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U.N. Policy Review: International Law in the U.N.

A) Recent Trends in International Law

Some six years ago a number of studies were carried our within the department on a range of subjects having implications for the future development of international law. In particular, examinations were made of the Soviet thrust for the codification of the "principles of co-existence" and of the Western and non-aligned response; the Soviet Western and non-aligned approaches to state responsibility, including the concept of sovereignty over national resources, and the right to nationalize foreign investments with or without compensation; and the studies of the International Law Commission on state succession, the law of treaties, consular relations and diplomatic relations. All of these topics were, at that time, under consideration either in Committees or sub-committees of the U.N. or in the International Law Commission. Studies were also carried out on human rights questions being dealt with in other U.N. bodies.

2. One of the principal conclusions reached in the studies in question was that while the developing countries were beginning to show an increasing interest in the development of international law, Western countries were adopting an essentially defensive posture, motivated by the desire to uphold traditional concepts of customary international law, with the result that the initiative appeared to have been seized to a large extent by the U.S.S.R. The Soviet emphasis on treaties as the fundamental basis for peaceful relations amongst states, and indeed for international law itself, appeared to be gaining considerable support amongst the non-aligned nations. Western states, while continuing to support

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customary principles of international law and refusing to accept the validity of Soviet claims to have originated a "new international law" based on the principles of peaceful co-existence, nonetheless had found it in their interests to cooperate in law-making activities within the U.N. and indeed had had much to do with originating such activities on largely legal questions such as the Law of the Sea, Consular and Diplomatic Relations and the Law of Treaties. The impetus for study of the more political subjects was, however, coming from the U.S.S.R., supported by the non-aligned. This reflected a new and vigorous approach by the U.S.S.R., partly propaganda and partly scientific, towards the development of international law.

3. It was concluded as a result of the studies in question that while in most cases there was little or no direct Canadian national interest at stake in the law-making activities being undertaken within the U.N. framework (other than the normal interest of any member of the international community in the development of international law), Canada ought to adopt a more vigorous and dynamic approach to the development of international law than was being taken by the Western group generally. The position adopted by the Canadian member on the International Law Commission (our present Under-Secretary) reflected these conclusions. The initiative taken at the time by Canada on the "friendly relations" question (a euphemism for "peaceful co-existence") provided an example of a more positive approach by Canada which contributed to a better Western posture and at the same time assisted in the development of cooperation in law-making activities in the U.N. More recently, Canada has developed a position on the definition of aggression which is more positive and forthcoming than that of the Western group generally.

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4. Six years later it may be concluded that some considerable success has been achieved in the process of law-making within the U.N. framework. The progress already made in the codification of the Law of the Sea has been followed by multilateral Conventions on Diplomatic Relations and Consular Relations; the Commission was finally successful in producing for consideration by governments a draft convention on the law of treaties; while a number of other legal and political-legal subjects were under active consideration by U.N. Committees, Sub-committees and other organs.

5. In terms of East-West relations it must be admitted that the U.S.S.R. has been able to attract considerable support amongst the non-aligned for its approach to international law. The non-aligned states have in large part accepted the Soviet thesis that the principles of customary international law were developed by colonial powers for the purpose of maintaining and protecting their own wide-ilung interests and that it was in the national interests of developing countries to join together in developing "new" principles of international law by means of elaborating and codifying international law through international conventions. Side by side with this essentially legal approach, on a number of more political subjects having important legal implications the non-aligned and Eastern European states had found it to be in their mutual interest to develop means of bypassing the slower consensus-oriented methods of developping international law(through the International Law Commission, the Sixth Committee of the U.N. and conferences of states.) This was done by drafting and passing by majority vote,against the opposition of a dissenting minority a number of U.N. resolutions on such highly political questions as

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colonialism, non-intervention, etc., couched in the form of declarations rather than draft treaties, (exceptions being the Human Rights and Outer Space declarations which were later codified into convention form). Western states were not able to protect themselves by traditional legal methods through, for example, refusing to ratify such instruments or making reservations to them. All that could be done by dissenting member states was to vote against such resolutions and give explanations of votes. The Declarations, being written documents, undoubtedly overshadowed the oral statements by delegates which are buried in the summary records of the U.N.

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6. In spite of the successes of the U.S.S.R. and the non-aligned in attacking certain customary principles of international law, principally those relating to colonial rule and protection of foreign investments, there has been no generalised attempt to supplant traditional principles of international law by anarchy or by new principles. In large part, the approach of the U.S.S.R. and the non-aligned has been cosmetic, in that they have necessarily and inevitably been forced to conclude that the fundamental principles of international law (such as those enshrined in the Charter, for example) are in their own interests as much as in the interests of the Western dominated conference which drafted the Charter; while subsuming a number of such principles under the rubric of Peaceful Co-existence and attempting to slant their application and elaboration, the Eastern European and non-aligned have not gone further thus far; basic principles have, in the main, been endorsed by them. Thus, on the basis of the law-making activities in the U.N. over the past decade, it may be concluded that the approach within the U.N. to the development of international law has been, on the whole, a constructive one.

B) Present Trends

7. The U.N. family of organisations can take a good deal of credit for the fact that, quite aside 5

from the surprising extent to which states abide by traditional principles of international law in their relations with one another there is a wide-ranging interlocking set of ~~bilateral and~~ multi-lateral treaty relationships upon ~~which~~ the basis of which the greater part of contemporary international relations is founded. / Admittedly, in some fields, such as human rights, while the legislative process has virtually been completed, the more difficult problem of implementation has yet / to be begun. The evidence of the past decade, however, is that states do not take their treaty obligations lightly and, in spite of the fact that there has been little recourse of states to third party settlement of disputes and little progress in the development of real international enforcement machinery, it may be concluded that there is an already existing world order, albeit primitive and imperfect, based on the rule of law, not in the Austinian sense, since there is no sanction machinery, but in the sense that the will of the community has been embodied in a set of legal rules which the community tends to obey, principally because it is in its own enlightened self-interest to do so. This conclusion does not ignore the obvious, recurring, and in some cases continuing breaches of international law such as have occurred in the Middle East, South East Asia and as occurred last summer in Eastern Europe. It is argued by some that such breaches of the law are analogous to thebreaches of domestic law which occur in any society. Be that as it may, it is obvious that states do conduct their relations with each other on the basis of certain ground rules which are no longer left to the academics or to the statesmen to expound. Both with respect to fundamental principles of international law (as embodied in the Charter) and in the case of highly

...6

5(a) A notable exception to progress in the development of international law in the U.N. has been the whole area of compulsory third-party settlement. The Eastern Europeans have consistently opposed the concept of compulsory settlements of international disputes, as an infringement of state sovereignty, and have succeeded in making the question appear as a cold war issue. Partly for this reason, and partly for their own national reasons, the majority of non-aligned states have tended to support the Eastern Europeans in opposing compulsory settlements procedures, in spite of continuing efforts by Western States to develop them.

technical subjects (regulated by a number of ILO, ITU and WHO instruments, for example) there is now in existence a large body of "international legislation", in the form of bilateral and multilateral treaties, constitutions of international organizations, and U.N. declarations.

8. At the present time the U.N. is extremely active in the legal field. The Human Rights Commission and the Third Committee of the U.N. continue to study human rights problems; the continuation of a two-part conference on the codification of the law of treaties is to occur in the spring of 1969; a U.N. Sub-committee will be meeting soon to pursue its studies of the definition of aggression; another sub-committee will meet shortly to pursue its studies of seven basic Charter principles in the context of "friendly relations"; another sub-committee will meet to pursue the elaboration of an Outer Space Liability Convention; a working group will soon be considering the legal aspects of problems raised by the possibilities of direct satellite broadcasting; (another (and permanent) sub-committee will be attempting to develop a legal regime for the peaceful uses ~~of~~ for the benefit of all mankind of the seabed resources beyond national jurisdictions; another sub-committee is studying principles of private international law and in particular trade law (the only such sub-committee of which Canada is not at present a member); the Legal Committee of the U.N. will continue its consideration of the I.L.C. draft convention on the principles applying to the sending and receiving of ad hoc special diplomatic missions; the International Law Commission will continue its studies on the relations between states and international organizations,

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on state succession, and, in due course, on state responsibility. It is noteworthy also that at least in two of the cases mentioned (Outer Space and the Seabed) the lawyers are in the forefront in attempting to cope with these problems rather than, as has often been the case, lagging behind technological, economic and political developments. Thus there is good reason to conclude that in spite of the popularly-held notion of the disrepute into which international law has fallen since its heyday at the time of the League, and even its non-existence in the contemporary world, the contrary is in fact true. There is instead a vigorous and dynamic approach by states of all political shadings directed towards developing and making more effective the legal basis of a world order within the U.N. framework.

9. The role played by Canada in these activities has been an active one to the point that it has become difficult to avoid Canadian membership on U.N. law-making committees. In certain cases it is clearly in Canada's national interest to ensure membership on the relevant committee, and thus far Canada has been successful in doing so. (Recent examples are the 42-member committee set up to study the seabed question and the 28-member working group on direct satellite broadcasting.) On such questions as the law of the sea and those provisions in the draft convention on the law of treaties touching on the rights of component parts of federal states to make treaties, Canada has a direct national interest, quite apart from its general desire to make a contribution to the developing world order. It may be concluded that Canada is taking the necessary and appropriate action to protect these interests.

C) <u>Possible Future Trends in International Law</u>

10. There is little reason to expect that the Soviet interest in

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international law will lessen. The/range of activities in the legal field pursued actively by the U.S.S.R. during the Khrushchev regime appears, however, to have diminished somewhat in recent years. This is due in part to the departure from active involvement in international law-making activities of Oregori Tunkin, the former Legal Adviser of the U.S.S.R. Foreign Ministry, who was able to have a disproportionate influence on the development of international law due to his personal qualities as a jurist and as a diplomat. The interest of non-aligned countries may be expected to increase rather than lessen, particularly on certain subjects, such as state succession, where they may consider it in their interests to develop open-ended legal principles which would leave new states virtually free to determine what international obligations they should assume. Nothing very new is likely to emerge from western states, who will undoubtedly continue to attempt to protect their interests, which they will generally identify with the status quo. A change may occur in the position of western states on the question of defining aggression, discussed below as a separate question because of its potential importance. The major new development to be expected in terms of influence by states on the development of international law is likely to occur if and when (and, perhaps, even before) the Peoples Republic of China gains admission to the U.N. There appears, thus far to be no readily identifiable Chinese Communist doctrine of international law distinct from Soviet doctrine. As was (and still is) the case with Soviet jurists, there are differences of views amongst Chinese theorists as to the correct doctrinal basis of international law, differences stemming from the very real difficulty of postulating a Marxist theoretical basis for a law which would govern

...9

capitalist and socialist states alike. Thus far the Chinese do not appear to have produced anyone like Tunkin to articulate and sell their approach, and it may be that they shall not choose to do so. It may prove necessary to make deductions as to their legal theories from their foreign policies, at least for a period, although ultimately the Chinese like the Russians will presumably be forced to state their case in the various U.N. law-making forums. On the basis of available evidence, it may be concluded that while the Communist Chinese had a good deal to do with the origin of the so-called principles of peaceful co-existence as the basis of relations between certain states it seems evident that they see them as being applicable on a much more selective basis than is the case with the U.S.S.R. which still seems to see them as the basis for relations amongst all states. One doctrinal point on which the Communist Chinese seem to be closer to the majority of developing countries than to the U.S.S.R. is in their support for "wars of liberation". It may be, therefore, that Chinese theories of international law will be oriented more towards the have-nots as against the haves than is the Russian approach, which supports the third world on such issues as colonialism but is much less forthcoming on legal-economic issues, or on such questions as the utilization of the resources of the seabed beyond national jurisdiction. Whatever the form of the Chinese approach, however, it may be assumed that it will have considerable impact and that it will be necessary for all Western states, including Canada, to be aware of and ready to react to and, if possible, attempt to contain the Communist Chinese approach to international law.

11. A not unrelated trend that could emerge out of the draft

Convention on the Law of Treaties, and one which could have considerable significance for the stability or instability of treaty relations, is the evident desire on the part of the non-aligned states, strongly supported by the Eastern Europeans, for retention of a number of open-ended provisions now contained in the draft Convention which permit highly subjective determinations of issues touching on the essential validity and termination of treaties, coupled with a refusal to countinence the inclusion of any effective procedures for third party compulsory settlement of disputes. If the Western states are successful in building into the Convention on the Law of Treaties procedures for compulsory settlement of disputes then the beneficial effects could extend well beyond the specific context of treaty relations; if they are unsuccessful then much of what has been said about the extent to which there is an existing world order based on treaties would be open to question.

12. A further trend which could develop, on the basis of certain indications already evident, is a thrust on the part of the "third world" for the development of principles of international law which would give them more parity with developed countries in the field of aid and trade as a matter of right rather than as an act of grace, as they maintain is the case at present. An example where they have been partially successful is the Seabed Item, where it has already been agreed that the benefits of the exploitation of the resources of the seabed beyond national jurisdiction should be for "all mankind". Repeatedly, representatives of developing countries have emphasized that they interpret this phrase as meaning essentially in the interests of developing countries, including landlocked states. It may be expected that somewhat similar approaches may be

...11

developed with respect to direct satellite broadcasting, and that the developing countries, as they come to understand the full implications of new technological developments, will demand, as a matter of right, an increasing share of the benefits. It would be surprising if similar trends did not develop in the context of UNCTAD, (itself a result of such thinking) and perhaps even GATT, as the notion of "thy brother's keeper", not yet wholly accepted domestically, becomes established internationally. Developing countries may have learned from their experiences in UNCTAD that passing resolutions by a large majority in an attempt to force new principles of trade law upon developed countries is ineffective, but it would be illusory to assume that they will abandon such efforts entirely. It seems safe to assume that if the Communist Chinese enter the U.N. family of organizations they will lend their support to this thrust by the developing countries. It is on this type of issue where there would appear to be more identity of interests between Communist China and the developing world than between the Communist Chinese and the U.S.S.R. Presumably, Communist China will not be handicapped, as is the U.S.S.R., in supporting the position of developing countries on these issues by fears of the effect upon itself. Whereas it is in this field that the U.S.S.R. has been most negative and least responsive to LDC aspirations, contenting itself generally with attacking Western positions rather than offering real concessions, the Communist Chinese may find it in their direct national interest, quite apart from their posture internationally, to align themselves with the demands of the developing countries. ~~Quite apart~~ Aside from demands by the developing

...13

countries, it is evident that the developed countries (and in this case the interests of the Eastern Europeans and Western countries may not be opposed) will have to develop a philosophy of aid and a philosophy of trade which would be directed to lessening the gap between developed and developing countries. Such a movement could conceivably go some ways towards avoiding a confrontation with the developing world. In any event, whether a constructive and dynamic response by the developed world to the aid and trade needs of the developing world will be successful in heading off proposals for the development of a "new international law" which would place obligations on developed countries to assist developing countries by trade and aid, it seems clear that there is a useful role to be played by wealthy countries such as Canada in developing a positive approach on these issues, without prejudging one way or the other future developments in the field of international law in the field.

13. Another possible trend in the future development of international law over the next decade may be a continuation of the process which has been taking place almost since the inception of the U.N. towards the acceptance of the individual as a subject as well as an object of international law. This cannot be assumed, however, since the U.N. is now beginning to move from the legislative phase into the much more contentious implementation stage. From a doctrinal point of view Eastern Europeans have not yet accepted the concept of the individual as an ~~object~~ subject of international law, while most Western jurists have, but both groups cooperate (for quite different reasons) in the elaboration of international instruments intended to protect individual as well as collective rights. The developing countries

...13

seem to have concerned themselves little with the doctrinal aspects of the question, while lending their very active support to any human rights initiatives touching on racial matters, and somewhat less enthusiastic support for human rights initiatives focussing on other issues, such as religious discrimination and the protection of political and civil rights. It remains to be seen whether any of the political groupings within the U.N. will lend their active support to the development of actual machinery for the implementation of the international legislation on human rights. Almost every member state of the U.N. has a skeleton in its closet in the field of human rights. Thus support for the proposal of a Human Rights Commissioner (initiated by Jamaica with the support of Canada as an actual co-sponsor) has been lukewarm thus far. At first glance there would seem to be ample reason for Canada to play a very quiet role in this field, until Canada's domestic problems are resolved. A case might also be made, however, for developing further the approach taken during the recently concluded session of the U.N., during which Canadian representatives, while admitting frankly that there were a number of unresolved human rights problems in Canada which are being attacked but are not yet solved, went on to say that Canada like other countries must nonetheless lend active support to the implementation domestically of the international human rights instruments. The extent to which Canada could provide real leadership in this field must, of course, depend to a large extent on domestic developments, particularly on the question of individual versus collective rights. There seems to be little for Canada to fear, however, from international

...14

developments in the U.N. in the human rights field (as distinct from international pressures outside the U.N. on such issues as self-determination). For example, the studies of the Friendly Relations Committee on the principle of self-determination have made clear that no member state is anxious to include the right of secession as an aspect of the right of self-determination. On the contrary, secession has been specifically ruled out in the tentative formulations developed thus far. On principle, it would seem that it is in the human rights field that such Western states as Canada, with a far better domestic/record on human rights as distinct from ratification of international human rights instruments, than most other member states in the U.N., ought to be able to adopt a positive and constructive role, ~~approaching case of handicap~~. This presupposes, however, the development of new federal-provincial consultation procedures and, perhaps, consultative institutions in Canada. Rather than await the resolution of Canada's domestic problems, however, it would seem open for Canada to try and make progress domestically and internationally at the same time, basing its policies in both cases on the principle of equality of opportunity for the individual.

14. A possible trend on a highly political issue, having potentially serious implications for the ability of the U.N. to fulfil its peacekeeping role, is the developing non-aligned doctrine which labels as aggressive action, warranting Security Council enforcement measures under Chapter VII, only the classical type of direct armed aggression across frontiers. This emerging doctrine, already supported not only by the Arabs and a number of Afro-Asian states but also by many Latin American states, would deny the right of self-defense, except insofar as limited internal police-type

...15

security measures are concerned, to a state which has become a victim of "indirect" armed aggression by a neighbouring state or some other country, (by means of infiltration of armed bands, subversion, terrorism, etc.) The impact of China on such issues, committed as it is to the concept of "wars of liberation", would obviously be considerable. If the experience over the past two decades can be projected into the future, it may be concluded that many of the most serious threats to the peace will arise from conflict situations of a mixed internal-international character, in which it is impossible to say whether the conflict is purely internal or is one which would permit intervention by the U.N. It would seem to be in the interests not only of Western states, but of any country desirous of avoiding ~~sending~~ serious breaches of the peace to ensure that any definition of aggression which may be produced, (and it now looks virtually certain that one will emerge over the next few years), will cover both direct and so-called indirect armed aggression. So long as Western states were able to effectively frustrate attempts to define aggression, the issue has been an essentially academic one. It seems evident, however, that the non-aligned states as well as the Eastern Europeans are now determined to achieve a definition of aggression which the Security Council would be expected (at least by them) to apply almost automatically, thus altering the role of the Security Council from that of policeman and mediator to that of judge and jury. Whatever the content of any such possible definition, the alteration of the function of the Security Council in such a fashion would obviously have serious implications for the future of the U.N. The role of a country like Canada on this question can hardly be determinative, but it is important that Canada

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continue to play the active role it is already playing and endeavour to ensure that Western as well as other states adopt a constructive approach based on long-term strategic considerations oriented towards the future development of a world order based on international law rather than, as has often been the case in the past, one tailored to fit more immediate tactical considerations.

15. Another possible trend in the future development of international law could be the further denegration of the peacekeeping functions of the U.N. due to the lack of any generally recognized legal basis for such activities. While all member-states of the U.N. have accepted the Chapter VII provisions of the Charter there is very little disposition to implement Articles 43 and 47 on stand-by forces and a Military Staff Committee. While the problem is a political rather than a legal one, it is open to question how long the U.N. can continue to attempt to deal with specific breaches of the peace on an ad hoc basis and in the absence of agreement between the main power groupings in the U.N. on the basic legal principles upon which such action may be founded. Presumably the future trend will be towards the continuation of the recent re-emphasis of the role of the Security Council and away from the "uniting for peace" principle justifying peacekeeping action by the Assembly, due largely to the unresolved dispute over Article 19. On this, as on a number of other fundamental legal issues, the interests of East and West may however continue to converge. Another trend increasingly evident on the part of the developing countries, and particularly the Africans, of permitting U.N. intervention on a highly selective basis, may be expected to continue throughout the next decade, although it seems

...17

likely that ultimately, the third world will come to recognise the desirability of one law for all. This type of issue would, however, seem to provide considerable scope for mischief-making by the Communist Chinese, particularly on "colonial" issues, where the Chinese may present the problem as being essentially one of colour. Canada has never had a direct national interest in the peacekeeping activities of the U.N. other than the extent to which it tends to unite Canada through a feeling of pride in the role of Canada on the international scene. Like other countries, Canada has a general interest in contributing to the developing world order and preventing breaches of the peace that could conceivably develop into world conflicts, and Canada's geographical position between the U.S.A. and the U.S.S.R. reinforces Canadian interest in keeping the peace. Unlike many other countries, however, Canada possesses the technical, financial and military facilities to contribute to U.N. peacekeeping activities, and Canada still appears to be one of the few countries which are generally acceptable as contributors to U.N. peacekeeping action, (in spite of Canada's recent unfortunate experience in the Middle East). Whether or not Canada continues to contribute materially and financially to future U.N. peacekeeping functions, it would seem nonetheless to be in Canada's interest to participate actively in attempts to develop a legal framework within which future U.N. peacekeeping operations might be mounted. Unsuccessful efforts in the past to this end need not deter future action by Canada, since the problem is so much one of timing in terms of relations between the great powers. For example, very recent indications of the possibility of an agreed Great

...18

Power approach to a Middle East settlement may conceivably contain the seeds for the future development of a political and thus a legal basis for such action, which could be of very great significance for the future of the U.N. and of international law. The mere possibility of the Security Council being able to take effective action on the Middle East because of basic agreement amongst the Great Powers sounds at this time futuristic. Any support which Canada can give to such a possible future trend would seem well worthwhile, even if progress amongst the present Great Power membership in the U.N. might become more difficult if and when the Peoples Republic of China attains membership on the Security Council.

16. A possible future trend in international law in the U.N. which Canada and many other countries would like to see, but which seems unlikely to materialize during the next decade, would be the further development of a legal basis for the gradual attainment of general and complete disarmament. Little that has occurred in recent years provides much evidence to support the likelihood of progress on the problem, and indeed the trend has been away from Great Power interest in the question, but Canada should remain alert to the possibility of/reactivating efforts supporting the attempts of the developing countries aimed at within ENDC directed towards the central disarmament issues as reflected in the U.S.A. and U.S.S.R. draft disarmament plans, while, of course, continuing to support initiatives on secondary disarmament questions. The problem is political rather than legal, but eventual progress on the political issues will have to take place within a highly sophisticated legal framework. If and when Communist China attains membership in the

...19

U.N. the whole problem can and should be re-examined but until Communist China (and France) begin to participate in disarmament discussions there seems little reason to hope for progress towards Great Power disarmament. Conceivably the establishment of diplomatic relations between Canada and the Peoples Republic of China might assist in opening a dialogue on these issues, but it is not likely that Canada would be any more successful on such questions than those countries already having diplomatic relations with Communist China. Canada might, however, begin to prepare for the advent of China into the U.N. and ENDC by commencing studies on the possible implications of Communist Chinese participation in disarmament negotiations. More than this does not seem realistic at the present time.

17. A further possible future trend in international law is the further de-emphasis of regional collective security arrangements entered into pursuant to Article 52 of the U.N., such as NATO and the Warsaw Pact. While such a trend might ultimately serve to strengthen the U.N. as the central peacekeeping body, this would not necessarily follow, given the present inadequacy of the legal framework within which U.N. peacekeeping activities must be mounted. From a practical, political and military point of view it would seem inadvisable to scrap NATO and the Warsaw Pact until the U.N.'s peacekeeping capacities are strengthened Moreover, the disintegration of NATO and the Warsaw Pact would presumably, of itself have little or no effect upon the possibility of similar collective security arrangements developing in Africa, Asia or Latin America. There

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are admittedly some indications of the beginning of a trend away from the fractionalization and towards a centralization of international peacekeeping arrangements. It is impossible to say what effect the admission of Communist China might have on such developments, nor the possible consequences of a strong and security-conscious Japan as an emerging Great Power. It is noteworthy, however, that the Peoples Republic of China has moved from a position of support for the U.N. during the early years of the U.N. to one of disenchantment, to the point where it proposed at one time (together with Indonesia) to set up a rival organization. The present Chinese position on this question seems obscure. In the meantime, from the point of view of the future development of international law, at least, it seems clear that the preferable course is to strengthen the U.N.'s peacekeeping ability step by step to the point where it may be hoped that regional arrangements might become less necessary. The attainment of any such goal is presumably well beyond the next decade and even perhaps the ensuing one. However, the steps now being taken by Canada, opening to question the desirability of continuing forever regional collective security arrangements such as NATO, seem well founded from the point of view of the future development of international law, provided such ideas are not advanced at such a pace that the international community is left with neither universal nor regional collective security arrangements, a situation which would obviously have consequences very serious for the future development of international law both within and outside the U.N.

18. A question of considerable significance for the U.N. and for the future of international law generally is the direction the U.N. takes over the next decade on the issue of universality. On the one hand there

...21

are already existing pressures for the expulsion of South Africa from UNCTAD, a U.N. organ, (following successful attempts by the Afro-Asians to exclude South Africa from the Specialized Agencies, usually in violation of the constitution of the Agencies) which could conceivably lead to proposals to expel Portugal and, presumably, in due course, other countries. On the other hand there are proposals, to some extent from the same sources but more from Eastern Europeans, towards the admission of North Korea, North Vietnam and East Germany which will presumably be augmented if and when the Peoples Republic of China gains admission to the U.N. It is not possible to predict which trend will prevail. One difficulty is that none of the main power groupings within the U.N. has been consistent thus far on the issue of universality. It is conceivable that some kind of second "package deal" could become necessary, whereby admission of certain countries is accepted in return for the continued membership of others. It is noteworthy that the position of Communist China, insofar as it is known, seems to be that, having strongly supported the principle of universality in the U.N. up to around 1965, it has since adopted the position that "imperialists" and "colonialists" should be expelled from the U.N. Whatever the outcome, insofar as the future development of international law is concerned it is clear that effectiveness of international law (and the U.N.) will depend in large part upon the extent to which the U.N. becomes universal in its membership. It may even be necessary for Western states to begin thinking less in terms of possible unification of divided states (an aim which hardly any state seems to be pursuing seriously) and towards

...22

recognition and admission to the U.N. of the Communist "states" in question.

19. One final issue, seemingly of academic interest, but which could have important practical implications for the future development of international law within the U.N., is the approach which states take to the concept of "sovereignty". Both Soviet and Communist Chinese legal doctrine concerning international law is firmly founded on the 19th Century quasi-absolute state principle of sovereignty, with the consequence that all forms of "supra-nationalism", such as acceptance of the compulsory jurisdiction of the International Court or other means of third party settlement, are strongly opposed. This attitude has considerably influenced the newer states, which have become independent, are understandably jealous of their own sovereignty, having so recently attained it, and in part because the International Court and related questions have become accepted as a cold war issue, and more recently because of the decision of the International Court on the South West Africa case. While the composition of the Court has altered and some indications have occurred of the beginning of an alteration of the Soviet attitude toward third party settlement, at least in specific fields of law, there seems little reason to expect general progress in the further development of compulsory settlements procedures nor greater recourse by states to such procedures. For the foreseeable future, Conciliation Commissions may offer the best compromise available, with the possibility for the future that as states learn to use and accept the recommendations of such Commissions they will gradually move towards acceptance of compulsory settlement procedures. Over the next decade law-making by treaty can continue, since this process does not impinge upon the sovereignty of states but permits them to accept

...23

international legal obligations voluntarily and, in so doing, exercise their sovereignty. Unfortunately, however, the problem of third party settlement is that it is looked on as an infringement of sovereignty. (As pointed out in paragraph 11 above, however, the preoccupation of all states, but particularly the Eastern Europeans and the Africans and Asians, with the need to protect their sovereignty, could erode the stability of treaty relations for the future.) Thus it seems likely that over the next decade states will continue to be preoccupied to protect their sovereignty and be unwilling to accept the development of new international institutions or greater use of any existing institutions where use might lessen their sovereignty. It is of interest that the developing countries insisted on the passage of a resolution on the Seabed Item requesting the Secretary-General to study the possibility of the creation of international machinery in the context of the use of the resources of the Seabed beyond national jurisdiction, (The limits of national jurisdiction being one of the most contentious issues) for peaceful purposes and in the interests of all mankind. This item contains within it the possibilities of a future confrontation, on issues of state sovereignty, not only between states members of the U.N. but even between states members and the U.N. itself, or alternatively, new approaches within the U.N. to problem situations. This item, together with developments on the Law of Treaties, should be watched closely as indicators of future trends on the basic and related issues of sovereignty and compulsory peaceful settlement of disputes.