FIFTY YEARS PROGRESS IN INTERNATIONAL LAW *

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I. *INTRODUCTORY STATEMENT*

It is a great privilege to be invited to address your organization whose distinguished members have shown abiding interest in the study, not only of the fundamental domestic problems confronting our country, but also of questions involving international affairs about which I shall speak today. As my time is limited, my comment must be brief.

One of the paradoxes of our time is that while the overwhelming majority of mankind abhors war, it has not been possible as yet to achieve a just and lasting peace. The world has witnessed, during the last few years, revolutionary changes. Today we are living in a nuclear age, an age that brings changes more significant than anything brought about by the industrial revolution of the past. We are living in a world in which the tempo of change is constantly accelerating. This revolution in science and technology has placed in the hands of man a magnitude of physical power which presents both great military dangers and great possibilities of peaceful progress.

II. *SOME STEPS TOWARD THE PROGRESS OF INTERNATIONAL LAW*

Before stating the various steps of the progressive development of international law, it may be pertinent to ask: What is international law? What are its shortcomings?

International law is the body of general principles and concrete rules which the states that are members of the community of nations recognize as binding upon themselves in their mutual relations.[1] This general and accepted definition is now being challenged in many quarters, because sovereign states are no longer the only members or subjects of international law. As an eminent scholar well puts it: "International law, like common law, is not static, but a dynamic, legal order." [2]

International Law may be divided into two classes: (a) Public International Law, and (b) Private International Law. For the

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[1] C. Fenwick, *International Law*, p. 32.

[2] Josef L. Kunz, *The Changing Science of International Law*, Am. Journal of International Law, April, 1962, p. 489.

purpose of our discussion, the subject is limited to public international law.

There are some shortcomings in the progressive development of international law, such as: (1) The uncertainty of some of the rules of international law; (2) The different interpretations held not only by different scholars and schools of thought but also by different states. It is not uncommon to see one and the same state interpreting the same norm of international law in a different way under different situation or circumstances according to its political interests. Notwithstanding this limitation, it can be stated that on the whole the rules of international law are generally observed by the community of nations.

The progress in international law is more evident in the development of collective security and the renunciation of aggressive war. Fifty years ago, as you very well know, war was accepted as a perfectly legitimate instrument of national policy. Learned writers in the field of public international law upheld the legality of war.[3] It is to be recalled also that collective efforts were largely confined to ameliorating the harsh conditions of war. For example, the Hague Conventions of 1899 and 1907 devoted considerable attention to land and naval warfare; and the Geneva Conventions of 1929 and 1949 also approved rules and regulations toward the treatment of prisoners of war.

Some of the significant developments of international law during the last fifty years are:

(1) *The signing of various bilateral or multilateral treaties, providing for voluntary arbitration, conciliation and mediation.* These methods of settling international disputes have supplemented the traditional diplomatic methods in the solution of international disputes. The United States signed several treaties with many countries accepting these methods. There is at the Hague, the *Permanent Court of Arbitration* which still exists at the present time.

(2) *The creation of the League of Nations.*
The first world war demonstrated the ineffectiveness of the measures existing at the time. The need for an international organization became imperative. The Covenant of the League of Nations was signed by 63 nations. The League of Nations was created in order to provide for some system of collective security if international peace was to be maintained. The Covenant represented the first collective attempt to meet this need.

[3] Herman Phleger, *Progress in the Rule of Law*, Dept. of State Bulletin, Oct. 24, 1955, p. 647.

The Covenant did not meet the approval of the United States Senate. Many writers have attributed the failure of the United States to join the League of Nations as one of the causes of the early demise of the organization. Yet for a decade and a half, people throughout the world looked to the League as the instrument by which it might be possible to establish peace and stability in the world. But the League proved to be another short-lived experiment.

(3) *Further efforts towards peace.*

(a) In 1922, the United States called the *Washington Naval Conference,* where the five principal naval powers agreed to a limitation of their naval forces. At the same conference, the *Nine Power Treaty,* designed to insure the integrity of China, was entered into.

(b) In 1925, Germany, Great Britain, France, Italy and Belgium signed the *Locarno Treaty,* designed to prevent repetition of World War I.

(c) In 1928, the *Kellogg-Briand Pact* was signed whereby the parties solemnly bound themselves to renounce war as an instrument of national policy. Sixty-three nations became parties to this pact, and one of the first countries to sign the treaty was the Soviet Union. This treaty was regarded as a revolutionary development of international law.

(d) *Organization of the United Nations.*[4]

The United Nations was created in 1945, as a result of World War II. Originally, there were 50 members, including the Philippines that signed the Charter of the United Nations. Now there are already 104 members of the United Nations. Very soon this number will be further increased.

The Charter of the United Nations, signed at San Francisco on June 26, 1945, by the representatives of 50 nations, was the product of evolutionary development extending over a long period. The Charter was made possible because of the strong conviction of the majority of mankind to maintain peace and security in a world devastated by war.

Because of the increasingly tremendous devastation that modern weapons can produce, it is essential that efforts should be exerted to make the U.N. an effective instrument for maintaining world peace. If man wants to save the present and the future generations from the agony of another war, the pillars or the forces of law should be strengthened. Every effort should be made to strengthen the U.N. in order that it could gradually build a regime of world order based upon law and justice.

[4] Francis O. Wilcox, *The United Nations After Ten Years,* Dept. of State Bulletin, Nov. 7, 1955, p. 736.

The development of international law was accelerated after World War I by the establishment of the League of Nations with its many associated agencies, including two important ones which have survived World War II, namely, the International Court and the International Labor Organization.

With the establishment of the U.N., we have witnessed the emergence of specialized agencies, such as International Civil Aviation, World Health Organization, United Nations Educational, Scientific and Cultural Organization, Food and Agricultural Organization, the International Monetary Fund, the Bank for International Settlements. All these bodies are creatures not of municipal law but of international law.

(4) *The International Law Commission.*[5]

Article XIII, section 1 of the Charter of the United Nations specifically provides: "The General Assembly shall initiate studies and make recommendations for the purposes of promoting international cooperation in the political field and encouraging the progressive development of International Law and its codification."

To implement this provision, the General Assembly of the United Nations in 1947 established the International Law Commission composed of 15 members (in the last session of the Assembly this was raised to 21 members) to make recommendations for the progressive development of international law and its codification. This Commission was also directed by the Assembly to formulate the principles of International Law recognized at the Nuremberg trial of war criminals and to prepare a draft code of offenses against the peace and security of mankind.[6]

It is significant that the International Law Commission is composed of 21 members of recognized competence in international law, representing the chief forms of civilization and the basic legal systems of the world. Its members are nominated by the governments of member states of the U.N. and elected by the U.N. General Assembly.

To the credit of the Commission, it has succeeded in submitting several reports to the U.N. on various subjects, including the draft on *Diplomatic Intercourse and Immunities,* which was the subject of an international conference in Vienna from March 2 to April 14, 1961. There were more than 80 countries, including the Philippines, that took part, and after more than 6 weeks' deliberation adopted

[5] Dr. Yuen-Li Liang, *The General Assembly and the Progressive Development and Codification of International Law,* Am. Journal of Int. Law, Jan. 1948, p. 66.

[6] Hans Ehard, *The Nuremberg Trial against the Major War Criminals and International Law,* Am. Journal of Int. Law, April, 1949, p. 223.

the so-called *Vienna Convention on Diplomatic Relations,* consisting of 53 articles. It also passed several resolutions, one recommending further study on special missions by the International Law Commission; one dealing on optional protocol concerning acquisition of nationality; and one dealing on optional protocol concerning the compulsory settlement of disputes. The Conference passed a resolution expressing its gratitude to the International Law Commission for its outstanding contribution in the codification and development of international law on diplomatic intercourse and immunities. This is one of the several conferences in which I represented the Philippines. It is also one of the conferences in which both the U.S. and the Soviet Union have reached an agreement.

This conference is significant because it has codified the existting rules on the subject. The Congress of Vienna in 1815 adopted some rules in determining the relative rank and precedence of diplomatic representatives.

(6) *The International Court of Justice.*

This court, composed of 15 judges and elected for a term of 9 years, is practically a continuation of the old Permanent Court of International Justice, created under the League of Nations. The framers of the Charter of the U.N. thought that the Permanent Court of International Justice had represented such a great advance in international relations that it must be continued.

Because of the adoption of the Connally amendment by the U.S. Senate, in ratifying the Statute of the Court, this court has played a limited role in the settlement of international legal disputes. In its 15 years of existence up to the end of 1960, it has decided only 19 contentious cases.[7] This indicates that nations have not during the past half century shown an increasing disposition to submit to judicial determination disputes involving what they conceive to be their important interests.

It is worthy of note that the Philippines is one of the 37 member-states of the United Nations, composed of 104 member-states, that have accepted the compulsory jurisdiction of the Court. Among those who have not accepted the court's compulsory jurisdiction are the states of the Communist bloc and most of the new nations of Africa.

The Court has suffered because certain nations, like the U.S., have refused to accept the compulsory jurisdiction of the court. Notwithstanding this limitation, it has contributed immeasurably to the progress of international law.

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[7] George C. Doub, *The Unused Potential of the World Court,* Foreign Affairs, April, 1962, p. 465.

III. *FORCES OF NATIONALISM AND INTERNATIONALISM*

The recurring conflict between nationalism and internationalism may have affected the development of international law. In an interesting book entitled "Five Ideas that Changed the World," by the eminent British writer, Barbara Ward, has this acute observation: "The great paradox of this century is that we have reached an extreme pitch of national feeling all around the world just at the moment when, from every rational point of view, we have to find ways of progressing beyond nationalism."

However, some degree of balance must be observed, depending on changing circumstances, in the inevitable conflict between individualism and collectivism within a state. By the same token, there should be a workable balance between the forces of nationalism and the forces of internationalism. There can be a strong trend toward internationalism, without sacrificing the true spirit of nationalism. True nationalism and internationalism are complementary to each other. Many have considered these forces as among the factors that have retarded the development of international law. Personally, I do not share this view, notwithstanding the fact that the Charter of the U.N. envisions a trend toward the development of internationalism as provided in the preamble.

In the shrinking world in which we live, there will be more demand than in the past for common values, which transcends national frontiers. There will be an increasing demand for a re-examination of the rules of public international law.

IV. *NEED OF SOME RULES ON THE NEW ACHIEVEMENTS OF SCIENCE*

The next point which I would like to bring briefly to your attention is the dramatic developments in science and technology which calls for a re-examination, or modification, or promulgation of rules of public international law.

It is to be noted that scientists are making inroads into the realm of the unknown on all fronts; new weapons are being invented and produced; new forms of energy are being developed for peaceful or warlike uses; swifter and cheaper methods of communication and travel are provided; and several legal problems have been created by the growing activities in space.

We may ask, therefore, these questions: "Are we prepared to provide rules and regulations governing these new discoveries? Do we have the necessary maturity and capacity to absorb these innovations and promulgate new rules and regulations?"

These questions are being asked in many parts of the world. Up to the present, international law does not have definite rules and regulations regarding outer space. It is not, therefore, surprising that the established legal order at present is under serious scrutiny in every respect.

Professor C. Wilfred Jenks, a serious student of international affairs, in his recent book entitled "The Common Law of Mankind," expounds the view that modern public international law is not now limited by the rules governing the relations between states. It has outgrown this stage of development and must now be conceived as the common law of mankind. While this view seems to be optimistic there is no doubt that the new order is concerned with such problems as nuclear weapons, the polar areas, outer space, universal economic problems, fundamental human rights, and the problems that emanate from international organizations.

Dean Rusk, Secretary of State of the U.S., speaking on "International Law Day" at the International Fair in Seattle last May 25, 1962, advocated: (1) Keeping outer space free for use by all nations as long as this use follows the principles of the United Nations Charter; (2) Extension of International Law to outer space; (3) Clear identification of rights and adjudication of disputes between nations in outer space activities; (4) Useful applications of space technology; and (5) Opportunities to take part in space activities should be open to all nations.[8] As to whether these various proposals will receive wide acceptance and adoption in the U.N. remain to be seen.

Incidentally, it may be stated that the Committee on the Peaceful Uses of Outer Space of the U.N. General Assembly recommended to the General Assembly the calling of an international conference regarding the peaceful uses of outer space, similar to the conference that met in Geneva in 1955 which considered in the peaceful uses of atomic energy, leading to the establishment of the *International Atomic Energy Agency* with headquarters in Vienna.

V. *TWO SUGGESTIONS*

First, there is a need to call a *Third Peace Conference* similar to the two Hague Conferences of 1899 and 1907. This international conference should be called under the auspices of the United Na-

[8] See New York Herald, Tribune, May 26, 1962; See also Andrew E. Haley, *Space Law—Basic Concepts*, 24 Tennessee Law Review, 1956, p. 643; H. Courtney Kingstone, *The Future of the Law of Outer Space*, 38 Canadian Bar Review, May, 1960, p. 226.

tions primarily to revise and coordinate the existing rules and regulations of international law in order to meet the new conditions or circumstances, and to promulgate new principles and regulations governing the other new developments in science and technology, including outer space.

This conference may define the extent of sovereignty over space. No one today knows how far into space the sovereignty of a nation extends. As with the problems of sovereignty, there are no clear rules governing liability that might result from the operation of space crafts.[9]

This Conference may modify the shortcomings of some of the rules of International Law.[10] Dr. Luis Padilla Nervo, Mexican member of the International Law Commission, has this pertinent observation: "The rules now in force (responsibility of states) were established not merely without reference to small states but against them, and were based almost entirely on the unequal relations between the great powers and small states. This is not only true in this particular branch (responsibility of states), but it is also true to the other subjects."

Parenthetically, I may add that the peace of the world depends not only on a system of collective security or power alliances, but to a great extent on the attainment of economic, social and political equality of the states of the international community and the underdeveloped areas of the world. This is one of the great challenges facing the world today, particularly by those who are interested in the progressive development of international law.

Furthermore, the revised rules of international law should reflect not only the needs of the new factual situations to which they are being applied but also a consensus of the entire world community, including the new emerging states.[11]

Second: That the International Law Commission created in 1947 by the U.N. General Assembly, sitting at Geneva for about two months each year, should be made a permanent body and meeting continuously throughout the year so as to devote its full time and energy towards the codification and development of the rules of international law. The period of two months in every year that the Commission works has been found insufficient. The achievements of science and technology demand a redoubling of efforts in law to avoid a fatal lagging behind.

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[9] Prof. Stephen Grove, *On the Treshold of Space: Toward a Cosmic Law*, 4 New York Law Forum, July, 1958, p. 305.

[10] H. Lauterpacht, *Codification and Development of Int. Law*, Am. Journal of Int. Law, January, 1955, p. 16.

[11] Am. Journal of International Law, April, 1962, p. 386.

VI. *CONTRIBUTIONS OF THE PHILIPPINES TOWARD THE PROGRESS OF INTERNATIONAL LAW*

What have we contributed toward the progress of international law? To the credit of the framers of our Constitution, they have embodied in the said fundamental law, the following provision:

> "The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the nation." (Article II, Sec. 3.)

The Philippines has consistently followed the generally accepted principles of international law. On the whole, our record in the United Nations and its various organs and agencies in promoting the purposes and objectives of the U.N., may be regarded as substantial, considering the fact that the Philippines is a small nation. The Philippines has tried to uphold the principles of the Charter of the U.N. It was one of the 16 member-nations that responded to the call of the U.N. by contributing soldiers and equipment in repelling communist aggression in South Korea in 1950.

Every one must take a part in promoting public understanding of the vital need for the progressive development of international law. Each one must contribute to the determined and prayerful quest of the peoples of the world for a rule of law based upon justice and security. Man cannot simply afford another world war.