

# BUCHBESPRECHUNGEN

*Rosalyn Higgins*

**Problems and Process – International Law and How We Use It**

Clarendon Press, Oxford, 1994, 274 pp., US \$ 35.00

Rosalyn Higgins' new book is an important enrichment to international law teaching and thinking. It is a revised text of her widely acclaimed lectures from The Hague Academy General Course in International Law in 1992.

The author, professor of international law at the London School of Economics, says she wanted to try and show that "there is an essential and unavoidable choice to be made between the perception of international law as a system of neutral rules, and international law as a system of decision-making directed towards the attainment of certain declared values" (vi). She wishes to explain "how the acceptance of international law as process leads to certain preferred solutions" (vi) as far as the difficult and unanswered issues and problems in today's international law are concerned.

She has achieved much more, especially by giving her own opinions on this broad range of subjects: the book encourages the reader to learn but also to strive for more, for his own personal answers. He gains a greater depth of understanding in many areas, especially where the "interlocking" of the different concepts is concerned.

It is an ideal book for young international lawyers! In one word, it is brilliant!

The volume is divided into 15 chapters (corresponding to the 15 lectures taught) and ranges from nature, function and sources of law to human rights and self-determination, from state responsibility, the UN, dispute settlement and use of force to the roles of national courts and the ICJ. A basic knowledge of all of these topics is a prerequisite, as Rosalyn Higgins offers new views and interesting ideas on all issues.

According to the authoress "international law is not rules" (p. 1), it is not finding the rule and applying it; it cannot alone achieve justice, it needs values. Yet, international law has become a universal interest in the past few years, because we have finally recognized the common threat to mankind. She asks what it is that makes states regard international law as 'binding' and thus capable of being a true system of law, why states should comply with the norms of international law, what the reach of international law is and to whom it applies. "The classic view has been that international law applies only to states. But (...) there is a growing perception that it is relevant to international actors other than states" (p. 39). It seems to include international organizations. "As for the place of individuals in this scheme of things, rational debate has been constrained, first by the notion that the appropriate frame work of enquiry is that of the concept of 'subjects and objects of international law' and, secondly, by a conservative belief that what presently is, necessarily

always has to remain so" (pp. 48/49). This is perceived to be an intellectual prison of our own choosing.

She deals with the subjects of international jurisdiction and its exceptions and then moves on to human rights and points out the speciality of this law, the obligations owed directly to individuals. She explains the various views on human rights and states that she prefers "the position that human rights are demands of a particular intensity made by individuals vis-à-vis their governments" (p. 105). It is up to everyone of us to participate in this fight for human rights, because international human rights bodies cannot succeed alone. The 1993 Vienna World Conference for Human Rights could have helped, but "states showed no interest" (p. 110).

A whole separate chapter is reserved for the particular human right of self-determination, where she analyses the UN Charter, GA Res. 1514 (XV) and 1541 (XV), and the Helsinki Final Act, as well as GA Res. 2625 (XXV) when concerned with self-determination beyond colonialism.

Regarding minorities in a time when states have begun to disintegrate, she asks who has the right to self-determination, how it is limited by the requirement of territorial integrity, whether it is limited to the exercise of political rights and she concludes that "(...) the right of self-determination continues beyond the moment of decolonization, and allows choices as to political and economic systems within the existing boundaries of the state" (p. 123), yet, as such, minorities do not have such a right. "It is today fashionable among political leaders to invoke the right of self-determination" (p. 124) and aid minorities, but to the international lawyer the rhetoric is – at best – confused. Rosalyn Higgins reminds the reader of the imminent danger of allowing it to be "all things to all men".

The work also contains detailed analyses on notion and courts, equity and proportionality etc., which are all well worth reading and enjoying.

The whole book is courageous, refreshing, outstanding. Do not miss it!

*Dagmar Reimmann*

*Ernst-Otto Czempel*

### **Die Reform der UNO – Möglichkeiten und Mißverständnisse**

BsR, C.H. Beck Verlag, München, 1994, 199 S., DM 19,80

Das Buch des Frankfurter Politikwissenschaftlers E.-O. Czempel ist eine Publikation der Hessischen Stiftung Friedens- und Konfliktforschung.

Unterteilt in acht Kapitel befaßt es sich mit den Erkenntnissen der Theorie, den Erfahrungen der Vergangenheit und – in der Hauptsache – den aktuellen Problemen, Ideen und konkreten Lösungsvorschlägen, insbesondere der Erweiterung des Sicherheitsrates, der Friedenserzwingung, dem Ausbau des Peacekeeping, der Verstärkung der Friedensschaf-