

Current Legal Problems of the United Nations

I am much honoured by the invitation to address you today. I have been asked to speak to you on the current legal problems of the United Nations. That is a vast subject and I hope not too dry a one, as it involved cataloguing activities on many different subjects. Of course, nearly all the problems of the United Nations have legal aspects, either because existing rights and duties are involved, or because new rights and duties are being laid down, and often some new institutional framework is being constructed as well.

I do not intend, however, to give you today an inventory of all the current problems on the Legal Counsel's desk, since it is thickly piled and, if you were willing to hear me out, we would long outstay our welcome in this place. There are also some matters, for example, steps to be taken to solve the financial crisis of the United Nations, that are still under discussion and are not yet ready to be reported on. I would like, however, first to mention one problem which has been confronting the Secretariat, and then to give a brief summary of current and recent efforts in the United Nations to advance and develop the law as a means of promoting the solution of a vast range of international problems.

Change in the Representation of China

The problem of the Secretariat which I would like to mention is that of working out the consequences of the change in the representation of China which took place as the result of the General Assembly's decision on 25 October last year. In the first place, we maintain the principle that the 22 years of history of the United Nations between October 1949, when the Government of the People's Republic was established, and October 1971, when the Assembly recognized its right to represent China in the Organization, cannot be undone. Thus, for example, in our publication on multi-

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lateral treaties in respect of which the Secretary-General performs depositary functions, we continue to list all signatures, ratifications and other treaty actions taken by the Government that represented China in the United Nations at the time of the action, and we have included a note to that effect in the publication.

In the second place, we recognize that the People's Republic cannot automatically be considered to be bound by obligations incurred by its rival regime during the 22 years in question; though we hope that the People's Republic may see fit, now that it is seated in the Organization, to take over as many as possible of those obligations by any means it thinks appropriate, including accession to treaties. Accordingly, last January we sent the Chinese Mission a complete list of all treaty actions taken on behalf of China in regard to United Nations treaties, and asked the attitude of their Government respecting the actions taken after October 1949. So far we have received no full reply, though we have been informed that the People's Republic regards the Chinese ratification of one treaty—the Single Convention on Narcotic Drugs, 1961—as null and void.

In the third place, the General Assembly's resolution leaves us no ground for considering that the Taiwan régime is now the Government of a State. There is therefore a simple reversal of the awkward and unrealistic situation which prevailed before October 1971, and the reversal does not make the situation any more comfortable. Some United Nations activities are more useful and effective when done on a truly world-wide basis without regard to political issues of recognition, and we would like, for example, to obtain and publish statistics in economic, demographic and narcotics matters from Taiwan. Unfortunately, however, the grounds in law and precedent for doing so, do not seem strong enough to resist the objections which have been or could be raised.

International Court of Justice

I shall now turn to the legal activities of other organs than the Secretariat, and I would like to speak first about the International Court of Justice. The Court has now two contentious cases before it. The first is between Pakistan and India over rights of passage for civil aviation, and the march of events in the sub-continent has largely deprived it of practical importance. The second, recently brought by the United Kingdom against Iceland over the latest extension of the Icelandic fisheries zones, may well be of very great significance for the law of the sea if it proceeds to judgment. Yet it is still a fact that the Court is not sufficiently used, either by States or by the international bodies that have the right to request advisory

opinions. I know that the American Society of International Law is working on this problem, and I hope that it will succeed in developing useful ideas which will have an influence on the policies of Governments. The main problem, I think, will be to change the present tendency of States to prefer to keep problems unsettled, in the hope of being able some day to obtain a favourable settlement by purely political means.

Disarmament

One of the most vital areas being dealt with by the United Nations is disarmament. Even if major war is prevented by the so-called "balance of terror," the economic lives of many countries are distorted by the heavy burden of armament costs, and precious resources are being lavished upon preparations for destruction. The legal steps toward disarmament are not proceeding as rapidly as could be wished, but nevertheless there is some progress.

At its 1970 session the General Assembly commended to States a treaty prohibiting nuclear weapons on the sea-bed, and in 1971 it recommended a convention prohibiting development, production and stockpiling of bacteriological and toxic weapons, now signed by over 70 States. The Conference of the Committee on Disarmament, which produced both those treaties, has been requested to continue as a matter of the highest priority its deliberations on a treaty banning underground nuclear weapons tests, to supplement the Nuclear Test-Ban Treaty of 1963. We all know the very great difficulties which beset efforts for disarmament, which have been going on at least since the Hague Conferences of 1899 and 1907, but continuing effort may, we hope, finally succeed in making important progress.

United Nations Conference on the Human Environment

You have heard at the meeting this morning about the United Nations Conference on the Human Environment, and I do not think I can add very much about it. It is a remarkable attempt to deal rapidly and effectively with the far-reaching problems of keeping the earth a fit place to live, and if it succeeds it will have important legal effects, though probably not at once in the form of conventions. It is to be hoped that the intense effort and imagination which have characterized the preparations for the Conference will find an enthusiastic response among the Governments represented at Stockholm, and that during the brief ten days their representatives spend there they will succeed in agreeing on a wide range of the huge and complex problems they will deal with. The world has reason to hold its

breath as it watches the progress of the Conference, in the hope of breathing a less polluted atmosphere after it ends.

Preparations for the Conference on the Law of the Sea

The question of the peaceful uses of the sea-bed and ocean floor beyond the limits of national jurisdiction, was raised in the General Assembly in 1967, and as a result the Assembly in 1970 decided to convene a Conference on the Law of the Sea in 1973, subject to its review in 1971 and 1972 of the progress made by a preparatory committee. All of the issues of the Law of the Sea are so closely interconnected that discussions could not be limited simply to the sea-bed and ocean floor. The preparatory committee, whose number is now established at 90 States, has consequently been carrying on wide-ranging discussions. The method of preparation of the future Conference contrasts strongly with that of the 1958 Conference on the Law of the Sea, which proceeded mainly on the basis of draft articles prepared by the International Law Commission. This time, since many States desire both a progressive development of the law in new fields, and an innovative evolution of existing law rather than its codification, the political element has been more conspicuous than the legal and technical elements during the preparatory stage, and the discussions have been difficult.

The main question now seems to be whether the General Assembly this autumn will consider that sufficient progress has been made to permit the convening of the Conference on the Law of the Sea in 1973, or whether a postponement will have to be made. Much depends on the result of the next session of the Sea-bed Committee, which will meet in Geneva during next July and August. It is to be hoped that each of its three sub-committees will reach the indispensable minimum of agreement which will allow the Conference to meet next year. It must be said, however, that at this stage even more depends upon the success of private negotiations among States than upon what is accomplished in the preparatory committee.

From the proceedings so far it does not seem likely that the preparatory committee will be able to produce a set of draft articles to serve as the basis for discussion and amendment. The Conference will thus probably have to deal with a number of different proposals submitted by States rather than by the preparatory committee, and this may complicate and slow down its procedures. Even if the Conference begins in 1973, it cannot be anticipated that it will finish in that year. Even optimists do not exclude the possibility of sessions in a second and even a third year.

Outer Space

The Committee on the Peaceful Uses of Outer Space has been in existence since 1959, and its Legal Sub-Committee since 1962. During its lifetime the Legal Sub-Committee has produced three important treaties which have been commended to States by the General Assembly. The first, in 1966, was the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which laid down the basic legal principles in the field, and which is now in force. The following year, 1967, came the Agreement on the Rescue of Astronauts, and last year, 1971, the General Assembly recommended the Convention on International Liability for Damage Caused by Space Objects, a most interesting application of the principles relating to responsibility of States.

The Legal Sub-Committee of the Outer Space Committee is now in session, and is working on two treaties, one relating to exploration of the moon and possibly other celestial bodies as well, and the other on registration of objects launched into space. It is not yet clear whether it will be possible to arrive at a treaty on either subject at this session.

International Law Commission

The work of the International Law Commission came to what is perhaps its most important fruition so far reached in its 23 years of existence, when in 1969 a United Nations Conference adopted the Vienna Convention on the Law of Treaties. Ratifications and accessions to that Convention are coming in slowly, and thus far there are only thirteen of them, no doubt because the complexity of the Convention makes its consideration by national parliaments slow and difficult. I have no doubt that the Convention will ultimately obtain the 35 ratifications or accessions needed for its entry into force, but in the meantime I am sure that all practitioners of international law will agree with me on the extreme usefulness of well-drafted formulations of the rules regarding treaties, adopted at a conference of 110 States, very often with a general opinion that the texts represented existing law.

Since then, the Commission has produced two sets of draft articles relating to questions of privileges, immunities and facilities. One of them has become the Convention on Special Missions, adopted by the General Assembly in 1969, and the other, on the representation of States in their relations with international organizations, which was submitted to the Assembly last year. At its session this year the Commission is expected to make progress on the topics of succession of States and governments in

respect of treaties, of protection of diplomats, and, it is hoped, of State responsibility as well.

Perhaps its most interesting and important discussions, however, will be on its long-term programme of work which will be considered on the basis of a comprehensive survey of international law prepared by the Secretariat. The Commission must plot out its course over the years to come, and thereby indicate the direction of what are among the most important efforts of the world community toward the progressive development and codification of international law. The Commission's choice of topics is limited, since most of the topics which were evidently ripe for codification have been dealt with, and since, in the present international climate, political difficulties seem inherent in some aspects of such topics as succession of States and responsibility of States. It is to be hoped that the Commission will succeed in finding topics on which it will be able to make as great a contribution as it has on those it has already dealt with.

UNCITRAL

The United Nations Commission on International Trade Law is now holding its fifth session, at which it is expected to adopt a set of articles on time-limits and limitations in the field of the international sale of goods, and to recommend the means of turning those articles into a convention. The Commission was established by the General Assembly in 1966, with the object of promoting the progressive harmonization and unification of the law of international trade. From the start it has benefitted from the energetic and competent representatives sent to it by the States who are its members, and indeed it is clearly one of the very best commissions which has ever operated within the framework of the United Nations. While it was initially envisaged that the Commission would largely spend its time co-ordinating the work of other organizations active in the field and encouraging co-operation among them, it has been found that many States are anxious for the Commission also to take direct responsibility for the preparation of legal texts. This seems to be more and more the way in which it is heading, while of course it is also continuing to co-operate closely with other organizations.

In the field of international payments, the Commission is making good progress in the bold and imaginative project of preparing a draft uniform law on a special negotiable instrument, called an international bill of exchange, for optional use in international transactions. The Commission is also undertaking work on bankers' commercial credits and bank guarantees, on bills of lading in international shipping, and on international commercial arbitration. There is no danger that the Commission will ever run

out of subjects to work on, and it can be expected to continue successfully its work of harmonization and unification, to the increasing benefit of world trade.

The Definition of Aggression

The Special Committee on the Question of Defining Aggression finished its fifth session last month. It has been dealing with a question on which serious efforts were made in the League of Nations and which has been pending in the United Nations since 1950, always without arriving at a generally acceptable definition of aggression, though some progress towards agreement has been achieved. Yet many States are convinced of the importance that a definition would have if one could be adopted, so despite the rather limited progress made at its most recent session the Special Committee has recommended that the General Assembly should invite it to continue its work in 1973.

If the Assembly agrees, it is to be hoped that the immense amount of labour which has been spent on this subject will finally lead to some fruition. It was possible for the Assembly in 1970 to adopt the Declaration of Principles of International Law concerning Friendly Relations among States, and if that more comprehensive task could be accomplished, there seems to be no inherent reason why a definition of aggression cannot also be adopted. It may be, however, that if adoption of a definition by consensus continues to be desired, this will occur only after a more peaceful atmosphere than at present comes to prevail in the world.

Conclusion

I have concluded my *tour d'horizon* of the main fields of legal activity at the United Nations, extending from outer space and celestial bodies to the deepest parts of the oceans. Not every item on the agenda gives rise to international legislation, and I have dealt only with what seem to me to be the main areas of current legal growth. I do not wish to present an over-optimistic picture of international law, marching triumphantly in majestic array to victory over discord and disorder in all fields, and I do not wish to minimize the problem, on which I have scarcely touched, of ensuring respect for the rules of law after their existence has been recognized.

I do wish, however, to show how the States of the world, sometimes hesitantly and sometimes confidently, sometimes generously and sometimes with too narrow a view of their own interests, are nevertheless seeking to use the machinery of the United Nations to promote

co-operation by legal means. The sum of the effort being exerted is enormous, and that fact alone is encouraging. The output of legal texts in the United Nations varies widely in effectiveness and in technical quality, but the most important thing is to keep trying. That is beyond question being done, and gives us all grounds for modest encouragement about the future of our profession and its value to the world.