EDITORIAL COMMENT

THE MANY FACES OF INTERNATIONAL LAW

Very few persons remember today that some twenty years ago the lawyers of the United States and Canada were engaged in a giant joint effort of assessing the fundamental problems of international law. Their conclusions were embodied in a document entitled "The International Law of the Future: Postulates, Principles and Proposals," which, after a period of private circulation among interested persons and government officials, was published simultaneously by the Carnegie Endowment for International Peace, the American Bar Association and the American Society of International Law in April, 1944.[1]

Many of the proposals embodied in this document found their way into the Charter of the United Nations. (Compare, for instance, Principle 7 with Article 51 of the U.N. Charter.) Almost all "postulates" and "principles" have generally been recognized as forming a part of contemporary international law, and many documents have been greatly influenced by them. (For instance, the Draft Declaration on the Rights and Duties of States adopted by the International Law Commission in 1949,[2] and the statements adopted by the regional conferences on "World Peace Through Law" held at San José, Tokyo, Lagos and Rome, in 1961 and 1962.[3])

But even the most optimistic among the two hundred lawyers who participated in the 1942–43 effort could not have anticipated the tremendous growth of international law and organization in the intervening period. The United Nations and its specialized agencies have developed elaborate programs in practically every area of interest to the human race: agriculture and land reform, health, labor, aviation, shipping, weather and outer space. These international organizations, and some hundred and fifty smaller ones, have devised a variety of ingenious procedures for coping with such problems as freedom of association, air navigation, sanitary regulations, commodity agreements and assistance to the developing nations. The patient work of the International Law Commission has led to the adoption of codes of international law dealing with such subjects as the regime of the high seas and of the territorial sea,[4] and diplomatic and consular privileges and immunities.[5] The Nuremberg experience resulted in the preparation of the Genocide Convention,[6] a Draft Code of Offenses against the Peace and Security of Mankind[7] and a Draft Statute for an International Criminal Court.[8]

[1] 38 A.J.I.L. Supp. 41–139 (1944). [2] 44 A.J.I.L. Supp. 15 (1950).

[3] See Consensus of San José, 1961, and Consensus of Rome, 1962, 56 A.J.I.L. 1003, 1008 (1962). [4] 52 A.J.I.L. 834, 842 (1958).

[5] 55 *ibid.* 1064 (1961); 57 *ibid.* 995 (1963).

[6] 45 A.J.I.L. Supp. 7 (1951). [7] *Ibid.* 126.

[8] 46 *ibid.* 1 (1952); revised in 1953, U.N. General Assembly, 9th Sess., Official Records, Supp. 12, p. 23.

The scope of international law has also been broadened. It is no longer a specialized discipline, slightly esoteric, of interest only to a few experts and the legal advisers of foreign offices. Practicing lawyers throughout the world have become deeply involved in legal activities across national boundaries. A new branch of international law has grown up in order to keep pace with international transactions and investments. The three European Communities have established a whole elaborate system of "supra-national" law and a special court to interpret it. Various international organizations try to develop appropriate rules for dealing with the new international problems resulting from technical progress in such areas as peaceful utilization of atomic energy and peaceful use of outer space for international communications, weather observation, et cetera.

It might be necessary, therefore, to reassess the content of international law today and to reappraise some of the past attitudes toward that subject. In the first place, it has now become obvious that international law is "one" system of law only in the sense that common law constitutes a single system. International law is no longer a branch of law equal to contracts, torts or constitutional law. It is, on the contrary, a great conglomeration of subjects, equivalent in its scope to all domestic (municipal, national) law taken together. We have now in international law the equivalent of all branches of domestic law; for instance, we have constitutional law (the law of the United Nations), administrative law (the law of the international organizations, especially of the European Communities), law of torts (responsibility of states), law of contracts (law of treaties), and so on. In the second place, as in domestic law, each of the branches of international law has developed along slightly different lines, and it is dangerous to apply the same general principles or methods of interpretation indiscriminately in various areas. In particular, it is necessary to approach "public law" areas, such as United Nations law or the law of the European Communities in a different manner than such "private law" areas as ordinary international trade agreements. Finally, one must be more cautious than in the past about analogies from domestic law. In searching for the "common law of mankind," we often forget that common principles discovered in some areas of private law may be applied usually only in parallel areas of international law, and that, for instance, rules relating to the interpretation of private contracts may be as inapplicable to the interpretation of the Charter of the United Nations as they are inapplicable to the interpretation of the Constitution of the United States. More attention should be paid also to domestic rules of public law which have become increasingly relevant in the rapidly growing public-law areas of international law. Thus, the Court of Justice of the European Communities found it useful to follow some of the French (and other) rules of administrative law relating to *détournement de pouvoir*. The European Court of Human Rights is likely to apply various principles of constitutional law relating to the protection of human rights. In other areas, such as international transactions, public and private-law doctrines are interacting, and one has to be very careful in distinguishing clearly be-

tween the impact of such public fields as antitrust and taxation on the public side of these transactions, and the influence of the practices of the business community on the private-law aspects of the problem.

If anybody should try again to prepare a guide to the international law of the future, he would be faced with a much larger job than his predecessors. International lawyers can no longer be universalists; like domestic lawyers, they have become specialists. Only through intensive co-operation among many experts in various areas of international law would such reassessment become possible.

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