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Cover Page Footnote

United States Ambassador to the United Nations.

THE AMERICAN TRADITION AND ITS IMPLICATIONS FOR INTERNATIONAL LAW

ADLAI E. STEVENSON*

FOR us who have been educated in the law, and who also have something to do with international affairs, the dedication of this splendid new law school building carries a simple and forceful moral. It says to us that just as this is a time for building in the life of universities, it is also a time for building in the life of nations.

Indeed, it is a principle of life that when you stop building you start dying, and never has that principle been more evident than it is in our day. Yet, if we build, it must be on good foundations. If we are to know where we are going we must know where we are and where we have been. So I am glad that the theme which you have given me today begins with the words "The American Tradition."¹

A wise man once said that the trouble with this generation of Americans is that "they haven't read the minutes of the previous meeting." It is all too true. As a result we often repeat the mistakes of the past and think that, in learning from our mistakes exactly what our predecessors learned from theirs, we have done something quite splendid.

But that method is no longer good enough, if it ever was. There is a sage warning in Rousseau's observation about his pupil, *Émile*: "The best way to teach *Émile* not to lean out of the window is to let him fall out."² Unfortunately, the defect of this system is that the pupil may not survive to profit by his experience.

Now, in the legal field I am not going to try to read you the entire "minutes of the previous meeting." I have to leave it to the scholars to do that. But I want to pick out a theme or two which recur in our history and which have relevance to our international predicament today. For one thing, our people are deeply respectful of the law for the most part—and yet sometimes we show a lingering weakness for anarchy. At the end of a bad day in court long ago, I'm afraid I was guilty of saying: "You know, I always thought that judge was impartial, but today he found against me." A good many of us seem to accept the ruling of the umpire but feel we have a constitutional right to talk back to him.

Then, when Jefferson wrote that "all men are created equal," it is pretty clear that the gentlemen who signed their names to that explosive proposition didn't mean it quite as much as we mean today. In their day the vote was generally denied to women, to slaves, and to people without property. Many of the same gentlemen, eleven years later, wrote a constitution which permitted American citizens to import African slaves

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1. This address was delivered as part of a symposium on the "American Tradition" in three spheres of law, held at the Fordham University School of Law, Nov. 17, 1961.
2. Rousseau, *Émile*; ou de l'éducation.

until 1808.³ And even half a century after that, Lincoln himself was not absolutely sure that God had made the Negro equal in natural endowment with the white man. His Act of Emancipation,⁴ which ennobled the history of that age, was thus in some degree an act of faith.

We are still redeeming Lincoln's act of faith. Whatever our Constitution and our courts say, we as a people, North as well as South, are still learning by experience and by suffering to realize the truth of racial equality. It seems probable that this painful process will continue for years more, perhaps many years. It is thus a newly *explored* truth—but it is not newly *discovered*. It was there all along, imbedded in our national heritage. We received it from many sources, but perhaps most of all from the Christian teachings which lie at the heart of our tradition. We find it in the story of Jesus preaching to the people of Samaria,⁵ a people whom the Jews feared and despised. We find it in the Apostle Paul reminding his flock in Galatia that, in their Christian fellowship, "there is neither Jew nor Greek."⁶ And through two thousand years Christian teachers and missionaries have carried to all continents and all races that same universal truth.

The perception of that truth is, of course, one of the central ingredients of the United Nations. It is explicit in the charter.⁷ It is a central theme in our debates. It is written on the faces of the delegates of 103 nations, which are the faces of every race of mankind.

Not much over a year ago, Dag Hammarskjöld spoke of the need for solidarity between Europe and Africa and Asia, and added this testimony from his own experience: "I believe no anthropologist nowadays," he said, "would say that the various branches of the family of man represent fundamentally different potentialities. . . . For my part I have not been able to discover any such differences."⁸

But perception alone will not save us. A few days ago Prime Minister Nehru, during his visit in this country, observed that "a politician may aim at the right—he may even perceive the right—but he must convey that perception to others to function. A saint need not, and therefore he is often stoned to death."⁹

Through our history, we Americans may have perceived the right most of the time, but we have not always tried very hard to act on it, or to

3. U.S. Const. art. I, § 9.

4. 12 Stat. 1268 (1863).

5. John 4:5-42.

6. Paul, Galatians 3:28.

7. U.N. Charter, art. 1, para. 2, signed at the United Nations Conference on International Organization, San Francisco, Calif., June 26, 1945.

8. Address by Secretary General Hammarskjöld, Europe, Asia and the United Nations, in Stockholm, May 1960.

9. N.Y. Times, Nov. 10, 1961, p. 9, col. 6.

convey our perception to others. Most of us have practiced the equality and dignity of all men only as much as we found convenient. Now, for the American people, and indeed for all free peoples, that age of convenience is past. In this generation we are compelled by history to practice our beliefs to the limit.

I say "compelled" advisedly. The Communist challenge rejects all ideas of man's "inalienable rights" and yet claims, just as we do, to speak in the name of "all men." This challenge has put us on our mettle. As never before, we are required to search out our values, and to exert ourselves to narrow the gap between our pretensions and the reality of our lives.

This obligation lies upon us in all aspects of our civic duty, at home and abroad. It requires us to raise up our education, the life of our cities, of our families, our churches, our mass media of communication, our party politics, our system of justice, and all the centers of influence in this plural society. And most of all, for the sake of peace as well as freedom, it requires us to build, on a world scale, a true community of nations—a community of "all men." Let me therefore explore with you the present state of the community and some of the means of strengthening it.

Our exploration must begin with the United Nations—and first of all with the United Nations Charter. The charter is a necessary starting point because, more than any other document of our age, it expresses the adherence of the nations of the world to certain values and standards of conduct. It is, in our time, the supreme embodiment of basic international law.

I should add, because of our topic today, that the charter is also, to a very great extent, a projection on to the international stage of universal principles which lie at the heart of the American tradition. They are all in the charter:

The principle that the sovereign is subject to the law, especially where the use of force is concerned;¹⁰

The principle that human beings are created with certain rights which cannot be taken away from them—including the right to be governed by their own consent;¹¹

The principle that governments are obliged to uphold these rights;¹²

The principle of reserved powers, which places strict limits on intervention by the central authority;¹³

10. U.N. Charter art. 2.

11. *Ibid.*

12. *Ibid.*

13. *Ibid.*

The principle of attention to the "general welfare" in order that freedom may be given reality through economic and social progress.¹⁴

Now the United Nations Charter is a guide to action for its members in *all* their international affairs—not just in the work of the Organization itself. Yet the light of the charter, though it is supposed to illuminate the whole world, shines a little brighter in the buildings over on the East River than it does anywhere else, so that the shortcomings of nations are more glaringly illuminated there. And there can be no doubt that the United Nations Organization has proved itself a priceless instrument for bringing the aims of the charter nearer to realization.

The Organization has undergone many profound changes since 1945. It has doubled in size. The signatories of the charter in 1945 numbered fifty-one. Today there are 103 member states, and for many of them nationhood is newer than the United Nations itself. This increase has significantly altered the balance of influence in voting. There was a time when the United States could be confident of a large majority in the General Assembly on any political issue of real importance to us. But the admission of forty-three new members since 1955—the great majority of them from "unaligned" Africa and Asia—has changed all that.

In our relations with the newly independent states, time is on our side; at least it is if we use it well. Whatever their original suspicions or skepticism of the West, I think they have begun to find that we are profoundly and anxiously interested in their welfare and their future.

The second great change has been the shift of authority from the eleven member Security Council to the full General Assembly. This arose directly from the Soviet abuse of the Security Council veto,¹⁵ to prevent emergency actions sought by the majority. It was necessary if the United Nations was to act at all, to be able to move the center of decision to a place where a small minority could not prevent action.

This was provided for in 1950 when the General Assembly agreed that whenever the Security Council was prevented by the veto from taking action, the Assembly itself would meet in emergency session and recommend collective measures, including, if necessary, the use of military force. Under this procedure the resolutions condemning Russia for intervening in Hungary, and bringing about the withdrawal of Britain and France from their attack on Suez, were drawn up and approved by the General Assembly in emergency session. So too were some of the crucial resolutions on the crisis in the Congo.

14. *Ibid.*

15. U.N. Charter art. 27, para. 3 provides: "Decisions of the Security Council . . . shall be made by an affirmative vote of seven members including the concurring votes of the permanent members. . . ." Thus any one of the permanent members, which include the Soviet Union, United States, United Kingdom, France and China, could, by the use of the veto, prevent any action by the Security Council.

The Assembly has been a great initiator in many fields. It has devised programs and mobilized hundreds of millions for technical aid and economic development. It has overseen the administration of Trust Territories and dependent areas. It has enabled a million refugees to find new homes. Most difficult and daring of all, it has put together military forces and corps of civilian administrators to head off civil war and anarchy.

The direction of these global tasks heavily taxed the Secretariat and its Chief, the Secretary General. As a result he acquired more power and discretion than was dreamt of in the early days of the Organization.

It was probably inevitable that this increase in the vigor of the United Nations should eventually collide with the ambitions of the Soviet Union. The challenge came in September 1960. That was the moment when Soviet ambitions in Africa were frustrated by the United Nations, when Mr. Krushchev launched his famous *troika* proposal, accompanied by the drumming of shoes and fists. Not only was Dag Hammarskjold to resign; his office would be abolished altogether and a three-headed body substituted—a committee representing the three alleged “forces” of communism, capitalism, and neutralism which, in Moscow’s mythology, are supposed to be running the world at this moment in history. And, of course, the *troika* could act only “by agreement”—thus grafting the Soviet veto power on to the Secretariat.

The reaction was hardly a triumph for Soviet diplomacy. Hardly a nation, outside the obedient communist bloc, was willing to support the *troika*.

When Dag Hammarskjold was killed¹⁶ Moscow resumed the attack. And once again it failed. Gradually, through six weeks of negotiation they receded bit by bit and gave to the new unanimous choice, the able U Thant of Burma,¹⁷ the *carte blanche* on Secretariat appointments to which the charter entitles him. And when his name came before the General Assembly, without any advance declarations on how he would conduct his office or whom he would appoint, the vote in the 103-nation Assembly was 103 to 0.

So one great crisis has been passed, at least until April 1963. But a second one is nearly upon us—a financial crisis. The United Nations military operation to save the Congo will have cost about \$180,000,000 by the end of this year. Of this total more than fifty-nine million dollars is unpaid. There is another thirty-three million unpaid on the bills of the United Nations Emergency Force, that international force which still guards the border between Israel and Egypt. That adds up to

16. September 18, 1961.

17. Elected Acting Secretary General, November 3, 1961, to fill the unexpired term of Mr. Hammarskjold, which continues until April, 1963.

ninety-two million dollars in unpaid bills. Nor is that the whole story. Neither of these two operations has reached the point where it can be reduced with safety. The bills will keep coming in during 1962.

Who must pay to save the Congo? The United States, by assessment plus voluntary contributions, has already paid nearly half—much more than its assessed share. Twenty-nine others have paid about one-eighth. The Soviet bloc, France, and South Africa say they will not pay. Others say they cannot. Others simply do not.

It has been calculated that if matters continue as they have gone thus far, the treasury of the United Nations will be empty, and its credit exhausted by the end of March 1962. How the communist bloc, and the promoters of Katanga's secession, and any others who find in the United Nations an obstacle to their dreams—how they must be waiting and hoping for that moment! What is the answer? Shall the members allow their organization to die by financial hemorrhage? Or shall the United Nations, in the name of economy, strike its colors in the Congo and the Middle East and resign those areas to chaos? Or do other nations perhaps think that the United States, although we do not call the tune at the United Nation and do not wish to, can somehow be prevailed on to pay the piper? If this illusion exists, it will have to be dispelled as quickly as possible.

The stark fact is that if the members will not pay for the United Nations they will not have it. Will this be fully realized in time?

I have been talking about the United Nations as it now exists, because what it does is directly relevant to the development of international law. With all its limitations and weaknesses, the United Nations gives effect to orderly concepts of law through the rather disorderly proceedings of parliamentary diplomacy.

The international judicial system is something else again. It is far more orderly, but it is gravely undernourished.

The International Court of Justice is an organ of the United Nations. Its statute is an integral part of the charter.¹⁸ But it has been sadly neglected. In sixteen years, it has considered only about thirty-five cases, made decisions in about eighteen, and handed down eleven advisory opinions. Some of these decisions have concerned very important legal questions, but the case load is one which an overworked judge in New York or Chicago would find hard to believe.

The shame of this situation for Americans is that we have done so little to keep busy the fifteen eminent judges of this Court,¹⁹ whose work

18. U.N. Charter art. 92-96. The Statute of the International Court of Justice is appended to the charter.

19. The fifteen judges on the International Court of Justice at the present time include: Bohdan Winiarski, Poland, President; Ricardo J. Alfaro, Panama, Vice President; Abdel

should be one of the greatest bulwarks of the world order and rule of law about which we talk so much. When the Senate attached the Connally amendment to our Act of Ratification,²⁰ it reserved the right to judge for ourselves whether a particular case is a domestic United States matter and therefore beyond the reach of the World Court. We are today the only major power to insist on this crippling "self-judging" principle. The result is, in effect, a legal boomerang. We can refuse to be a defendant in the World Court, to be sure; but by the same token, because of the rule of reciprocity, we can hardly expect to be a plaintiff either. By our own act we have, in effect, cut the United States off from access to the World Court. We can't lose a case and we can't win one — we just sit on the sidelines in unsplendid isolation while the Court languishes. Here is a matter on which the American tradition is relevant. The tradition I have in mind begins in 1794, when Jay's Treaty with England²¹ cleaned up a number of outstanding issues left over from our War of Independence. One of these was a boundary dispute between what is now the state of Maine and the Canadian Province of New Brunswick. Under the treaty this dispute was to be settled by three commissioners—one chosen by England, one by the United States, and one jointly by the other two.

After the decision had been made unanimously by these three commissioners and resulted in Canada getting a strip of forest which our side had claimed for Maine, the American commissioner, David Howell, commended the decision in these words: "Why shall not all the nations on earth determine their disputes in this mode, rather than choke the rivers with their carcasses and stain the soil of continents with their slain?" That question is still good today, and it acquires extra urgency in the face of the Communist challenge. Do we or don't we favor an international legal order as a means to world peace based on justice? And if we don't, then how are we to insure peace and justice for this community of nations which ultimately is our surest defense against Communism?

In my opinion to remove the Connally Amendment would do this country a great service and contribute to the growth of the community of peace and justice.

Hamid Badawi, United Arab Republic; Jules Basdevant, France; Jose Luis Bustamante y Rivero, Peru; Roberto Cordova, Mexico; Sir Gerald Fitzmaurice, United Kingdom; Philip C. Jessup, United States; Vladimir M. Koretsky, U.S.S.R.; Gaetano Morelli, Italy; L. M. Moreno Quintana, Argentina; Sir Percy Spender, Australia; Jean Spiropoulos, Greece; Kotaro Tanaka, Japan; V. K. Wellington Koo, China.

20. United States Declaration Respecting Recognition of the Compulsory Jurisdiction of the International Court of Justice, Aug. 14, 1946, 61 Stat. 1218, T.I.A.S. No. 1593, 1 U.N.T.S. 9.

21. Treaty of Amity with Great Britain and the United States on Commerce and Navigation, Nov. 19, 1794.

There is much more to be done.

In the field of treaty law, we can expect very important developments over the coming years. The greatest field requiring new treaties is likely to be in the economic sphere where so many new relationships are evolving. Europe's Common Market, soon to be joined by Great Britain, will be a formidable trading force with which the United States must make creative arrangements for the good of all concerned.

Meanwhile, all the nations of the North Atlantic must find ways of promoting quickly the massive economic developments which is a matter of life and death through much of Africa and Asia. That movement, on which so much of the future of freedom depends, will require new treaties to establish the rights and duties of private and public investors.

Here, truly is one of the most creative areas for the development of new international law. Not the least of its promises is the chance to prove to the emerging nations that not all treaties are like the capitulations or "unequal treaties" of an earlier age. The security and predictability of treaties can work powerfully for them in speeding their development and promoting their independence.

Nor should the Soviet Union be excluded from the reach of treaties, though its interests and ours are much harder to reconcile. We have a precedent in the recently concluded treaties on the Law of the Sea.²² And we have the encouraging example of the recent treaty on Antarctica²³ which reserves that vast area for peaceful uses, forbids nuclear tests there, suspends territorial claims, and perhaps most important of all permits inspection by each party of the installations of all the others.

With that start we can press forward for treaties with the Soviet Union and other nations governing the peaceful use of outer space. More immediately, only this week the United States and the United Kingdom have once again urged the Soviet Union to resume negotiations for a treaty to ban nuclear tests under international control. We have no illusions about the difficulty of that problem. But we are encouraged by an overwhelming vote of the General Assembly urging such a treaty.²⁴

I need not say how greatly this one treaty, with full inspection on both sides, would relieve the fear of war and add to the security of every nation. It is important not only as a first step toward nuclear disarmament, but as a pilot project for a far more comprehensive, general, and complete disarmament program. With all the defiant acts of Moscow fresh in our minds, it is easy to dismiss the whole idea of disarmament as a utopian dream. But we dare not be so irresponsible. We know the suicidal power of the new weapons, and people all over the world know

22. See 38 Dep't State Bull. 1111 (1958).

23. See 41 Dep't State Bull. 914 (1959).

24. N.Y. Times, Nov. 14, 1961, p. 1, col. 1.

it too. Even if we were tempted to give up trying, they wouldn't let us.

We must not yield, then, to despair or to hysteria. We cannot know how long Moscow will withhold its agreement to a sound and fully controlled disarmament program. But we are a grownup nation, and when we have a great goal, however distant, we must be prepared to work for it and believe in its attainment over a long period.

Disarmament is such a goal; and with it is now combined, in the plan we have laid before the United Nations, a proposal for the progressive development of a United Nations Peace Force and of institutions under the United Nations capable of keeping the peace in a world of disarmed nations. That is the ultimate limit, thus far, of our vision of a world of law. We may not reach it for many years — perhaps never. But “man's reach must exceed his grasp — or what's a heaven for?”

There are many shorter steps which we must take. Some of them lie within the United Nations, some outside, but all within the scope of the charter.

Within the United Nations, the United States has suggested a “Series of steps to improve the United Nations machinery for the peaceful settlement of disputes — for on-the-spot fact-finding, mediation, and adjudication for extending the rule of International Law.”

That is a vast field to be explored. Only this week I outlined to the Political Committee of the General Assembly some of the ideas of the United States on this subject, including the designation and special training of national military units for future emergency service at the call of the United Nations.

Outside the United Nations, from the Alliance for Progress in this hemisphere to the growing Economic Institutions of the Atlantic Community, there is scarcely a region of the noncommunist world in which we are not working to build the foundations of a stronger and more peaceful world order.

Recently Senator Fulbright wrote persuasively in favor of building a “Concert of Free Nations.”²⁵ I believe we should pursue that line, not as an alternative to the United Nations but rather as a way to strengthen and support its most promising institutions. In fact, the United Nations itself has often acted precisely as such a concert of free nations. Time and again, from Korea to United Nations Technical Assistance, from the World Bank to the emergency actions in Suez and the Congo, the United Nations has acted either with little or no participation by the Soviet bloc, or actually in the teeth of Soviet opposition.

Much of the greatest work of this community remains to be done. In that work the development of international law must take its rightful place. We all owe a debt to the leaders of the American bar who are

25. Fulbright, *For a Concert of Free Nations*, 40 *Foreign Affairs* 1 (1961).

joining in a series of regional conferences throughout the free world, this year and next, on "World Peace Through Law."

Through such contacts, and through the consensus which they help to build, we may look forward to the day when every nation of the free world, our own included, will accept the jurisdiction of the World Court on international legal disputes, and when every member will so prize the community to which it belongs that it will not hesitate to lose a case in that Court and honor the decision. When that day comes, then truly we can say that a world community has come into being — a community too solid for the communists to break up, and which they may ultimately decide to join in fact as well as in form.

These are long perspectives. I cheerfully admit that history leaves ample ammunition for the cynical and the fearful.

For instance, it can be pointed out that the great innovations in international order—the Concert of Europe, the League, and the U.N. itself—have been made after great wars, not in the impending shadow of new wars. But one can be too fascinated by such fatalistic patterns. Is not this cold war to which we have been condemned for the past fifteen years perhaps as close to a real war as the world dares to come in this nuclear age? And will not the settlement of it to say nothing of the revolutionary transformations in Africa and Asia demand innovations in international order quite as great as any the world has even seen before?

I believe they will. I suspect that international law will have a much greater part to play in the remaining decades of this century than it has had in recent years.

None of us can tell what forms will finally emerge, but we have grounds for confidence nonetheless. Dag Hammarskjöld once said, in reviewing the development of executive action in the United Nations, that the Organization had already "conquered essential new ground" which would not be lost "even if political complications were one day to force us to a wholly new start."

In that spirit we must have the fortitude to withstand disappointment and even tragedy — to be prepared to see all our work apparently lost, and yet to know that nothing of real value in our experience is ever lost, and that as long as we have life we must try again. And I think we already have the warrant of experience to expect that whatever emerges will be in harmony with the great universal principles of the American tradition—the principles of that declaration in which Lincoln found "something . . . giving liberty, not alone to the people of this country, but hope for the world for all future time."²⁶

26. Address by President Abraham Lincoln, in Independence Hall, Philadelphia, Pa., Feb. 22, 1861, in 4 *Collected Works of Abraham Lincoln* 240 (Basler ed. 1953).