legislation which it replaced. It has been hailed as reaching 'a peak of legislative excellence unequalled in the countries which have inherited the English tradition as to marriage and divorce'.[4] Such exuberant acclaim cannot be sustained indefinitely. *Divorce, Society and the Law* gives considerable impetus to the view that much work needs to be undertaken now to provide a basis for an early review and remodelling of Australian divorce law. As Mr Justice Barber says (p. 77), any sense of satisfaction with the 1959 Act is only maintained by looking backwards.

DAVID HAMBLY*

No Peace—No War in the Middle East, by JULIUS STONE, the Challis Professor of International Law and Jurisprudence, University of Sydney. (Maitland Publications Pty Ltd, Sydney, 1969), pp. 1-40, Bibliography (including abbreviations) 41-42. Price $1.

On the 22nd November 1968, the material contained in this booklet was delivered by Professor Stone as an address to the annual meeting of the Australian Branch of the International Law Association. Appropriately, that day was the first anniversary of the November Resolution of the Security Council which called for 'a just and lasting peace in the Middle East'. It follows on from a lecture which he gave to that branch of the International Law Association on October 18 1967, and which has been published also as *The Middle East Under Cease-Fire*. The work now being reviewed is an interesting case study of an important and still current international legal problem which all students or interested observers of international law ought to read in order to see the difficulties surrounding the actual application of rules of international law. The author has looked at the 'Legal Problems of the First Year' and he begins with a short description of the factual background and an outline of those problems. He has concisely analysed the political and legal positions of Israel and the Arab States concerning the implementation of the November Resolution but not unnaturally he has been unable to cover the topic as completely as say, the very useful Symposium on The Middle East Crisis.[1]

The effect of Cease-fire agreements is examined and of course such agreements without more do not prohibit the States who consent to them from re-arming and building up their military forces so there can be no complaint from either side in respect of this type of activity. However, as the author quite rightly says, Cease-fire agreements 'mean exactly what their name conveys. They forbid all hostilities across the lines'; but the evidence adduced shows that the present agreements have been broken repeatedly by the Arab States. In fact, as is well known, those States openly claim 'credit' for certain of the breaches which have occurred. The Arab States have the most to gain from this sort of conduct both because of their refusal to recognize Israel and because Israel's defence problems have been magnified by the occupation of territory won during the 'Six Days War'. In addition one of the Super Powers is supporting the Arab States whilst there is no continuous support for Israel and in these circumstances Israel could find world public opinion marshalled against her if she took action in the territory of any of the Arab States. At the level of the United Nations one finds that the composition of the present non-permanent members of the Security Council is heavily weighted against Israel so that any Israel infringement of the agreements would lead to a severe censure by that body.

The Cease-fire agreements which terminated the 'Six Days War' took the form of Security Council Resolutions which were formally accepted by Israel and by only three of the fourteen Arab States which participated in that war. The point is made that it is legally curious that this situation has been allowed by the Security Council to continue, that is that insufficient pressure has been brought to bear by that body on the other eleven states to compel them to accept the Cease-fire resolutions. It is submitted by this reviewer that the reasons for this 'legal curiosity' are quite obvious and lie in the realm of power politics, albeit in disguise.

4 Toose, Watson and Benjafield, *Australian Divorce Law and Practice* (1968) vii.

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1 Halderman (ed.), 'The Middle East Crisis: Test of International Law' (1968) 33 *Law and Contemporary Problems* 1.

Professor Stone then treats generally the Israel administration in the occupied territories on the basis that Israel's status is only that of a military occupant. Later on he endeavours to develop an argument that Israel's status is higher than that but this argument rests on, what is in this reviewer's opinion, an erroneous view of the right of self defence contained in Article 51 of the Charter which is discussed below. Treating Israel as a military occupant, the relevant international law rules are to be found in the traditional law of military occupation as supplemented by the Fourth Geneva Convention, 1949, and he shows that by comparison with these minimum norms Israel's administration is extremely benevolent. He mentions one matter which is more often than not overlooked in analyses such as this, namely, that, at the level of the individual, day to day contact between Arabs and Jews in these Territories has 'already substantially re-drawn the Arab image of Israeli soldiers and civilians, and the Israel-held image of Arabs'. It is, after all, the individual, the private citizen who suffers in situations such as the Middle East 'little wars' and it would seem that Israel is taking this opportunity of neutralizing to some extent the hatred and distrust of the Israelis with which the Arabs had been indoctrinated by their leaders.

There is a very good survey of the economic-legal and the politico-legal aspects of Israel's administration in these territories and here again the author provides a clear description of the way in which these territories appear to be administered far more benevolently than required by the rules of international law. It is interesting to note that no change has occurred in important areas of law owing to the fact that the law administered previously by Egypt and Jordan and now by Israel has its origins in the former British Mandatory's Defence (Emergency) Regulations for the whole of Palestine. He concludes his survey of questions arising from the Israeli administration of the occupied territories with an examination of 'Demolition, Detentions and Deportations' all of which were included in the above mentioned British Regulations. However, he does not produce any evidence to support some of his statements, for instance the number of deportations referred to on page 16.

In Sections VII-VIII the international status of East Jerusalem is discussed and he maintains that action taken by Israel has not changed the international status of that city. He states that the reason for bringing East Jerusalem within the boundaries of Jerusalem was to provide a legal basis for the Municipal authorities of the city to extend the required aid and services to East Jerusalem. However, this argument seems rather thin especially in view of the fact that he goes on to analyse the legal standing of the General Assembly's resolutions on East Jerusalem which called on Israel not to change the status of the city and concludes that they do not bind Israel. It is clear to this reviewer that the status of Jerusalem is one of the questions that must eventually be dealt with at a peace conference between Israel and the Arab States and in view of the deep historical emotions which the city arouses provision ought to be made for it to become a Free City under the auspices of the United Nations.

The 'November Resolution' of the Security Council was intended to provide an outline for peace in the Middle East but difficulties arose as to whether any heirarchy was implied by virtue of the order in which various requirements were set out in the Resolution. What has been termed the Arab threshold thesis was put forward—namely that an Israeli withdrawal must precede any peace conference—and this was counterbalanced by the Israeli threshold thesis that the Arab States must recognize the Sovereign Equality of Israel and the objective of a genuine peace. It is submitted that the author is correct in his conclusion that the Resolution must be implemented in its entirety simultaneously and it is not legally permissible to isolate one provision for performance by one party earlier in time than the others. The United Nations Special Representative Dr Gunnar Jarring was given authority by paragraph 3 of the Resolution to 'promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution'.

It is of course not possible within the limited framework of a book review to comment on all the points made by Professor Stone but the reviewer is unable to conclude without expressing the strongest disagreement with Professor Stone's statements on the right of Self Defence and Article 51 of the Charter. The reference to

the Tokyo Tribunal at page 38 ought to be compared with what the Nuremberg Tribunal said when it condemned Germany's invasion of Norway as not being justifiable on the grounds of self-defence.[2] Both decisions took place before the Charter entered into force and regardless of the conflict between them the question of self defence is now governed by the Charter and particularly Article 51. The words of Article 51 are quite clear and make provision for a right of self defence if and only 'if an armed attack occurs'. There is no right of anticipatory self defence and the Soviet action in Czechoslovakia last August, to which he refers, only shows that to allow such a right would involve a return to the wilderness of neo-barbarism. The community interest of Mankind requires that the law of the Charter should prevail.

GERARD BRENNAN*

The History of English Law Before the time of Edward I, by SIR FREDERICK POLLOCK and FREDERICK WILLIAM MAITLAND, 2nd Ed., reissued with a new introduction and select bibliography by S. F. C. MILSOM. (Cambridge University Press, Cambridge, 1968), 2 volumes, pp. 1-688, 1-674. Australian Price: $4.70 per volume.

Pollock and Maitland, now seventy years of age, has been given a new and deserved lease of life by this reprinting. This classic history of the early English law as seen in the documents then available might have been in danger of becoming itself simply another historical document. It might have been viewed as merely a late nineteenth century picture of the ancient common law, merely another portrait in the series of pictures drawn by Bracton, Coke, Hale and Blackstone in their own times. It is that, but it is also more than that.

The publishers have wisely not attempted any rewriting of the original text. Equally wisely, they invited Professor Milsom to compile an Introduction, not to bring that text up to date in detail—but to assess in general terms the veracity of the vision seen by the authors in 1895—above all, that of Maitland (who is generally regarded as the senior partner in the enterprise). A vast work of scholarly discovery has been done since then. Professor Milsom himself has supplied in this new issue an impressive list of recent texts, books and learned articles. He rightly laments that great masses of other records have not yet been seriously examined. Thus, in very many details of *rules* Maitland has been corrected and replaced; though what he said about *institutions* 'has indeed worn well' (xxiv). His vision is still relevant, important, perceptive. An Australian lawyer, whose institutions and rules are now receding rapidly from what went on in the reign of Henry II, will still be grateful for Maitland's permanent contribution and agree that he can still derive benefit from the fact that 'Maitland wrote not about rules and technicalities but about people and ideas, about an achievement. This is what makes his picture vivid and his book great. It has become the foundation of all that we know about the history of the common law . . .' (lxxi).

It is true that the more pertinent problems for our law students today are of another kind. An American Scholar, Barbara J. Shapiro, has complained recently, with some justice, that:

> Legal history is a rather peculiar field. It is dominated by the great nineteenth and early twentieth century school of historical jurists. These men were lawyers, essentially concerned with contributing to an autonomous discipline of the law by the use of historical methods. In spite of their frequent general disclaimers and their very real interest in the historical interrelations of law and society the impact of their work has been to create a legal history ghetto. Particularly in the abbreviated way in which legal history reaches the law student, it is likely to take the form of tracing the evolution of the writs or explaining the difference between common law and equity.[1]

She goes on to describe the impression left on the student that, by some internal dynamism of their own, legal doctrines grew and changed with little reference to

2 *Proceedings of the trial of Major War Criminals before the International Tribunal at Neuremberg* xxii, 448-450.

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1 Shapiro, 'Law and Science in Seventeenth Century England' (1968) 21 *Stanford Law Review* 727, 728.