



International Law and Developing Countries

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Abstract

The general view of the Third World States in connection with the International Law has always been that of distrust. These nations like communist countries want to be sure that International Law does not become instrument for the preservation of the status quo which may stand in the way of measures to promote their desires for development and freedom. Such countries, in fact, constituting a wide range of nations with differing interests and needs, and at different stages of development, have been influenced by decolonization and the struggle to obtain a better life. Economic problems have played a large role in focusing their attention upon general developmental issues. This paper looks at international law and how it affects the Third World countries.

Introduction

We have seen that balance of power policies, collective security arrangements, and procedures for the pacific settlement of disputes operate to fix the relationship of states with each other. To the extent that they operate effectively they are stabilizing factors in interstate relations. More general and continuous than these control is international law. In theory this law is common to all states. It incorporates the experience of many centuries during which peoples have lived side by side and have done business with each other; it may properly be spoken of as the moral code of states, for it is the body of rules upon which they have agreed so that they may survive.

Many writers have quarrelled with the term “international law,” saying that it implies the existence of a law over states. They contend that in reality international law is a law among states - not over them. The difference is a fundamental one, for it involves the basic nature of the state system. Indeed, international law must be studied with the realization that it not only presumes the sovereignty of states but also seeks to preserve sovereignty - that, in general, it has been the friend rather than the enemy of sovereignty.

The Nature and Content of International Law

We might do well to begin our brief study of international law by noting some definitions which distinguished writers have used. Oppenheim, a standard authority, spoke of it in 1905 as “the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other.” He added that it is “a law for the intercourse of states with one another, not a law for individuals” and that it is “law between, not above, the single states. (Oppenheim1905:1,2). Ellery C. Stowell, writing in 1931, offered this





definition: “International law embodies certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily through the agency of the governments of the independent communities into which humanity is divided.” In 1948 Philip C. Jessup wrote that international law is “generally defined as law applicable to relations between states,” but he declared that “there has welled up through the years a growing opposition to this traditional concept.” He was so confident that individuals are becoming more and more subject to international law that he outlined a “modern law of nations” based upon the hypothesis that the law of nations is applicable to individuals in their relations with states and even to certain interrelationships of individuals, He also called attention to the growing importance of “transnational law” as a result of the proliferation of agencies of an official and nonofficial nature and of practices which cut across national lines.

The recent trend in the West, particularly in the United States, is toward a less technical view of the law. The increasingly influential school of international law created by Myres S. McDougal of Yale University regards law as a process of decision into which all relevant factors, and not merely technical norms, enter. It virtually identifies law with policy and calls the study of law “a policy science.”

While Dr. Jessup’s and Professor McDougal’s views of the expanding nature of international law are certainly warranted by the developments of our time, we must continue to regard that law as primarily “the body of rules accepted by the general community of nations as defining their rights and the means of procedure by which those rights may be protected or violations of them redressed,” to use Professor Charles G. Fenwick’s excellent definition.

Unfortunately, however, “the general community of nations” is split in many ways, and traditional international law, which is after all a product of Western civilization, is regarded with great suspicion in Communist countries and with significant reservations in the developing countries of Asia and Africa.

The Communist States and International Law

The Communists tend to regard traditional international law, as we have defined it, as an instrument of the capitalist, imperialist West, designed to preserve the status quo. A standard Soviet definition of international law was given in 1948 by A. Y. Vyshinsky, who called it the sum total of the norms regulating relations between states in the process of their struggle and cooperation, expressing the will of the ruling classes of these states and secured by coercion exercised by states individually or collectively.(Vyshinsky, 1948).

This definition was also presented in the textbook on international law published in 1957 by the Institute of State and Law of the Soviet Academy of Sciences, with the addition of a reference to “peaceful coexistence” as coming within the purview of international law. Although Y. Korovin in 1961 went so far as to insist that “Contemporary international law may be defined as the international code of peaceful co-existence”, a year later a statement by G. I. Tunkin, head of the Treaty and Legal Department of the Soviet Ministry of Foreign Affairs, reaffirmed the





more typical Soviet view that international law reflects “the struggle and cooperation of states, and, first of all, of states of the two systems” (Lizzitzyn1962:17). “It is this Soviet stress on antagonism rather than cooperation as the primary characteristic of the relations between the states of ‘the two systems’ that sets narrow limits to the role of international law in world affairs” (Lizzitzyn1962:17).

The New States and International Law

The developing nations of Asia and Africa evidence a distrust of traditional international law, a belief that the traditional norms are not binding on them, and a strong desire for the development of international law to meet the needs of the modern world. These nations, like the Communist countries, want to be sure that international law does not become an instrument for the preservation of the status quo which may stand in the way of measures to promote decolonization, self-determination, human rights, and the social use of natural resources, and they are inclined to give more emphasis to the “progressive development of international law” than to its codification. Unlike the Communists, they have a positive view toward international law and in most instances they are inclined to accept, or at least to abide by, its traditional norms.

Most of them are quite ready to join international organizations, become parties to multilateral conventions and treaty arrangements, and play as active a role as possible in international life. Yet, while they have a deep appreciation of the importance of international law, there is among the developing nations, as Oliver Lizzitzyn has pointed out, “a perceptible current of discontent with traditional international law,” and a feeling expressed by Judge Radhabinod Pal, a distinguished Indian jurist who wrote a famous dissent in the Tokyo War Crimes Trials and who was a member of the International Law Commission of the United Nations, that they ought not “to be bound by rules of international law which they have not helped to create and which very often ran counter to their interests” (UN Review 1962, p.31). “There is also”, to return to Professor Lizzitzyn’s analysis, “a desire to incorporate in it (international law) certain principles that have been usually regarded in the West as political rather than legal and that, by their very generality and flexibility of application, lend themselves to manipulation.

The non-Western nations tend to use such principles as weapons in their effort to do away with the remnants of Western domination in both political and economic spheres.” The new states, for example, place great stress on the concept of self-determination, which they advance vigorously in their anti-colonial crusades and in their efforts to assert their economic and social, as well as political, independence.

This orientation is reflected in the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly of the UN in December, 1960, which affirmed that “all peoples have the right to self-determination,” and in the frequent assertions by new states of their sovereignty in the economic sphere. It also explains the tendencies to challenge the status quo and to seek legal justification for such a challenge, even if it may lead to the use of force against recalcitrant colonialists. This attitude has been encouraged and supported by Communist countries, and viewed with misgivings, or worse, by most Western states, whether colonial powers or not.





The Origin and Development of International Law

Like many other institutions of modern times, international law had its beginnings in the prehistoric world. Historians suggest that tribal communities must have been driven to some sort of understandings about places of habitation, water holes, hunting areas, trespass, warfare, and perhaps intermarriage. At first these inter-group relations were conducted on the assumptions that war and conflicts of interests were normal conditions and that peace was to be achieved only by express agreement. Friendly relations between tribal groups were not unknown, however, and as states emerged in the ancient world certain peoples, perhaps especially the Hebrews and the Hindus, asserted ideals of justice and order in the relations of states. The increasing respectability of commerce added a personal interest in law and order and thus contributed to peaceful relations among trading peoples.

Pre-Grotian International Law

The distinctive feature of the political organization of ancient Greece in the time of its greatness was the supremacy of local loyalties and law. It was in relations among the city-states that the Greeks made their greatest contribution to the law of nations, but they also furthered orderly interstate or international relations through their belief that these relations should be based upon certain rules. In their inter-city-state relations they acknowledged rules of warfare and diplomatic immunity, they made considerable use of arbitration, and they evolved a system of maritime law.

With a greater genius for government and administration, the Romans extended the authority of Rome by conquest and alliance until they achieved what we speak of as a world-state. Their contributions, like those of Greece, sprang from the effort to regulate the relations of peoples and areas which did not qualify as “states”, and their legacy to international law was the ideal of a common citizenship and impartial justice everywhere, the idea of a universal law, and the breaking down of the old isolationism and the old contempt for foreigners. To aid them in the government of conquered areas, Roman jurists formulated the principles of the *jus gentium*, or law of peoples, a body of rules and usages believed to be applicable to all peoples and resting upon natural justice. These principles survived the chaotic centuries that followed the fall of Rome and toward the close of the Middle Ages were accepted as part of the emerging international law. In this manner the way was prepared for the modern belief that definite legal principles should control the relations of states.

With the rise of Britain, France, Portugal, and Spain as nation-states, international relations in the modern sense of the term began to develop. Regulations became imperative for the conduct of war, the preservation of neutrality, the use of the seas in both peace and war, and the fixing of boundaries in colonial claims. Agreements were made between states by treaty and conference. A law of neutrality also took form, the principles of Roman law respecting private property were applied to boundary lines and colonial claims, and a law of war was slowly formulated.

Writers long ago began to point out that in the agreements of states, in the principles of Roman law, in practice and custom, and in what they called “natural law” there was a growing body of rules of conduct that states were approving by observance and commitment. Thus while international law was made by the actions and agreements of rulers, it was collected and





systematized by scholars through researches in the past and current relations of states. “International law as now practiced by the states of the world”, wrote Pitman B. Potter a number of years ago, “is largely the product of private scholarship, taken over later by the states more or less in spite of their natural instincts”.(Cornelius 1937:VII).

Perhaps the first of the important writers was Legnano, an Italian, whose study of the rules of war were written in 1360, although not published until 1477. No outstanding writer appeared in the fifteenth century, but at least six legal scholars produced notable works on international law in the sixteenth century. The most important of these were Vitoria, a Spaniard who “laid down the principle that the nations formed a community based upon natural reason and social intercourse”, Suárez, also a Spaniard, who first distinguished between reason and custom as sources of international law, a distinction followed ever since”, and Gentilis, a British subject of Italian extraction, who added historical and legal precedents to natural reason and natural law as sources of international law. Gentilis is remembered today for his *De jure belli*, but probably even more as the direct forerunner of the man destined to become known as the “Father of International Law”, Hugo Grotius.

Grotius (1583 -1645) and Natural Law

Hugo Grotius was born in Holland in 1583. He took the degree of doctor of laws at the University of Leyden at the age of fifteen. In 1609 he published *Mare liberum*, wherein he argued for freedom of the seas, a view then not generally held. Later he went to Paris, where he lived for ten years and where in 1625 he published the work which has given him permanent fame, *De jure belli ac pscis*, or *On the Law of War and Peace*. It is significant that this notable work appeared in the midst of the bloody Thirty Years’ War. He issued an enlarged and revised edition in 1631 and later three other editions with little change. A total of sixty- four editions had been issued by 1928.

With *De jure belli ac pscis*, particularly Part II, “the science of the modern Law of Nations commences . . . because in it a fairly complete system of International Law was for the first time built up as an independent branch of the science of law.” One authority describes it as having four main characteristics. First, Grotius would hold states to the same rules which regulate the lives of individuals and make the violation of them a crime subject to punishment. Second, basing his judgment upon researches in the Scriptures, ancient history, and the classics, he formulated the “law of peace” which became the foundation of his whole system. Third, he argued that states may properly punish other ‘states which violate the law. Fourth, he accepted natural law - or right reason - as the primary basis for determining rules for the rightful conduct of states.

Grotius is much admired today for his earnest desire to bring nations to accept the principles of humanity. Indeed, in our esteem for international conduct based on moral principles and in our growing conviction that peace-loving states must accept the obligation to punish lawless states, we are closer to the spirit and mind of Grotius than were the men of the nineteenth century with their glorification of sovereignty.

International Law and World Peace

We should remember that international law is only one aspect of international relations, and by no means the most important one, and of course, the great issue of international politics.





Those most clearly involving issues of peace or war, are largely outside its purview. This is not because many of these issues do not lend themselves to judicial settlement, but because the states of the world will generally not submit them to judicial settlement. Matters of national honour and prestige are too closely involved.

International law, moreover, is still in a very primitive stage of development. Professor Dickenson, a friendly critic, described it this way: "...as regards its institutions and procedures of adjustment, the law of nations has been a jungle law imperfectly ameliorated by a fragmentary and hesitant progress in the direction of legal order". In Professor Brierly's judgment, "the system is still at what we may describe as the laissez-faire stage of legal development." Nevertheless, it represents a positive attempt to build an international legal order, in the absence of which peace and sanity in the international community are in constant jeopardy.

We must not regard international law as an alternative to diplomacy. Clearly, diplomacy too is essential to the family of nations; in fact, as we have seen, it is the usual method of conducting interstate relations, including the adjustment of differences and disputes. Even if one argues, as some writers do, that international law now provides rules that are adequate for the solution of all disputes among nations, he must concede that there remains the need for diplomacy to bring nations to seek settlement by law and to accept it. If one argues that diplomacy must take up where law leaves off - that is, that there are justiciable and non-justiciable disputes - then there falls to diplomacy the whole area of "political" differences among states.

Conclusion

Increasing attention is being given to the study of international law, on both official and unofficial levels. Interest on official levels is illustrated by the growing number of courses in international law in law schools throughout the world, the expanding number and activities of societies of international law, and the voluminous literature on the subject

References

- Fenwick, C. (1924). *International Law*, New York: Century Jessup, P. C. (1948). *A Modern Law of Nations*, New York: The Macmillan Company, 15&16.
- Jessup, P. C. (1959). *Transnational Law*, New Haven: Yale University Press.
- Lizzitzyn, O. J. (1963). "International Law in a Divided World", *International Conciliation*, No. 542, p. 59.
- Oppenheim, L (1905). *International Law*, New York: Longman Green & Co, 1,2.
- United Nations Review*,(1962). "Future Role of International Law in the Changing World", New York.
- Vollenhouse, C. V.(1937). *An Introduction to the Study of International Organization*, 5th ed, New York: Appleton-Century-Crafts, p.58.
- Vyshinsky, A. Y (1948). *International Law*, New York: Holt.

