

THE PRACTICE OF JAPAN IN INTERNATIONAL LAW, 1961-1970. Edited by Shigeru Oda and Hisashi Owada; book review by Leo Gross and Anthony D'Amato, 78 *American Journal of International Law* 733 (1984) Br3-84

A nation's influence upon the content of international law is largely a function of the complete and rapid dissemination of its state papers and the sophistication of the international legal practitioners in its foreign office. The positions a state takes on international legal matters, and the manner in which it describes and justifies its positions, constitute the most readily accessible evidence of its state practice as a component of customary law. Therefore, one would imagine that all states would place a high premium upon the dissemination of their official practice in the international community.

Yet governments are generally too shortsighted to disseminate this information. This shortsightedness is perhaps the most cost-ineffective policy any government can have. Even governments such as the United States and Great Britain, which are leaders in the dissemination of their state practice (and consequently have had a disproportionately large impact upon the formation of customary rules of international law), have in recent years slowed down in the preparation and publication of their papers.

The Japanese Government has harmed itself by failing to publish its diplomatic documents in an accessible language. The editors of the volume under review have taken it upon themselves to select and edit various state papers of Japan so as to present them to a wider audience. Because of the huge task, they decided to edit only those papers from 1961 onwards. For the years 1961-1970, they published their work annually in the *Japanese Annual of International Law*. The *734 present volume collates those annual compilations and presents them in a most readable and accessible form.

There are many interesting documents in this book. For instance, one might want to look up the official Japanese reaction to the decision of the Tokyo District Court in the Shimoda case, [FN1] dealing with the legality of the nuclear bombing of Hiroshima and Nagasaki. We find that various officials of the Japanese Government, when questioned in the House of Representatives, disagreed with the finding of the court that the nuclear bombing was illegal under international law. The Minister for Foreign Affairs, for example, while regretting the atomic bombing, said that it was not in violation of international law because no positive rule of international law seems to have existed on the point (p. 403). The Director-General of the Treaties Bureau, Ministry of Foreign Affairs, is quoted extensively on this point. Among his arguments are the following:

The majority view among international lawyers in Japan is that the atomic bombardment of Hiroshima and Nagasaki should be condemned as a violation of international law. Nevertheless, none of the lawyers would confirm the existence of a rule of positive law which is directly applicable. ... Inasmuch as bombardment from the air is the dominant feature in air warfare, the rules, as adopted at the time of the Hague Rules on Land Warfare, have been considered neither capable of regulating air warfare in a satisfactory manner, nor even appropriate as rules for regulating air warfare [pp. 403-04].

Japan today is certainly not among the poor countries of the world. It is a proud nation, anxious to trade with other nations and to be respected in the international community. How is it possible, therefore, that its government does not expend an almost infinitesimal portion of its public funds to

disseminate its state papers in their entirety? Why must international scholars be remitted to a slim volume such as the one under review, containing just a portion-even though the portions are intriguing-of the attitudes of the Japanese Government on international law matters? It strikes this reviewer as patently absurd that Japan does not expend the trifling amount of money necessary to publish and disseminate its state papers.

[FN1] Shimoda case, 8 JAPANESE ANN. INT'L L. 212 (1964); Falk, *The Shimoda Case: A Legal Appraisal of the Atomic Attacks upon Hiroshima and Nagasaki*, 59 AJIL 759 (1965).