

THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS. By Rosalyn Higgins. [London: for the Royal Institute of International Affairs by the Oxford University Press. 1963. xxi + 402 pp. 63s.]

The title of Dr. Higgins' book — *The Development of International Law through the Political Organs of the United Nations* — may seem strange to those purists who regard law and politics as distinct, although, as Dr. Rosenne has already shown, in modern political life the decision to regard a problem as amenable to 'legal' rather than 'political' methods is itself political. The same broad approach is adopted by Mrs. Higgins: "Political considerations must be taken in account when interpreting ambiguous or imprecise legal rules. To insist that every international problem admits of an 'impartial legal answer is essentially a dishonest position. All rules of international law are open to interpretation, and as many of the rules are fluid and unclearly stated, the interpretive element is very great. It is not possible always to choose between alternative interpretations purely on grounds of 'legal correctness'. It is necessary on some occasions to examine the political preferences involved in each alternative, and to decide accordingly. Unless such considerations are taken into account, the growth of international law will be stunted and its content unsatisfactory." (pp. 9-10). It must also be borne in mind that although the Charter is a treaty, and as such a legal document, it is at the same time a political instrument of the highest order used by politicians for political purposes. It is true that state practice forms international law, and, therefore, "the practice of the Organization provides important evidence of the development of the law at a given time" (p. 72). It may be questioned, however, whether in view of the fact that there are now more new than original members, it is any longer possible to say, as does the learned author, that such practice "may help to clarify the intention of the signatories of the treaty" (p. 72).

In view of the author's clear realization of the interplay between law and politics, especially in the application of the Charter, it is surprising to find her subscribing to the Kelsonian view that collective self-defence is an incorrect concept, for "defence of the self cannot be collective" (p. 208). Equally, her comment upon the Security Council's attitude to the British despatch of troops to Kuwait shows more legal idealism than political assessment: "the failure of the Council to approve or condemn the United Kingdom implies that this is an example of an act which is legal, but which may prove in the circumstances, and *at the discretion of the Security*

*Council*, to be impermissible as a 'threat to the peace' under Article 39 of the Charter" (p. 212, italics added). In a book of this nature, however, differences of interpretation and emphasis are bound to arise. What is important is the contribution Dr. Higgins has made and the light she has thrown upon *The Development of International Law through the Political Organs of the United Nations*.

The learned author has taken as the basis of her study the problems of statehood, domestic jurisdiction, recognition and representation, the use of force and the law of treaties. She shows beyond any shadow of doubt either that the political organs of the United Nations have in these gone their own way without undue concern for the restrictions of the established law, or else that they have made a concrete contribution to the development of that law. Since the reviewer believes that international law, like any system of law operating in society, must be vital and adaptable, and accepts the view that the law which was developed by nineteenth century empire-ruling states may not be adequate in a twentieth century anti-colonial environment, he prefers to agree with Dr. Higgins that the United Nations is making a real contribution to the adaptation and development of international law. He feels, however, that at times she seeks for evidence of a trend towards legality when, in fact, it would be more realistic to base one's judgment on political reality with its apparent condonation of illegality. The difference in attitude is perhaps clear from her comment that "while the approval of sheer numbers in the Assembly cannot make an illegal treaty legal, it none the less does lend evidentiary weight of legality to agreements whose constitutionality is open to conflicting interpretations" (p. 282).

This is the type of work which could easily lend itself to a review made up of citations indicating issues on which the reviewer agrees or violently disagrees with the approach and views of the author. To do so in this case would denigrate from the value of the work and the respect which Mrs. Higgins' scholarship demands. It is a volume which may be readily recommended to lawyers and political commentators, to students and research workers alike. Would that more of the writers upon the practice of international law today showed the high sense of realism evidenced by this author when she writes: "The maxim *ex factis jus oritur* has perhaps come to have far-reaching importance in the United Nations, which comprises, to a degree that the League never did, a membership vitally concerned with problems of transition from one status to another. Law being a product of social reality, it cannot afford to lag too far behind the facts. While individual illegal acts are not to be condoned, *de facto* recognition of them may be considered essential after a period of time. Over the long run the *status quo* will become adapted in this manner." (p. 140).