

This book follows the practice of counsel, courts, and treatise-writers in spreading upon the record selected pieces of the *ratio decidendi*, and never once attempts to set forth what the Court actually and specifically decided. It is possible to do both. The Anglo-Norwegian Fisheries Case is distributed here under State Practice (pp. 102-107) and Territorial Waters (pp. 124-149), the actual issue being whether the Norwegian decree of July 12, 1935, violated international law in excluding British fishermen from certain waters. All the reasoning related to fishing rights as distinct from ordinary territorial water jurisdiction and high sea limits. The *dispositif* declared the decree and its base lines delimiting a fishing zone "not contrary to international law" because of geographical characteristics, historical practice in delimitation, and notoriety of the Norwegian practice. Each condition is set forth in quotations which stand unmodified by the prime fact that only use of the waters for domestic fishing rights was involved. The Court, however, more often than other tribunals, states its conclusion in its reasoning and only repeats it in the *dispositif*. But the line between what the Court thinks and what it decides remains blurred.

The bibliography of 1,725 items is selected from the lists published in the Annual Reports of the Permanent Court of International Justice and the Yearbooks of the International Court of Justice, on which 390 titles are exhibited.

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The International Court of Justice: Its Role in the Maintenance of International Peace and Security. By Oliver J. Lissitzyn. Foreword by H. Lauterpacht. New York: Carnegie Endowment for International Peace, 1951. pp. xvi, 118. \$1.75.

In this tightly compressed and thought-provoking little book, sixth in a series of United Nations Studies published by the Carnegie Endowment for International Peace, Professor Lissitzyn seeks to appraise the rôle of the International Court of Justice "as an instrument for the maintenance of international peace and security." Taking the maintenance of international peace and security as the principal function of the United Nations, Professor Lissitzyn organizes the "means" by which this end is sought into three interrelated "categories": (1) the "creation and maintenance of conditions conducive to peaceful relations among states and to a general feeling of security"; (2) "peaceful settlement or adjustment of disputes and situations likely to disturb friendly relations between states"; and (3) "effective action to prevent or suppress breaches of the peace" (p. 3). With respect to each of these "means," the author reviews, with a detailed analysis of decisions and factors affecting decision, the performance and promise of the Court, treating the old and new courts as one continuous institution.

The contribution of the Court to "conditions conducive to peaceful relations among states" is found in its "development" of international law. International law is conceived as the "pattern of standards of conduct generally recognized by modern states as governing their mutual relations" (p. 4), and its primary function, as in any system of law, is not merely to provide "rules for the settlement of disputes," but also "to prescribe and enforce standards of conduct deemed to be necessary or conducive to the preservation and advancement of the community" (p. 6). In the absence of a world legislature there is need for courts to take initiative in "exposing deficiencies" in existing standards and in formulating new standards. Many factors have made the International Court of Justice an effective instrument for such development of international law and the Court's contributions to many fields are recited (p. 25). The cases on *Reparations for Injuries Suffered in the Service of the United Nations* and the *Corfu Channel* are emphasized as particularly happy examples. Despite many well-known factors limiting "performance of the Court's law-developing function," it is affirmed that this has perhaps been its "greatest contribution" to peace and that "the creation and successful functioning of a standing international tribunal has introduced a new and potentially powerful factor in the shaping of international law" (pp. 3, 38).

The rôle of the Court in the peaceful settlement of disputes is presented as modest. The Court has advantages over arbitral tribunals both in "the standards and techniques applied in the settlement of disputes" and in "organization, composition and facilities" (p. 43). In applying the standards and techniques of international law the Court fulfills "reasonable expectations" and is "thus conducive to stability and security" (p. 44). The procedures, composition, continuous functioning, and facilities of the Court give the international community confidence in "the impartiality, thoroughness, and ability with which it performs its tasks" (p. 48). A review of the cases shows that the Court has been helpful, in both "contentious" and "advisory" proceedings, in the settlement of disputes with a large admixture of "political" elements. It must be recognized, however, that, with its present bases of jurisdiction, the Court can be helpful only in the solution of such conflicts as the parties are willing to have terminated by judicial techniques. In the world community, as in other communities, there remain "areas of interest" in which conflicts can be "settled only by the matching of economic and political strength" (p. 72). In addition, the rôle of the Court is further weakened by the inadequate development of international law and "by the absence of organized enforcement of the law by superior power" (p. 73). The "effective adjudication of international disputes on an obligatory basis" must await "the development of a sentiment of world community" and "the gradual transference

of effective power and authority over individuals from the governments of particular states to a supranational agency" (pp. 101, 102).

With respect to the "enforcement of peace," Professor Lissitzyn finds that the Court has little present rôle or future potentiality. Though he recommends "serious attention" for proposals "which favor judicial review of the actions of the political organs of the United Nations," he doubts the merit of proposals "which envisage a system of world security based on judicial determinations of breaches of the law" (pp. 103, 104). The "community of states," in its present development, is not comparable to "communities of individuals organized into states"; there is too little "common understanding of what is forbidden"; and it is too difficult to apply coercion to political entities, as contrasted with individuals (pp. 105, 106). The contribution of the Court to the maintenance of international peace and security must, in sum, be largely confined to contributing to "the necessary shifts in primary allegiances and habits of thought" required for a deeper sentiment of world community (p. 109).

Professor Lissitzyn has given us a very sane and balanced book, informative and stimulating for beginner and initiated alike, and justifying in considerable measure, despite its pessimism on major problems, Professor Lauterpacht's Foreword appraisal that the Court has probably "proved the most successful institution of the United Nations." It is perhaps too much to ask for more. One senses, however, that Professor Lissitzyn might some day do more. In his text (p. 58) he recognizes that law is properly conceived as "the formalized expression of the long-range policy" of participants in a community process, and in footnotes and text he recognizes that there are participants in the world power process other than nation-states. His threefold categorization of the "means" by which international peace and security are sought is much too mechanical and simple a device to catch the rich variety of institutional practice by which the many participants (individuals, nation-states, international governmental organizations, political parties, pressure groups, and private associations) in the world power process formulate, prescribe, and apply policy for many objectives, all of which vitally affect "international peace and security." Though, as Professor Lissitzyn insists, "no thorough study based on concrete historical data of the relation between international law and international politics has ever been made" (p. 3), it is to be hoped that he may eventually project his studies of the Court into this richer context and consider whether the opening of the Court to other participants, and the devising of appropriate new sanctions, might not do much to enhance its potentialities for contributing to the major objective of the United Nations and all free peoples.

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