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Law in Africa: Sixth World Conference on World Peace Convened

In his introductory remarks, Charles Rhyne, Chairman of the World Peace Through Law Center, indicated the necessity of choice between force and law. Since there is no world parliament or government, the nations of the world must accept treaties and agreements to govern their relationships. Mr. Rhyne pointed out that this was the 10th Anniversary of the establishment of the Center. The work of promulgating the Rule of Law no longer is accomplished by diplomats and professors but by the 100,000 participants of the Center, from 130 countries. The fate of every man was inextricably intertwined with the fate of every other. Just as no man is an island, neither is a nation. Law, the crystalization of world public opinion, could be the medium of a constructive dialogue. It is the only concept, said Mr. Rhyne, on which all peoples of the world could meet on a common ground to build a new world together, to replace primitive solutions with rational discourse.

Justice Earl Warren, who followed Mr. Rhyne, pointed out that this was the 25th Anniversary of the Declaration of Human Rights. He voiced a pervading sense of impotence at the slow pace of progress. Rhetoric and legalisms seem to have replaced cooperation and community. Only 20 percent of the potential number of nations have acceded to the Covenants. Some 27,500 complaints by individuals were filed with the UN in 1973. Since the UN has no power under its Charter to take any action in such a context, these complaints fall on deaf ears. Yet there is no reason why the Charter should not be amended to cover this nagging problem. The individual has standing to file complaints before the International Labor Organization, the Council of Europe and the European Commission on Human Rights. The inherent dignity and the inalienable rights of man must be protected, asserted Justice Warren. From time immemorial this has been the hallmark of the legal profession. The protection of human rights of citizens is not just a domestic matter.[1]

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[1]One of the arguments against U.S. ratification of the Genocide Convention is that it infringes

The Honorable Alphonse Boni, President of the Supreme Court of the Ivory Coast, brought the greetings of the host country. Peace, he asserted, was a precondition of world progress, but peace is more than just the silencing of the guns of war. It represents a dedicated search for the solution of common problems. The Judge noted that nations must restrain the urge to power and, instead, promote the community of justice. How could one ignore the tragic conditions of two-thirds of mankind? Within a month of President Boni's statement Robert S. McNamara, President of the World Bank, meeting in Nairobi, sounded the same note:[2] One and one-half of the 2 billion people in developing countries suffer from hunger or malnutrition, 20 to 25 percent of the children die before they are five. Life expectancy is 20 years less than in industrial nations and 800 million people are illiterate.

The 20th century has been termed the "century of the homeless man." The several tragic wars that have terrorized the world in the last 75 years have uprooted families, made millions homeless and disintegrated family life in many parts of the world. It was essential, therefore, that one of the work sessions be devoted to the problem of human rights for refugees. Professor Bhek Pati Sinha, of India, Professor of International Law at Indiana State University, submitted a work paper for this session. He pointed out that the usage of asylum which originally meant freedom from seizure, is the oldest exercise of human rights *par excellence.* A persecutee and/or a perspective persecutee should have a legal right to asylum; a state, as an agent of the world community, should have an obligation to grant asylum to such an individual.[3] The rights of refugees are circumscribed by such considerations as national security or public order or the safeguard of the population in the event of a mass influx of refugees. A person who has violated the freedoms and rights of others forfeits his right to asylum. A state's grant of asylum to such a person would incur international responsibility, for the right to asylum is an exercise in international human rights, not an indulgence in criminal activities. A refugee should be entitled to national treatment in regard to wage-earning employment, labor and social security benefits. He should be entitled to acquire and lease property, engage in agriculture, trades, handicrafts and the right to pursue liberal professions, the right to housing, higher education and related subjects. He should be afforded free access to the courts, freedom of religion and right to transfer his assets.

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upon the sovereignty of a nation, since it deals with the regulations between a nation and its own citizens. However, the U.S. has ratified several international agreements which concern the activities of its citizens, *i.e.*, narcotics, public health and conservation.

[2]Boston Globe, September 24, 1973.

[3]Article 14 (1) of the Universal Declaration of Human Rights establishes that "everyone has a right to seek and enjoy in other countries, asylum from persecution." The grant of asylum by a state to a person entitled thereto is a peaceful and humanitarian act and cannot be regarded as unfriendly by any other state.

Since the family is the cornerstone of society, the reunion of a family is a basic humanitarian goal.

Two recommendations to the World Peace Through Law Center advanced in the work papers are of special significance: (1) that a Universal Court of Human Rights be established (either as a division of the UN or as a specialized agency on the pattern of the European Court of Human Rights) to adjudicate disputes relative to the observance of human rights and (2) that the office of the UN High Commissioner For Refugees be authorized by the United Nations General Assembly to seek advisory opinions from the International Court of Justice with respect to the interpretation and application of world law dealing with refugees.

One of the sections of the World Peace Through Law Center (organized in Belgrade in 1971) is entitled "Multinational Business Law Section." The topic addressed at the conference was under the sub-heading of this section entitled "Development Law For Developing Nations." So important was this section determined to be that at the work session it was resolved that the Center establish a permanent section entitled "Development Law." This would be in place of the present formula where development law appears as a sub-heading of multinational law. Samuel Pisar of Paris prepared and submitted a paper entitled "The Third World Between East and West: A Proposal For Transideological Enterprise." He emphasized the fact that the new world of relationships, with emphasis on economic cooperation rather than political strength, is consolidating an era of détente. He felt that the concept of coexistence and commerce[4] between East and West offered the Third World a chance to become a theatre of significant economic cooperation and development. He urged that an innovative set of commercial and legal instruments be forged through concerted efforts to be used by "transideological corporations." These could be owned and operated jointly by private enterprises in the West and state enterprises in the East. Such hybrid business enterprises could help alleviate the problems encountered by the communist, capitalist and developing countries in their respective trade and aid arrangements. In Pisar's view, the joint collaboration between East and West business entities will result in a highly advantageous specialization and division of labor. The West usually provides superior technology, advanced equipment, finance resources and sophisticated organization. The East provides engineers, agronomists, certain raw materials, heavy equipment and machinery, skilled, cheap and strike-free labor.

The problem of setting up a legal framework for the effective utilization and control by African host states of multinational corporations was the subject of a paper by S. K. Date-Bah of the University of Ghana. He felt that the developing nations must be careful to sanction only such investments as will involve a net

[4]This is the title of Mr. Pisar's book (McGraw Hill, New York).

inflow of otherwise unavailable capital resources into their respective economies. The insurance business was an area which tended to promote capital accumulation accruing from local insurance premia. The host country must see that the investment of this liquid capital is regulated. In both Nigeria[5] and Ghana[6] certain restrictions are imposed on foreign-controlled insurance companies as to ownership of shares and compulsory investment of a percentage of the income received in government bonds or such investments as are approved by the Commissioner of Insurance. With respect to foreign controlled manufacturing industries, the local control is less stringent; but in Ghana, for example, in order to establish or expand such an industry a license must be procured from the minister in charge of such activities. Foreign investors are well advised to follow the prescribed procedure in order to enjoy such benefits as employment tax credits, income tax holidays, capital allowances, exemption from indirect tax charges and such concessions. Any multinational company which is granted a license to operate automatically assumes the obligation of initiating arrangements for the training of Ghanaian citizens in administrative, technical, managerial and other skills. The speaker called upon the multinational companies operating in host countries to respond to a new social responsibility; they should be concerned not only with the impact of their activities on their profits, but also on the development process of the host states in which they operate.

One of the most interesting of the various work papers delivered was that of L. Michael Hager, Regional Legal Advisor, U.S. Agency For International Development. It was the speaker's thesis that "law and development" is a relatively new discipline. The economists, facing the problems of the less developed countries (LDCs) employ rationality in the system of public and private investment. Political scientists emphasize political development, social and cultural anthropologists noting how difficult it is to introduce modernization into "traditional societies" emphasize social development. Rarely are lawyers called upon to participate. Now, the process has changed and "Law and Development" appears in law school curricula and there is a growing body of literature on the subject. The speaker divided development law into two categories: (1) development of the legal infrastructure (courts, ministries of justice, bar associations and law schools) and (2) solving specific development problems. What the planners neglected in their search for distribution-oriented policies are the social benefits of an improved legal system. Legal education is a logical starting point in a legal development effort.

In addition to the furtherance of projects such as codification of local laws, legislative research and drafting services and programs of continuing legal education, lawyers should be involved in "legal engineering," the new apotheo-

[5]Insurance (Miscellaneous Provisions) Act 1964, #19 (1964).
[6]Insurance (Investment of Funds) (Amendment) Instrument (1967) L.I. 555.

sis of the lawyer as a social planner. In many countries, development is inhibited by lacunae in the statutes; for example, if readily enforceable chattel mortgage and crop liens are not available, commercial banks will not experiment with small farmer credit and rural cooperatives. Laws regulating banking, insurance and capital market activity are necessary to prevent exploitation by the private sector and to maintain public confidence in the economic system. Lawyers should be called upon not only to perform the narrow drafting function, but should sit with their economic and political counterparts in searching out alternative ways of accomplishing a policy goal. Skillful and imaginative use of comparative law materials is often required.

Hager argues that developing countries need both generalists and specialists in the field of development law. The generalists would exercise their skills in legislative drafting, contract revision, negotiation of agreements and would also be active in the modernization of legal institutions. The specialist lawyers would examine in depth such development problems as land tenure reform, securities regulation, agricultural credit, population control, taxation, private investments and cooperatives. Their work would include active collaboration with non-lawyer counterparts in the formulation and implementation of various policy approaches. Hager felt that development law institutes should be established to service the development agencies of government, conduct research and provide training for development lawyers. He pointed out that the areas in which the Development Law Institute could be most useful would be in (1) assisting planners and legislators in preparing changes in the law, (2) providing an additional pool of development-oriented lawyers to serve on interdisciplinary teams, and (3) tapping through research teams the tremendous "idea bank" of comparative law.

Two other programs should be referred to, in brief, to afford an idea as to the wide spectrum of the area covered by the conference. E.O.A. Idowu of Nigeria expressed the view of the developing countries toward the classical approach to the "law of the sea." With each country deciding unilaterally how far its territorial waters extend, with the new and sophisticated techniques which make offshore drilling exploration more and more feasible, it is only natural that a chaotic situation has developed. The developing nations hope for some uniform rules which will do equity to the developed and developing countries and resolve the conflicting demands of the need of stability and the need of change. Offshore fishing rights, the ownership of valuable minerals in the adjacent seabed, the right of innocent passage through contiguous waterways, are all problems of which there are many divergent opinions among the nations concerned.

In the Section on International Legal Education, a learned panel brought its expertise to bear on this problem during two work sessions. It was the consensus of the panel that regional law schools should be established in Africa to supply

the needs of three or four adjoining states. In the days before independence, legal education in Africa had been limited to English and French domestic law. Now the schools teach international law, international relations and conflicts of law among other topics. Thus the lawyer is helped to adapt to the needs of the foreign service. Professor Rabinowitz of Tel Aviv made the point that the law schools must prepare their students for a future public function. Interdisciplinary knowledge must be inculcated—philosophy, sociology; the problems facing the world exceed the parameters of a single discipline. It was generally recognized that the African heritage and local attitudes would have to be considered as a given input in the problem of African legal education. We must, it was suggested, also stress the conditions of scholarly development within our own society; further, more attention must be paid to the input of African scholars.

There was one other noteworthy event among many outstanding occurrences which must be mentioned before concluding this resume of an outstanding conference. At one of the four lunches which were interspersed between the work sessions, Rt. Hon. Philip Noel Baker, a Nobel laureate, was the speaker. He traced the transition from the embryonic and tentative international effort during the early days of the League of Nations with 50 delegates to the present-day sinewy United Nations with 132 delegates. He felt that the real benefit of the League and its successor the United Nations was and is in mobilizing world public opinion. When The International Court of Justice awarded Greenland to Denmark, Norway accepted the decree of the Court. When Mussolini attacked Ethiopia in 1935, 95 percent of the public were in favor of economic sanctions against him. He felt that the U.N. Charter is far stronger than the Covenant of the League. The walls between nations are falling and there is a yearning for and turning to the law. But, he pointed out, $15 million is spent in research on maize as compared with $15,000 million on military research. How, one might ask, can man claim to be civilized when millions of children die in their mothers' arms, and this appalling disproportion occurs in the world's spending habits?

This exemplar of the man who has never lost faith in the possibility of rational discourse between men may certainly symbolize the mood and aspirations of the Abidjan Conference, the triumph of intelligence and enthusiasm over benightedness of evil among men.