

sentiment when it gives birth to change in law. The agent of the change is here, however, not the dictate of a court but the responsiveness of the political branches to the claims of a minority that touched the conscience of the country and thus marshaled general support. To be sure, the Court played a large part in this awakening of moral sensitivity, a fact that should forewarn us against too simplistic a conception of the discrete roles of law and politics. It is, indeed, the fact that Mr. Bickel sees the intricacy of their interplay that lends such great importance to this subtle study of the most transforming legal movement of our time.

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THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS. By *Rosalyn Higgins*.^{*} Oxford University Press, 1963. Pp. xxi, 402.

Mrs. Higgins' excellent book concerns precisely what its title denotes. It analyzes the development of international law through the practice of the "political organs" of the United Nations: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat. It does not deal with the development of international law by the International Court of Justice, the International Law Commission, or by law-making conferences held under the auspices of the United Nations (such as those on the law of the sea and diplomatic relations). The Sixth (Legal) Committee of the General Assembly is treated more as a legal than a political organ, and thus largely not dealt with, on the ground that: "The work of that Committee has become more and more restricted and political problems with important legal implications are debated in the First and Ad Hoc Committees" (p. 3). While an accurate appraisal at one time, it is no longer wholly so. Since 1961, the Sixth Committee has been increasingly concerned with a spectrum of problems of important political as well as legal content which are embraced by its continuing item of "Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."

Mrs. Higgins maintains that:

The political organs of the United Nations . . . are vitally con-

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cerned with the development of international law. . . . The United Nations is a very appropriate body to look to for indications of developments in international law, for international custom is to be deduced from the practice of states, which includes their international dealings as manifested by their diplomatic actions and public pronouncements. With the development of international organizations, the votes and views of states have come to have legal significance as evidence of customary law. Moreover, the practice of states comprises their collective acts as well as the total of their individual acts; and the number of occasions on which states see fit to act collectively has been greatly increased by the activities of international organizations. Collective acts of states, repeated by and acquiesced in by sufficient numbers with sufficient frequency, eventually attain the status of law (p. 2).

Mrs. Higgins acknowledges the difficulty of specifying at what point the practice of states may harden into a rule of law. In this regard, she notes (and understates) the fact of United Nations life that "voting patterns to some extent conform to political pressures rather than to legal beliefs . . ." (p. 6). She concludes that: "The only possible answer to the problem of at what stage a usage becomes law must be *at that point at which states regard themselves as legally bound by the practice*—a point which can only be ascertained by the close examination of states' attitudes and public statements" (p. 6; Mrs. Higgins' emphasis).

Mrs. Higgins subjects five broad areas of United Nations practice to such close examination: the concept of statehood; the concept of domestic jurisdiction; recognition, representation and credentials; the legal limits to the use of force; and the law of treaties. She does so by the exposition and analysis of actual claims made before United Nations organs and the response of those organs to those claims.

Her treatment is searching and incisive. Masses of material have been expertly pruned and parsed. As Mrs. Higgins rightly points out, "there is at present no repertory of United Nations practice in reference to different aspects of international law" (Preface). Her text, fully annotated, justifies her hope of "at least partially" fulfilling this need—a need to which the Secretariat of the United Nations should be enabled to address itself in an official and comprehensive manner. The book contains a great deal of useful information which is subjected, by and large, to thoughtful analysis. Mrs. Higgins succeeds in demonstrating that a considerable body of law has been developed through the practice of the political organs of the United Nations.

The tenor of the work is optimistic. Mrs. Higgins typically weaves the pattern of practice, extracts what threads of consistency it may yield,

and ties those threads together in a fashion which, in her view, leaves states legally bound. It is questionable, however, whether "states regard themselves as legally bound by [their] practice[s]" to the extent suggested by Mrs. Higgins. Take, for example, her conclusion that "self-determination has developed into an international legal right, and is not an essentially domestic matter" (p. 103). In support of this conclusion, Mrs. Higgins works persuasively through seventeen years of United Nations practice whose high point is the Declaration on the Granting of Independence to Colonial Countries and Peoples, a General Assembly resolution adopted in 1960 by a vote of 89 to none, with 9 abstentions. That resolution declares, among other things, that: "All peoples have the right to self-determination Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence." Mrs. Higgins says of this resolution: "Even for a commentator favourably disposed towards a liberal interpretation of the right of self-determination this resolution has many undesirable aspects, and the total lack of opposition displayed reflects sadly upon the failure of those governments (such as that of the United Kingdom) who most loudly insist upon Big Power responsibility to vote against resolutions which they do not support when public opinion is mounted against them" (pp. 100-101). Her analysis proceeds to state quite clearly that the abstaining Members did not favor the resolution. Nevertheless, she concludes immediately thereafter that: "The resolution must be taken to represent the wishes and beliefs of the full membership of the United Nations" (p. 101).

It may be wondered whether the resolution (at the time of its adoption, at any rate) can reasonably be taken as representative of the wishes and beliefs of all of the abstaining states, which included Great Powers whose participation in the development of international practice accepted as law would seem to be of special importance. It might otherwise be contended that certain of these states meant their abstention to indicate reserve rather than acquiescence. At the same time, Mrs. Higgins makes a fair point: states which wish to foreclose the contention that abstention equals acquiescence should vote negatively.

Still other cases might be cited where Members of the United Nations have not merely abstained but even voted in favor of resolutions on legal questions of great importance—and yet clearly did not mean thereby to indicate movement toward "that point at which states regard themselves as legally bound by the practice." Two instances more recent than Mrs. Higgins' book may be cited. The more notorious is the General Assembly's treatment, by resolution and otherwise, of the question

of the application of Article 19 of the Charter to those Members which fell within its terms by reason of their failure to pay peacekeeping assessments. The vast majority of the General Assembly, by accepting the advisory opinion of the International Court of Justice on the matter, agreed that the delinquents were incontestably delinquent in their assessed contributions. It recognized that, if the law were to be applied, the terms of Article 19 required that the delinquents "shall have no vote in the General Assembly." Nevertheless, the delinquents retained their vote by consensus of the General Assembly which the Assembly itself knew to be a practice not in development but in derogation of the Charter. Another example of the ambiguity of votes in the United Nations was provided by the General Assembly's unanimous adoption (save for a British abstention) at its twentieth session of a Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty. The Declaration deals with subjects of paramount legal and political importance. It declares, among other things, that "the practice of any form of intervention . . . violates the spirit and letter of the Charter of the United Nations . . ." The Representative of the United States, in explanation of his favorable vote, stated:

[W]e view this Declaration as a statement of attitude and policy, as a political Declaration with a vital political message, not as a declaration or elaboration of the law governing non-intervention. . . . [Moreover] the Special Committee of the Assembly on the Principles of International Law concerning Friendly Relations and Cooperation among States has been given the precise job of enunciating that law. Thus, we leave the precise definitions of the law to the lawyers, and our vote on this resolution is without prejudice to the definition of the law that we shall make in the Special Committee.¹

Apart from this major question of whether states at times mean to invest their United Nations actions with the legal import which Mrs. Higgins tends to attribute to them—and of the weight to be given to their intentions—minor interpretative reservations may be entered. Thus Mrs. Higgins suggests (p. 170) that the fact that the Security Council "took note" of the OAS action in respect of the Dominican Republic in 1960 "laid the ground for" later Soviet support of a Cuban complaint to the Security Council "that the expulsion of Cuba from the OAS in January 1962 was unlawful enforcement action, lacking the ap-

1. United Nations General Assembly, Twentieth Session, First Committee, Verbatim Record of the 143rd Meeting, A/C. 1/PV. 1423, p. 12.

proval of the Security Council required by Article 53." The 1960 episode, however, cut the ground out from under the Soviet position since, in 1960, the Council declined to accede to the Soviet claim that Council approval was needed for what the U.S.S.R. contended was enforcement action against the Dominican Republic. By merely taking note of that action, the Council indicated that it did not regard it as enforcement action. Again, Mrs. Higgins states that the Cuban missile quarantine raised the issue "upon which the United States rested its case before the Security Council . . . whether this action was permissible under the terms of Article 51" (p. 202). Actually, the United States did not rest its case on Article 51. It deliberately avoided resort to Article 51 and doctrines of self-defense and rather relied on the authority of the OAS. Questionable renderings such as these are few. The book is characterized by careful interpretation and a high level of scholarship.

A more minor point still: the book also is characterized by footnotes containing singularly unappealing abbreviations. "Especially" is rendered as "espec." (as at p. 214); "meeting" as "mtg" (as at p. 233); "resolution" as "res." (as at p. 185); "Committee on Foreign Relations" is "Cttee on For. Rels." (p. 77); "Secretary-General" as "S-G" (as at p. 184); and "General Assembly" is "GA" (as at p. 116). The reader gets the impression that Mrs. Higgins wrote her footnotes in longhand and carried over the consequent student shorthand to the printed text unchanged. While this would be understandable, the printing by the Oxford University Press of such abbreviations is less so.

Mrs. Higgins wrote her book at the suggestion of Mr. Elihu Lauterpacht of Cambridge University and under the guidance of Professor Myres McDougal of Yale and Mr. Oscar Schachter of the United Nations Secretariat and Yale. The work is of a quality associated with those three leaders of international legal thought and action. It would be hard to give it higher praise.

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