

1960

## Book Review

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## Book Reviews

*Reviewed by William Samore\**

THE USE OF INTERNATIONAL LAW, by Philip C. Jessup. Published by The University of Michigan Law School, Ann Arbor, Michigan; 164 pp. (1959).

Too many laymen, lawyers, and professors of law think that international law is not law. One of the best books to set them straight is Brierly's classic *The Law of Nations*. Another book that should accomplish the same purpose is Professor Jessup's *The Use of International Law*. Jessup, who is Professor of Law at Columbia University Law School, delivered a series of lectures at the University of Michigan in 1958. This book is a publication of those lectures.

Most of the lectures were devoted to a survey of the existing body of international law, concentrating on methods of settling disputes. The author asks indulgence if some of the ground seems too familiar. The material is worth repeating, especially to the uninformed. The only real weakness in the book is that Professor Jessup sometimes assumes that his audience or readers know too much. He drops names such as the Calvo Doctrine, the Drago Doctrine, and the Calvo Clause with little or no explanation.

Without closing his eyes to international law's weaknesses, Professor Jessup points out that its critics expect too much of international law at the present time. The practitioner expects international law to be just as certain and just as enforceable as national law. But by now the practitioner should know that even national law is not certain or always enforced. The political realist castigates international law because it does not solve the power struggle. "In the political arena, action will generally be determined by power and by politics. It is so also within a national state . . ." (p. 27).

Jessup's modest plea is that international law be applied within a selective community of states which share generally a philosophy of respect for law. Even so limited, international law potentialities have not been realized. Surely one of the states which has blocked this potentiality is the United States with its limited acceptance of the Optional Clause of the Statute of the International Court of Justice. The United States sets a fine example when it declares that the United States itself will deter-

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mine if a question is within its domestic jurisdiction. President Eisenhower could not with self-righteousness suggest to Khrushchev that Russia also accept the Optional Clause. Even if Russia would accept, it would probably mean nothing. Because of reciprocity, every time the United States attempted to bring Russia before the Court, Russia would declare that the matter was within its domestic jurisdiction. "It is probably not too late for the United States to replace a bad example with a good one. If the Senate authorized the President to withdraw [the reservation] to our acceptance of the Optional Clause . . . the United States would then be in a position to exert its best diplomatic effort toward the establishment of the rule of law which we invoke so religiously" (p. 60).

In the final Chapter, Jessup looks far, far into the future when the advance of science will raise new problems for the international community: space travel, control of weather and human reproduction, and purification of sea water.

But the kernel of Professor Jessup's message is best said in his own words:

The theme to which this reexamination of international law has been addressed is that the national interest of the United States lies in the strengthening of the role of international law in international relations. The more widely and effective the international legal system is developed, to be sure, the more the freedom of action of the United States will be restricted. But, *ex hypothesi*, so will the freedom of action of other states, at least within a limited international community. The solidarity of such a like-minded law-respecting international community would be helpful in the contest with maverick States which presumably would continue in their own path. The advantages to international trade and commerce—again the international community—could be considerable (pp. 151-2).

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*Reviewed by C. Richard Andrews\**

THE AMERICAN CONSTITUTION, by C. Herman Pritchett, McGraw-Hill Book Company, Inc., N. Y. 719 pp. (1959).

To record "an exposition of what the Supreme Court has said the American Constitution means" is the announced intention of

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