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Katz: The Relevance of International Adjudication

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The Relevance of International Adjudication. By MILTON KATZ. Cambridge: Harvard University Press, 1968. Pp. 165. $4.95.

The Relevance of International Adjudication represents six lectures delivered by Professor Katz in Honolulu during July, 1967, at a special program of instruction for lawyers conducted by the Harvard Law School.

In this study, Professor Katz explores the extent to which international adjudication and quasi-adjudication may be relevant to the settlement of two primary types of disputes which plague contemporary international life: (1) the Cold War dispute, and (2) controversies between non-self-governing peoples and established states. His investigation is premised upon two elemental functions of law, namely, "to curb violence and resolve controversies"[1] as they pertain to a peaceful and constructive international adjudicative resolution.

In his analysis of East-West Cold War disputes, the author indicates that the adverse parties will use international law in asserting their respective claims, however, they refuse to submit their differences to adjudication or related processes available under international law because of the dominance of political factors over the legal aspects of the controversy. An analogy is drawn between the character of this class of dispute in relation to the prospects of international adjudication at the time when the dispute manifested itself, and the controversy between the national government and some southern state governments over the right of secession from the Union in pre-Civil War days and whether it would have been a proper question then for adjudication in the Supreme Court. He concludes that in the domestic situation, the Court would not have considered the controversy a proper question for adjudication because of the "political" nature of the dispute; however, at a later date the Court might have taken a different view. Similarly, at the time any Cold War dispute appeared, the established tribunals available to resolve it were the International Court of Justice, the Security Council of the United Nations, and the Organ of Consultation of the Organization of American States, as well as possible arbitral or ad hoc judicial tribunals which would be created. But optimum[2] conditions for adjudication or quasi-adjudication were not prevalent, since they appeared at the far edge of the spectrum, thereby precluding a favorable result. "Typically, they lie beyond the limits."[3] Thus, the prospect of utilizing the World Court or other international adjudicative bodies for the resolution of this type of dispute would prove a misapplication of these institutions which could only dissipate these precious resources.

The second class of dispute with which Professor Katz concerns himself involves non-self-governing peoples and established states. Illustrative of this class is the South-West Africa situation. A major portion of the book is devoted to a full examination of the dispute over this territory, in-

1. *Katz, The Relevance of International Adjudication* 1 (1968).

2. Optimum connotes "circumstances in which judges find it easiest to decide and their decisions are most readily accepted by the parties and the community." *Id.* at 32.

3. *Id.* at 39.

cluding its past and present status and its possible destiny. Analyzed is the progression from the early "tug of war" between the Union of South Africa, the Mandatory, and the Permanent Mandates Commission, constituted by the Council of the League of Nations as its supervisory body, to the revival of the dispute in the United Nations. The hardening of opposing positions of the Mandatory and a number of bodies within the present world organization eventually brought the International Court of Justice into play on five occasions.[4] When, after five and one-half years of proceedings,[5] the 1966 decision of the Court finally came, it stunned many international law writers, including Professor Katz (who expressed his own pertubation at the result);[6] "the international legal community blinked incredulously,"[7] and governments[8] seriously reflected upon the future role of the Court in international disputes.

On remand from the World Court, the problems of South-West Africa were handed to the universal political forum—the General Assembly of The United Nations. Professor Katz examines the actual consequences of the 1966 judgment of this august institution and presents a speculative appraisal of the probable consequences had the one vote margin gone the other way to illustrate his position that "the designation of such controversies as disputes 'between established states and non-self-governing peoples' . . . is imprecise."[9]

Both classes of disputes are then compared to determine their "ultimate amenability" to adjudication. One conspicuous and critical distinction between the disputes relates to the principles and standards available to be applied in an effort to adjudicate. In the Cold War dispute, the author concludes that the objective is peaceful settlement itself. This is fallacious since "a goal does not afford a standard."[10] On the other hand, the South-West Africa dispute was provided with a standard in the second paragraph of Article 2 in the Mandate and Article 22 of the Covenant of the League.

The author has written with great care and clarity. A careful reader will consider his time well spent with this volume. At a time when the World Court's docket is about to become bare, one wondering why might find the answer in *The Relevance of International Adjudication.*

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4. Advisory Opinion on International Status of South-West Africa [1950] I.C.J. 128; Advisory Opinion on Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa [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; South-West Africa Cases [1962] I.C.J. 319; South-West Africa Cases, Second Phase [1966] I.C.J. 6.

5. The dispute was submitted to the World Court on November 4, 1960, and the second judgment, on the "merits," was delivered on July 18, 1966.

6. *Supra* note 1, at 103.

7. *Supra* note 1, at 99.

8. For example, Prime Minister Pearson of Canada said that in his opinion the ruling may stunt the growth of international law, New York Times, Aug. 10, 1966 at 2, col. 4.

9. *Supra* note 1, at 143.

10. *Supra* note 1, at 147.

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