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A Century of World Law- Prologue

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Prologue

SIR PERCY SPENDER*

The vast tragedy and untold sorrow of two world wars within the space of a little over thirty years has failed to banish the scourge of war. One terrible conflict was hardly over before another engulfed the world. Each was followed by solemn resolutions to save succeeding generations from another disaster.

The high-minded words that gave birth to the League of Nations vanished rapidly into the mists of history, the ideals of its founders soon frustrated by certain states bent upon conquest whose people responded only too willingly to the beat of the drums of war and the megalomaniacal rantings of their leaders falsely pointing the path to some dim and distant glory. It is but two decades since the guns of the last world war were stilled, when the leaders of vast millions of people sought to erect upon the ruins of conflict the foundations of permanent international peace based upon the principles of justice and international law and to this purpose created the United Nations.

It is true that, during this period of twenty years, we have avoided another holocaust; for this the United Nations has been greatly responsible. We have more than once, however, hovered perilously close to the brink. The same or similar ingredients which make up the broth of war appear plentifully available in only too many parts of the world.

Has mankind really learned to live in peace? Has it yet learned the appalling folly of war? It would be unwise to believe so. We live in constant, though not always apparent, danger of another frightful catastrophe, a danger which demands of all men and women of goodwill throughout the world to do whatever lies within their power, however little it may seem to be, to make every effort to build a better society in which the nations of the world may live in peace under the rule of law — a world in which, as the Charter of the United Nations contemplates, all disputes and situations which threaten peace shall be resolved by peaceful means.

It is, however, a sad commentary upon our time that, despite article 2(3)(4) of the Charter, which provides that all member states of the United Nations shall settle their international disputes

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by peaceful means in such a manner that international peace and security and justice are not endangered and shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, we have, in the short life of the United Nations, witnessed, as we still witness, these solemn Charter obligations often ignored.

Are then nations yet prepared to submit to the rule of law? Are nations, even when what is so loosely called "their vital interests" are not involved and merely "political interests" may be said to be engaged, yet prepared to submit their disputes to third-party adjudication? Some certainly are, but the answer, so far as the majority of states is concerned, must, I regret to say, be in the negative.

It will be recalled that, when the Charter of the United Nations was being drafted, there was strong pressure within the Committee of Jurists, which assisted in the drafting, to make compulsory the submission of disputes to the International Court of Justice. This failed to obtain support on the political level. Agreement so to do was not forthcoming then, nor would it be to-day, whether or not some other tribunal or tribunals were substituted for the present Court with wider or different powers from those accorded that Court. In general terms it may be said that political leaders to-day are no more disposed than they were twenty years ago to surrender freedom of political action to the discipline of the rule of law. The real reasons why this is so, whatever may be those publicly advanced, are primarily political.

There is no logical reason why mankind, in terms of its own preservation, should not be able to design mechanisms capable of resolving effectively all disputes and situations likely to endanger world peace. The task of so doing remains one to which all who are devoted to the cause of peace, not only lawyers, must constantly give their attention and efforts. Mankind must, in the end, agree to live by and submit to the rule of law, or else be submerged in a disaster so mammoth as to render puny even the indescribable destruction and human suffering of the last two world wars. The devising of the necessary mechanisms for the proper functioning of the rule of law, important though this task is, will, however, not be enough.

Even if, as some advocate, there were established, together with a World Court, a number of different regional or specialized international tribunals spanning the world, with, possibly, a World Court as the ultimate tribunal of appeal; even if international courts

were entitled to decide cases not necessarily in accordance with international law but *ex aequo et bono*; and even if the procedural processes could be streamlined by conferring upon agreed tribunals effective power to compel parties to disputes — should this be practically possible — to present their cases with proper despatch, much as these and similar proposals might improve the climate for peaceful settlement, facilitate recourse to the relevant tribunals, and provide the means to outlaw war, there will yet remain the stubborn problem of persuading political leaders of states to accept the arbitrament of law.

The rule of law predicates acceptance of the application of the law pronounced by the appropriate tribunal. It would not be prudent to assume, because in such cases as states have submitted to international arbitrament there has been a good record of acceptance by the unsuccessful state of the decision rendered, that the way to the establishment of international peace by the discipline of law is open or that states will willingly submit their disputes to the discipline of law if only we are able to provide acceptable means of recourse to a tribunal or other organs.

It is, as well, over optimistic to believe that, if only the law to be applied can be improved, all will be well and states will enthusiastically embrace third-party arbitrament. To widen and improve the body of international law, and the mechanisms for its application, is of first-class importance. This, however, is but the beginning of a long road. There is no dispute, no situation imperilling peace which cannot be handled through accepted means of third-party adjudication, certainly none which cannot be rendered less difficult of resolution by the discipline of law.

A great service in the cause of peace is rendered by the distinguished writers to this symposium. We should all feel indebted to them for their informed and valuable contributions. There is, happily, a steadily growing force of world opinion, to which lawyers have greatly contributed, that all wars must be outlawed. Perhaps in a world opinion which is strong and articulate, properly organized and developed, and which demands that all political leaders forsake the instruments of power politics and settle differences between states peacefully by agreed processes lies the ultimate hope that the fear of the scourge of war may be removed from mankind.

We live in an imperfect world and mankind moves tardily, indeed almost carelessly, towards its own salvation.

For those of us who believe in the rule of law and the part it

could play in the establishment and maintenance of world peace and security, the call is for greater, not less, effort. We would, however, if our efforts are to bear the fruits they deserve, be wise not to underestimate the task confronting us.

Permit me to recall and repeat what I had to say in 1965 at the Washington World Conference on World Peace Through Law:

It will be many years, I fear, before the rule of law is accepted as an integral part of international society. We must, however, struggle onwards, no matter how difficult or how long the struggle may be, to bring about world peace through law. We will be confronted by many obstacles and great frustration as we go along. But the cause is so great that, whatever the effort and time required, whatever the trials and frustrations, we must never despair, because in this, and this alone, lies the salvation of mankind.