There are similar difficulties with the author's treatment of recklessness. This, he says, is distinguished from intention in that the consequences of one's act are not desired, but are foreseen as possible. He stresses that the enquiry is into the actor's mental state; but if so, it is difficult to follow his proposition that recklessness presupposes a duty to take care. There would here appear to be some confusion between a subjective and an objective use of the term, although the author is at pains to warn readers against the risk of any such confusion. My main objection to the author's definition, however, is that neither the judges nor the man in the street use the term "recklessness" in the author's sense. They use it to indicate a very high degree of carelessness. If this is true, the definition can only lead to confusion when the cases come to be discussed.

The chapters which deal with these matters occupy some seventy out of the first hundred pages of the book. Thereafter the author deals with ignorance of fact and of law, insanity, drunkenness, duress, principals and accessories, strict and vicarious liability, and many other topics bearing on criminal responsibility. The authorities are marshalled, and the arguments set out, in a way that commands admiration. Almost every problem which may arise in practice is adverted to and carefully analysed. I know of no other book in which these matters are assembled and discussed with anything approaching the care which they receive at Professor Williams' hands.

This is a pioneer work in one of the more obscure areas of the common law. It has its faults—a book of this kind could hardly be beyond criticism. But no one who is interested in criminal law can read it without deriving from it both pleasure and profit. The practitioner in the criminal courts cannot afford to be without it. The author in his preface announces that he hopes to follow it later with a companion volume on specific crimes. The reader cannot but hope that the appearance of that volume will not be long delayed.

PETER BRETT*

Voelkerrecht, by Alfred Verdross. Vienna, Springer-Verlag. Third Revised and Enlarged Edition 1955. xx and 546 pp. with index.

The second edition of Verdross' *Voelkerrecht* appeared as recently as 1950, and was (as might have been expected) virtually a new book in relation to the first edition of 1937. The distinguished Professor of the University of Vienna has long been a leader of its school of juristic thought, and his standing throughout the world makes the appearance of any work from his pen an important event, especially one which brings up to date the results of Professor Verdross' thirty years of fruitful teaching, study and thought.[1]

This new edition is organised, like the second, in three main parts: Foundations of Public International Law (pp. 1-83), General International Law (pp. 84-424), and Law of the Organised Community of States (pp. 425-530), the middle section embracing the traditional law of peace, war and neutrality. The new edition varies or adds to the author's earlier treatment on numerous points. Discussion of the foundations of international law has been extended especially in relation to "the basic norm" (pp. 18 ff.), the notion of "inter-

* LL.B. (London), LL.M. (W.A.). Senior Lecturer in Law, University of Melbourne.

[1] For a list of Professor Verdross' principal publications (more than fifty items) see (1953) 83 *Hague Recueil* 3-5.

national community" (pp. 44 ff.) and the principles of *bona fides* and *abus de droit* (pp. 79 ff.) and effectivity (p. 81), the sociological foundations of international law (pp. 6 ff.) and relation to ethics (pp. 30 ff.) and municipal law (pp. 61 ff.). The new or extended sections of the second and third parts of the treatise touch the development of international control (p. 161), the supra-national relations between States (p. 280), the protection of war victims (p. 366), the limits of the competence of the United Nations (pp. 429 ff.) and international criminal law (p. 511) and the effect of enforcement measures based on recommendations of the General Assembly of the United Nations (pp. 522 ff.). Systematic accounts are given not only of the United Nations Organisation (pp. 436 ff.) but also of the Western Union (p. 457), the Council of Europe (p. 458) and the League of Arab Nations (p. 459), regional arrangements (pp. 467 ff.), the European Coal and Steel Community, which he sees as a true supra-national entity (pp. 280-81) and the immense tasks of international administration (pp. 469 ff.).

In basic approach Verdross is a natural lawyer who sees international law founded in "natural" or "objective" law. Since the international legal community contains no organised political authority superior to the internal political authorities of the several States, legal obligations between States are (in his view) only possible if the States accept that their obligations will be fulfilled in good faith (*nach Treu und lauben*). He denies that any "general will" of States can as "pure fact" impose any legal obligations, and he insists that the legal force of principles such as *bona fides* and *pacta sunt servanda* cannot be established without resort to some kind of "natural" or "objective" law, that is, a "set of rules in the light of reason", a part of universal morality. Positive international law, therefore, does not generate its own legal power, but depends on certain ultimate moral postulates; its validity is relative to the absolute value of the idea of justice.

Professor Verdross indeed recognises that the position may have been, by the creation of power in the United Nations Security Council by a majority of seven votes, including those of its permanent Members, to impose and enforce obligations on all Member States; so that, for example, the implementation of the Security Council's peace enforcement measures under Chapter VII of the Charter, is no longer dependent solely upon good faith of Member States, but could be ensured by collective action of the organised international community.[2] It must be admitted, in view of the paralysis in practice of the organic powers of the United Nations, that Professor Verdross here gives a highly theoretical view of the import of the Charter.

Despite this natural law foundation, Professor Verdross is much concerned that international lawyers shall not meddle beyond the range of positive international law, that in the words of Sir Gerald Fitzmaurice[3] "the lawyer may have to renounce, if he ever has pretended to it, the dominance or rule of *lawyers* in international affairs" so that only then will lawyers establish "the Rule of Law". He thinks therefore that discussion *de lege ferenda* should be left to competent legislative agencies. His "natural law" thus differs radically from that of Professor Charles de Visscher[4] who regards it as a means "*enrichir la substance*", "*transformer les methodes*" and "*elargir les horizons*" of public international law.

In these circumstances it is not surprising that while Professor Verdross pays tribute to the views, methods and ideas of modern sociological schools of legal thought, the role of this approach in the body of his work (as distinct from its preambulatory and introductory excursions) is only a modest one, as

[2] See the demonstration in J. Stone, *Legal Controls of International Conflict* (1954) cc. 7-10 *passim* of the practical assimilation of the organic United Nations system to the loose co-operative system of the old League. The work under review was completed before Professor Stone's book became available.

[3] (1953) 38 *Grotius Society Trans.* 135-150, esp. 145 ff.

[4] See his *Théories et Réalités en Droit International Public* (1953) 9.

compared either with recent work like that of Professor Julius Stone, or with older work like that of Professor Max Huber.[5]

A comparison of Professor Verdross' work with the sociological work of Professor Stone published in the previous year presents interesting contrasts as well as similarities. It can be said at the outset that the work under review does not attempt to meet the urgent need for what Julius Stone has called a "stocktaking of the specific conceptions and rules of international law, *not only* in technical terms, *but in terms* also of their relations to actual economic, technological, political and psychological forces". (Italics supplied.)[6] From this standpoint, Professor Verdross' work would be regarded as insufficiently concerned with these forces and rather limited in its range to consideration of the structure "of the assumed system of international legal norms".[7] For if law is to be understood in its relation to the forces which determine its scope and operation, then it must be interpreted within its full socio-political and economic contexts, in its dynamics as well as its statics.[8] Yet even such critics will still recognise with appreciation the courage of Professor Verdros' attempt to combine the natural law and positivist approaches, and even add to them a certain tolerance of sociological questionings.

This initial difference of aim is reflected naturally in the treatment of the "principle of effectivity" as a basis of international law. For both Professors Stone and Verdross the dominant principle of "effectivity" is an axiomatic feature of international law. Verdross sees it as involved in the very nature of the international community, as depending on co-ordination rather than subordination. A particular community will be recognised as a State if its order is "effective" according to the standards of international law, and so also with new governments; but Professor Verdross thinks that the principle of effectivity only operates within the limits set by international law, otherwise international law itself would be annulled.[9] The divers tempers of the writers emerge well when we contrast with Verdross' treatment Stone's observation that 'rules like those of "effectiveness", title by conquest and the validity of imposed treaties, are thus a fascinating meeting point of law and the negation of law, preserving the international legal order even into the moment of its destruction.'[10]

On the vexed question whether an international court can or must refrain from deciding a case on the ground that the applicable law is in doubt (*non liquet*), Professor Verdross' conclusions[11] coincide with those of Professor Stone,[12] as opposed to those of Professors Lauterpacht and Kelsen who consider a *non liquet* situation to be logically impossible on the assumed foundation of international law. It is of course questionable, as both the former authors would admit, whether the mere logical possibility of a *non liquet* will ever in fact lead to a *non liquet* being declared.[13] Professor Verdross' position also approximates to that of Professor Stone[14] in seeing the direct criminal responsibility of individuals under general international law as limited to war crimes, *stricto sensu*, though both authors admit the legislative tendency of the Nuremberg Charter and Trials to qualify as international crimes, also conduct against humanity and against peace.

The more specific divergencies to which the different approaches may lead are best seen perhaps in the discussions by Professors Verdross and Stone

[5] Max Huber, *Die Soziologischen Grundlagen des Voelkerrechts* (1928).
[6] Stone, *op. cit.* xliv and *passim.*
[7] Stone, *loc. cit.* n. 59a.
[8] Stone, *op. cit.* vii-ix, 37-49.
[9] *Voelkerrecht* at 81-82.
[10] Stone, *op. cit.* xxxi-xxxiii.
[11] *Voelkerrecht* at 131.
[12] Stone, *op. cit.* 153 ff.
[13] Professor Stone, indeed, has given cogent practical reasons why it may not (*op. cit.* 153-164). Professor Verdross, in accepting "general principles of law" *in foro domestico* as international law and at the same time admitting the possibility of *non liquet*, seems to dissociate the problem of *lacunae* from that of *non liquet* which, although related, are independent problems.
[14] See respectively p. 511 of the work under review and Stone, *op. cit.* 301-302, 324-329.

of the place of war in modern international law. Both agree that war was "permissible" (*zulaessig*) under classical international law. For Verdross, however, Art. 2 (4) of the Charter has created a legal revolution by prohibiting war. Its principle that Members shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, must (in his view) be interpreted in the light of Paragraph 7 of the Preamble, setting the end of ensuring "that armed force shall not be used, save in the common interest". The effect, he thinks, is to render war illegal unless it is "in the common interest", even if the Security Council cannot for some reason act to enforce peace under Chapter VII.[15]

It must be admitted that such discussion of the absolute illegality of war, based on preambulatory exhortation, seems distant from contemporary realities. To ignore the loopholes in the Charter, through which war may enter without hindrance, would be, in Julius Stone's words, "a grave disservice to humanity"—since "the liberty of States to resort to war under customary international law is still a substantial liberty", and modern technological warfare has, if anything, increased the urgency of retaining and developing the rules of warfare. This rift also underlies these learned writers' differences as to whether the lawyer need be concerned with types of conflict which lie between "war" and "no war". Verdross considers that this "no peace—no war" condition is not legally relevant since there are no special rules of international law covering it; for him the "cold war" is merely a state of peace with peaceful relations of States reduced to a minimum. Professor Stone, on the other hand, is concerned to express the

> reluctant conviction . . . that the wishful standpoint which ignores the obstinately crucial role of war, even in our modern world, creates an "either peace—or war" dichotomy, which leaves no room for rational examination of the over-all conflict, the "neither peace—nor war" which dominates our actual world.

Moreover, whether as a "gap" or "exception" to the prohibition of war, Article 51 of the Charter on self-defence, and Article 107 on action against enemy States, have proved of central importance in the Charter as a living document. And the tendency in treaties such as the Geneva Convention in 1949 to make rules for mitigation of human suffering applicable in any armed conflict, whether legally war or not, seems to support Professor Stone rather than Professor Verdross.[16]

Correspondingly, Professor Verdross considers the freedom to remain neutral or not of States under classical international law to be now largely taken away by the recognition that aggression is an international crime.[17] Neutrality, for him, can only exist by way of the principle of mutual assistance, provided for in Articles 2 (5) and 49 of the Charter, since all Member States are obliged to accept and apply the decisions of the Security Council for action against aggression or aggressors, and must abstain from giving assistance to the party against which the United Nations are undertaking action. And he thinks that even when such action is lacking, the spirit of both the Charter and the Briand-Kellogg Pact require third States to abstain from giving assistance to the aggressor. Yet, after all, this is a very misleading picture, unless we also recognise, as Stone has insisted,[18] that "the paralyis of the Security Council by the Great Power veto, and the clauses of escape and evasion embodied in the

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Professor Verdross correctly points out that the Genocide Convention of 9 December, 1948 is on a different level since it established a mere *delictum iuris gentium*, rendering the crime punishable by municipal courts, though in virtue of international law.

[15] On this point Professor Verdross, in agreement with Professor H. Wehberg (*"L'Interdiction du Recours a la Force"* (1951) 78 *Hague Recueil* 7-121), or in German translation *Krieg und Eroberung im Wandel des Voelkerrechts* (1953) at 70 ff.) revises the interpretation given in the second edition (p. 332) of his treatise (3rd ed. p. 514).

[16] Though the latter recognises the tendency at pp. 519 ff.

[17] *Voelkerrecht* at 524-26.

[18] Stone, *op. cit.* 382.

Charter, make it regrettably clear that the law of neutrality is not visibly more obsolete in the mid-twentieth century than it was under the ill-fated League of Nations".

As was to be expected, this third edition of Alfred Verdross' *Voelkerrecht* will continue to rank with the capital treatises on international law. This code-like text-book, characterised as it is by great economy and precision, must inevitably contain assertions which require qualification, and exclude many points of view necessary for a rounded picture. But its earnestness and integrity well deserve the tribute which Sir Arnold McNair once paid to the late Professor C. C. Hyde.[19] that "In writing he felt that he was on oath."

S. GLICHITCH*

Executive Discretion and Judicial Control: An Aspect of the Conseil d'Etat, by C. J. Hamson, Fellow of Trinity College, Professor of Comparative Law in the University of Cambridge, of Gray's Inn, Barrister-at-Law, *Chevalier de la Legion d'Honneur*. London, Stevens & Sons Ltd. Sydney, Law Book Co. of Australasia Pty. Ltd., 1954. x and 222 pp. (17/9 in Australia).

The Judicial Control of Public Authorities in England and in Italy, by Serio Galeotti, D. Phil. (Oxon.), Dr. Jur. (Milan), of Lincoln College, Oxford, Professor "Incaricato" of Comparative Constitutional Law in the Universita Cattolica del Sacro Cuore of Milan, Professor of Constitutional Law in the University of Urbino. London, Stevens & Sons Ltd. Sydney, Law Book Company of Australasia Pty. Ltd., 1954. xi and 562 pp. (£1/10/- in Australia).

It is only of comparatively recent years that, for English lawyers, the study of Continental administrative law and institutions has emerged from the shadow cast over it by Dicey in his *Law of the Constitution*.[1] To the steadily growing literature on the subject, Professor Hamson's book, and Professor Galeotti's, are welcome additions.

Professor Hamson's book, which embodies the Hamlyn lectures for 1954, sets out to bring to the English reader, in a short compass, a knowledge of the structure of the French *Conseil d'Etat*, of how it functions and of the rules which it applies in the conduct of its judicial business—the *contentieux administratif*. To one who has not studied the original French materials, the book appears to be admirably successful in carrying out this purpose and it leaves the common lawyer with the wry reflection that, whatever else the common law may be, it certainly is not systematic.

While the book is concerned almost exclusively with the *contentieux administratif*, Professor Hamson makes clear what Dicey failed to make clear[2]—

[19] See (1951) 28 *B.Y.B. Int. L.* 347.

* *Docteur en Droit* (University of Paris), *Diplomé of the Institut des Hautes Etudes Internationales* and *Ecole des Sciences Politiques* (Paris). Research Assistant, Department of International Law, University of Sydney.

[1] 1 ed. 1885—9 ed. 1939.

[2] While he concentrated almost exclusively on the *contentieux administratif*, Dicey (see *The Law of the Constitution* (9 ed. 1939), 352 ff.) recognised the intimate relation between the *Conseil d'Etat* and the Executive only as a basis for criticism, and he concluded that the French system would be satisfactory only when the *Conseil* became completely "judicialised", in the sense at least of becoming entirely separated from and independent of the Executive.