The adoption and approval of this convention by the General Assembly constitutes a special case, since Article 105 of the Charter stipulates that the "General Assembly . . . may propose conventions to the Members of the United Nations for this purpose" and the particular convention runs between the United Nations on the one part and each of its Members which accede on the other part. However, Article 62 of the Charter provides that the Economic and Social Council "may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence" and that "it may call . . . international conferences" on such matters, presumably with a view to drafting other treaties or agreements between states. Even aside from the specific authorizations of Articles 105 and 62, there seems to be nothing in the Charter to prohibit the United Nations, its organs and committees, from initiating, drafting, approving, "adopting," and proposing for accession international instruments dealing with a wide variety of subjects.

Admittedly, these procedures fall short of the enactment of binding rules of international law by an international legislature. Nevertheless, they provide a procedure of deliberate law-making such as is described by Judge Manley O. Hudson when he writes: "The term international legislation would seem to describe quite usefully both the process and the product of the conscious effort to make additions to, or changes in, the law of nations. . . . An instrument which changes or adds to the law applicable to the relations of the states which are parties to it, may take any of numerous forms." [5]

International legislation which requires widespread acceptance in order effectually to achieve its purposes can best be formulated in a multipartite instrument by periodic or permanent conferences, or by the organs of the the United Nations. Although juridically it might be immaterial whether a plan for the international control of traffic in narcotics, for example, were formulated in a network of identical bilateral treaties rather than in a single multipartite convention, efficiency clearly points towards the latter procedure. The United Nations Charter appears to provide adequate procedures for the progressive development of international legislation.

HERBERT W. BRIGGS

THE TASK OF THE INTERNATIONAL LAWYER

It is here suggested that the world is not moving toward an international legal order, and that the international lawyer, and all lawyers, have a responsibility for educating the people as to the need of such an order, and for concentrated effort toward solution of the problems connected with its establishment.

[5] M. O. Hudson, *International Legislation*, Vol. I, pp. xiii, xv.

In a speech made at the time of his retirement, Secretary Byrnes said, out of a relevant experience:

> The struggle for peace is the struggle for law and justice. It is a never-ending struggle. Law and justice can be developed and applied only through living institutions capable of life and growth. And the institutions must be backed by sufficient force to protect nations which abide by the law against nations which violate the law. . . .
>
> And we must realize that unless the Great Powers are not only prepared to observe the law but are prepared to act in defense of the law, the United Nations Organization can not prevent war. . . .
>
> History informs us that individuals abandoned private wars and gave up their arms only as they were protected by the common law of their tribe and their nation. So I believe that in the long run international peace depends upon our ability to develop a common law of nations which all nations can accept and which no nation can violate with impunity. . . .

It is significant that Mr. Byrnes, who had to deal with the political problems which harass the world, should have made it his valedictory theme that a common law of nations must be developed and given adequate support. It is to law and government that all human beings look for personal security and justice, and there is little doubt that the American people are in theoretical or vocal agreement with him.

Yet the trend today is away from an international legal order. In spite of urgent vocal demands that there be established a system of law strong enough to protect peoples at least against the use of force—which is a primary function of law—the trend of positive action is in the other direction. Statesmen follow the old patterns of conduct, and popular support takes the form of mere words rather than of deeds.

Various evidences indicate this trend. The makers of the United Nations—chief among whom was the United States—created a political rather than a legal system. It was only because of the insistence of China that the word "law" is to be found in the Charter at all; a clause was later added stating in words as weak as could be written the function of the General Assembly in developing international law. The Charter does not change the ancient practice by which a state can be bound by a new rule of law only with its own formal consent. In the provisions for the settlement of disputes no obligation was put upon any organ of the United Nations or upon any Member to submit legal disputes to legal settlement and the Security Council is not required to consult law in its handling of disputes. The International Court of Justice was not given by its Charter or Statute compulsory jurisdiction over any type of dispute and it was apparently intended that any Member could withdraw a dispute from consideration by the United Nations merely by asserting that it was a "domestic question." The enforcement measures provided were not put behind law and can only be used against aggression, in which case they can be blocked by a veto.

None of the specialized agencies have the power to make, administer, or enforce law. The World Health Organization was the only one to which was given any power to issue regulations, and even this small grant was made subject to veto by any Member.

The practice of the United Nations has also disregarded law, even the constitutional law of the organization itself, and has rather sought solutions through political adjustment. The Security Council in its first case overrode the Charter in its desire to condemn the Soviet Union, and when the Secretary-General protested this procedure, it overrode his protest as well. In none of the cases before the Security Council has international law been called upon for solution of the dispute and no case has yet been referred to the Court. The General Assembly disregarded the Charter provision concerning domestic questions in the case of Spain and South Africa and sought solutions based upon its current emotions. In both cases the rule overridden was a restrictive one which perhaps should never have been put into the Charter but it was part of the constitutional law of the United Nations.

Finally, disregard for legal order is shown by the nationalistic conduct of various states of which the United States is here taken for illustration. It was the United States which put into the Charter the veto and the domestic questions clause, and our purpose in both cases was to enable us to escape submission to law. When we accepted the obligatory jurisdiction of the Court we did so only with reservations, one of which excepted domestic questions "as determined by the United States." The trusteeship system of the Charter was weakened by our demand for "strategic areas" and subsequently by our insistence upon control for national purposes over certain Pacific islands. We are now seeking bases all over the world and building up a military system in the Western Hemisphere. In the discussion of the grave question of support for Greece the suggestion came late that this might be an international responsibility, and the trend of our discussions has been toward national rather than international action to halt Russia. If it be said that the United Nations is not strong enough for the task no one seems to think seriously of making it strong enough. Our actions seem to indicate that we intend to rely upon our national strength rather than upon the United Nations and to go our own way rather than that of the United Nations. The former path is that of power politics which leads to war but there is no evidence to show that the American people are willing to organize themselves so as to be prepared for such a war. Thus we reach the completely frustrating conclusion that the American people will support neither national action nor a system of international law and order.

International law is at a critical stage today and its crisis is that of every human being. Like any other system of law, it must depend upon the support of those whom it serves and to the average individual inter-

national law is still a faraway and mysterious institution which he does not relate to his personal situation. He is drawn toward international law because reason and experience assure him that law is the answer; he hesitates to support it partly because he is skeptical of international law and partly because he is unwilling to make the concessions of personal or national freedom of action necessary to establish the reign of law among nations. The eternal struggle of law is here represented, but now in a phase surpassing any former instance, for no conflict among individuals can equal the terrible cost of conflict among nations. Never in the history of law has there been such a need and such an opportunity.

The problem must be resolved, in the long run, by the votes of individual citizens, and a large and difficult task of educating the people to support international law lies ahead. It would be expected that those who practice law as a profession would be leaders in the effort to extend law among nations but it is unfortunately true that the average domestic lawyer is among those who must be educated. No one has been more ready than he to ask whether "there is any such thing as international law" and to argue that it is not true law. Since lawyers are supposed to know about law their skepticism has influenced the masses of the people. The science of international law has developed largely outside of the ranks of the qualified practitioners of domestic law and it is a strange commentary upon the existing situation that rules for the practice of law forbid experts in international law, not qualified by the requirements for a domestic lawyer, to offer professional services, with the result that the practice of international law is limited to domestic lawyers who, with a few exceptions, have had no training in international law and are incapable of offering expert advice in that field.

There would seem to be two chief approaches to the education of the lawyer as to the need of international law. The law schools have long neglected this field and they should be encouraged to offer courses and to require some knowledge of international law from their students. An increasing number of law schools are now doing this and others should be urged to fall in line. This approach, however, does not reach the lawyer who is already practicing, and to await the results of such training would be to delay the educational process too long. It is therefore desirable that law associations of various kinds should call attention to the need for development of international law, and the efforts of the American Bar Association in this direction are to be heartily praised and encouraged.

The responsibility for this leadership falls primarily upon the international lawyers and they should devote much time, individually and collectively, to the task of popular education. It is they who must furnish the explanations, the reasons, the arguments; and it is they who must show how a rule of international law could operate to solve a particular current problem. With no purpose of demeaning studies of state succession, rec-

ognition, or such topics, it is suggested that it is today more important for the international lawyer to go on the radio, to write popular articles, and in other ways to show to the people the vital importance in their lives of the development of international law, and to show that this law can not grow without their active support. It is important also that they study current problems and offer solutions in terms of international law for such international questions as aviation, trade, competition between private enterprise and totalitarian systems, and so on, and the organization and constitutional and administrative law needed for each. The effort of the international lawyer must be more positive, more utilitarian, more educational, than it has been in the past.

CLYDE EAGLETON

THE ITALO-AUSTRIAN AGREEMENT ON THE AUSTRIAN SOUTH TYROL

Although Austria is not a Party to the Treaty of Peace with Italy of 1947, Part I of that document contains in Section III special clauses concerning Austria [1] and Annex IV [2] contains the text of the provisions agreed upon by the Austrian and Italian Governments concerning the Austrian South Tyrol. This Agreement must be viewed in the light of Austria's long fight for the Southern Tyrol, which goes back to the Paris Peace Conference of 1919 and even to 1914/15.

Two different problems are involved. The first problem is the territorial one.[3] Italian irredentism had, long before the First World War, coveted those parts of the old Austria which were inhabited by an Italian-speaking population. That meant, in the case of Southern Tyrol, the province of Trento. In 1914/15 Italy, which had remained neutral at the outbreak of the war, carried on negotiations with Austria and, on the other hand, with Great Britain and France. Austria was unwilling to cede the Southern Tyrol but Great Britain and France promised to Italy in the secret London Treaty of April, 1915, among many other things, the cession of the Southern Tyrol up to the strategic frontier of the Brenner Pass as a prize for her entry into the war on the side of the Entente Powers.

President Woodrow Wilson's Fourteen Points, the agreed basis of the peace settlement, provided in Point 9: "A readjustment of the fontiers of Italy should be effected along clearly recognizable lines of nationality." Such clearly recognizable lines of nationality had existed for a thousand years. They passed through the Salurner Klause; south of it was the Italian-inhabited province of Trento, north of it the Austrian, German-speaking, Southern Tyrol including Meran and Bozen. Italy should have

[1] Article 10.

[2] September 5, 1946.

[3] See Josef L. Kunz, *Die Revision der Pariser Friedensverträge, Vienna,* 1932, pp. 16–18, 209–210.