the very existence of which helps to settle a number of issues without any need of recourse to the courts. Another paper which has some local interest is that by Professor Humphrey of McGill who deals with the work of the Human Rights Commission of the United Nations with which he was connected for many years. He feels that now that the two Covenants on Economic and Civil and Political Rights have been drawn up, the Commission should devote itself to the issues of implementation, and in view of the hesitancy of States either to sign these or ratify them when signed, such a need is paramount. At the end of 1969, Canada had still not acceded to either of them.

Among the other matters dealt with in this symposium, are minorities, the position in Latin America, the role of the International Labour Organization, the problem of impartiality in investigation, the significance of the European Court of Human Rights, medical experimentation, universality and regionalism, penal problems, education, and the like. While there is no paper concerned with the situation as it exists in Africa, Asia or the Communist bloc, Dr. Szabo of Budapest does show how the nature of human rights has broadened since the days of the Universal Declaration of which Cassin was one of the founding fathers, and it is gratifying to note that in this field at least socialist lawyers are prepared to pay homage to their non-socialist colleagues. All-in-all, a fascinating collection.

—L. C. GREEN*

* Professor of International Law, Department of Political Science, University of Alberta.

THE CANADIAN YEARBOOK OF INTERNATIONAL LAW. Volume VII. 1969. Edited by C. B. Bourne. Published under the auspices of The Canadian Branch, International Law Association.Vancouver, B.C.: The Publication Centre, The University of British Columbia. 1969. Pp. 377. $12.00.

This seventh volume of the *Canadian Yearbook* contains some stimulating Articles and Notes and Comments in the fields of what Professor Wolfgang Friedmann has so aptly described as the 'new dimensions of international law' which according to him now cover such diverse new areas as international law of co-operation; international constitutional law and international economic development law to name just a few.[1]

The collections offered in this volume are a valuable Canadian contribution to contemporary public international law, particularly by dealing with certain problems of undoubted urgency, like the question of asylum, aircraft hijacking; satellite telecommunications; GATT; economic sanctions; and universal concern about the control of narcotic drugs.

The contents page lists some six lengthy Articles, three Notes and Comments, a section of Canadian Practice in International Law during 1968 as Reflected Mainly in Public Correspondence and Statements of the Department of External Affairs, and another on the Digest of Important Canadian Cases decided in 1968 in the Fields of Public International Law and Conflicts of Law, plus some eight Book-reviews. This inevitably calls for a rather restrictive approach and whilst it is not possible to do

1 Friedmann, *The Changing Structure of International Law* (1964) at 61, 64, 151 *et. seq.*

complete justice to all the contributions in this review, an attempt will be made to single out a few for specific attention.

Most of the material in the volume is in the nature of specialised studies, carefully researched and meticulously documented by scholars who have a certain expertise. This assists greatly in the understanding of the complexities of the wide range of subjects covered by the authors.

In the first article, Professor Edward McWhinney of McGill University, in *Canadian Federalism, and the Foreign Affairs and Treaty Power: The Impact of Quebec's Quiet Revolution* postulates and defends the thesis that on the "level of constitutional law-in-action important changes and modifications are occurring" on the Canadian political scene and that these changes "make good sense in pragmatic, experimental terms, having regard to the inner dynamics of Canadian federalism today and to the aspirations of the main contending power groups" (at page 3). The discussion by him revisits the 1937 Privy Council advice in the *Labour Conventions Case* (*Attorney-General for Canada* v. *Attorney General for Ontario*),[2] moves on to hold that actually the *ratio decidendi* of that case really concerned treaty-*implementation*, not treaty-*making*, and leads the author to criticise as *non-sequitur* the views expressed by the Canadian Government in the Federal White Paper *Federalism and International Conferences on Education*[3] that "the judges of the Supreme Court of Canada explicity recognized that the Canadian Government could enter into treaties on all subjects, and the Judicial Committee of Privy Council which was the final court in that case did not challenge this opinion" (at page 6). He stresses the point that nearly "every aspect of community decision making today in the modern federal state will have some trans-national aspects, whether political, social, or economic or a mixture in part of all of these" (at page 8) and to automatically characterize these as 'foreign affairs' and therefore, of exclusive federal constitutional competence would in his view lead to either, an extraordinarily centralized federal system, or else to outright political separatism. He castigates the "expansionist, pre-emptive federal foreign affairs power, according to the United States *Migratory Birds* rationale as politically unacceptable in Canada to-day" (at page 8). As a result he examines other options to resolve the problem of conflicting federal and provincial claims to legislative competence. He decides in favour of what he terms "a prudent characterization of a given problem-situation, and preferably a characterization given, not in the abstract, but against a concrete factual record" (at page 10). He hopes that such a scientific pragmatic, empirically-based, approach would be able to show whether the problem is really 'foreign affairs' in the classical sense, or a normal question of provincial legislative competence involving some trans-national aspect. He follows this by carefully examining the recent Quebec-Federal controversy. The conclusion reached by him is that a satisfactory solution to the tension-issues of Canadian federalism seems to lead "inevitably to the modern philosophy of co-operative, and not competing, federalism, with the prime emphasis being on joint, co-operative, action, on a basis of common-sense and mutual give-and-take and reciprocal self-interest" (at page 27)—in fact, in his own words the

2 [1937] A.C. 326.
3 *Federalism and International Conferences on Education*. A Supplement to *Federalism and International Relations* (Hon. Mitchell Sharp, Secretary of State for External Affairs, Ottawa, 1968).

modern 'contemporary constitutional principle of federal comity'. His proposals above would seem to echo the views of at least a majority of the Provincial Governments.

Of particular interest for those involved in air and space law is the excellent article on *Direct Satellite Broadcasting: A Case Study in the Development of the Law of Space Communication* by A. E. Gotlieb[4] and C. M. Dalfen,[5] which in a brilliant and pertinent fashion carries out a succinct analysis of the "legal norms [that] are evolving in an activity newly opened for man by very recent and far-reaching technological developments" (at page 33). It should also be mentioned that though they write in their personal capacities both were intimately connected with the Canadian Delegation to the July-August 1969 Second Session of the U.N. Working Group on Direct Satellite Broadcasts.

In this article the authors predict that the development in this field "is likely to represent a fusion of a number of principles, rules and arrangements, which are at present or will be applicable to the environment in which such systems operate, as well as to various spheres of activity which will form part of the systems and to certain special characteristics which they are likely to have" (at pages 33-34).

They categorize direct satellite broadcasting activity into four general areas, that: (1) this specific activity of direct satellite broadcasting is 'use' of outer space; (2) such 'use' of space is for telecommunications purposes; (3) this telecommunications broadcasting is via artificial earth satellites; (4) this telecommunication method of broadcasting is for direct general reception. The authors then examine the international norms and understandings that relate to the above four general areas. Finally, they also see if there has been a process of evolution of legal norms for direct satellite broadcasting mainly concentrating on the activities of the U.N. in this field.

The authors start their study with the important assumption that as any other space activity, direct satellite broadcasting would seem to have to be governed by the 1966 Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies (for short, the Space Treaty). From this Space Treaty they in fact deduce several principles as being generally applicable to outer space activities.

The authors have thoroughly reviewed the efforts of the U.N. and other specialised agencies in this area. Their conclusion is that the "development of international legal norms governing direct satellite broadcasting in particular and that of the law of space communications in general are in the early stages of development" (at page 56). Despite this, they point out that the particular pattern of evolution of norms for direct satellite broadcasting would seem to indicate the central role of the U.N. in this process. They stress the significant stage reached "most notably in respect of the 'new' law being developed to keep pace" with modern technological developments (at page 56). The authors also make reference to the "emergence of an embryonic international legislative process, with the committee on outer space, the seabed, and so on, playing the role of parliamentary standing committees and the Assembly that of a parliament—albeit one whose "acts" must be ratified by the

[4] Deputy Minister of Communications, Government of Canada.
[5] Assistant Professor of Political Science at Carleton University.

governments of members" (at page 58). They, therefore, hold the views that "the legislative pattern that has developed through the U.N. has been perhaps the most significant feature of the progressive evolution of international law in the post World War II period" (at page 58). With this, few would be prepared to disagree. However, the authors other submissions would seem to be predicated upon, firstly, the continuing and abiding interest of States for international co-operation, and secondly, upon the activities being carried out primarily through the U.N. Without introducing any sense of pessimism, both of these sentiments seem to lack a certain degree of reality. Recent events in South-East Asia and those also relating at least to the question of the non-proliferation treaty (on nuclear weapons)[6] do not augur well for the international control of nuclear activity in space,[7] nor for the international co-operation so necessary. Also, the problem of the participation of non-members—highlighted once again by the U.N. Secretary-General U Thant's recent urgent plea in June 1968 at San Francisco—in the progressive work being undertaken by the U.N., poses a real test for it as the embodiment of a universal organization. Despite the slightly exaggerated parallel to parliamentary legislative techniques, there is ample evidence to confirm the author's plaudits on the achievements of the U.N. in the progressive development of international law.

Dean R. St. J. Macdonald, of Toronto University Faculty of Law, deals with *Economic Sanctions in the International System* by surveying the "process by which international public policy is enforced by political organizations" through use of economic sanctions (at page 61). The approach he utilises is described by him as being within the analytical framework. Nevertheless, the author summarizes his Introductory Remarks with the assertion that "the traditional analytical approach to domestic law is of doubtful use when transferred to the international context" (at page 68).

On enforcement he advocates "the dynamic functional approach with "its criterion of feasibility and effectiveness, the international as opposed to the domestic context, and the current political environment" (at page 69) as the cornerstone of his investigations. The study phrases the question of enforcement in terms of "who does what to whom and for what purposes?" The "who" here is categorised as the entity that is attempting to enforce the law, in fact the "sanctioner"; and the "to whom" is the entity against which the law is being enforced, the "sanctionee" (at page 69). Whilst describing the disadvantages of individual enforcement, Dean Macdonald lists them as, the single state sanctioner bringing about "a situation in which we have auto-determination of law, of the delict, and of the guilty party, and where since the effectiveness may often depend upon the relative strengths of the States involved the law is enforced against the weak but not against the strong States" (at page 69). In dealing with the position of the international organisation as a sanctioner "operating on a principle of concern" he feels that such "collective measures are theoretically more desirable than individual sanctions, the reasons being that the coercion is here being mobilized in support of, and in no way in opposition to, the decisions of

[6] See, 57 Dept. of State Bulletin 315 (1967). Also reproduced in (1968) 62 Am. J. Int. Law 151.
[7] For a discussion on this aspect, see Gotlieb, *Nuclear Weapons in Outer Space*, (1965) 3 Canadian Yearbook of International Law 3.

the organized community" (at pages 70-71). Surely this must postulate that the decisions of the organized community are always valid to make them theoretically more desirable, which may not be the case always.

He correctly points out that as "the direct and indirect costs of sanctioning are likely to be high, the need to distribute the costs as widely as possible becomes important. It is unrealistic to expect a potential sanctioner to participate in a sanctioning programme that will hurt the sanctioner more than the sanctionee" (at pages 72-73). But despite its *raison d'etre* that "in order to maximise participation and to increase the effectiveness of any sanctioning programme, efforts must be made to mitigate the burdens of implementation" (at page 73), it would seem that the experience of the U.N. adopted sanctions against Rhodesia have been counter-productive in that there is little doubt that Zambia (the "potential sanctioner" in Dean Macdonald's phraseology) has been more affected than Rhodesia (the "sanctionee").

Would it not be more correct to hold that economic warfare, without a substantial fulfilment of the so-called pre-conditions—the "cost-effectiveness" element; mutual support; maximum participation; non-default, etc.—of a sanctioning programme, should be declared illusory? A cursory examination of past experience, particularly under the League of Nations and, in recent years, under both the U.N. and the regional organizations; abundantly confirms its dismal failure as a lone enforcement measure. Perhaps it should even be postulated that economic measures used alone are not the panacea for resolving the difficult problems of today.

A significant omission in Dean Macdonald's treatment (in a study devoted to international systems) is his failure to examine the very real interlocking of Article 41 to Article 42 of the U.N. Charter, which would seem to establish that it is probably a fallacy to regard economic "modalities" under Article 41 as providing a self-sufficient, distinct and isolated category of a "pacific weapon" just by itself, whereas in reality what Chapter VII of the U.N. Charter envisaged was the hierarchical application of a gambit of enforcement measures, with a built-in mechanism for escalation—should the economic sanctions being applied become inadequate—to actual military action under Security Council auspices. The U.N. itself has not always juxtaposed these two Articles.

In an article on *The United Nations Declaration on Territorial Asylum,* Dr. P. Weis, the Special Adviser to the Office of the U.N. High Commissioner for Refugees, carries out an illuminating discussion on the history and adoption of the Declaration. He ably deals with its legal aspects.

The author also reviews the law of territorial asylum and its recent development and concludes that the "transition from traditional law as a law between states to transnational law (Jessup) and ultimately to a "common law of mankind" (C. W. Jenks) fully protecting the rights of individual is bound to be slow" (at page 149).

An interesting study by W. F. Foster on *Fact Finding and The World Court* summarizes the methods "by which the tribunal itself may find "extracurial" material and information, necessary for the just and equitable settlement of a dispute, irrespective of the co-operation of the parties" (at page 151). He concludes that as in the field of fact finding international proceedings resemble the continental inquisitorial system

which gives the judge a much wider scope, the World Court could play an active role in the collection of factual evidence and suggests that for sake of clarity and certainty it might be advisable to include in the Statute or Rules these specific provisions relating to the Court's powers.

In an article entitled *International Control of Narcotic Drugs and International Economic Law,* J. W. Samuels' effort has little novelty in it. Only in the Conclusion (covering roughly two and half pages out of a total of approximately twenty pages as a whole on the article) does the author venture to examine the contribution of international control of narcotics to the development of international economic law, which does not really go beyond showing the growth of international co-operation, which as he so rightly observes at times does seem to fail, citing the views of the International Narcotics Control Board in support. The Board in fact held that "the greatest obstacles to the further progress in international narcotics control are found in territories with a "drug economy", i.e. whose economies depend on the sale of opium for illicit purposes" (at page 211).

In the Notes and Comments portion of the volume, which approximately covers a fifth of its entire contents, Professor Christian Vincke writes in French on *Certain Aspects of the Recent Evolution on the Problem of Jurisdictional Immunity of States;* whilst Gerald F. FitzGerald carries on his manifold contributions to these series by continuing his writings on the very topical question of the *Development of International Legal Rules for the Repression of the Unlawful Seizure of Aircraft.* FitzGerald claims that though the solutions proposed for overcoming aircraft hijacking will disappoint those seeking "quick, complete and foolproof answers, [neverthless this] does not mean that there are no legal solutions" for this vexing problem (at page 296). In another currently popular activity, J. S. Sanford deals with *Treaty Amendment: The Problem of the GATT Tariff Schedules.* His observations that "there must be very few international institutions of the size and importance of GATT which conduct their affairs without a legal service" (at page 268) "and would be better served by at least one international lawyer," is a most sad commentary on an institution, one of whose Principles and Objects[8] is to stimulate world trade in favour of the developing countries. It can be presumed that the removal of any legal anomalies constituting an obstacle to the development of international trade would no doubt enhance international trade co-operation.

In the section reserved for *Candian Practice in International Law During 1968,* edited by A. E. Gotlieb and J. A. Beesley, the authors under some twelve different subject headings draw attention to the Canadian government under an international treaty obligation, on board immunity in the case of a Canadian Registered Pilot, provided by the Canadian government under an international treaty obligation, on board a privately owned Belgian vessel involved in a collision with a U.S. ship in the Detroit River (at page 298); Canadian Declaration on the Territorial Integrity of Cambodia (at page 302); International Organizations claim to immunity (at page 303), question of Canadian Territorial Waters—Canadian straight base lines in the St. Pierre and Miquelon area (at page 308); Continental Shelf—the Canadian statement in the

[8] *The General Agreement on Tariffs and Trade* (Part IV) Article XXXVI.

First Committee of the U.N. General Assembly on the Extent of Canadian Coastal State Jurisdiction (at page 309); Canadian Practice concerning Lump Sum Agreements (at page 314), etc.

In the succeeding section to the above, comprising the *Digest of Important Canadian Cases Decided in 1966*, edited by J. G. Castel there are summaries of: *Lazarovitch* v. *Consult Général de Grece et Papas*[9]— on jurisdictional immunity; *Gronlund et al.* v. *Hansen*[10] relating to extra-territorial application of Canadian legislation where a seamen was killed as a result of negligence out at sea; *Makoon-Singh* v. *Makoon Singh*[11] the question of whether the domicile of choice could be acquired in Nova Scotia in a divorce procedings based on cruelty; *Fedeluk* v. *Fedeluk*[12]— a case also on domicile where an expressed desire to go in some two years time to the U.S. was held by the Alberta Supreme Court as not constituting an abandonment of a previous domicile; etc.

The volume also has some seventeen pages on some eight Book-Reviews. This reviewer found some of these particularly helpful as a guide and in light of the importance of the *Canadian Yearbook* to those involved in the international law field in Canada, the very brief review of *British International Law Cases*, Volume VII, edited by Dr. Clive Parry, comprising some 1,300 pages, does less than justice to him.

These annual volumes are without any doubt a valuable source, not only for the legal scholar and practitioner but also, for the growing numbers of political and other social scientists who favour a multi-disciplinary approach to academic pursuit. It is also a tribute to Professor C. B. Bourne and Professor J. Y. Morin who have, since the inception of the series in 1963, been consistent in keeping a high standard in the selection of the contributions and have admirably lived up to "the possibilities of a Yearbook of International Law for Canada, somewhat after the fashion of the British Yearbook"[13] of International Law. The great expansion of Canadian teaching and writings in international law since then is evidenced by the fact that a large number of the contributors—most of them Canadian—have had more than one previous showing in the *Canadian Yearbook of International Law.*

—*Mohamed Ali Adam**

9 [1968] C.S. 486.
10 (1968) 69 D.L.R. (2d) 598.
11 [1968] C.C.L. 69.
12 (1968) 63 W.W.R. 638.
13 MacKenzie, *Foreword*, (1963) 1 Canadian Yearbook of International Law at 7.

* M.A. (Oxon); Of Lincoln's Inn, Barrister-at-Law; Advocate of the High Court of Southern Rhodesia; LL.M. Candidate, Faculty of Law, The University of Alberta.

THE PROSECUTOR. AN INQUIRY INTO THE EXERCISE OF DISCRETION. By Brian A. Grosman. University of Toronto Press. 1969. Pp. 114. $7.50.

The reader of Professor Grosman's impressionistic work is struck time and again by the apparent lack of understanding and concern embodied in the Criminal Justice system, and personified by the personnel responsible for its daily operation. It is portrayed as a system carried along by historic momentum and totally lacking in goals and the orientation implicit in goals. By any contemporary humanistic standards the system is a wretched thing.