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Le Droit des Traites dans L'Ordre Juridique et dans la Pratique Diplomatique Belges

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will not lightly disregard the wisdom and common sense embodied in the long practice" of its predecessor. Simon compares the World Courts with the Court of Justice of the European Communities and finds no radical difference in the respective modes of reasoning of their judges, with the important exception that the Treaty Establishing the European Economic Community (the Treaty of Rome, March 25, 1957) has become constitutionalized, and the supremacy of European Community law is recognized as an inherent quality of Community law.[1] While there may be some merit in Casper's statement that "as in the United States, the supremacy of law seems to mean the supremacy of judges," Simon points out that judges cannot freely interpret and that they are bound by certain basic guidelines, which they have followed scrupulously, of which the most important is "to give effect to the continuing consensus of the parties" (citing McDougal and Lasswell) and to adjudicate consistently with the promotion of the best interests of the public international organization involved. Simon cites with apparent approval the guiding words of Mr. Justice Holmes in the landmark case of *Missouri v. Holland* (252 U.S. 416 (1920)): "A constituent instrument will call into life a being the development of which could not have been foreseen completely by the most gifted of its begetters," with which the author could have coupled Holmes's earlier observation: "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used" (*Towne v. Eisner*, 245 U.S. 418, 425 (1918)).

As far back as 1946, "Pollux," in an article entitled *The Interpretation of the [UN] Charter*, observed that "[t]he accumulated literature on treaty interpretation is already so voluminous and some of it, at least, so adequate that it might seem presumptuous to add to it."[2] Much has happened, however, since then, and Simon has traced the growth of treaty interpretation through the labyrinth of commissions, international courts, the United Nations and the specialized agencies, and other public international bodies—not presumptuously, but laboriously, thoroughly, and admirably. Professor Simon's *magnum opus* brings to international legal scholars, jurists, and Foreign Office practitioners a complete analysis and reference work that is a major contribution to the fast-growing field of international law as developed by international tribunals.

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Le Droit des traités dans l'ordre juridique et dans la pratique diplomatique belges. By Jean Masquelin. Brussels: Etablissements Emile Bruylant, 1980. Pp. 674. F.3,396.

Masquelin's book (The Law of Treaties in the Belgian Legal Order and Diplomatic Practice) is a comprehensive work explaining the place of treaties

[1] *See* Ami Barav, 72 ASIL PROC. 193–97 (1978), and the cogent remarks of Gerhard Casper at page 175.

[2] 23 BRIT. Y.B. INT'L L. 54, 54–55, and 54 n.3 (1946).

in Belgian law. The work spans international law and the municipal law of Belgium, since as the author states, the law of Belgium has since 1831 foreseen the fact that treaties could bind Belgian citizens as individuals (p. 8). The starting point for an examination of the Belgian practice concerning treaties and their authoritative effect is Article 68 of the Belgian Constitution. This article provides that "[c]ommercial treaties and those which could burden the state or bind Belgians individually have effect only after having received the approval of the chambers [of the legislature]." While the language is quite different from Article VI of the American Constitution, one is nevertheless struck by the fact that this provision bears a definite similarity to the U.S. supremacy clause in that both provisions acknowledge that as to some treaties in some circumstances the treaty itself is acknowledged as the municipal law of the land.

The author raises the question of the "self-executing" effects of a treaty early in his book, and then returns to the question for specific treatment at approximately its midpoint. He states that a number of treaties have as their object not so much the creation of general obligations between states, but "the creation of rules which possess the character of normative legislative acts" (p. 390).

The general doctrine of self-executing treaties in Belgium is the same as is often set forth in American decisions.[1] The basic test is whether the treaty contains normative expressions that can be directly applied or will have direct effect. Nevertheless, the author concludes that it is indeed difficult to establish a single criterion that is sufficiently precise to distinguish between the self-executing and non-self-executing terms of a treaty.

Europe offers extremely interesting questions of the internal effect of treaties. For example, Belgian courts apparently went back and forth on the question of whether an international convention covering traffic signals was self-executing before finally coming to the determination that it was not, but imposed obligations only on the contracting states (p. 405). Masquelin sets forth what appears to be the complete decision in another case dealing with the imposition of commercial duties on cheese, which comes to a startlingly different conclusion (pp. 436–41). In this case, *Fromagerie Franco-Suisse*, decided May 1971, the Cour de Cassation held that a law imposing a duty on the importation of cheese that conflicted with an article of the Treaty establishing the European Economic Community was unenforceable, even though the legislature passed the law after the enactment of the Treaty. Thus, the Court held that the Treaty not only had domestic effect, but could not be contravened by a subsequent act of the legislature. This is strikingly different from the resolution that would obtain in the United States, where an act of Congress enacted subsequently to a treaty will prevail over conflicting treaty provisions.[2]

The book is a comprehensive treatise on the many aspects of the Belgian practice with respect to treaties. Its scope is revealed by a glance at some of the major topics listed in the table of contents: origin and nature of international legal norms, sources of the rights and obligations of states, ratification

[1] *See*, for example, Sei Fujii v. California, 217 Pa.2d 481 (1950).

[2] *See* 5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 185 (1943).

of the law of treaties, characteristics of treaties, formation of treaties, legal effects, modification and termination of treaties. The book is well organized and a very useful reference for its subject matter.

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Les Contrats internationaux de coopération industrielle et le nouvel ordre économique international. By Jean d'Herbes and Jean Touscoz. Paris: Presses Universitaires de France, 1980. Pp. 350.

Le Régime juridique et la nationalisation de concessions pétrolières et autres concessions d'immeubles. Une étude de droit international privé au regard des pays en voie de développement. By Jean-Claude Njem. Stockholm: Almqvist & Wiksell International, 1980. Pp. 295.

Few concepts arising in the United Nations are so laden with emotion as the "New International Economic Order." Adopted by the UN General Assembly in 1974 as a shopping list of measures that developing nations felt should be taken to redress a serious economic imbalance, it has begun to be thought of, at least in the United States, as an enemy war cry in the North-South struggle. So it is refreshing to see that a large group of French businessmen and academics can meet without emotional overtones to discuss how the business community can best work with developing nations to address some of these inequities in a practical way.

The d'Herbes-Touscoz volume is the record of a colloquium held at the University of Nice in 1979 to explore the techniques of industrial cooperation. While most of the 150 participants came from the business community, there was a healthy leavening of academics and government officials from the francophone states of Africa. Like the meeting itself, the book concentrates on three problems: equalizing the value of contributions to a cooperative venture, dealing with the guaranties of performance that may be demanded by one side or the other, and managing the cooperative venture itself. Quite wisely, many other issues of a philosophical, political, or legal nature are strictly excluded; one senses a welcome authoritarianism on the part of the chairmen.

A hypothetical contract of industrial cooperation between a multinational oil company and a developing state serves as the focus of discussion. There is heated debate on whether industrial cooperation is in fact something different from joint ventures, service agreements, concessions, or transfers of technology. As always, the multinational corporation seeks a return on its investment in technical expertise and trained personnel, while the developing country desires to acquire what the discussants neatly refer to as "la maîtrise industrielle." An ambitious goal, but the participants have many wise and diverse suggestions based on actual experience.

Much of this volume consists of summaries of remarks made by participants, which does not make for easy reading. But it does constitute a stimulating and largely pragmatic collection of ideas from a community that views North-South relations in a way different from that currently fashionable in the United States.