LAW, ORGANIZATION, AND POLITICS IN THE INTERNATIONAL COMMUNITY

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It is generally agreed among scholars working in the field of international studies that the "core" subjects of international relations consist of international politics, international organization, and international law. Undoubtedly, international economics exercises a very important effect upon international relations, but for political scientists the economic aspects are usually subordinated to the political, legal, and organizational elements. Recently, Quincy Wright has expanded the study of international relations into the fields of sociology and psychology and, while his approach is new and challenging, there remains a great deal of research to show clearly the impact of these disciplines upon the central areas of international relations.[1]

Within the past generation, and especially since the end of World War II, the study of international relations has taken on increasing importance as a result of recent experiments in international organization, namely, the League of Nations and the United Nations. The importance of the study of international relations is reflected not only in innumerable monographs written in the past thirty years on various aspects of international law, international organization, and international politics, but also by the tremendous increase in the number of courses in international relations offered by American universities and colleges, by adult education programs in foreign affairs, and by a rapidly developing awareness and interest of the general public in international affairs.

Unfortunately, there has not been any wide agreement by scholars on a scheme of methodology to delineate the scope and methods of international relations. This is an important reason why the study of international relations is yet an immature discipline, and is naturally an object of attack from the other more well-established social science disciplines. It should be emphasized, however, that this new field of study is still in its infancy; as the years go by and more research appears, international relations is likely to emerge as a mature discipline distinct and separate from political science.

It would seem that part of the difficulty behind the inability to establish a coherent methodology lies in the preoccupation by scholars with one of the "core" subjects of international relations to the exclusion or minimization of the other two. Thus, some scholars concen-

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1. See WRIGHT, THE STUDY OF INTERNATIONAL RELATIONS cc. 27, 28 (1955).

trate on international politics, some on international law, some on international organization, and some on international law and organization.

It is the aim of this paper to suggest rather than define a framework into which international politics, international organization, and international law may be fitted. It is the thesis of the writer that for methodological purposes at least the three subject areas are equal in importance. The purpose of the paper, therefore, is to provide a clearer insight into the conceptual and operational aspects of the three processes of international relations as they interact upon each other.

I. CONCEPTUALIZATION

Theoretically, international politics, international organization, and international law interact upon each other individually and collectively. Therefore, it will be necessary to consider the impact of international politics on international organization and vice versa, the impact of international politics on international law and vice versa, the impact of international law on international organization, and finally to consider the collective result of this complex interaction.

International politics arises out of the interaction of the foreign policies of nation states involving points of conflict and coincidence, and the reactions which ensue. The impact of international politics upon international organization is illustrated by examples from the experience of the two general international organizations of this century, the League of Nations and the United Nations. This experience reveals that, despite the lofty idealism in the Covenant and the Charter regarding collective security, international organization must always function within a framework of international politics.

Under the League of Nations, French foreign policy was so adamantly committed to preserving her territorial integrity against the threat of German penetration that the vaunted armies of Fascist Italy were viewed as an adjunct to French security against Hitler. When Italy invaded Ethiopia in 1935 France could not abandon her policy of alignment with Italy which conflicted with her obligation to apply sanctions under the League Covenant.

More recently, political history since World War II reveals numerous instances of international political conflict affecting and indeed retarding the effectiveness of international organization. The obvious illustration is the steady deterioration of the World War II alliance of Russia, the United States, Britain, and France, and the consequences flowing therefrom.

The framers of the Charter of the United Nations realized the importance of Great Power solidarity when they placed primary responsibilty for maintaining and enforcing peace on the Great Powers

with the assumption that their wartime unity would continue during the formative years of the United Nations. The principle of unanimity, or the veto as it is more popularly known, gave expression to the superior responsibility of the Great Powers with respect to decisions of the Security Council involving the pacific settlement of disputes and the enforcement of peace and security. That the unity which the framers hoped for has been shattered is reflected not only in the large number of vetoes cast by the Soviet Union in the Security Council, but also in a general reliance by the Western Powers upon the General Assembly to circumvent the principle of unanimity of the Security Council by mobilizing the support of the free and uncommitted nations against the policies of Soviet communism. Thus does international politics permeate and dominate the operation of international organization.

On the other hand, international organization is brought into existence and continued in operation to restrain or contain conflicting national foreign policies. This is the impact which international organization exerts on international politics. The need for international organization arises out of the feeling by two or more states that their common problems of health, transportation, communication, economics, and peace and security can be implemented more effectively through international rather than national action. It is not expected that their individual differences in handling these problems will automatically disappear when they combine by treaty or agreement into an international organization, but that by organized international cooperation their differences will be submerged in a common unity through the processes of inquiry, discussion, and agreement.

Again we may turn to political history for an evaluation of how well international organization has fulfilled its function of reconciling opposing foreign policies. In the area of social welfare where political conflict between nations has been at a minimum, international organization has been, on the whole, fairly successful. This is evidenced by the existence of numerous international organizations apart from the United Nations which have survived two world wars. Such organizations as the Universal Postal Union and the Organization of American States continue to perform useful functions. More recently, the International Labor Organization, the International Bank, the Organization for European Economic Cooperation, and the World Health Organization are good examples of international organizations operating effectively within their own spheres of interest.

International organization clashes sharply with international politics over the question of national sovereignty versus international jurisdiction. The conflict is expressly implied in Article 2 (7) of the United Nations Charter which prevents the United Nations from

intervening in matters of domestic jurisdiction or requiring member states to submit such matters to the United Nations. This clause constitutes one of the severest limitations on the efforts of international organization to restrain or moderate international political conflict, and, more importantly, reflects the limits which national sovereignty places upon participation in international organization.

Within the past few years, several states have invoked the "domestic jurisdiction" clause to hamper the United Nations in its role as a conciliating agency. The Union of South Africa used it to delay effectively discussion of the treatment of Indians in South Africa. In connection with Moroccan and Algerian claims for self-government, France also reverted to the clause to challenge the competency of the United Nations to discuss these questions. Finally, the puppet Hungarian Government invoked the clause to prevent United Nations investigation of serious violations of international morality perpetrated by the Soviet Union in quelling the recent rebellion in that country.

The question of domestic jurisdiction is indeed a delicate one for international relations today. But its very ambiguity only serves to confuse the thin line between questions within the domestic jurisdiction of a state and those which affect the welfare of the international community as a whole. At one extreme it could be argued that any question or dispute which constitutes a threat to the peace, regardless of origin, is a proper subject for discussion and recommendation by the United Nations. At the other extreme one could argue that each state is itself the final judge of matters within its own borders regardless of how they affect directly or indirectly the welfare of the international community. The answer probably lies somewhere between the two extremes. Until the International Court of Justice renders a specific opinion on the line of demarcation between domestic jurisdiction and the authority of international organization, it is likely that the United Nations will continue to be hampered by states resorting to the "domestic jurisdiction" clause.

As might be expected, it is in the field of enforcement of peace and security that international organization has been least successful because sanctions against an aggressor very often conflict with the foreign policy of states at the time such action is ordered. Thus, the unwillingness of a majority of member states of the United Nations to supply troops to put down aggression in Korea stemmed from a disparity between their own foreign policies and their international obligations. In Korea this disparity was not confined to the schism between the Western democracies and Soviet communism. Many small and medium powers abstained or participated only to a limited degree because of fear of retaliation from the aggressor; and two large pow-

ers, Great Britain and France, contributed only minor support.[2] France, busily engaged in a costly war in French Indo-China, placed greater priority in that area than in Korea. Great Britain found it difficult to participate wholeheartedly in the enforcement action against Communist China because of extensive trade relations with that country. As a result the United States bore the brunt of the military and financial burden, and an overwhelming military force to deter aggression as envisioned in the United Nations Charter was therefore lacking. The stalemate which continues over the future of Korea reflects the consequences which ensue when the Great Powers fail to cooperate in the enforcement of peace and security.

The failures of international organization to defeat aggression wherever and whenever it appears should not imply that international organization be abandoned altogether as an instrumentality to maintain peace and security. Perhaps the words of Professor Inis Claude express this best:

> The world is engaged in the process of organizing. This process has a past which is not very long, as historians measure time, but which is nonetheless significant. It has a present which is confused and troubled, but which is not for that reason less important as an object of study. And, it may be confidently asserted, if man has a future, so has the process of international organization.[3]

The relationship between international politics and international law is illustrated by the conflict between national foreign policies and an international legal order which attempts or has attempted rather unsuccessfully to posit an international community transcending in importance national communities. As with international organization, international law can not and does not operate in a vacuum. It operates also within a political framework of nation states interacting, for the most part, with respect for law and order, but at other times, defying and violating the standards of international law which have been accepted by the majority of civilized states.

International politics influences international law by establishing the limits to which states will agree in practice to be bound by international rules and principles. An example of the interaction between law and politics in international relations is furnished by the limitations placed upon the International Court of Justice. Under Article 36 of the Statute of the Court, signatories may accept as compulsory the jurisdiction of the Court in four types of legal disputes.[4] While a

2. It could be argued that participation by the smaller powers would have been insured had all the larger powers cooperated.

3. CLAUDE, SWORDS INTO PLOUGHSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION (1956). Quotation from outside jacket.

4. Disputes concerning the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a

majority of member states of the United Nations have filed declarations indicating their acceptance of the so-called optional clause, the jurisdiction of the Court has been seriously weakened by copious reservations attached to these declarations in which the states concerned have sought to exclude from the jurisdiction of the Court disputes they deem within their own domestic jurisdiction. These reservations are apt to exclude from the jurisdiction of the Court disputes of a markedly political character, and therefore operate as restrictions against the extension of international law into the realm of international politics. As a result, the number of disputes which could be adjudicated under the optional clause is sharply limited.

Recent history also provides examples of the influence of international politics on international law. While the majority of states found it expedient to sign the Kellogg-Briand Pact outlawing war as an instrument of national policy, they also found it expedient to utilize war as an instrument of international policy when the climate of international politics so dictated. Likewise, Great Britain and France ignored or minimized their obligations under the United Nations Charter to abstain from the use of force to settle disputes and committed an act of aggression against Egypt in support of their foreign policy of restoring the status quo over the Suez Canal.

It may be legitimately questioned whether resorts to force—serious violations of international law as contained in the League Covenant, the Kellogg-Briand Pact, and the United Nations Charter—do not, in effect, seriously impair the validity of this rule of law and, indeed, the binding force of international law itself. Obviously, there can be no doubt that continual violation of international law gravely weakens any hope for an international legal order. On the other hand, we must not be so pessimistic as to accept the fact that international politics must always control international law. To do so is to pay homage to the dictum that might is right. In domestic communities we do not discard respect for law and order because law and order are continually violated; in the international community the same attitude must be maintained.

The possibility of international law exercising decisive control over international politics remains the ideal of those scholars who emphasize law and order as the basis of peaceful relations between states. While it is doubtful that conflicts between states can ever be eliminated, short of a world government, they can be regulated by the imposition of effective legal restraints. It remains the task of international law to widen the amount of legal restraints over international

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breach of an international obligation; and the nature or extent of the reparation to be made for the breach of an international obligation.

politics to make the possibility of war less likely and, with the assistance of international organization, to make these restraints effective.

The interrelationship between international law and international organization merits extended discussion not only because of the difficulty of defining this relationship but also because it has not received enough attention from scholars. Historically, the development of international law has preceded the development of modern international organization as typified by the League of Nations and the United Nations. The reason for this may be ascribed to the fact that a legal order is necessary before an organizational structure of any complexity can exist. That is, that every organization must in fact have a legal basis. Viewed in this sense, international law, with its intricate framework of customs and rules defining the relations of states, appears as a necessary foundation for international organization. Moreover, as international organizations of an institutionalized nature began to appear in the late nineteenth century, they were almost always activated by means of a multilateral treaty or convention which defined their powers and functions.

On the other hand, once international organization comes into being it can and does operate in a variety of fields which have little or no connection with international law. Organized international cooperation in health, communication, transportation, labor, narcotics, and postage, find little parallel in the traditional subject areas of international law. Moreover, international organization has scarcely penetrated into such legal areas as nationality, diplomatic immunities, and the status of aliens, to give only a few examples.

Despite the relative dissimilarity of the areas of operation of these two processes, they are closely interwoven. International law provides a tool by which the purposes of international organization may be achieved. This is illustrated by resort of member states of the United Nations to numerous treaty agreements utilized to promote cooperation among them in the various social welfare fields mentioned above. They do this not only in the General Assembly and the Economic and Social Council, but also in specialized agencies of the United Nations such as the International Labor Organization. Thus does international law provide a legal means by which national policies may be synthesized into international policies and actions.

Finally, as suggested above, international law is directly related to international organization since it defines the forms, agencies, and powers of the latter. Thus, the Charter of the United Nations, the Statute of the European Coal and Steel Community, and the Constitution of the International Labor Organization provide the legal founda-

tion of these three international organizations. In this way international law gives legal form and organization to the hitherto unorganized segments of the international community.[5]

II. Conclusions

The foregoing analysis of the interrelationship of international politics, international organization, and international law points to the conclusion that international law and international organization act conjointly to impose legal and organizational restraints upon international politics. As yet these restraints are still weak and decentralized because ultimately each state is the final judge as to whether it will obey international law or carry out the mandate of an international organization. Despite these limitations, international organization and international law, if developed and strengthened, can serve to mitigate the political rivalries of states by bringing these rivalries under the rules of law and the reconciliatory procedures of international organization.

This is not to underestimate the role of international politics in its interaction with international law and international organization. Under present world conditions and for some time to come, it is likely that international politics and international political conflict will continue to dominate international relations irrespective of the current bipolarization of power. This does not, however, exclude the possibility of the forces of international law and organization exercising greater control over world politics than they now do.

As they interact collectively, the three dynamic processes of international relations may be viewed in a continuum of action and reaction, of conflict and compromise. At one end of the continuum the great force of international politics exercises a gravitational pull of considerable power toward the other end represented by international law and international organization in an attempt to submerge these two opposing forces into oblivion with the consequent likelihood of international choas. At the opposite end, international law and international organization are resisting the pull of international politics in an effort to stabilize world peace and order at the middle of the continuum. The outcome of this complex interaction between the three dynamic processes of international relations is still unsettled.

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5. Potter, An Introduction to the Study of International Organization 6 (5th ed. 1948).