

## EDITORIAL COMMENT

### WORLD LAW

The British Foreign Minister, Mr. Ernest Bevin, made a remarkable pronouncement to the House of Commons on Friday, November 21, 1945, when he said:

I feel we are driven relentlessly along this road. We need a new study for the purpose of creating a world assembly elected directly from the people of the world as a whole, to whom the governments who form the United Nations are responsible and who, in fact, make the world law which they, the people, will then accept and be morally bound and willing to carry out. For it will be from their votes that the power will have been derived, and it will be for their direct representatives to carry out.

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The supreme act of government is the horrible duty of deciding matters which affect the life or death of the people. That power rests in this House as far as this country is concerned. I would merge that power into the greater power of a directly elected world assembly in order that the great repositories of destruction and science, on the one hand, may be their property, against the misuse of which it is their duty to protect us and, on the other hand, that they may determine in the ordinary sense whether a country is acting as an aggressor or not.

I am willing to sit with anybody, or any party, of any nation, to try to devise a franchise or constitution . . . for a world assembly . . . with a limited objective—the objective of peace. Once we can get to that stage I believe we shall have taken a great progressive step—from the moment you accept that, one phrase goes, and that is “international law.” That phrase presupposes conflict between nations. It would be replaced by “world law,” with a moral world force behind it . . . with a world judiciary to interpret it, with a world police to enforce it, with the decision of the people with their own votes resting in their own hands, irrespective of race or creed, as the great world sovereign elected authority which would hold in its care the destinies of the world.

The significance of this commitment is considerably enhanced by an earlier declaration of a similar nature by Mr. Anthony Eden, who preceded Mr. Bevin as Foreign Minister.

The constraining reason for so momentous a declaration is undoubtedly the profound alteration in international relations brought about by the atomic bomb. Statesmen and scientists alike seek protection through some form of international control. They believe that the only sound kind of control is to be had through a world government having the powers of a super-state to legislate and execute laws affecting directly the peoples of the world.

A “world law” of this character obviously would be different from international law. It is not obvious, however, that it should “replace” the law

of nations. The function of "world law" might properly be to augment, improve, and implement international law.

Those who are especially interested in the science of international law are constantly challenged to defend it when misinterpreted and discredited, even by its friends. A common misunderstanding concerns the sanctions of international law, which are different from the sanctions of municipal law. The followers of Austin are largely responsible for this misunderstanding.

The most serious error committed by the defenders of international law has been found in their parrot-like reaffirmation that it applies only between sovereign states. No wonder that responsible statesmen should call for a law that is primarily concerned with the rights and duties of individuals! They can see no way to control the manufacture and use of atomic bombs other than by a universal law that operates directly upon individuals.

It is unfortunately the fact that this conventional notion of international law as a law applying only between states should continue to be upheld by responsible authorities. Nevertheless in recent years there has been a decided trend towards the recognition that the fundamental object of international law, as of most law, is the protection of the rights of human beings. The whole field of private international law, which the Anglo-American jurists have rather scornfully called Conflict of Laws, is gradually being recognized as an integral part of international law. Writers in this JOURNAL have occasionally drawn attention to the fact that the *lex gentium* is actually a *lex populi*, as Grotius originally maintained. They have shown that the decisions of national courts and international tribunals have been concerned primarily with the interests and the rights of individuals. They have urged the proclamation of the constitutional rights of man. They have insisted on freedom of access by aggrieved aliens to international judicial tribunals for redress.

This movement in behalf of the rights of peoples and individuals has received considerable impetus of late. The creation of the Social and Economic Council of the United Nations Organization should greatly accelerate the movement.

The far-reaching significance of the demand for a "world law" should receive most thorough and serious consideration. The mere intimation that the agents of a world government might ignore the local authorities and proceed directly against individuals charged with an offense against that law is bound to cause grave concern. The resentment and ill-feeling which would surely be aroused by such an intrusion would be likely to injure international harmony and cooperation. This would apply equally within the United States and within Russia. Within the national's own state he normally has immediate remedies, either legal or political, for a violation of his rights. Any legal device to protect an individual against arbitrary or illegal action by a super-state would present serious difficulties of an unprecedented nature.

The proposal of a world government having supreme powers to enforce a "world law" may be the ultimate ideal towards which the peoples of all nations must strive. It is very doubtful, however, at this crisis, if it is wise or expedient to discredit the United Nations Organization, before it has even begun to function, by demands for another kind of world government.

The peoples of the world gathered together at San Francisco in the first real "Congress of Nations" felt that they had made great progress when they finally agreed on the Charter of the United Nations. They will not wish to have the task of the United Nations made more difficult by demands of statesmen, scientists, or perfectionists of any kind. Progress in international coöperation, even under the stimulus of the atomic bomb, should not be attempted by leaps and bounds beyond the power of adjustment by the bewildered and badly-frightened peoples of the world.

This crisis of civilization demands the best collective wisdom, the stoutest courage, and robust faith if we are to build a sound structure of international relations based on law. That law has grown out of the experience of mankind over the centuries. It cannot be "replaced" without chaotic results. It should be improved, strengthened, and implemented. That is a proper function of the United Nations Organization. By such orderly process a genuine "world law" may be evolved.

PHILIP MARSHALL BROWN

#### THE ATOMIC BOMB

Who shall control the atomic bomb, manufacture it, or prohibit effectively its use by individual nations? The invention of this lethal weapon has confronted the American Government with one of its most troublesome dilemmas. On the one hand, there are those who seem to believe that the manufacture of the bomb cannot be kept an American secret—practically all the scientists, apparently the British Government, the CIO, and others—and who advocate "internationalizing" the process and seem to think that the Security Council of the UNO as transferee constitutes such an international organ. On the other hand, there are those, like President Truman and the military authorities, who want to keep the manufacture an American secret as long as possible or who would in particular keep the secret from Soviet Russia.

In between, other alternatives are suggested, such as the alleged British proposal to vest the secret—said by President Truman to be known to Great Britain and Canada, and by Professor Urey, to France and Denmark—in the military staff of the Security Council, representing the Big Five only, or in a new committee of UNO, or by delegated authority from UNO to let the United States act as custodian of the bomb with the understanding that it is to be placed at the disposal of the Security Council and used exclusively under orders from the military staff. It is alternatively suggested that the plants be made extraterritorial.<sup>1</sup> Ex-Justice Roberts' group at Dublin,

<sup>1</sup> *The New York Times*, November 1, 1945.