Towards World Law

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Secular laws have a profound effect upon the way contemporary society functions. Although we may not be aware of it, almost everything we do is governed by a variety of such laws: when we go to shop, drive a car, carry out our occupation, even when we communicate with one another. Each action we take (or fail to take) can have legal consequences, although we may rarely think about it. Such is the pervasiveness of law in the 20th century[1].

Most legal experts would take the view that there are two distinct branches of secular law – one is domestic or national law (including locally made law), and the other is international law. The former is the branch of law with which most individuals are likely to come into contact with. Rarely will international law impact upon these individuals.

Some legal thinkers take the view that international law is not really a system of law at all. It is a system that has evolved over the ages in connection with relations between powerful persons, and which in more recent centuries has come to be regarded as the set of rules governing relations between sovereign nation-states.

The term "*international law*" was first used by Jeremy Bentham last century. That law then had a limited field of operation, being concerned with such matters as the laws of war, treaties, diplomatic relations, national boundaries (including maritime boundaries), navigation on the high seas, etc.

Given the absence of any world body capable of making and enforcing international law in the same way as nation-states can make and enforce domestic law, the argument of some writers was that international law was really something less than a system of law – more a convenient system of political arrangements between nation-states, not detracting from their sovereign powers. This view has led a number of countries , including those applying law derived from British common law traditions, to take what is described as a dualist position, with international law largely unenforceable in their domestic courts except in so far as it may be adopted by domestic legislation. If anyone wants an international legal remedy, he

[1] Note that this article was written before the turn of the 21st century.

or she must act through some nation-state in order to get before some international body.

Other legal thinkers have taken the view that international law is a true system of law, in that it is largely observed in practice despite the absence (usually) of any enforcement mechanisms of a legal nature, and that it is not necessarily limited to nation-states. Such views tend to be less dualist in nature, and see a connection between domestic and international law.

Taking these views even further, some prominent legal writers such as C Wilfred Jenks and R Falk regard international law as the common law of all mankind (as distinct from domestic law, which only applies to people in the nation-state concerned). The term "*international law*" may be misleading, in that it suggests that that law only applies between nations, whereas contemporary practice indicates a much wider application. The term "*world law*" is sometimes used in preference.

The widest of views is that they are really both part of one overall system of law governing the whole of humanity – the only difference being the field of operation.

What is the contemporary situation? It is certainly clear that the content and breadth of international law has greatly expanded this century and is continuing to expand. There are now few matters on any subject that are not dealt with in this system, at least to some extent. Such matters as trade and industry, peace and the peaceful settlement of disputes, disarmament, the environment and conservation, human rights, health, education, food, population, the use of the air, the seas and outer space, crime, refugees and emergencies are now increasingly dealt with at an international level. It remains, however, an incomplete system of law that is still evolving.

It is also clear that the degree to which international law is having, or can have, some direct impact on entities other than nation-states is growing. These entities include a variety of international institutions (including organs of the United Nations), multi-national companies, political entities that are not sovereign nation-states and, to a limited extent at this stage, individuals. A recent example of the last is to be found in the Optional Protocol to the International Covenant on Civil and Political Rights, giving individuals a right of complaint to an international human rights institution.

Further, international law is impacting more and more on domestic law, even in those countries which still maintain a dualist jurisprudential approach. Domestic courts of many countries now have recourse to international principles in their decision-making and national parliaments increasingly refer to or adopt these principles in their domestic legislation. The growing interdependence of nation-states makes it increasingly difficult for them simply to ignore international considerations and this is reflected in various ways in their domestic legal systems.

In addition, there is a growing recognition worldwide that most of the major problems now facing humanity can no longer be effectively dealt with on a nation-by-nation basis. Too many of these problems are felt across national borders. In most cases they are growing in urgency, scope and complexity. They require international solutions, and such solutions invariably have consequences in international law.

Humanity has never been faced with anything like its present situation. This unique time requires unique solutions. Traditional approaches and concepts that do not meet the needs of the time are being modified or swept aside, if not by choice, then by necessity. International law is no exception in this regard. A leading international lawyer, James Brierly, said:

> "*….Law, after all, is only a means to an end, and that end is to assist in solving the problems of the society in and for which it exists*", and that
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> "*…only to a small extent, and hardly at all in international law, can a society be confined within a legal mould that does not meet its needs, or what its prevailing opinion conceives to be its needs*".

Expanding on this theme, Wilfred C Jenks wrote that the largest issue confronting international law in our time was how this law will remain the traditional framework for the mutual relations of states jealously guarding their sovereign independence, and how effectively it will become a common law of mankind, fulfilling in a world community of peace and freedom a part comparable to that of a mature legal system in an advanced civilization.

The movement to expand international law towards maturity has derived great impetus from major events in this century. The catastrophe of World War I led to the creation of the League of Nations and the early emergence of the concept of collective global security. It gave impetus to the use of

multi-lateral treaties and other arrangements between nation-states to solve world problems, thereby expanding the role of international law.

The collapse of the League and the envelopment of most countries and peoples in another war in turn led to the creation of the United Nations. This international organ has, despite its many shortcomings, had an enormous effect on global thinking and on global methods of problem solving, to a degree yet to be adequately assessed. The outlawing of war by international law, the development of principles of human rights for all peoples, the expansion of international institutions as distinct legal entities, the further refinement of principles of collective security, the great expansion in the range of international concerns in multi-lateral and bi-lateral arrangements under UN auspices are but some of the matters behind this impact. But the United Nations, under its present Charter, still remains an association of nation-states rather than being representative of humanity as a whole.

More and more, eminent people throughout the world are calling for the reform of the United Nations and for significant changes in the world order. Many of these calls have included a new or expanded role for international law and for the international institutions necessary to give effect to it.

In particular the goal of "*world peace through world law*" has been emphasized, particularly in a book of that title by G Clark and L Sohn a few years ago. An organization entitled the World Peace through Law Centre has been established, with a large membership of legal professionals. It has held a number of conferences around the world in which prominent jurists have explored avenues for greater legal cooperation internationally and for the extension of the role of international law.

Other organizations such as the World Federalist Movement are in the forefront of proposals for reform of the United Nations. Many other organizations have similar aims concerning peace and the welfare of humanity generally.

The United Nations has recognized this growing need, with the General Assembly declaring the current decade to be the Decade of International Law[2]. There is growing recognition within the United Nations that it must

[2] 1990-1999.

change, and with it the law applicable to the United Nations, including its Charter.

Various suggestions that have been made include changes to the Security Council, the question of standing UN peace-keeping forces, an enhancement of the role of the International Court of Justice and the possible creation of new international bodies such as an international criminal court or tribunal[3].

The teachings in the Baha'i writings refer to the importance of international law, particularly in the context of the achievement of world peace and unity and the establishment of a just world order. In the writings of both Baha'u'llah and his son and successor Abdu'l-Baha, a universal convocation of the rulers and representatives of all the nations is urgently called for to establish a permanent and binding union of the nations of the world. Such a convocation, they say, must establish a comprehensive, binding treaty and covenant, this being a sacred task undertaken on behalf of the whole of humanity.

Under such a treaty and covenant, the relations between all nations would be clearly defined and all continuing international agreements and obligations ascertained. A comprehensive system of multi-lateral disarmament must be included. An enforceable system of collective security would ensure compliance. A supreme tribunal with compulsory jurisdiction would adjudicate on all disputes of an international character. Its supreme task would be the prevention of war.

Shoghi Effendi, the Guardian of the Faith after Abdu'l-Baha, further elucidated on these statements by making it clear that nation-states would still continue to exist after this convocation, but they would have to cede some of their sovereign powers to a world legislature and executive under new federal arrangements similar to those now applying domestically within some nation-states.

He called for the adoption of a single code of international law – the product of the considered judgment of the world's federated representatives, as part of these new arrangements, using as its sanction the instant and coercive intervention of the combined forces of the federated units. The new world

[3] The International Criminal Court has now been established.

legislature, as trustee of the whole of humanity, would continue to develop this law to meet the evolving needs of a new, united global community.

Under such a system, the arbitrary use of force in international affairs as a method of conflict resolution would be removed and any threat of force swiftly dealt with. The hollowness of the present provisions of the UN Charter outlawing war, but under which violent conflict has continued to flourish, would be addressed. The treat of further catastrophe from weapons of mass destruction, a threat that still hangs over our heads, would be removed permanently.

In its place, the concept of the peaceful resolution of disputes under a system of world law, with respect for the rights and freedoms of all humanity, would be given prominence. The pivot of the system would be the recognition of the oneness of humanity.

Such dramatic teachings, involving a radical change in the present global structure, may be difficult for many people to accept. Yet, if we contemplate major world developments in recent decades, the signs increasingly point towards such an evolution in human affairs.

Many may be skeptical and say that it could not happen in their lifetime, but who could have foreseen only a few short years ago the dramatic changes that have so quickly occurred – for example, in Eastern Europe? Others will say that the dangers are too great of some new global tyranny occurring, in which international law and institutions may be subverted to serve any one section which assumes power.

Clearly there are dangers and many difficulties to surmount, but, in the end, it has to be asked whether humanity has any real alternative in the longer term other than to seek some wider unity. The present world order is increasingly identified as being lamentably defective. The choice now facing the leaders and those in authority is whether to strive voluntarily for a better system based on appropriate principles such as the rule of law, justice and cooperation, or whether to sit back and allow developing events to thrust some new and possibly defective system upon us all. More and more thinking people are advocating the former.

Whatever happens, it is clear that international law is going to grow in strength and importance. As the new President of the International Court of Justice, Sir Robert Jennings, recently put it:

> *"An international law, which is strong and adequate to today's situation is not just something to be desired – it is absolutely essential. None of humanity's most serious problem can now be solved without it."*

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