carefully evaluating the materials put before him against his own developing standards of judgment, he may simply "take sides."

ROBERT S. SUMMERS*

PRINCIPLES OF PUBLIC INTERNATIONAL LAW. By Ian Brownlie. London : Oxford University Press. 1966. Pp. xxxi, 646. £3 3s. : $10.50.

The death of Sir Hersch Lauterpacht seems to have marked the demise of *Oppenheim* as a continuing publication, and new younger writers are producing "English" expositions of international law. After O'Connell's two-volume work, we have Dr. Brownlie's *Principles of Public International Law* which, in view of his *International Law and the Use of Force by States*, is concerned solely with the law of peace, save for isolated comments concerning the lack of any right to resort to force under the law of the United Nations.

With a work of this kind, the reviewer's task is, for the main part, limited to drawing attention to special aspects of the book, especially those in which the author appears to be breaking new ground or putting forward as established law ideas which, to many at least, have not yet reached the stage of *lex lata.*

There are two prime attractions of Dr. Brownlie's work. In the first place, it reads fluently and with a rhythm that disguises its nature as a textbook. Secondly, it is fully cognizant of the impact of the new states and some of the "revolutionary" principles of international law they have imposed upon the United Nations. The reviewer feels, however, that the learned author at times goes too far in his exposition of and support for these ideas. Thus, "there is probably also a collective duty of member states [of the United Nations] to take responsible action to create reasonable living standards for their own people and for those of other states" (p. 227). "Many economists consider that an extensive public sector, as a concomitant of a modicum of planning, is a necessary way forward for underdeveloped economies which face problems of poverty, health, nutrition, and education of a magnitude equal to that of a national emergency only created for some Western countries by war or threat of war. Legal exponents of *laissez-faire* theories would disagree" (p. 280). With regard to compensation for expropriated alien property, "it is not possible to postulate an independent minimum standard which in effect supports a particular philosophy of economic life at the expense of the host state" (p. 428). "The present position is that self-determination is a legal principle and that United Nations

* Associate Professor of Law, University of Oregon.

organs do not permit Article 2, paragraph 7, to impede discussion and decision when the principle is in issue. Its precise ramifications in other contexts are not yet worked out" (p. 484).

A somewhat similar acceptance of a particular ideological approach to international law tends to appear in Dr. Brownlie's approach to the United Nations, particularly in connection with the effect of resolutions of the General Assembly. He accepts the view that, in general, such resolutions are not binding on members, "but, when they are concerned with general norms of international law, then acceptance by a majority vote constitutes evidence of the opinions of governments in the widest forum for the expression of such opinions" (p. 11), and he cites such resolutions as those concerning the Nuremberg Principles, Colonialism and Sovereignty over National Resources. Nevertheless, "it is doubtful if the United Nations has a 'capacity to convey title,' *inter alia* because the Organization cannot assume the title of territorial sovereign: ... the General Assembly only has a power of recommendation. Thus the resolution of 1947 containing a partition plan for Palestine was probably *ultra vires*, and, if it was not, was not binding on member states in any case" (pp. 161-62)—it is not enough merely to cite Kelsen, and completely to disregard the possibility of confirmation by subsequent action. It is also difficult to see how this view of the Resolution fits in with his earlier statement that "few would take the view that the Arab neighbours of Israel can afford to treat her as a non-entity: the responsible United Nations organs and individual states have taken the view that Israel is protected, and bound, by the principles of the United Nations Charter governing the use of force" (p. 85). On the other hand, "when a resolution of the General Assembly touches on subjects dealt with in the United Nations Charter, it may be regarded as an authoritative interpretation of the Charter: obvious examples are the Universal Declaration of Human Rights and the Declaration on the Granting of Rights to Colonial Countries and Peoples" (p. 535). While resolutions are evidence of the state of law and have it, it would seem, clarified the law as it is today, "to give legal significance to an omission of an organ to condemn is hazardous in the extreme, since the omission turns often on the political attitude of the majority in the organ concerned" (p. 536). It would be interesting to know why the same reasoning is not applied to positive recommendations, even though their substance is approved by Dr. Brownlie. After all the United Nations is a political organization, and "political organs, like the General Assembly and the Security Council of the United Nations, may and often do concern themselves with evidence and legal arguments, although the basis for action remains primarily political" (p. 542).

Dr. Brownlie's attitude to politics in the United Nations comes out in a somewhat one-sided way. He accepts the view, that is perhaps a minority view and is certainly controversial, that by virtue of Article 2(6) the Charter

is binding on non-members, because of the "special character of the United Nations as an organization concerned primarily with the maintenance of peace and security in the world and including in its membership the great powers as well as the vast majority of states" (p. 531). Here, he appears to be unconcerned at the non-representation of the Chinese People's Republic, although in another context he complains that "United Nations practice in convening a Conference to draw up a treaty is to leave the question of composition to a political organ, the General Assembly, and a number of Communist states are excluded as a result" (p. 508). A footnote names China, East Germany, North Vietnam and North Korea. He might have pointed out that both Chinas were omitted from the conference that drew up the Japanese Peace Treaty and that no representative of the Polish Government attended the San Francisco Conference. The explanation in all these cases could just as easily rest on the basis of insufficiency of recognition of the entities concerned. This tendency to find a particular political motive behind United Nations actions that the learned author does not consider agreeable also appears when he comments upon issues which are considered ultra vires by a minority in the United Nations. He cites UNEF and the Congo expedition and the quarrel over United Nations expenses—issues in which the "Eastern" countries tended to constitute the minority, and ignores those in which the West have been similarly placed. He comments that the Assembly can only recommend, "yet the [World] Court's view [in the *Expenses* opinion] permits non-obligatory recommendations to result in binding financial obligations" (p. 541), stating that the Court's presumption against ultra vires is contrary to Article 2(1) and agreeing with those who felt that the opinion tends to "superstatism" (p. 541).

Most commentators, particularly since the fiasco over South West Africa, have drawn attention to the composition of the bench of the World Court. Dr. Brownlie's comment probably needs revising: "Politically, the Latin-American and Asian states represented on the Court are associates of the West. Senegal is a political associate of France. Non-aligned states are excluded, apart from Egypt" (p. 551, n.1). This assessment is based on the election of 1963, but the decision of 1966 might suggest that the East-West alignment and the cold war are not so important as other considerations.

While one may criticize or disagree with Dr. Brownlie for his approach to issues affecting the ideology of the "new" world, one can only be sympathetic when he draws attention to the invalidity or superficiality of rubrics that are still used and respected more through misplaced piety and tradition than anything else. Thus, when considering the personality of the Vatican and the Holy See, he points out that, issues of statehood apart, "the personality of political and religious institutions of this type can only be relative to those states prepared to enter into relationships with such institutions on the international plane" (p. 59). Again, "to classify the individual as a 'subject'

of the law is unhelpful, since this may seem to imply the existence of capacities which do not exist . . ." (p. 60). In so far as title to sovereignty is concerned, the learned author suggests that discovery as title, inchoate or otherwise, could well be abandoned in view of the need of occupation (p. 137), and he considers it "inelegant" to describe prescription as a source of title, for "the genuine source in this type of case is recognition or acquiescence of the consequences of unchallenged possession" (p. 145). Like so many post-1945 lawyers, Dr. Brownlie rejects aggression and illegal seizure of territory as a valid source of title, but if such illegal seizure accords with self-determination "it is probable that, at the very least, recognition of the title of transference by third states would then be justifiable and would consolidate the rights of the holder" (p. 159). This is in accordance with his general view of self-determination as part of international law, so that "the operation of the principle of self-determination as a part of the *jus cogens* may support a doctrine of reversion : for example, rights of way granted by a colonial power may not be opposable to the state which, in replacing the colonial power, is recovering an independence which it formerly had" (p. 79).

Enough has been said to show that Dr. Brownlie's *Principles of Public International Law* is a stimulating and exciting work. It is, however, a work that can more readily be recommended to graduates than to undergraduates, for the latter are less likely to be aware of the traditionnal view or of statements made by the author which are not as yet parts of the *lex lata,* despite the endeavours of some states to make them such. When a new edition is prepared, as it is hoped it will be, perhaps Dr. Brownlie would consider expanding his index so as to include places and institutions by name, rather than leaving them to be found under some generic title, and perhaps he will expand such references as "Vattel in his influential *Le Droit des gens* (1758) may have adopted a theory of a maritime belt," without any page cited (p. 169, n.2), or "See also claims by the United Arab Republic in respect of the Suez attack in 1956, and claims against individual states involved in the joint occupation of Germany and Austria" (p. 377, n.2).

L. C. GREEN*

CASEBOOK WRITING AND THE CASE METHOD : SOME CHALLENGES IN CANADA. CASES AND COMMENTS ON CRIMINAL LAW. By Douglas A. Schmeiser. Toronto: Butterworths and Company. 1966. Pp. xxvi, 965. Index. $25.50.

The need in Canada for a set of teaching materials in any field of law is acute. Available instructional tools are inadequate, ranging from syllabi containing cases directly copied from the *Canadian Abridgment,* some "mi-

* Professor of Political Science, University of Alberta.