

## EDITORIAL COMMENT

### CONTEMPORARY PROBLEMS OF INTERNATIONAL ORGANIZATION

Fifty years, ago, following the outbreak of World War I, there emerged in the United States and in Europe a movement for the expansion and improvement of international organization for peace and welfare.\* Since that time international institutions have multiplied to a degree astounding to the outside observer;<sup>1</sup> the latter perforce needs an analytical guide to even discover what institutions exist and what they do. These possibly somewhat inflated institutions have, inevitably, generated a congeries of problems of varying importance, some very acute today.<sup>2</sup> The somewhat paradoxical situation exists of unprecedented quantitative expansion together with failure to solve the most crucial issues of international relations and international government.<sup>3</sup> While the underlying causes cannot be

\* This editorial is written as of December, 1964.

<sup>1</sup> For the most reliable data see *Yearbook of International Organizations*, published by the Union of International Associations (cited hereafter as *Yearbook and UIA*) in Brussels; in the prospectus to the December, 1964, edition of this work it is stated that there existed, at that time, 179 inter-governmental international organizations and 1718 non-governmental ones. Hereafter the 1963-64 edition is cited. See review of 1964-1965 edition, below, p. 423.

The whole world of non-governmental international organizations is omitted from this discussion. See *Yearbook* 305-1419, and article in *International Associations*, published by UIA, June 6, 1962, p. 403. These NGO's are often of great importance and maintain an elaborate system of consultative relations with the U.N.: *Yearbook* 95-105. A world commercial satellite communications enterprise was approved by eighteen countries in Washington in July, 1964. See 51 *Dept. of State Bulletin* 281 (Aug. 24, 1964), and note by Simsarian, this *JOURNAL*, p. 344.

<sup>2</sup> The American delegate to the U.N. Conference on Trade and Development on April 17, 1964, objected to the creation of a new U.N. capital development fund demanded by 28 Latin American, African, and Asian countries, partly on the ground that "it would . . . have to compete with existing international institutions." United Press International (UPI) dispatch, Geneva, that date. (For recent events and utterances, on which this study is largely based, it is necessary to use press dispatches, which are to be found in any large newspaper such as the *New York Times*.) See also discussion of a combination of E.E.C. and E.F.T.A., advocated both to simplify international machinery and for economic reasons, in an address by the Danish Premier, reported in the press on June 8, 1964. On the other hand, a leading columnist demands more "international machinery" to handle Southeast Asian problems (Lippmann, May 28, 1964), and the Soviet Union has recently advocated "an international commission" to regulate and control arms deliveries to the Middle East (June 2, 1964). Strange entities appear from time to time: an European Space Launcher Development Organization (intergovernmental), *Associated Press* (AP), London, Nov. 18, 1964; the Paris Club (seemingly an offshoot of the IMF), UPI, Paris, Nov. 8, 1964.

<sup>3</sup> The use of this term, in contrast to voluntary international co-operation, and the meaning attached to the general term "international organization," will appear in the course of the discussion, as well as its relation to international federation, contrasted with unitary government (and defined either by the source of its authority or its application).

fully explored in this brief survey, nor adequate solutions for them proposed, an inventory of the major problems of presently contemporary international organization—some of them dating back over fifty years—should be both practical and useful.<sup>4</sup> In so doing, an effort must be made to avoid subjective personal or sectarian propaganda, but some assessment of the outstanding merits and defects of structure and procedure in this field, as measured by the professions of the institutions in question and by “the general principles of law” and the accepted principles of political science, may justifiably be undertaken, with, perhaps, a cautious glance or two into the future.

The science and literature of international relations and organization, especially the latter, have not kept pace with developments in actual life, except for a number of special studies.<sup>5</sup> The press has responded avidly to the increased news value of even technical international organization, although inevitably with a sometimes dangerous ineptitude.<sup>6</sup> The result is a curious lag which is the reverse of the failure of political institutions to match in point of quality the more advanced thinking on the subject, a familiar phenomenon also still observable today.

Developments of or in the international community have been both startling and problematical. There now exist over one hundred and twenty-five sovereign, equal, and independent states, if we may believe their own declarations.<sup>7</sup> Colonialism is just about dead.<sup>8</sup> These states, sometimes referred to by the telltale term “countries,” are, however, obviously not in fact equal nor do they form a homogeneous international community, waiving even the Super-Powers or the “Big Three” as we now hear. Possibly the multiplication of states serves somewhat to mitigate the gross and continuing inequalities between, *e.g.*, Panama and the United States. On the subjective side, nationalism as a spirit was never stronger in modern history nor, paradoxically, was international consciousness.<sup>9</sup> The place of the individual, and of humanity as such, in this

<sup>4</sup> For expanded treatment, see work on Institutions and Functions of International Organization, in preparation by the present writer, especially Ch. 13.

<sup>5</sup> Apart from the literature on the U.N., see work cited in note 4 above, Appendix D. A large section of the Sixth World Congress of the International Political Science Association, held in Geneva in September, 1964, was devoted to problems of international organization. In this study it is not intended to explore to any great extent contemporary secondary literature in the field. <sup>6</sup> See note 2 above.

<sup>7</sup> Not to mention the States of the United States and the Swiss Cantons, which also claim to be “sovereign.” See list of 113 “sovereign states” participating in the United Nations and the Specialized Agencies in 1962, Yearbook 91; the presently increasing activity of the Holy See may be noted; the membership of the U.N. had risen to 115 by 1964; a dozen other “sovereign states” may also be found, see Yearbook 93, notes 1–6.

<sup>8</sup> Barring a possible return of national tutelage in some modified form or the further development of international territorial administration. See discussion in connection with national and international aid, p. 300 below.

<sup>9</sup> A spokesman for the European Economic Community’s Commission recently warned the Western European Union against “the growing flood of nationalism throughout Europe,” UPI, Rome, June 23, 1964. The terms “international” and “imported” still hold prestigious value, but on the other side “foreign” and “alien” remain

world picture is recognized as never before; in its resolutions in 1963 the U.N. General Assembly constantly referred to "the human race" and "mankind" and to individual beneficiaries of human rights ("all human beings").<sup>10</sup> International communications, airlines, and hotel chains, with television and the recent expansion of "tourism" added to all the older devices, are forming a notably cosmopolitan world.<sup>11</sup> International education in all its rapidly developing forms, especially exchange fellowships, is spreading so fast that the observer cannot keep up with it.<sup>12</sup> The Communist International remains both a partly unifying and partly divisive factor. Finally international trade, fostered by the states themselves, whether directly<sup>13</sup> or on behalf of their nationals, and by several international organizations,<sup>14</sup> threatens or promises to produce a somewhat integrated world economy, which would not be without its own peculiar problems.<sup>15</sup>

International political relations, regarded by some as the dynamic heart of the whole problem, have continued on their usual turbulent way, accentuated by the increased number of players. At the center has loomed, since World War II, the schism between Russia and the United States, mitigated in recent years by the concept and perhaps the policy of peaceful co-existence, but complicated by the rift between Russia and China.<sup>16</sup> It is coming to be recognized widely that the schisms between Russia and China and between Russia and the United States are not entirely rifts between proselyting Communism and individual capitalism or even between proletarian dictatorship techniques and freedom in national and international relations, but are also embodiments of the old conflict between national states; the similar schism between the Arabs and Israel is probably

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somewhat pejorative. On the other hand, it has been argued in most responsible quarters that fear of the nuclear bomb alone has welded together an international community, a community of fear, perhaps, as has no other factor: *The New Yorker*, June 13, 1964, pp. 136, 140, quoting Rabinowitch, *The Atomic Age*.

<sup>10</sup> Res. 1881, 1884, 1904, General Assembly, 18th Sess., Official Records, Supp. No. 15 (A/5515), pp. 13, 19, 35.

<sup>11</sup> Tourism is now a multibillion-dollar industry, as indicated in a recent O.E.C.D. study, *Tourism in O.E.C.D. Member Countries 1964*, O.E.C.D. Publication No. 17,869 (1964). Some countries have begun to protest against the influx of tourists. To this should be added mention of the Olympic Games (with their difficult mixture of nationalism and internationalism), international music and film festivals, *villes jumelles*, and so on.

<sup>12</sup> "International Education, A Brief Analysis," in *New Goliards*, No. 4, Aix-en-Provence, 1965. But see critical report to Institute of International Education on this activity, reported in the press June 18, 1964.

<sup>13</sup> See discussion on Feb. 29, 1964, at Conference on Soviet Impact on International Law at Duke University, U. S. Department of State, External Research Paper 156, May, 1964, pp. 8-10.

<sup>14</sup> E.C.S.C., E.E.C., E.F.T.A., G.A.T.T., etc. On all of these organizations and agencies, see *Yearbook 77*, 109 f., 212, etc., and *European Community*, cited in note 39 below.

<sup>15</sup> See especially much recent discussion of reform of the International Monetary Fund, and concurrent discussion of monetary integration among the Six.

<sup>16</sup> See discussion on Feb. 29, 1964, cited in note 13, pp. 1-7. For recent developments, see *Changing East-West Relations and the Unity of the West* (ed. by A. Wolfers, Baltimore, 1964).

not as dangerous but seems to be more fanatical and not mitigated by any doctrine of peaceful co-existence. In response to the East-West schism, a complicating factor has arisen in the form of a block of professedly neutralist or non-aligned states, a highly "discretionary" neutralism, although it does profess the old international law principle of abstention from aid to either party (while drawing benefits from both). To these must be added the rift between the comparatively underdeveloped countries and their opposites, the former to a large extent constituting the neutralist group. In a somewhat, but not entirely, different context is to be observed a blurring of the old line which forbade states to intervene (even in a general, not strictly legal, sense) in one another's "politics"; more and more this somewhat artificial exaggeration of state "independence" is being ignored today even by international officials.<sup>17</sup> If the increased practice of attempted subversion of governments with which the government indulging in the practice is ostensibly on friendly terms<sup>18</sup> is added, not to mention the phenomenon of "governments in exile," a first-class dilemma emerges.

While all this has been going on, what has happened to good old common international law? Very little until just recently, if even then. Attempts at revision and codification under the League of Nations and the United Nations have not accomplished a great deal, in spite of the high quality of the efforts of the commissions and conferences established for this purpose,<sup>19</sup> and in spite of devoted labors by a few other similar na-

<sup>17</sup> See the lively interest and comment in Europe and elsewhere on the recent Presidential election in the United States, not to mention comment in Washington on the régime of General de Gaulle (Fulbright: "de Gaulle view . . . reactionary"), and world-wide comment on the choice of Mr. Nehru's successor and on the retirement of Mr. Khrushchev. On June 4, 1964, Mr. Stikker, Secretary General of NATO, while protesting that he did not wish to become involved in American politics, said that Europeans "might get disturbed" if Senator Goldwater should win the Republican Presidential nomination; in a similar manner U.N. Secretary General U Thant called for an explanation of the demotion of Mr. Khrushchev, Oct. 22, 1964. Polish leader Gomulka and Russian Premier Khrushchev, echoing world-wide opinion, unofficial and semi-official (leading British and German newspapers argued that "what happened at San Francisco concerns us all"), denounced the Republican Party platform adopted at San Francisco on July 16, 1964, and the acceptance speech of Presidential nominee Goldwater, July 21, 1964. President Johnson sent a message to Chancellor Erhard in connection with the conflict of views between the latter and party opponents in Germany, UPI, Munich, July 12, 1964; the U. S. Department of State declared its support of Prime Minister Wilson in the matter of Rhodesia, AP, Washington, Oct. 28, 1964. The President of the United States, acting under Congressional statute of 1959, still proclaims "Captive Nations Week," UPI, Washington, June 21, 1964. Diplomatic establishments of even "friendly" countries are made the objects of hostile political demonstrations and destruction.

<sup>18</sup> Or of the government of a "new" nation; see discussion by Prime Minister Sir Alec Douglas-Home before a press association luncheon in London on April 10, 1964, AP, London, that date. In a Commencement address at the Coast Guard Academy on June 3, 1964, President Johnson revealed that the United States was combating "subversion" by means of 344 "teams" in 49 different countries. 50 Dept. of State Bulletin 951 (1964).

<sup>19</sup> Particularly the International Law Commission of the U.N., the Geneva Conferences on the Law of the Sea, and two conferences in Vienna on diplomatic and consular status

tional and international bodies.<sup>20</sup> International law seemed to sink somewhat into obscurity between 1920 and 1960, from both neglect and deliberate repudiation or something closely approaching it.<sup>21</sup> On the other hand, a curious revival or a somewhat nostalgic longing for the old "international law" *ipsisssimis verbis* seems to be evident recently; hardly a week goes by when some statesman or politician—Castro, Johnson, Sukarno, Wilson—does not employ those sacred words in appealing for sympathy or in threatening vengeance. Finally a very notable movement in the direction of "world law" has sprung up and shows great promise.<sup>22</sup> Perhaps a helpful revival of interest in international ethics may also be detected! Of course an enormous body of international legislation is building up in and through the many international organizations mentioned above.<sup>23</sup>

The recent multiplication of independent states has also had the effect of multiplying consular and diplomatic personnel tremendously and of increasing interest in questions of organization and procedure connected therewith.<sup>24</sup> The democratization of the international community has also, however, had the paradoxical effect of raising the level of diplomatic rank; now all God's peoples have ambassadors!<sup>25</sup> Concurrently with the efforts of new states trying to learn the tricks of the trade, some old states—the United States and Great Britain, for example—have inaugurated new programs of reform and improvement.<sup>26</sup> Diplomacy is threatened with automation, on the one hand, while the ancient diplomatic corps, on the other, seems offered new life as a useful institution. Permanent repre-

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and privileges. The U.N. General Assembly has taken action on several occasions recently to promote study of and respect for international law: Resolution for a Juridical Year Book, Dec. 18, 1962; Resolutions 1966 and 1968 of Dec. 16, 1963, on Principles of International Law, etc., and to promote teaching and application of international law (18th Sess., Official Records, Supp. No. 15 (A/5515), pp. 70, 71).

<sup>20</sup> For example, the American and other national societies of international law and political science (see note 5 above) and the "non-governmental" International Commission of Jurists at Geneva (Yearbook 585).

<sup>21</sup> See reference in note 36 below. For a very stimulating exploration of the future, see W. Friedmann, *The Changing Structure of International Law* (London and New York, 1964).

<sup>22</sup> Summarized in W. McClure, *World Legal Order* (Chapel Hill, 1960).

<sup>23</sup> See D. W. Bowett, *The Law of International Institutions* (London, 1963).

<sup>24</sup> This means adding hundreds or thousands of new consuls and diplomats. Groups of young people from underdeveloped countries are studying international relations and diplomacy in Geneva, Paris, London, Washington, and elsewhere. The U.N. has inaugurated a "Training Program for Foreign Service Officers from Newly Independent Countries," Press Release TA/1220, Jan. 15, 1964, and has for a number of years past arranged for intern training of promising junior civil servants of less developed countries in various specialized organizations.

<sup>25</sup> A. Toynbee, "The Proletarian Peoples," originally prepared for the Observer Foreign News Service, London, under the title "A Revolutionary Change," cited in *New York Herald Tribune*, Nov. 11, 1960, p. 4.

<sup>26</sup> For the United States see, *inter alia*, statement by Secretary of State Dean Rusk on Sept. 18, 1962, *New York Times*, Sept. 19, 1962, p. 1; also Key Officers of Foreign Service Posts, a new Department of State publication, May, 1964. Great Britain will institute once more a united foreign service in 1965. *Reuters*, London, March 16, 1964.



sentatives to the United Nations are maintained in New York and Geneva by most Member States, and these form a quasi-diplomatic corps of several hundred persons.<sup>27</sup> There has developed a greatly increased use of the Ambassador at Large and Attachés of all kinds. Diplomacy has in a number of cases been abused, even beyond the more or less familiar historical examples, for espionage, subversion, and kidnaping, to the considerable detriment of its legal status.<sup>28</sup> Finally, the practice of meetings of heads of state and foreign ministers—"summitry" or "sub-summitry" as it might be or even has been called—began toward the end of World War II and expanded in the 1950's, still persists, amid divided opinions as to its value.<sup>29</sup> Mention must also be made of the "hot line" between the Kremlin and the White House to prevent war by accident, recently predicted by the United States Secretary of State for conversion to television.<sup>30</sup> In addition there are hundreds of resident delegates to international institutions in Brussels, Luxembourg and elsewhere.

With the increase in rather sharp fragmentation of, and conflict among, states or governments, including ex-colonial and territorial problems, with the continued lack of adequate international legislative, judicial, and executive agencies to deal with many of these issues and conflicts and with an enhanced fear of war, a greatly increased demand has been felt for what may generically be called mediation. All sorts of individuals and political entities now engage in a great volume of such activity,<sup>31</sup> but, as has always been true, such action, depending for success on voluntary acceptance and compliance, varies greatly in what it is able to accomplish.

For similar reasons the volume of treaty-making in the world is inevitably increasing rapidly today. A somewhat disconcerting proliferation is, moreover, taking place in the forms of, and parties to, "international" agreements. Hundreds and probably thousands of such accords or contracts (discovery of an unbiased generic term is difficult in the face of

<sup>27</sup> For example, the professional staffs of the permanent delegations and missions to international organizations in Geneva also number several hundred persons. Permanent Missions to the United Nations, published by the U.N.

<sup>28</sup> Newsweek, April 13, 1964, p. 11.

<sup>29</sup> Examples are too numerous and familiar to require citation. It is to be specifically noted, however, that the demand for adequate preliminary preparation before any summit meeting is held, is becoming stronger: "I feel that a summit meeting is only useful when the basic prerequisites have been agreed to," said Greek Prime Minister Papandreou to President Johnson. HT, June 29, 1964. Prime Minister Wilson recently advocated annual summit meetings "of the principal nations." UPI, London, Oct. 5, 1964.

<sup>30</sup> On the "hot line" see 49 Dept. of State Bulletin 50 (1963); the matter was referred to in the U.N. General Assembly on Dec. 7, 1964, by Soviet Foreign Minister Gromyko.

<sup>31</sup> Including GATT, the U.N., etc., although the action here rises to a higher level. AP, London, May 1, 1964. See, for example, Herman Walker, "Dispute Settlement: the Chicken War," 58 A.J.I.L. 671 (1964). Mediation is warmly recommended by partisans but also encounters opposition (difficulty of application in Vietnam, especially during July, 1964; Greek refusal to negotiate with Turkey over the situation in Cyprus in spite of American, British and U.N. mediation, July, 1964). There have even been complaints that we have today *trop de bons offices*. Gazette de Lausanne, July 2, 1964, p. 1.

current practice) are being concluded among states, interstate organizations, corporations, individuals, and somewhat unclassifiable entities today. The *Treaty Series* of the United Nations now contains over 10,000 items (the League series contained nearly 5,000), but even so, cannot hope to catch all of them nor is there any other registry adequate for the purpose. The individual student is left with a very difficult task of research and documentation. On the other hand, it is not clearly evident that any great change in the legal rules on procedures of treaty-making is in process.<sup>32</sup>

International institutions in the narrower sense of the term are also multiplying rapidly. The chief current problems which arise concerning the institution or the practice of international conference today are the old ones: the holding of so many meetings (whether or not to hold a conference and whether to hold it in isolation or in a series, usually in connection with standing international organizations); and, secondly, their *internal composition and organization and procedure*, especially procedure for legislation.<sup>33</sup> The practice of conference, in other words, has, for good or bad, expanded to immense proportions in all forms; some, but probably not much, progress has been made under the second heading.

The same—a combination of growth with some stagnation—might be said concerning international administrative agencies and their personnel. There has occurred a great expansion in the numbers and size of agencies. There has occurred some improvement in internal management. Some change or improvement has been made in arrangements for financing such agencies and, although the problem has become increasingly acute with the growth of their budgets, states have become more reconciled to contributing to these ends.<sup>34</sup> The idea of an international civil service, not long ago still somewhat of a dream, has become a solid fact.<sup>35</sup> Cases of international

<sup>32</sup> On the agencies and individuals concluding agreements, see, for example: "The United States and the European Atomic Energy Commission today agreed . . .," UPI, Brussels, May 27, 1964. The continuing practice of making "treaties" with what were formerly called "native peoples" should also be noted, Reuters, London, May 4, 1964. The United States still practices the "executive agreement," and a recent case was an agreement between the "deputy head of the National Aeronautics and Space Administration and a Soviet Academician," AP, Geneva, June 7, 1964. There has recently been "preliminary agreement" between "United States and Soviet scientists" on protection of astronauts (Reuters, Geneva, June 5, 1964) concerning which it was noted that the agreement would have to be approved by "the governments"! See, finally, the draft on the law of treaties of the International Law Commission, in U.N. General Assembly Doc. A/CN.4/173, July 30, 1964. The draft is reprinted in 59 A.J.I.L. 210, 434 (1965).

<sup>33</sup> Some movement, though very slight, appears to be noticeable in the direction of representation and voting power on some basis of proportionality; see earlier study by D. P. Myers, "The Bases of International Relations," 31 A.J.I.L. 431 (1937), and reference to Riches in note 46 below. The United States was reported recently to have proposed a scheme of representation in proportion to contributions to U.N. peace-keeping operations. AP, New York, Sept. 15, 1964.

<sup>34</sup> See Q. Wright, "The Mode of Financing Unions of States as a Measure of Their Degree of Integration," in *International Organization* (Winter, 1957), p. 30.

<sup>35</sup> European Economic Community administrative personnel, numbering over 7,000, are unionized, demand wage increases (threatening strikes), and advocate merger of agencies of all Community institutions (E.E.C., E.C.S.C., E.A.E.C.), *Time*, March 13, 1964, p. 35.

territorial administration have appeared chiefly in the operations of the League mandates and the United Nations trusteeships, observers, and police actions, to be considered shortly.

With respect to international tribunals and adjudication, however, the situation is more discouraging. The International Court of Justice was explicitly created as "the principal judicial organ of the United Nations," and based upon the earlier Permanent Court of International Justice of the League of Nations; but little or no further general progress has been made in developing international judicial machinery (regional or appellate) or procedure.<sup>36</sup> There is a seemingly absolute dead block in the development of obligatory submission.<sup>37</sup> At no point are present prospects for either quantitative or qualitative growth in international organization more dismal. The causes for this situation are obvious, the remedies almost unattainable.

The processes of inquiry and conciliation, formerly both neglected but tentatively given distinct institutional form ("commissions of . . ."), have in recent years been invoked and applied in increased volume, but, except for cases of mediation already noted, they are being applied at the hands of agencies created for other or general administrative purposes. They may have gained somewhat in effectiveness because of increased pre-occupation with, or sharper realization of, the need for international peace and a resulting concentration of attention thereon, but they are still inconclusive in their essence.

Finally, the formation of international federal unions, in the generic sense of the term, has gone forward apace.<sup>38</sup> Outside of the League of

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The question of denationalizing the international functionary has been seriously debated by an experienced veteran, Pablo de Ascarate, in *Tribune de Genève*, April 8, 1964; also C. W. Jenks, "Some Problems of an International Civil Service," in 3 *Public Administration Review* (Chicago), No. 2 (Spring, 1943).

<sup>36</sup> See "Relative Values of International Relations, Law and Organizations," in 54 *A.J.I.L.* 379 (1960). Some attention is given to this problem in the work by Bowett, cited in note 23. There has also been a curious obsolescence of claims commissions (56 *A.J.I.L.* 728 (1962), citing work by R. B. Lillich). On the other hand, the new organizations of the European community have developed powerful courts of their own: G. Bebr, *Judicial Control of the European Communities* (London, 1962); the U.N. and various other unions have their own administrative courts. On the general problem, see C. W. Jenks, *Prospects of International Adjudication* (London, 1964), for a very balanced view.

<sup>37</sup> Fear of submitting to adjudication is of course a tribute to its force and value. On the attitude of Soviet Russia toward such action, see discussion at Conference cited in note 13 above. At the same place, see discussion of Soviet Russia and treaty law and international organization in general. See also S. Rosenne, *The International Court of Justice* (Leyden, 1957), for a general approach, and Jenks, cited above.

<sup>38</sup> The term is used here to mean any juridical union of two or more states for common action, usually, if not necessarily, through a delegated agency. No reference will be made to so-called national federal unions or unions on the border between the national and international spheres, although some very interesting cases of this kind (Southern Arabia, Tanzania) have recently arisen. European federation as a general political program is dragging; see note 39 below. The whole problem of the (British) Commonwealth becomes more and more acute as its composition changes and new types of issues arise; see last Commonwealth Conference reports in July, 1964, especially *Newsweek*, July 20, 1964, p. 30 ("British family of nations: a force or a farce?").



Nations and the United Nations, and sometimes connected with these general organizations, a startlingly—perhaps an alarmingly—large number of such unions have been created, chiefly for purposes of defense or economic promotion, most of them regional in scope.<sup>39</sup> This inflation has inevitably raised the hoary problem of sovereignty and the answers given are exactly what might have been expected, none the less irreconcilable for that reason: national sovereignty must be respected; it does not exist; it must be abolished.<sup>40</sup> All states, it is also declared, are equal; this assertion, contrary to obvious fact, and disastrous as a legal principle unless elaborately qualified, appears to be stronger than the doctrine of sovereignty, as incredible as that may seem. The situation is nearly identical with that existing in respect to nationalism and internationalism, noted earlier: flat contradictions between fact and doctrine, harmful to all concerned, are stubbornly maintained.

Greater light has been thrown, or perhaps merely greater candor displayed, recently in regard to the reasons for the establishment of international organizations and their objectives. The general purposes of peace and welfare remain dominant,<sup>41</sup> but are more explicitly admitted and concretely formulated. The desperate need for a solution of the problem of war and peace, threatened somewhat equally by conditions in underdeveloped areas and by Great Power reactions, particularly in highly special situations such as those arising in Korea, the Suez area, Cyprus, Cuba, the Congo, and Southeast Asia, where the United Nations has clearly not been entirely adequate or even available, and for arms control or disarmament, on economic grounds as well as safety, is perhaps making some impression but not much headway.<sup>42</sup> The almost equally desperate need

<sup>39</sup> NATO, CENTO, SEATO, ANZUS, etc.; E.E.C., E.F.T.A., G.A.T.T., etc.; I.B.R.D., I.M.F. See, in addition to Yearbook 108, etc., and especially on the second group, European Community (monthly) and The European Community 1950–1964, published by European Community Information Service, London. One student claims, however, that neither these European unions nor their judicial organs may be judged in the light of traditional federation and adjudication. Bebr, note 36 above.

Much could be learned from the experience of NATO and its members particularly, both in the efforts to improve that regional federal alliance in recent days and also from a study of the movement for European political union (including demands for a supranational parliamentary government for such a union, popular elections, plural citizenship, common currency, identification cards, etc.). See also summary in Yearbook 178–180, and discussions in the International Political Science Association Congress, cited in note 5 above.

<sup>40</sup> For mild repudiations of sovereignty see speech by U.N. Secretary General U Thant in Upsala (AP, Upsala, May 6, 1964) and article by former U. S. Ambassador Clare Booth Luce in New York Herald Tribune, June 2, 1964, relying largely on a statement by Secretary of State Dean Rusk to the effect that “absolute sovereignty is an outmoded concept.”

<sup>41</sup> U.N. Charter, Preamble, pars. 1 and 2.

<sup>42</sup> Waiving for the moment the idea that war is on its way out automatically, although the British Prime Minister apparently said recently that the world’s great nuclear Powers had “decided that they can not fight” (AP, London, April 10, 1964). Peace has actually been preserved in the world since 1945 by this mutual fear on the part of Russia and the United States or, more particularly, by the deterrent power of the latter.

See, as evidence of persisting optimism, Resolution of the General Assembly, No. 1931, Dec. 11, 1963, on “Conversion to Peaceful Needs of the Resources Released by Dis-

of an overwhelming proportion of the world's feverishly expanding population for relief from disease and destitution is more frankly recorded than ever before, together with an increased obligation to do something about it. The refugee problem persists, amplified by conditions in "Iron Curtain" countries. Astounding steps have already been taken in the creation of machinery and the provision of funds for helping the underdeveloped countries, which constitute, incidentally, some three fourths of the membership of the United Nations.<sup>43</sup>

At this point, however, an interesting variant emerges. While such economic and financial, technical, and possibly military aid might better be provided through international organizations (greater resources of material and talent, potentially at least, avoidance of competition, greater detachment and equitable oversight), much more aid is at present being given in the aggregate by individual state grants, loans, technical missions, peace corps (United States; Germany; Sweden), Alliance for Progress (United States and Latin American states), and Executive Service Corps. This constitutes by implication a perhaps justifiable insinuation that international organization is not presently capable of doing the job. States are also reluctant to entrust their contributions to international organizations for distribution—not being sure of a suitable *quid pro quo*. An effort is now being made to co-ordinate such national aid programs through a committee under international auspices.<sup>44</sup> Inevitably, however, cries of "neo-colonialism" are hurled, even by the beneficiaries, and possibly "international colonialism" will soon be charged against aid by international institutions. Such voluntary and incompletely organized intergovernmental mutual assistance has not been unknown in the past, but it has not been practiced to the present amazing extent. That such giving of aid originates largely or even mainly in calculated national interest on the part of the donors (a very high percentage of the financial aid given is "tied" to purchase of goods from donor state exporters) is obvious, but not necessarily destructive of the good done; and that rivalry between East and West accounts largely for this explosion of international philanthropy, while also not very reassuring, may in turn possibly not be fatal.

Voluntary and even unorganized unilateral intergovernmental aid or co-armament," General Assembly, 18th Sess., Official Records, Supp. No. 15 (A/5515) p. 25.

<sup>43</sup> See Res. 1897 adopted by the General Assembly in 1963, 18th Sess., Official Records, Supp. No. 15 (A/5515), p. 24, and annex. Some 75 Member States have signed this unique register as if applying for a privileged status, which, indeed, they were. HT, June 6, 1964, p. 2. Some 25 countries were also recently on record as desiring further Peace Corps aid from the United States. UPI, New York, Nov. 23, 1964.

<sup>44</sup> Development assistance work (DAC) within O.E.C.D. A great deal of such aid has been extended by and through the U.N., I.B.R.D. and I.M.F. and other international agencies, mention must be made of the U.N. Decolonization Committee, but this contrasts strongly with the billions given by individual states. The recent effort of the less developed countries to secure control of G.A.T.T. or obtain a new organization in its place should also be noted, AP, Geneva, April 22 and June 2, 1964. The same factor has repeatedly arisen in connection with the operation of U.N. Specialized Agencies. AP, Paris, Oct. 20, 1964, on UNESCO membership debates.

operation (not stipulated in advance and not necessarily executed through international agencies) cannot, indeed, be regarded as totally worthless in the general picture of world affairs, but rather the contrary in special cases. As in national life, much, if not the major part, of international respect for law is based on such behavior, apart from co-operation above or beyond the law. The aid to underdeveloped countries is not the only example of such voluntary social action which might be given from contemporary international practice. Co-operation in scientific activities in the Antarctic, in outer space, and under the sea might be added, although here international agreements serve to organize or at least co-ordinate such activities to some degree. From this point the states pass over to scientific activities under various organizations such as the World Meteorological Organization, the World Health Organization, the United Nations Educational, Scientific, and Cultural Organization, and so on. On the whole the state of affairs in this area is very promising.

The reverse is the case when we turn to the specific problem of international legislation, in the strict sense of statutory action by less than unanimity, as distinguished from treaty-making and conference. The states are unwilling to confer such power on the General Assembly of the United Nations, for example, although some exceptional cases of such authority do exist elsewhere.<sup>45</sup> Abstention from voting and simple silence in the face of a chairman's "No objection? Adopted!" are also eating away the principle of unanimity. The chief obstacle is to be found in nationalistic opposition pure and simple, a second in the refusal of great Powers to be bound by majority rule in absence of representation and voting proportioned to population or some other similar standard,<sup>46</sup> and a third in the unwillingness of the smaller Powers to waive the principle of equality (as they have perforce waived it in the matter of assessments!). It is evidently hoped that the needs of the situation may still be met by multipartite conventions.

Paradoxically the provision of enforcement, or international police ac-

<sup>45</sup> F.A.O. Constitution, Art. 3; I.L.O. Constitution, Art. 17. The U.N. General Assembly itself may deal with some matters by majority vote (Charter, Art. 18); in spite of the concrete and limited character of these matters, this is technically "legislation"; it has long existed in a similar form in a few independent international organizations.

One student has asserted that: "The abolition of the unanimity rule in the United Nations is categorical and complete. Virtually no trace of it remains in any of the principal or subsidiary organs of the United Nations or in the Constitutions of any of the Specialized Agencies." S. Rosenne, "United Nations Treaty Practice," in 86 Hague Academy of International Law, *Recueil des Cours* (1954) 314 (Leyden, 1955). This seems somewhat of an exaggeration!

<sup>46</sup> Some progress has been made in breaking down the dogma of equality of voting power; see note 33 above, and C. O. Riches, *Majority Rule in International Organization*, Ch. X (Baltimore, 1940). See also the qualification of one-state-one-vote principle in the membership of delegations to the General Conference of the I.L.O. (coupled with Arts. 4 and 17 of its Constitution) and the institution of "multiple voting" in the I.T.U.

Discussion of modifications in voting in the U.N. has already begun, AP, Washington, June 21, 1964. And when it was recently proposed to create a new international trade organization, the question of "voting arrangements" was specifically held over "for further study by an expert group." HT, June 15, 1964, p. 3.

tion,<sup>47</sup> which might be regarded as a more radical or advanced step toward international government than legislation, has made some headway in recent years, chiefly under the auspices of the United Nations.<sup>48</sup> Such action, or its legality under international law and treaty agreements, has inevitably been contested, but nevertheless gives every indication of continuing and even expanding; perhaps it could be supported by the old and somewhat controversial international law right to use force short of war, available to states acting in concert, as well as individually. In any case the rules of international law concerning conduct of hostilities would apply.<sup>49</sup> International police action thus far has remained rather fragmentary in character, but serious proposals for a general police force or standing army under the United Nations are being put forward, among conflicting opinions in favor and against such a step.<sup>50</sup> Developments in one or two of the regional security organizations, notably the North Atlantic Treaty Organization, point in the same direction.<sup>51</sup>

The United Nations Organization has clearly developed further and more rapidly in its first twenty years than did the League of Nations. It is necessary, on the other hand, to insist upon the importance of the branches or varieties of international organization outside of this organization, and on the autonomous character of the Specialized Agencies (in action on substantive matters).<sup>52</sup> All this is very clear and obviously very important. It would, however, possibly be regarded as gratuitous to remind ourselves that, like the League of Nations, the United Nations as such may not last another thirty or fifty years, incontrovertible as this may be. The problem of membership remains an arena for international politics now

<sup>47</sup> Reference is made here to military action. On non-military aspects of seeking compliance with international law, see 1964 Proceedings of the American Society of International Law.

<sup>48</sup> Kashmir, Congo, Cyprus, Greece, Indonesia, Iran, Korea, Lebanon, New Guinea, Suez, Yemen. See brilliant summary in article, "Posse for Peace," by J. J. Sisco in 41 *Foreign Service Journal* 22 (1964). For enforcement action by O.A.S., see UPI, Washington, June 26 and July 26, 1964.

<sup>49</sup> Just what powers the U.N. forces can properly exercise in the field (arranging a truce, firing except in defense, arrest and deportation of persons, seizure of property?) remain to be determined. AP, Nicosia, July 17, and Leopoldville, July 21, 1964; AP, New York, Aug. 9, 1964.

<sup>50</sup> See articles by Sohn, 52 *A.J.I.L.* 229 (1958), and Halderman, 56 *A.J.I.L.* 971 (1962). The U.N. Military Staff Committee (Charter, Art. 47) has been idle in this matter through 500 meetings (AP, New York, Aug. 3, 1964). Great Britain put forward the idea of a conference on the subject of a U.N. police force some time ago, followed by Canada, which is sponsoring a preparatory conference on the subject. HT, Feb. 22, May 19, Oct. 22, 1964. The United States had already indicated a similar position and joined with other countries in agreeing to train U.N. troops, UPI, New York, Nov. 1, 1964. A recent Gallup poll reported a strong majority of public opinion in the United States in favor of the general principle, AP, Princeton, May 29, 1964. Finally came a Russian proposal looking in the same direction, which is still under consideration, Reuters, Washington, July 8, 1964, and London, July 12; *Newsweek*, July 20, 1964.

<sup>51</sup> Raising the old questions of joint command (AP, Paris, June 4, 1964) and equipment. France recently broke away from NATO on this point, AP, Paris, June 9, 1964. On the U. S. proposed multilateral force, land and sea, under NATO (MLF), the discussion continued throughout 1964.

<sup>52</sup> Analyzed in *Yearbook* 37.

complicated by a proposal of the Secretary General to invite observers from non-member states.<sup>53</sup> There is some tendency today perhaps to overload the organization, and one may be inclined to ask how the nations ever got along without it.<sup>54</sup> Its other major problems consist of the question of legislative power and finances and the "veto" in the Security Council, in the main tied to the police or security problem.<sup>55</sup> Nor, on the other side, must the phenomenal development of the post or rôle of the Secretary General,<sup>56</sup> and all the steady serviceable work of the Secretariat itself be forgotten.

The conclusions to be drawn from this survey, itself a rather summary treatment, are few but of cardinal importance. Among all of the fifteen or more contemporary problems of international organization just reviewed, some five or six stand out above the others. These include notably the reality and composition of the international community, in special reference to the underdeveloped countries and their needs; the East-West political schism which also involves these countries; the organization and practice of international adjudication, which itself turns in part on the present form and content of international law; the problem of war and peace and disarmament; international majority legislation and the veto power; and international police action. All of these problems arise both within the United Nations and also outside of that organization. Most of these half-dozen problems relate to action rather than to the structure of international organization, although some problems of organization

<sup>53</sup> Introduction to Annual Report on the Work of the Organization, November, 1964. General Assembly, 19th Sess., Official Records, Supp. No. 1A (A/5801/Add. 1).

<sup>54</sup> At this point the U.N. approaches the level of "international territorial administration" (not to mention the "trusteeship" system); so for repeated demands for U.N. police forces and "observers" in Southeast Asia, Yemen, and elsewhere. HT, May 5 and 12, and June 10, 1964. In press references the U.N. begins to be personified: "The UN also favors"; "The UN is withdrawing its troops," etc. AP, Geneva, March 22, 1964; HT, June 29, 1964, p. 4. Also appeals have been put forward for U.N. intervention even in local problems, as in British Guiana and South Africa, UPI, London, July 6; Reuters, New York, June 15; and AP, New York, June 18, 1964; not to mention Cuba, HT, July 11, 1964. U.N. action has also at times come to be preferred to direct negotiation, notably regarding Cuba and Cyprus. HT, July 11, 1964, p. 4; AP, London, July 21, 1964.

<sup>55</sup> For origins of the problem: AP, Moscow, April 1, 1964; HT, June 16, 1964, p. 4. However, as recognized in the Charter, Art. 19, the difficulties of some countries in paying their assessments are simply due to their economic conditions. The finance problem remained unsettled at the end of December, 1964. It is worthy of note that the International Court of Justice has long since, by a 9-to-5 vote, ruled in support of the U.N. in the matter of the peace-keeping activities contributions of Members (Advisory Opinion, July 20, 1962, later accepted by the General Assembly by a vote of 76 to 17, with 8 abstentions). A new approach to the problem is made by R. F. and H. J. Taubenfeld in "Independent Revenue for the UN," *International Organization* (Spring, 1964), p. 241.

<sup>56</sup> Mr. U Thant has been referred to as "the present head" of the U.N. (HT, April 24, 1964, p. 12), as "commander in chief of the UN peace-keeping force on Cyprus" (UPI, New York, March 18), and even as "the UN's boss" (Newsweek, June 29). On the general problem, see R. W. Cox, "The Executive Head: an Essay in the Comparative Study of Heads of International Organizations," in the records of the International Political Science Association meeting cited in note 5.



proper arise acutely in all but the first two. The causes of these difficulties can be summed up in one word: nationalism—an element, to repeat, different from the dogma of “sovereignty,” which is used as a tool in international dialectic but is disregarded at will when that seems desirable. The remedy, without which the necessary organizational and procedural steps, especially providing for obligatory adjudication, majority legislation, and enforcement action, must be unattainable, is correspondingly easy to formulate: relaxation of nationalism and development of a stronger spirit of international unity. This will be extremely difficult and is rendered all the more difficult by the great inequalities in both power and “civilization” existing among the nations.<sup>57</sup> All that is said today must be said with the reservation that current revolutionary developments in the use of nuclear energy and startling advances in medicine and education may so alter the premises of the problem that present opinions may prove totally inadequate. With this situation in mind, the future of world peace and human welfare as ministered to by international organizations may indeed look gloomy. Fear of nuclear annihilation and desperation over the miseries of life as lived by the bulk of humanity, together with the precocious current growth of “international machinery,” may save humanity and the nations, but this can come about only by the exercise of wisdom and good will or, quite simply, manifestation of the spirit of conciliation among the nations, and this to a degree somewhat greater than that to which they have been manifested in the past fifty years.

PITMAN B. POTTER

#### REFLECTIONS ON THE SABBATINO CASE

Few recent cases have enlisted as much discussion among international lawyers as the *Sabbatino* case in its progress through the United States District Court, the Court of Appeals, and finally the Supreme Court.<sup>1</sup> It is interesting to compare the opinion of the Court, which seemed to me correct but on a not wholly satisfactory international law basis, with the opinion of dissenting Justice White whose exposition of international law was in some respects more adequate, though he reached, I think, a wrong conclusion.

The applicable principles of international law seem to me the following:

(1) United States courts apply international law in suitable cases, in the absence of a statute or other rule of national law<sup>2</sup> which is so clearly

<sup>57</sup> Term employed in the Statute of the International Court of Justice, Art. 38, par. 1c. Relaxation of remaining elements of Communist or/and capitalist imperialism must also obviously be demanded. Indeed the over-all crucial problem in contemporary international organization lies precisely in the conflict between the policy of peaceful co-existence and the policy of violent extermination (of the other fellow).

<sup>1</sup> *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398 (1964), 58 A.J.I.L. 779 (1964). Subsequent references are to the report of the case in this JOURNAL. For lower court opinions, see 193 F. Supp. 395 (1961), 55 A.J.I.L. 741 (1961); and 307 F. 2d 845 (1962), 56 A.J.I.L. 1085 (1962).

<sup>2</sup> *The Paquete Habana*, 175 U. S. 677 (1899).