

WORLD ORDER: CONSTITUTIONAL FRAMEWORKS

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IN dealing with the problem of the constitutional frameworks of world order, it is advisable to clarify first the interdisciplinary location of the problem.

The issue is one which belongs to the field of the academic discipline of International Legislation. The problem is not one which is primarily a lawyer's problem (*lex lata*), but one of the law in the making or law to be (*lex ferenda*). It is one of social planning or social engineering.

This will explain why no lawyer has any particular claim to be consulted on such matters in a professional capacity. He can, however, assist policy-makers in two ways in which he can make use of his particular training. First, more clearly than non-lawyers, he may see the legal and constitutional implications of proposals for change (*primary criticism*). Secondly, he ought to be able to work out without undue difficulties the legal details of proposals *de lege ferenda* or criticise such proposals on the basis of the major assumptions made by any particular policy-maker.

There are a number of patterns from which decision-makers may take their choice. Before dealing with these, it is probably advisable to study exactly the major assumption on which concern *de lege ferenda* with any such patterns is based. This is dissatisfaction with the present state of world organisation, semi-organisation or anarchy. Such an attitude may be due to discontent with the position of the 'veto-Powers' in the Security Council of the United Nations, the purely optional character of the pacific settlement of international disputes, the lack of adequate provision for organised peaceful change, the imperfections of the machinery of collective security in the United Nations, the lack of provision for the limitation of armaments and disarmament or the weaknesses of the existing economic world organisation.

Assuming that this situation requires more or less drastic changes, the available patterns of reform can be classified under six major headings: (1) The United Nations Reform Model, (2) the One-Way Model, (3) the Good-Faith Model, (4) the Bad-Faith Model, (5) the Federal Model and (6) the Regional Model.

It must suffice to provide a few illustrations of primary criticism of each of these models.

(1) *The United Nations Reform Model.* The most drastic and comprehensive blueprint under this heading is Clark-Sohn's *World Peace through World Law*. This is instructive; for, on closer scrutiny, it becomes apparent that the realisation of this programme really presupposes the transformation of the United Nations into a world federation.

In other words, the issue is whether this – like any other – proposal *de lege ferenda* is necessary, acceptable and realistic. Like a long line of predecessors, the Clark-Sohn scheme certainly proves one thing. If it is desired, it is always possible, and not unduly difficult, to devise the requisite machinery for any type of international or supranational organisation.

(2) *The One-Way Model.* Under this heading fall attempts to solve the problem of international anarchy by advance on one of several fronts. All these proposals have in common one feature; they attempt to provide one single cure for all the world's evils.

For instance, there is a plethora of proposals for the 'compulsory' or more comprehensive automatic settlement of all international disputes by judicial or quasi-judicial international organs.

The real problems posed by these proposals are of the first order. In the first place, it has to be settled on which basis (law, morality or expediency) such issues are to be solved. Secondly, it has to be ascertained whether States, and which States, are willing to grant so wide a discretion to any third party.

It may also be mentioned that some of those in favour of such proposals probably have illusions about the certainty of international law. They also may be unaware of the fact that the border line between legal and non-legal disputes is rather subjective. It is true that, potentially, every political dispute is a legal dispute. This implies, however, that the converse proposition is equally true. It is that it entirely depends on the parties to any dispute whether they wish to solve it on the level of law, morality or expediency or not at all.

It is similar with proposals for an international police force. It is relatively easy to devise a command structure and satisfactory draft regulations on the manifold technical issues connected with its creation and maintenance. The crux of the matter is, however, to settle who is to give the orders to the police force to go into action. If this is left with political organs, we are faced again with all the deficiencies – and reasons for such deficiencies – of

organs such as the Security Council of the United Nations. If the matter is settled by reference to the device of standing orders, this merely means leaving political decisions with the General in charge of such a force. Yet, to entrust political decisions to the military, is probably the worst of all possible solutions.

Another panacea would be to proceed towards the goal of world order through disarmament. If the history of the evolution of law inside civilised communities is any guide, it is clear that disarmament is the consequence of the establishment of a strong central order with overriding power. In the international field, the present-day high level of armaments and the cosmic rearmament race proceeding in front of our eyes are evidence of the insecurity which exists in contemporary world society. This is the reason why conferences on disarmament, as distinct from conferences on the limitation of armaments on the basis of the present distribution of power, are predestined to be disappointing; for, in the absence of an overriding central order, disarmament can be only the consequence of existing confidence in an equilibrium between security and peaceful change that has already been attained.

(3) *The Good-Faith Model*. This model relies on the pledged word of States. It means accepting the signature and ratification of treaties and hoping for the best. The trouble with this model is that world history is littered with broken promises and treaties of non-aggression and eternal peace which have culminated in major wars.

In a politically and ideologically divided world, bills and covenants of Human Rights on a universalist level are further typical illustrations of this approach to the reform of international relations and organisation. The reason why, on a global level, there are bound to be failures in treaty observance is that they lack the necessary sanctions machinery, without which they are hardly different in kind from any other set of ethical propositions. As Plato stated in *The Laws*, most of us are inclined to abide most of the time by most laws. The essence of law, however, is to be effective when, occasionally, any of us may be tempted to stray beyond this border line.

This relation between the onerous character of certain legal norms and a correspondingly more pressing need for stronger sanctions behind the law, also explains why, in the relations between *homogeneous* States in one and the same world camp, it is so much easier for conventions on human rights to be effective. In the relations between such States, such commitments are largely declara-

tory of attitudes which are typical inside such communities. All that is needed to watch in a treaty such as the European Convention on Human Rights, are marginal contingencies when parties tend to fall short of standards which, on the whole, they are prepared to accept.

(4) *The Bad-Faith Model*. In this model it is taken for granted that the danger of a breach of an international commitment exists. Thus, provision is made for an array of sanctions which may range from diplomatic sanctions to economic and military sanctions.

The war between Italy and Ethiopia and the sanctions experiment against Rhodesia illustrate the lesson that the real issue is much more fundamental than advocates of the Bad-Faith pattern are likely to assume. It is the question of what will happen if limited sanctions of any type happen to prove ineffective.

Within the State this problem is solved because the physical force at the disposal of the State is so overwhelming that, normally, no need exists to evoke this ultimate means of pressure; for everybody concerned knows that resistance would be hopeless. Yet if, as in race riots in the United States of America and widespread terrorism in Ulster or, from time to time, in some of the new States as in the Lebanon, this order does break down, we are faced with a situation of semi-anarchy, not so different from that in international relations. If even within the State, the government is occasionally too weak to prevent a breakdown of the law, then it is even less likely that this pattern will be successful on a universal level.

(5) *The Federal Model*. In the abstract, this model solves effectively a good many of the issues which experience proves cannot adequately be coped with on a confederate level.

There are two variations of the federal model. The first is the model of territorial federation as it has been realised in the United States, Canada, Australia or post-1919 Germany. The second is that of functional federation as it has been attained in the supranational Communities of Western Europe. The two models merely differ in their starting point. Whereas in the territorial type of federation foreign policy and defence are unified, in the functional type of federation the process of unification commences in the economic or financial field. In either case, the end envisaged is the minimum of unity and subjection to majority rule that is required to achieve the common end, whether this lies in the political, military or economic field.

In a world in which more than half of mankind lives under author-

itarian or totalitarian governments and below the subsistence level, in which more than half of mankind consists of non-white populations, and in which more than half of mankind are not monotheistic even in name, but believe only in what Thomas Hobbes termed 'mortal gods', the realisation on a global scale of this model, too, is beset with formidable difficulties.

(6) *The Regional Pattern.* This needs mentioning merely for the sake of completeness. In a world in which any major war is likely to be a world war, this pattern is merely of minor interest in the field which matters most, that is, in that of international peace and security.

CONCLUSIONS

It will be seen from this survey that all the innumerable blueprints for world order that, from time to time, are being advanced are represented by relatively few models and, in substance, are distressingly repetitive.

The easier any of these schemes can be realised, the less it is likely to assist in attaining a true world order. Conversely, the more likely it is to achieve this purpose, the heavier is the price states will be asked to pay in terms of surrender of national sovereignty and cherished ways of life. Whatever the choice may be, specialists in the field of international legislation can safely be relied upon to provide any requisite constitutional moulds. If world order escapes our grasp, it will not be because legal planners have been found wanting.