

EDITORIAL COMMENT

ARTHUR K. KUHN

November 11, 1876—July 8, 1954

As the American Society of International Law draws nearer to the half-century mark of its existence, every falling out from the first-line ranks of its charter members becomes more conspicuous and irreplaceable. A particularly grievous loss was suffered in the recent death of Arthur Kuhn in the year following the death of his devoted wife. A sponsoring member of the Society, Mr. Kuhn dedicated practically his entire life to advancement of its objectives. He was in constant service on most of the committees of the Society and was chairman of some of them, including the Committee on the Revision of the Society's Constitution in 1925 and the Committee on Selection of Honorary Members, a post for which he was especially qualified because of his many close associations with, and knowledge of, leading men of the science in foreign countries. From the year 1929 he was an elective member of the Executive Council before his selection as an Honorary Vice President in 1946. He opposed the present practice of rotation in the office of President, and it was the Society's loss that he would not encourage his friends to nominate him for the office. His absences from the annual meetings were so exceptional as to be noticeable. He could always be relied upon for considerate and constructive debate and discussion. He was often on the program as a leading speaker pioneering the treatment of questions relating to new developments in international law, such as the beginnings of international air law. "Jurisprudence," he held, "follows the path of science as the flag of a nation follows the territorial explorations of its subjects."

Perhaps Mr. Kuhn's greatest service to the Society was on the Board of Editors of its *JOURNAL*, of which he was a member from 1924 until his death. It was his habit to collect materials for use in the *JOURNAL*; he left a brilliant record in its pages of scholarly learning and of the highest professional qualities. His contributions dealt with the rapidly accelerated progress of international events of the dynamic first half of the twentieth century. He never failed to supply an article, editorial comment, or a book review on any subject when needed; and, what was equally gratifying to a managing editor, his manuscripts were always received on time.

Arthur Kuhn was one of the younger members of the Bar invited to attend the organization meeting of the Society held at the Association of the Bar in the City of New York on January 12, 1906. In later life he

related how proud and pleased he was to be associated with the experienced men who launched the Society. The invitation to him in 1906 was undoubtedly due to the notable record he had already made as a student of international relations. In 1893, while a teen-age sophomore at City College, New York, he won a nation-wide intercollegiate essay contest sponsored by the American Peace Society on the subject of the "Economic Waste of War." He was born in Philadelphia but his parents moved to New York before he reached school age. He later transferred to Columbia College in New York from which he graduated in 1895, before it had become a part of Columbia University. He took courses in the School of Political Science under Dean John W. Burgess, and in the Law Department, where one of his professors was John Bassett Moore. He won the James Gordon Bennett prize award for the best essay on "The Past and Present Diplomatic Relations of the United States with China, Japan and Korea."

Through college and law school, Mr. Kuhn had a year's experience as a law clerk in a private office and then opened his own. He joined the New York County Lawyers Association and the American Bar Association and responded to their numerous calls for committee and other work throughout the years.

His vacations were spent visiting the old European universities and taking courses under their famous professors in the special branches of law for which he decided to prepare himself for practice as a specialist and expert, namely, international public law, comparative law, and the conflict of laws. Some of his more prominent professors were Max Huber and Friedrich Meili of the University of Zurich; Charles Lyon-Caen, André Weiss and Antoine Pillet of the *École de Droit*, Paris; and Louis Renault of the *École libre des Sciences politiques* of the same city.

While in Switzerland, with Meili's encouragement, he translated into English the latter's treatise, *Das internationale Civil und Handelsrecht auf Grund der Theorie, Gesetzgebung und Praxis*. Macmillan published it in 1905 under the title, *International Civil and Commercial Law as Founded upon Theory, Legislation and Practice, Translated and Supplemented with Additions of American and English Law*. This was the first of a widely welcomed series of specialized treatises written by Mr. Kuhn for the profession, the last being *Comparative Commentaries on Private International Law or Conflict of Laws* which appeared in 1937.

When he became a member of the teaching staff of the Law Department of Columbia University in 1909 he took his Ph.D. degree in Professor Munroe Smith's course in Roman Law and Comparative Jurisprudence. His thesis on the subject of *A Comparative Study of the Law of Corporations with particular reference to the Protection of Creditors and Shareholders* was published in 1912.

During the spring and summer of 1914, Mr. Kuhn, accompanied by his wife, visited Europe, to fulfill an invitation from the Law Faculty of the

University of Zurich to deliver a course of lectures. To accommodate the cantonal authorities for whom the lectures were intended, as well as the students of the Law School, the lecturer spoke in German instead of English. Upon the outbreak of World War I Mr. and Mrs. Kuhn were stranded in Europe with thousands of other travelers who were obliged to seek whatever make-shift accommodations were available to return home. They went through the same experience in September, 1939, upon the outbreak of World War II, when they went to Switzerland to attend the biennial session of the Institut de Droit International, which had to be canceled after the invasion of Poland.

His Zurich lectures were published in book form in German. After the war they were published in Paris in French translation under the title *Principes de droit anglo-américain, droit privé et procédure*. A Chinese translation was made from the French and published in 1948 for use in the law schools of Chinese universities. The book reached China before the advent of Communism, but Mr. Kuhn lamented that it had come too late:

It is regrettable that a dissemination of the principles of Anglo-American law, especially of our judicial system, had not been sooner undertaken with the encouragement of the many American educators who were influential in China before the Communist régime. . . . If instruction in Anglo-American constitutional and legal institutions had been brought to China at an earlier date, this country of a great people, but the unfortunate inheritors of an amorphous system of government, might have successfully resisted the inroads of the new totalitarianism.

Mr. Kuhn was active in many other international associations besides the American Society of International Law. He joined the International Law Association in 1905 and attended its meetings in various capitals of the world. At the Warsaw session in 1928 he was elected to its Executive Council. He was a moving spirit of the committee that organized the American Branch in New York in 1905 and was elected its President in 1939. He also helped to organize the American Foreign Law Association in New York in 1925 and became its President in 1941. The Institut de Droit International made him an associate member in 1931 and a full member in 1947. He attended the last session at Aix-en-Provence, France, in April of this year, and was elected Second Vice President.

He was an invaluable member of the Harvard Research in International Law from the first session of its Advisory Committee at Cambridge, Massachusetts, in January, 1928, until the last in 1949. He was an expert adviser to the Committee and worked with its Reporters on the subjects of Nationality, Competence of Courts in regard to Foreign States, Jurisdiction with Respect to Crime, Judicial Assistance, Neutrality, and Aggression.

The Institute of Politics at Williamstown, Massachusetts, twice invited him to be a round-table leader, and he attended succeeding sessions as a

participant. Twice also he lectured at the Academy of International Law at The Hague. He believed that institutions like the Academy "are not sufficiently appreciated by the general public for the work they are doing in creating relationships of lasting value between advanced scholars in international law and diplomacy. These men and women are sure," he wrote, "to be leaders of public opinion, if not of actual administration, in their own countries."

In World War I, Mr. Kuhn was over-age for active military service, so he enrolled as a Field Director of the American Red Cross. He was a firm supporter of the League of Nations, not as a first step toward world government, but as an institution to sanction international law. While in Paris early in 1919 as a member of the United States Committee on Public Information he accepted appointment as counsel to the American Delegation of the League to Enforce Peace. This delegation met with delegations from private associations of other Allied and Associated Powers to urge the establishment of the League of Nations by the Paris Peace Conference. This Inter-Allied group proposed a draft covenant and likewise the establishment of an International Court of Justice. Upon Mr. Kuhn's return to the United States in 1919, he delivered many public lectures in defense and explanation of the League of Nations. He saw in an effective League a bulwark against the spread of Bolshevism. "It is no longer a question," he cautioned, "of whether the world will be safe for democracy, but whether democracy will be safe for the individual."

In a course of lectures on the jurisprudence of the Permanent Court of International Justice, delivered at the Law School of the University of Pennsylvania, he surveyed the decisions of that court and pointed out the reliance it placed upon the judgments of the Supreme Court of the United States. This was in refutation of the oft-repeated criticism that the World Court was a League court and applied "League law."

On January 24, 1930, Mr. Kuhn published a letter in the *New York Times* correcting the record of the unjustified criticism that the American Society of International Law under the presidency of former Secretary of State Charles Evans Hughes had taken an unco-operative and unfriendly attitude toward the League of Nations.

Mr. Kuhn's views on the possibilities of enduring peace were expressed in an editorial comment in the *AMERICAN JOURNAL OF INTERNATIONAL LAW* upon Secretary of State Cordell Hull's principles of peace, circulated to the nations at large on July 16, 1937, and their replies:

Everyone desires peace, everyone proclaims the sanctity of treaties and the faithful compliance therewith, everyone desires that there be less difficulties in international trade, and everyone wishes to have the burden of armaments removed or lightened. Difficulties begin only when it is sought to pass from the field of intentions into that of action.

He looked upon the United Nations as a worthy successor of the League of Nations, but believed that the

United States should exercise great discretion at the time of the elaboration and drafting of treaties, especially of multilateral treaties such as those worked out under the auspices of the United Nations or its specialized agencies. The Declaration of Human Rights and the proposed Covenant to follow are excellent examples of the dangers which can follow from negotiations with a large number of countries whose public laws and whose ways of life are so different from our own. Undertakings no matter how high-minded in purpose must be scrupulously scanned with a view to avoid any which are not properly within the functions of our own Federal Government. This will avoid impinging on the powers and functions reserved to the several States.

The global character of Mr. Kuhn's mind and constructive sympathies were demonstrated in his work as a delegate to the Second and Eighth American Scientific Congresses in December, 1915, and May, 1940, both held in Washington. "These Congresses were not devoted merely to the social sciences but to every important branch of human knowledge." He believed that "The wide dissemination of the efforts of such congresses in the preservation of the treasures of civilization, especially in time of threatened danger to peace, itself constitutes a morale builder of no mean importance."

Fortunately, the year before he died, Mr. Kuhn published a *Personal Narrative* under the main title *Pathways in International Law*,¹ in which he recorded intimate accounts of many events of historical significance in which he took part during the more than a half-century of his busy life. It is an auto-anthology of his views on the international legal and political development of the times in which he lived. The reading of that attractively and compactly written volume is in itself a liberal education in the subjects of which it treats.

It would be very interesting to reproduce more of his views here, but that would unduly extend the limits of this comment. We cannot, however, omit the opinion he expressed on the nature of international law, and the place of the American Society of International Law in its development, at the luncheon held in celebration of the Twenty-Fifth Anniversary of its founding:

. . . International law has to my mind a double aspect. It is regarded, rightly so, as a universal science, a science tending (if not in actual fact) to be universal everywhere and among all nations. We know, especially the practitioners among us, that this is a counsel of perfection which has never been realized, and I am afraid that even within the *next* 25 years it will not be realized. But international law also has another aspect with which this Society is most intimately connected, and that is its national aspect, for each nation has its own concept of

¹ Reviewed in this JOURNAL, Vol. 47 (1953), p. 511.

what international law is, or ought to be. In order that each nation shall organize, develop and promote the best and highest ideals in international law, it is necessary that the trained legal minds who have given attention to that phase of law should have an opportunity to work in common. It is that, it seems to me, which has been the outstanding contribution which this Society and the *Journal* have made to the life of our nation. We are rightly termed an American Society, and an American Society we must remain.²

Modest, gentle, courteous, humane, if Arthur Kuhn had any faults, they were covered by the generous charity of his heart and purse. The unfortunate, man, bird or beast, crossing his path was indeed fortunate. Those who came to him for help were not turned away within the limits of his means. The extent of his donations to worthy causes was known only to himself and his beneficiaries. The American Society of International Law would join with other societies honored by his membership, and with his fellow workers and acquaintances throughout the world, in inscribing as his epitaph: "Well done, Good and Faithful Servant."

GEORGE A. FINCH
Honorary Editor-in-Chief

JURISDICTIONAL QUESTIONS INVOLVED IN THE GUATEMALAN REVOLUTION

As early as October 14, 1953, the Department of State gave public expression to its concern over the situation in Guatemala by reason of the relations between certain members of the Government of Guatemala and the Soviet Union. Assistant Secretary of State John M. Cabot, in an address before the General Federation of Women's Clubs, charged that Guatemala was "openly playing the Communist game," citing the fact that Guatemalan newspapers were following the Communist line and that Guatemala was interpreting the fact that the United States was seeking to defend the rights of American citizens under international law as constituting opposition to social progress in Guatemala.

The situation was, however, not deemed sufficiently urgent to call a Meeting of Consultation of Foreign Ministers, the basis for which might have been the Declaration of Washington of 1951, or the specialized conference contemplated in Resolution VIII of the same Fourth Meeting of Consultation. When, however, the Tenth Inter-American Conference met at Caracas Secretary Dulles felt it urgent to deal with the problem of international Communism more explicitly, and the United States Delegation secured the adoption of a declaration by the Conference that the domination or control of the political institutions of an American state by the international Communist movement would constitute a threat to the general peace and would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties. Guatemala

² Proceedings, American Society of International Law, 1931, pp. 246-247.