INTERNATIONAL LAW AND THE UNITED NATIONS *

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It gives me great pleasure to speak tonight to an Association which has long taken a deep interest in world problems. Its distinguished leaders—such as Elihu Root, Henry Stimson and Charles Evans Hughes—have been known throughout the world for their contributions toward the efforts to make the rule of law the basis of international relations. It is indeed a notable feature of the American tradition in foreign affairs to attach high importance to the establishment and maintenance of standards of international law and justice.

I should like to speak to you about the part the United Nations takes in the making of international law, and the relation between the efforts of the United Nations in this regard and the national legal systems of States.

In selecting this theme I have done so not merely because of its obvious interest to lawyers, but because of its timely character. In the community of nations our means for dealing peacefully with the inevitable conflicts of interest which arise between them are diplomacy, international organization and international law. International law has been the least prominent of these means in recent years; its growth has been disappointingly slow, and it has been viewed too often as a conservative stabilizing element rather than as a dynamic instrument for peaceful development. Now that we may have come to a new turn, when we can reasonably hope that a real relaxation of international tensions will come to pass, it becomes essential to consider international law, not as a body of doctrine, but as a means of achieving rational and orderly co-operation in the solution of vital international problems.

At the same time we must bear in mind the importance of respecting the proper boundaries between international and national jurisdiction and of avoiding needless tasks and prohibitions imposed in the interests of uniformity. Thus the theme of my talk tonight is both political and legal. Its logical starting point is Article 38

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of the Statute of the International Court of Justice, which provides that the Court, in deciding such disputes as are submitted to it, shall apply international conventions establishing rules recognized by the parties; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; and, as subsidiary means for determining the rules of law, judicial decisions and the teachings of the most highly qualified legal authorities of the various nations. Thus there are roughly speaking five sources of the law: treaties, international customs, general principles of law, judicial decisions and the writings of eminent scholars.

The United Nations plays an important part in developing the law by several of these methods. Treaties are drafted under its auspices; its decisions may show the existence of international custom; and the decisions and the advisory opinions of its principal judicial organ, the International Court of Justice, have the prestige of the highest authority on questions of international law.

The conclusion of a convention is the most obvious way of bringing a new rule of law into effect. The States which desire to work out a solution of a particular international problem meet together, consider the problem in the light of their individual and joint interests, draft a convention embodying a rule for their future conduct, and, if they are then willing to accept the convention, they become parties to it. When solutions are sought on a multinational basis, such problems are most suitably dealt with in the United Nations, which can discuss any problem in the international field, and in the specialized agencies, like the International Civil Aviation Organization, UNESCO and the World Health Organization, which are part of the United Nations family and which have special competence in their own fields.

There are two general types of multilateral treaties which are prepared under the auspices of the United Nations and its specialized agencies. Treaties of the first type involve mutual concessions for the sake of mutual advantage, like ordinary contracts in national law. These include such treaties as the General Agreement on Tariffs and Trade, in which the parties agree to make tariff reductions for the sake of expanding the economic opportunities of all. Another example is the Universal Copyright Convention drafted under the auspices of UNESCO, which the United States has ratified and which is about to enter into force.

The other type of multilateral treaty in some ways more closely resembles a law than a contract. Such conventions are concluded for some general humanitarian purpose, to remedy some social evil

which requires international action ,and in the interest of the international community as a whole. This type of convention has long been used in dealing with such problems as slavery, narcotics, the traffic in women and children and obscene publications. Many of the old conventions in these fields have been revised and brought up to date under the auspices of the United Nations. Moreover new conventions have been drafted in the Organization in a number of new, or relatively new, fields such as genocide, refugees and displaced persons, the status of women and freedom of information.

The creation of new international law by conventions is sometimes a slow and uncertain process. The drafting of a new convention by itself accomplishes little; States must become parties to the convention before the new rule has any effect, and this often takes considerable time. It occasionally happens that although there initially appeared to be considerable enthusiasm for an advance of the law, support for it diminishes when the acid test of ratification is reached, and the treaty is slow to enter into force. Thus the making of conventions requires a wise discrimination, a sense of timing, and a deep appreciation of national needs and preferences in determining whether and to what extent a treaty is appropriate. Such treaties can be justified only to the extent that they meet a real international need, as determined by the enlightened consideration of the interest of States.

Other methods of developing international law than the conclusion of new conventions are available. For example, one more rapid method is that in use in the International Civil Aviation Organization. Under the Organization's constitution its Council adopts standards and "recommended practices" which come into force after a specified period unless the majority of the members register their disapproval within that period.

In the field of the unification of private law a method has been used which largely dispenses with conventions and even international obligations, and operates through parallel legislation in several countries. This method has been pioneered by the Scandinavian States, which have long cooperated closely in the legal, social, economic and cultural fields. Since 1872 a movement has been under way for the achievement of uniformity in various fields of national law, and in 1946 a permanent joint agency for juridical co-operation was established by the Scandinavian Ministers of Justice. Meetings of jurists from the various countries have proposed legislation which has then been transmitted to the governments for consideration in accordance with their constitutional procedures. Many drafts thus prepared have been adopted, with the result that the four Scandi-

navian countries now have more or less uniform legislation on such subjects as negotiable instruments, sale of personal property, insurance, marriage, and maritime and seamen's laws. In only a few cases has this uniform legislation taken the form of conventions.

This success has, of course, been made easier by a community of interests and tradition in the Scandinavian countries, which does not exist for the community of nations as a whole. Nevertheless this is an example of what can be accomplished in this way that may have relevance in other parts of the world even today.

I should now like to turn to the internal law of international organizations, in particular the United Nations, and its relation to international law. No organization today embraces the whole community of nations. Furthermore, all international organizations have under their charters or constitutions only very limited powers of imposing legal obligations on Member States without their consent. Thus there can be no question of legislating international law in such organizations. Nevertheless, international organizations can make important contributions to customary law.

International organizations are continually called upon to interpret their own constitutions, and these constitutions in turn contain concepts of international law. The United Nations Charter, for example, prohibits aggression and interference with matters of domestic jurisdiction; decisions interpreting such provisions, which are taken on the basis of legal considerations, assist in illuminating not only the meaning of the Charter, but of international law itself. In general, the stresses of the past ten years have made it necessary for the organs of the United Nations to maintain a maximum of flexibility, and only the beginnings have been made of a clear and consistent "common law" on the interpretation of the Charter. But in a calmer period when the practice of the Organization can become stabilized, the customary law of the United Nations will be a rich source of evidence on customary law in general.

Further, the constitutions of international organizations are treaties, albeit of a special kind, and they must be interpreted and applied in the light of international law. Thus the interpretations by international organizations about the extent of their constitutional powers may come, in time, to evidence a special new branch of the customary law on the interpretation of treaties.

Moreover, the United Nations has occasion to deal with issues of ordinary international law in considering questions brought before it. In the course of its world-wide operations, problems of international law also arise. For example the United Nations has

capacity to bring international claims for reparation of injuries suffered in its service, and doing so involves questions of State responsibility. Representatives of Members sometimes have problems concerning diplomatic immunities. Such cases as these can constitute evidence of international custom.

Another type of contribution to the clarification of customary law is made in the United Nations. Under Article 13 of the Charter, the General Assembly is given the function of initiating studies and making recommendations in order to encourage the progressive development of international law and its codification. To assist it in this work the General Assembly has established the International Law Commission, which conducts studies and makes recommendations to the Assembly for those purposes. The work of the Commission may in future lead to the conclusion of multilateral conventions on some topics of law; in the meantime, the drafts prepared by the Commission have the authority of the conclusions of an international group of experts, reached in the light of careful study. The Commission, whose work is of the highest interest to lawyers everywhere, has dealt with such subjects as the continental shelf, territorial waters and statelessness and it is about to embark on a reexamination of the principles governing the responsibility of States for injuries suffered by foreigners in their territories.

Many of the decisions of the United Nations have, however, no direct relation to international law, though they may constitute part of the internal law of the Organization. Numerous resolutions of the General Assembly, for example, deal with such matters as the functions and methods of operation of subsidiary bodies, regulations for the handling of the finances and personnel of the Organization, and the like. These resolutions all have legal force within the Organization, and we who work for it are daily engaged in interpreting and applying them. Some of them are highly interesting and significant, as they establish the framework of international co-operation in particular fields. For example, a resolution of the General Assembly recently convoked the conference on the peaceful uses of atomic energy, and others have created machinery for technical assistance to States which need it, have established institutions such as the United Nations Children's Fund, the United Nations Agency for Palestine Refugees, the United Nations Agency for the Reconstruction and Rehabilitation of Korea, and so forth.

Another class of United Nations decisions consists of recommendations to States. These recommendations are of different degrees of definiteness and urgency. In some cases a standard is set up only as a goal for aspiration, and obviously does not require im-

mediate and total conformity. Even when recommendations are in stronger terms, however, they impose upon the Member States to which they are addressed only the obligation, at most, to consider seriously the question whether or not to comply. But this minimal obligation may carry weight in the long run in influencing national action. The considered views of a body composed of representatives of many States have a moral force which it is impossible to overlook.

I come now to the contribution of the United Nations to judicial decisions as a source of evidence of the law. The principal judicial organ of the United Nations is the International Court of Justice. Its Statute, as I have said, provides that judicial decisions, even those of the Court itself, are only a subsidiary means for the determination of rules of law. The Statute, which more nearly follows Continental than Anglo-Saxon ideas about the force of judicial precedents, also declares that "The decision of the Court has no binding force except between the parties and in respect of that particular case." Nevertheless, the Court is the highest authority in the world on international law, and consequently its judgments and advisory opinions are necessarily an important source of evidence of that law. In practice the Court, though under no obligation to do so, always considers its own precedents and follows them where they apply. Other international organs likewise pay careful attention to the judicial pronouncements of the Court, which form a coherent international jurisprudence and are an important means of clarifying and developing international laws.

The international Court of Justice has dealt in its judgments with such issues as the right of exclusive fisheries in coastal waters; the right of asylum; the protection of nationals abroad; and the effect of the most-favoured nation clause in treaties. It has rendered advisory opinions to the General Assembly about such matters as admission of new members to the United Nations, the interpretation of the peace treaties with Bulgaria, Hungary and Romania, and the status of South West Africa.

Thus the United Nations and other international organizations are making contributions in various ways to the development of international law. Given a favourable international atmosphere, these contributions can be greatly increased. Some critics feel, however, that the law is growing much too slowly and that the United Nations, based as it is upon the principle of the sovereignty of States, is only a rudimentary instrument for creating law. Their prescription for the salvation of mankind is to sweep away present techniques and the international organizations through which they operate, and to

set up a much stronger world legal order, with power to make and to enforce binding laws.

Other critics feel that it is idle or undesirable to spend so much effort on the development of international law, and that the United Nations is doing too much in this direction. Some of this latter group are sceptics who view all international differences as wholly political, and dismiss a concern for the law in such matters as self-deceiving idealism. Still others are strongly conscious of the value of their national traditions and techniques, and are afraid that the development of law on the international level will somehow interfere with these national traditions.

To the first school of thought, which would like to go much further and faster than is being done at present, it can be conceded that the growth of the law has been slow, especially during the last ten years. The cause of this slowness, however, lies deeper than inadequacy of methods; the methods themselves are highly flexible, and a much better rate of construction can be achieved whenever the great mass of mankind desires it.

As for the second school, we may freely admit that the law is not a panacea whose manufacture and use will automatically bring about the triumph of reason and virtue. Nevertheless, the law does play a significant part in the formation of policy by governments, which habitually prefer to abide by it. This means that the development of the law is a useful method for the attainment of ends agreed on among States.

The development of international law is not a threat to the sovereignty of States, but a safeguard, since order is a condition of any real freedom. The growth of international law is completely within the control of States. If, for example, a new multilateral convention is drafted under the auspices of the United Nations, no State is bound by it unless that State itself takes further steps to become a party. In a few rather exceptional cases, which are usually agreements of a subsidiary character where the main obligations have already been undertaken by more formal means, States may become parties by simple signature. Ordinarily, however, signing a convention imposes only an obligation to consider whether or not to ratify. In either event each nation remains entirely free to accept or not to accept the obligations of the agreement in the light of its own national interest as determined by its own constitutional processes. Becoming a party to an international agreement is in itself an exercise of sovereignty rather than its curtailment.

The development of customary law through the practice of international organizations is a protection to the member countries.

No country can foresee when an issue affecting it will come under discussion, and if that occurs it is very much better to have the discussion carried out on the basis of objective principles established by such practice than to contend with a majority inspired perhaps by purely political considerations.

The United Nations serves as a centre for the common consideration of common problems and for steps toward their solution on a world-wide basis. It has been reasonably effective in this function in the past, despite adverse conditions, and there are hopes that it will be much more so in the future. As lawyers we may feel impatient with the slowness of the law-making process in the Organization. But we have no reason for despair. On the other hand, as lawyers, we should make it clear and widely understood that there is no ground for fear or suspicion that international law-making is a threat against the sovereignty and national traditions of States.

International law-making is a highly meaningful process, worthy of the study of groups of distinguished lawyers like yours. It can benefit at every stage from informed comment and critical examination of the kind that your Association has made in the past. Such study not only helps to clarify the technical points involved; it also promotes public understanding of the whole process, and without public understanding efforts in the field are likely to be very much less fruitful than they should be. There is therefore a real service to be performed by lawyers in Member countries of the United Nations, as has been so well shown by your Association in the past and will, I am sure, continue to be shown in the future.

I mentioned in the beginning men like Elihu Root, Henry Stimson and Charles Evans Hughes. Their example is a living challenge to continued efforts to develop international law—an example as relevant to the members of this Association as to the servants of the United Nations.