

Louisiana Law Review

Volume 20 | Number 3

April 1960

THE USE OF INTERNATIONAL LAW, by
Philip C. Jessup.* Pp. xiii, 164. University of
Michigan Law School, 1959.

Joseph Dainow

Repository Citation

Joseph Dainow, *THE USE OF INTERNATIONAL LAW*, by Philip C. Jessup.* Pp. xiii, 164. University of Michigan Law School, 1959., 20 La. L. Rev. (1960)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol20/iss3/17>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Book Reviews

THE USE OF INTERNATIONAL LAW, by Philip C. Jessup.* Pp. xiii, 164. University of Michigan Law School, 1959.

Within the past ten years there has been a great expansion of active interest in international law among the American law schools. Many people were jostled out of a comfortable isolationism by the events of the war; a much larger number have been influenced by more recent events to recognize not only the existence but also the importance of international law. Even among hard-boiled law students during this period, the earlier majority of cynics has been replaced by a very substantial group of adherents.

Of course, many reasons can be given by way of explanation but one of them is Professor Philip C. Jessup. By his talks and his writings, by his realism and his scholarship, and most of all by a deep faith which communicates itself, he has been a great leader and teacher. With such practical experience as legal advisor to federal government officials since 1924, as Deputy Chief of the United States Mission to the United Nations, and as Ambassador-at-Large for the negotiation and settlement of some of our most difficult post-war problems in Europe, Philip Jessup cannot be considered as an academician in an ivory tower. However, even while he mingles in the international market place, he also preserves some of the idealism of the professor. His latest book reflects well both of these characteristics.

As a realist Jessup agrees that international law is not as effective a legal system as the national legal systems. (p. 9) On the other hand, an expression of his faith is found in the assertion that instead of putting so much effort into proving the existence of international law, it is "more significant to prove that it has a future." (p. 2) The combination of both attributes makes the framework and pattern of his latest book.

The five lectures herein comprised were delivered as the Thomas M. Cooley Lectures at the University of Michigan Law School in February 1958. In the first lecture, Jessup reexamines

*Hamilton Fish Professor of International Law and Diplomacy, Columbia University Law School.

“the international community” and points out its development from a restricted “family of nations” or “society of states” (p. 20) to its present global membership. The United Nations as well as so many other international organizations have a legal personality; they deal with each other and with traditional “states” and make treaties. It is also becoming more acceptable to consider individuals as “subjects of international law” although they are not “members” of the international community. (p. 22) Realistic and at the same time constructive, Jessup concludes this lecture with a plea for a modest objective. The inability of international law to solve the great political issues of the whole world should not detract from its usefulness within selective communities “identified with regional or functional organizations or more broadly with groups of states which share generally a philosophy of respect for law.” (p. 29)¹

Jessup's two main points are: (1) international law is playing a useful role, and (2) its potentialities have not been realized. (p. 29) It is like looking at a glass with some water in it — from above it looks half empty; from below it appears half full. This affirms that there is content, and at the same time it is an exhortation to add more.

The second lecture is entitled “Procedures of Settlement.” Just as among individuals and in national law there are conflicting interests and differences of opinion which result in disputes, so there are the international disputes. Peaceful settlement in international law is predicated upon consent of the parties rather than compulsory jurisdiction of tribunals; yet, to a more appreciable extent than is generally realized, there has been a good deal of peaceful settlement through various means such as good offices and mediation as well as by arbitration and adjudication. However, there is an impressive amount that can still be achieved. Jessup suggests that lessons can be learned from such areas of national law as labor relations, where the great bulk of settlements are worked out amicably, and that improved methods of fact-finding can develop better processes of decision.

The third and fourth lectures deal with the roles of national courts² and international courts,³ respectively, and Jessup dis-

1. *E.g.*, NATO, SEATO, European Coal & Steel Community, Euratom, The Common Market, the countries within the (British) Commonwealth, and so forth.

2. This includes an analysis of cases in the Supreme Court of the United States from 1927 to 1957, the United States Court of Claims, national claims commissions, also cases in British courts.

3. Including arbitration, arbitral tribunals, mixed commissions, permanent courts.

cusses the various types of problems and kinds of tribunals in each category. The record of performance of the use of international law in the former is a very considerable one; and even in the latter, cases of non-compliance are very rare. Without exaggerating past achievements and without denying the shortcomings, he makes a strong case for enlarging what is still necessarily a consent jurisdiction for international tribunals. As a first important step in that direction, he urges strongly that the United States delete from its acceptance of the International Court's jurisdiction the objectionable reservation of its own determination of what is a matter of "domestic" concern. This example would inspire more confidence by other states in the court, and the example would probably be followed. It is encouraging to note that, both before and especially since the delivery of these lectures, there have been many strong expressions along the same line not only from writers and scholars but also from the American Bar Association and even from the President of the United States.

In the final lecture, Jessup looks ahead — realist, optimist, and constructive planner. He visualizes the new international community together with its newly developing types of international organizations and the new kinds of international problems which are concomitant with scientific discoveries and the penetration of space. He is keenly aware of the political obstacles which interfere with the appropriate international use of new scientific knowledge, but even in terms of national interests there is still a "balance of advantage" to strengthen and extend international law. In order to establish a law-abiding international community, there must be some directed evolution of "the outworn concept of absolute sovereignty above the law." (p. 152) Jessup's hopes and faith are expressed in a closing statement that "the new frontiers of science present such challenging opportunities to serve simultaneously the national interest and the common good that one might expect the decision-makers, instead of being frozen with horror by the possibilities of holocaust, to be stimulated by the constructive potentialities to pioneer boldly." (p. 154)

Throughout the book the emphasis is on the *use* of international law, as its title indicates. The three middle lectures, making the bulk of the work, are devoted to the use of interna-

tional law in the various phases of the peaceful settlement of international disputes. Naturally, the highlighted area of any legal system is the litigation, and the most sensational issues arise where the rules are least developed. However, just as the vast part of legal relationships in a given society are consistent with and patterned on the norms established by law, without resulting in disputes or litigation, so there is a vast part of international law which is followed and observed without creating many international disputes. Much of this is customary international law; and there is an ever-increasing amount of international agreement both bilateral and multilateral. The work of the United Nations International Law Commission which led to the adoption of several Conventions at the 1958 Geneva Conference on the Law of the Sea, and the signing in Washington of the 1959 Convention on the Antarctic, are among the more striking of recent achievements. While Jessup's book does not emphasize the potential of the use of international law in the field of international agreements, he must not be considered as overlooking or underestimating it. His own personal experience, including the many years he worked with the Harvard Research in International Law, attest his appreciation of its significance.

It was a special privilege to hear these lectures when they were delivered. It is a pleasure to go over them again in their printed form. The book is alive and reads very smoothly. It is replete with factual incidents, yet always related to legal principles. The lay reader will understand it and find it interesting; at the same time it will also be meaningful to scholars and helpful to students. A table of cases and an index make it a useful reference work.

Professor Jessup has drawn on his experience and his insight to give a realistic description of the past and present; his imagination and his faith point the way for the future. It is not enough to say that these lectures were timely and attractive as well as scholarly and encouraging; the expectations were very high and they were thoroughly fulfilled.

Joseph Dainow†

†Professor of Law, Louisiana State University.