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Bishop: General Course of Public International Law, 1965

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GENERAL COURSE OF PUBLIC INTERNATIONAL LAW, 1965. By *William W. Bishop*. 2 Hague Academy of International Law, Recueil des Cours. Leyden: A. W. Sijthoff. Pp. 328. 1965.

The General Course of Public International Law is delivered annually, in fifteen lectures and over a three-week period, at the Hague Academy of International Law. It forms the backbone of a program which also includes a number of five-lecture courses on a variety of specific topics. It is given alternately by distinguished international lawyers from the common-law and the civil-law worlds, and thus provides an excellent opportunity for reflections on significant trends in the evolution of international law. The choice is between a compressed survey of the entire field of international law and the selection of a certain number of topics and problems that appear to the lecturer to be of special significance. Most lecturers veer between the first and the second alternatives. In the present reviewer's opinion, the selective critical treatment of specific fields and aspects vital to the evolution of international law is clearly preferable.

To the American student of international law, the course offered by Professor Bishop, and his approach to various significant problems of contemporary law, is of particular interest, since Professor Bishop, one of the most distinguished teachers of international law

in the United States, is also the author of *Cases and Materials on International Law*, a book that has for a number of years held a pre-eminent position in the teaching of international law in American universities. The present reviewer has been among its users for a number of years, a grateful but not an uncritical user. For all its technical and pedagogical excellence, Bishop's *Cases and Materials* does not, in the present reviewer's respectful opinion, sufficiently indicate the profound changes in both the vertical and the horizontal scope and structure of international law that have occurred, particularly during the last generation. It is therefore of particular interest to follow Professor Bishop's approach and line of thought in the present course of lectures, since this is likely to give some indication of his approach to the next edition of his *Cases and Materials*. For American law teachers, the opportunity given by the Hague Academy courses, and particularly by the general course, is all the more to be welcomed, since today the complete dominance of the casebook and the corresponding atrophy of texts and treatises greatly reduces the opportunities for the systematic exposition of any major branch of the law. The growing habit of interspersing cases, statutes, and other materials with introductory notes and comments is no substitute for the systematic exposition of a subject which gives the author the opportunity for both a systematic analysis and a coherent presentation of his own views.

Since Professor Bishop's approach in his general course is closer to the first than to the second alternative—that is, it is an attempt to survey briefly the major topics usually covered in a course on public international law—he has obviously not been able to go in depth into the many challenging problems that he poses. It is nevertheless evident, especially from his introductory lecture, that Professor Bishop fully accepts some of the major new perspectives and challenges of contemporary international law. Among the most notable of these are the expansion of the subject matter of international law as analyzed by Jessup, McDougal, Jenks, Röling, and others; the political foundations of international law, discussed in a book of this title by Kaplan and Katzenbach; the increasing importance of the international law of co-operation, with the attendant partial shift from punitive sanctions to sanctions of nonparticipation, as suggested by the present reviewer; and the various impacts of an ideologically and economically divided world on the international legal order, as described in Oliver Lissitzyn's short book on this subject. At this point a note of regret may be appropriate with regard to Professor Bishop's almost exclusive use of British and American writers. The Hague Academy is the world's leading international center of international law, and attracts students from all over the world. It offers a unique oppor-

tunity to compare the thought of common-law and civil-law writers, especially in a field which by definition should know no national boundaries. The work of such writers as de Visscher, Reuter, Bastid, Ago, and other contemporary European authors springs to mind. Some of them are mentioned in the bibliography, but they do not appear to have exercised any notable influence on Professor Bishop's thinking.

Professor Bishop's achievement in surveying, briefly but lucidly, the major areas of international law is remarkable. The brilliant short section on reservations to treaties and the lucid discussion of state responsibility, and, in particular, of the contemporary problems of expropriation say a great deal in brief compass. Some other sections are very sketchy: barely more than one page is given to the problem of interpretation of treaties, a subject recently treated in a full-length book by Professors McDougal, Lasswell, and Miller. Given the increasing importance of treaties, as against custom, in contemporary international law, and considering the paucity of judicial decisions, the problem of interpretation assumes cardinal importance and has a complexity which is barely indicated in Professor Bishop's brief observations on this subject.

The principal gap in the author's *Cases and Materials* is the rather sketchy treatment of international organization as a major instrument for developing contemporary international law. International organizations are mentioned in the context of international legal personality. But apart from that, hardly anything is said about the enormous influence which the various types of international organizations—from the United Nations to the European Communities, from the World Bank to GATT—have had on the development of the modern international, constitutional, and administrative law, on the evolution of new international techniques of decision-making, and on the expansion of the horizons of international law. To a large extent, the future of international law is bound up with the future of international organization, and particularly with the gradual strengthening of executive powers and decision-making functions, such as are at present enjoyed only by the international financial agencies and, to some extent, the European Economic Community.

One might also have hoped for some treatment of the increasingly important and complex field of international economic law. Professor Bishop does discuss, in this context, the United States bilateral commercial treaties, and he makes an occasional mention of concession agreements. But the decisive importance of international economic transactions, either between states or between states and private investors, for both the substance and the procedures of international law is not sufficiently stressed. On the other hand, Professor Bishop

fully deals with the broadening of contemporary sources of international law, including the significance of general principles and of declaratory resolutions.

It is, of course, impossible to treat all or even many of these matters in the framework of a course of fifteen lectures unless, as would be the present reviewer's preference, certain crucial topics and perspectives are singled out for treatment, and the less controversial subjects omitted. The students have, after all, a multitude of texts at their disposal, not to speak of a growing number of previous general courses published in the *Recueil des Cours*. However, Professor Bishop's numerous students, and the vastly greater number of his indirect students—the users of his *Cases and Materials*—will be delighted with the openness and freshness of his approach, and with his readiness to accept the continuous challenge of international law as a discipline that is changing and expanding with the social needs and pressures of the times. Professor Bishop's cautious optimism about the future of international law is well summarized in the concluding passage:

We can look forward to an international legal system in which the law is likely to be far more intense and to cover many more aspects of life, as between members of the same group, than in inter-group relations. Here, between like-minded nations, we shall probably see the greatest growth of bilateral and regional treaties, and international organizations. But despite their differences in needs and outlooks, states of all three major groups referred to (and of the many sub-groupings which might be set up with a more accurate description than the perhaps overemphasized tri-partite division) do have many common needs. Not the least of these is an international law;—"for co-existence," if we may alter slightly this much discussed title, since under present conditions all need international law in order to continue to exist together on this planet. Gradually statesmen, lawyers and ordinary citizens are coming to recognize this need.

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