THE RULE OF LAW IN THE
WORLD COMMUNITY *

ANDREW W. CORDIER †

The place of law in the harmonious ordering of the relations of
tions to each other and in the promotion of general human welfare
is extensive, but great gaps exist where law could strengthen the
international political and social fabric. The state of perpetual crisis
in which we live creates the impression that there is no law, or if so,
that it is almost always being ignored. Yet the record does not sup-
port this judgment. The distinguished John Bassett Moore some
years ago noted that, on the whole, international law was as well
observed as national law.¹ Contrary to the popular impression that
treaty commitments are often lightly regarded by the signatories, the
truth is that the vast majority of such engagements are honored faith-
fully, sometimes even at some inconvenience to the
² To be
sure, there is no enforceable Rule of Law to secure the peace, but
there are multitudinous treaties, conventions, agreements, and codes,
and many international organizations and arbitral tribunals that have
done much to regularize the relations of nations and peoples in many
areas of life.

But in what setting does international law find its roots? Mu-
nicipal law functions within the framework of established governments
and within relatively homogeneous societies. On the world level there
is nothing corresponding to government in the national sense, and
there is very much heterogeneity in race, national interests, traditions,
and expectations. If national democratic societies have achieved the
goal of governments of law rather than of men, international society
has not advanced to that level. In particular, nondemocratic societies
are generally suspicious of the evolution of law which would circum-
scribe the freedom of action of the men in power. This suspicion
applies both in the national and in the international sphere.

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the dedication ceremonies.

† Dean, School of International Affairs, Columbia University.

¹ Moore, INTERNATIONAL LAW AND SOME CURRENT ILLUSIONS 300 (1924).

² See Jessup, A MODERN LAW OF NATIONS 7 (1948); THE ABSOLUTE WEAPON:
ATOMIC POWER AND WORLD ORDER 8 (Brodie ed. 1946). 

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Some sense of common interest must exist to give birth to principles out of which law emerges. Group life characterized by internal cohesiveness was an early historical development and manifested itself first in the family unit. As families enlarged or established common bonds with other families, tribes emerged. Tribes, in turn, either through the discovery of common interests or through pressures from outside or above, were often brought together in larger units—nations.

Nations, both anciently and particularly in the modern era of the nation-state, found it both expedient and necessary to facilitate their relationships through the crystallization of understandings on matters of protocol, general diplomatic practices, rights of aliens, the conduct of trade, and many other matters necessary to their peaceful existence.

The Statute of the Court of International Justice in article 38 lays upon the court the obligation to make decisions in the light of international conventions, international custom as evidence of a general practice accepted as law, and the general principles of law recognized by civilized nations. There is encompassed in these categories a recognition of law and the origins of law which reach far back into history. In addition to Western law, they include Islamic law, Buddhist law, Hindu law, Chinese law, and Japanese law. In the composition of the court, the representation of the main forms of civilization and of the principal legal systems of the world is to be assured.

It is not my purpose, however, to trace these earlier developments of law, or even to delineate the historical evolution of modern international law, dated generally from its founder Hugo Grotius.\(^3\)

The major developments in international law span the last hundred years.\(^4\) The formation of the Universal Telegraph Union in 1865 and the Universal Postal Union in 1874 were forerunners of later international organizations. There were great cases in the field of international arbitration. Mixed claims commissions settled thousands of cases between and among nations. The Hague Peace Conferences of 1899 and 1907, though the importance of their work was greatly exaggerated at the time, exerted a significant influence on world thought regarding international relations and the role of law in the conduct of human affairs.

The League of Nations represented a great stride forward beyond previous developments in efforts to keep the peace and promote inter-


national cooperation. Although the League finally broke in the face of international conflict, it made a considerable contribution in its continuous year-around tasks to the development of modes of cooperation among nations, to the development of international administration, and to the methods of implementation of actions taken by the Council and the Assembly.\(^5\)

In the period since World War II, the law and principles of conduct among nations have developed on much wider fronts, and in many more aspects of human activity. This is due in the main to three principal developments: first, the existence of the United Nations, the specialized agencies and other international organizations; second, the intensified interlacing relationships of peoples and nations as expressed in industry, trade, finance, travel, and communication; third, the achievements of science with deeply significant contributions both for war and peace.

An important requirement for the effective operation of international organization would seem to be a widely articulated sense of world community. Yet we are living in a world of serious threats and deep divisions. The cold war divides the United States and the Soviet Union and their respective allies, and its divisive and paralyzing influence often penetrates into areas and problems quite remote from the direct clash between East and West. There are regional differences and intra-regional tensions. Nationalism is not abated and new nations have quickly adopted nationalism, both in imitation of the older nations and as a means of producing a sense of national unity. Cultural differences and variations of aspirations compound the profound divisions of our times.

Walter Lippmann's reference several years ago to the need of a return to sanity is made against the image of a human family torn by conflicts, devoting massive energies to causes and values which ultimately could be destructive, and possessing no clear-cut vision of the positive sense of direction which would provide more certainty for peace and the existence of conditions for more steady human progress.

Is there such a thing as a sense of world community?\(^6\) Are there common denominators of more or less uniform attitudes on great issues affecting humanity such as to imply the existence of a world public opinion as an expression of world community? The late Senator Vandenberg called the General Assembly the "town meeting of

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the world." The phrase had the double implication that on some great matters a consensus existed and on others a consensus through discussion could be reached. During the last sixteen years many speakers in the General Assembly have referred to a public opinion of the world, or again to a conscience of humanity.

There are three areas—one relating to fear, one to aspirations, and one to justice—in which something like a world consensus is most discernible. Fear expresses itself negatively in a general desire to avoid war and positively in efforts to maintain the peace, including support of international organization. For example, it has become clear that with the balance of terror and the threat of thermonuclear war a reality in the world, no government could desist for any long period of time from the conferences, discussions, and consultations aiming at disarmament and nuclear controls. Humanity senses a deep threat, a deep and dangerous threat, in the arms race, and insists quite correctly that this is a matter of concern not alone to the great military powers, but to the whole of mankind. Delegates participating in these discussions speak with a sense of this moral pressure behind them.

In the areas of justice and aspirations, the picture is sometimes blurred, and there are, of course, some fundamental differences in attitude not only between East and West, but between North and South. There are, however, also some clear-cut expressions of a genuine world consensus of opinion. For example, South Africa’s persistent adherence to policies of apartheid has in the last few years been repeatedly condemned by the whole world community except Portugal. Prime Minister Macmillan’s advice to South Africa to heed the winds of change was given with solid recognition that humanity’s sense of justice was shocked by the continued practices of that government.

In the successful worldwide revolt against nineteenth-century colonialism, justice and aspirations are joined. The right of man to be free, the right to self-government and independence, written into the Charter, is deeply engrained in man’s being. It has led to the break-up of vast empires, to the birth of several score new nations, and to the creation of a new and challenging role for the United Nations and its members. But the aspirations go beyond the attainment of freedom. They include expectations for improved health, opportunities for education, and higher standards of living. These aspirations are reflected in most of the work of the United Nations and its specialized agencies and in the unprecedented programs of aid which characterize our time.
Dag Hammarskjold said publicly, and more often privately, that world organization as expressed in the Charter and institutions of the United Nations was in advance of the sense of world community. This conclusion flows in part from a recognition that on many matters, particularly in the field of keeping of the peace, the general public often does not have a sufficiently clear comprehension of the law, the principles, the procedures, the nature, and the requirements of the successive steps of mediation, conciliation, and related activities to give support in quelling a crisis or in bringing disputes to an end. The threat must be great and obvious to crystallize public opinion effectively on a worldwide scale behind concrete diplomatic and organizational efforts.

Generally, it is the governments, the governments of sovereign states as interested parties, and those who claim an interest rather than an articulate expression of public opinion, that represent the constellation of forces—cooperating, noncooperating, or obstructing—that have to be taken into account in seeking solutions. When public opinion is present as a force and therefore as a factor in peaceful settlement, it may vary infinitely in its strength, and sometimes different segments of public opinion may take contradictory positions on the issue at hand, just as the conscience of mankind may express itself differently in different parts of the world, and sometimes in contradictory forms on the same issue.

Thus, there remain serious limitations in the scope of what might be called world public opinion. Nevertheless, there is sufficient evidence of common approaches on some great issues involving human welfare, and of common interest in their outcome, to draw the conclusion that there exist the beginnings of a sense of world community which deserve to be nurtured and strengthened. This does not imply that we have reached or can even anticipate the day of "one world." The nature of man and the character of his institutions and interests will always preserve a large measure of diversity which international organization and international law will have to recognize and, indeed, should protect.

If in some respects the United Nations Charter and the organization that it brought into being are too far advanced for the present state of world community, it must also be borne in mind that the sheer necessity for some machinery to preserve peace and security could not have justified the creation of any organization less highly developed. The nature of the challenge and the gravity of the world questions to be handled require that constitutional and functional advances must be made which correspond at least in some measure to
the need. In addition, it is not uncommon in the organic growth of society that institutions and the instruments of action within them, representing an advance over public opinion, may in fact contribute heavily to general public enlightenment and to growing public support for those very institutions and methods.

There are those who would go farther with the application of this formula and would insist upon world government as an absolute necessity in a world divided by archaic concepts of sovereignty, nationalistic and ideological difference, and threatened by thermonuclear destruction.7 Without evaluating the merits of such a supernational organization, we may limit ourselves to the observation that the nations represented at San Francisco brought into being an organization which represented not only the maximum obtainable at that time, but probably more than could be obtained from the governments today or in the near future. Furthermore, the Charter and institutions of the United Nations have demonstrated a capacity for organic evolution toward more effective forms of action at a pace fully as rapid as governments and public opinion can be brought to accept them.

The evolution in practice of its peace-keeping and peace-restoring functions may serve as an example both of the adaptability to political circumstance and of the capacity for growth of the United Nations as at present constituted.

The Charter is a treaty, binding together its members as an association of sovereign states, pledged to conform to its high purposes, and bound to act for their attainment through the machinery and processes provided for.8 The overriding purpose of the Charter is to maintain international peace and security, and to this end the organization is empowered to employ processes of mediation, conciliation, and pacific settlement, and to promote friendly relations among its members. While the organization itself is to be a center for harmonizing the relations of nations to each other, members are enjoined under article 33 to employ pacific means of their own choice to settle disputes before bringing the matter to the United Nations; and article 51 limits the scope of the use of force on the part of its members to the right of self-defense in response to an armed attack.

Primary responsibility for the maintenance of peace and security is vested in the Security Council, and within that Council the per-

manent members have a special status and responsibility. Unanimity is required of the permanent members of the Council in implementation of the enforcement provisions of chapter 7 of the Charter. Efforts in this direction failed because of the deeply divisive effects of the cold war. Consequently, the heavy and detailed responsibilities laid upon the Military Staff Committee for the planning and organization of contingents from the armed services of members to be used in the preservation of peace have become, at least for the present, a dead letter. 9

These developments have forced adjustments in the manner in which the United Nations functions in the vital field of peace-keeping. Happily, the vacuum produced by the failure of the great powers to exercise their responsibilities under the enforcement provisions of the Charter has been partially filled by the responsibilities assumed by the middle and smaller powers. One or more of the great powers has combined with a number of the smaller powers in the cooperative efforts reflected in the peace-restoring efforts in the Korean, Suez, and Congo crises.

In the first of these, the Korean crisis, a great power—the United States—was designated officially by the Security Council as the United Nations Command responsible for the direction of the forces repelling the North Korean attack upon South Korea. The United Kingdom and more than a dozen other members provided contingents for this action. The Suez and Congo crises reflect further departures in the relation of the great powers to the quasi-military aspects of the action taken.

It was Mr. Hammarskjold's conviction that well-formulated principles should accompany political action, and he had a genius for formulating them. Concurrently with the planning, organization, and dispatch of the United Nations Emergency Force (UNEF) to its posts of duty in Egypt at the time of the Suez crisis, he developed a set of principles covering the status and functioning of the Force which came to be accepted by the whole membership of the United Nations, and established the accepted legal framework within which this novel creation in peace-keeping could function. 10 Since two great powers were involved in the Suez fighting, there was ready and universal acceptance of Mr. Hammarskjold's view that contingents making up UNEF should not include contingents from any of the great powers. Further, the stationing of a Force on the territory of a sovereign state, member of the United Nations, required the consent of that member.

This consent was all the more necessary because the action taken in the Suez crisis was taken under chapter 6, not chapter 7 of the Charter, and by the General Assembly, not the Security Council, since the General Assembly has no enforcement powers under the Charter and the Security Council’s enforcement powers are limited to action under chapter 7. Since the Force was set up on the basis of principles reflected in the constitution of the United Nations itself, its commanding officer had to be appointed by and be responsible to the United Nations, with his authority so defined as to make him fully independent of the policies or control of any one nation. The responsibilities of the Force were exclusively international in character. Its task was to preserve calm, to stand between the forces of the host country and the withdrawing forces of the invading countries, and finally, to maintain the peace along the Israeli-Egyptian armistice demarcation line. The Force was defined as para-military in character; it was in no sense a military force exercising through force of arms even temporary control over the territory in which it was stationed. It was to have neither military nor political objectives, nor was it to be used as a political weapon to influence political decisions. Political and diplomatic decisions were to be achieved independently and on a different level. Finally, the continuing presence of its members on the soil of the host state required formal agreement with that state, covering numerous legal and practical questions.

The regulations for the Force affirmed its international character as a subsidiary organ of the General Assembly, whose duration would be determined by the needs of the emergency and whose task and legal basis could be defined only by the Assembly.

Mr. Hammarskjold rightly assumed that this definition of the legal principles regarding the Force would contribute not only to its smooth functioning and its acceptance by the host state and other member states, but also to the recognition of its value as a peacekeeping mechanism with significance for future use.

The experience of UNEF and the principles laid down by the Secretary General and approved by the Assembly proved invaluable in the establishment of a similar force in the Congo (ONUC). The requirement of consent was covered by the initial urgent request of the Central Government of the Congo for United Nations assistance in restoring law and order. But from that point on there were many variations in the setting and the task of ONUC as compared with those of UNEF. In the Suez there was direct military conflict between members of the United Nations. In the Congo there was a need of

11 Ibid.
restoring internal law and order. But since the chaos in this mineral-rich country attracted external and rival ideological forces, the restoration of law and order was logically related to the maintenance of international peace and security. The Secretary General persistently emphasized this fact and the Security Council endorsed it, thus making it the basis of action in the Congo. The consistent lines of principle laid down for action in the Congo, similar to those for UNEF, were subjected in their application to heavy strain because of the serious and confused character of the internal crisis, its often bizarre manifestations, and its serious prolongation. In the paramilitary character of the Congo force, its mission was essentially peaceful, and its methods well calculated to preserve law and order. For this purpose, freedom of movement was a necessity from the beginning, if forces were to be properly deployed to points of tension. The safeguarding of freedom of movement has sometimes involved ONUC in measures rather more military and controversial in character, but these incidents have obscured the more persistent, prolonged, and conscientious efforts to maintain freedom of movement by peaceful means as a prerequisite to the preservation of law and order. Apart from the legitimate right of ONUC to use force in self-defense, the Security Council, in its resolution of February 21, 1961, also introduced a major departure in the peaceful character of the force by authorizing the use of force by ONUC in putting an end to civil war.

Continued inability to implement the Charter provisions for military contingents, the significant role played by specially devised UN forces in Korea, the Suez, and the Congo, and recognition that future crises are likely to occur in which the use of military or paramilitary UN forces may help preserve or restore peace, have led to widespread support for proposals for a standby United Nations force. If it is implied that such a force should be composed of units drawn from the armed services of member governments and held together at a central training point until such time as their services are needed in the field, several objections arise. First, in the present financial plight of the United Nations such a plan would be too expensive. The financial resources necessary for its support would be even more difficult to secure than those for the present operating forces in the field. Secondly, due regard has to be paid to the nationality of units brought together to deal with each new situation. It would be embarrassing,

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perhaps deeply so, if certain national units of a standing force had to be excluded from service in the field.

It is possible, however, for the United Nations to proceed along another far more economical, as well as more effective, line in preparation of a force for future emergencies. What is needed is the establishment at headquarters of a small corps—approximately 25—senior, intermediate, and junior officers of the type required by United Nations service in the field. This group—joined in their work by a few selected members of the Secretariat—would engage in a thorough assessment of all aspects of the operation of UNEF and ONUC. The experience with ONUC is replete with many excellent chapters of brilliant improvisation. Yet more thorough study of the problems involved and the procedures that might be used would increase the efficiency and the effectiveness of such a force in the future. Problems of transport to the area where the force is serving and of transport within the area, the question of communications, problems of procurement, supply, administration, and personnel, general headquarters practices and procedures, problems of command, training, instructions, and orders are among the subjects worthy of study and advance planning. The problem is not alone one of mechanics; there are numerous legal, political, and even psychological problems that need to be understood by the officers and the men of the United Nations force. It is not an easy task for units drawn directly from national armies to comprehend readily the special status and posture of a United Nations force in the field. A further problem, particularly in the Congo, has been the need of deepening the understanding by the Congolese of the function and role exercised by ONUC. Manuals, documents, and papers should be produced by this group as directives and informational and instructional aids covering all predictable aspects of an operation.

A further and very vital feature of this plan would be the initiative of a number of governments of the smaller powers in designating small units of their armed forces for continuous training for ultimate service in a United Nations force in the field.

The Scandinavian countries—Sweden, Norway, and Denmark—have already started such training programs within each of their armed services. Effective interchange of experience and continuous contact between the headquarters group and the earmarked units in member countries should be maintained. In consultation and agreement with the Secretary General, practical methods of coordinated effort could be worked out, aimed at the maximum readiness for service of such units in the field.
At the time that a new emergency arose requiring a United Nations force, a majority—perhaps four-fifths—of the officers in training at headquarters would go to the field to constitute the core of the general headquarters staff. This would meet a most important need which has never been met with perfect satisfaction in ONUC.

This plan would have the advantage of efficiency, as response to headquarters direction has sometimes been slow; it would have the advantage of responsiveness, since both the headquarters staff and units in the field would be more keenly aware of United Nations requirements and policies as guides in the determination of their own conduct and in the issuance and implementation of orders. It would have the advantage of increased effectiveness, not only in the tightly coordinated effort of the force flowing from intensive and common training, but also in the vital area of understanding by the local population of the purposes of the force and of the standards to which the force adheres. Thus, while assuring a greater all-around effectiveness in its constitutional, legal, political, and practical aspects, such planning for the future needs of the United Nations in this field could be carried on with maximum economy. Furthermore, the presence of training programs within the armed services of a number of member countries would have many derived advantages in increasing the support of these countries for this type of United Nations action.

This whole area of past and potential United Nations peacekeeping activity is rich in the development and need of principles with relevance to the field of law. The strength and effectiveness of such activity is greater when the main principles are elaborated as responses to great and obvious needs and are kept within the framework of valid legal concepts.

We have seen how this has applied to the United Nations' peacekeeping forces in the Middle East and the Congo. It applies also to the manner in which the principal organs of the UN are used for the same purpose.

The cold war and related political tensions existing in the world from the beginning of the United Nations and surrounding its work, together with excessive use of the veto, have led to a changed balance of function as between the Security Council and the General Assembly. After the beginning of the Korean experience in 1950, it was feared that the Security Council, because of use of the veto, would not be able to deal resolutely and promptly with a threat to peace. This led to the adoption of the Uniting for Peace Resolution. The Resolu-
tion established procedures for calling an emergency special session of the General Assembly to pick up a task where the Security Council had dropped it because of the veto. Initiative in calling an emergency special session could be taken on request of any seven members of the Security Council or of the majority of the members of the United Nations. This resolution, as Mr. Hammarskjold pointed out, did not change the constitutional character of the organization. While the Security Council has the primary responsibility for the maintenance of peace and security, it does not have exclusive responsibility. That responsibility may be shared, under the Charter, by the General Assembly to the extent of the Assembly’s more limited powers of recommendation.

If the Assembly is to preserve its effectiveness in the exercise of its important role, it should act within its constitutional framework and competence, and employ effective procedures for negotiation and the settlement of disputes which are in accord with its constitutional limitations. Respect for such limitations gives strength to its often highly effective methods of negotiation and implementation.

The door should always be left open to the increased use of the Security Council. At least four of the important resolutions relating to the Congo were those adopted by the Security Council. If the possibility of Charter revision should some day become a reality, the size of the Council as well as other organs should be increased to take into account the enlarged membership of the United Nations. In addition, the areas of the application of the rule of unanimity should be somewhat reduced. It is a question, for example, as to whether the rule of unanimity should be used in the admission of new members. Nearly one-half of the vetoes exercised have related to that question.

Dag Hammarskjold never abandoned his hope that article 28, paragraph 2, of the Charter, which provides for periodic meetings of the Security Council at the ministerial level, might be implemented. He saw this as a potentially valuable addition to the instruments available for efforts at peaceful settlement and reconciliations. Some sixty foreign ministers now attend the early part of each session of the General Assembly. This attests not only to the importance attached to the work of the United Nations by the governments, but also to the value these ministers have found in the opportunity to participate in formal and informal diplomatic discussion and even negotiation on questions of concern, whether they are on the formal UN agenda or not. This development gives added weight to the desirability of

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periodic foreign ministers' meetings of the Security Council where specific issues might be aired, or more general measures aimed at the easing of tensions might be discussed in private as well as in public.

The question of the relationship of the Security Council and the General Assembly played a vital role in the thinking of the judges of the International Court of Justice in the recent case of the legal status of the financial assessments in support of UNEF and ONUC. President Winiarski defined that relationship in rigid terms. He stated:

The intention of those who drafted . . . [the Charter] was clearly to abandon the possibility of useful action rather than to sacrifice the balance of carefully established fields of competence, as can be seen, for example, in the case of the voting in the Security Council. It is only by such procedures, which were clearly defined, that the United Nations can seek to achieve its purposes. It may be that the United Nations is sometimes not in a position to undertake action which would be useful for the maintenance of international peace and security or for one or another of the purposes indicated in Article I of the Charter, but that is the way in which the Organization was conceived and brought into being.

The majority of the court, as well as the overwhelming majority of the membership of the United Nations as a whole, however, does not agree with this interpretation. In their support of the Uniting for Peace Resolution and of the subsequent actions taken by the Assembly in pursuance of it, the members demonstrated their belief that the Assembly is competent, although within a more limited framework of constitutional authority than the Council, to consider and act upon problems which are a threat to the peace. In the limited case of the advisory opinion referred to, the majority of the court stated that "the provisions of the Charter which distribute functions and powers to the Security Council and to the General Assembly, give no support to the view that such distribution excludes from the powers of the General Assembly the power to provide for the financing of measures designed to maintain peace and security."

To some extent, the vacuum theory can be said to apply to the relationship of the Security Council and the General Assembly. If the Security Council fails in the discharge of its responsibilities, the Assembly has not only the right but the moral obligation in the over-


19 Id. at 154.
riding interest of the organization to act toward filling the vacuum within the limits of its constitutional authority. Mr. Hammarskjold carried the vacuum theory one step further in applying it to his own office when he said that, if in a crisis both the principal organs of the United Nations and the methods of traditional diplomacy were to fail, he would regard it as his obligation as Secretary General to intervene in the interest of preserving peace even without the guidance of decisions by the organs or specific provisions of the Charter.20

Another cluster of important developments in the legal interpretation of the Charter and in the practical work of the United Nations gravitates around article 2, paragraph 7, which states that "nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state." 21 The strict interpretation of this article has been most elaborately defended by South Africa in denying the right of the United Nations to concern itself with the question of apartheid and the treatment of people of Indian origin in South Africa. It is of interest that in the course of debate in San Francisco the word "essentially" was introduced before the words "within the domestic jurisdiction" as an amendment late in the discussions as a way of discouraging too narrow an interpretation of the clause. Those who oppose the strict construction of article 2, paragraph 7 generally emphasize that this article has to be read in conjunction with other articles of the Charter, especially article 1, paragraph 3, article 13, 1b, article 55c, article 73, and article 76c, all of which refer to human rights and fundamental freedoms.22 These provisions have relevance not only to peoples in trust and nonself-governing territories, but to human beings everywhere. The majority in the United Nations has generally sought implementation of these human rights articles as against a minority basing itself on strict interpretation of the domestic jurisdiction clause. Many delegations, including that of the United States, have generally taken the line that the domestic jurisdiction clause of the Charter does not override article 10, which empowers the General Assembly to discuss any question or any matter within the scope of the present Charter. The articles just referred to extend competence for the promotion of human rights and fundamental freedoms to four organs of the United Nations—the General Assembly,

20 Dag Hammarskjold, op. cit. supra note 16, at 150.


the Economic and Social Council, the Trusteeship Council, and the Committee on Nonself-governing Territories.

The Universal Declaration of Human Rights sidesteps the difficulty by its very nature. While representing a detailed elaboration of human rights in many fields, applicable to individuals anywhere and everywhere, it is not a covenant with the legal force of a treaty. The effectiveness of the Declaration depends upon the support of public opinion and upon the voluntary action of governments and courts. For example, some of the constitutions of the newly independent nations have written respect for the Declaration into their provisions, and courts in many countries have rendered decisions invoking provisions of the Declaration.

These and many other developments, particularly in the vital field of the control of atomic energy, have had an impact on the concept of sovereignty. Philip Jessup in the early years of the United Nations stated:

The development of the organization of the international community suggests the ultimate possibility of substituting some kind of joint sovereignty, the supremacy of the common will, for the old single state sovereignty. The official proposals of the United States with reference to the international control of atomic energy rests on an altered attitude toward the fiction of sovereignty. Mr. Baruch, in his presentation of these proposals to the United Nations Commission, declared that the peoples of the democracies "are unwilling to be fobbed off by mouthings about narrow sovereignty . . ." But in the same Commission the Soviet representative declared that the "principle of sovereignty is one of the cornerstones on which the United Nations structure is built; if this were touched the whole existence and future of the United Nations would be threatened." 23

Jessup rightly concluded that the path to progress may be long and thorny. At the least there are continuing evidences that sovereignty, once providing a sacred envelopment of the rights of states, now in a world of interdependence and of extensive forms of international cooperation, as well as of threats of nuclear destruction, expresses itself more and more in terms of the responsibility of states. 24

Article 13 of the Charter imposes upon the General Assembly the duty to "initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its

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23 Jessup, op. cit. supra note 2, at 13.
24 See Bourguin, L'ÉTAT SOUVERAIN ET L'ORGANIZATION INTERNATIONALE 10-46 (1959); Schenner, THE UNITED NATIONS, TEN YEARS' LEGAL PROGRESS (1956); Virally, op. cit. supra note 9, at 103-12.
codification." To this end the International Law Commission was established—a Commission which has produced a number of valued studies, some of which have in turn been used in conferences like those on the law of the sea and diplomatic practices. At its last session, the General Assembly, acting on reports of the Commission, set up two subcommittees on state responsibility and the succession of states and governments. It requested the Commission to study further the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations, and took further steps in support of the international conference soon to be held to consider the question of consular relations. The scope of international legal topics is so great and the value of their study so relevant to the strengthening of the Rule of Law in the world community as to warrant a substantial lengthening of the sessions of the Commission. It is also to be hoped that governments having members on the Commission would more uniformly give attention to the genuine competence of their nominees.

This session of the Assembly also debated at length an item entitled "Consideration of principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations," and placed the item once more on the provisional agenda of the next (18th) session. The halting efforts of the last few years in establishing the Rule of Law for the use of outer space may now be followed by more concerted and effective action. In any case, the resolution adopted by this past session of the Assembly was comprehensive both in the outline of the substantive objectives to be pursued and in the establishment of guidelines for the widest possible international cooperation in achieving effective results. No genuine successes have yet been yielded by years of intensive negotiations on disarmament and nuclear control. However, the issues have been further clarified and there has been some advance in the definition of the character and types of controls.

Dag Hammarskjold believed that greater efforts to strengthen international law were essential to progress toward peace and world community, and he frequently regretted the relative weakness of the judiciary and the law in the conduct of international affairs. What

25 See generally FELLER, op. cit. supra note 6, at 130-38; GROSS, op. cit. supra note 21, at 116-22; LARSON, THE INTERNATIONAL RULE OF LAW—A REPORT TO THE COMMITTEE ON RESEARCH FOR PEACE 3-111 (1961); Hyde & Seligman, comment in LEGAL INSTITUTIONS, op. cit. supra note 5, at 208-48.

26 See generally OUTER SPACE—PROSPECTS FOR MAN AND SOCIETY (Bloomfield ed. 1962); JESSUP & TAUBENFELD, CONTROLS FOR OUTER SPACE (1959).

he had to say on this subject in the introduction to his annual report in 1955 remains relevant to the situation as it is today and deserves to be quoted:

If the system of international law remains insufficiently developed, there are many ways in which this situation may be progressively corrected. The beginnings of a "common law" of the United Nations, based on the Charter, are now apparent; its steady growth will contribute to stability and orderliness. Advisory opinions of the International Court of Justice have added substantially to the law of the United Nations; their more frequent use should be encouraged. In appropriate cases, arbitral proceedings may usefully be employed in connection with controversies on legal points; the use of such proceedings would tend both to facilitate immediate solutions and to further the long-range goal of strengthening the authority of law. The systematic examination within the United Nations of the practice of States can bring to light areas of agreement and divergence in the law and stimulate efforts to seek a reconciliation of opposing views.

To some extent, this process is taking place through the work of the International Law Commission and through the adoption of conventions by the Economic and Social Council and the General Assembly. It is apparent, however, that the resources devoted to these purposes have been far from adequate, and it is important that Member States and the United Nations as a whole should give renewed consideration to the task. It may well be that each Government should constitute a specialized group of highly qualified jurists, either within or outside the Government, to carry on the work on a national level, and thus to facilitate well-informed and considered decisions by the responsible governmental authorities. Within the United Nations, similarly, there is room for making better use of the machinery and improving the procedures for the development of international law.

The more frequent submission by the Member States of their legal disputes to the International Court of Justice is essential to progress in this direction. It is apparent that there are a number of controversies between governments which continue to be sources of tension but which are suitable, in whole or in part, for judicial settlement through the Court. Only half the Member States have so far accepted the compulsory jurisdiction of the Court, under Article 35, paragraph 2, of the Statute. To those States which have not yet accepted the compulsory jurisdiction of the Court, I draw attention to the resolution of the General Assembly of 1947 calling for such acceptance, and propose again that these
States should give favorable consideration to this recommendation. The Court has fully demonstrated that it merits their confidence...  

Unhappily, the status of the court, both with respect to its use by governments and its jurisdiction, has not yet improved. However, an important chapter has been added to the development of the legal order in the world community during the last decade in relation to the office of the Secretary General, and in particular to the manner in which Dag Hammarskjold discharged his responsibilities. While the full story of the manner in which he looked at his office and discharged his responsibilities is a rich and inviting topic, I shall limit myself here to his concept of the role of law in the discharge of his duties. His family background and training developed and matured his interest in law. His accession to the post of Secretary General provided him with what he justly regarded as a fertile field for the development of law. His mind played nimbly and profoundly over the subtleties of legal logic, and there was hardly an area in United Nations activity that did not provide him an opportunity for the formulation of principles which, in their application and acceptance, might become a part of the body of customary law. Sometimes even the more nebulous fields provided him with the greatest challenge, particularly if these had relevance to genuine human progress.

He was frequently described as a man imbued with law. His contributions in this field gave him a personal satisfaction, at least equal to if not greater than those arising from successes in the diplomatic field, since he felt that enduring and solid progress toward a stable peace rested on the increasing acceptance of the Rule of Law. He referred frequently to the processes of law and the principles of justice as twin requirements for averting disaster and for achieving a stable and decent international order.

The fields of law, diplomacy, and politics were all relevant to his task. Diplomacy by necessity was a central pivot of his daily work. In this field he demonstrated a resourcefulness which repeatedly broke through impasses and established the basis for new efforts at solution. His adroitness and flexibility, which always took into account the political realities of a situation, seemed at times superficially to be at variance with his firm adherence to legal concepts. But closer observation revealed how he combined these diplomatic techniques with

30 See generally Dag Hammarskjold, op. cit. supra note 16, at 251-60.
a profound faith in the relevance of long-established or newly formulated legal principles to the solution of most issues. It was in the interplay of diplomacy and law that his greatest mastery was demonstrated and that his working techniques became a highly perfected art.

He utilized to the full the Charter concept of the exclusively international responsibility of the Secretary General, the universal applicability of the principles of the Charter to the whole of the membership, and the value of accepted principles of international law. All of these became important instruments in his diplomacy of reconciliation. He was aware that he was nurturing an organic growth in society, not designing an ideal pattern. But he was also always aware of the ultimate goals and of the importance of maintaining a clear sense of direction. By applying or inventing wrong principles for reasons of political expediency one might give the whole course of development a push in the wrong direction and end up in chaos instead of a stronger world order. On the other hand, a succession of diplomatic successes which expressed and reflected a genuine evolution and development of principles of law would contribute to building up a body of international "common law" essential to strengthening the capacity of the world community to proceed along the pathway of order and justice.31

This was the great contribution of Dag Hammarskjold as Secretary General to the "Rule of Law in the world community." It is to be hoped that governments, the legal profession, and international officials alike will pursue with equal vision, integrity, and political sagacity the efforts that are so much needed to strengthen the scope and influence of law in the many other aspects of international affairs and organization.