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Whiteman: Digest of International Law

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RECENT BOOKS

DIGEST OF INTERNATIONAL LAW. Edited by *Marjorie M. Whiteman*. Washington, D. C.: U. S. Government Printing Office. Vol. I, 1963. Pp. x, 996. \$4.25; Vol. II, 1963. Pp. v, 1330. \$5.25; Vol. III, 1964. Pp. iv, 1261. \$5.25.

In these first three volumes of what will probably be a sixteen-volume work, Dr. Marjorie M. Whiteman, Assistant Legal Adviser of the Department of State, shows that this digest of international law will prove an invaluable source for all who wish to keep abreast of current thinking and practice in the field. It is, indeed, a worthy successor to the famous Moore¹ and Hackworth *Digests*,² published in 1906 and 1940-44 respectively. Like those predecessors,³ it is an official publication of the Department of State. It brings together material found in the practice of the United States Government (using both previously published documents and manuscript records), judicial decisions (American, foreign, and international), extracts from books and articles (both American and foreign), documents of the United Nations and other international organizations, and whatever else might be useful in painting a picture of current developments in international law. Since the primary sources of international law are acknowledged to be custom and treaties, the importance of such a work is obvious in view of the light it casts upon customary international law. Though texts of treaties are easily obtainable, customary international law is far more difficult to find. In addition to its record of customary international law, the book is of great value for what it shows about the views of publicists and judicial decisions dealing with international law; together with "general principles of law recognized by civilized nations," these are the other sources of international law to which those working in the area must turn.

Pointing out her basis for selection of material, the author says:

"The inclusion in this work of a particular quotation from or other reference to material—or its omission—is not to be construed as necessarily indicating approval—or disapproval—of a certain viewpoint or statement. In numerous instances a selection of differing opinions (including those of publicists) is

1. MOORE, INTERNATIONAL LAW (1906).

2. HACKWORTH, INTERNATIONAL LAW (1940-44).

3. For the sake of completeness, one should also mention the *Digest of the Published Opinions of the Attorneys-General, and of the Leading Decisions of the Federal Courts, with Reference to International Law, Treaties and Kindred Subjects*, prepared in 1877 by Assistant Secretary of State John L. Cadwalader; and the three-volume *International Law Digest* published in 1886 and prepared by Dr. Francis Wharton, who as "Chief Examiner of Claims" was the principal law officer of the Department of State. The Wharton material was in large part incorporated in the later *Moore Digest*.

set forth in order that a broader understanding of the matter may be had. In the light of events and a developing international law, presentation of various viewpoints may conceivably be of assistance to the user."⁴

Just as the Hackworth *Digest* made no effort to repeat the material already published in Moore, so the Whiteman *Digest* does not repeat what was contained in Hackworth, but deals primarily with events since 1940. For complete coverage of United States practice and positions since 1776, all three *Digests* must be used. However, for an account of the present-day scene, the Whiteman *Digest* will, when completed, largely suffice. It should also be observed that new developments have resulted in a somewhat different distribution of material, though the general plan of organization remains the same. Perhaps more noticeable is the fact that in the new *Digest* the emphasis in approach and scope is less peculiarly American, and more truly *international*, than that of the Moore and Hackworth works.

The extensive participation of other government agencies alongside the Department of State in the conduct of our foreign relations during World War II and following, the enormous growth of international organizations of many types, the rapid increase in the number of countries with whom we carry on foreign relations, the increased intensity of United States participation in international affairs since 1940, and the growing number of subjects formerly confined chiefly within national boundaries which have now become ordinary matters of international relations—all increase the amount of raw material to be dealt with. These factors also help explain why the size of this *Digest*, covering a scant quarter-century, will be as large as the combined Moore and Hackworth *Digests*, which spanned the years from 1776 to 1940. These factors have also greatly increased the labor of gathering, sifting, and preparing material.

To the preparation of this *Digest*, Miss Whiteman has brought a busy life-time of practical experience in the Office of the Legal Adviser of the Department of State, coupled with wide reading and distinguished writing of her own.⁵ The greater part of the work of finding the scattered materials, selecting those which would be most useful, and synthesizing them into a usable and readable book has been her own and that of the able assistants whom she directed on the project. This accomplishment is all the more remarkable when it is remembered that the author has simultaneously carried a heavy load of day-to-day legal work in the Department. Commencing with

4. P. iv.

5. See 1-3 WHITEMAN, DAMAGES IN INTERNATIONAL LAW (1937-1943); Whiteman, *Conference on the Law of the Sea—Convention on the Continental Shelf*, 52 AM. J. INT'L L. 629 (1958).

the preparatory work in the Department for the Hague Codification Conference of 1930, Dr. Whiteman has closely devoted herself to international law as it has been applied throughout the years. Next to Judge (then Legal Adviser) Green H. Hackworth himself, she carried the largest responsibility in the preparation of the classic Hackworth *Digest*. Although formal work on the new *Digest* only began in 1957, when the Department's Legal Adviser, Herman Phleger, asked Miss Whiteman to undertake the task, in a very real sense all of her work in the Department was preparation for this assignment. She has produced a thoughtful, exhaustive, and interesting work.

Volume I contains two chapters. The first, labeled "International Law," deals with the general nature of international law, the subjects of the law, its sanctions, its sources, its relation to "municipal" (*i.e.*, national) law, and the development and codification of international law. The other chapter, entitled "States, Territories, and Governments," discusses various kinds of states, the birth of some fifty new states, the British Commonwealth and French Community, mandated territories, the trusteeship system of the United Nations, the distinction between state and government, and such peculiar types of governments as governments-in-exile, insurgent and revolutionary governments, and military governments.

Volume II contains three chapters. These deal with recognition of states and governments, including recognition of belligerency and insurgency, nonrecognition, and effects of recognition and nonrecognition; with state succession; and with territorial problems, including acquisition and loss of territory, problems of polar regions, air space, and the legal problems of outer space.

Volume III deals with international boundary problems, the regime of international rivers (with particular attention to non-navigational uses and diversion of waters, in addition to rights of navigation), and inter-oceanic canals having special regimes (such as Panama, Suez, and Kiel).

Miss Whiteman's attempt to show the changing state of international law is indicated in her prefatory statement:

"To reflect the status of international law in this our time is to reveal a considerable evolution in both its range and content. The volumes reflect a moving scene. At times, in fact, during the preparation of manuscript for this *Digest*, it has seemed that international law would not jell long enough for accurate reflection of its current status.

"While international law is comparatively clear and definite in many of its aspects, in others it is unclear and uncertain. It may be that a particular norm or principle, far from being at its zenith, may be either in its ascendancy or in its descendancy

as international law. Further, the degree of acceptance of a particular practice may vary within a particular period.

"The author has not attempted to adopt the role of prophetess. She has endeavored to treat of materials in an objective fashion, leaving it, in the main, for other determination whether a particular practice or principle of international jurisprudence is in process of development or jettison."⁶

Enough has already appeared in these first three volumes to make us eagerly await publication of the rest. From this set the lawyer, the student, the scholar, and the practitioner of foreign affairs will be able to find much that was previously unpublished concerning United States practice. He will also have an invaluable selection of the published decisions and documents and views of commentators. The *Digest* gives us at one and the same time the raw material of international law, a guide to its development, and a picture of its present status. Publications of this type are among the most needed working tools of international law. They form a vital part of the task, early entrusted to the United Nations International Law Commission, of finding "Ways and Means for Making the Evidence of Customary International Law More Readily Available." The lead taken by the United States in this respect through our Moore and Hackworth *Digests* has now been followed by France with the publication of a digest of French practice in international law, while work is under way on similar British, German, Swiss, and other national digests. As these new digests are prepared and published to show the practice of various European (and, we hope soon, non-European) countries, the Whiteman *Digest* keeps the United States in the lead with its completeness, scholarship, and practical usefulness.

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6. Pp. iii-iv.