining present relevant rules of international law, only the *lex lata* is important. It is best to observe this caution when reading *Modern Trends in Treaty Law*. Examples of confusion of *lex lata* with *lex ferenda* abound.

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2 A valuable resumé of the work of the Commission on the Law of Treaties can be found in Sir Humphry Waldock's article (he was Special Rapporteur on the Law of Treaties for the International Law Commission from 1961-1966), *The International Law Commission and the Law of Treaties*. U.N. Monthly Chronicle, May, 1967, 69-76.

3 U.N. Doc., A/6309/Rev. 1 (General Assembly Official Records: 21st Session, Supplement No. 9), 7-100.

4 At 86.

In Book One, while discussing recent developments in treaty-making, the author mentions the practice of adoption of a treaty text by General Assembly resolution. While not committing herself, she suggests that:

> the fact that States having participated in its framing attach great importance to its adoption unanimously or at least by a large majority would seem to suggest that this mode of authentication implies something more than the mere establishment of the text *ne varietur*.[5]

If the "something more" she is hinting at is legal importance, then it is submitted that, as international law stands to date, she is wrong. No legal obligation arises in such a case from the adoption of the text by the General Assembly.[6]

The failure to distinguish between *lex lata* and *lex ferenda* is again apparent in the discussion of the legal and moral consequences of signature. Holloway accepts the rule set out by the authors of the Harvard Research project[7] which attaches some legal consequences to signature,[8] and then goes on to give three examples of refusal to ratify which illustrate the consequences and implications of ignoring the importance of signature. The first example is the United States Senate's refusal to ratify the Covenant of the League of Nations after President Wilson, as President and as an individual, had provided the leadership and inspiration for the drawing up of the Covenant. The author concludes her discussion of this example with a most confusing paragraph:

> Within the context of the concept of discretionary ratification, entailing no moral or legal obligations, the refusal of the United States to ratify the Covenant could, admittedly, be pleaded on legal grounds. But against the background of the consequences of this defection with regard to the effectiveness of the Covenant, and thereby to the action of the League of Nations in safeguarding the respect of international law and more specifically the maintenance of peace, and the terrible price all humanity had to pay, *the necessity of recognizing the principle of a moral and legal obligation to ratify a regularly signed treaty acquires compelling force*.[9]

Does she mean that the United States breached a rule of international law by not ratifying? Or does she mean there should be a rule of in-

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5 At 35.

6 In support of this criticism, see G. Schwarzenberger, *Manual of International Law* 279-80 (4th Ed. 1960); D. H. N. Johnson, *The Effect of Resolutions of the General Assembly of the United Nations* (1955-6), 32 B.Y.B.I.L. 97, who discusses the moral political and legal aspect of General Assembly resolutions.

Repeated resolutions to the same effect on the same topic may lead to a legal norm but this is because the repeated resolutions provide evidence of the growth of a new customary rule of international law. The resolution *qua resolution* has no legal effect. This situation is met in the areas of human rights and self-determination. See, for instance, J. A. Yturriaga, *Non-Self-Governing Territories: The Law and Practice of the United Nations* (1964), 18 Yearbook of World Affairs 178.

Holloway, in footnote support (n. 26, at 35) for her statement quoted in the text of this review, quotes *inter alia* a footnote in 1 Oppenheim, *International Law* 139 (1948 ed.), n. 1. There, speaking of League of Nations Assembly resolutions, the author had said:

> Probably there is no good reason for denying generally that a State may undertake a binding obligation by consenting to a resolution of the Assembly. Ratification of a signed treaty is not the only way of assuming binding obligations in international law.

The same footnote appears in the latest edition of Oppenheim (1955 edition) n. 2 at 144. This footnote appears beneath text dealing with the obligation of non-recognition of states in certain circumstances. In his discussion of the United Nations General Assembly, Oppenheim expresses the opposite view!

> Unlike the Security Council, the General Assembly is not endowed with effective powers of decision in the fulfilment of the general functions entrusted to it by the Charter.

(1 Oppenheim, *International Law* 426 [1955].) All of which makes this part of Holloway's footnote support illusory. In fact, Holloway herself seems to disregard her earlier statements in a later discussion on General Assembly resolutions (599-603).

7 Harvard Law School Research in International Law, *Draft Convention on the Law of Treaties* (1935), 29 A.J.I.L. Supp. 653.

8 At 48. The quotation which Holloway offers as the Harvard rule is a passage from the comment on Article 9 of the Harvard Draft Treaty which appears at (1935), 29 A.J.I.L. Supp. 780.

9 At 51 (italics added).

ternational law to prevent such a thing happening? Surely this example of refusal to ratify supports the proposition that, whatever political and moral consequences hinge on signature, there are no truly binding legal consequences arising from signature of a treaty. Rules of international law are established, in part, by state practice. The practice of the United States does not support Holloway's rule. This was shown in the League Covenant situation and in the Genocide Convention case, where again the United States signed but did not ratify the treaty (Holloway's third example).[10] It is one thing to say that the trend of the law points to the establishment of a new rule in the future, and another to say that the trend has already resulted in the establishment of a new rule. Holloway does not make clear to which position she is referring. Perhaps she has left the confusion deliberately in the hope that readers will accept the argument as *lex lata* and thereby follow the rule.

The confusion is even more marked in the preliminary part of Book Two where Holloway discusses the two opposing schools of thought on the relevance of municipal constitutional provisions to the validity of international obligations. Theorists who support the *constitutional requirements theory* hold that a treaty concluded by the agent of a state in violation of constitutional limitations is, insofar as that state is concerned, null and void—no international obligations flow from such an agreement. On the other hand, writers who support the *head of state theory* hold that a treaty is valid if the state organ competent under international law formally declares that the state is bound, whether or not that state organ was competent under the municipal constitution. After presenting both theories, Holloway concludes:

> It is submitted that in spite of apparent divergence and some confusion there seems to be a fairly wide concensus that constitutional provisions are neither a decisive factor nor even relevant. (!)[11]

There is *obviously* no such consensus. Whether or not one side is wrong and the other right is another matter. Perhaps Holloway is right—the *head of state theory,* if accepted, would strengthen international law—perhaps she is even right when she argues, with impressive supporting evidence, that the law has adopted this theory; however, she is not right in saying that the *constitutional requirements theory* does not really hold that constitutional requirements are relevant. This is precisely what that theory does.

Footnotes and general source references imprecise

It is somewhat regrettable that, in a work of this magnitude, the footnotes and source references leave much to be desired. The author has done an amazing amount of research but has made it difficult for later students to follow up some of her leads. Basically, her sources are listed in an extensive bibliography at the end of the book. Footnotes refer only to the author's name and it is up to Holloway's reader to look up the work of the author referred to in the bibliography. There are cases, however, where the author's works have been left out of the

10 At 52-3.
11 At 149-150.

bibliography in error and Holloway's reader is left with no clue as to what book is being referred to.[12]

It is also regrettable that the index is completely inadequate for such a wealth of information.

Parts of the work irrelevant

It is often inevitable in a long book on a shorter topic that some straying should occur. In *Modern Trends in Treaty Law* it is sometimes difficult to understand what the author is trying to say, and even more difficult to relate the substance of the particular part to the main theme of the book. Thus the jurisprudential intricacies of Chapter 20 on "Formation and Ascertainment of International Custom" seem to have no place whatsoever in a work on modern trends in treaty law. In fact, little in Book Three Part Two on the Formation, Establishment and Development of General International Law (which occupies 3 chapters and 90 pages) seems relevant to the book's theme. Virtually none of Book Three Part Three on the Court's Role in the Development of International Law (which occupies 2 chapters and 60 pages) appears relevant. The substance of these portions is excellent reading. They just are not relevant.

This loss of the main theme becomes evident in the opening line of her last chapter:

> The guiding and overriding principle in this study of modern trends in the operation of international law has been the search for ways and means of strengthening the rule of law in the relations between States.[13]

The book set out as a study of modern trends *in treaty law* and continued on its way for 540 pages. It then lost course and wound up as a study of modern trends *in the operation of international law* with the object of strengthening the rule of law between states.

J. W. SAMUELS*

12 For example, there are numerous footnote references to M. or Mervyn Jones and there is no way of knowing what book is referred to. This author is referred to in the following places, among others: p. 36, n. 29; p. 43, n. 11; p. 59, n. 56; p. 90, n. 22; p. 141, n. 63; p. 325, n. 3; p. 328, n. 15 and 20; p. 336, n. 39; p. 362, n. 33; p. 397, n. 52; p. 399, n. 3; p. 416, n. 6.

On page 148 in the text, Sereni is referred to as having clearly brought out a certain point. There is no footnote reference as to where Sereni brought out this point.

On page 87 she speaks of the *Restatement of the Law*. This, by itself, is inadequate. The American Law Institute has produced numerous *Restatements* in various fields—contract, property and so on. We must know which *Restatement* is meant. In this case it is the *Restatement of the Law, Foreign Relations Law of the United States*, 1962. After Holloway wrote that portion of her book, the American Law Institute published the *Restatement of the Law (Second), Foreign Relations Law of the United States*, 1965.

Footnote 44 on page 288 refers to the UNESCO Symposium. This again offers no lead to the reader. What is the document number? What is the topic of the Symposium?

13 At 698.

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