President Walsh's rejoinder betrayed the vast power and confidence of NGA. "If they want war," the General said, with reference to domestic, not foreign, enemies, "let it begin here!"[7]

Obsolete and inefficient as a military weapon, thoroughly confused as a case study in federalism, the National Guard remains what it has always been—a political, not a military, phenomenon. Guard commissions and perquisites are an integral—and from the gubernatorial point of view, a very cheap—part of the spoils of state politics, the parochial equivalent of the "rivers and harbors bill" on the national level. As instruments of administration, state governments may be obsolete, as Professor Riker suggests in his conclusion. As basic and largely autonomous units of American politics, the states are still powerful, and the National Guard is the best proof of it. The author, primarily concerned with the theoretical and administrative aspects of the Guard, does not sufficiently develop the implications of this fact. Federalism in American government has always been less a system than a harsh political fact, indeed, a political imperative of successful, if rather inefficient, governance in a country as large and as disparate as the United States. Federalism has administrative implications; in National Guard, as in other, affairs, however, its meaning and its reasons are basically political.

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INTERNATIONAL LAW OPINIONS. By Lord [Arnold D.] McNair. New York: Cambridge University Press, 1956. Vol. I: PEACE, pp. xxvi, 380; Vol. II: PEACE, pp. viii, 415; Vol. III: WAR AND NEUTRALITY, pp. viii, 436. $35.00.

IN these volumes, Lord McNair, long a leading English international law professor and formerly President of the International Court of Justice, renders an invaluable service by making available much source material on international law as viewed by the British government. In the international law system developed over the last several centuries, treaties and international

7. HUNTINGTON, THE SOLDIER AND THE STATE 176 (1957). The potent congressional influence of the Guard is revealed in an incident from the 1930's. General Milton Reckord of Maryland, the chief NGA lobbyist, discovered that the Senate Armed Services Committee contemplated a cut of $700,000 in Guard appropriations, and, adding insult to injury, planned to spend $400,000—to be added to the Guard bill—improving Fort Sill, Oklahoma, a Regular Army reservation. General Reckord in a speech to the NGA convention in 1937 related his transactions with Senator Copeland, Chairman of the Committee: "In a respectful but firm way I indicated to him that there might be a difference of opinion . . . and . . . we would not play ball that way . . . . It simply meant, gentlemen, that we were losing $700,000 and they were adding an additional $400,000 and charging it against us . . . . I begged and pleaded with him to delete it, and when he would not do that, and he would not restore the $700,000, I called for assistance, and wires and letters went all over the United States, and very quickly the response came back to the Senators, and finally, on the floor, our $700,000 was restored." Pp. 89-90.

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customary law—"international custom, as evidence of a general practice accepted as law"[1]—form the chief sources of law, roughly comparable to statutes and precedents in our own domestic law. Treaties are relatively easy to find, but it is frequently most difficult to ascertain what the general international practice has been on a particular point, and how far this practice has been followed because of acceptance as law. The United States is fortunate in having the two famous *Digests of International Law*, that by John B. Moore, published in 1906, and that by G. H. Hackworth, covering the period from Moore to 1940-42. From these works, lawyers, judges, government officials and scholars may learn the views and practices of our own country on matters of international law. There are no comparable publications for other countries, including Great Britain.[2] Lord McNair does not attempt the same task as Moore or Hackworth but confines himself more narrowly. He states:

> "These three volumes represent an attempt to trace the development of public international law in Great Britain as evidenced by the opinions given to the Crown by its Law Officers and certain other occasional legal advisers during the past three to four centuries, and more particularly between 1782 and the end of 1902."[3]

He writes that in the Foreign Office archives, in part deposited in the Public Record Office, he found many thousands of opinions on questions of international law rendered by the Law Officers of the Crown, from which he seeks to reproduce a representative selection. Most of these opinions had not been previously published in any form.[4] He points out:

> "[I]n the sixteenth century the Crown developed the practice of consulting groups of civilians, members of Doctors' Commons, upon questions of international law which arose in the conduct of foreign affairs, and we find these groups of civilians being consulted throughout the seventeenth century."[5]

From about 1600 until abolition of the office in 1872, a standing adviser of the Crown on these matters, known as the King's Advocate, was consulted alone or with other civil-law experts; the Attorney-General and Solicitor-General were often associated with the Advocate on questions of importance, or upon his request. These three officials were the "Law Officers of the Crown," whose opinions are dealt with in this book. Most of the reported opinions date from the period after 1782, when the Foreign Office was established as a separate department and its archives separately filed, and before the end of 1902, "the last date of the open period of the archives of the Foreign Office." Lord McNair expresses regret that, "through lack of time and absence

1. STAT. INT'L CT. JUST. art. 38, ¶ 1(b).

2. In 1932 and 1935, two volumes appeared of SMITH, GREAT BRITAIN AND THE LAW OF NATIONS, but it is understood that no further work on this series is now in progress.

3. Vol. I, p. xvii.

4. Some, however, have been printed in previous books on special topics or in lives of particular law officers. See vol. I, p. xxii.

5. Vol. I, p. xvii.

abroad," he was compelled to neglect the opinions and memoranda prepared by the expert legal staff of the Foreign Office itself.

But even narrowed by limitations on the type of source material considered and the span of years covered, these opinions show amazing variety. Only the subject of treaties is omitted, it having formed the topic of McNair's famous *Law of Treaties*.[6] Otherwise, the opinions treat questions ranging over most of the topics found in a general comprehensive textbook on international law. Some of them throw new light on well-known diplomatic incidents and judicial decisions; others concern matters now brought to light for the first time. Lord McNair points out that, in the very nature of things, "there is a vast field of international law which municipal courts of law are never likely to touch" and that though "more and more we find international tribunals working in parts of this field," yet in international matters "the main source of law, apart from multipartite treaties, is to be found in the practice of governments."[7] Appraising the opinions, he observes:

> "Like all human products they vary in quality. Many of them will be recognized as bearing the imprint of first-class legal minds and as the source or the development of rules of international law with which we are now familiar. I do not claim that these opinions are the law. No State alone can make [international] law. But it is valuable to know what any State's legal advisers believe to be the law, because in the majority of cases it is that advice which governs the practice of that State. . . . Moreover, as the opinions given to the British Government are highly confidential and are not likely to be published, if ever, for a considerable time, the authors can deal with the matter quite objectively and without regard to any other factor than stating to the Government their genuine opinion. In this respect they resemble judgments, not the arguments of a pleader. They bear another resemblance to judgments in that the cases upon which they are based usually contain an objective statement of the facts and the opposing legal arguments. Finally the opinions have the advantage of being given not in the abstract but in relation to a given set of concrete facts, which is the best way of testing a rule of law."[8]

So far as can be judged by a reader who lacks direct access to the unpublished archives, the selection of the opinions appears excellent, and the opinions themselves are accompanied by helpful brief introductions and annotations which add notably to the value of the book. While grateful for the aid thus afforded and recognizing that the nature of the work precludes much more of the sort, the reader would indeed wish in some instances that he had a fuller evaluation from Lord McNair himself, in view of the high standard of his scholarship, the breadth of his practical experience and his sound judgment.

The book is quite different from the Moore and Hackworth *Digests*, and even more from Professor C. C. Hyde's treatise, *International Law, Chiefly*

6. McNAIR, THE LAW OF TREATIES (1938). It is understood that Lord McNair is at work on a second edition.

7. Vol. I, p. xvii.

8. Vol. I, pp. xviii-xix.

as Interpreted and Applied by the United States.[9] We may be thankful that work is going forward toward the production of a somewhat comparable *British Digest of International Law*; we may hope that similar publications will be made by at least a number of other governments and that in the not too distant future another set will be published to cover the United States for the period since Hackworth.[10] Meanwhile, like the *Annual Digest of Public International Law Cases*—now the *International Law Reports*—founded by Lord McNair and Judge Lauterpacht when both were professors, the book under review makes an important contribution toward the task of finding out and making known the principles and rules of international law actually followed by nations.

WM. W. BISHOP, JR.†

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9. HYDE, INTERNATIONAL LAW, CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES (rev. ed. 1945).

10. It is believed that the Department of State would be ready to press forward on such a digest of international law, covering the years of important international legal developments since the Hackworth *Digest*, if adequate financial support is provided by Congress.

More closely comparable to the volumes under review would be a collection of the opinions on international law topics rendered by the Attorneys General of the United States, but in view of the regular volumes of published opinions of the Attorney General, it is doubtful whether such a compilation would be greatly needed. The opinions of the principal law officers of the Department of State over the past century, who have held the successive titles of "Examiner of Claims," "Solicitor," and "Legal Adviser," might form a fruitful source for treatment comparable to the McNair volumes; they remain unpublished except as a few are quoted in the Hackworth *Digest* or in the *United States Foreign Relations* series.

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