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Legal Developments in the First Half of the United Nations Decade of International Law

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LEGAL DEVELOPMENTS IN THE FIRST HALF OF THE UNITED NATIONS DECADE OF INTERNATIONAL LAW

BY

SOMPONG SUCHARITKUL
I. INTRODUCTION

THE UNITED NATIONS DECADE OF INTERNATIONAL LAW

This year marks the half-way point in the closing decade of the twentieth century, which by General Assembly Resolution 44/23 has been proclaimed "THE DECADE OF INTERNATIONAL LAW". ¹

On September 12, 1990, the Secretary-General of the United Nations presented his first report on this item containing the initial reactions gathered from the views of member States, international organizations and non-governmental bodies pursuant to paragraph 3 of that Resolution. ² A consensus appeared to have emerged that the program of actions for the Decade including the plan to convene a Third Hague Peace Conference in 1999 should be "generally acceptable, well defined and action oriented", and at the same time "concrete and realistic" without duplicating the work of existing organs. ³

The main purposes of the Decade, as defined in the Resolution, are: ⁴

(a) To promote the acceptance of and respect for the principles of international law;

(b) To promote means and methods for the peaceful settlement of disputes


² Ibid., paragraph 3; see also UN Doc. A/45/430 (1990), and Add. 1 and Add. 2.

³ UN Doc. A/45/430, at p. 6.

⁴ Paragraph 2 of the G.A.Res. 44/23 of November 17, 1989.
between States, including resort to and full respect for the International Court of Justice;

(c) To encourage the progressive development of international law and its codification;

(d) To encourage the teaching, study, dissemination and wider appreciation of international law.

Reactions of States, as gathered and reflected in the first Secretary-General's report in 1990, have been mixed. The Western European countries and others appeared more reserved than countries formerly known as "socialist", such as the Russian Federation, China, Cuba and Bulgaria. The West appeared less eager and generally reluctant to begin the Decade with great expectations. The European Union Members thought it useful to review the progress of the program in the mid nineties. China and the Russian Federation favored convening a Third Peace Conference to adopt a new Convention on Pacific Settlement of International Disputes to pave the way for the passing of the twentieth century and to welcome the third millennium.⁵¹

The decade of the nineteen eighties had witnessed a paradoxical transition, a change of attitude or rather an exchange of position between the West and former socialist countries. As the latter began to show greater respect for and reliance on the United Nations with the overwhelming support from the so-called third world which for all practical purposes consisted of the Group of 77 and the non-aligned nations, the West, most of all the United States and its closest Western allies, appeared more disenchanted with, if not constantly disillusioned by, the stand taken by some Specialized Agencies of the United Nations as well as the World Organization itself.⁶¹

Five years have elapsed since the Decade started and after five annual reports by the United Nations Secretary-General, it is time for a mid-term review of the progress made, if any,

⁵¹ See Dr. J. Pérez de Cuéllar, Secretary-General of the United Nations, Preface to "The United Nations Decade of International Law", Leiden Journal of International Law, Special Issue, 3 LJIL 90, at p. vii; see also Sam Muller and Marcel Brus, The Decade of International Law, *ibid.*, pp. 1-14, at p.7.

⁶¹ In spite of the new constructive role of the Security Council in the Gulf War, the U.S. Government remains chronically in arrears in the payment of its annual contribution to the U.N. budget. Its membership with UNESCO is still in a state of suspended animation.
at least in some selected areas of primary interest and concern to the international community, especially in the Asian-Pacific region of the world.

During each of the past five years of the United Nations Decade of International Law, States and International Organizations have provided their responses to the Secretary-General which are in turn systematically included in his annual reports of which the latest one in 1995 is contained in Document A/50/368 of August 30, 1995, item 143 of the provisional agenda of the General Assembly. Thus far the United Nations Decade has been organized into inclusive two-year terms: first term 1990-1992; second term 1993-1994; and third term 1995-1996.

In 1994, the General Assembly invited all States under Resolution 49/50 to disseminate widely the guidelines for military manuals and instructions on the protection of the environment in times of armed conflict \(^7\) received from the International Committee of the Red Cross (ICRC) and to give due consideration to the possibility of incorporating them into their military manuals and other instructions addressed to their military personnel. The ICRC continues to report on activities undertaken with regard to the protection of the environment in times of armed conflict.

States have been invited to submit suggestions for consideration by the Sixth Committee of the General Assembly, in particular, with regard to the areas of international law which States considered ripe for codification or progressive development. International Organizations have been encouraged to report to the Secretary-General on ways and means for implementing multilateral treaties to which they are parties. Both States and International Organizations have been encouraged to publish summaries, repertoires, or yearbooks of their practice.

The 1995 Report of the Secretary-General includes responses received from (a) 2 States: the Cook Islands and Cyprus; and (b) 14 International Organizations. The paucity of reports from member States testifies to the lack of enthusiasm which States display in comparison to the dedication of international organizations to the object and purposes of the United Nations Decade of International law.

While the United Nations activities regarding the Decade are generally available, especially for activities in the field of progressive development of international law and its

\(^7\) See UN Doc. A/49/323, Annex.
codification through the International Law Commission and other norm-formulating bodies and
specialized agencies, such as UNCITRAL, WHO, ILO, FAO and UNESCO. Activities of other
organizations, governmental and non-governmental such as UNIDROIT, the Hague Conference
on the Unification of Rules of Private International Law, the Institut de Droit International and
the International Law Association reveal ample evidence of the achievements and works still in
progress in important specified areas.

The American Society of International Law in its capacity as a Non-Governmental
Organization with consultative status with ECOSOC, regularly publishes newsletters for its
International Group on the United Nations Decade of International Law. In the summer of 1995,
the celebration of the signing of the Charter, coinciding with the Fiftieth Anniversary of the
United Nations, took place in San Francisco, as an event organized by the Northwest Region of
the Society which now includes Northern California, Washington, Oregon, Idaho and British
Columbia. Professor Homer Angelo, our Co-Regional Coordinator, was responsible for the
organization of that memorable event.

Last but not least, it should be added that in 1995 the American Society of International
Law also published among other regular journals and international legal materials a special series
of studies in Transnational Legal Policy. Number 27 concerns precisely the kind of survey of
State practice encouraged by the United Nations. The publication of "National Treaty Law and
Practice" covering six country-studies coincided with the celebration of the Fiftieth anniversary
of the San Francisco Charter. 81 Its first volume contains six essays on the law and practice of
major legal systems: France, Germany, India, Switzerland, Thailand and the United Kingdom.
As a Regional Coordinator of the Society and as a member of Golden Gate Faculty of Law, I
am honored to have contributed to the production of this first volume. Chapter V gives a survey
of the Treaty Law and Practice of Thailand. The studies form part of the measures undertaken
by the American Society of International Law to "encourage the teaching, study, dissemination
and wider appreciation of international law" in conformity with paragraph 2(1)(d) of the General
Assembly Resolution 44/23, proclaiming the United Nations Decade of International Law.

II. MID-TERM REVIEW OF THE DECADE OF INTERNATIONAL LAW

The time has come for us in the Northwest region, as well as in the larger Asian Pacific region, to take stock of the progress made up to this point in the various activities and undertakings of States and International Organizations including Non-Governmental Organizations as part and parcel of the world community. It is not the purpose of this brief report to give a detailed comprehensive and analytical survey of all the achievements, of all the activities in progress and the failures and disappointments that we as members of the international community have encountered over the past five years. That enormous and ambitious task could not be undertaken, let alone attempted within the given time constraint. An endeavor will be made nonetheless to highlight some of the salient features and to bring to focus a selected summary of areas of continuing progress being made in furtherance of the object and purposes of the United Nations Decade of International Law. Significant achievements, important giant steps, far-reaching constructive measures and major obstacles and challenges will be mentioned together with recommendations wherever warranted for possible improvements if not potential solutions.

Attention will necessarily have to be confined to certain specified areas of legal developments where an appreciable stride is being made in the evolution, consolidation and crystallization of existing and emerging norms of contemporary international law.

The areas selected for current presentation will broadly touch the conduct of international economic relations and cooperation among States, in particular the regulation of transnational trade; the efforts on the part of the world community at large to promote, preserve and protect human rights and the environment fit for human habitation including the survival and management of all the living and non-living resources of the earth in all their species and forms. The three areas appear sufficiently inter-connected and to some extent inter-dependent and inter-related. Connexities do not necessarily warrant conditionalities as States have sometimes suggested between international trade and human rights on the one hand and between sustainable development and transnational trade on the other. Human rights and the environment are not intrinsically separable to be made conditional one upon the other. Rather their recognition and
protection are more absolute and therefore unconditional.

Another point of methodology concerns the dimensions of this enquiry. Transcending all problem areas, developments continue to be made nationally and internationally, as well as regionally and globally. Each of the avowed purposes listed in the United Nations Resolution proclaiming the Decade of International Law may be examined seriatim.

A. ACCEPTANCE OF AND RESPECT FOR THE PRINCIPLES OF INTERNATIONAL LAW

One of the main purposes of the Decade is the promotion of the acceptance of and respect for the principles of international law. As a rule, it is easier to persuade international organizations to accept and respect the principles of international law than to induce or entice States to observe the same.

Several questions have been raised regarding the nature, contents and scope of a particular principle of international law. Some principles of international law attract wider recognition and observance by States than others, depending on the general attitude of the State towards international law in general and with regard to a particular rule or principle being invoked to require adherence and conformance by the State.

As has been observed, the traditional or national view would tend to weigh the relevance and significance of a particular rule or principle of international law in the evaluation of the State whether or not to accept and respect it. States may be willing, eager, anxious or reluctant or even unwilling to accept or acknowledge the legitimacy of a principle. For instance, where there is a conflict of interest, as in maritime delimitation in the North Sea Continental Shelf Cases, the Federal Republic of Germany was not prepared, nor is it likely, to accept the principle of equidistance as the applicable or decisive principle for the delimitation of its North Sea Continental Shelf, with Denmark and the Netherlands. On the other hand, both Denmark and the Netherlands, consistent with their respective national interests, argued in favor of the principle of equidistance, having also ratified the Geneva Convention on Continental Shelf of
Whenever new principles are introduced or proposed for adoption, States whose interests stand to suffer thereby are likely to oppose. Thus, Greece and Turkey adopted opposing views regarding the principle of equidistance in contradistinction to equitable results.

It is not untenable when the position of a State vis-à-vis a principle of international law is dictated by its national interest. However, States should maintain consistency in upholding a principle of law or in challenging it. This does not preclude a State from shifting its views or position with regard to an emerging principle of international law. The United States for one is capable of revising, streamlining or updating its position or attitude towards a given principle of international law, and wherever feasible would endeavor to maintain consistency and to avoid being self-contradictory or inconsistent with itself. Thus, in the Proclamation under President Reagan in 1983 on the Exclusive Economic Zones, the United States excluded from its exclusive zones, highly migratory species, so as to maintain consistency in support of United States fishing fleets harvesting tunas in the Exclusive Economic Zones of the South Pacific Forum Nations. Common sense and justice prevailed in the end when the United States Government finally conceded to the fifteen South Pacific States and agreed to recognize and abide by the principles commonly accepted as binding upon coastal States, the principles of exclusive sovereign rights of the South Pacific Nations to regulate and manage fisheries within their Exclusive Economic Zones, including especially highly migratory species.\textsuperscript{10}

Another principle most vital to international civil aviation is the obligation on the part of States to refrain from taking measures that would destroy an unarmed civil aircraft in flight. The aerial incident involving the downing of Korean KAL 007 in flight from New York to Seoul by Soviet air-to-air missiles \textsuperscript{11} precipitated further precautionary measures to avoid repetition of such disasters by a tri-lateral Memorandum of Understanding concerning Air Traffic Control involving Area Control Centers (ACC) in Anchorage, Alaska (USA), Tokyo (Japan) and

\textsuperscript{9} See North Sea Continental Shelf Cases: Germany v. Denmark; Germany v. The Netherlands, ICJ Reports 1969, p. 3; Geneva Convention on Continental Shelf 1958, 499 UNTS 311; 52 AJIL 858 (1958).


\textsuperscript{11} See UN SCOR 37th Session, 2470th Meeting at p. 47. UN Doc. S/PV/Z470 (1983); and 22 ILM 1109, 1109-1220 (1983).
Khabarovsk (then USSR) to assist civil aircraft in emergency situation on the Northern Pacific Routes (NOPAC). The incident led to an amendment unanimously adopted by the ICAO Assembly with regard to Interception of Civil Aircraft at an Extraordinary Session in 1984. The amendment, cited as Article 3 bis of the Chicago Convention and referred to as the Montreal Protocol of 1984, was designed to enhance the safety of international civil aviation. It reaffirmed the principle of forbidding the use of weapons against civil aircraft in flight. Although this amendment represented the rule of customary international law and was unanimously adopted by the ICAO Assembly, it required 102 ratifications to enter into force. Although this principle was accepted by the United States representative to the ICAO Assembly in 1984, it was not ratified by the United States Government four years later when another incident occurred in 1988, this time involving an Iran Airbus 300 in flight (IR 655) over international waters in the Persian Gulf shot down by the U.S.S. Vincennes. The United States Government belatedly tendered an apology for the incident and offered to pay ex gratia compensation without prejudice to the question of principle of its liability. Some eight years later, however, in 1996, the United States Government reversed its position and now invoked the principle of Article 3 bis, as if it was all the time embraced by its practice. This reversal of position is indeed to be encouraged as it was done in the right direction. States should be complimented for adopting a more enlightened attitude in accepting and respecting an acquired principle if international law, even if they might have opposed it on earlier occasions when their

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15. Article 3 bis of the Protocol provides:

"(a) The Contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered."


17. See Ambassador Albright, U.S. Permanent Representative to the U.N. and President of the Security Council in the debate over an aerial incident involving the downing of an unarmed U.S. aircraft near Cuban waters during the last week of February 1996.
national interests were neither at stake nor in need of its application. The wheel of international justice often turns in a mysterious way, providing a path-finder to light the passage through the haze of immediate national self-interest to point the path to salvation for truth-seekers and peace-lovers in pursuit of a just and peaceful solution to an international conflict, based on a universally accepted and respected principle of international law.

1) PRINCIPLES GOVERNING TRANSNATIONAL TRADE

Transnational or international trade is regulated by three different levels of norms:
(a) National level;
(b) International level; and
(c) Private-Sector level.

Principles of international trade can be found at each of these levels. Different sets of rules may prevail at national level and conflicting results could follow the application of national law which may differ from country to country or from one legal system to another. The international level of trade control need not be uniform in all cases and different principles may apply in different regional groups where special trade arrangements have been adopted by members of the region to govern their intra-regional commerce. Globalization of international trade regulations may ultimately produce uniformity or at least harmony in the control of transnational trade subject to regional variations. On the other hand, in the private sectors, globalization of trade usages has taken place without governmental interference or intervention. Thus, the INCOTERMS continue to be applied and respected among the trading entities in various parts of the world.

The question of utmost relevance to us may concern all three levels in the event of conflict of principles prevailing at different levels of transnational commercial relations: how to promote acceptance of and respect for the principles of international law governing transnational trade.

We do not have to look far to appreciate the complexities of the problem facing international trade. Take the case of the United States as an example. At national level, the
external trade of the United States is regulated by the three separate branches of the government. Regulatory power is shared between Congress as the legislative authority placing restrictions on imports and fixing tariffs as part of fiscal policies, and the Executive, namely, the President, the Secretary and Department of Commerce, and the United States Trade Representative. That is not all. Import and export of certain commodities are subject to control and regulation by other specialized government departments and agencies such as Defense, Foreign Affairs, Agriculture and Fisheries, the Food and Drug Administration and the Drug Enforcement Agency. These regulations and rulings are not free of judicial review for legality, constitutionality or validity of a given transaction involving external trade. The judicial authority in the United States may have a final say in permitting execution or recognizing the validity of a foreign judgement or award on condition that an exequatur does not offend the mandatory law of the forum State, i.e., the United States of America.

If the United States were to isolate itself and placed an embargo or trade restrictions on the rest of the world, we could shut our eyes to the legal developments in the outside world and be content with "Fortress America", applying only United States national law on trade regulations. As it happens, however, the United States is an important world trader, a number one trading partner in international trade. We might have looked to Europe for models and guidance and been impressed by the "Common Marketization" of the European Union. But the United States Trans-Atlantic trade has been exceeded by the United States Trans-Pacific by leaps and bounds. This past year, the trade volume with the Pacific amounts to fifty percent higher than that with the Atlantic. We can no longer afford to ignore legal developments across the Pacific Basin, nor overlook trade customs and commercial usages in the Asian Pacific region.

Fundamental changes of circumstances have induced basic changes in attitude and position of any State. The United States is no exception. Having fortified itself with reinforced legal measures permitting the executive branch of the government to impose unilateral sanctions on transactions suspected of involving unfair trade competition, subsidies, dumping or infringement of intellectual property rights, the United States Government is initially omnipotent in protecting its national interest to enforce its anti-trust law and its patent and copyrights laws not only within United States territories but also beyond, overreaching its own arms length if the international community would tolerate such extra-territorial application of United States
trade law.

Bilateral negotiations on an equal footing with a powerful trading partner such as Japan or Canada may not yield one-sidedly satisfactory results. An improvement in the principles of international law governing trade relations between nations appears at this point desirable and responding to the national self-interest of the United States. Once conviction is reached and reasons are apparent, the United States Government is likely to promote general acceptance of the principles of international law so identified and adopted by the international community.

Although the Havana Charter of 1947 was defeated in United States Congress and the first conceived International Trade Organization was aborted, its still birth gave rise to the General Agreement on Tariff and Trade in 1947, which has weathered a great many storms in international trade.

Within the first half of the Decade of International law, the succession of Multilateral Trade Negotiations (MTN), including the Kennedy Round, the Tokyo Round and last but not least the latest Multilateral Trade Negotiations Round which in 1994 culminated in the adoption of the Final Act embodying the Results of the Uruguay Round at Marrakesh on April 15, 1994. This monumental document contains the text of the Agreement Establishing the World Trade Organization (WHO) targeted for entry into force by January 1, 1995.

A List of Annexes is attached to the Agreement. Without examining in any detail the contents of the Annexes, it is of utmost significance to project the scope and dimension of the global trade problems in contemporary practice of world trade.

LIST OF ANNEXES

ANNEX 1

ANNEX 1 A : Multilateral Agreements on Trade in Goods
General Agreement on Tariffs and Trade 1994


19 Ibid., at p. 1143.
Agreement on Agriculture
Agreement on the Application of Sanitary and Phyto-sanitary Measures
Agreement on Textile and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Matters (TRIM)
Agreement on Implementation of Article VI of GATT 1994
Agreement on Implementation of Article VII of GATT 1994
Agreement on Pre-Ship ment Inspection
Agreement on Rules of Origin
Agreement on Import Licensing Procedures
Agreement on Subsidies and Counter-vailing Measures
Agreement on Safeguards

ANNEX 1 B : General Agreement on Trade in Services and Annexes (GATS)
ANNEX 1 C : Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP)

ANNEX 2
Understanding on Rules and Procedures
Governing the Settlement of Disputes

ANNEX 3
Trade Policy Review Mechanism

ANNEX 4
Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement
The Final Act of Marrakesh constitutes an all-embracing package that wraps up most of the issues under multilateral trade negotiations. It does not comprehend all trade issues nor all commodity agreements, such as sugar, coffee, tin and petroleum. Yet it is inclusive enough to be highly serviceable if all or most States can be persuaded to accept and respect the principles of international law contained in all the specific agreements listed in the Annexes to the Agreement Establishing the World Trade Organization.

This is an area in which the longer-term interests of the United States appear to coincide with those of other States and international organizations. However, each State has to overcome its own internal obstacles and division of power and jurisdiction within the national confines of its territory.

In this particular connection, the principles of international law governing transnational trade are clearly stated and agreed upon with agreed interpretation. As such they necessarily reflect some compromises but are consensual and deserve to become generally accepted principles applicable to all matters of world trade at the global level.

At the regional level, the United States, Canada and Mexico have accepted the creation of a North American Free Trade Area (NAFTA) with the possibility and likelihood of further expansion to include Chile and other Central and South American States bordering the Pacific Rim. The United States is already an active member of the Asia Pacific Economic Cooperation (APEC), a loosely organized regional association for economic cooperation, designed to promote international trade.

2) PRINCIPLES RELATING TO INTERNATIONAL HUMAN RIGHTS

It is common knowledge that international human rights are protected by relevant principles of international law. The corpus juris of the principles of international law is contained mainly in the International Bill of Human Rights: the Universal Declaration of Human Rights of 1948 and the two International Covenants a) on Economic, Social and Cultural

Rights \(^{21}\) and b) on Civil and Political Rights \(^{22}\) and Optional Protocol \(^{23}\) of 1966. The rights of special categories of persons are further specifically protected by other multilateral conventions, such as the International Convention on the Elimination of All Forms of Racial Discrimination, entry into force in 1969; \(^{24}\) Convention on the Elimination of all Forms of Discrimination against Women; \(^{25}\) entry into force in 1981; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; \(^{26}\) Standard Minimum Rules for the Treatment of Prisoners, 1956; \(^{27}\) and the United Nations Declaration on the Right to Development, 1986. \(^{28}\) The protection of minorities forms the subject of another Resolution 1 (XXIV) of ECOSOC creating a sub-commission for the Prevention of Discrimination and Protection of Minorities in 1971. \(^{29}\)

In addition to the general multilateral treaties, there are in almost every region of the world some arrangements, declarations of principles embodied in regional conventions and

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28 G.A. Res. 41/128. GOAR 41st Session, Supp. 53, p. 183, (1986); the Declaration was not adopted by Consensus but by a vote of 146 to 1 (USA), with 8 abstentions (including FRG, Japan and UK).

regional machineries for enforcement of human rights.\textsuperscript{30}

In the past five years, international human rights have received further impetus in regard to the protection of the rights of the child, the rights of women and the rights of indigenous and tribal peoples in independent countries. The Convention on the Rights of the Child was one of the first to enter into force on September 2, 1990\textsuperscript{31} as the Decade began, followed closely by the entry into force of the Convention concerning Indigenous and Tribal Peoples in Independent Countries on September 5, 1991.\textsuperscript{32}

Prominence has been given to the treatment of women and the protection of their rights in a series of World Conferences convened under the auspices of the United Nations, beginning with the Rio Earth summit of 1992, the World Conference on Human Rights in Vienna in 1993, the Cairo International Conference on Population Development in 1994, and the Copenhagen World summit on social Development in 1995.\textsuperscript{33} The United Nations Fourth World Conference on Women was held in Beijing, China, on September 4-15, 1995, emphasizing the theme of equality, peace and development. The Conference adopted the Beijing Declaration and Draft Platform for Action. The NGO Forum was held in Huairou near Beijing from August 30


\textsuperscript{31} G.A.Res. 44/25 on November 20, 1989, entered into force on September 2, 1990. This convention attracted the highest number of ratifications in record time. By June 23, 1993, the number of parties has increased to 143, 32 ILM 1469 (1993). The United States remains singularly non-party; See also Note 23 above for the entry into force of the Second Optional Protocol to the ICCPR on Capital Punishment on July 11, 1991.

\textsuperscript{32} ILO Convention 169, LXXII, ILO Official Bulletin, ser.A, No.2 at p. 63 (1898), entered into force on September 5, 1991. Countries with indigenous and tribal peoples such as Bolivia, Colombia, Mexico and Norway were among the first to ratify the Convention. the United States is not yet disposed to accede to it but has voted for it.

\textsuperscript{33} See ASIL Newsletter, November-December 1995, UN Fourth World Conference on Women by Valerie Oosterveld, at p. 18.
to September 8, 1995, with some 35,000 persons attending from over 100 countries.\textsuperscript{341}

Human rights have found new expression and assumed a fresh outlook through the enforcement measures the Security Council finally decided to adopt in 1991 to maintain international peace and security by authorizing all means necessary including the use of coalition forces to repel the Iraqi invading army and occupation of Kuwait.\textsuperscript{351} A new post of United Nations High Commissioner for Human Rights has been created in addition to the existing United Nations High Commissioner for Refugees. Humanitarian laws have reached a new height of progressive development when the Security Council decided to establish the International Criminal Tribunal for former Yugoslavia\textsuperscript{361} to sit in judgement of persons accused of crimes against peace and humanity or offenses against the dignity of the human person, genocide and other breaches of humanitarian law. The United Nations thus succeeded in extending its peace-keeping operations into other fields hitherto more aptly known as peace-making. It is conceivable that the jurisdiction of the Tribunal could be extended to cover violations of humanitarian law committed in other territories, such as in Rwanda.

This is as far as the new trends could project. Prosecution of crimes against the law of nations is a positive step in the suppression and punishment of individual wrongdoers. It does not take precedence over the need to establish and maintain peaceful conditions of law and order in any given society. Human rights cannot be expected to flourish in the clashes of arms. An appropriate order of priorities has thus been set. There will be no general international tribunal to try offenses under international law, in spite of a draft statute proposed by the International Law Commission annexed to the report on the Draft Code of Offenses against the Peace and

\textsuperscript{341} \textit{Ibid.}, at p. 19.


Security of Mankind. It is unlikely that such a general tribunal be set up in the foreseeable future, as no head of State in the right mind could afford to subject not only his or her State and its officials to international criminal prosecution, but also him/herself along with other agencies, since no one can remain outside international law or above the jurisdiction and beyond prosecution before such a tribunal.

The extent to which the principles of international law upholding international human rights are accepted and observed in practice is a burning question today. There are more than one way of assessing the status of principles of international law. The fact that a principle of international human rights law is as vulnerable and as violable as any other basic norms of national or international law is no indication, one way or another, of its validity or enforceability. For instance, New York and Tokyo probably have very good penal codes, prescribing and defining the crimes of murder, robbery with violence and rape, the fact that the crime rates in New York far exceed those in the whole of Japan is no proof that New York criminal law is weaker or deficient. By the same token, the fact that international human rights are breached, curtailed, infringed and ignored in various parts of each country of the world is no indication of the absence or non-applicability of human rights law. Indeed, it is the primary obligation of each State to monitor violations of international human rights by its agencies within its territory.

Not unlike charity, human rights must also begin at home, at the breakfast table and at the local police station. There is no human right without the correlative obligation incumbent upon the State to promote, preserve and protect such human rights, beginning with the preliminary recognition that every human person answering the biological definition of a Homo Sapiens must be given equal protection under the legal system of every State.

Alien to the object and purpose of the International Bill of Human Rights, a State may


381 No President of the United States, nor Head of Government of the United Kingdom will allow him/herself or his/her sovereign Lord or Lady to be prosecuted for offenses against international law which may be committed by or attributable to him/her.
go out of its way to monitor violations of human rights in the rest of the world except within its own national borders. The rating of respect for international human rights cannot be measured by the potential or actual negative recrimination that a State may be called upon to level against all other States, but rather by the subjection of the situation within its own territory to international scrutiny and by permitting international enquiry, fact-finding mission and investigation for alleged violations of human rights within itself, not outside where the State has neither control nor truly direct business. True it is that international human rights are the common concern of each and every State and of all persons, but the way to achieve progressive development of human rights and their complete implementation must be by taking affirmative actions, however simple and modest, with regard to violations of human rights that are not only attributable to the State but require more dutiful discharge of obligation to have them respected and implemented within its territory.

An assessment of the degree of respect for international human rights in some society should begin, not with how well national constitution protects civil and political rights, but how sincerely the State accepts its own international obligation to respect human rights by ratifying, adhering or acceding to all commitments of human rights without evasive reservations, elusive understandings, illusory declarations and unintelligible proviso that defeat the object and purpose of any human rights instrument.

It is time every State returned to the conference table, resumed its useful role in the international community and renewed its effort to rebuild international peace and security where international human rights could prosper. It has proved impractical for any State to dictate any terms of conduct for the international community, while itself remaining outside the family of nations.

The United States has come a long way from paying lip-services to international human rights to actually beginning to accept and slowly trying to re-enter the world community by condescending to face the critics of human rights in an international forum. The ratification by the United States of the International Covenant of Civil and Political Rights on June 8, 1992, with effect on September 8, 1992, was a giant step, a first step ever taken by this country in
support of principles of human rights.  

Even this giant step was not taken without excessive precaution. The United States ratification included five reservations, five understandings, four declarations and one proviso, each of which is capable of over-killing the applicability of international human rights in the United States. Take as a straight-forward example, the first declaration by the United States that the provisions of the Articles 1 through 27 of the Covenant are non-self-executing. On the face of it, this sweeping declaration may look innocent, but with a sophisticated judiciary, it merely lends countenance to the United States Court to refrain from any consideration of any human right question, not covered by existing United States law, nor requiring additional United States legislation to have any meaningful effect. One consolation remains that the United States never intended to destroy the human rights apparatus set up by the provisions of Part IV and Part V, Articles 28 through 53 of the Covenant.

Every human rights believer in this country understands the binding character of a treaty, once ratified, it engages the responsibility of the State party to observe it. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Under international law and the law of treaties, the United States, having ratified the Covenant, is bound by its provisions. The declaration as to non-self-executing status of Articles 1 to 27, would have no bearing on the observance of human rights within any country. However, in the United States, the declaration has paved the way for non-application of the treaty provisions without legislative endorsement, and provided the judiciary with an excuse to violate international law by hiding comfortably behind United States Congress, while fully prepared to apply customary international law principles recognizing even torture committed by a non-U.S. citizen against a foreigner outside United States territory as actionable without any justification under any rules of private international law.

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The obligations under international law incumbent upon States to uphold and give effect to the enjoyment of human rights within its territory may be divided into two or three categories. Publicists regard some of these international obligations as obligations of result such as the right to life, freedom from arbitrary arrest, detention and exile. Other types of international obligations relating to human rights may be classified as obligations of means or conduct which do not guarantee the results projected but require that States undertake specified measures, adopt a certain conduct or comport itself in a prescribed manner, designed to lead progressively to the achievement of an objective, such as the obligation on the part of States to provide medical and health care, adequate housing and reasonable living conditions by adoption of legislative or administrative measures. Obligations of conduct are good efforts obligations, not absolute guarantee of results. However, some obligations are mixed; partly obligations of conduct and partly obligations to ensure fulfillment of a designated goal, or a targeted, planned or postponed attainment of result, such as an undertaking by a State to achieve freedom from hunger within a reasonable period or to be self-sufficient in grain in ten years. They are obligations of means or of conduct consistent with the attainment of the avowed object and purpose to result within a given time frame.

If we should put the United States to a test as to its rank and file among the States and persons who support and sustain human rights, the results could be revealing. For obligations of results in general, the United States may rank high within the first quartile of the total number of States, members of the world community. On the other hand, if we glance at the obligations of conduct, address the question how many legislative acts have been adopted by the United States Congress to implement international human rights or monitoring how many United States judicial decisions, of their own accord, proceed to establish new judge-made law to place the United States in compliance with its international obligations under the Covenant on Civil and Political Rights, then the United States ranks at the bottom of the last quartile, especially taking into account the order and the belated and equivocal nature of United States ratifications of the International Bill of Human Rights.

In short, the United States as a State has come some distance away from total disregard of international human rights to a giant steps taken half-heartedly in 1992 extending its ratification of the Civil and Political Rights Covenant subject to numerous reservations,
understandings, declarations and even one proviso, each of which when appropriately construed is likely to defeat the object and purpose of human rights altogether. But to pay lip services in support of human rights is still infinitely to be preferred, although no one is heard to contest or reject the validity of any principle of international human rights.

3) PRINCIPLES SUSTAINING THE ENVIRONMENT

With regard to the protection of the environment, there was little customary international law in the practice of States before World War II. The very first principle which is still valid today is the principle “*sic utere tuo ut alienum non laedas*”. The past five years have witnessed considerable growth and expansion of general principles of international law supportive of the human environment. Healthful environment and impact assessment rank high in the thinking of States in the preparation of their economic and development plans. The right to development as a collective human right has received further qualification. It is now better known as "sustainable development". In the mid-term review, States are searching for a balanced approach to sustainable development, having regard to the need of every nation, specially the least developed countries for industrial development on the one hand, and the need to contain and reduce adverse affect on the global environment on the other.

The "Polluter Pays Principle", applicable in Europe since the 80s has attracted general support, as a redress of existing or current harm, not as a license to inflict harms on one’s neighbors.

The Precautionary Principle and the necessity for environmental impact assessment for every development project appear to have gained popular recognition and acceptance in State practice, required by the World Bank Group of International Finance Institutions.

The landmark in the past five years is distinctly the Rio de Janeiro Earth Summit of 1992, culminating in the Rio Declaration on Environment and Development, the adoption

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42 UN Doc. A/CONF./151/5/Rev.1, June 13, 1992; 31 ILM 874 (1992). This is a proclamation of 27 principles, building on the United Nations Conference on the Human Environment, adopted at Stockholm in 1972, with the goal of establishing a new and equitable partnership through the creation of the new levels of cooperation among States, key sectors of society and people, and working together towards international agreements respecting the interests of all and protect the integrity of the global development system.
of Agenda 21 43 and the Convention on Biological Diversity.44 In addition, the Conference adopted the United Nations Framework Convention on Climate Changes,45 and a non-legally binding authoritative statement of principles for global consensus on the management, conservation and sustainable development of all types of forests.46

A series of international conventions were concluded in the period following Stockholm Principles of 1972 and the Rio Earth Summit of 1992, on the Protection of the Atmosphere, Ozone Layer and Climate,47 Protection against Nuclear and other Transboundary Accidents,48 Hazardous Wastes,49 Environmental Impact Assessment,50 and Protection of  


Flora, Fauna and Natural Resources. 51 During and after 1992, further international treaties came into force with new and updated provisions adopted in anticipation of the challenges of the twenty-first century. 52

Sustainable development and healthful environment constitute an area where there appears to be less likelihood of political diatribes than human rights. It is the economic and developmental interests of every State that appear to be at stake. In this particular connection, the United States appears to be taking an active if not leading role after returning to the conference table with amended part XI of the United Nations Convention on the Law of the Sea. The United States is placed on record as being second to very few nations in support of the preservation and possible improvement of the ecosystem.

In the United Nations Decade of International Law, States have been urged to ratify, accede to, or accept all multilateral conventions and regional treaties where appropriate, in all fields. In contrast to the promotion of international human rights where progress is slow and lamentable, partly because the United States has forsaken its role as a world leader, the protection of the environment finds the United States in the forefront, if not on the ring-side seat, and ranks highly among the keenest supporters of human habitat and the global environment, having put up its best efforts to clean the water and to clear the air within the United States borders or created necessary mechanisms to resolve recurring conflicts. Much progress may be expected in the latter half of the Decade provided that the earth ecosystem does not depreciate drastically or the ozone layers depleted substantially.


B. PROMOTION OF MEANS AND METHODS OF DISPUTE SETTLEMENT

The second purpose of the United Nations Decade of International Law is the promotion of means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice.

It is pertinent at this juncture to cite the impression given by His Excellency Mohamed Bedjaoui, President of the International Court of Justice on the occasion of the Fiftieth Anniversary of the United Nations and of the Court in Lisbon, Portugal, on August 25, 1995. The President pointed out that the Court as a principal organ of the United Nations has no separate existence, or independent future without the World Organization. As the United Nations has neither the executive power, nor the legislative power, whatever judicial authority conferred upon the Court is totally consensual and can be withdrawn by the parties to the Statute of the Court. In spite of the fundamental changes of circumstances in the ending of the cold war, the "Berlin wall" constructed by framers of the Charter against compulsory jurisdiction of the Court has not been torn down. The Court may now be enjoying the full blossom of its age and experience, full of energy and vitality, yet there is no assurance how long this happy state of affairs will last.

In some instances, the Court is well aware that submission of the dispute for a hearing before the Court is only one means of arriving at a political settlement more amiable and readily acceptable to the parties than a judicial decision as in the case of the Grand Belt Passage between Finland and Denmark. However, the Court does not systematically practice Solomon's judgements, nor has it sought clientèle, or practiced a policy of seducing parties to litigation, or curried favor to a party or transacted at the expense of the integrity of its judicial functions. Without seeking customers or clientèle shopping, the strength of the Court - and its success no doubt, lies in the ability to pronounce the legal rule in all its juridical rectitude, in all its intellectual honesty and in all independence. This is reflected in the rallying of an overwhelming majority in at least two significant cases.

President Bedjaoui cautioned against undue optimism or complacency if the Court is currently in the best of health. It is in the prime of its life, but it may enter an aging phase at a quickening pace. Hopefully, this is not the case. While the political organs of the United
Nations have evolved with greater authority and efficacy than their counterparts under the League of Nations, the International Court of Justice is only a continuation of the Permanent Court with not much difference from its predecessor after 73 years of continuous successive existence. The President advocated adaptations of the Statute which was the product of 1922. Confined to the States which alone can be parties to the disputes before the Court, the Statute needs modifications. In any event, States prefer to retain the flexibility of a politically negotiated settlement.

Although the Court has succeeded in creating within itself a Special Chamber on the Law of the Sea and a second Special Chamber on Environmental Law, much remains to be streamlined by way of procedural modifications, such as shortening of the time-limits for the filing of written pleadings. Advisory Opinions of the Court could be more widely sought if the list of organizations with consultative status could be expanded. President Bedjaoui ended his observations by warning that we may have been demanding and seeking justice against violences; but the era of doing violence to justice is by no means closed.

Methods of dispute settlement need not reach the height of the highest international judicial instances such as the International Court of Justice or the predecessor Permanent Court. Other mechanisms exist for international conflict resolutions, such as arbitration, conciliation, mediation, fact-finding mission, commission of enquiry, good offices and re-negotiations or any other means the parties to the dispute may freely choose under Article 33 of the United Nations Charter. Besides, several types of international disputes are now being settled by a hybrid Court with competence to hear disputes between States and nationals of other States, such as investment disputes under the Washington Convention of 1965, through the International Centre for the Settlement of Investment Disputes (ICSID), or other specialized fields such as deep-seabed mining under the new Law of the Sea Convention, or the Commission under the Liability Convention for Space Objects of 1971. Regional instances have been created for the settlement of regional disputes.

For the settlement of trade disputes not only between States but often between States and a regional group of other States, we have noted the creation of the new World Trade Organization (WTO), following the adoption of the Final Act at Marrakech in 1994 and the closing of the Uruguay Round of Multilateral Trade Negotiations under GATT. A new dispute
settlement mechanism is created to resolve trade conflict with a mixture of conciliation, mediation and good offices of the international agency. Certain flexibility is maintained which will allow parties to the dispute room for complying with the recommendation which should represent an element of negotiated settlement without the risk of unilateral sanction. Rather any sanction recommended by the dispute resolution mechanism may or may not apply at the choice of the parties with differing consequences. Purely commercial disputes are decided by the private sectors themselves, such as the International Chamber of Commerce Arbitration Centers (ICC) or the American Arbitration Association (AAA) or other specialized arbitrations. In the Pacific Rim, Arbitration, Conciliation and Mediation Centers abound with widening membership and increasing vitality. Among the latest innovations should be mentioned the Arbitration Center at Hanoi and the new China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules 1995.

These references are not intended in any way to deviate from the need for States in general to accept the compulsory jurisdiction of the International Court of Justice and to withdraw their reservations, but are necessarily given to illustrate the variety of methods of international dispute settlement and to the different types of forum accessible to States and international organizations for the resolution of their conflicts.

C. PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

States have been requested to submit their suggestions as to new topics of international law which may be ripe for codification and/or progressive development. This is being undertaken on the main by the International Law Commission with all the supporting services of the United Nations, with ample opportunities for reception and incorporation of the views of governments either in writing or through verbal comments made in the annual debate in the Sixth
Committee of the General Assembly.\textsuperscript{531}

Other organs and specialized agencies of the United Nations continue to function in full steam with the preparation of new rules or codification of newly emerged rules and practice of States in various specified fields, such as Fisheries Management, Environment, Human Rights, and Commodity Agreements, by all the norm-formulating agencies, apart from the United Nations itself, AEA, FAO, WHO, WMO, UNESCO, WIPO, GATT, WTO, UNEP and ILO.

Each State should be urged to participate more actively by responding to the questionnaire circulated by the norm-generating organs and agencies of the United Nations so as to share their views with others in the process of international law-making through codification and progressive development, thereby formulating norms in the set of draft articles which will later be integrated in a Convention to generate not only treaty law and obligations but also ultimately customary rules of international law.

D. \textbf{THE TEACHING, STUDY, DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW}

Almost ninety years ago, Oppenheim commented in the second volume of the American Journal of International Law in 1908,\textsuperscript{541} following the two Hague Peace Conferences of 1899 and 1907, that the rudiments of international law "ought also to be taught in all secondary schools, and the teachers of history are the proper persons to undertake [the task]".\textsuperscript{551}

The final object of the Decade: the teaching, study, dissemination and wider appreciation

\textsuperscript{531} See Sucharitkul, the Role of the International Law Commission in the Decade of International Law, 3 Leiden Journal of International Law, 90, at pp. 15-42.

\textsuperscript{541} The Science of International Law: Its Task and Method, 2 AJIL (1908), at pp. 323-324.

\textsuperscript{551} \textit{Ibid.}, at pp. 323-324: "If the public knew something about the merits of the case concerned they would frequently look more coolly and in more impartial way, and it would be easier for the governments to consent to arbitration".
of international law was the least controversial. The Resolution was enthusiastically supported by the United States. The Bush Administration had proposed that an effort be made to develop model curriculums and materials for the teaching of international law at primary and secondary levels of education.

The organizers of current regional meeting of the American Society of International Law, combining force with the Fulbright Symposium, precisely have this objective in mind. It was understood from the start that the observance of the Decade should involve the public at large and not confined to representatives of government and professors of international law. It is exactly what is being unfolded today.

Each year of the Decade has been witnessing growing attention being paid to problems of international law, especially those closely affecting the Asian Pacific Region. Golden Gate University has offered to host the Regional Meeting of the American Society of International Law since 1992 when a grant was given through the Ford Foundation to create regional outreaches for the Society. The Fulbright Symposium has supported the meeting of legal scholars, learned in various branches of international law to participate in the debate as panelists. The formula adopted is designed to induce the public, law practitioners and the academia as well as other sectors of the intelligentsia of the Northern Region to share the mutual exchange of views on current legal developments.

As far as the teaching, study and research in international law are concerned, it is good news to observe that when the Decade started, Golden Gate University School of Law only had 20 and 5 students for Day and Night Classes in the introductory Public International Law Course. This year, last Fall, the student participants have reached over 50 and 25 Day and Night, an increase of some two hundred percent of the student body with somewhat wider appreciation of international law. International Law classes have also grown from five to fifteen courses.

III. CONCLUSION

The foregoing survey is not intended to sound any alarm in the mid-term review of the progress made in legal developments during the first five years of the United Nations Decade of International Law, but perhaps to alert the public to the awareness of the significance of the time frame of our existence. We are in the middle of the Decade that can be meaningful if appropriate attention is drawn to certain salient facts.

The brief reference to the past five years of State practice is indicative of the extent of further progress to be expected in the face of new challenges of the third millennium. The key note struck by the President of the International Court of Justice last August is one of cautious realism. The end of the cold war has not greatly enhanced the chance of lasting global peace. Indeed, the Secretary-General of the United Nations, Dr. Boutros Boutros-Ghali, took occasion to lament, at the Fiftieth Anniversary of the World Organization celebrated in Lisbon on August 25, 1995, about the variety and the gravity of international conflicts which continue to take up more than two-thirds of United Nations peace-keeping resources. The tragedy of Rwanda and the atrocities in former Yugoslavia brought unspeakable shame to the international community, and one could cite countless examples of internal conflicts just as barbaric and scandalous in other parts of the world to the utter indifference of the general public. If 30 per cent of United Nations activities are devoted to the maintenance of international peace and security, the other 70 per cent cover activities designed to promote social and economic developments.

International law has progressively developed far beyond the imagination of most practitioners and even the most attentive publicists could not generally keep up with the rapid pace of codification and progressive development of international law through the process of multilateral law-formulating and norm-generating treaties and by dint of practical acceptance and adherence by States, thus accelerating the process of customs formation in the consistent pattern of systematic State practice based on the conscious volition that States act in compliance with the requirement of the principles of international law.

While the wheel of international justice moves slowly but surely, its movement is swifter on the path in areas where State actions are dictated by practical necessities of economic, social
and cultural character. The progress of international law is to some extent impeded where there exist conflicting political considerations and motivations. Time is of essence. When the time is ripe, general acceptance and respect for principles of international law will be irresistible. The race for international justice is less enticing than the arms race. Respect for the law and human rights is less attractive and more difficult than the pretense that there is no law on the subject matter of the dispute and that consequently there has been no breach of an international law rule which never came into existence, let alone venerably observed and faithfully honored and implemented.

Further conclusions will emerge from the presentations of the panelists who follow and the Rapporteurs who close the sessions with their impressions.

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