

TWO LECTURES ON INTERNATIONAL LAW (*)

by

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I

CURRENT TRENDS IN INTERNATIONAL LAW

I am glad to be here as part of the cooperation between our two Universities of Istanbul and Michigan, which symbolized the cooperation between our two great republics. I feel particularly honored to be asked to speak on law in this city where more than 1400 years ago the law of the ancient Roman world received at the hands of Justinian that authoritative formulation as the *Corpus Juris Civilis* which has so greatly influenced legal thought of the Western World.

Today I shall discuss briefly some of the current trends in international law which to me seem significant. When we look at this legal system of treaties and international custom "accepted as binding" in relations between states, we find it applied in negotiations between foreign offices, in international organizations like the United Nations and the specialized functional agencies, in the International Court of Justice and other international tribunals, in many relations between individuals and foreign states and their agencies, and in controversies before national courts of different states.

(*) Lectures delivered on April 1958, at the Faculty of Law of Istanbul.

Treaties

In this world of international law, the most noticeable phenomenon, even as compared with a generation ago, is the amazing number, variety, and complexity of the international agreements, or treaties, which represent purposeful development of the law and which so largely replace custom in many fields by more clearly defined rules chosen by the parties to meet their needs. Treaties deal with an almost infinite variety of subject-matter. Most of the cases heard by the "World Court" since its creation in 1920, and most of the international legal problems which arise today in legal practice or between foreign offices, involve international agreements. In contrast with the variety of legal instruments such as constitutions, legislation, contracts, corporate charters, and conveyances, for the regulation of life within the modern state, McNair has well described the treaty as "the only and sadly overworked instrument with which international society is equipped for the purpose of carrying out its multifarious transactions."

As the law contained in treaties has become the predominant part of our field, the principles and practices pertaining to the making, effect, application, interpretation, modification and termination of treaties becomes an ever more vital part of international customary law. More and more we depend on the notion of *pacta sunt servanda*; and our gain in clarity of international rules and their suitability to human needs may come at the expense of the habitual conformity to law and tradition which characterizes all customary law. This growth of the written international law, comparable to the great growth of legislation in the internal law of most states during the past 150 years, renders more and more acute the problem of the binding force of a treaty and of the possibilities of termination or modification of treaties which are in force.

We have developed "mechanics" of making treaties which serve our ends quite well. Some treaties are still negotiated and concluded between two countries by diplomats or foreign office officials in traditional and formal style. Alongside them we find increasing use of exchanges of notes and similar informal agreements, and many multilateral treaties. Many of our most important

International agreements of late years have been drafted at international conferences, and were framed out of a series of compromises arrived at by voting. In consequence we see more use of reservations by those who remain unhappy about particular articles, with the resulting uncertainty as to how far such reservations must be accepted by other parties to the treaty if the reserving state is to become a party. With the growth of international organizations and conferences, the question arises whether *resolutions* of such bodies may have more or less international legal effect as agreements between states whose representatives vote in favor of the resolution, even though not expressed in the usual treaty form. With respect to all these problems there is constant need for better draftsmanship of international agreements, and for a wider awareness of the difficulties likely to be encountered and of the means which have been adopted for meeting them with respect to other agreements. More careful and imaginative draftsmanship may also do much to avoid difficulties of treaty interpretation.

The normal requirement of unanimous consent among the parties to an international agreement may be slowly disappearing. In a few modern agreements we see the delegation of subsidiary rule-making power to less formal organs of the parties to the treaty (as in the Halibut Conventions between the United States and Canada, where they agree that fishing regulations adopted by a commission under the treaty shall become effective on approval by the President of the United States and the Governor-General of Canada without need to go through the whole treaty-making process again for each set of annual regulations.). At times states agree in a treaty they will be bound by subsequent changes approved by a specified majority of the parties, even though a particular state may oppose the change (as with amendments to the UN Charter, so far as concerns any but the five states which have the "veto"; or the technical annexes to the 1944 Chicago Civil Aviation Convention, amendments to which become effective for all upon adoption by two-thirds vote of the Council, unless within three months a majority of the parties to the Convention register their disapproval). Such modest beginnings may slowly lead the way toward a more effective international legislative process.

In these matters relating to the conclusion of treaties, technical international legal progress has been considerable, in large part because no state is obligated to enter into a treaty unless it wants to. But where the law comes into conflict with strong state policy difficulties arise. When one state wants to escape the obligations of a treaty into which it has entered or wants to cease performing, but another party or parties to the treaty want it kept in force and demand performance, there is trouble. Thus it is hard to find in modern state practice, accepted as customary law, any very clear answers to the question under what circumstances violation of a treaty by one party permits the other party or parties to terminate unilaterally, or as to the effect of changed conditions upon the continuing validity of a treaty. Careful technical drafting is not enough to care for these situations; the real question is how far those responsible for determining state policies will judge that the general interest in maintaining the sanctity of treaties is superior to the immediate gain they may see in repudiating a burdensome treaty obligation. Here is the most urgent need for more effective and better accepted rules concerning the termination of treaties. In the present state of the customary law on this point, the best hope for progress on it appears to lie in making effective provision for the determination of such cases by impartial international judicial or political bodies rather than in seeking to formulate more precise rules while leaving each party free to be the "judge in its own case".

International organization

The next development I would mention is the tremendous growth of international organization: the establishment of the League of Nations and now the United Nations, and the integration therewith of the old and new specialized functional agencies to deal with everyday international problems of labor, health, agriculture, money, mails, aviation, telecommunication, meteorology, atomic energy, etc. We see as well the growing importance of regional or defense organizations like the North Atlantic Treaty Organization or the Organization of American States. Nor may we lose sight of the effective work of bilateral and local international

organizations such as the International Joint Commission which has dealt so well with boundary water problems between the United States and Canada, or the International Boundary and Water Commission between the United States and Mexico which has built international dams; these might both serve as a useful pattern for international cooperation in water development problems in other regions. This growth of international organization has brought us problems concerning their status internationally and before national authorities, their relations with each other, the legal position of international organization employees, and above all the interpretation and application of the treaties under which they are set up and function. The "constitutional law" of each such organization grows rapidly, and with what may be called "parliamentary diplomacy" their rules of procedure become increasingly important. Most of these legal questions relate to international agreements of one type or another, while much of the work performed by many international organizations likewise takes the form of preparing and administering treaties. Nor should we forget that with such bodies as the European Coal and Steel Community we begin to see what may be called "supra-national" organizations whose rules and agencies operate directly upon individuals as well as upon member states.

Scope and boundaries

Another striking feature of the present scene is the broadening of our field and the obliteration of the boundaries which separate international law from other kinds of law. We see frequent use of such terms as "world law", "transnational law", "international legal studies" and the like. These novel terms may represent in part a desire to use new terminology just to be new, but in a larger measure they are indicative of the realization that international law questions, when viewed by the lawyer in practice either for his government or for his private client, are usually intermixed with the domestic law of two or more countries. Closely related is the increasing importance of international law specialities in which the specialized subject matter becomes a unifying force for international law and national law dealing with a common problem.

International air law, international taxation, international copyright law, and the like, are typical of those fields in which lawyers and government officials tend to think of aviation, taxation and copyright rather than to distinguish between the national and international sources of the rules concerned. In fields like these progress appears relatively rapid if compared with the more traditional international law topics.

Reexamination of old areas

At the same time there is a constant reexamination of old areas of international law and an effort to fit the law better to the present needs. In part this takes the form of trying to find out what actually has been the practice of a much larger number of states than often were taken into account in the past. Particularly with the considerable number of new states which have come on the international scene in the last few years, and the recognition of the increasing influence of Asian and African nations, it is necessary to ascertain just how widespread acceptance exists for some of the rules which have been treated as if they were customary international law. Information collected by the United Nations International Law Commission may here be of great value.

The reexamination also takes the form of discriminating more closely according to differences in fact situations, with the elaboration of more precise rules or the "individualization" of solutions to fit peculiar facts. May I give some examples: At the maritime frontier, we are far more uncertain than many writers were fifty years ago, as to whether international customary law does or does not set the permissible limit of territorial waters at three or four or six or twelve miles. When one examines the evidence of state practice from all over the world, it is difficult to find in it anything more than the conclusion that three miles is the minimum and that claims to more than twelve miles for territorial waters will be generally regarded as violating international law. At the same time, complexity arises from necessary attempts to deal with different aspects of jurisdiction at the maritime frontier in specialized fashion,

with resulting claims to the seabed and subsoil of the continental shelf, to "contiguous zones" for the suppression of smuggling, to defense areas, and conservation zones for fisheries, all asserted on a wide variety of differing justifications adapted to the particular problem and all more or less widely accepted. In the field of sovereign immunity we see similar attempts to differentiate between the types of foreign state activities and property which are entitled to immunity from jurisdiction and those which are not. Concerning expropriation of foreign property and compensation therefor, we find the greatest present interest less in the accepted requirement that compensation must be paid than over the problem of *how much* compensation, and when and in what form payment should be made. In international air law we can no longer accept the simple proposition that each state is completely sovereign over the air space above "as high as the sky"; earth satellites and rockets cause us to ask where the line is drawn between the air space over which it may not be sovereign. This growing complexity and individualization of rules is necessary and proper if international law is to keep up with modern needs, but it comes at the expense of clarity, simplicity and assurance that the supposed international customs are actually "generally accepted as law" by any great number of nations on many of these points.

As the International Court of Justice labored to reach a satisfactory result in the *Anglo-Norwegian Fisheries case* through examination of the peculiar facts, it leaves us uncertain for the future whether Norway could properly draw its baselines for territorial waters far from the actual shore because of the peculiar configuration of the coast, or because of historical claims, or only because both these factors coincided. When the "World Court" thus individualizes in order to do justice in a particular situation, it may discourage future resort to the Court by states unable to predict the result the Court will reach in other cases. We must not wholly forget Hall's caution that "There is no place for the refinements of the courts in the rough jurisprudence of nations." We must certainly avoid the situation caricatured by the English Admiralty Judge, Marriott, who wrote in 1778: "A pedantic man in his closet dictates the law of nations; everybody quotes, and nobody minds him."

The individual

Another striking development is the growing role of the individual in international law. I refer both to the situation in which individuals are fast acquiring international law rights and duties, and to what we might call the "humanizing" of much of international law to deal with problems of direct concern to individuals as such. In many areas we can see a distinction between the growth and effectiveness of the law applied in joint restraint of individuals by states, and the slower and more doubtful development of the rules designed to restrain state action. But I shall have more to say about this in my second lecture.

Law and force

In the international law of war, recent decades have brought the legal prohibition of aggressive war and resort to force, in the League of Nations Covenant, the Pact of Paris of 1928 and the United Nations Charter, applied to individual governmental leaders in the Nürnberg and Tokyo Trials. There has been a renewed interest in the law of war between belligerents as it relates to protection of prisoners of war, the sick and wounded, and civilian internees, and at the same time scepticism as to the value of treaties or rules against those forms of violence believed to be of real military value. One may contrast the support, in the war crimes trials and in new treaties, for rules to prevent such suffering and inhumanity as are "unnecessary" by the military test of what it contributes to winning, with the disregard on both sides during World War II of the 1930 and 1936 treaties restricting submarine warfare and our current doubt as to the value of any treaty in which the parties would merely agree not to use atomic weapons, without making effective provision to forestall and prevent such use. We find general acknowledgement that the customary rules as to belligerent occupation codified in the 1907 Hague Conventions, are not well adapted to modern conditions, especially on the economic side, but a general reluctance to attempt agreed revision. Despite the former importance of the law of neutrality, we now find an almost complete cessation of interest in neutral duties, or

in neutral rights to trade, combined with the belief that in most hostilities likely to arise many nations will (and under the United Nations Charter should) take sides rather than treat the belligerents impartially.

We must recognize that law cannot *force* states in matters of primary political importance, unless there is a sufficiently strong feeling of international political community, including the states concerned on both sides of the controversy. Law cannot bring order when there is not enough common will to keep the peace. Jessup has well said, "Until the world achieves some form of international government in which a collective will takes precedence over the individual will of the sovereign state, the ultimate function of law, which is the elimination of force for the solution of human conflicts, will not be fulfilled." Meanwhile, of course, international law can be, and is, a most useful instrument for giving effect to policies upon which there is common agreement, but it cannot succeed if it gets too far ahead of the actual attitudes and feelings of the states concerned. With our international society what it is, we must think of international law in terms of agreement rather than coercion.

Substitution of agreement for adjudication

In the last decade or so we see considerable de-emphasis of international adjudication, at least as compared with the inter-war period or with earlier hopes. There is less resort to the International Court of Justice and to other international tribunals. Fewer states are willing to undertake the obligations of compulsory jurisdiction. There appears to be a growing preference for non-judicial settlement of international disputes; settlement by international organizations and by the process of negotiation are favored. One may see, perhaps, some domestic analogy in the effort of lawyers to keep their clients out of the courts. And we must remember that the exalted and trusted position of courts internally in most of Europe and America is not shared by courts in all other parts of the world. Whether we like it or not, the emphasis seems to be shifting from the settlement of international disputes by the judicial

application of international law to the specific agreement negotiated within the general formula of the law and expressed in the legal form of a treaty.

Here Brierly, following Schindler, well suggested years ago that "We must expand our interpretation of the term 'international law'. We must cease to think of it as merely a set of principles to be applied by courts of law, and understand that it includes the whole legal organization of international life on the basis of peace and order. Such an organization must provide for the peaceful and orderly use of *political*, as well as judicial, methods of adjustment." Formulation of, and agreement upon, generally applicable rules of international law may be less practicable and less useful than the achievement of orderly solutions to particular problems in view of their peculiar facts. When we contrast the relatively small number of independent states in the world and the enormous factual differences between these states, with the thousands and millions of individuals who live in even a small modern state, we readily see why solutions by *general rules* may be less suitable in controversies between states than within the state.

Conclusions

In these several developments, it seems to me that we see a growing disposition to examine the social purpose of the law, to think of international law as a human tool for human social purposes rather than as something immutable found in the nature of the world or developed by historical processes which are beyond our control. We find a change in the sanction of international law from notions of natural law or worldwide agreement on ethical norms, and in large part the substitution instead of the idea of reciprocal advantage to those who carry out the rules and fear of retaliation for those who do not. We may seem to be placing less reliance on international law, realistically asking and expecting less of it in some situations; but with a "social-engineering approach" we may hope we can better adapt it to our needs when and where it will work, and make it a more useful instrument for social order in the world. We may well agree with what Brierly wrote a generation ago:

"The law of nations is neither a chimera nor a panacea, but just one institution among others which we have at our disposal for the building up of a sane international order. It is foolish to underestimate either the services that it is rendering today, or the need for its improvement and extension."

II

INTERNATIONAL LAW AND THE INDIVIDUAL

When we think of individuals and international law, we are concerned both with the question whether individuals may have rights and duties under international law, and with the way in which international law may affect individuals. (What we say about individuals includes not only human beings, but also corporations and other types of "juristic persons" established under the laws of various countries.) The classical writers on international law in the 16th, 17th and 18th centuries appear, at least sometimes, to have treated individuals as possessing rights under international law and subject to duties or obligations under that law. Then came a hundred years or so in which the theory developed and received general acceptance, that international law saw only states as the "legal persons" to whom it applied; and in most respects practice conformed to this theory. In more recent times, however, practice shows an increasing recognition of the international legal personality of individuals, and theory is beginning to acknowledge its existence. As Jessup well wrote in his *Modern Law of Nations* (1948), exploring the hypothesis that the individual is a subject of international law,

"It is true, as Sir John Fischer Williams has said, 'that it is obvious that international relations are not limited to relations between states.' The function of international law is to provide a legal basis for the orderly management of international relations. The traditional nature of that law was keyed to the actualities of past centuries in which international relations were inter-state relations. The actualities have changed; the law is changing." (p. 15).

Even though the individual may in some situations be treated as a subject of international law, it is important to remember that

he shares in the *making* of international law rules only through his part in the action of states. With the world politically organized as it is, only through state action expressed in agreement or international custom, or possibly through the action of an international authority deriving its competence from states, can rules of international law be laid down which become binding on states or upon individuals.

International law duties of individuals

It has long been held that individuals were capable of violating international law, whether their punishment lay at the hands of state authorities or, more recently, of international courts. Pirates have generally been regarded as committing a crime against the law of nations, for which any state which seizes them may try and punish them. Some writers regard piracy not as a crime against international law, but merely as a special ground for universal jurisdiction to apply national criminal laws. It seems that the more widespread practice, however, accords with Justice Story who said for the United States Supreme Court in 1820:

"The general practice of all nations in punishing all persons, whether natives or foreigners, who have committed this offence against any person whatsoever, with whom they are in amity, is a conclusive proof that the offense is supposed to depend, not upon the particular provisions of any municipal code, but upon the law of nations, both for its definition and punishment." (U. S. v. *Smith*, 5 Wheat. 153, 162.)

It may further be noted that under the United States Constitution, Congress is empowered to "define and punish... offences against the law or nations", and upon occasion has so acted. Similar provisions are not unknown elsewhere.

Even more striking is the accepted principle that individual members of belligerent armed forces are criminally responsible for violations of the international laws of war and may be punished by the enemy authorities who lay hands on them. Whatever one may believe, one way or the other, concerning the charges of "planning, preparation, initiation and waging of wars of aggres-

sion" in the major War Crimes Trials at Nürnberg and Tokyo after World War II, so far as concerns the violations of the international law of war there is general agreement with the declaration by the Nürnberg International Military Tribunal:

"That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized. . . . Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

Nevertheless it does remain true that under most circumstances international responsibility is imposed upon the state as an entity rather than upon individuals whose conduct may violate the standard of international law. Violations of international law by persons in the service of a state have been regarded as wrongs done by that state, and the only means of redress has been through efforts to hold the state internationally responsible (usually to pay damages), through negotiations between the governments concerned or before an international tribunal. But in all this we must not lose sight of Westlake's observation, long ago, that "The duties and rights of States are only the duties and rights of the men who compose them."

International Law Rights of Individuals.

An individual usually lacks procedural capacity to assert rights before an international tribunal which gives rise to doubts whether he has any rights of his own under international law. Ordinarily, only the state of which he is a national may bring suit in an international court (or protest through diplomatic channels) against the state of whose conduct the injured individual complains; and hence the state is usually regarded as having the international law right rather than the individual. If, for such reason as it judges best, the Foreign Office refuses to press the claim, the individual has no legal redress. Since the orthodox theory of state responsibility and international claims is that injury to a national is an injury to his state, when the individual is stateless, or has changed

his nationality after the wrong done to him, he has no international law remedy.

In some ways, however, even present practice treats the international wrong as one done to the injured individual and the international law claim as if it were his. When the international law claim succeeds, the individual usually gets the money collected from the wrong-doing state. He, and his lawyers, may do much of the work of preparing the documents and arguments, and gathering the evidence, and may indeed notably influence the success of the prosecution of the claim even though it is formally made in the name of his state. In practice the claim is often thought about and talked of as the individual's claim. This is especially true when it comes to the appropriate measure of damages, to liability for failure to protect aliens or for failure to prosecute and punish private individuals who have wronged aliens, and to waivers of claims or "Calvo clauses" in which individuals renounce "their" rights; in some of these aspects the results are in closer accord with a recognition of the individual's rights under international law than with the logical consequences of the promise that the only international law right is that of the state and not of the individual. From time to time contracts, especially for concessions, between a state and aliens are thought and spoken of as governed in part by international law.

Indeed, there seems to be no inherent legal reason why individuals may not be given the right to bring actions in their own name and on their behalf before international courts, and in fact this has been allowed in certain exceptional instances. Thus the Convention of 1907 for the establishment of the Central American Court of Justice provided that in addition to taking jurisdiction over controversies between the contracting states, the Court should also hear questions raised by the nationals of one Central American country against any of the other contracting governments, and several such cases were brought and heard by the Court in the decade of its existence. The Mixed Arbitral Tribunals established under the Peace Treaties after World War I to adjudicate various types of claims arising under those treaties were in some instances

open to individuals, who could bring their own claims even when their own states did not wish to do so. The German-Polish Convention relating to Upper Silesia, signed at Geneva May 15, 1922, laid down elaborate rules giving individual rights and provided for resort to the Upper Silesia Arbitral Tribunal by individuals against either Government that was a party to the Convention, even though the plaintiff individual might be a national of the defendant state.

In the drafting of the Italian and Balkan Peace Treaties after World War II, the United States in 1946 proposed that claims for the return of property belonging to Allied nationals or compensation for the destruction of or injury to such property should be treated as international claims belonging to the individuals concerned, who would have the right to prosecute such claims, if need be, on their own behalf before international mixed arbitral tribunals. This proposal was rejected only because of strong Soviet objection to what they considered an affront to the "sovereignty" of a state if it were made a defendant before an international court at the instance of a "non-sovereign" plaintiff.

Even if direct access by individuals to international tribunals was therefore rejected in these peace treaties, their provisions on nationality of claimants recognize that the "United Nations nationals" to whom the treaties gave rights against the former enemy country included persons who were in fact nationals of the defendant country but who during the war had been treated by that country as "enemies".

The recently created but already important Court of Justice of the European Coal and Steel Community is open to individuals (and companies) as well as to states and organs of the Community, the European Economic Community, and EURATOM. Here within limited though vital economic fields, we find individuals having international law rights and enforcing them on their own behalf before an international (or supranational) tribunal.

In some countries there is a strong under-current of belief among international lawyers, particularly those concerned professionally with claims arising out of wrongs done to aliens, that alongside the International Court of Justice we need a system of

convenient and inexpensive international tribunals to which individuals can resort directly when injured by a foreign state. We have, indeed, already had enough experience with the possibilities of individual access to international courts for the protection of their international law rights, so that the notion no longer shocks us, and states and lawyers alike are beginning to weigh the advantages of letting individuals come before international tribunals of one type or another as plaintiffs against foreign states, or perhaps even their own governments.

Furthermore, we must not forget that though nationality is the normal tie with the state, through which the individual benefits from rights under international law, states have by treaty made special provisions for the protection of stateless persons and of refugees. In a very different situation, employees of international organizations are becoming another group of individuals who have rights and duties toward the employing organization under rules which appear to be a part of international law at least in an enlarged sense, and which they can enforce before such agencies as the United Nations Administrative Tribunal.

While international agreements may usually be drafted to give international law rights to one state against another, there is nothing to prevent two or more states, if they so desire, from conferring rights under the treaty directly upon individuals and giving them such means of enforcement as the parties may agree on. In the Advisory Opinion concerning the *Jurisdiction of the Courts of Danzig*, the Permanent Court of International Justice stated in 1928 that,

"the very object of an international agreement, according to the intention of the contracting parties, may be the adoption by the parties of some definite rules creating individuals rights and obligations and enforceable by the national courts..... The intention of the parties... is decisive." (P.C.I.J., ser. B, no. 15, pp. 17-18).

Domestic law determines whether a treaty becomes automatically a part of the municipal law binding upon and applicable in the national courts, or whether action by a national legislative body is necessary to give local effect to the treaty as a rule of law.

While under the British practice such legislation is generally regarded as requisite, under the constitutions of the United States, France, and various other states treaties are applicable in national courts as "the supreme law of the land" without need for legislative action. Many modern treaties thus give to individuals a great variety of rights, privileges and immunities whose source lies in the international agreement by which they are defined and conferred. For examples, we may think of the multitudinous provisions of typical bilateral treaties of commerce and establishment, of consular conventions, of tax treaties, of treaties dealing with navigation and air transport, and the like. Furthermore, in many countries the customary rules of international law are declared by constitutions or held in practice to form part of the local law, and thus rights under customary international law are enforceable by individuals in local courts. In connection with the application within the state of both treaties and customary international law, one may theorize that the source of the right is not international law but a national law rule identical with or patterned after the international rule; but the practical effect is much the same: individuals have and can enforce legal rights in the national courts because of the rules of treaties or customary international law.

International Law Rights against Own State.

Though we may thus see that individuals have rights under international law against foreign states, while often lacking procedural capacity to enforce such rights through international channels; the idea that individuals may have international law rights against their own states may come as more of a shock to our thinking about international law. However there is no reason why this situation may not be brought about by treaty if the states concerned so wish, and we have already had some examples of cautious progress in this direction. I have mentioned the Upper Silesian Tribunal, and the economic provisions of the 1947 Peace Treaties, in which certain national were given rights against their own states. In the Minorities Treaties concluded after World War I certain Allied States assumed international legal obligations to give specified rights to persons who were their own nationals but who

belonged to minorities of different language, religion or national origin. Here the enforcement procedure was administrative through Leagues of Nations organs, rather than judicial.

This idea of international legal definition of individual rights, even as against one's own state, lies at the heart of the post-World-War-II Human Rights program, the most ambitious development of the idea individual rights under international law. In the United Nations Charter, "All Members pledge themselves to take joint and separate action in cooperation with the Organization" to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". The 1947 Peace Treaties required the former Axis states to take "all measures necessary to secure to all persons" under their jurisdiction "the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting." Allied States receiving territory were likewise obligated under these treaties. In 1947 the General Assembly adopted the International Declaration of Human Rights "as a common standard of achievement for all peoples and all nations." Since that time the United Nations has been endeavoring to draft one or more Covenants of Human Rights in the form of treaties legally obligating states which become parties thereto to accord the rights specified therein to all individuals regardless of nationality, and providing for "implementation" procedures. As is well known, many difficulties have arisen in attempting to draft the Covenant. It has been hard to get agreement on the rights to be covered, and especially on whether it should include the somewhat vaguer "social, economic and cultural rights" seldom legally enforceable under national laws. Many qualifications and limitations appear necessary in a document applicable in countries of widely different social, political, economic, legal and cultural backgrounds and present conditions. A few states, notable Australia, proposed implementation through an international court where individuals would have redress against foreign states or their own; others believed no enforcement machinery necessary or desirable; and a majority thought implementation should be through investi-

gation and report by a United Nations Committee, which a more or less limited right of petition to that Committee by aggrieved individuals. While the difficulties inherent in any attempt under present conditions to draft and put into force such a Covenant on a world-wide scale have caused many to doubt the desirability of going forward this effort at the present time; we all look with interest at the results achieved by the states which are members of the Council of Europa, who have successfully drawn upon their community of background to put in effect a more limited European Convention for the Protection of Human Rights, in connection with which a European Court of Human Rights is to be established. A relatively small number of like-minded states, willing to start out with a few well-accepted rights, may succeed in an area where it is not yet possible for the United Nations to accomplish its project on so grandiose a scale including the great number of proposed "social, economic and cultural rights" and the "rights of self-determination" in addition to the civil rights more often the subject of precise legal definition and protection in domestic constitutions and laws.

Direct interest of international law to the individual

Whatever may or may not be accomplished in these "human rights" programs, and whoever or not the individual is deemed to be a "subject" of international law, it is important to recognize how greatly the subject-matter of present-day international law emphasizes the individual. More and more of international law, particularly in treaties, concerns and affects the individual directly. Under the heading of "Individuals in international law", Judge Lauterpacht in his latest edition of Oppenheim's *International Law* treats such topics as the position of the individual, nationality, reception of aliens, position of aliens, expulsion of aliens, extradition, protection of minorities, work of the International Labor Organization, slavery and forced labor, and the international protection of human rights. One could well add most of the type of international law specialities I referred to last time, such as international air law, international tax law, international radio law,

international copyrights and patent protection, international railroad law, etc.

What may be called "treaty-laws" come to play a more important part alongside the older "treaty-contracts". We see increasing international cooperation to regulate individual activities by multilateral treaty, whether it be to prohibit and punish traffic in narcotics, slavery and slave trade, and the like; or to lay down uniform rules under which air transport, navigation and telecommunications are carried on; or to standardize ship construction for safety at sea; or to protect whales and fish against wasteful hunting and fishing; or to further the common strife against insects and pests which attack crops; or to unify quarantine and health standards or rules of private international law; or to establish minimum working conditions in favor of laborers against their employers; or to provide minimum prices for commodities moving in international trade; and so on and on. I have already alluded to the many provisions in bilateral commercial and consular treaties which are of direct concern to individuals. The point I am making is that more and more modern international law has become of direct concern to large segments of our populations in matters other than those of important political controversy.

Another evidence of this same trend is the growing number of decisions involving international law in national courts, as international law becomes more and more a matter for the practicing lawyer as well as for the foreign offices. And while exact figures are unavailable, I believe that as compared with a century ago a far larger part of the legal questions which arise and are adjusted in daily negotiations between foreign offices now involve the rights and activities of individuals as contrasted with the solely political questions between states.

It is in this whole area of international problems involving individuals that international law is most likely to afford a useful means of dealing with the questions which arise, since political passions are not so high and both states concerned may often feel a common interest in promoting (or in repressing) the type of activity involved. Here again, as in my earlier talk, I would empha-

size the growing place of international law, and particularly the treaty, as an instrument for giving effect to the common policies of states, stressing the law as a means of coordinating state action rather than attempting coercion of states. Not only are we fast recognizing that the individual may have some degree of international legal personality, but we may see this portion of international law which most directly concerns the individual as the portion which most successfully accomplishes its mission.
