

March 1968

## Foreward to the Symposium: Recent Developments in International Law

Philip C. Jessup

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [International Law Commons](#)

---

### Repository Citation

Philip C. Jessup, *Foreward to the Symposium: Recent Developments in International Law*, 9 Wm. & Mary L. Rev. 551 (1968), <https://scholarship.law.wm.edu/wmlr/vol9/iss3/2>

Copyright c 1968 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

## *SYMPOSIUM*

### RECENT DEVELOPMENTS IN INTERNATIONAL LAW

#### FOREWORD

PHILIP C. JESSUP\*

The amount of interest which American law schools now show in the study of international law is one of the important consequences of the present position of the United States in world affairs. The movement gained momentum slowly as the following facts reveal. In 1925 a survey of 110 law schools showed that 65 offered no course in international law and 45 offered some kind of course in that field. Of the 61 schools then members of the Association of American Law Schools, 31 offered international law and 30 did not. A survey of 101 law schools in 1963-64 revealed 91 schools offering one or more courses in public international law and seven others planning to introduce such a course. Even more impressive are the figures for the increase in courses in the broad field of international legal studies in the years between 1950-51 and 1963-64.

In 1950-51 the University of Chicago Law School offered only two courses in the international field . . . ; in 1963-64 it offered a dozen courses and seminars. In 1950-51 the Columbia University School of Law offered nine courses and seminars; in 1963-64 it offered 21. In 1954-55 the University of Michigan Law School offered 5 courses and seminars; in 1963-64 it offered 13. In 1954-55 the University of California School of Law (Berkeley) offered three courses; in 1963-64 it offered eight courses and seminars. As late as 1959-60 the University of California School of Law (Los Angeles) and Syracuse University College of Law gave no courses

---

\* Judge, International Court of Justice.

in the international field; two or more faculty members were teaching courses in the international field in 1963-64 at each of these schools.<sup>1</sup>

It is hard to understand why the American Bar as a whole during so long a period was allergic to international law. After all, the Founding Fathers, in Article I, Section 8 of the Constitution, gave Congress the power "To define and punish . . . offenses against the law of nations," and as early as 1784 Alexander Hamilton was arguing a point of international law in a suit in a New York court.<sup>2</sup> American courts, both state and federal, have been deciding points of international law ever since, and the Foreign Assistance Act of 1965 is only one of the recent examples of congressional action in this field.

But it is no longer necessary to argue the reality or importance of international law as many law teachers in the United States not so many years ago were goaded into doing by the sneers of the hard-boiled practitioners who had not been fortunate enough to be among those leaders of the bar retained in cases involving the law of nations.

As the articles included in this issue of the William and Mary Law Review bear testimony, the scope of international law and of international legal studies has broadened enormously. But this is not a peculiarity of the international side of law because law schools and scholars over a long period of time have accepted the proposition that the famous "Brandeis Brief" represents the intelligent approach to legal appreciation. The international lawyer, however, needs an horizon which is not only broad in its substantive content (embracing, for example, transnational law) but also in its literal geographical sense.

In respect of its international scope, as a body of law regulating the relations of states, an old fallacy has put blinders on some legal eyes. The fallacy is most evident when one considers the role of the International Court of Justice. It is an interesting fact that opponents of the International Court of the United States include both those who profess to fear its power to call upon the United States to act lawfully, and those who scorn it for its weakness. The latter school of detractors sometimes bolsters their arguments by comparing the International Court to domestic criminal courts; where, they ask, are the police to

---

1. RICHARD W. EDWARDS, JR., *INTERNATIONAL LEGAL STUDIES: A SURVEY OF TEACHING IN AMERICAN LAW SCHOOLS 1963-1964* 6 (1965). See also Bishop, *International Law in American Law Schools Today*, 47 *AM. J. INT'L L.* 686 (1953).

2. J. GOBEL, *THE LAW PRACTICE OF ALEXANDER HAMILTON* 296 (1964).

enforce the Court's judgments against the criminally aggressive national state? Actually the comparison is with civil courts, since the cases which come to the International Court of Justice deal with matters analogous to the law of contracts, real property and torts rather than to robbery, burglary and homicide. The enforcement of judgments of the International Court of Justice is not and has not been one of its problems.<sup>3</sup>

Nor has the International Court ever had to pronounce a *non liquet*—to say that it could find no rule or principle of international law which could be the basis for a decision in a case. Neither have United States courts nor the courts of other countries which have over the years decided hundreds of cases involving international law, been at a loss to find the applicable law.<sup>4</sup>

It is of course true that the International Court of Justice is not adequately utilized in the general search for peaceful settlements of international disputes. The reasons for this lack of resort to the "principal judicial organ of the United Nations" can not be analyzed here, but the disuse of the Court is not indicative of any general disparagement of international law in the United Nations. In fact, the newer states are especially avid for help in training international lawyers. In 1963, by Resolution 1968 A (XVIII), the General Assembly of the United Nations established a Special Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law; the Committee was composed of representatives of Afghanistan, Belgium, Ecuador, Ghana, Hungary and Ireland. The report of that Committee was the basis for Resolution 2099 (XX) of 20 December, 1965, which launched the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Application of International Law. Activities related to this programme have been numerous. I shall note only some highlights. Two affiliates of the United Nations are active, UNESCO and the recently formed United Nations Institute for Training and Research, known as UNITAR. The research work of UNITAR is in the charge of a distinguished international lawyer, Oscar Schacter, who for many years was Director of the Legal Division of the Secretariat of the United Nations. The United

---

3. Cf. *Unfinished Business in* JAMES N. ROSENBERG PAPERS 47, 182 (1967).

4. Until the publication of *International Law Reports*, which first appeared under the title of *Annual Digest of Public International Law Cases*, it was difficult to study comparative jurisprudence in this field; this is no longer the case. See 33 ANN. DIG. PUB. INT. L. CAS. (1967) for reports from two international and six national jurisdictions.

States has provided funds for a number of Adlai E. Stevenson Memorial Fellowships principally for younger persons from the developing countries. Some of these Fellows are engaged in studies of problems in international law. A number of governments have provided annual fellowships to enable young men and women from the developing countries to attend the international law seminars which have become a feature of the times at Geneva when the United Nations International Law Commission is in session there, since members of the Commission lecture in or conduct these seminars. Under the same United Nations impetus, an international law seminar was held at University College in Dar-es-Salaam during August and September 1967. Twenty-six persons, mostly government officials and university teachers of international law from twenty African states, attended. A similar seminar is scheduled to be held in Ecuador in 1968, also with the cooperation of UNITAR and UNESCO. Other comparable training opportunities are offered by the Dag Hammarskjöld Foundation, by the Carnegie Endowment for International Peace and by The Hague Academy of International Law.

There was another testimony to the importance of international law in the last session of the United Nations General Assembly. The Secretary-General submitted a paper outlining a proposed reorganization of the Secretariat. When these proposals were discussed in the General Assembly's Fifth Committee, which deals with administrative and budgetary questions, one delegate after another expressed grave concern at the proposal that the position of Legal Council should be downgraded from the rank of Under-Secretary to Assistant Secretary-General. Thus Ambassador Hambro of Norway, a former Registrar of the International Court of Justice, said that the "down-grading might be taken to mean that the Organization attached less importance to the rule of law in the conduct of human and international relations." Mr. Small of Ireland said the lower rank "might not adequately reflect the part played by law in the activities of the United Nations, one of whose main purposes was to promote and consolidate the rule of law throughout the world." Mr. Kouyate of Guinea said that the demotion of the office of Legal Counsel "might well make it harder for the smaller countries to ensure the defense of their legal interests and hence their sovereignty."<sup>5</sup> Like views were expressed by delegates from all quarters of the world.<sup>6</sup>

---

5. U.N. Doc. A/C. 5/SR. 1200 (1967).

6. *Id.*

When referring to the annual Geneva seminars mentioned above, the Delegate of Pakistan in the General Assembly last October said that "such seminars are very essential for the better appreciation of, and what is more, for the universalization of International Law". The emphasis on universalization is well placed because some observers have feared that with the emergence of so many new countries and with the importance attached to various regional groups, the tendency might be to develop separate schools of international law which would run counter to the universal trend. The promotion of international legal solidarity is an invaluable aid to that political solidarity which the United Nations symbolizes.

This Symposium directs the reader's attention to all corners of the world and to outer space as well. The substantive reach of the contributions also demonstrates what has been said above about the international lawyer's need for a broad horizon, viewing relations of individuals, groups, business associations, and international organizations, and recognizing that law—and especially international law—is designed to avoid or to settle disagreement, conflict, and war itself.