

THE RULE OF LAW IN ORIENTAL COUNTRIES

Dr. Saba Habachy of Egypt, presiding. (During the discussion of Islamic Law Dr. John C. H. Wu took the chair)

Prof. Rudolf B. Schlesinger of the United States served as Rapporteur Général, and Prof. John N. Hazard of the United States as Secretary.

OPENING REMARKS

The President welcomed the scholars to the colloque, and indicated that he would ask the General Reporter to outline the scope of the problem to be discussed and the Director of Research of the International Association, Dr. Kurt Lipstein of the United Kingdom, to discuss generalities so that the transition might be made between the specific discussion of the problems of Indian law which had occurred at the meeting of the Association in Barcelona in 1956 and the broader discussion to be held in 1957 on the identification of problems in India, the Islamic countries and Japan. China's legal history would be presented also as a vital element to a consideration of the cultural heritage of Japan and some other parts of Asia.

The General Reporter followed with an indication of his concept of the problem facing the colloque. He saw the colloque not as definitional but as exploratory. The first pair of papers do not aim at definition but to bring several strands together to provide an idea of the body of concepts that flow together to formulate the rule of law in Asian societies. The first body of concepts has a technical character, and Dr. Lipstein has been asked to present this body, using

India as an example. The second body consists of concepts which are not technical and not legal but which belong to the realm of values and philosophy and religion. These matters are not irrelevant if it can be shown that they give life and reality to the rule of law. These matters are especially necessary in considering law in Asia because at some times and places these attitudes may have constituted a substitute for a rule of law. Dr. John C. H. Wu's focus is on China, but it is to be hoped that commentators will generalize in the discussion from the Chinese example.

A comparative picture is to be provided thereafter from consideration of certain geographical areas in Asia, and the comparative method will be used at this point. This is imperative, for the colloque is to deal with a process, namely the reception of foreign ideas in Asia, and this process must be comparative. It is also to be hoped that through comparison specialist in one society may gain insights from those who know other societies.

Finally, there is an additional reason for the colloque. It is designed to try to lower the intellectual and institutional barriers between peoples and to seek to find a common denominator in law. Art. 38 of the statute of the International Court of Justice has indicated that such a common denominator exists, for it directs the judges to use in their decisions the general principles of law recognized by civilized nations. International law as a discipline cannot identify these general principles, but they can be found only through the conduct of a search for the common core in the fora of the various nations. Cornell University is now trying to determine whether there are such general principles and whether they can be stated and put in meaningful terms.* There are other ways in which

* The General Reporter had distributed a paper on the Cornell University program to participants in the colloque. It has been printed under the title, "Research on the General Principles of Law Recognized by Civilized Nations". *American Journal of International Law*, Volume 51, page 734 (October, 1957).

the general principles can infiltrate the law, for many codes permit application of general principles, and even without the code directions of this sort there is infiltration in the work of the Conseil d'Etat in France and of the Supreme Court of the United States of America. The question is whether these general principles are to be found by a judge in the *volksgeist* of his court alone or whether they can be derived from the decisions of courts of other countries. Many courts are currently taking the latter broader point of view, and this approach leads not to formality of detail but to some rapprochement between legal systems.

Civilists may say that a finding of general principles may have value in the public law sphere as well, and this is especially possible in Asia, where legal systems are still more malleable. Asians already shown deep respect for the principles on which mankind has built its social structures. A brief session such as that of the colloque can show only the direction in which events are moving, and it is to be hoped that in search for that direction the discussion will transcend detail and seek the common cora.

The floor was given thereafter in succeeding sessions to the authors of the papers presented to the colloque. Following each set of papers discussion was opened by the discussion leaders named in the agenda for the colloque. This discussion has not been made a part of the proceedings. It was summarized by the General Reporter in his concluding remarks.
