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## International Claims: Postwar French Practice

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## International Claims: Postwar French Practice

### Keywords

History, Human Rights Law, Homosexuality

## BOOK REVIEW

### INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE.

By Burns H. Weston.<sup>1</sup> (Volume 9, Procedural Aspects of International Law Series.) Syracuse, N.Y.: Syracuse University Press. 1971. Pp. xv, 237. \$10.50.

The post World War II period, which marked the end of colonialism, has also brought to the fore concomitant problems; one such problem results from the nationalization of alien property. Claims and counter-claims between the capital exporting countries and the countries taking over foreign properties have been settled by different means, the most frequent of which at present is that of lump sum settlements, reached under bilateral agreements. France, among other Western powers, has in this manner settled the claims of her property interests "damaged, destroyed or divested by nationalization, and other deprivative measures"<sup>2</sup> undertaken by other countries (among these are several East European states, Cuba and Egypt). In each instance, the French government established a claims settlement commission to compensate the affected French property interests. It is these commissions and their decisions that Professor Weston studies and analyzes in his work.

The study is unique, for this is the first serious attempt to inquire into this important subject. But in this reviewer's opinion, the significance of the study is further enhanced by Professor Weston's technique in analyzing the French practice. He provides a policy-oriented framework to bring order to this otherwise unwieldy and highly confusing maze of commissions' decisions.

This technique offers Professor Weston the use of an appropriate methodology to sift the material, treat it systematically and present it in such a fashion as to assist a researcher and scholar as well as a decision maker in drawing useful comparisons over time, and thereby contributing to the development of the "Law of International Claims." Additionally, it facilitates the performance of the essential intellectual tasks as enumerated by the "New Haven School": clarification of the goals of decision; description of the trends; analysis of the conditioning factors; projection of probable future development; and

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<sup>2</sup> B. WESTON, INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE [hereinafter cited as WESTON] 4 (1971).

appraisal and recommendation of alternatives and strategies that contribute to the realization of preferred goals.<sup>3</sup> More specifically, this approach allows Professor Weston to analyze the commissions' decisions in the context of the claimant's objectives,<sup>4</sup> base-values,<sup>5</sup> strategies,<sup>6</sup> situations affecting claimant eligibility,<sup>7</sup> and outcomes of the claims.<sup>8</sup>

Apparently an argument can be made that the uninitiated might find it hard to follow the contents of the work, because of what the editor of the Procedural Aspects of International Law (PAIL) series, Professor Richard Lillich refers to as the "possible hazards of specialized language and innovative organization."<sup>9</sup> But if the reader takes the necessary time with the book (and it is no *Love Story*, nor was it conceived to be read in one sitting), he will find the merit in Professor Weston's deliberate choice in (1) using functional, precise and relatively norm-free terminology, thereby avoiding the ambiguities inherent in traditional legal vocabulary (although he almost always refers to traditional terminology as well); and (2) parting with the traditional organization, which would have imposed serious constraints on the author, especially in view of the disorganized nature of his material.

Professors McDougal and Lasswell, the co-founders of the New Haven School have in a recent article<sup>10</sup> eloquently articulated the need for "a more configurative, hence viable, jurisprudence of international law." This suggests a more contextual and multi-method framework for studying international legal problems.<sup>11</sup> A careful reading of Professor Weston's book should reveal the usefulness of following their recommendations. It provides a sharper focus for discussing pertinent issues such as: what transpired; under what circumstances, why, with what immediate outcome and the long range effects on international legal order; and what alternatives should be recommended to strengthen this order.

Professor Weston was handicapped in collecting the pertinent data for the book. There was an initial difficulty caused

<sup>3</sup> For a recent articulation, see McDougal, Lasswell and Reisman, *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188, 197 (1968).

<sup>4</sup> WESTON at 95-147.

<sup>5</sup> *Id.* at 156-57.

<sup>6</sup> *Id.* at 158-59.

<sup>7</sup> *Id.* at 147-56.

<sup>8</sup> *Id.* at 159-82.

<sup>9</sup> *Id.* at viii.

<sup>10</sup> McDougal, Lasswell and Reisman, *supra* note 3, at 188.

<sup>11</sup> *Id.* at 298-99.

by the policy of the French government not to publish the commissions' decisions. To this was added the non-accessibility to the author of "a number of probative documents" on file with the French Foreign Ministry.<sup>12</sup> However, these hurdles seem to have been overcome by the author's painstaking research extending over a period of three years, including two summers in France, during which time he translated thousands of commissions' unpublished decisions and interviewed a large number of key figures, both government officials and private practitioners. It seems that the author's hope of having caught "sufficiently the spirit of French commission practice"<sup>13</sup> has been amply fulfilled.

At the outset Professor Weston provides the necessary historical background,<sup>14</sup> followed by a discussion of the enabling legislation establishing the commission, the "Statutory Instruments," and the rules of procedure of each commission,<sup>15</sup> and finally, a thorough analysis of the commissions' decisions.<sup>16</sup> The texts of the various lump sum agreements which are pertinent to the study are translated and conveniently contained in the Appendix.<sup>17</sup>

Professor Weston's analysis leads him to the conclusion that the commissions have performed "most of their basic missions generally with distinction,"<sup>18</sup> that they have displayed a "generally unparochial perspective,"<sup>19</sup> that their decisions are remarkably uniform<sup>20</sup> and have been consistent with "customary international law, as well as with the comparative American and British practice."<sup>21</sup> He convincingly makes the point that while these commissions obviously have been "instruments of the French legal order," they nevertheless should be regarded as "decision-making agents of the international legal order"<sup>22</sup> as well. In fact, it is primarily the latter function which prompts us to pay special attention to these commissions and other similar national or domestic instruments, whose decisions when placed "side by side . . . from country to country,

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<sup>12</sup> WESTON at 6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 9-38.

<sup>15</sup> *Id.* at 39-69.

<sup>16</sup> *Id.* at 71-182.

<sup>17</sup> *Id.* at 191-224.

<sup>18</sup> *Id.* at 187.

<sup>19</sup> *Id.* at 189.

<sup>20</sup> *Id.* at 188.

<sup>21</sup> *Id.* at 189.

<sup>22</sup> *Id.* at 183.

help form over time that synthesis which is in large measure what we today call international law."<sup>23</sup>

Professor Weston's criticism of the French practice mainly concerns the commissions' procedures, specifically their emphasis on secrecy with the resulting lack of public accountability<sup>24</sup> and their slow administration causing prolonged delays.<sup>25</sup> However, this reviewer would have liked to see Professor Weston include in his appraisal an examination of how these commissions' decisions are likely to affect the world community expectations on the standard for compensation which traditionally has been that of prompt, adequate, and effective payment.<sup>26</sup> He would have also preferred more extensive comparisons,<sup>27</sup> and further recommendations, with the author exploring in his own words "the world order policy implications" of such recommendations. But perhaps this is beyond the scope of the present work; hopefully, the author has saved such comparisons and recommendations for the next study, which he has promised us.<sup>28</sup>

Most appropriately, this study, as volume 9 of the PAIL series forms part of a broader project, which in the words of its able director, Professor Richard Lillich, "involves a definitive examination of the lump sum compensation agreements settling claims for the taking of private property rights which have been included by Eastern and Western countries since World War II. . . ."<sup>29</sup> Works already completed and published directly on this point include Professor Lillich's analysis of the post-war British practice,<sup>30</sup> and those forthcoming include one by Professor Isi Foighel surveying the post-war Danish practice,<sup>31</sup> one by Professor Lillich on the practice of the Foreign Claims Settlement Commission of the United States,<sup>32</sup> and one co-authored by Professors Lillich and Weston, entitled *International Claims: Their Settlement by Lump Sum Agreements*.<sup>33</sup>

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 184-85.

<sup>25</sup> *Id.* at 185-86.

<sup>26</sup> However, see *id.* at 30-33 for Weston's discussion of the extent to which the decisions of the French claims commissions conform to the traditional standard.

<sup>27</sup> However, see, e.g., *id.* at 14-16, 39, 83, 89-90, 129, 177 for Weston's comparisons of the French practice with similar practices of Great Britain and the United States.

<sup>28</sup> *Infra*, note 33 and the text accompanying it.

<sup>29</sup> Lillich, *The Procedural Aspects of International Law Institute*, 4 INT'L LAWYER 740, 746 (1970).

<sup>30</sup> R. LILLICH, *INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE* (1967).

<sup>31</sup> Mentioned in WESTON at 5 note 13.

<sup>32</sup> Mentioned in *id.* at 5 note 11.

<sup>33</sup> Mentioned in *id.* at 38 note 134.

The book is written in a clear style and given the tedious nature of the material, it is no mean achievement that the work is quite readable. This study, which Professor Lillich has aptly described as being "so rich in material and so rewarding in insights,"<sup>34</sup> is a worthy addition to the growing literature of both the New Haven School and the Procedural Aspects of International Law Series.

Ved P. Nanda

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<sup>34</sup> *Supra* note 9.