

Book Review

The Growth of World Law.

By Percy E. Corbett. Princeton: Princeton University Press. 1971.
205 pp. \$7.50

Reviewed by A. J. G. Priest

Dr. Percy E. Corbett, who possesses few peers among international lawyers, has written a brief history of mankind's faltering progress, largely in this century, toward decency and order. It is lucid, enlightened and enlightening, scholarly and good reading. Professor Corbett's title, "The Growth of World Law," implies that there has been forward movement and he justifies his belief. Utopians and idealists generally have been impatient with stumbling and with frequent retrogression, and they may not accept all of Professor Corbett's conclusions; but they have much to learn from his informed realism, his warm, if tempered, optimism.

Professor Corbett's work belongs in the libraries of all diplomats, down to the consular level, throughout the world, and it also is required reading for every serious student of international law and for practicing lawyers, from senior partners to new-fledged associates, whose clients function across those melancholy delimitations called national boundaries. His excellent volume will be a model for like efforts through many years.

Development of law in a world which has not yet attained community, even in this perilous nuclear era, is traced from the earliest Mesopotamian civilization through (a) the Delian League which saved Athens and her allies, but could not develop a sense of community strong enough "to overcome the short-sighted particularism which has been the time-honored accompaniment of political organization"; (b) the strong but essentially sanctionless influence of the Church in the Middle Ages; and (c) the attempts of scholars to grapple with international problems "against appalling odds" to (d) the grim realities which confront the United Nations in our own time.

Among philosophers quoted are Arnold Toynbee, who sees universal brotherhood "moving from the range of the possible to that of the probable" and one Reinhold Niebuhr, who prophesies that "the chaos of in-

ternational relations cannot be overcome by any system of 'collective security' " and that man is "finally unmanageable." How disappointingly agreeable Niebuhr will find Hell when he arrives!

Professor Corbett observes that the World Peace Through World Law conferences held at Athens and elsewhere under the auspices of the American Bar Association, might have been expected to pay some tribute to the "expertly elaborated" plans of Grenville Clark and Louis Sohn in "World Peace Through World Law," but adds that the doubts of Mr. Eberhard P. Deutsch and many of his associates are "justified." He says, "Soviet abhorrence of everything implying a reduction of the sovereignty of the USSR is fully shared by present-day France; and who can say how far the United States and the United Kingdom are prepared to go in subordinating themselves to supranational authority?"

After examining the rights and wrongs of the Cuban missile crisis, Professor Corbett says that the doctrine which makes the power of the state, as a separate entity "the supreme consideration in international relations" still prevails. Yet he adds, "But it would be far from wholesome to accept this condition of affairs as an immutable feature of civilization. In the circumstances now surrounding us, to do so would be to abandon hope for the future of man."

The author pays tribute to the Permanent Court of International Justice and the present International Court of Justice as "major steps in development of a world legal system," saying that these tribunals have adjudicated a number of disputes. He notes, however, that the optional acceptance of jurisdiction is a "profound inferiority as compared with national courts." Inclusion in multilateral conventions of a clause requiring submission to the World Court of disputes as to meaning and application is called "a highly constructive practice." Professor Corbett speaks in the best traditions of his profession when he says that "general submission to adjudication "may be the least remote of the changes needed to strengthen the world rule of law." He adds:

A judicial hierarchy of regional and universal courts with compulsory jurisdiction would substitute regularity and consistency for the haphazard operation of existing institutions. There is no other definite way of clearing up uncertainties in the law whether *before or after* codification.

Public international law, both before and after 1945, is examined in some detail. Systematic formulation came largely in Europe, where the Greek stoics made human community a concept that was transmitted to medieval Christendom, only to be submerged by the tragic assumption that there is no human authority superior to the amoral nation-state. Professor

Corbett pays tribute to the Geneva Convention of 1864, which established the Red Cross, and to gatherings at The Hague which made modest progress, but suffered from the general belief that war was a "permanent social institution," a "natural and inevitable expression of human nature."

The author says that the Covenant of the League of Nations "could not quite yet 'outlaw' war," but that emphasis began to be placed on the prevention of war rather than its regulation, and that there were certain achievements, notably the prohibition of gas warfare and the temporary limitation placed on battleship tonnage. The necessity for reducing national armaments was recognized, but the League of Nations failed to bring about agreement "upon either the necessary abstract rules" for a general disarmament "or the structure for their enforcement." Professor Corbett notes that "these same problems still, after a Second World War and two more decades of arm's-length negotiations, defy solution." The nuclear-non-proliferation and partial-test-ban treaties seem to hold out some hope, however, and current disarmament negotiations between the USA and the USSR somehow may prove fruitful.

Many failures for which one or more of the major powers were recurrently responsible are listed as gravely discouraging, but various secondary conventions achieved under League of Nations auspices are enumerated, and the League is praised as having "laid the groundwork of method and experience" on which the UN has been able to build.

Professor Corbett contends that apology and metaphor can be dispensed with if "we are content to regard the international normative order as a world legal system in the making rather than one already made, where the recourse to violent self-help has not been decisively limited by the combination of accepted formal definition and collective control that now characterizes municipal law."

He says, in this context, that some writers have fatalistically concluded that "man has reached, in the sovereign state, the limit of his political potentialities"; that they become scornful when they analyze man's "stumbling, ambivalent essays in supranational organization and legislation." Then the lash is applied, but not so harshly as to draw blood: "In this they display a lack of perspective no less real than that of the hurried idealists whose visions they deprecate."

Professor Corbett says that Communist writers take most pride in the slogans known as the "Five Principles of Peaceful Coexistence" which purport to renounce war and contemplate equality and trust among states, non-intervention, strict respect for sovereignty, and economic and cultural cooperation. The author suggests that the effective implementation of these

principles "would solve all the problems of world politics," but that "their proclamation solves none" and he points to instances, among others, of grave intervention in the affairs of other states by the USSR and the USA.

The vexed question of recognition is discussed fully. Professor Corbett observes that a convention drawn by the International Law Commission should lay down "the firm principle that any community established in independent control of territory with a good prospect of permanency and with the will and ability" to perform its international obligations is a state and must be treated as such. He castigates the "pantomime we are forced to witness when the title to govern is left to the subjective appreciation of individual states."

In his examination of the 1958 conventions which have made progress toward codifying the Law of the Sea, Professor Corbett deplors the failure of major powers to ratify one or more of these conventions. This warning is sounded: "Clearly the absence of an agreed limit to the marginal belt of sea in which a riparian state has full sovereignty, subject to the right of innocent passage, leaves room for dangerous disputes." The agonies of our fishermen in South American waters, and the explosive issues which may arise out of explorations for oil and gas in the continental shelf adjoining South Vietnam, will serve as examples.

Progress and retrogression in world organization are developed lucidly. Disappointment characterized the earlier years of the nineteenth century, and even the faltering efforts which followed World War I. The Hague Conventions of 1899 and 1907, which set up an elaborate code of arbitral procedure, and the Covenant of the League of Nations itself did no more than provide for machinery of settlement "that could be used if governments felt so disposed." The record of the League as a peace-keeping agency is called "a familiar tale of bright hopes, occasional small triumphs, gradual disintegration and final collapse."

But the successor U.N. has greater achievements to its credit, despite the inability of its Security Council to act except by concurrence of its permanent members. The U.N. plainly served the best interests of the planet when it preserved the independence of Iran against a Soviet threat, when it was able to act effectively in Palestine and Kashmir, Lebanon and Jordan, Suez and Congo crises, and when its mediating efforts helped to resolve the potentially disastrous Cuban missile confrontation of 1962. No more than hand-wringing was the U.N.'s response to great-power adventuring in Hungary, Czechoslovakia, Indo-China and the Dominican Republic, and the Security Council made no serious attempt to stop the Arab-Israeli war in 1967. Yet Professor Corbett holds out hope:

Since the dawn of history political communities have been expanding geographically and ethnically. . . . Why the process should stop short with the present constellation of nation states is by no means clear. Indeed, the now constant groping towards larger integration for purposes ranging from security to health and prosperity, impeded as it is by sacrosanct myths and special interest, suggests forces moving men willy-nilly towards universal organization.

There is a great deal more: (a) encouraging regional organizations—the Organization of American States, the Leagues of Arab and African States and especially the European Communities, which Professor Corbett calls “a delicate and uneasy compromise between a federation and a mere association of sovereign states”; (b) threatened nuclear war “which has become intolerably dangerous in the intensified interdependence of a world which has discovered, accumulated and mobilized the means of exterminating the human race”; (c) guerilla warfare; (d) international propaganda which incites to violence; (e) human rights; (f) the “new law merchant” developed under the aegis of the International Chamber of Commerce; (g) the International Labor Organization which Professor Corbett served as a legal adviser; (h) misuse of aid to less-developed countries; and much else. There are pith and substance in the whole volume.

This review is already long enough, but the temptation to single out a few more sparkling sentences cannot be resisted (emphasis the reviewer’s):

1. Critics have deplored the one-nation-one vote rule in the General Assembly, which institutionalizes “a divorce of authority from capacity and contribution. *The same can be said of universal adult suffrage.*”

2. “*The complete subjectivity of interpretation which reigns in the absence of compulsory jurisdiction draws out of law the regularity and predictability which are its purpose.*”

3. International law was not “generally subject to objective interpretation and application. . . . *It was the book of the rules for a game played without umpires.*”

4. “*As for any practical consequence, the [Briand-Kellogg] Pact stands as a monument to the frailty of verbal understandings unsupported by organized power.*”

5. “*But the truth is that governments do not expect much of each other in the way of morals.*”

Professor Corbett would not be challenged if he declared himself to be in the best sense, along with Benjamin Franklin, Thomas Jefferson, Albert Einstein, Mahatma Ghandi, Quincy Wright, Grenville Clark, Albert Schweitzer and Norman Cousins, “a citizen of the world.” He writes engagingly, with the gift of clarity, talent that evokes the trenchant phrase and the grace of humor. The ponderousnesses of lesser scholars is not even within his ken. He has been deeply cherished by colleagues and students at McGill, Yale, Princeton, Virginia and Lehigh, and by the readers of his many books. That process will continue down the years.

THE INTERNATIONAL LAWYER'S CALENDAR

All ABA activities shown in boldface

1971.

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June 7-July 2	Fifteenth Annual Summer Program of the Parker School of Foreign and Comparative Law, Columbia Law School, New York City	Willis L. M. Reese Parker School of Foreign and Compar- ative Law Columbia University 435 W. 116th St. New York, N.Y. 10027
July	International Meeting, National Association of Women Lawyers, London	Mrs. Barbara May 1155 E. 60th St., Chicago, Ill. 60637
July 1-10	Section Meeting of International and Comparative Law Section, ABA, New York	Antonio R. Sarabia, 135 S. LaSalle St., Chicago, Ill. 60603
July 12-16	Section Meetings of International and Comparative Law Section, ABA, London, England	Antonio R. Sarabia, 135 S. LaSalle St., Chicago, Ill. 60603
Sept 5-9	Conference of the Federation of Women Jurists Jerusalem	Charles R. Norberg 1815 H. Street, N.W. Washington, D.C. 20006
Sept 13-17	International Association of Young Lawyers Washington, D.C.	Matthew J. Travers, Jr. 1000 Connecticut Ave. N.W. Washington, D.C. 20036
Oct. 4-8	International Fiscal Ass'n., Annual Congress, Washington, D.C.	Harold S. Sommers, Esq., Sec'y., 280 Park Ave., New York, N.Y. 10017

1972

Aug. 4-11	Section Meetings of International and Comparative Law Section, ABA, San Francisco, California	Antonio R. Sarabia, 135 S. LaSalle St., Chicago, Ill. 60603
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1973

Aug. 3-10	Section Meetings of International and Comparative Law Section, ABA, Washington, D.C.	Antonio R. Sarabia, 135 S. LaSalle St., Chicago, Ill. 60603
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The Section usually meets twice a year—in the summer during the annual meeting of the Association and in the spring in Washington, D.C

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