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Book Review

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BOOK REVIEW

THE RELEVANCE OF INTERNATIONAL ADJUDICATION. By Milton Katz. Cambridge: Harvard University Press 1968. Pp. 161. $4.95.

It seems to be a corollary of our extremely troubled state of international affairs at the present time that some thoughtful writers on international law address themselves to basic issues rather than specific rules. The dangerous condition of our diplomatic relations serves to emphasize the need to reexamine the nature of international law and its role in the world today. In 1967 Professor Louis Henkin, of Columbia Law School, published a work entitled *How Nations Behave*.[1] In addition to many other broad deliberations, he sought to examine the role of law in the Suez Crisis, the case of Adolf Eichmann, and the Cuban Quarantine. This year Professor Milton Katz, of Harvard Law School, has published a book entitled *The Relevance of International Adjudication* with the purpose of elucidating broadly both the scope and the limits of international adjudication.

Professor Katz' volume is based on a series of six lectures which he gave during July 1967 at a special program of instruction for lawyers conducted in Honolulu, Hawaii, by Harvard Law School. Within the compass of this slender tome (161 pages), Professor Katz attacks basic problems and avoids consideration of technical points — though the latter, of course, do exist in the process of international adjudications.[2] Essentially, Professor Katz devotes his efforts to a thorough consideration of two large disputes in the world today: the Cold War dispute and the disputes between non-self-governing peoples and established states. It is Professor Katz' thesis that there is a difference between the two disputes in what he calls their "ultimate amenabiltiy"[3] to international adjudication.

Elaborating upon the international problems involved and drawing analogies to the development of our constitutional law, Professor Katz concludes that at present the Cold War disputes fall beyond the limits of international adjudication. In his analogy to domestic problems, he shows that, as at present in the Cold

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[1] L. HENKIN, HOW NATIONS BEHAVE; LAW AND FOREIGN POLICY (1967).

[2] This reviewer can attest to the existence of technical points in international adjudications. As counsel for the United States in the Interhandel Case, [1957] I.C.J. 105; [1959] I.C.J. 6, this reviewer had occasion to consider problems such as the indication of interim measures, declaratory judgment, and preliminary objections.

[3] M. KATZ, THE RELEVANCE OF INTERNATIONAL ADJUDICATION 145 (1968).

War disputes, legal arguments were advanced in the pre-Civil War period by the national government and by some of the southern states. Professor Katz expresses the view that in the 1860's the right of secession would not have been a proper question for adjudication in a suit by the United States, but that in view of later opinions the Supreme Court might have reached an opposite conclusion at some later period.[4] Similarly, the author suggests that Cold War disputes, while now outside the proper limits of international adjudication, in the future might become subject to peaceful solution by international adjudication as the result of an international give and take.

A large portion of the book deals with the issue of disputes between non-self-governing peoples and established states. A primary example used is the long and intricate South-West Africa dispute before the United Nations and the International Court of Justice.[5] Professor Katz reviews in full detail the long history of legal disputes concerning the treatment of the mandated territory of South-West Africa by the Union of South Africa. In addition to the many discussions before other international legal bodies, the author traces the legal issues involved in the three advisory opinions of the International Court of Justice[6] and in the two opinions rendered by the Court in its contentious procedure.[7] The author is not concerned with the many intricate procedural problems of international adjudications, numerous though they were, especially in the last proceeding of the International Court of Justice.[8] Instead, his principal concern is with the possible relevance of international adjudication as concerns the treatment of native populations. On a theory that the petitioners lacked a "legal right

[4] In support of his thesis Professor Katz discusses in some detail the Supreme Court decisions in United States v. Texas, 143 U.S. 621 (1892), and Texas v. White, 74 U.S. (7 Wall.) 700 (1868), the former affirming the power of the United States to sue a state, the latter affirming that the question of the indestructibility of a state was a justiciable question. M. KATZ, *supra* note 3, at 24-28.

[5] M. KATZ, *supra* note 3, at 41-144.

[6] Advisory Opinion on International status of South-West Africa, [1950] I.C.J. 128; Advisory Opinion on South-West Africa — Voting Procedure, [1955] I.C.J. 67; Advisory Opinion on Admissibility of hearings of petitioners by the Committee on South-West Africa, [1956] I.C.J. 23.

[7] South-West Africa Case (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, [1962] I.C.J. 319, and the ill-fated opinion of July 18, 1966, South-West Africa Case, Second Phase, [1966] I.C.J. 6.

[8] South-West Africa Case, Second Phase, [1966] I.C.J. 6. In a departure from the normal procedure before the Court, a lengthy array of witnesses and experts, called by the government of South Africa, was heard in public sittings which lasted from March 15 to July 14, and from September 20 to November 29, 1965.

or interest regarding the subject matter of their claim,"[9] relief was refused, this result being reached by a severely divided Court. Recognizing this deplorable result, the author engages in a most interesting speculation that by a switch of a single vote the institution of legal adjudication might have found a most useful place in that area.[10] Professor Katz concludes that, different from Cold War disputes, the South-West Africa type disputes, certainly in more recent contexts, possess the essential characteristics of "ultimate amenability to adjudication."[11] Cold War disputes basically are not subject to adjudication because the standards to be applied "boil down to the objective of peaceful settlement itself,"[12] whereas in the South-West Africa dispute an applicable standard was established "by the common consent of the states concerned."[13]

In essence the book evidences optimism in its belief that, within proper limits, international adjudication occupies a valuable role in the present world crisis. Whether or not the reader shares this optimism, the book sets forth a challenging and thought-provoking study. Of course questions can easily be raised by any dissenter: Is the optimism borne out by the actual facts? Does not the debacle in the South-West Africa case demonstrate the futility of international adjudication? Is not Professor Katz' hopeful analogy to the incidents of our constitutional law history far-fetched and perhaps ill-advised? In particular, in view of the different constitutional law developments in the countries of the world, is it proper to single out American constitutional law history as an analogy to the growth of international law?

Whatever questions may occur to the reader, the present book undoubtedly is of major importance. It deserves most thorough consideration.

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[9] South-West Africa Case, Second Phase, [1966] I.C.J. 6, 18.

[10] M. KATZ, *supra* note 3, at 127-42.

[11] *Id.* at 145-55.

[12] *Id.* at 147.

[13] *Id.*

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