CONFLICT AND COMPROMISE: INTERNATIONAL LAW AND WORLD ORDER IN A REVOLUTIONARY AGE, by Edward McWhinney, C.B.C., Toronto; Sijthoff & Noordhoff, Alphen aan den Rijn: 1981, pp. 160.

Some ten or fifteen years ago Professor McWhinney delivered a series of lectures for the Canadian Broadcasting Corporation under the title International Law and World Revolution. Since then, he has produced many writings which reflect his views on detente, co-existence and the legal implications of the relations between world powers. He has now consolidated some of his thoughts on these subjects into a collection of essays published by the C.B.C.. The work is entitled *Conflict and Compromise — International Law and World Order in a Revolutionary Age.*

Perhaps the most striking thing about this publication is its easy flowing style, reminiscent of McWhinney the public lecturer. His views on the effects of decolonization are illustrative of this writing style. At page 14 the learned writer explains that:

> ... decolonization has been the most striking historical development of the decades following World War II. The resulting flood of "new" countries ... has not merely transformed organizations like the United Nations, which rested on an original, if shortlived, "victors' consensus" from World War II; it has created a vast new area for the competition and interaction of different social and economic systems. It has also brought, in its wake, a whole new range of post-decolonization problems.

Among these problems is the legacy to "new" countries of issues created prior to national independence — issues such as claims for political self-determination by ethnic minorities. Professor McWhinney points out that, whereas the older multinational states (he does not include Canada among his examples) have sought to solve their problems by constitutional pluralism and/or devolution of decision making power, the "new" states have been more likely to resort to violence in the name of national sovereignty and territorial integrity, even where such integrity was established by the former colonial power to protect its own imperialist purposes.

Another novel feature of the "new" states is their concerted attempt to establish a more equitable and inclusive new international economic order by use of the legislative *fiat.* They push General Assembly resolutions through by the sheer weight of their voting power, a power which has effectively displaced the bi-power hegemony of yesteryear. Professor McWhinney maintains that such resolutions of the Assembly, together with the Charter of Economic Rights and Duties of States adopted by the Assembly, "constitute a code of imperative principles of the 'new' international law". He does not, however, comment on the legal force of Assembly resolutions which, according to the Charter, lack any obligatory character.

There is no doubt that on some issues of international law the "new" states have grounds for criticism and for seeking amendment, a point which even the Canadian government made when amending its acceptance of the compulsory jurisdiction of the World Court in relation to littoral rights. However, one is left with the feeling that, in Professor McWhinney's view, any criticism the "new" states put forward and any amendment they seek is more than justified.

At a time when the American administration is taking issue with the Soviet bloc Brezhnev Doctrine, while attempting to ensure observance of

its own Monroe Doctrine, the author's chapter, "Law and Power", subtitled "Competing (Communist and Western) Systems of World Order" is topical. The learned writer points out that the world of 1945, that is to say the world of the united front against fascism, was short lived and that reality soon came to be dictated by politics rather than law. His references to the Cuban "quarantine", and the irrelevance of law thereto, are just as applicable to the current crisis in Poland. The U.S. Secretary of State, by declaring that the United States would not tolerate Soviet interference in U.S. affairs, directly excluded the United Nations from considering issues of American policy. Obviously, if the U.N. were not excluded, the Soviet Union, as a member, would be able to interfere openly in U.S. matters. So too, the Eastern bloc can maintain that its doings are outside U.N. competence. Such an attitude is likely to be supported by Third World States, despite assertions by the United States and its European allies that a particular issue ought to be considered by the United Nations.

Continuing his comments on the United Nations as the wartime alliance against fascism, Professor McWhinney reminds us that the organization was "the creation of only a part of the world community — the victorious Allies" (p. 39). If this was true in 1945, it is even more true today, and perhaps it is time we dropped the pretence that the United Nations, under its present Charter, is the correct organization for the administration of a peaceful world. It is difficult to look at the Security Council and General Assembly as the "Parliament of Mankind". Indeed, it is not so viewed by the western powers or the Soviet Union, least of all when a U.N. decision appears embarrassing.

On the other hand, it is important to recall that the Charter may be more correctly regarded as a constitution rather than a statute. In the learned author's words (at p. 56), it should:

> constantly be re-examined in the light of its original grand design as an instrument for maintaining world peace; the bald text of the Charter must therefore be supplemented, and literal interpretation eschewed, in favour of policy interpretations that will refine and restate the details to accord with those ultimate historical purposes and objectives.

To a certain extent, this is the view adopted by some of the members of the World Court, particularly those coming from Third World countries. The activism of these members is fully approved of by Professor McWhinney, even though it may entail what many would regard as an abandonment of proper judical function in favour of political and ideological interpretations.

For many, the conflict between east and west arising from the imposition of martial law in Poland would seem to mark the end of the era of peaceful coexistence. Professor McWhinney, at page 97, suggests that peaceful coexistence had been founded on:

> ... a virtual legitimation of the political and military status quo of the cold war era. Insofar as it would accept the factual cold war division of the world into the two great military blocs dominated by the Soviet Union and the United States, it would necessarily concede general control and responsibility by each bloc leader over its own sphere of influence. It would further proclaim a principle of non-interference by either the Soviet Union or the United States in the other's bloc, however great the temptation to profit by the other side's difficulties, and however great the moral anguish at not being able to intervene in specific cases.

This, apparently, was Khruschev's view of the meaning of peaceful coexistence, a view which seems to have been readily accepted by the United States with regard to Latin America, but to some extent rejected by it with regard to eastern Europe, especially during the Polish crisis.

In the chapter dealing with peaceful coexistence, Professor McWhinney suggests that this bifurcation is giving way to a period of active international cooperation, but it would appear, with the introduction of U.S. "sanctions" against the Soviet Union, that we are returning to the Khruschev conception of peaceful coexistence. This is emphasized by the fact that "part of the price of the general reduction of world tensions and the risk of a nuclear or general war is an acceptance of a certain status quo in intra-bloc relations and also in bloc relations with "client" or otherwise politically dependent states" (p. 94).

From Professor McWhinney's work, *Conflict and Compromise*, it is clear that however anxious the world is to rest upon a Rule of Law, we must recognize that, as in the national sphere, the realism of politics frequently interferes with the Rule of Law, or finds ways around its restrictions. However provocative some of the author's comments may be, his clear postulation of the confrontation between the two world blocs and their mutual reliance on their own "rules of the game", and his description of the confrontation between post-industrial societies and developing third world countries, cannot be questioned. While not necessarily accepting all his premises, there is little doubt that anyone believing in the Rule of Law and world order will accept his final statement:

> The urgency of the challenge to bridge-building — between the first and second world on the one hand, and the emerging third world countries on the other — is apparent, as is the need to construct a more equitable, and more genuinely inclusive, world economic and public order system.

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