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A PERSONAL PERSPECTIVE ON INTERNATIONAL LAW

Ralph Zacklin

In the early 1960s, while a doctoral student at the Graduate Institute of International Studies in Geneva, I was recruited to work as a research assistant by the Carnegie Endowment for International Peace. The project on which I worked for the next three years was the *Manual of Public International Law* edited by Max Sørensen, Professor of International and Constitutional Law at Aarhus University in Denmark, and published by Macmillan in London and St Martin's Press in New York in 1968.

The development of international law had been a major objective and concern of the Carnegie Endowment when established in 1911, reflecting a turn of the century conviction that the rule of law is as basic to a peaceful international community as it is to a peaceful national society. This was the period between the Hague Peace Conferences of 1899 and 1907 and the outbreak of war in 1914.

The decision to underwrite the publication of the *Manual* in 1963 coincided with one of those cyclical upturns in interest in international law which recur from time to time. The Trustees of the Carnegie Endowment, even though the development of international law was a stated objective of their trust, were themselves not immune from these cyclical trends.

The 1960s seemed to be the ideal time to return to the development of international law and the Carnegie Endowment believed that it had a particular niche to fill. The Cold War seemed to be waning, or at least there were signs of a thaw in relations between East and West, and the decolonization of Africa and Asia had resulted in large numbers of new member States in the United Nations whose presumed attachment to international law and international institutions was seen as ushering in a new era of international law.

The idea underlying the Sørensen *Manual* was to capitalize on this perceived new era by preparing and publishing a treatise on public international law written from an international rather than a national perspective. The authors were to be from different regions and different legal systems, representative of the new dispensation of the community of nations: East–West, North–South. While each contributor would be assigned individual topics, the final edited text would represent the collective views of the group as a whole. The *Manual* was successfully completed and published in 1968. It was made available in a paperback edition for students world-wide. Within five years the Carnegie Endowment changed course and abandoned its interest in international law and international institutions, surrendering its pre-eminent place among foundations and NGOs in the field, and eventually moving its headquarters from New York to Washington DC.

This recollection demonstrates both the strength and weakness of international law. On the one hand there is its enduring appeal which draws governments, international institutions, foundations, civil society, academies, and individuals time and again to the notion of an international community under the rule of law; on the other hand

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there is the widely held view among many segments of society that international law is honoured more in its breach than its observance and especially when major national interests are at stake.

I have been privileged to work for almost thirty years as an international lawyer in the United Nations and from this vantage point international law is neither the omnipotent solution to the world's problems nor is it an illusion that only die-hard pacifists cling to. It is, in fact, for the practitioner a very real and pragmatic discipline. That it may be uncertain, incomplete, and difficult to enforce does not lessen the need for the rule of law on the international plane nor does it mean that the efforts to codify the law and develop its institutions should cease or be diminished.

At the core of contemporary international law is the Charter of the United Nations. It is a tribute to its drafters in the San Francisco Conference that this instrument has retained its essential validity as a set of fundamental principles which have guided the community of States for more than fifty years. It is the basis for the development of much of international law as we know it today in such key areas as human rights, the environment, and the law of the sea and outer space, not to mention the vast array of multilateral treaties in numerous technical, economic, and scientific areas.

International law provides a common legal vocabulary within which States and other actors operate. It provides a framework for conceptions of what is 'legal' or 'right'. For the author personally, the most striking lesson of the last thirty years is not the quantitative qualitative development of international law which has been substantial but the degree to which States have come to accept the existence of international law as a standard that must be observed or by which their actions must be justified.

The debate taking place at the present time regarding the content of the rule of self-defence as enshrined in Article 51 of the Charter is not, to my mind, a demonstration of the irrelevance of the Charter. Rather, it is a demonstration that even the most powerful state feels the need to justify its actions in law in order to secure international legitimacy.

There is another dimension to international law which is sometimes overlooked in an era of globalization. International law, however inchoate it may be, represents the expectations and claims of substantial segments of humanity. It cannot be dismissed merely because of its perceived weakness. This dimension is of particular relevance to the member States of the United Nations, the overwhelming majority of whom rely on international law-making processes in international forums to weave together the fabric of the rule of law.

This accounts for the persistence of the United Nations in the holding of major conferences or summits—much derided in some quarters—which have produced soft law Declarations on the environment, human rights, advancement of women and a panoply of economic and social rights. These fora move from agenda-setting gradually towards normative outcomes and have undeniably altered the international legal landscape over the past twenty-five years.

Law, whether domestic or international, is by nature a conservative discipline. Its evolution is slow, even laborious. International law is not, nor should it be, viewed as an ideal state in which harmony prevails. Like any other system of law, its rules and institutions mature over time. When one compares the international law of today with that of a mere three decades ago, one cannot but marvel at the advances that have

been made both normatively and institutionally. The path of advancement is by no means uneventful but it continues.

I have been fortunate in my own career to have had the opportunity to contribute to significant developments in international law, such as the establishment of ad hoc criminal tribunals for Yugoslavia and Rwanda as well as, more recently, the Special Court in Sierra Leone. Over the years I have provided legal advice which has helped to shape much of the contemporary law of UN peace-keeping and, like many of my colleagues, have rejoiced in the completion of UN mandates which have resulted in the independence of countries such as Namibia and Timor-Leste. There have also been tragic failures in Rwanda, Bosnia, and Somalia.

At the outset of my career I was motivated like many young people of the time by an idealistic determination to make the world a safer and a better place. Over the years my idealism has certainly been tested, but I believe that the role and impact of international law has grown, and it continues to grow.

The present work to which I have been asked to contribute this short prefatory reflection bears testimony to my conviction. In many ways it completes a professional and intellectual circle that is as harmonious for me personally as is the ultimate aspiration of international law itself.