(b) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces or cantons, the federal government shall bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

This article is, in our opinion, wholly unsuitable for inclusion in an instrument by which our Federal Government would commit our whole nation to guarantees of specified rights to all individuals within our territory. It should be obvious that every international obligation assumed by our Federal Government through a valid exercise of the treaty power is binding upon our State authorities as well as upon our Federal authorities. We have to choose between giving national guarantees and not giving them. If we give them, we must be prepared to stand behind them all the way, obtaining the co-operation of the State Governments to the fullest possible extent, but realizing that, if that co-operation is withheld, we have still another choice to make: We must take direct Federal action to effectuate the guarantees or we must accept the international consequences of our failure to do so.

The road to be taken by the Commission on Human Rights is plain. It is, essentially, the way of the ILO. The problem of the present and of the long future, in promoting the observance of fundamental rights and freedoms, is to obtain agreement and common action on small, practical measures in the direction indicated by the Universal Declaration. This is no time for paper guarantees in broad and general terms. A Commission on Human Rights duly reoriented could appreciably shorten the time the world has to wait for the assurance of a good life to "all the men in all the lands."

EDGAR TURLINGTON

THE NEED FOR A RETURN TO INTERNATIONAL LAW

It would be relatively easy today to compose a devastating comment upon international law as an instrument for the promotion of international peace and justice. It would be assumed, of course, in the terms of the basic statement of principles of the American Society of International Law, that the maintenance of international relations on the basis of law and justice constituted the highest objective in this sphere. But it would be relatively easy to demonstrate that international law, as such, had proven a very weak instrument for this purpose. This problem has again become of some interest, not to say actually acute, as a result of the continued difficulties of the United Nations International Law Commission and opinions recently expressed in that connection.[1]

[1] See the Report of the Commission to the Fifth General Assembly, General Assembly, 5th Sess., Official Records, Supp. No. 12 (U.N. Doc. A/1316); this JOURNAL, Supp., Vol. 44 (1950), p. 105.

Thus international law, in one form or another, has existed and been recognized for some six thousand years. Yet the tone or tenor or moral quality and practical value of international relations have only improved to a limited degree in that rather considerable space of time. As late as 1914 international law had little or nothing to say concerning peace or justice in international affairs. Indeed a strenuous effort was made even at that time to avoid any identification of international law with either the cause of peace or the ideas of justice. The "realistic" outlook of the late seventeenth, eighteenth, and early nineteenth centuries was still in full vogue.

It was not surprising, therefore, that numerous friends of peace and justice rather deliberately abandoned international law for the movement toward international co-operation and eventually international organization (or organized international co-operation). It is not surprising that such persons felt little interest in, or enthusiasm for, international law. It has been slightly startling but not entirely incomprehensible to observe the almost complete lack of interest in international law displayed by many peace workers.

In the meantime, important developments were taking place looking in the direction of greater contributions by international law to international peace and progress. In particular an extensive expansion of conventional international law or international legislation designed to promote international understanding and co-operation had been instigated, had been practiced, and had had a beneficent effect (certain special cases excepted). In this process, however, the older common international law came in for little attention, little employment, and few results.

A somewhat similar situation has existed in the national sphere. The common law had dealt with individual rights and obligations and to some extent with the procedure for their effectuation, but not to any great extent with the problem of community peace and order except in a very indirect manner. As a result, those persons who have been primarily concerned with improving the existing state of affairs on this score—securing greater justice among men, reducing the provocation to violence, in short developing a better ordered society—have turned to the science and art of government, constitutional law, statutory legislation, and so on. They have had to meet the skepticism of the devotees of the common law and their contention that the distilled wisdom of experience must be more valuable than improvised reform. This in spite of the fact that the distilled wisdom of the ages had not contributed overwhelmingly to the improvement of community order and progress.

As in so many situations of this type, the answer or solution seems to lie clearly in a combination of the two or more competing elements, and neither in an elimination of one entirely nor in a meaningless compromise between them. On the one hand, the shortcomings of traditional inter-

national law as an instrument for securing peace and justice to the nations and the peoples of the world must be freely and frankly recognized and not glossed over or denied out of loyalty to an ancient institution. Then efforts can be put forward to correct the defects, so obvious on the record, by filling in gaps, correcting bad law, by codification, and so on. In the second place, the development of international legislation must go on and be improved in terms of its procedure and its administration, although this gets over to something outside the field of strict law. Finally, something can possibly be done to bridge the gap between these two aspects of international law and bring to an end what at various times—again as in national law—has amounted to a veritable feud.

On the other hand, strenuous efforts should be made to correct what is rapidly becoming a state of some confusion and almost irresponsibility in the field of international legislation and organization, not to mention international co-operation. It is one thing to try to amplify, enrich, and extend the fabric of international relations, juridical as well as practical; it is another to disregard fundamental juridical principles and indeed to pretend or, worse, to believe or feel, that there is no need for clarity, precision, and stability in the definition of international relations. International law may be old-fashioned, but it at least made a sincere effort to achieve a genuine degree of order in the international community. At one time there were compelling reasons for turning from the traditional international law to something more creative, more constructive, and indeed more imaginative. Today there is need for a good healthy reaction in the direction of international law.

How such a development may be brought about is another matter. More conservative types of international lawyers may well be invited to display a more sympathetic attitude toward the newer phases of international relations, and something of the sort is already observable. Indeed today the major difficulty seems to lie on the other side, namely, in persuading the devotees of international co-operation and progress to take any interest in orthodox international law and order. The inevitable result is to be observed in the by no means universal, but all too widespread, disregard for the more formal canons of international relations. Contemporary international relations cannot, it is quite true, be conducted satisfactorily within the limits of the rules of the sixteenth, or even the eighteenth, century. It is also true that contemporary international relations cannot be conducted entirely by improvisation and haphazard adjustment. Finally, the mere multiplication of machinery and international institutions may complicate rather than simplify, confuse rather than effectuate, international co-operation. Waiving all questions of motive, on one side or the other, the time seems ripe for a renewed attempt to magnify the rôle of law in international affairs.

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