An Introduction to the Law of Nations (Oscar Svarlien, 1955)

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BOOK REVIEWS


Modestly limiting his book to being merely "a useful guide to the student who is just beginning his study of international law" (p. vii), Professor Svarlien has organized its subject matter, as far as possible, around a central theme of the international community concept. In a rather unorthodox sequence, the first part of the book deals with international community, sovereignty, various plans for world organizations, and, finally, with the nature and origins of international law in general. The next four parts deal respectively with the functions of states, territorial problems, diplomatic relations, and hostile relations. The sixth part covers the position of the individual in international law and the problem of human rights — an arrangement not usually found in the standard textbooks.

In this selective, rather than exhaustive, coverage considerable emphasis has been placed on such topics as regionalism and collective security, the continental shelf doctrine, air law, military occupation and war crimes, and the position of the individual in international law. To reduce the normative dicta of law to their practical values, the author treats these and other subjects, both in the light of the principles themselves and in terms of their quality, vis-a-vis modern trends and developments.

Viewing the community principle concept as a unifying basis for the relationship between law and the consensus of community, and between law and international organization, Professor Svarlien sees a cure for our ills in a more effective world community, which to him is both a remedial basis for the needed revision of the now obsolete doctrine of sovereignty and a prerequisite for a more workable international law. Sovereignty is viewed as having suffered a crippling devaluation in both the communist and the noncommunist orbits, and the legal premises of sovereign equality as having been reduced to pious fiction. As to the law of nations, it "as yet, has failed to become attuned to the new techniques in international relations prescribed by the pragmatic conduct pattern of wider cooperation between states" (p. 395).

Rightly denied the quality of being a superorgan common to all, and accepted merely as an association striving to maintain an ac-
ceptable *modus vivendi* among its members, the United Nations is presented as having its purpose limited to preserving what is left of peace today, rather than to achieving a permanent one. Along with the other shortcomings, this basic disappointment in the United Nations is in accord with the author's well-justified observation that, although community consciousness has been given new impetus, its development still remains meager and ineffective. A certain degree of encouragement in that direction, however, is found by the author in the modern trend toward regionalism. He believes that "the next step in the creation of a more permanent order in the world will be in the direction of regionalism without losing sight of the ultimate goal which must be a federation of the world" (p. 13). One can readily agree with this. Whatever the political markings and however far from being strictly legal entities, the regional arrangements should command more than a passing interest; temporary curative measures often lead to a permanent healing.

Of the various aspects germane to territorial problems, the author expresses his concern over the uncertainties still permeating the modern doctrine of the continental shelf, envisaging an extension of the land mass of the coastal nations. Also to be noted is his desire to see the traditional mileage concept of territorial waters replaced by the universal application of the principle of "base-line" as a more satisfactory medium for delineation of territorial waters. He also suggests, in regard to the sovereignty and jurisdiction of the subjacent state, that the air space above it should be treated in terms analogous to those used for fluvial domain, territorial, marginal, and open strata.

In the realm of diplomatic relations, Professor Svarlien submits that the impact of the rapid changes overtaking the world today renders the old principle of *rebus sic stantibus* no longer a tenable basis for the present rule of international law pertaining to treaties and other contractual arrangements; this principle presents "a serious conflict between dynamics of a changing world and a search for stability in a legal regime" (p. 283). Of note is his vision of the whole problem of collective security. NATO is not considered to be a regional system within the framework of Chapter VIII of the United Nations Charter but merely an arrangement for collective self-defense under Article 51. The whole edifice of collective security is nothing but an expedient product of power politics, reflecting the many-mansioned conflict between Western ideas and the Soviet world outlook; it should not be viewed as an undertaking of a universal na-
ture but as a strictly regional measure collectively conceived by its participants.

In the coverage of hostile relations, the suggestion is submitted that the case of civilization would probably be strengthened if the modern normative concept of "legal" and "illegal" wars were rejuvenated by merging it with the long dormant classic doctrine of "just" and "unjust" wars. As to neutrality, the totality of wars in this age and the pragmatics of collective security have removed it from workable notions of international law. To the chagrin of those to whom neutrality has been a pet subject and a forte in the past, and to the satisfaction of those who prefer a more realistic approach to the problem, Professor Svarlien's verdict is brief: neutrality can have no meaning either in fact or in law. The forty pages on military occupation and war crimes serve well as a reminder that international law is still limited by international politics, and that the prevention of war, a political task, should be differentiated from the violation of peace, which is the responsibility of criminal law.

The standard treatment of the problem of the individual in international law is projected against the conflict between the orthodox positivists, who contend that only states can be the subjects of international law, and the proponents of the idea that the individual should be elevated to a legal position under the law of nations. There is also conflict between the concept of inherent and inalienable human rights and the positivist theory of the co-operate state. By way of a rather general summary, the author submits that we may have "come to a turn in the road, where legal theory must bend its course in conformity with new developments in the larger aspect of international relations" (p. 445) and that possibly the era of the nation state is nearing its end. If there is a criticism of this book to be voiced, it is at this point. It is disappointing that this important issue has not been further elaborated. Indeed, there are several schools of thought on the matter, ranging from the already mentioned irreconcilable positivists, now paradoxically reinforced by the Soviet scholars, to those who accept only the individual as a subject of international law. Between these two extremes, there are those who view the whole problem of the legal position of the individual as merely a technical issue, for the reason that international law, as every rule of law, has for its ultimate purpose the protection of the individual, with all his human rights and values. There are also those who are willing to accept the formula of a "limited subjectivity" as a quite tenable legal
concept. Finally, there are those who go much further and are ready to acclaim Professor Jessup's radical and venturesome notion that a treaty may also be an agreement between a state and an individual, thus envisaging them both as full-fledged subjects of, and equal sovereign entities in, international law. There is no answer in the author's summation as to which of these alternatives is the direction toward which legal theory should now bend.

This is an excellent book. For the students, the useful historical background is given with considerate and sufficient generosity. The coverage of standard particulars within each of the major topical subdivisions of the book suffers no flagrant omissions and is free of obscuring details, while the statement of the law in force is made with commendable clarity. The author's well-taken, albeit disturbing, points of concern are purposeful termini in which the student will readily find a stimulating challenge and an invitation to probe the field further until solutions for the problems now confronting international law are found. Properly placed footnotes and a carefully and adequately selected bibliography lend completeness to this well-timed and scholarly book.

The experts, too, may profit from reading *An Introduction to the Law of Nations*. Whatever arguments they may raise on some of the issues touched upon by Professor Svarlien in the familiar panorama of international law, they will observe that his approach to the learning process in the field of international law cannot be overlooked; it rests on combining the orientation text and the case-book methods, a refreshing deviation from both the extremes and the limitations of either of these two. However entrenched in their views and preferences, they may be reminded once again that scholars are no longer reluctant to agree that in the context of the relationship between the law of today and the law of tomorrow many of the old familiar postulates of international law are being eroded beyond repair. The much used road of this law is nearing the end of its hard surface, only to find a long stretch of new construction lying ahead — a veritable *via dolorosa* across a difficult terrain of the ever advancing progress of our times, the steadily increasing thrusts of warring ideologies, and the rapidly rising spectrum of the neglected individual, the maker of laws for his own protection and the seeker of protection for his own laws.

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