EDITORIAL COMMENT

PROBLEMS OF INTERNATIONAL ADJUDICATION AND COMPLIANCE WITH INTERNATIONAL LAW: SOME SIMPLE SOLUTIONS

The present writer had the opportunity of attending discussions relating to the concern widely held about the prospects for the settlement of international disputes through judicial procedures and, more particularly, through the International Court of Justice. Participants included leading scholars and practitioners. The group seemed more impressed with the difficulties than the possibilities of making the Court a more effective instrument or, in the words of the Institute of International Law, of considering reference of disputes to the Court or another adjudicative instance as "a normal method of settlement of legal disputes."[1] The participants certainly did not see any easy solution for what has been described as the crisis of confidence in the Court.[2]

The American Society of International Law at its 1964 Annual Meeting approached the problem in a wider perspective by exploring a variety of ways and means for "Causing Compliance with International Law." Professor Richard Falk, in opening the debate, stressed the limited rôle of international adjudication and, as to the future, was of the opinion that "the rôle of courts will remain marginal as long as the nation state continues to be the pre-eminent center of power and loyalty in world politics."[3] In discussing the rôle of experts in providing authoritative guidance, he seemed to deplore the display, in connection with the United States quarantine in the crisis over Soviet missiles in Cuba in the fall of 1962, "of national patriotism at the expense of scholarly detachment."[4] Professor Julius Stone formulated nine canons of realism and urged, among other things, that low-level disputes with respect to which reasonably certain rules of international law exist or are believed to exist, should be steered in the direction of the International Court of Justice or some other judicial institutions.[5] Professor Louis Sohn submitted suggestions for "fractionating the obligation to go to the Court" by permitting and persuading states to be more discriminating in accepting the compulsory jurisdiction of the Court pursuant to Article 36 of the Statute. The point of his proposal was that states might not wish to expose themselves to an unlimited range of legal disputes but might be more inclined to take the risk in specified areas, of which he listed 30, beginning with recognition

[1] Resolution adopted at the Neuchâtel Session in 1959, 54 A.J.I.L. 136 (1960).

[2] For some constructive suggestions for opening up a wider range of procedures and remedies, see Jenks, The Prospects of International Adjudication, Ch. 3.

[3] 1964 Proceedings, American Society of International Law 3.

[4] *Ibid.* at 5. He expressed a similar sentiment in "The Adequacy of Contemporary Theories in International Law—Gaps in Legal Thinking," 50 Virginia Law Review 231–265, at 236 (1964). The essays to which he referred appeared in the July, 1963, issue of this JOURNAL and elsewhere.

[5] Proceedings at 28.

of states and ending with expulsion of aliens. The list was, of course, tentative and by no means exhaustive.[6] This proposal requires no change in the Statute but merely a rational use of the faculty open to states under Article 36 to formulate reservations *ratione materiae*. Professor Stone doubted that there was "much to be gained by a kind of 'supermarket' selling approach."[7] As other approaches have not met with overwhelming success so far, there can be no harm in suggesting or, more correctly, calling the attention of the states to the flexibility which is inherent in the present system of Article 36. In any event, Professor Stone was unfair in attributing to Professor Sohn a "supermarket" mentality; Professor Sohn described his approach as the "smörgåsbord" approach, hoping that states might be tempted to "nibble here and there."[8] *Bon appétit!*

A sort of break-through was achieved by Professor Roger Fisher. He proposes a "post-decisional veto," that is, the right, to be defined and circumscribed, to refuse or suspend or postpone—it is not clear which—the execution of a judgment of the Court as an inducement for accepting the compulsory jurisdiction of the Court. In the case of the United States, the Connally Amendment might be repealed and in its place the United States might reserve the right to suspend the binding force of the judgment.[9] A reservation of this sort "appears less damaging than the Connally Amendment," and it seems clear, to Professor Fisher at any rate,[10] that "some such reservation would make third-party settlement more acceptable both to the United States and to other governments as well."[11] This is an unverified and, one must add hopefully, unverifiable proposition. The Connally Amendment did not produce any benefits for the United States; it backfired on the one occasion when the United States appeared before the Court as plaintiff against Bulgaria,[12] as it had backfired against France in the *Norwegian Loans* case. If its purpose was to close the Court to the United States, it achieved this end extremely well. As to the proposed veto with respect to the binding force of the Court's judgment, there can be little doubt that it would operate in the same way and with the identic effect: to close the Court to the United States. For it can hardly be imagined that any state would go to the trouble of accepting the challenge of the United States or of challenging it to have the Court adjudicate a dispute, to the expense and formidable effort of preparing the memorials and plead orally, if the end result, the judgment, could be vetoed by the United States. The principle of reciprocity, moreover, would operate here as it does with respect to other reservations.

[6] *Ibid.* 131–136.

[7] *Ibid.* at 141.

[8] *Ibid.* at 136.

[9] *Ibid.* at 129, where the rough draft of the proposed reservation will be found.

[10] And to Professor Stone as well, who commented: "when paper promises of compliance could not in the nature of things be enforced, we might well promote organic growth of procedural solutions by admitting the right of veto." *Ibid.* at 141.

[11] *Ibid.* at 129.

[12] See this writer's "Bulgaria Invokes the Connally Amendment," 56 A.J.I.L. 357–382 (1962).

The foregoing assumes that a reservation of the sort proposed by Professor Fisher could validly be made. This point, and it is a crucial one, is not elaborated beyond asserting that an amendment to the Statute might be required "to give the defendant government some residual immunity if the (*sic!*) worst came to the worst" or the attachment of a reservation to the jurisdiction of the Court. The veto, however, could surely not be regarded as a reservation to the jurisdiction of the Court. It would have no connection with Article 36 of the Court's Statute, unless the concept of jurisdiction were to undergo drastic surgery. Nor could the desired result be achieved by an amendment of the Statute, although, if the binding force of judgments were to be abolished, consequential changes might have to be made in the wording of some articles, notably Articles 59 and 60 of the Statute. This observation leaves aside the problem of extending the post-decisional veto to the execution of judgments. Here again, consequential changes would be required. The proposed reservation would have to be attached, it is submitted, to Article 94, paragraph 1, of the Charter. This purpose could be achieved only by the process of amendment, since the procedure of making reservations to the Charter even under the assumption that it could have been validly effected, is, of course, no longer available to Members of the United Nations.

As indicated above, it is not clear what precisely Professor Fisher has in mind. In several passages he argues that it would be easier for the United States to accept the compulsory jurisdiction of the Court, if it were given "some kind of veto over decisions of the Court *after* they had been made," [13] that other governments would be in the same position if each nation were given "a legal 'out' if it finds itself confronted with a decision that it then considers unacceptable," [14] and that "giving governments a right of some kind to *reject* an international decision is not a drastic step." [15] This writer believes that it would be a very drastic step indeed, for it would involve an attack on a firmly established principle of customary as well as conventional international law. Tampering with the binding force of judgments would undermine the foundation on which the whole structure of international adjudication rests.

Assuming that what is proposed relates not to the validity of judgments but to their execution, one is forced to ask whether the reservation is necessary. The execution of judgments belongs to what Rosenne calls the "post-adjudicative phase" [16] of the judicial process and finds its place in the political realm. In the system of the United Nations the execution of judgments is entrusted to a political organ, the Security Council, pursuant to Article 94(2). Insofar as the United States is concerned, it is fully in position to prevent any action, whether recommendatory or decisional, which it considers inimical to its interests by the exercise of its veto power.[17] If the question of the non-execution of a judgment were raised

[13] *Ibid.* at 124. Italics supplied. [14] *Ibid.*

[15] *Ibid.* Italics supplied.

[16] Rosenne, The International Court of Justice at 73 f. and 108; and Jenks, *op. cit.* at 667.

[17] This point is considered in greater detail by Rosenne, *ibid.* at 107 f.

in another organ, say, the General Assembly,[18] the situation might be different, as no veto would protect the United States there. The Security Council, given the deliberate ambiguity of Article 94, paragraph 2, is not limited to recommending or deciding automatically action to enforce the judgment, if not barred by a veto, but may, without casting doubt on the *res judicata,* make recommendations or decisions which "at most have a suspensive or moratory effect on the judgment."[19] Thus, if no more than a suspension were the object, it could well be achieved without an amendment to the Charter. But it would be the international community acting through the Security Council which would have to be convinced that a suspension or moratorium is in the general interest rather than in the particular interest of a Member.

A recommendation or decision under Article 94, paragraph 2, could be frustrated by any of the permanent members of the Security Council, though it could not be so frustrated in the General Assembly. In the latter case there might be the difficulty of securing the necessary majority, which may not be an easy task. The object of the proposed reservation thus becomes clear: to secure for the United States or for all Members a unilateral veto regardless of the general interest in the execution or suspension of the judgment. This would be as self-judging a reservation as is the Connally Amendment and, since it could conceivably be invoked for self-seeking interests, it might be detrimental to the moderate degree of stability and order which exists currently, and resisted on this ground. In this writer's view it should be resisted. Surely the United States is not in need of more protection from international law than it already enjoys. Be that as it may, the proposed post-judgment veto, contrary to the view that it "should increase the normal pattern of compliance,"[20] seems irrelevant to the problem of compliance with international law.

The rationale behind this veto, however, is relevant. "Providing a legal right of rejection," argues Professor Fisher, "in large part simply confirms the practical power of non-compliance that already exists."[21] The thought is to reduce "the gap between the rules about power and the power itself," for

> As long as national governments have an undoubted physical power of frustration of an international decision, we will, I believe, develop more effective legal machinery if we recognize that fact and define substantive and procedural limits upon that power of frustration than *if we pretend it did not exist. The power of words is great, but not* so great as to abolish the power of political review of judicial decisions.[22]

As has been shown, the power of political review of the consequences of judicial decisions is available, but the postulated power of political review of the judicial decisions is something else, for it deprives such decisions of

[18] *Cf.* Rosenne, *ibid.* at 108.
[19] Rosenne, *ibid.* at 109.
[20] Fisher, *loc. cit.* at 126.
[21] *Ibid.* at 124.
[22] *Ibid.* at 129.

their legal character as *res judicata*. There is, however, for anyone concerned with securing compliance with law or, more especially, international law, a clear indication of the way to handle this problem.

Clearly by reducing the gap between what individuals or states can actually do and what the law requires them to do or prohibits them from doing, the problem of compliance could be simplified or totally eliminated. This has not been the path of the law. For, as reported in Scriptures, Cain was punished for the slaying of Abel. If there were no law at all, there would be total compliance, a condition usually described as anarchy. And if there were very little law, there would be some compliance and, hopefully, a little less anarchy, and so on until the point is reached where the creation of more law would become counterproductive. In other words, compliance appears as a function of the quantity and quality of law in society, be it national or international, and of the number, character and quality of decision-makers. It is also a function of the organization for the application, enforcement and change of law, all of which are rudimentary in the extreme in the international society. Since the prospects for making this organization more effective are very slim indeed, those who are preoccupied with the problem of compliance must concern themselves with the quantity and quality of existing international law. The prospects for improving its quality are not very bright, and they become dimmer with the reduction in the use of the judicial function. The contribution which the United Nations has made or may make is not negligible but insufficient. More and speedier progress could be made by reducing the quantity of law: less law, less violation of law, more compliance. This could be done by outright repeal of those parts of the Charter where the gap between norm and performance has become conspicuous or by the more tortuous path of interpretation. Progress in this direction has been quite remarkable.

As Professor Sohn said, we would be more realistic and wiser if we would "elevate our sights a little lower."[23] The practical way to accomplish this is to beat a retreat from the Charter to the 19th century, which was wise enough to let the states have the freedom to use force, war or arbitration as interchangeable instruments of national policy. The attempts to limit this freedom through the League of Nations Covenant, the Kellogg-Briand Pact and currently the United Nations Charter, have largely failed and there is some pressure to argue the limitation away. Professor Stone, agreeing with Dean Acheson, said that surely "the survival of states is not a matter of law."[24] This sounds realistic enough but, in the context in which Dean Acheson used these words, they may have related to Article 51 of the Charter, which safeguards the right of self-defense against armed attack. But in the Cuban crisis there was no armed attack and yet the survival of the United States was believed to be at stake. Dean Acheson and Stone then read the Charter, including Articles 2, paragraph 4, and 51, as not limiting the "residual power" of Members to

[23] *Ibid.* at 131.

[24] *Ibid.* at 27. Mr. Acheson's remarks will be found on p. 14 of the 1963 Proceedings.

take any measures in self-defense if and when their survival, in their judgment, of course, is at stake. This seems entirely plausible in the context of the Cuban crisis, and is good 19th-century doctrine. But how about other contexts? Should a state, a weaker and smaller state, subordinate its political, economic and social well-being to the observance of those rules of international law which deal with the use of force, expropriation or state succession? Why should they be expected to be temperate and "promote by example a spirit of compliance with international law"?[25] Should not rather the well-established, well-to-do and well-protected state set this example? Should not compliance with international law, like charity, begin at home?

The result so easily obtained by Dean Acheson and Stone can be achieved slightly more laboriously, but only slightly so, by a suitable method of interpretation. Thus, Professor McDougal, in the context of the Cuban crisis, contends that

> nothing in the "plain and natural meaning" of the words of the Charter requires an interpretation that Article 51 restricts the customary right of self-defense. The proponents of such an interpretation substitute for the words "if an armed attack occurs" the very different words "if, and only if, an armed attack occurs."[26]

The principle of interpretation applied by Professor McDougal, which might be called the "negative plain meaning" principle, opens up old vistas—the 19th century—as well as new ones. It could be applied to many articles of the Charter as well as to treaties generally and precepts of customary international law. However, it may be questioned whether the "fallacy of word-juggling"[27] is within the reserved domain of the proponents of the "positive plain meaning" principle, for it would seem that the "negative plain meaning" method involves some word-juggling too. This will be seen from the following comparisons of the two versions of Article 51 in which A refers to the former, and B to the latter method:

A: if, "and only if," an armed attack occurs.
B: if, "but not only if," an armed attack occurs.

Some other comparisons may illustrate the versatility of the method:

Article 51. A: if an armed attack occurs "only" against a Member.
B: if an armed attack occurs "but not only" against a Member.

Article 1, par. 1. A: to take "only" effective collective measures.
B: to take "not only" effective collective measures.[28]

[25] Stone, 1964 Proceedings, American Society of International Law at 31.

[26] "The Soviet-Cuban Quarantine and Self-Defense," 57 A.J.I.L. 597–604, at 600 (1963).

[27] *Ibid.*

[28] "Only" and "not only" may modify "collective" or "effective" as desired.

Article 2, par. 3. A: settle international disputes "only" by peaceful means.
B: settle international disputes "not only" by peaceful means.

Article 2, par. 4. A: All members shall "always" refrain . . . from the threat or use of force.
B: All members shall "not always" refrain. . . .

Article 53, par. 1. A: But no enforcement action shall be taken without the "prior" authorization . . .
B: But (no) enforcement action shall be taken "with or without" "prior or subsequent or no" authorization . . .

Examples could be multiplied, but it is hoped the usefulness and versatility of the "negative plain meaning" method has been sufficiently demonstrated. Insofar as the particular case of the Soviet-Cuban quarantine is concerned, the difference between Stone, Acheson and McDougal seems to boil down to this: Stone and Acheson simply deny that there was any applicable law or that Article 51 governed the situation, whereas McDougal accepts the applicability of Article 51 and maintains that the action was in conformity with, or, at the very least, not contrary to Article 51 as interpreted in accordance with the "negative plain meaning" canon.

In case there should be precepts of customary or conventional law which are quite intractable and resistant to any of the above methods, still another more dependable and comprehensive principle or canon could be envisaged. It could be formulated, quite tentatively, as follows: Every precept shall mean what it plainly says ("positive plain meaning" principle), what it plainly does not say ("negative plain meaning" principle), as well as its opposite ("opposite plain meaning" principle), and no precept shall be deemed to curtail the residual power of a state to take limited, moderate and necessary measures which in its judgment ("auto-interpretation" principle) are best calculated to promote or ensure its national survival ("survival" principle). This comprehensive rule could, naturally, be refined and improved. It would, of course, be understood that every state acts at its peril and, therefore, smaller and weaker states should use it with caution lest they be accused of flouting international law and punished to boot. There is still a good deal of vitality in the Roman adage: *Quod licet Jovi non licet Bovi.* The recognition of the power factor might thus appear to run counter to the principle of sovereign equality enshrined in the Charter. But every student knows that this principle has been and continues to be a legal fiction and, moreover, the problem here is no problem in reality, if the "negative plain meaning" principle is applied.

Another example will illustrate the use to which this principle can usefully be put. The Test Ban Treaty, which Professor Fisher commends as an example of legal regulation and therefore limitation of the power of

states to frustrate a treaty,[29] provides in Article IV:

> Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty three months in advance.

Now, the "positive plain meaning" principle yields the obvious results: There must be extraordinary events, there must be a jeopardy to the supreme interests—a rather awkward substitute for the well-known vital interests—and there must be three months' notice. This reading interpolates the word "only" in the first sentence thus: "Each Party . . . only if it decides." It is plain that "only" is not in the text and therefore the right to withdraw from the Treaty cannot be limited to the stated circumstances ("negative plain meaning" principle), and can be exercised in other circumstances as well. The second sentence could be considered as somewhat intractable. But the "opposite plain meaning" principle clearly eliminates the requirement of three months' notice. Q.E.D. Moreover, this requirement is nonsensical in any event and falls to the ground simply when subjected to the venerable principles that an "absurd" meaning should not be attributed to a treaty provision, that every provision should be interpreted in the context in which it appears, and that the major purpose should be effectuated. It is absurd to assume that a party will know three months in advance that "extraordinary events" are about to occur, as it is in the nature of such events that they arrive habitually unheralded; the provision clearly recognizes that the "supreme interests" of the party must be safeguarded; the treaty should, then, be so interpreted as to carry forward this objective, and, therefore, the requirement of three months' notice is no requirement at all, but plainly a drafting error. One might end this little but instructive exercise with the query: To what do the words "in advance" refer? To the extraordinary events? Or to the withdrawal? A good draftsman was obviously conspicuous by his absence in the drafting of this treaty. Or was the English text of this clause penned by a Russian?

The principles briefly sketched above present, it is believed, an attractive smörgåsbord for experts eager to interpret international law. It must be conceded, however, that they lend themselves to abuse. Consequently, in order to prevent nibbling by unauthorized persons such as, for instance, Soviet experts, some precautions will have to be taken. This matter, fortunately, appears to be outside the purview of the present paper.

It has so far been assumed that by dint of one principle of interpretation or another, it will be possible to arrive at a clear-cut conclusion whether, given a certain set of facts and the validity of the applicable rule, a state's conduct has or has not complied with the posited rules. However, scholars do not necessarily have to assume the rôle of judges sitting in adversary proceedings who must uphold or reject the contentions of the parties. They might be better off to play a more discreet rôle. This has

[29] Fisher, 1964 Proceedings, American Society of International Law at 125.

indeed been proposed by Professor Falk, who suggested that, rather than to "dichotomize inquiry," it would be

> better to think of compliance as a position on a spectrum, rather than as a two-way switch that is either on or off; if we adopt the idea of a spectrum, then legality is a matter of degree varying with the circumstances of the case.[30]

Leaving on one side the "two-way switch" in view of the present writer's complete ignorance of electronics, Professor Falk's proposal is entirely in line with modern trends in theorizing about international relations to think in terms of a continuum or spectrum. It is certainly proper for experts, as suggested above, to refrain from formulating conclusions and to present, as Professor Falk suggests, arguments pro and con, to dispense praise for restraint, moderation, *et cetera*. All this, it is felt, is no argument in favor of the spectrum approach. Presumably at one side of the spectrum would be compliance and at the other, non-compliance, and the conduct of states, whether in a crisis or not, would be placed at or somewhere between the poles, in the grey area. But, unfortunately, legality like virtue is not a matter of degree. One can sympathize with the fallen damsel and stress the "unfortunate misfortune" in which she found herself when she fell, but fall she did. So, *mutatis mutandis*, it is with state conduct. If the United States quarantine is considered as a reprisal, it must be tested for its legality in the light of the applicable law. Leaving out of consideration the question whether reprisals are or are not compatible with the Charter, it would be relevant to consider the question of summation, proportionality, et cetera, as was done in the *Naulilaa* case. But the condition *sine qua non* of compliance with international law would be a prior illegal act on the part of the Soviet Union. What this act was, has never, to this writer's knowledge, been clearly stated, and it is at least doubtful whether President Kennedy construed the Soviet Union's conduct as illegal rather than dangerous to the security of the United States.

On the other hand, if the United States quarantine is regarded as a measure of self-defense, its conformity with international law must be tested in the light of the Charter, or if the Charter does not apply, in the light of customary international law. If the Charter did not prohibit self-defense in circumstances other than armed attack, the United States' conduct *ab initio* was lawful. This initial lawfulness might have been marred by excessive action, *et cetera*. Here all the aspects of the United States' action, such as moderation, proportionality, *et cetera*, become relevant if, according to customary international law, these factors are relevant. If they are relevant, then the action was lawful initially as well as throughout. The second hypothesis would be that the Charter intended to prohibit resort to self-defense except in case of armed attack. In view of the abuses committed in the name of self-defense or self-help,[31] and in view of the plain meaning of Article 2, paragraph 4, and Article 51 ("positive

[30] *Ibid.* at 5.

[31] See Corfu Channel case, [1949] I.C.J. Rep. 4, at 35.

plain meaning'' principle), a strong argument could be made in favor of the second hypothesis. For proponents of this construction the spectrum is no help. They must make up their minds. And considerations of moderation, *et cetera,* may sweeten the pill, but they have no other choice but to swallow it. Apart from an exegesis of the Charter, past precedents, including the Anglo-French action in Suez in 1956, would have to be examined to discover any light which they might shed for the proper construction of the Charter.

Loyalty to his country may cloud the expert's impartiality. Even in a free society this may be so. The government's rôle as a dispenser of awards and the society's mark of approval or disapproval are factors which may or may not be relevant. But in a free society, at any rate, silence is an acceptable option. There is no reason to assume, however, that ''neutral experts'' [32] are in fact more impartial than national experts. They may be free from bias where interests of their own country are not directly involved. But in this age of interdependence this cannot be taken for granted. And surely there is no reason to assume that they are better versed in international law than national experts. It all hinges on the quality of their legal opinion.

Preoccupation with legal issues carries with it the risk of overlooking the need for weighing political actions and conceivable alternatives, of concentrating on the issue at hand and disregarding its political or economic antecedents. It may be inevitable to consider the legal aspects of the Bay of Pigs operation or the Cuban quarantine or the incidents in the Gulf of Tonkin, but the political factors and motivations may be just as relevant even for international lawyers. They cannot be divorced from the perennial confrontation known as the Cold War and its corrosive impact on compliance with international law.

In any event, it may be safely suggested, whatever experts think or say or, according to Professor Falk, should think or say about compliance, does not alter the legal aspects of a case. Experts do not pronounce authoritative interpretations of international law, even though they may flatter themselves of so doing. The attitude of the state or states involved is decidedly more relevant for determining compliance or non-compliance. Unless they reach an agreement, there is a stand-off: one auto-interpretation faces the other and neither is authoritative for or binding upon the other. Acquiescence in a political claim does not produce a rule of law any more than the formulation of a political claim is necessarily evidence of a stand on the relevant rules of law. And currently experts and governments seem to have at least one position in common, namely, that it is more prudent to keep a dispute out of court than to run the risk of an authoritative but perhaps unfavorable interpretation.

It has been noted above that compliance is a function of the quantity and quality of law, of the capabilities of decision-makers, *et cetera.* Governments in their lawmaking activities sometimes display excessive concern with the problem of compliance, as for instance in connection with the

[32] Falk, *ibid.* at 8.

"self-enforcing" Test Ban Treaty. On other occasions they seem to respond with almost excessive abandon to pressures of interest groups or of public opinion. The desire to banish war and the use of force and even the threat of force was no doubt one of those "idealistic" motifs in drafting the Charter and other instruments as well. But are the states and their citizens ready for a warless world? Or will they have to pass through a lawless world before they start building a warless world? If Articles 2, paragraph 4, 51 and 53 had not been written into the Charter, there would have been less controversy and less pressure to find compliance with the law. There is some international law which, even under optimistic assumptions, can hardly be made to work in contemporary international politics.

Compliance with international law is also, though to a lesser extent, a function of the experts. At this point of history, experts may do more harm than good to international law as a form of, or stage in, the regulation of international relations, if they formulate in universal terms propositions intended to deal with particular situations. They may produce nothing but a boomerang effect, and add a dubious case of compliance with the law to another. The cause of compliance is not likely to be advanced by doctrines which achieve no more than to plaster over instances of non-compliance. Nor will it be promoted by proposals for "planned non-compliance" or "built-in non-compliance" with judgments of international tribunals. It is far better, in this writer's view, to let international adjudication advance at the current snail's pace than to attempt to speed it forward by such means. The result could only be a setback. The existing procedures and remedies as indicated above are a sufficient political protection against an abuse of the judicial power, which moreover is wholly speculative. If governments feel insufficiently protected, let them set up an appeals tribunal to give them the desired judicial guarantees. It is illusory in the extreme to pretend that compliance with international law by one skillful device or another can be made a painless affair, like the promise of the school book, *French Without Tears,* or of its French equivalent, *Rire et Apprendre.* Governments may try to get something for nothing but they know that such gains are apt to be short-lived. In the long run they will be as they have been in the past, inimical to progress in developing the modicum of order and stability that is compatible with an international law built on and around the sovereignty of states.

Consistency need not be a virtue in national decision-makers, but independent experts may do more harm than good in throwing consistency to the winds. What is argued on behalf of one country in the form of a general statement on international law must apply equally to all countries. Rules of interpretation used by one expert may obviously be used by another. To argue complementarity of rules in international law is hardly tenable. International law would not deserve even the courtesy title of "system" if it accommodated at one and the same time rules and their opposites. Unfortunately, in the art of interpretation this complementarity has been achieved: for any or many principles there is an opposite prin-

ciple and moreover there is no agreement as to which rule applies and when. The danger is not to be ruled out that, by the manipulation of these principles, the experts may successfully interpret international law away and find themselves face to face with *Le Néant.*

LEO GROSS

CO-EXISTENCE LAW BOWS OUT

An item entitled "Juridical Aspects of Peaceful Coexistence" stood on the agenda of the International Law Association for eight years. At Tokyo in August, 1964, it was removed, and the committee charged with its study during the preceding years was given a new name. It became the "Committee on Principles of International Security and Cooperation."[1]

With this change the International Law Association follows the lead of U.N.E.S.C.O. and of the United Nations. The former's General Conference of 1954 chose "peaceful co-operation" as the aim of its research rather than "peaceful co-existence" when the matter was broached by an Indian resolution.[2] The latter once undertook a search for juridical aspects of peaceful co-existence, but substituted a study of the law of "peaceful relations and co-operation among states" in 1961.[3] The Tokyo decision leaves "peaceful co-existence" as an agenda item only in two prominent organizations. One is the Conference of Non-Aligned Nations, which included the subject on its agenda for its Cairo meeting of October, 1964. The other is the non-governmental International Association of Democratic Lawyers which last met in Budapest in April, 1964.

Can the Tokyo decision be interpreted as more than a new move in a wide-ranging dispute over terminology? Members present from the branches of the International Law Association in North America, Western Europe and the rim of the Pacific thought that the change was of substantive significance. Eastern European branches came prepared to accept the change as part of a compromise, for they knew that the pressure was strong for a change. An American Branch report had placed before the meeting, as it had on each of three previous occasions, a plea for a change.[4] The Americans argued that "peaceful co-existence" as a subject of study had two disadvantages: it was obscure, and if it meant anything, it was an inadequate aim for research by international lawyers. Obscurity stemmed from a wide variety of usage, from a 1954 treaty between India and the Chinese People's Republic over the status of Tibet, a foreign policy aim of the Afro-Asian countries set forth in the Bandoeng Declaration of 1955 in apparent emulation of Buddhism's *Pancha Shila,* a declara-

[1] The record is in process of assembly and will appear as International Law Association, Report of the Fifty-First Conference, Tokyo.

[2] For an account of this episode, see John N. Hazard, "Legal Research on 'Peaceful Coexistence'," 51 A.J.I.L. 63 (1957).

[3] See U.N. Doc. A/5036, Dec. 15, 1961. Report of the Sixth Committee.

[4] See Proceedings and Committee Reports of the American Branch of the International Law Association 1963–1964 (New York, 1964) 83–88. Prior reports appear *ibid.* 1957–1958 (New York, 1958) 85–94, and 1961–1962 (New York, 1962) 72–77.