THE FIRST DECADE
OF THE UNITED NATIONS

THE UNITED NATIONS AND LAW IN THE WORLD COMMUNITY

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The subject that has been set for discussion today—namely, accomplishments and evaluation of the United Nations' first decade—spreads over an impressively large part of the whole field of human political endeavor. That fact is a reflection of the generous ambitions which were entertained by those framing the United Nations Charter ten years ago. They were concerned about preventing another great armed conflict. They wanted to encourage and to make easier the peaceful and just solutions of international disagreements. They cared about the living conditions and status of individual people all over the world; this arose from humanitarian impulse and from a belief that oppression may beget conflict and even world war. The framers realized that world trade had a bearing on peace and on economic improvement. They thought it wise to continue international supervision of the affairs of peoples in mandated territories and to extend some supervision to other non-self-governing areas.

In furtherance of all these purposes, the framers hoped to devise international institutions which could carry on constructive enterprises of co-operation and which would emphasize, develop, and apply principles of law in appropriate areas of international life. Accordingly, as is usual with the business of lawyers, we are bound to be interested in a very wide range of affairs when we look at the United Nations.

During the last week, at San Francisco, the first decade of the United Nations has been talked about extensively and from many points of view by government representatives on the occasion of the tenth anniversary of the signing of the Charter. As Walter Lippmann noted before the San Francisco meeting,

*The speaker made plain that he was speaking personally and unofficially and not necessarily expressing the views of the Department of State.

more important than the speeches were the facts that governments sent their statesmen to the commemorative session, that membership in the United Nations is universally prized, and that the Organization is deeply rooted among the nations as an indispensable institution for preserving the universal society in the face of dangerous division and conflict between East and West.

Significance of the Organization

The United Nations stands as a symbol of human progress and of the rule of law in the world. Its meaning, to people in every country who know about the Organization's existence, is the meaning of an institution founded upon principle and dedicated to the rational pursuit of certain human values that are easily and generally recognized. The Organization and the specialized agencies related to it were designed to bring about fruitful international co-operation in many fields. These include health, agriculture, labor conditions, science and education, trade, finance, economic development, communications, weather reporting, and transportation. The United Nations was designed to do away with the use of force, at will, by national governments. It was designed to provide standards of conduct among governments, and by governments toward their peoples in regard to at least some matters—standards of substance and procedure which would take the place of shifting expediences and arbitrary actions.

Of course, seeking after the rule of law among nations did not begin with the United Nations Organization. The League of Nations had gone before. And, before the League, international law had been growing for several centuries. The United Nations is significant as it represents the present era's expression of a main current and purpose in the growing law of nations. The purpose of bringing about the rule of law in the world can be pursued in different ways. World government, equipped with ineluctable enforcement procedures, is certainly one kind of possibility. It is not the only kind. And the present United Nations Organization as an association of national states is not the only alternative to world government.

Appraisal of any given set of institutions designed to bring about the rule of law should not be based on their relative complexity, or on the quantity of direct enforement of standards which they reveal. Law, in any community, is more genuinely measured by the degree of its recognition and acceptance than

by the amount of visible enforcement. When we are looking at the United Nations, we should not simply think of it in comparison with a more elaborate form such as world government, and regard it as a stop-gap or inadequate substitute. We should consider the performance of the United Nations as the performance of an institution which, in its own right, may spread the rule of law and make it effective in the community of nations.

Character of the United Nations and Distribution of Powers

In general, the United Nations was constructed along the lines of the League, as an association or continuing diplomatic conference rather than a government. However, in the area of maintaining international peace and security, the new organization was nominally endowed with governmental powers. At the same time, the Charter imposed no obligation on Member States to go to the aid of a country under military attack.

If the founders of the United Nations back in 1945 could have looked ahead to the present time, they might have been most surprised at the fate of the Security Council. The Council was designed as an executive organ which would decide very important questions concerning the maintenance or restoration of peace, and then carry out necessary measures directly. This design rested on co-operation among the Great Powers, which was hoped for as a logical development of their joint efforts in wartime. Actually, there had not been a very close co-operation during the war between the USSR and its allies, and the course of the San Francisco conference of 1945 led through some heavy seas. Soon after the war ended, matters grew worse and the period of cold war began. Progressively, the Security Council became to a considerable extent incapacitated by great-power differences and the veto.

The institutions created by the Charter have proved remarkably adaptable in coping with the situation which developed in the Council. Quite early, the practice of abstention was invented to deal with cases where permanent members did not agree on a course of action. This was later extended to include the proposition that the Council could act if a permanent member were deliberately absent from the meetings. As time went on, however, there came a concentration in the General Assembly of political responsibility for the main questions brought to the United Nations. This the Assembly was able to undertake by virtue of Articles 10, 11, and 14 of the Charter. The fact

that the Assembly's deliberations could not produce decisions binding on the Members of the Organization is not necessarily a true gauge of its effectiveness in furthering the rule of law. We need always to keep in mind that the Security Council's resolution calling for resistance to the attack in Korea was no less effective because it was a recommendation and not a decision.

The real question is whether the processes of United Nations political organs have resulted in the formulation or application of standards which in fact gained acceptance and were acted on by governments. The record on this is mixed. There have been instances where a political and propaganda contest was conducted vigorously, with many countries entering the lists and debating main issues, and where a recommendation based on announced principles emerged and was recognized as an expression that ought to be followed. The several stages of the Korean case in the Assembly provide examples: there was the finding of Chinese Communist aggression, and the embargo; the resolution on non-forcible repatriation of prisoners of war; and the demand for release of United Nations Command personnel illegally held by the Chinese Communists. In several cases, Assembly recommendations have not been given effect—as in the case of human rights in the satellite countries and South Africa. Even there the resolutions were probably not al together futile; they declared for principles and announced standards which were recognized as valid in most of the world.

Then there have been other instances—perhaps these can be described as relatively few—where the Assembly merely witnessed routine propaganda performances and glossed over difficult issues without real give-and-take. This has happened with the North African cases and with Cyprus and Netherlands New Guinea. There is a great difference between an outcome reached after active and even heated discussion and a more or less automatic outcome which follows upon stereotyped consideration of a problem.

There may be reasonable ground for discouragement in what can be interpreted as some retrogression in the processes of the Security Council and General Assembly during the last few years. But those processes remain available, and the knowledge is abroad as to how they can and ought to be used. I wonder if it is not true, despite any recent history, that there is greater security in the world today with the United Nations than without it. The Organization repelled aggression in Korea and contributed powerfully to the stopping of hostilities in Indonesia, Kashmir, and Palestine. The guess may be hazarded

that these examples and the knowledge that the United Nations was there helped materially to prevent the outbreak of hostilities in other situations.

The Charter has laid an obligation on governments to try to settle international differences peacefully, by means of their own choosing. United Nations practice has been helping to establish the proposition that differences resisting settlement or urgent in character should be brought to the United Nations before a state takes unilateral measures. When a case does come to the Security Council or General Assembly, public debate of issues—in which statements of fact are made and differing points of view set forth—tends to focus interest and attention on issues and their merits. In debate, governments generally feel compelled to rest their case on principles. As the debate proceeds, the correctness of those principles is exposed to scrutiny, and the propriety of their application to the particular facts is held up for examination. This process promotes recognition and acceptance of the rule of law.

As I have noted earlier, the Security Council today is not performing its intended function of enforcing peace, and it is not likely to, because of great-power differences and the veto. Efforts to reconstruct the Council so that it could actually wield enforcement power—even if the efforts could succeed—appear to be of doubtful wisdom; even a somewhat enlarged Security Council could not sufficiently represent the whole membership of the United Nations. The Council, nevertheless, is still able to perform useful tasks in the pacific-settlement field, up to the point where the veto is used and frustrates constructive attempts at solution. Resort to Security Council procedures, and the various types of settlement mechanism which the Council as well as the General Assembly can provide, may frequently be worthwhile. But, where an expression of world opinion is sought on controversial issues in a case, the Assembly is likely to be a better forum.

International Supervision of Dependent Areas

Another area where the United Nations has been engaged in activity to further the rule of law is dependent territories administered by metropolitan powers. The international trusteeship system is a continuation of the mandates under the League of Nations. Conditions within a trust territory are brought to light by the submission of annual reports and of written petitions and by the hearing of oral petitioners. The

administering authorities are at pains to answer and justify their conduct or to correct an abuse. The visiting missions, sent to trust territories in succession, furnish a valuable first-hand supplement to the other means of knowledge available to the United Nations.

These United Nations activities, together with the less ambitious but no less difficult tasks of the Committee on Information from Non-self-governing Territories, probably exert a generally beneficial influence on the lives and affairs of people in politically dependent areas. Some practical accountability on the part of the metropolitan administering powers is enforced. The institution of accounting now follows fairly clear procedural rules, and substantive standards to measure the administration of a metropolitan power are developing. In the case of South West Africa, the Assembly has twice sought and received advisory opinions from the International Court of Justice on disputed legal questions concerning administration of the mandate. It is a matter for regret that the Union Government in South Africa has not yet been persuaded to abide by the conclusions which the Court reached.

While these operations of the United Nations in regard to dependent areas have worked fairly well in a technical sense, there has not consistently been in the forefront a broad vision of the future and an effective concern for each area in its own right. Some of the metropolitan powers, at least at times, have been grudging in their participation, apparently resentful that any authority outside themselves should have opinions concerning the administration of dependent territories. There has not been put aside entirely the image of territories that are to remain dependent and continue to exist as profitable possessions. A grave danger from the situation is that old-style nineteenth-century colonialism may be replaced directly by totalitarian Communist colonialism.

Asia is continuing to undergo great upheavals. A similar future seems to be in store for the continent of Africa unless evolution can work more quickly and perceptibly. There are immense possibilities for constructive United Nations action in the political and economic liberation and development of colonial and underdeveloped areas; in this way the Charter principles would have real life in these areas. The necessary machinery exists in the United Nations. The problem is, first, one of political willingness on the part of governments. The United States obviously has a great interest and the opportunity for great influence here.

The United Nations and Individual Rights

United Nations bodies, particularly the Human Rights Commission and the Assembly, have devoted substantial attention to protecting individual rights throughout the world. The Charter contains some general statements of principle, in Article 55, about human rights. The emphasis of the United Nations in its first ten years has been on refinement and codification of these statements.

First came the Universal Declaration of Human Rights. This, despite its vagueness and precautionary loopholes, could serve as an expression of goals to be striven after. But the two draft Covenants on Human Rights, intended as precise and legally effective instruments, are often uncertain in meaning. Not infrequently when the Covenants prescribe a minimum standard, it is too low, and one can only doubt that the present period is one in which Bills of Rights ought to be framed. The utility of the draft Covenants, and even the Declaration, for advancing human freedoms seems uncertain. Crystallization of standards in this field might better wait until there is a larger measure of agreement, and on higher standards, than seems possible currently. The United Nations might better devote its energies meanwhile to the exposure of factual situations in different parts of the world. This process can be a powerful force in creating an enlightened and vigorous opinion at work for the recognition and acceptance of higher standards.

The International Law Commission

Among its manifold tasks under the Charter, the General Assembly was given the responsibility of finding and proposing rules of international law by direct studies to that end. The Assembly was to initiate studies and make recommendations to encourage "the progressive development of international law and its codification." For this purpose the Assembly established an International Law Commission to be composed of 15 individual experts. The Commission was to prepare drafts, circulate them to governments, put the drafts in final form, and submit them to the Assembly.

Now, what were these drafts? They were and are drafts of treaties for signature and ratification by the individual United Nations Members. A few of the drafts have been finally processed by the Commission, but not a single one has been signed and ratified and made into law by treaty for even a very limited

number of states. This fact should not be considered a reflection on the quality of the Commission's work. I imagine the opinion is quite widely shared that the Commission has done careful and useful work on several topics. At the present time the Commission is busy with a series of inter-related maritime subjects of great general importance: the continental shelf, fisheries, and the regime of the territorial sea and high seas.

What I wish to suggest is that it may be a mistake to try to make international law at the present stage by codification and the conclusion of treaties containing codes of law. The great political difficulty of securing agreement by any considerable number of states on any single formulation is certainly increased by the fact that in the present state of international law much of the drafting must represent new law and not already accepted rules. International law is in a relatively primitive stage of development. According to the national experiences with which we are familiar, it does not seem ready for codification. To concentrate on the preparation of draft treaties in this field tends to deprive the International Law Commission's work of its practical value. If the treaties are not signed and ratified—as they have not been, and as few are likely to be—they lose standing through non-adoption. Their failure to be concluded has an adverse practical effect on the esteem in which their contents are held.

It might be more profitable for the International Law Commission to select areas of international law for study and to publish at the end of its study on each a carefully organized analysis of relevant precedents and authorities, together with any observations the Commission thought it possible and desirable to make on the rules of law which ought to be followed in deciding issues of law in the area. The process would stop there. Political approval by governments would not be sought for the Commission's analyses and conclusions. These would not be put in treaty form and submitted for formal approbation by the United Nations or by individual states. The Commission's reports would stand on their merits as joint statements by some of the most qualified persons in the field, and could serve as a source available to international tribunals and to governments in their conduct of foreign affairs. This kind of work by the International Law Commission would give scholarly support to the general purpose of the United Nations in furthering the rule of law. It would also organize and preserve in readily usable form the experience of operating United Nations bodies in framing and applying standards as they dispose of the problems that are brought before them.

The International Court of Justice

Let us turn now to the International Court of Justice, established in the Charter as the principal judicial organ of the United Nations. In a little more than nine years the Court has given judgments on the merits in 9 cases; it has rendered 9 advisory opinions. For its next session after it adjourns for the summer this year, the Court will have on its docket not a single contentious case or advisory opinion that will proceed to the filing of briefs and the hearing of oral argument.

Another factual observation that may be made concerns the jurisdiction of the International Court of Justice. Since the Court's early days, there have been no substantial accretions to its general jurisdiction through the deposit of acceptances of compulsory jurisdiction by states. In fact, some of the older acceptances have run out and not been renewed. Others have been withdrawn or limited. A number of the acceptances in force today are qualified by important reservations. In several of the contentious cases brought before the Court, states have sought to avoid judgment on the merits by raising objections to the Court's jurisdiction.

The United States, in some recent cases, has filed applications with the Court against countries that have not accepted compulsory jursidiction and have been unwilling to negotiate special agreements for the adjudication of United States claims arising out of the loss of aircraft. Great Britain has followed suit recently in filing applications against Argentina and Chile concerning Antarctic territorial claims. In due course, the Court will dismiss all these applications if, as now appears probable, the defendant states will not accept jursidiction. It is too early to gauge the effect of these actions in encouraging resort to the Court, or in clarifying issues and emphasizing those aspects of them which are most likely to lead to their peaceful settlement. The claims of certain South American countries, asserting a 200-mile width of territorial waters off their coasts, form an appropriate subject matter for adjudication by the International Court. But those countries have so far indicated a definite reluctance to accept litigation.

In surveying the record of the Court, one should not be discouraged simply by the small volume of cases. It could be true that only a few questions went to the Court because of a wide acceptance of and reliance on settled rules of law. It is certainly true that the cases going to The Hague are large and complex, and often require trial of facts as well as decision

on the law. But, to be candid, we must admit that there is room for much more litigation before the International Court of Justice. In failing to go to the Court, governments are not simply applying accepted and agreed standards to solve problems in which they become involved. Governments, both individually and as they are represented in international organizations, often seek to avoid obtaining impartial and authoritative answers to disputed legal questions. They prefer to wage their law, through diplomacy, economic controls, or straight use of physical power.

As for the International Court itself, it is not too much to say that the Court's processes are generally accepted as those of an able and objective judicial body. One may conclude that the Court is an intrinsically sound institution, capable of handling successfully a much larger volume of business than it has had. Judge-made law, coming out of controversies before the Court at the Hague, can make an important contribution in the realization of the United Nations' purpose to develop the rule of law in the world.

Conclusion

As we take a fleeting look back over the organs and activities of the United Nations, we see plain vestiges—and more than vestiges—of the old order based on force and expediency. Some large questions, like the conflict in Indochina, have not been brought to the United Nations at all. There has been disappointingly little use of the Peace Observation Commission. United Nations meetings are sometimes used merely for propaganda and advertising purposes, without commitment to real debate and its consequences. Resolutions adopted by United Nations organs do not always rest on a foundation of principle rationally applied to a given set of facts. Postponement or the adoption of an anodyne resolution may be the result of pressure politics in the corridors or in the capitals. Tasks may be foisted by the Assembly on the International Law Commission not because of their merit but because this seems a convenient way to dispose of some troublesome item on the Assembly's agenda. Members for the Commission and judges for the International Court may be chosen in elections which are sometimes obvious political trading, although of course the United Nations has no monopoly here. The proceedings of the Assembly's Legal Committee may not always inspire confidence. And legal questions may be kept away from solution according to rules and principles by a body equipped for this purpose.

Yet the very existence of the institutions of the United Nations shows aspiration and effort toward making the rule of law a reality. As the world public, in many countries, comes to know more about these institutions and scrutinizes their operation, the opinion of that public may compel government actions which will result in better use and functioning of the institutions. It is evident that they are young and in a relatively primitive stage of development.

In time there may evolve, without basic alteration in the present political structure of the world community, greater voluntary reliance on processes and agencies of international co-operation and larger acceptance of law in international relations. It is also possible that a world-wide community of interest, in a field such as disarmament, will be recognized and given effect in practical arrangements where an international agency may have greater direct responsibility and authority than any United Nations body exercises today. The functioning of the World Health Organization, in its proposal and promulgation of international sanitary regulations, may be a forerunner of analogous developments. On a regional basis, the European Coal and Steel Community is a going concern. Other approaches to European integration are in the making. Gradually there might grow up from similar beginnings on a world-wide basis some closer form of world political organization.

A large question undoubtedly exists whether law will become generally effective and order will prevail in the world without such growth. There are some who think that the existence of many nation states—some large and powerful, some small—is inherently inconsistent with the prevalence of law and order. Secretary-General Hammarskjold noted in a commencement address at Stanford a week ago that the era of nationalism had not passed, that new nations were still emerging. This continuing development may seem almost an anachronism, but it is a fact to be reckoned with. And the possibility of collisions among national states is equally real. World organization, in the form of the United Nations, helps to keep the contending forces of national states in friendly competition, according to rules that are understood by all.

It is still true that individual nations can bring rich gifts to efforts of co-operation by the world community. Affirmative projects of co-operation count among their consequences a contribution to peace by creating vested interests in it. A number of such international projects are going forward today, like technical assistance, the activities of the specialized agencies,

and now the projected establishment of an international agency for peaceful uses of atomic energy. These may be extended, in wider campaigns against disease and want, and in joint scientific undertakings such as the exploration of interplanetary space.

At the end of the first decade of the United Nations, there lies ahead a great future of unknown events. Its possibilities of promise are probably much less known than the threats to civilization which have become apparent since 1945. The United Nations today is a powerful force for keeping open the uncharted opportunities for life guided by law and by reason.