

May 2020

The Finnish Yearbook of International Law 1991, Vol. 2

W. Paul Gormley

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

W. Paul Gormley, The Finnish Yearbook of International Law 1991, Vol. 2, 22 Denv. J. Int'l L. & Pol'y 545 (1994)(book review).

This Book Review is brought to you for free and open access by Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

The Finnish Yearbook of International Law 1991, Vol. 2.

REVIEWED BY W. PAUL GORMLEY*

THE FINNISH YEARBOOK OF INTERNATIONAL LAW 1991, VOL. 2. Helsinki: Ius Gentium Ry. Acta Societatis Fennicae Iuris Gentium A II, 1991; Pp. viii, 596; \$40.00.

Although it is one of the newest yearbooks of international (and comparative) law, the *Finnish Yearbook* constitutes a major contribution to legal literature. It parallels existing volumes in that the full range of international problems fall within its scope. Yet one of the unique contributions rendered by this most recent series is that a Finnish perspective is, to a significant degree, transmitted to a wider audience. This is not to say that volumes one and two are centered exclusively on Finnish scholarship or to Scandinavian legal issues; rather, a delicate balance between regionalism and internationalism has been struck. For instance, world-renowned scholars have joined the distinguished local academics and practitioners for the purpose of dealing with legal issues facing all of humanity, such as the need to stimulate environmental protection while simultaneously facilitating global development. Other common themes include preservation of water resources, fisheries, human rights; plus economic guarantees, social forces, the future role of international institutions; along with rubrics of traditional law and jurisprudence. Therefore, this huge volume will take its place alongside comparable volumes.

Eight major studies — that are in reality lengthy monographs — constitute the bulk of the text. Supplemented by shorter articles and comments that also render significant insights (plus a well chosen section of documents and reports dealing with Finland's International relations, including summaries of case law and appropriate treaty instruments), the Finnish perspective is dealt with in terms of contemporary international jurisprudence. This approach can be seen in the opening study by M. Fitzmaurice, entitled "New Developments in the Legal Regime of the Baltic Sea Fisheries." Following a review of geographical factors and ecological considerations, the Gdansk Convention is discussed from a law making perspective as the first phase leading toward the common fisheries policy of the European Union (EU). Delicate considerations had to be harmonized as a result of the EC accession to the Gdansk Convention and the introduction of the common

* A.B. San Jose State University; M.A. University of Southern California; Ph.D. University of Denver; J.D., LL.M. George Washington University; M.Int.-Comp.L., D.Jur. Free University of Brussels; LL.D. Victoria University of Manchester. Member of the District of Columbia and United States Supreme Court bars. Formerly, Leverhulme and Simon Fellows, University of Manchester, England.

fisheries policy, with the transfer of competence by EU member states to Brussels. The important factor is the extensive conservation measures that currently protect the Baltic Sea, especially its fishery resources, by the EU and the International Baltic Sea Fisheries Commission (IBSFC). This evolution was complicated by the unification of Germany and the inclusion of the East into the EU sphere. This trend of regionalism is being advanced by the IBSFC in its closer cooperation with the International Baltic Environmental Protection Commission. These recent developments should be closely monitored.

The second essay, "Restriction on Military Activities in the Baltic Sea — A Basis for a Legal Regime?" by Marja Lehto, logically follows. The legal rules imposed on warships necessarily affect the ecology of the region, along with the protection of fish stocks and, in fact, all life in the Baltic. Here, then, the force of customary law becomes involved with the United Nations' Law of the Sea Convention (LOSC), as these bodies of law regulate the innocent passage of warships and over-flight aircraft. In this instance, attention is placed on the exercise of power when coastal states seek to enforce their legal rights, pursuant to special regimes that are permitted by the LOSC. Furthermore, national legislation is applied by littoral states. In addition to the Scandinavian countries, the former Soviet Union imposed severe regulations on foreign vessels. For instance, notification was required prior to passage. Thus, a large corpus of military legislation and treaty law have become applicable. The as yet unresolved conflict concerns the relationship between these unilateral military restrictions, placed upon the use of the sea, with the "new" spirit of Baltic regionalism that should include a Nordic nuclear-weapon-free zone. There is obviously a need for stability within enclosed seas.

The third contribution, "Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others," by Katri Silfveberg, is a lengthy monograph that deals with an entire rubric of law, originating from the illegal traffic in persons. Attempts have been made by the League of Nations and currently by the United Nations, the Council of Europe, and the Nordic Council to control transboundary prostitution and traffic in persons, and even indentured slavery. However, the purpose of the study is to evaluate the modern approach, namely to place the protection of women and children within the orbit of human rights. This class — women and children — is the most helpless against the horrors of warfare, natural and man-made disasters, and sheer exploitation in defiance of national and international law. The author demonstrates how human rights law is emerging with regard to both limited, municipal rights, as well as universal guarantees. Special emphasis is placed on the protection of children by multi-national and international organizations. Also included is the newer topic of traffic in human organs and tissues, to the detriment of peoples in the developing countries. However, the thrust of this study is placed upon prostitution: its control and eventual elimination.

The numerous treaties and conventions and their sponsors are analyzed in considerable detail. These include the League of Nations, the United Nations, the Council of Europe, ECOSOC, and regional institutions. The valuable contributions of non-governmental bodies in furthering these programs are also accorded full attention.

The evolution of rights that are applicable to human beings generally, and women, children, handicapped persons, tortured individuals, prisoners of war, civilians in occupied territories, and classes of minorities specifically, has already achieved notable success. Nonetheless, the study concludes with a plea on behalf of those persons and groups still held in bondage and who are continually suffering.

Professor L.C. Green carries forward the examination of criminal justice in his study entitled "The Intersection of Human Rights and International Law." Professor Green explains how jurisconsults created traditional law, and the development of the field of international criminal law ensued. Accordingly, Professor Green employs a textual analysis to illustrate the manner in which this newer rubric is evolving from the classical norm of piracy, as interpreted by the Permanent Court of International Justice. Considerable attention is focused on those classical writers who set the foundation for newer, universal human guarantees, possibly encompassing humanitarian intervention, in appropriate circumstances. Indeed, he examines the opposing positions in considerable detail. Moreover, the scope of the inquiry is enlarged to encompass crimes that are committed against civilian populations in wartime or during occupation.

The essay does not have a set of conclusions; instead the technique selected is to indicate the weaknesses in contemporary law. Regrettably, on two occasions he slights the legal force of the Universal Declaration of Human Rights by stating that it "is nothing but a Resolution of the General Assembly and, as such, [is] devoid of any intrinsic legal authority," and that "the Declaration is a mere Resolution of the Assembly and therefore lacking in legal force." On the positive side, his approach leads up to a proposal that an international criminal court be established that would have jurisdiction to try offenders. Such jurisdiction would arise from a surrender of national sovereignty to the tribunal, presuming that states shall first agree on the nature of those human rights to be protected at the global level. Alternatively, if such agreement is lacking, national law must be modified in order to enable municipal courts to act against perpetrators. "In the absence of an international criminal court the only way that there can be a real intersection of human rights and international criminal law is by a universal codification indicating those human rights, the breach of which is to be considered criminal *jure gentium* and *erga omnes* granting every party the right to try."

The discussion of criminal law continues with Dr. Barry Feinstein's detailed chapter entitled "The Interception of Civilian Ves-

sels at Sea in the Fight Against Terrorism: Legal Aspects — An Israeli View." This discussion carries forward some of the issues examined by other contributors. In dealing with global issues, such as the law of the high seas and the nationality of vessels in terms of the law of the flag state, Feinstein is well aware of the rules governing innocent passage through territorial waters.

This review stresses that a logical and scientific approach should be adopted, relative to legal precedent; the study is even-handed when dealing with recognized exceptions, namely the duty of states to prevent hostile acts from taking place within their territories. Thus, an absolute duty is imposed on sovereign states. From this premise the author's main thesis emerges: the freedom of the high seas can become subject to the unilateral exercise of national jurisdiction in clearly recognized circumstances to freedom of navigation, primarily national defense, and also actions that endanger the integrity of coastal states.

At this juncture, the exceptions of terrorism and hostile acts directed against a specified territory give rise to the right of the coastal sovereign to board and search vessels, in contravention of the right to "innocent passage." In the instance of terrorism, a universal jurisdiction may be applied. Similar rights exist concerning the seizure of aircraft, especially those that have been hijacked. From this perspective, a full examination of previous seizures of vessels on the high seas, applicable conventions, and resulting case law are analyzed. Complete discussions of such events as the Cuban Missile Crisis, the Falkland Islands, and Algeria are employed to advance his thesis of acceptable unilateral action.

Naturally, Feinstein recognizes that this "right of self-defense" is not unlimited and must, henceforth, be exercised with considerable caution, even though the security of the state seems to be compromised by a particular set of circumstances. On the other hand, "the target State . . . will not sit idly by and allow the potential terrorist aggressors to retain the advantages of a buildup of resources and to be used ultimately against and to injure that State or its citizens. It is beyond doubt, then, that such a foreign vessel, even while sailing the high seas, will be the object of interception by the endangered State."

Notwithstanding the logical and forceful theses defended, this subject matter is far from settled; many additional controversies will arise in the future, when the competing rights of sovereign states necessarily come into conflict.

In the fifth study, "Self-Determination: An Overview of History and Present State With Emphasis on the CSCE Process," Juha Salo comes to grips with a topic of conflict that is present in every major area of the globe. In an article of nearly one-hundred pages, the author traces the historical roots of the concept, springing from President Wilson's Fourteen Points up to the present time. The author's specific

purpose is to determine "whether the CSCE process has added to the meaning of the concept." Indeed, a huge corpus of precedent exists, applicable to political and legal norms, particularly in the post-World War II period. Beginning with the common Article I of both United Nations Human Rights Covenants, self-determination arises as a human right, largely as the result of action within the United Nations. In fact, as a phase of the new international economic order, political and civil self-determination are being "extended" to include such approaches as economic self-determination. This extended focus of the norm will attract considerable attention in the future, notwithstanding its controversial nature, owing to the reaction within the United Nations General Assembly against economic colonialism.

A number of unique legal issues arise, as for example the place of self-determination within the orbit of human rights. To illustrate, it is being argued, with some justification, that "the realization of the right of self-determination has been claimed to constitute a necessary precondition for the enjoyment of all other human rights." Such issues as the rights of minorities and humanitarian intervention are ever-present, for these disputes have still to be resolved because of the distinction between peoples and minorities.

An even more troublesome issue is the possible imposition of *jus cogens* — a peremptory norm of international law — to self-determination. Salo quite correctly concludes that while applicable in the political realm, when applied by the U.N. organs, "self-determination does not fit very easily into the category of *jus cogens*." It cannot be included within this category.

The final portion of the study, Part III, is directed to the CSCE process. The thrust of the work returns to a European and Finnish viewpoint. From this context, it is helpful to recall that it was a 1969 Finnish initiative that led to negotiations relative to security and cooperation in Europe. These negotiations led to the signing of the Final Act at Helsinki.

The CSCE process, which remains closely tied to Helsinki, was followed by successive conferences in Belgrade, Madrid, and Vienna that proved somewhat less than encouraging. On the other hand, the availability of this forum may ultimately prove to be of considerable value, at such time as Europe and the United States seek to aid Eastern Europe. The potential of the CSCE process must not be minimized. Admittedly, there is some question whether the CSCE can deal with these issues — including the deterioration of Yugoslavia — so clearly recognized.

Self-determination is set forth in Principle VIII; however, the mention of territorial integrity seems to set some limits on the exercise of this principle. The author reviews the lengthy process of negotiation, begun at the Geneva Preparatory Meeting, during 1973 to 1975. A

number of rubrics, such as peoples and minorities, are discussed by several of the contributors and the conclusion reached is that minorities are not accorded a right of succession by the Final Act. Nonetheless, these issues continued to be discussed at the follow-up conferences in Belgrade, but no additional rights were granted to minorities — nor was self-determination strengthened. Claims for independence are still being pressed by minorities in European states. An example is the Baltic region.

Despite pressing political and legal controversy, the concept of self-determination remains ambiguous. As a result, each case must be decided on its own merits. Hopefully, certain guidelines will be perfected, since some degree of certainty in law and practice is required. "There are signs that such guidelines may be attainable, and their desirability has become apparent within the CSCE. But it must not be forgotten that every situation has its special features, and thus no all-embracing, universal formula can be given," in spite of the Helsinki Final Act.

"Recent Developments in the Work of the International Court of Justice," by Professor Ruth Donner, sheds considerable insight into the current case-load of the ICJ and the precise legal questions at issue. At the beginning of June, 1991, eleven contentious cases were pending before the court; additional cases are being filed. Accordingly, it is valid to conclude that the ICJ is assuming a greater role in the relations between states. Hopefully, the United Nations Decade for International Law has some relevance in promoting the peaceful settlement of disputes.

Professor Donner divides her text into three main sections. First, there is the new trust fund administered by the U.N. Secretary-General. This fund is designed to assist poorer states in their resolution of disputes through the utilization of the International Court of Justice, which in reality also supports the parent United Nations in maintaining peace and security. Here, then, financial support is provided in those instances in which disputes are submitted by means of a special agreement or the execution of a judgment resulting from such special agreement. Conversely, the fund does not provide financial support for proceedings based on compulsory jurisdiction. The reviewer submits that this unduly limits the aid that can be provided to lesser developed countries. On the other hand, the court's jurisdiction is not placed in contention. Though narrow in scope, these measures for assistance may stimulate the use of special agreements.

In a departure from the all too numerous cases from the 1970s and 1980s, in which respondent states refused to appear in the Hague and defend their positions, there are no pending cases wherein states are refusing to enter an appearance. Though there are still challenges to the court's jurisdiction by means of preliminary objections, when compulsory jurisdiction is invoked, the huge majority of cases are sub-

mitted by mutual consent. Yet, the possible utilization of the preliminary objection remains a source of difficulty. As such, Professor Donner reviews the various means by which compulsory jurisdiction can be obtained. Under present conditions, the main sources are to be found in treaties and conventions, pursuant to article 36(1) of the court's statute.

The court must determine in which instances states may be permitted to intervene in a pending case. Specifically, a great deal of discretion lies with the judges, but it is exercised sparingly. In fact, the first instance in which a state was permitted to intervene occurred in the 1990 Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application by Nicaragua for Permission to Intervene, (1990 I.C.J. 92). Professor Donner's extended analysis continues with a review of the employment of chambers, for the reason that it has become the newest and possibly the most effective source of the court's competence.

There remains the issue of interim measures of protection; it is one of the most difficult and challenging measures of relief that can be granted, because of the fact that an extremely high (possibly excessively severe) standard of proof is demanded by the judges.

The Case Concerning Passage Through the Great Belt, Request for the Indication of Provisional Measures (Finland v. Denmark) (Order of 29 July 1991, 1991 I.C.J. 12; this order is also abstracted in the documents section of the Yearbook at 559-90) was discontinued on September 3, 1992, pursuant to a friendly settlement between the parties. Yet its precedent will remain significant, as part of the ICJ's jurisprudence.

Professor Maurice N. Andem deals with pressing problems that are being intensified by the new international economic order (NIEO) in his study "International Law as an Evolutionary and Dynamic Legal System — With Special Reference to the New International Economic Order." Professor Andem seeks to detect solutions to adverse situations that have been building up for the past several centuries. In rejecting selected norms from classical international law (e.g., the use of force and colonialism), he attempts to support the evolving world order, concluding "that significantly greater progress has been made in the development of contemporary international law during the last four decades of this century than in previous centuries." Not only have greater numbers of peoples become independent, but there is a growing awareness of the need for economic cooperation. Yet, despite experiments in bilateral and multilateral cooperation at the regional level, there is a definite need for the establishment of a NIEO. Moreover, considerable attention is devoted to substantiating this thesis, which is based on the lack of consent on the part of former colonies at the time of the formation of the United Nations and related agreements, such as the Bretton Woods system, the IMF, World Bank, and GATT. Be-

yond question, the historical discussion — including his analysis of appropriate resolutions of the U.N. General Assembly — sheds needed insight into the current North/South crisis. A significant portion of his reasoning necessarily depends on the legal force of resolutions of the U.N. General Assembly and other institutions. Henceforth, resolutions and declarations in appropriate situations, “particularly in politically and economically sensitive areas of contemporary international relations, should be recognized both in theory and practice as having binding force on all the member states of the UN.” He concludes that “it is imperative to recognize some aspects of the law making functions of the UN system.” Accordingly, he quite properly maintains “that resolutions, decisions and declarations adopted by its principle organs (the General Assembly and Security Council) will play a major role in the implementation of the New International Economic Order.” Fundamental to any advanced economic system, precise recommendations (e.g., model laws), a total commitment, and the active participation of all states, institutions, and peoples will be required, for the purpose of perfecting new legal solutions that can deal with ongoing relations between states and economic blocs.

Following these major contributions, a section of shorter articles and notes is offered. Special notice should be taken of Professor Raimo Lahti's “Life's Beginnings: Law and Moral Dilemmas,” in which he attempts to detect how human dignity and integrity can be protected by moral reasoning, i.e. structural reasoning. The goal is legal regulation based on harmonization of rules.

Johanna Jalas presents an excellent insight into global migration, a difficulty confronting all industrialized states, in “Immigration Into the European Community — the Community in Need of a Common Policy.” Although devoting the scope of the study to the European Union, the author is well aware of the impact caused by the migration from the former Eastern Bloc.

Given this situation, the unique regime perfected by the European Union — currently being strengthened by the Single European Act and the Maastricht Treaty - is now confronted by extreme pressure as the free movement of persons and the right of establishment come into play, particularly as to nationals of non-member states. Obviously, measures have been taken, as for example the Community Charter of the Fundamental Social Rights of Workers, the Convention on Asylum, the External Bonds Convention, and the Schengen Convention, that represent stages leading toward a common immigration policy. The goal, for humanitarian and economic reasons, is the integration of foreign workers. Consequently, the Maastricht Treaty on Political Union may prove to be a significant stride forward in the realization of a common immigration policy, that may serve as inspiration for other regional groupings and the international sphere.

The volume concludes with a carefully selected section of docu-

ments with appropriate commentary. "The Restoration of the Independence of Estonia, 1991" is especially useful, as are the documents devoted to seizures of aircraft during 1990 in the Soviet Union. As shown above, the Request for the Indication of Provisional Measures in the Case Concerning Passage Through the Great Belt is reproduced.

In sum, these studies and current documents are a welcome addition to existing yearbooks. In the present instance, the Finnish Yearbooks constitute a permanent contribution that will not become outdated. These fundamental legal issues, explored at length, will remain relevant and timely. Hopefully this review has demonstrated that a Finnish perspective is extremely helpful to practitioners and scholars, even though the contributors demonstrated an international perspective. The contributors all seek global solutions based on a peaceful world order, pursuant to their unyielding respect for humankind.

