

EDITORIAL COMMENT

LEGAL RESEARCH ON "PEACEFUL CO-EXISTENCE"

Eastern European states began in 1954 to urge joint legal research between East and West on what they chose to call "peaceful co-existence." By 1956 they had succeeded in having the subject placed on the agendas of several international associations of scholars to which considerable numbers of Americans belong. Their success was great because it had been resisted at many points by Westerners who wanted to substitute a topic to be called "peaceful co-operation" for the Eastern European favorite, but the persistent pressure of Eastern European states for their version has resulted in the capitulation of lawyers from other lands. "Peaceful co-existence" is to be discussed, even though no one has yet made explicit what is to be the subject to be analyzed. If lawyers in the non-Soviet world are to take an informed stand on the matter, it is necessary to determine what is meant by what seems to have become the number one research topic of our time.

The Eastern European campaign began at the General Conference of UNESCO in 1954 following the introduction of a draft resolution by India, whose delegates seem to have given no thought to the preferability of "peaceful co-existence" or some other term.¹ In consultation with delegates from various non-Eastern European states the Indians agreed to substitute the words "peaceful co-operation" in their resolution for the words "peaceful co-existence," and it was in the revised form that the General Conference accepted the subject as a topic for UNESCO-supported research.² Yet the Eastern European states, which had found it necessary to support the revised version to prove their new amiability, soon indicated

¹ For the debate at the General Conference of 1954, see UNESCO, Records of the General Conference, Eighth Session, Montevideo, 1954, Proceedings, pp. 423-431, 482-483, 507-509.

² Resolution IV.1.3.411. See UNESCO, Records of the General Conference, Eighth Session, Montevideo, 1954, Resolutions: "The General Conference, Bearing in mind the objectives of UNESCO as defined in its Constitution and as reiterated in resolution 0.10 'Action in the Service of Peace,' adopted by the General Conference at its sixth session; Recognizing that international tensions are impeding the realization of these objectives; Declares its faith in the possibility of resolving all tensions by peaceful means through the exercise of restraint, tolerance, understanding and good will, Recommends that all Member States encourage respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed by the United Nations Charter and the UNESCO Constitution for the peoples of the world, without distinction of race, sex, language and religion, and that they direct their attention to gaining recognition for the ideas of living peacefully together, of understanding and cooperation among all nations, whatever their differences, while recognizing the principle of self-determination; Recommends that Member States encourage the development of educational policies that will lead to effective realization of the aims mentioned above, and Authorizes the Director General to undertake an objective study of the means of promoting peaceful co-operation in accordance with the aims expressed in the UNESCO Constitution."

their dissatisfaction with the term "co-operation," and they began to work hard for restoration of "co-existence" in the documents prepared in accordance with the authorization granted by the General Conference's resolution.

The Eastern Europeans' first opportunity to reverse the General Conference came when the various UNESCO-sponsored international associations of scholars met in the wake of the General Conference to determine the contribution each might make to develop the theme of the resolution. In these meetings the term "co-existence" reappeared. The round table organized by the International Political Science Association in Stockholm August 20-30, 1955, seemed to have been almost ignorant of the discussion carried on at the General Conference over the choice of the term defining the goal of the research. In his report of discussion the *rapporteur* stated the purpose of the meeting to be consideration of "the particular contribution that political science might make to the study of peaceful co-existence."³ In his abbreviated report in UNESCO's International Social Science Bulletin he used the same term.⁴

Some of the political scientists present at the round table seem to have sensed the issue which had been before the 1954 General Conference in phrasing the resolution, for the report indicates that a discussion was begun at the first meeting over the meaning of "co-existence." A distinction was drawn between co-existence without collaboration on the one hand, and active co-operation between states on the other. Because of the sharp variation in views as to whether co-existence meant only a middle path between open conflict and cold war or whether it meant completely harmonious relations, the matter of definition was put aside in the hope that discussion of precise subjects for study would clarify the various definitions and conceptions of the central theme.

The economists, in selecting through the International Economic Association subjects which they thought suitable for discussion under the General Conference's resolution, avoided the problem of definitions, but one of their themes suggested that they were thinking more in terms of dynamic efforts to bring the world together than in terms of passive non-interference. This theme was phrased as

types and degrees of economic collaboration between nations and their economic effects: trade, exchange of scientific knowledge and technicians, migration of workers, capital movements.⁵

The battle of definitions re-emerged when law professors of East and West met at UNESCO House in Paris February 17-21, 1956. The call for the meeting had been phrased in terms identical with that of the resolution of the UNESCO General Conference, but the Eastern European delegates united at the outset behind the request of the Polish professors that the

³ See Doc. UNESCO/SS/Coext./2, Paris, Nov. 24, 1955.

⁴ See 8 International Social Science Bulletin 196-197 (1956).

⁵ The themes suggested by the International Economic Association were circulated at the conference of the International Association of Legal Science in a document without reference number.

meeting select for discussion a theme relating to problems of co-existence.⁶ Being aware of the history of the debate at the General Conference of 1954 and of the careful choice of the word "co-operation" rather than "co-existence," the delegate sent by the American Foreign Law Association urged that the meeting hold to its terms of reference and continue to use the word "co-operation" as indicative of its desire to further research designed to aid a dynamic effort to find a means of working together rather than to support what seemed to be implied by "co-existence," namely, a passive condition of live and let live.

Faced with the argument that the resolution under which the lawyers were meeting called for aid to co-operation rather than to co-existence, the Eastern European delegates found it necessary to accept the dynamic word, and one of the proposed themes for legal research was phrased as "Sovereignty and international co-operation," but the Eastern European delegates remained unhappy. The representative of the U.S.S.R., Professor Eugene A. Korovin, went home to write his report on the meeting, and he used the opportunity to ridicule the efforts of the American representative to have the meeting choose a theme relating to peaceful co-operation rather than peaceful co-existence.⁷ He suggested that the American representative was possibly remembering "that Secretary of State Dulles had said that 'co-existence' was a word to be shied at, to be on one's guard against." He argued that the American was trying to avoid a discussion of the relations between countries belonging to different systems, but he made no mention of the fact that the American Foreign Law Association had proposed just such a discussion in the sphere of commercial relations which have been plagued by legal problems arising out of the failure to find solutions of the conflicts which have arisen between states having differing economic systems. The American delegate was taking no narrow position against research on touchy subjects, but urging only that co-operation rather than co-existence must be sought because international tension has proved to be hard to alleviate if one adheres to the narrow concept of sovereignty in the reduction of barriers in the interest of co-operation to facilitate international intercourse.

The Soviet delegate seems to have appreciated the strength of the argument presented by those outside the orbit of Soviet influence, for in his public report Professor Korovin suggested that his government really did not care which word was used. He said:

We had no objections to "peaceful cooperation," since it is the active form of "peaceful coexistence," and therefore fully accords with the policy of the countries of the socialist system.

He then tried to turn his graceful retreat into a victory by saying that the American delegate

⁶ An account of the debate is set forth in John N. Hazard, "International Tensions and Legal Research," 9 *Journal of Legal Education* 29-38 (1956).

⁷ See Eugene A. Korovin, "The UNESCO Jurists Conference," *New Times*, No. 15 (April 5, 1956), pp. 20-23.

may not have intended it, but the outcome of his effort was that the decisions of the Paris meeting of legal experts popularize the more active form of peaceful coexistence.

Since that was the very aim of the American, it is perhaps enough to let the matter rest with the realization that in the alleviation of tensions it is often desirable to accept the appropriation of one's thesis by the other side even when the other side tries to dissociate the theme from its original proponents and to take all credit for its presentation.

If the Soviet side had finally become convinced at Paris that what was desired was research in co-operation rather than co-existence, this fact was concealed when the specialists from various international learned societies met in Geneva in July, 1956, to select topics for interdisciplinary research under UNESCO's auspices.⁸ The meeting, which on this occasion included no lawyers from the American side, accepted two topics, the first of which reflected the by now historic struggle for a term which would establish in a single word the theme of the UNESCO program of research. The final theme compromised this dispute by supporting both sides in spite of the wording of the 1954 General Conference's resolution to which the Geneva Conference was supposed to be providing the implementation. The theme as it came from Geneva was stated to be "The general theory and historical evolution of co-existence and peaceful co-operation."

Having succeeded in reversing the decision of the 1954 General Conference to exclude "co-existence" from the topic for research, the Eastern European lawyers spread their campaign into other associations of international lawyers. A Sixth Congress of the International Association of Democratic Lawyers, held in Brussels from May 22 to 25, 1956, with representatives from 34 countries, had on its agenda as its first subject of discussion "The United Nations Charter as legal basis of peaceful co-existence."⁹ Since this association has long evidenced its affinity for views supported by Soviet delegates, the Soviet victory in the phraseology of the topic is not surprising.

Eastern European lawyers appeared for the first time at a meeting of the International Law Association held in Dubrovnik, Yugoslavia, from August 26 to September 2, 1956. Although appearing only as non-voting guests, the Eastern European delegates indicated the interest of their learned societies in joining the Association and in placing upon its agenda for its conference of 1958 the theme of legal problems arising in furtherance of peaceful co-existence.¹⁰

In the light of the record it is evident that international lawyers will be

⁸ For the minutes of the meeting see Doc. UNESCO/SS/Coop/16, Paris, Aug. 8, 1956.

⁹ See International Association of Democratic Lawyers, Bulletin No. 28, July, 1956.

¹⁰ The proceedings of the Dubrovnik conference of the International Law Association will not appear for some time. The influence of the Eastern European delegates upon some members of the conference is indicated by a letter from William Lathey to the Editor of *The Times* (London), who compared the occasion in Dubrovnik with the efforts of the Nazis between the wars to control the activities of the International Law Association by mass votes. See Letters to the Editor, *International Law, The Times* (London), Sept. 21, 1956.

asked in coming months to explore the theme of "peaceful co-existence," for it is already on the agenda of UNESCO, the International Association of Democratic Lawyers and the International Law Association. The subject has not yet been officially defined, but there have been indications of what the Eastern Europeans want to discuss. These indications bear examination by those who plan to participate in the projected research of the international associations to which large numbers of Western lawyers belong, so that their work will be responsive to the issues which can be expected to appear in the papers of their colleagues from Eastern Europe.

Even though the research is supposed to be in the legal field, a political theme can be expected to emerge as the underlying concern of Soviet lawyers, if an editorial in the authoritative Soviet journal, *International Affairs*, is accepted as pointing the way for Soviet specialists.¹¹ In praising the results of the Franco-Soviet talks of the summer of 1956, the authors say that the talks were an important contribution to the development of international relations based upon the fact that countries with differing social systems must not simply exist side by side, but can and must improve their relations, strengthen their mutual confidence and seek a basis for co-operation. The editors seem to have adopted the active form of co-existence by this statement and to have come out for co-operation as well as a policy of live and let live.

Yet, when the reader proceeds further in the Soviet editorial, he finds that the principal block to peaceful co-existence in the Soviet view is stated as "the Western Powers' adherence to the 'positions of strength' policy." The Soviet representatives at the talks were said to have expressed their opposition "to the policy of military line-ups in Western Europe and the Middle East, the remilitarization of West Germany, etc." The Soviet representatives are said to have agreed with the French on the necessity of continuing efforts to reach agreement within the United Nations on urgent measures for the reduction, under international control, of armed forces and armaments, above all the armed forces of the five Great Powers.

Although espousing the extension of economic aid, the editorial writers say that the United States is using its aid to interfere in the internal affairs of the recipients and to establish imperialist domination. The editors call for an end to such aid. The editors then discuss the regional problems which came before the statesmen, and choose to criticize Secretary Dulles' scepticism over Soviet policy in the Middle East. Finally, the editors urge extension of trade, and cultural, scientific and technical exchange through the drafting of a cultural convention.

If the Soviet editorial on peaceful co-existence can be taken as an example of what Soviet scholars will say before meetings of international learned societies, it can be assumed that there will be an undertone which has become well known to those who follow Soviet pronouncements in the United Nations. The policy of the United States and of its allies will be selected as a policy which must be changed in the interest of co-existence,

¹¹ See "An Important Contribution to Peaceful Coexistence," *International Affairs*, No. 6 (1956), pp. 12-16.

while the Soviet policies which have given rise to defensive measures among Western and Asian states seeking to protect themselves from Soviet inroads will be overlooked or described in terms suggesting that they lead to peace. Yet the editorial suggests some possibly fruitful fields for research in declaring the necessity of cultural conventions and expanded trade. Here is work for lawyers who need to take into consideration the complexities created by the application of traditional rules of international law which were forged years ago in a world where cultural relations were not at the complete mercy of governments and where trade was primarily between private enterprisers who could claim no immunity from suit.

Soviet expectations of what should be discussed under the co-existence theme are further clarified in the study outline prepared by the International Association of Legal Science in UNESCO House in February, 1956.¹² Emphasis was upon "sovereignty" as the legal basis for co-operation between states of different systems. Attention was directed to the United Nations Charter as the embodiment of the principle, and research was to be directed to a determination of the extent to which states Members of the United Nations have reserved sovereignty to themselves in spite of their international obligations, and the extent to which regional pacts may function within the United Nations pattern.

The study outline on peaceful co-existence then suggests that research be directed to restrictions upon sovereignty which have been accepted by states either voluntarily or by custom in such spheres of political activity as have been made the concern of various international organizations, and in the application of foreign law to commercial matters, the acceptance of commercial arbitration to settle disputes and in the acceptance of responsibility for commercial transactions in foreign trade. Finally the outline proposes study of international legality as the basis of co-operation between states, with detailed consideration of the relationship between the principle of *pacta sunt servanda*, the clause *rebus sic stantibus* and the notion of "bonne foi."

The study outline must be regarded as less than what the Soviet representatives may hope to discuss in future conferences because it was the product of joint effort by Western as well as Eastern scholars, yet it suggests that there is to be recognition of the concept of limited sovereignty as a contribution to international co-operation, and once this principle is recognized, those who conduct the research can produce much material of recent years to prove that any narrow idea of sovereignty such as was found in the nineteenth century has already been submerged in the international agreements and custom of the twentieth.

Further evidence of Soviet intentions in development of the research programs on peaceful co-existence was presented in September, 1956, in the first article written with apparent reference to the adoption by various international associations of the theme of co-existence for their respective congresses. One of the editors of the principal journal of the Law In-

¹² The study outlines have not been published but are a part of the documentary record of the conference available in the files of the American Foreign Law Association.

stitute of the Academy of Sciences of the U.S.S.R. has taken cognizance of the decisions of spring and summer, 1956, by UNESCO, the International Law Association and the International Association of Democratic Lawyers to initiate a study of the legal problems arising in peaceful co-existence. In his leading article he sets forth the subjects which he thinks require discussion between capitalist and socialist states.¹³

Legal theory is placed first as a problem for research. The author asks that lawyers from East and West raise the basic question whether general international law is possible at all in regulation of relations between states of two such antithetical social systems as the capitalist and socialist. He says that he raises the question because bourgeois theorists have recently been asserting that the division of the world into two systems has made impossible existence of general international law. He finds, however, that the majority of bourgeois legal theorists have concluded that in spite of the division of the world, general international law is possible and has a basis for existing. He indicates the conclusion of himself and his colleagues in the U.S.S.R. that general international law is possible as a means of regulating relations between states regardless of their social systems.

To take his position that general international law is possible, the Soviet editor has found it necessary to explain that there has been complete repudiation within the U.S.S.R. of the view of Professor Eugene A. Korovin that there are two kinds of international law, capitalist and socialist, and a third area in which it could be said that there is a correspondence of the norms of the two systems. He concludes that the majority of Soviet jurists, in spite of disagreement on important details of international law, nevertheless agree that general international law exists at the present time, can exist and has to exist to regulate relations between all states regardless of their social systems. He finds this the logical consequence of the conclusion that at this time there can be peaceful co-existence of states belonging to two antithetical world systems.

As if to retort to those in the West who have treated co-existence as implying too passive a form of relationship, the Soviet editor declares that:

Of course, peaceful co-existence of states with different social-economic systems includes co-operation between them: without co-operation peaceful co-existence is senseless.

The victory of the Westerners seems complete in their effort to expand international legal research beyond the previously held narrow conception of co-existence as live and let live. On that score it may be assumed that there can be attention to legal problems of resumed relations between East and West and not just consideration of means of preventing aggression.

The Soviet scholars are not apparently prepared to give up their propaganda for socialism, for the editor repeats the familiar argument that the capitalist world preserves the economic basis for war, while substitution of public ownership for private ownership has created the foundation for

¹³ See G. I. Tunkin, "Peaceful Coexistence in International Law" (in Russian), *Sovetskoe Gosudarstvo i Pravo*, No. 7 (1956), pp. 3-13.

peace in socialist countries. In reflection of Nikita Khrushchev's declaration at the Twentieth Communist Party Congress in February, 1956, the Soviet editor declares that, under conditions of the present time, the fundamental conflicts of capitalism do not create the fatal inescapability of war because there are powerful objective and subjective factors leading in the direction of peaceful co-existence. Peace is dictated, so the Soviet editor believes, by appreciation that war would be so destructive that mankind would no longer consent to the continuation of the capitalist system. He points also to the need for mutual co-operation of states because of the increasing interrelationship of economic and cultural factors, and he believes that such economic relationships will develop peaceful relationships. Finally he believes that, with the increase in the number of states as nationalism takes its toll of empires, and with development of working-class movements in capitalist countries to weaken control by capitalist rulers, there will be further impetus to strengthening and progressive development of general international law.

The Soviet editor naturally does not comment on problems faced by the rulers of his own camp. Perhaps he could not have foreseen the wide expansion in subsequent months of nationalism within the Eastern European states, and the emergence of courageous and vocal groups of young liberals willing to fight to prevent their rulers from continuing to regiment Eastern European populations in the Soviet pattern. It was certainly not the expectation of Soviet Communist Party chiefs that they would soon have to demonstrate that their version of co-existence was applicable only to those parts of the world which were beyond the reach of their military might.

Events of October, 1956, have indicated to the world that the U.S.S.R. is as much in need of peace today as any part of the world because of the rumblings within the states on which she relies for economic and political support and for strategic bases for her own military plans. This fact suggests that Soviet rulers have reason to espouse international law not only to win friends among the noncommitted peoples of Asia and Africa, but also to assure international stability for a sufficient time to permit Soviet strategists to attempt to regain lost friends and restore Soviet power throughout Eastern Europe.

Soviet international lawyers can be expected to continue to demand research on problems of co-existence, because a policy of non-interference in areas of Soviet influence is essential to Soviet well-being. This does not mean, however, that Soviet lawyers can be expected to go so far as to participate in discussion of world law. Soviet experts fear such a development because they think it would lead inevitably to the creation of a super-state to enforce world law, and such a state they could not hope to dominate. This is the position of the Soviet author who describes the research necessary in the interest of co-existence. He has nothing but criticism for those in the West who have been arguing that international law must inevitably be replaced by something stronger.

Soviet scholars have too long consecrated their efforts to advancement of the foreign policy of the U.S.S.R. to depart at this point from polemics in

whatever they do. The editorials from *Pravda* are always part of the Soviet scholars' preparation for international conferences. Yet, the Soviet Government is facing difficulties greater than it has faced since the collectivization drive of the 1930's and the second World War of the 1940's. Under such circumstances it is conceivable that some value can be found for the West in the proposed joint research on "peaceful co-existence," but it must necessarily fall within strict limits. Any Western proposal that might be thought by Soviet scholars to undermine the Soviet position in that part of the world in which she has established her supremacy will be resisted. "Peaceful co-existence" as the Soviet lawyers think of it means as a minimum the condition necessary to keep non-Soviet power from penetrating into the Soviet orbit. It may also mean the relaxation of barriers to Soviet propagation of her ideas and influences across the frontiers of her orbit. There is yet little to suggest that Soviet members of international organizations intend to advance research projects which seek to explore the opportunities for co-operation without thought to improving the position of the Soviet camp at the expense of other camps.

JOHN N. HAZARD

THE LEGAL ASPECTS OF "NEUTRALISM"

It is an extraordinary reversal in the affairs of nations that we are witnessing these recent years. A generation ago a majority of the American people were proclaiming not only the right of the United States to remain aloof from any collective efforts to prevent the war then threatening in Europe, but the duty of Congress to forbid American citizens to do the things that neutral states had always had the right to do, lest by chance the act of individuals might come to influence public opinion, or, it might be, the United States would be led against its will to defend its neutral rights and be drawn into war as a result of maintaining its right to stay out of it. To many of the neutrality advocates of 1935-1939 it was not only futile as a practical matter to attempt to fortify the League of Nations as an agency of collective security, it was logically impossible to distinguish between right and wrong in international relations. The subtleties of national policy in Europe were too complex to tell who was the aggressor and who the victim. The only policy for the United States was to follow the advice of Washington and of Jefferson and to keep out of it all.

In strange contrast with all this, responsible spokesmen for the Government of the United States, and doubtless a corresponding body of public opinion, have been of recent months blaming certain states not for wanting to keep out of war but for wanting to keep out of collective security, such as it has developed since the establishment of the United Nations in 1945. A new term, "neutrality," has been created to describe the position of such states, and it will doubtless be entered in the lexicon of international affairs as soon as lexicographers are more sure what it means. At any rate, it does not mean what "neutrality" meant in 1914 or in 1939.

When the Charter of the United Nations was signed at San Francisco in