The International Law Standard in United States Statutes, 1953–1974

One of the most effective means for emphasizing the applicability of international law and of relating the constantly evolving body of that law to municipal law is through reference to customary international law and treaty standards in national legislation. Such references may be stated in very general terms, or there may be specific indication of the law's applicability in certain circumstances or as to stated subject matter. In previous studies, covering the period through 1953, I have called attention to the relative frequency with which the U.S. Congress has employed such a technique.[1] U.S. statutory pronouncements over the period from 1953 through 1974 reveal continued resort to this practice, and also some innovations.[2] A few examples may serve to illustrate how this device has retained its significance as a means of integrating municipal and international law and why it deserves continuing attention by international lawyers.

I.

One purpose of legislative reference to an international law standard is to express a standard of municipal criminal or civil law liability or obligation in areas where international obligations may be relevant. This is the case, for example, with respect to legislation relating to protection of foreign officials or the personnel of public international organizations. Thus, the Congress passed an act in 1964 and broadened its scope in 1972 in order to protect foreign officials and official guests. By its provisions,

> (a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official or official guest shall be fined not more than $5,000, or imprisoned not more than three years, or both. . . .
>
> (b) Whoever willfully intimidates, coerces, threatens, or harasses a foreign official or an official guest, or willfully obstructs a foreign official in the performance of his duties, shall be fined not more than $500, or imprisoned not more than six months, or both.[3]

[1] *The International Law Standard in Statutes of the United States,* 45 AJIL 732–40 (1951), and *The International Law Standard in Recent Statutes of the United States,* 47 *id.* 669–78 (1953). For some related issues, in the context of my discussion of the applicability of international law with respect to public relations of Commonwealth member states, *see* Robert R. Wilson, *The Commonwealth and the Law of Nations,* in David R. Deener and R. Taylor Cole (eds.), Commonwealth Perspectives 59–85, (1958).

[2] Practice seems to support the view that unilateral assertion including assertion of the applicability of this law may serve a useful purpose. There is possible utility in giving weight to assertion of the law's relevance, either in general or in relation to particular subjects. *See,* in this connection, Morton A. Kaplan and Nicholas deB. Katzenbach, The Political Foundations of International Law 105–06, (1961).

[3] Act of Aug. 27, 1964, Pub. L. 88-493, 78 Stat. 610, and Act of Oct. 24, 1972, Pub. L. 92–539, §301, 86 Stat. 1072, 18 U.S.C. §112.

Another purpose of legislative reference to international law may be to attempt to control the jurisdiction or exercise of authority by coordinate branches of government. Thus, in another statute during this period, the well-known "Sabbatino Amendment," Congress sought to prevent the federal courts from declining to act, on the ground of the act of state doctrine, in cases where the claim involved a taking in violation of international law. The statute provided:

> Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim or other right is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) such a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principle of compensation and the other standards set out in this subsection: [4]

Still another purpose of reference to international law has been to associate or include that law with relevant national law as a standard for the determination of claims or other questions. Thus, in legislation to amend an international claims settlement act, the Congress directed that the relevant commission should "receive and determine in accord with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania. . . ." [5]

On occasion, statutory reference to the law of nations has taken the form of assertions that there have been violations of that law. An illustration is the preamble of the famous "Tonkin Bay" joint resolution passed in 1964 in which Congress asserted that naval units of the Communist regime in Vietnam had, in violation of international law, "deliberately and repeatedly attacked United States naval vessels lawfully present in international waters. . . ." [6]

Reference to international law may also be in the context of assertions of sovereignty, as in the Federal Aviation Act of 1958, which provides:

> The United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States, including the airspace above all inland waters and the airspace above those portions of the adjacent marginal high seas, bays, and lakes, over which by international law . . . the United States exercises national jurisdiction.[7]

Other legislative language may be in more general terms and the reference to international law may be implied rather than expressed. Legis-

[4] Act of Oct. 7, 1964, Pub. L. 88–633, 78 Stat. 1009, which became §301(d)(4) of the Foreign Assistance Act of 1964. It was reenacted in 1965 as §301(d)(2) of the Foreign Assistance Act of 1965, Pub. L. 89-171, 79 Stat. 653, and is now incorporated in 22 U.S.C. §2370(e)(2).

[5] Act of Aug. 9, 1955, §3, 69 Stat. 571, 22 U.S.C. §1641b, amending the International Claims Settlement Act of 1949 (22 U.S.C. §1621 *et seq.*).

[6] Joint Resolution of Aug. 10, 1964, Pub. L. 88-408, 78 Stat. 384.

[7] 72 Stat. 731, 798, 49 U.S.C. §1508(a).

lative references to law in general or, as it has on occasion been broadly phrased in a resolution, to the "framework of law and order," [8] should presumably be broadly interpreted as including international law. Statutes have also referred to "any other law" and to norms "including international law." [9]

II.

These examples indicate that the fact that the congressional role is associated primarily with the making of national law has not precluded assertion, in the same contexts, of the relevance of international law along with that of applicable national law. National legislative provisions have sometimes been so worded as to indicate adherence not to specifically phrased commitments but to rules of law that are broadly indicated as applicable. There continues to be observable, in the process of national statute making, a tendency to refer to "law" in general terms and to bases of settlement as including international law. These are, of course, distinguishable from statutory references to commitments such as those in bilateral or multilateral treaties or agreements. As noted above, congressional declarations of competence as to the exercise of jurisdiction by national tribunals may specify sources, some of them in broad terms of law other than national law. While national statutes in which there are references to the law of nations may have for their purpose to implement contractual commitments such as those in treaties and agreements, the making of the latter has not precluded congressional commitments adhering in general terms to the law that is international.

III.

Statutory references to international law, such as some of those referred to above, are distinguishable from commitment to settlements based on principles comprising the charter of an international public organization. Statutes that do not in express terms refer to the law of nations may in effect, by their wording, commit parties to apply law other than that grounded in custom. Thus, in certain bilateral arrangements concerning guaranty of foreign investments (a development which is a relatively recent one in U.S. diplomacy and practice) there is no direct reference in terms to customary international law, but, instead, mention of conformity to the principles and purposes of the United Nations.

Another type of pronouncement in recent congressional legislation, apparently relatable to internationalism, had repeated expression by the Congress in the period from 1953 to 1974. A 1956 Act making appropriations for the Department of State provided:

> None of the funds appropriated in this title shall be used (1) to pay the United States contribution to any international organization which

[8] Concurrent Resolution of June 22, 1965, 79 Stat. 1429, 1430, recognizing the twentieth anniversary of the United Nations.

[9] Act of Aug. 9, 1955, §3, amending §304 of the International Claims Settlement Act, 69 Stat. 572, 22 U.S.C. §1641b.

> engages in the direct or indirect promotion of the principle or doctrine of one world government or one world citizenship; . . .[10]

Similar language has appeared in a number of congressional pronouncements since 1956.[11]

Some congressional language does not in terms refer to international law but is possibly relatable to that law. An example can be found in a concurrent resolution concerning Hungary. In this there was mention of "repressive" action by the Soviet Union, followed by reference to the need for "practical redress of the wrong which has been committed in violation of . . . elemental requirements of humanity." [12]

IV.

The foregoing does not, of course, purport to consider every example in the selected time period of the mention of international law in national statutes. However, it may illustrate this country's fairly frequent practice of asserting in its legislation the applicability of international law in general terms, without indicating what that law is believed to be or the manner in which it is or may become relevant.

The part which such references to international law by national legislative bodies may have in emphasizing and further strengthening public international law deserves continuing and further study. In doing so, it should be noted that a great part of the body of international law is based upon custom and that growth of customary rules tends to be slow. Of course, to provide briefly in statutory enactments that international law shall be applicable is not necessarily to furnish parties in interest with any specific assertion of what that law is understood to be on particular subjects. It is apparent that something more than general specification of international law is desirable, along with wider acceptance of the jurisdiction of international tribunals to interpret that law. Yet the continued practice of emphasizing the applicability of international law through congressional references to it in statutes, whether these be mere assertions of relevance or provisions looking to actual interpretation and application, may serve a useful purpose in the further development of the law of nations. Indeed, such pronouncements, if constructively utilized, may provide support for the gradual development of a more adequate (because more global) international judicial system.

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[10] Departments of State and Justice, The Judiciary and Related Agencies Appropriations Act, 1959, §109, 70 Stat. 304.

[11] *See* various similar annual appropriation acts, through 81 Stat. 411, 415.

[12] Concurrent Resolution of Aug. 6, 1957, 71 Stat. B-38, B-39.

* This is the last contribution to the *Journal* by Professor Wilson, who died on April 29, 1975, several days after having submitted this editorial comment to the *Journal*. Professor Wilson was first elected to the Board of Editors in 1937 and became an Honorary Editor in 1965. He was President of the American Society of International Law from 1957 to 1958. R.R.B.