

## BOOK REVIEW

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The inaugural volume of the *Michigan Journal of International Law* has been published in three parts starting with the winter 1989 and ending with summer 1989 issues. Even though the volume number starts from 10, it is the first issue of the journal in this particular format. Previously it was published as the *Michigan Yearbook of International Legal Studies* and used to come out only (in 'Yearbook style') once a year. Beginning from Volume 10 No. 1 issue, not only the name but also the format and style have been changed and the new journal will henceforth be published three to four times a year.

The journal, like other legal periodicals published by the University of Michigan Law School, such as, *Michigan Law Review*, *Michigan Journal of Law Reform*, is entirely student - edited. It is only fitting that the University of Michigan Law School - one of the leading centres for international and comparative law teaching and research in the United States - should now come up with a journal devoted exclusively to those areas of law. It will surely join ranks with other prestigious student - edited international law periodicals of various American Law Schools such as *Harvard International Law Journal*, *Yale Journal of International Law*, and *Virginia Journal of International Law*.

It is even more appropriate that the first two parts of the journal are devoted to the memory of the late Professor William W. Bishop Jr. who died in December 1987 in Ann Arbor. For about forty years Bishop graced the Michigan Law School with his inspirational presence, his erudite knowledge in and teaching of international law to generations of students and no less importantly with his endearing personality and charm.

The first two parts (Winter and Spring 1989 issues) published in memoriam of William W. Bishop Jr. contain ten tributes

and 31 articles written by a broad range of scholars on various topics dealing with international and comparative law. Part III of the journal contains three articles and six student written notes. Almost all the authors who contributed to the two part memorial issues are either former colleagues or former students of Professor Bishop. The authors hail not only from law schools, law firms and public organizations in the United States but also from such countries as Italy, the Netherlands, the Phillipines, the Federal Republic of Germany, Canada, Austria, Sweden and the United Kingdom.

The articles discuss a wide range of topics in international and comparative law and uniformly reflect a detailed and in-depth knowledge of the issues discussed. The topics covered include (among many others, and for example) relatively technical subjects like anti-dumping law (p. 765, Vol. 10, No. 3) and Anthony D' Amato's brief piece dealing with general but insightful international legal theory ("What does it mean to be an Internationalist?")(p. 102, Vol. 10, No. 1). A few of the other articles concerned themselves with such issues as the use of force, international trade and GATT, state responsibility, treaties, arbitration, human rights law, jurisdiction, United Nations and collective security, disarmament and the International Court of Justice.

The journal also contains some articles dealing with comparative law issues such as John N. Hazard's "Model for a Gorbachev Constitution of the U.S.S.R." (p. 176, Vol. 10, No. 10) and Miriam Defensor Santiago's "Some issues of Immigration Law in a Developing State" (p. 251, Vol. 10, No. 1) (Phillipines). The article about the Gorbachev Constitution was probably written some time during mid to late 1988 after the extraordinary Soviet Communist Party Conference in June 1988 where Gorbachev proposed his "presidential constitution" but well before the tumultuous events sweeping across Eastern Europe in the Fall and Winter of 1989-90 where "constitutionally mandated" one party system of governments in that region were effectively nullified by various peoples' power movements. Needless to say Professor Hazard himself could scarcely have guessed the disintegration of the Soviet Union and the formation of the Commonwealth of Independent States within two years after the publication of his article. We are now witnessing the changes in the legal and

constitutional structures of the former "peoples' democracies" in that part of the world. Thus Hazard's article would serve as an interesting, timely and ready reference for those who want to assess and project what impact the political changes occurring to Eastern Europe and the (now former) Soviet Union would have on legal institutions in those countries. It would also help to gauge the extent of the influence of "Western concepts of constitutionalism into the conscience of ... Soviet [*sic*] men and women" (and in the Eastern European countries) and contributes much towards ascertaining the significance (or otherwise) of these concepts in the constitutional changes which are now taking place in those countries.

Cynthia Lichtenstein's perceptive extrapolation of some concepts of international human rights law into monetary law in her article "Does International Human Rights Law Have Something to Teach Monetary Law?" (p. 225, Vol. 10, No. 1) deserves the attention and examination of scholars in both disciplines.

George P. Smith II's study of "International Jurisdiction of Mutiny on the High Seas" (p. 277, Vol. 10, No. 1) is infused with light-hearted anecdotes of the romantic period of "pirates, cutlass, cat-o-nine tails" and provides a historical perspective on the subject as well as considered statements about the current status of law in that area.

Eric Stein's article "The United Nations and The Enforcement of Peace" (p. 304, Vol. 10, No. 1) was a revised version of an address given on the occasion of the 600th anniversary of Heidelberg University in 1986 and as such was meant for the general audience; perhaps because of this fact it contains mostly historical reconstruction of events concerning the subject and therefore does not seem to contain as much in-depth analysis and (save the concluding part of the article) projection of future trends as the other articles. The gaps left in Stein's article are to a certain extent and in a related field filled by Burns H. Weston's piece "Law and Alternative Security" (p. 317, Vol.10, No.1). The section dealing with "A Comprehensive Nuclear Weapons Ban" (p. 323, Vol. 10, No. 1) obtains added significance when considered in the light of Mikhail Gorbachev's ground-breaking speech in the United Nations General Assembly on 7 December 1988. Likewise, the section dealing with "A U.S. - U.S.S.R. Non-intervention Regime"

in Weston's article is thought-provoking in the context of the events occurring in Romania and Panama in the closing days of the nineteen eighties and the differing actions/reactions of the Soviet Union and the United States in relation to those events.

If the judgment of the International Court of Justice in the Nicaragua case (1986) led Jonathan I. Charney to write a comprehensive article, "Third State Remedies in International Law", (p. 57, Vol. 10, No.1) one hopes the 1989 United States invasion of Panama (A first State remedy?) for the purpose of bringing Manuel Noriega to "justice" will also give rise to another and equally scholarly analysis of the issues involved from the learned and discerning author. Certainly, the issues concerning Noriega's "drug trafficking", the legality of the American "operation" and its effect on Noriega's trial, as well as the occasional conflict of human rights norms and norms regarding non-interference in the internal affairs of a State would make for an interesting discussion apropos the present day international law and practice of intervention and other "remedies". The Winter 1989 issue contains 16 articles, in addition to the ten tributes dedicated to Professor Bishop.

The Spring 1989 issue of the journal (Vol. 10, No. 2) also contains many articles of interest. There were altogether 13 articles in the Spring issue. The article "Trans-border Data Flow: Do we mean Freedom or Business?" (by Michael Botha, p. 333, Vol. 10, No. 2) concerns itself with the legal issues involving the highly topical subject of telecommunications which is of increasing relevance and significance to the practitioners of international law in this age of informatics.

Richard W. Edwards Jr.'s article "Reservation to Treaties" (p. 362, Vol. 10, No. 2) is in effect an update and continuation of the series of lectures Professor Bishop gave to the Hague Academy of International law in 1961. The author does briefly mention the provision relating to reservations (pp. 381, 384, Vol. 10, No. 2) in the 1982 United Nations Convention on the Law of the Sea, which in modern times approaches that of an almost universal convention being signed by an overwhelming majority of countries in the world. Even though concrete cases have not yet materialised bearing upon possible instances of reservation, especially in the field of deep sea-bed

mining and transfer of technology, it would have made a valuable contribution to this area had the author anticipated some of these issues and dwelt upon some future projections. Bernard H. Oxman's article "The High Seas and the International Seabed Area" (p. 526, Vol. 10, No. 2) while filling in the recent developments in this area does not specifically discuss the possible issue of reservations (or the non-acceptability of reservations in certain provisions) regarding the 1982 Law of the Sea Convention.

Particular mention must be made and credit given to Jordan J. Paust's thoroughly researched, ably argued and substantively sound article on "The Use of Human Rights Precepts in U.S. History and the Right to an Effective Remedy in the Domestic Courts" (p. 543, Vol. 10, No. 2). The "deviant opinions" of Judge Edwards and former judge (and failed U.S. Supreme Court nominee) Bork in *Tel-Oren v Libyan Arab Republic* [726 F. 2d 774 (D.C.Cir 1984)] received considerable and - in this reviewer's opinion - valid criticism from the author. Judge Bork's criticism of the ground breaking decision in *Filartiga v Pena-Irala* [577 F. Supp. 860 (E.D.N.Y. 1984)] was itself commendably and convincingly rebutted by Paust. *Filartiga*, in effect, holds that a private individual who is not a citizen of the United States can sue another individual who also is not a citizen of the United States for fundamental human rights violations such as torture, under the alien tort statute of the United States. The themes and issues raised in *Filartiga* and *Tel-Oren* are also discussed in the students' notes (p. 886, Vol. 10, No. 3). Paust's article as well as the above mentioned students' notes together with Harold G. Maier's "The Authoritative Sources of Customary International Law in the United States" (p. 540, Vol. 10, No. 2) and Louis Henkin's article "Treaties in a Constitutional Democracy" (p. 406, Vol. 10, No. 2) provide an overview, not only of human rights and international law but also the overlapping issues of United States constitutional law, precedent and executive practice in many related areas.

The third part of the journal published in the summer of 1989 includes for the first time in the volume notes written by six students some of whom are editors of the journal. The interaction between international and United States constitutional law and indeed politics, can also be observed in

the student note pertaining to the case *United States v Palestine Liberation Organization* [695 F Supp 1456 (S.D.W.Y. 1988)(p. 935, Vol. 10, No. 3)]. Another student note entitled "Interpreting the withdrawal clause in arms-control treaties" (p. 849, Vol. 10, No. 3) makes interesting reading in conjunction with the article "Reservations to Treaties" in No. 2 of the Volume. The three articles in Part III, Volume 10 mainly have to do with the law of international trade and anti-dumping law. They are "Political Questions in International Trade: Judicial Review of Section 301?" by Erwin P. Eichmann and Gary N. Horlick (p. 735), "The Anti-Dumping Systems of Australia, Canada, the EEC and the United States of America: Have Anti-Dumping Laws Become a Problem in International Trade?" by Edwin A. Vermulst (p. 765) and "The Specificity Test under United States Countervailing Duty Law" by Pieter Matthijs Alexander (p. 807).

The article by P.M. Alexander on the "specificity test" opens with the statement that "[o]ne of the most controversial areas in the field of international trade law is the use of domestic subsidies and the imposition of countervailing duties to offset their effects". The author goes on to discuss the "status of specificity under United States law" as well as "determination of specificity". Specificity is also analysed under the GATT rules. Even though the article was written more than two years ago it still has relevance as evident by the unsettled issues, including that of subsidies and countervailing duties that marks and mars the still ongoing and inconclusive "Uruguay Round" of negotiations arranged by GATT. The article by F.A. Vermulst on anti-dumping law also contains detailed discussion of GATT rules vis-a-vis anti-dumping laws. The concluding section "Shortcomings in the GATT anti-dumping code and in the National Anti-Dumping Laws; Proposals for Change" is instructive and challenging in the light not only of the continuing Uruguay Round of negotiations but also of the forthcoming (as of reviewing time) United Nations Conference on the Environment and Development to be held in Rio de Janeiro, Brazil in June 1992.

Eichmann and Horlick's article on "Questions in International Trade" contains a fair amount of "domestic" (United

States Law) concerning the subject. However the novel comments in the article concerning landmark United States cases such as *U.S v Curtiss Wright Corp* 299 US 304 (1963); *Youngstown Sheet and Tube Co v Sawyer* 343 U.S 579 (1952) and *The Paquete Habana* 175 US 677 (1900) where the United States Supreme Court declared over 90 years ago that “[i]nternational law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination” might be of interest to scholars of both international law and comparative constitutional law.

The editor-in-chief of the inaugural issue of the journal is Thomas A. Brusstar, a 1989 graduate of the University of Michigan Law School. The high quality of the articles, the competent editing, elegant style and the format of the new journal as well as diversity of the subject matters delved in pose a credit both to the writers and editors and a challenge for continuity of such excellence in future volumes.

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