THE INTERNATIONAL COURT AND WORLD CRISIS by Julius Stone. Published by Carnegie Endowment for International Peace and distributed by Taplinger Publishing Co., Inc., New York City, U.S.A. Pp. 64, $0.35. 1962.

The Carnegie Endowment for International Peace was established before World War I to seek practical paths to peace. For this purpose it supports and maintains a good many projects. One of such projects is the publication of *International Conciliation* which comes out five times a year. *International Conciliation* is intended to present factual statements and analyses of problems in the field of international organization. Each issue is devoted to a single topic, and is written by a specialist in that field.

The International Court and World Crisis is publication No. 536 of *International Conciliation.* It was written by Julius Stone, Challis Professor of International Law and Jurisprudence at the University of Sydney, who has taught and written widely in his field for thirty years. Mr. Stone has not limited his teaching work in Australia. He has been a professor at the Fletcher School of Law and Diplomacy and at Harvard and Columbia Universities. He has also taught at the India School of International Studies in Delhi. Mr. Stone's writings include the more recent Aggression and World Order, Legal Education and Public Responsibility, and Quest for Survival.

In the present work, Mr. Stone has taken a good look at the International Court of Justice, one of the principal organs of the United Nations. Now that the Philippine Government has finally laid claim to North Borneo and official statements have been made that the claim might be referred to the International Court of Justice, Mr. Stone's study has a compelling interest to those who would like to see the claim elevated to the International Court of Justice.

The International Court of Justice, as one of the principal organs of the United Nations, was intended to play a vital role in the maintenance of International Peace and Security. Paradoxically, however, Mr. Stone has observed that the business of the Court has diminished steadily even "when conflicts between states are so endemic."

The International Court of Justice has two functions: (a) give advisory opinions to the General Assembly, the Security Council, and other organs of the United Nations and specialized agencies which

have been authorized by the General Assembly to solicit opinions of the Court on legal questions arising within the scope of their activities; and (b) act as judge in disputes between states.

As regards the advisory function of the Court, Mr. Stone observes: "In view of the Assembly's own wariness in consulting the Court, it is ironical to recall that Assembly Resolution 171 (II) of 14 November 1947 recommended that the United Nations organs and agencies should regularly refer to the Court important 'points of law' arising in the course of their activities and involving questions of principle." He deplores the tendency of United Nations organs to refuse to seek clarification of legal issues by the Court. He notes that in the period from 1945 to 1956, there were only ten requests for opinion, eight by the General Assembly, but none at all on the controversial "domestic jurisdiction" exception contained in Art. 2 (7) of the Charter. No advisory opinion has been requested by the Security Council. "And it is significant that even the International Law Commission has been rather delinquent in its failure to include a routine clause of submission to the Court as a standard form in its draft instruments."

As to the contentious jurisdiction of the Court, Mr. Stone advises us to consciously reject two axioms; *nemo iudex in sua causa* and *ubi ius ibi remedium*. The reason for the rejection of the first axiom is because "in international law and society every state is affirmatively entitled to be the judge in its own suit except insofar as it has agreed to allow some other person or entity to fill that role." As to the second axiom, Mr. Stone observes that while international law has increasingly conferred benefits on individual human beings, they have no right of access to the Court for under its Statute only states may be parties before the Court. (However, individuals can have access to the Court indirectly by having their States espouse their causes.)

Because no state may be judged other than by itself unless it consents otherwise, the jurisdiction of the Court is somewhat limited. This jurisdiction may be voluntary or compulsory. The voluntary jurisdiction of the Court covers cases brought to it after they have arisen as provided in the first part of par. 1 of Art. 36 of the Statute. Its compulsory jurisdiction covers the cases provided in par. 2 of the same Art. 36 plus those provided in submissory clauses in international agreements. It is interesting to note that according to Mr. Stone, the Court has decided less than a dozen cases in its forty years of existence under the compulsory jurisdiction provision of Art. 36, par. 2, of the Statute.

What then are the reasons for the "barriers to third-party judgment?" Mr. Stone mentions (1) the virtual Communist boycott, (2) the attitudes of Afro-Asian states, especially the newer ones, which seek to reshape international law to their own traditions and convictions, and (3) the attitudes of Western states as best exemplified by the Connally Amendment to the United States acceptance of the compulsory jurisdiction of the Court whereby that state stipulated that its declaration shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as *determined by the United States of America.*"

On the Connally Amendment, responsible quarters in the United States have repeatedly urged its repeal. For one thing, whether rightly or wrongly, it casts doubts on the sincerity of the United States to refer its disputes to Court. The Amendment manifests lack of complete confidence in the Court. For another, it set an example such that a good many states also filed declarations containing the self-determined jurisdiction exception. And, ironically, the Amendment has boomeranged on the United States. Thus in the case of the *Aerial Incident of 27 July 1955,* the United States instituted action against Bulgaria but the latter invoked the Connally Amendment despite the fact that it has no similar reservation in its declaration. Bulgaria's action was based on reciprocity. The United States had to accept the Bulgarian objection and Gross observes that "this case appears unique in that here, for the first time, the applicant government accepted as justified the respondent's preliminary objection to the jurisdiction of the Court." (Lee Gross, Bulgaria Invokes the Connally Amendment, The American Journal of International Law, April, 1962, p. 358.)

In the light of the moribund condition of the Court, Mr. Stone urges the following remedies: (1) codification or restatement of the principles of international law, (2) the unification of national legal systems, (3) the institution of reforms in submission practices such as doing away with self-judging reservations; (4) implementation of Art. 26 of tae Statute whereby the Court can from time to time form chambers of three or more judges "for dealing with particular categories of cases," and (5) granting the Court appellate and supervisory jurisdiction in respect of international arbitral tribunals.

Mr. Stone urges patience in our attitude toward the Court. And he closes with this note of caution: "It would be a disservice to the Court to insist that the present urgencies can be met by an ambitious program aimed at making the Court quickly a central instrument for resolving the present crisis. This course could not serve humanity

and it would almost certainly destroy the Court itself, leading to still deeper disillusionment and frustration. If we see the Court's problems in the light of a wider vision, we may recognize that mere consolidation and defense of past gains, and such small advances as may leave the Court alive and viable, are at the present state worthwhile. To preserve an institution is to preserve its potentialities as well, even if these are still remote from the immediate crisis of our actual world."

Well said, Mr. Stone.

VICENTE ABAD SANTOS

REFLECTIONS OF THE LAW IN LITERATURE, by F. Lyman Windolph, University of Pennsylvania Press, Philadelphia, pp. 83.

The idea that seems to continually persist in the minds of both the lawyer and the layman is that law is a branch of knowledge that must always be dissociated from literature; that, in other words, where law begins, literature ends.

This conception of law as alien to the refinements of literature springs from the fact that law, because of the literalness and exactness of its language, cannot allow much room for the creative mind. Thus, where a poet would say that "she was soothed by the waters of Lethe and so sprung herself upon his knee," the law would simply say that "the wife committed adultery."

And so Mr. F. Lyman Windolph comes to us with his thin, eighty-three page book to tell us that while the situation may be so, that is, that there generally is not so much space in law for creativity, there can be, if enough cerebration is done, a harmonious wedding of literature and law.

The book is actually a compilation of a series of lectures delivered by the author at Franklin and Marshall College. It is divided into three parts. The first deals on Anthony Trollope, the English novelist of the nineteenth century, and the Law.

Mr. Windolph attempts to show that Trollope's works, particularly his novels *Phineas Redux* and *Phineas Finn,* are satisfactory illustrations of the possibility of Law getting involved in the refinements of Literature.

Thus, in Trollope's *Phineas Finn,* we are told of the story of Finn who literally woke up one morning to find a murder charge on his lap. It seems that earlier that week, he had a fight with the character murdered and as offshot, Finn warned, in the presence of some witnesses, that he was going to kill the deceased. But no one actually saw the fact of the murder. The question was, were the circumstantial evidences against Finn enough to send him to the gallows? And so Trollope's novel develops, gets complicated, and in the process, Trollope employs the language of the law, its technicalities and jargons that only lawyers have the patience to wade through. But, in spite (or because) of the legal jargons employed by Trollope, the novel, so Mr. Windolph tells us, is, as a literary work, an astounding success.

The second part of the book deals with meticulous details on the legal personality of Shakespeare as projected in many of his works,

particularly his *The Merchant of Venice.* In the mind of Mr. Windolph, Shakespeare raised two legal questions in the trial scene of his Venice play. The first legal issue raised was: Was there any merit in Portia's (as arbitrator) ruling that Shylock could exact the pound of flesh from Antonio (the surety who stood liable upon the default of Bossiano, the debtor) without shedding blood? And the other legal issue was: Was Shylock, in the first place, entitled to his pound of flesh?

The point that Mr. Windolph obviously wants to put across is that Shakespeare, notwithstanding the fact that he employed legal concepts and principles in his play, nevertheless, managed to preserve the poetic form of his play.

The last portion of the book touches on Robert Browning, the poet laureate of the middle eighteenth century, who managed to produce quite a number of beautiful poems based principally on a murder case that he read about in *The Old Yellow Book.*

Here, Mr. Windolph reminds us again, is another illustration of the possibilities of law mingling with literature. He intimates to us again, and validly perhaps, that the dessicated language and subject of the law can be as colorful and as creative as the language of literature, yet remain as exact and as precise as the language of science.

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