

The Rule of Law in the World

Sire Leslie Knox Munro

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Sire Leslie Knox Munro, *The Rule of Law in the World*, 43 Marq. L. Rev. 20 (1959).

Available at: <http://scholarship.law.marquette.edu/mulr/vol43/iss1/4>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

THE RULE OF LAW IN THE WORLD

SIR LESLIE KNOX MUNRO*

I am honored to be here on the occasion of the celebration of the 50th Anniversary of the justly-famed Marquette University Law School. May I congratulate you in the sure confidence that this school will continue to flourish and to produce men of character learned in the law.

After many centuries of effort and suffering, we now maintain the rule of law in the modern democratic state with the help of its enlightened public opinion, a legislature capable of appreciating and meeting the need for change, courts whose decisions are enforced and last, but not least, a police force.

In the nuclear age and in spite of untold sufferings from wars since the dawn of history, the relations between states are only imperfectly governed by the rule of law, although a brave attempt has been made through the United Nations. It will be my purpose in this address to evaluate the attempt.

I am not overlooking the fact that efforts have been made to outlaw the use of aggressive force before and apart from the United Nations. I am not one of those who despise the beneficent effects of the doctrine of the balance of power which I believe averted many major conflicts between 1815 and 1914. In particular Britain's steady support of the principle of the balance of power in the nineteenth century, coupled with the might of the Royal Navy, enabled the Monroe Doctrine to survive and indeed to flourish in these hemispheres. And until 1914 there was no world war and conflicts like the Russo-Japanese war were kept within bounds.

But I agree with Mr. Foster Dulles in his speech of January 31 of this year to the New York State Bar Association that any such balance "is inevitably precarious." I am not so sure that I agree with all the details of his conclusion, because even today the events leading to the First World War are a matter for infinite variety of opinion. "Furthermore," said Mr. Dulles, "balance of power normally implies a maintenance of the status quo. But history teaches that change is inevitable. Whatever may be the desire to maintain a balance of power, the balance inevitably shifts—with results such as those experienced in 1914 and 1939."

* From 1924 to 1938 practiced law in New Zealand and lectured at Auckland University College on the subjects of Jurisprudence, Roman Law and Constitutional History; 1938 Dean of the faculty of the Law School at Auckland; 1942 to 1952 Editor of the New Zealand Herald; 1952 to 1958 New Zealand Ambassador to the United States and permanent representative to the United Nations; served as President of the Trusteeship Council and for three periods as President of the Security Council; currently special representative of the United Nations.

And incidentally, if change is inevitable, that is equally true of this year of grace.

Between 1919 and 1939 two phenomena afflicted us—the pernicious notion that a master race under the iron hand of a murderous fanatic had a mission to rule the world and the even more dangerous and more lasting menace of a communist clique founded upon materialism, fanatically believing that its leaders could hasten the course of history toward the inevitable success of their doctrines, the uncontrolled masters of a brave and patient people and the unscrupulous heirs to the messianic ambitions of the Tsars.

In his valuable book “The Common Law of Mankind,” Wilfred Jenks writes with cogency:

The disruptive effects of the Second World War and the cold war; the challenge which they represent to the basic concepts of a family of nations, the rule of law, and the overriding claims of common humanity; the striking manner in which they have destroyed, apparently permanently, the balance of power among a group of States sharing a common civilization and common conceptions of morality which—however rightly we may, during the period immediately following the First World War, have criticised its limitations as a device for maintaining the peace in the absence of an effective international organization—was nevertheless one of the essential foundations of the community of international law; the scale on which and speed at which they have released and given opportunities of decisive influence to new political forces which have not yet learned from the facts of international life the habit of respect for international law; and the extent to which they have created or intensified economic and social problems for which international law is still in process of finding appropriate solutions: all these factors have tended to produce a situation of grave uncertainty which has given rise to widespread and deeply rooted pessimism.”

I have said that respect for the rule of law in a state is based upon an enlightened public opinion within its borders. For the rule of law to prevail between states, their governments and citizens must be susceptible to the climate of world public opinion. If they are not, then the rule of law, in the absence of the use of force, may be and has been flouted.

The classic cases here are the Suez and Hungarian crises of 1956. Both these grave affairs bring into question the observance of the rule of law, enshrined in the Charter of the United Nations and whereby member states are enjoined to settle their international disputes “by peaceful means in such manner that international peace and security and justice are not endangered.”

It is too early yet to pass a final judgment upon the Anglo-French intervention or even upon the Israeli incursion. Not all the facts are known nor have passions died away. The Government which I then

represented in the United Nations regarded the measures taken by Britain and France as an emergency action of a limited nature designed to deal with a situation of great political danger, a situation likely to deteriorate still further unless checked by drastic action. That it was police action and no more was, my Government felt, established from the outset by British readiness, expressed by Sir Anthony Eden, to hand over Angle-French responsibilities to an *effective* United Nations force.

However, the feeling of the Assembly was against Anglo-French policy. Mr. Dulles, in a speech in the Assembly on November 1, 1956, said that the threatened course of action seemed "inconsistent with the principles and purposes of the Charter and one which if persisted in would gravely undermine our Charter and undermine this organization."

The point I wish to make is that the United Kingdom, France and Israel withdrew their forces from Egyptian territory, not because the resolutions passed by the Assembly were legally binding on them—they were not—but because among other reasons, those resolutions reflected the feeling of a great body of world public opinion. The three Governments concerned did not ignore the disapprobation expressed by so large a part of the international community.

During the momentous debates in the Suez crisis I heard the Soviet delegate denouncing the British, French and Israelis as aggressors—incidentally they were never condemned as such in any Assembly resolution—and calling upon them to observe the resolutions requiring them to withdraw. But Marshal Bulganin himself in one of his numerous letters last year to Mr. Eisenhower said that the United Nations "is not a kind of world government adopting laws and decisions binding on states." The United Nations is not a super-world government. It is an instrument for its members to use.

If this is true, as normally it is, then the United Nations lacks an essential power to uphold the rule of law. In great degree, the power of the General Assembly depends upon its capacity to bring the force of moral opinion to bear. But the force of world moral opinion is likely to be effective only in countries within which domestic moral opinion also can develop. This is true of Britain and France but, as the events of the Hungarian crisis showed only too clearly, it has no relevance in the Soviet Union where domestic moral opinion has no impact or at the most very little on the formation of foreign policy.

The International Court of Justice faces a similar problem. In saying this I am not minimizing the work of the Court which is indispensable to the establishment of the rule of law in the relations of sovereign states. My learned audience is aware of the limitations upon the Court's jurisdiction, especially in respect of the domestic affairs

of a member state of which that state decides it is the sole determinant. But even more serious are the cases where a state flouts a decision binding upon it, as Albania has done in the Corfu Channel Case. Since that case Albania has become a member of the United Nations but still flouts the judgment.

It is above all the Soviets' scornful rejection of the resolutions affecting Hungary that led Mr. Dulles, in the speech I have already referred to, to say "in all seriousness that the United Nations and the world can, perhaps, survive a limited phase of double standard. But they cannot survive a permanent double standard. Unless the United Nations becomes, for all, an instrumentality offered through justice and law, as it was designed to be, then, as the founders declared, some alternative must be found."

These are serious words, coming from the representative of the most powerful member of the free world. I must confess I have considerable sympathy with Mr. Dulles' conclusions. I repeat what I said last year to the American Society of International Law:

It is my belief that no great Power—and I use the term 'great' here only in its physical sense—can expect to act entirely at its own discretion, heedless of condemnation and openly in contempt of the public conscience of the world; no great Power, I repeat, can indulge in this sort of behaviour—as one great Power has done—and, at the same time, expect that there will be no impairment of confidence either in its own probity or in the capacity of the United Nations to preserve peace with justice. The exercise of lawless violence and a refusal to withdraw from advantages secured by lawless violence can only diminish the stature and authority of the Charter. Those who bear great responsibilities should be the first to deny that national expediency can ever justify a deliberate departure from the imperatives of the Charter. Those who breach the Charter and, having done so, not only refuse to repair that breach but seek to lay the blame on others for the consequences of their own actions are, in my submission, adding to the sin of tyranny, which is the abuse of strength, the no less reprehensible sin of hypocrisy.

To have sat, as I have, and listened hour after hour to the Russians and their satellites blatantly justifying the massacre of the Hungarians is a grim and depressing business. But what, nevertheless, are we to do about it? None of the member states which condemned the Russian action in Hungary was prepared, so far as I know, to use force to save the Hungarian revolutionaries or to compel the Soviet to withdraw its troops from Hungarian soil. Indeed it may well be, as Mr. Lester Pearson has pointed out, that if the opponents of the Soviet action had intervened by force through the United Nations, the first victims would have been the Hungarians them-

selves and the rest of the world might have followed them into the abyss.

I am aware that many contend that the embarrassments of the Suez crisis were a deterring factor against aid to Hungary. But given the ruthless determination of the Russians in Hungary, I doubt whether even if the Suez crisis had never arisen, the Western world would have risked a third world war to save the Hungarians. We are living in an imperfect world whose ability to establish a universal rule of law is constantly stultified by the division between the Western and communist philosophies.

Under these circumstances I agree with Mr. Hammarskjöld:

To turn aside from the United Nations now because it cannot be transformed into a world authority enforcing the law upon the nations would be to erase all the steady, though slow and painful, advances that have been made and to close the door to hopes for the future of world society, toward which present efforts and experiences should be at least a modest stepping stone.

The rule of law, indeed, received great impetus from the Suez crisis: a United Nations Emergency Force was created and the 12th Assembly, by what I consider was a legislative act, established the international basis for the payment of the cost of the force. At least the world organization had a police force, even though it was only on an emergency and temporary basis and confined to a particular area.

UNEF is of course not the force contemplated by Article 43 of the Charter, which would, had it been implemented, have given the Security Council military power to enforce its decisions as the body primarily responsible for the preservation of the peace. But the Military Staff Committee has failed to reach agreement. Consequently in the Suez crisis the Security Council had no force at its disposal and even if it had I believe that a Russian veto would probably have prevented its use.

Under the circumstances it was the Assembly which acted under the Uniting for Peace Resolution, that expedient which enables the Assembly to act quickly where the veto has defeated the Security Council. Before the events of 1956 the Russians had always challenged the validity of this Resolution as an infringement of the prerogatives of the Security Council. But by an irony of history in the Suez crisis they joined in invoking the Resolution following the British and French vetoes in the Security Council. In August of last year when the situation in Lebanon was before the Security Council, Russian qualms over the validity of the Resolution seemed to reappear. The Council's resolution referring the Lebanese problem (and that of Jordan as well) to the Assembly made no reference to the Uniting

for Peace procedure. But clearly this procedure was the basis for the Council's action and the Assembly's jurisdiction.

The resolution passed by the Assembly in August 1958 in respect of the Lebanese and Jordanian problems was in essence an agreement by the Arab states to uphold the rule of law in the Middle East. Each undertook in accordance with the Pact of the Arab League to refrain from interference with internal affairs of fellow members. There can be no rule of law if states consider themselves free to subvert the governments of their neighbors. Yet the history of the years since 1945 is full of such acts of subversion. The resolution of August 1958, if it continues to be translated into deeds, is of good augury. But events in Iraq, a key state for Western Europe and an object of Stalin's ambitions, are the reverse of encouraging. In fact, they are infinitely serious.

As the result of Russia's constant use of the veto, the Assembly is growing in power and influence at the expense of the Security Council. It is the Assembly which is invoking Collective Measures to check aggression and to establish the rule of law. Of importance and tending to increase the influence of the small states in the Assembly is the fact that they and not the Great Powers have provided the troops for UNEF.

The significance for the United Nations of establishment of UNEF, both generally and in relation to the Middle East, is very great. At last and as a result of the Anglo-French police action, the United Nations has a means in the Gaza strip and in the area of Sharm al Shaikh of making its decisions effective. To some extent we now have a substitute for the arrangement envisaged in Chapter VII of the Charter. At the same time, it is important, I think, to keep in mind exactly what has been accomplished. As I have indicated, the Emergency Force is in no way a body permanently commissioned to keep and, if necessary, to enforce the peace. As the Secretary-General observed in his first report on the Force, "It would be more than observers' corps but in no way a military force temporarily controlling the territory in which it is stationed." Presumably UNEF would have to leave that territory at the request of its government.

The Canadian representative, M. Pinard, said in the 12th session of the General Assembly—

The United Nations Emergency Force is not so much a fighting force as a police contingent endowed with international authority which the United Nations has interposed between forces which have themselves accepted a cease-fire and the obligation to withdraw on the understanding that the United Nations would put its own independent forces into the area to secure and supervise the cease-fire.

I do not minimize the importance of the Force, the establishment of which I regard as more momentous in its way than the creation of the United Nations force in Korea, of which it might be remembered that first, it was established by the Security Council only because the Russians were absent from the crucial meeting, and, second, only sixteen nations contributed to the force, the bulk of responsibility falling on the United States, which already had forces in the area.

Mr. Lester Pearson, in an article in *Foreign Affairs* (April 1957) said convincingly: "The type of Security Council action against aggression in Korea, therefore, is not likely to be repeated. In any event, the United Nations character of that action was as much symbolic as it was real, because the United States supplied most of the forces and exercised most of the control over them. In so far as the possibility of using the United Nations for collective security was concerned, Korea was both an encouragement and a warning." Invaluable as UNEF has proved, it may not be a precedent for similar action in the future. During the Lebanese crises there was no enthusiasm in either the Security Council or the Assembly for the dispatch of anything more than an observer corps to Lebanon. Jordan rejected the idea even of such a corps.

Nevertheless, the danger of another emergency has persuaded many responsible leaders of the necessity for a permanent United Nations Force as an indispensable instrument for the preservation of the rule of law, created by the Assembly and at its disposal. At the Emergency session of August 1958 Mr. Eisenhower in person, under my Presidency, proposed the establishment of such a force.

I do not minimize the difficulties. Neither the Soviet Union nor, among others, India will support the idea—the Soviet because it wishes to preserve the jurisdiction of the Security Council where its veto can effectively prevent any permanent force being created. Other states outside the Communist bloc have domestic and external problems into which they have no desire to see the United Nations intrude.

Then there is the question of cost which would be great but in my judgment a very small insurance premium to pay against the cost in blood and money of war, either limited or unlimited. Yet during the 12th session, it required considerable negotiation and patience to secure, on November 22, 1957, the passing of an historic resolution authorizing the Secretary-General to expend for the period ending December 31, 1957, an amount up to a maximum of \$30 million and, as necessary, an amount for the continuing operation of the Force beyond that date up to a maximum of \$25 million, subject to any decisions on a review to which I need not refer here.

The Assembly went on—and I quote from its resolution—to "decide" that the expenses thus authorized "shall be borne by the mem-

bers of the United Nations in accordance with the scale of assessments adopted by the General Assembly for the financial years 1957 and 1958 respectively." The Assembly adopted the same principle at its last session.

It is true that in 1957 the Communist bloc and Chile and Ecuador voted against this resolution and that the Communist countries, whose contributions to the regular United Nations budget amount to 20 percent of the total, said that they would not contribute their share of UNEF expenses. But I am of the opinion that the resolution is binding on all Members of the United Nations. Its legal effect will, in the minds of some, I realize, be debatable, especially since the members of the Communist bloc have said so uncompromisingly that the resolution is not binding on them, as the "aggressors" alone should pay. I have already said that Britain, France and Israel have not been defined by the Assembly as aggressors. It appears to me that since the Charter provides simply that "the expenses of the Organization shall be borne by the members as apportioned by the General Assembly," a Member's failure to pay its due proportion of the expenses of the United Nations Emergency Force will eventually involve the consequences referred to in Article 19, whereby a Member in arrears in the payments of its financial contributions to the Organization shall have no vote in the Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years.

My audience will realize that if there was difficulty in persuading some members of the Assembly to pass the November 1957 resolution with its financial burden, the opposition would be very much greater if an attempt were made to create a permanent force. Those who would form such a force would come from the small powers whose sacrifices would probably be considerable, even allowing for over-all United Nations expenditure. Mr. Eisenhower's proposal was not adopted at the 13th session.

At that session, on November 5, Mr. Hammarskjold read a closely reasoned statement. He said that following upon the establishment of UNEF, many of the problems which arose in that type of operation had been solved and the solutions reached had stood the test of experience. He concluded that there was neither reason nor excuse for the United Nations to be unprepared to meet any new emergency requiring similar treatment.

I agree with the Secretary-General, save that I say that there may be new emergencies which do not require similar treatment and which may be solved only if there is a permanent United Nations Force in being or capable of being called into being speedily and that studies

should immediately proceed in the United Nations and action speedily taken on this vital question.

The Secretary-General emphasized "the need for the consent of the host country, as well as of contributing countries, to any such operation." In other words, a Peace Supervision Force could enter a country only with the consent of the Government of this country. It is pertinent to ask how such a force, having regard to Mr. Hammarskjöld's conclusion, could enter Western Berlin, where complicated legal questions of jurisdiction are involved. They will need political decision.

The Secretary-General emphasized that his approach to the problem was guided by the strictest respect for the rules of the Charter. All will accept his emphasis. He went on to say that his approach was entirely pragmatic and "did not try to freeze a pattern of action, nor would it give rise to arrangements which might be conducive to a premature or inappropriate use of similar means in the future." He emphasized that the political issues involved had to be solved. I repeat that this may have a significance for Berlin.

Nothing further was done during the thirteenth Assembly and the item entitled "Summary study of the experience derived from the establishment and operation of UNEF" was disposed of.

This seems to me a rather summary way of dealing with a summary item following the Secretary-General's valuable statement to the Special Political Committee.

Political issues come and go. Today they have an awkward habit of staying with us for a long time. They have arrived in drastic form in respect of Berlin. In spite of the primary interest and responsibility of the Great Powers, the United Nations, as the instrument for preserving world peace for small Powers as well as great, is obviously involved and must be ready to undertake its responsibilities.

I believe, as I have said publicly last year, that we must persist in attempting to create a permanent force. We must avail ourselves and learn from the improvisations of the Korean, Suez and Lebanon crises. I agree with Mr. Pearson that member governments, excluding the permanent members of the Security Council, should be invited to signify a willingness in principle to contribute contingents to the United Nations for purposes that are essentially non-combatant, such as, for example, the supervision of agreed cease-fires and comparable peace-supervisory functions.

Yet I believe we may have to go much further than this, and that soon. We live on a powder-keg. The Berlin crisis is upon us. It may well be that the United Nations will have to take part in the solution of that crisis if it is not to burst into ruinous war. A United Nations force in Western Berlin, comprised of contributions from the smaller

countries, fully armed and capable of fighting a defensive action and with the mission of preserving Western Berlin as a democratic outpost, may well be one solution of the present grave crisis. Of course such a force would require adequate and uninterrupted passage from and to the West. If Mr. Khrushchev is in earnest, he should agree to such a force being as well in Eastern Berlin, so that the whole city could be under United Nations protection and its freedom ensured. So the present occupying forces could be withdrawn and some degree of disengagement effected.

Of course there will be difficulties. The Soviet may insist that no NATO countries should contribute to a Berlin force, thus, for example eliminating Canadian troops, already in Western Europe. Whether the Soviet should have its way on this point is a matter for discussion.

If we are to preserve the rule of law in Europe, the establishment of an effective United Nations force in Berlin would be a substantial step.

Progress towards the rule of law has been slow and difficult. Since the end of the Second World War there have been major conflicts and intermittent hostilities. States have been subverted and rulers assassinated.

Yet there has been progress. Aggression has been checked in Korea, peace, albeit uneasy, has been established in the Middle East, in each case under the aegis of the United Nations.

Aggressive war is declared illegal and the International Military Tribunal at Nuremberg has held the solemn renunciation of war as an instrument of national policy involves the proposition that such a war is illegal in international law and that those who plan to wage such a war, with its inevitable, terrible consequences are committing a crime in so doing.

Under the trusteeship system considerable areas have advanced and are advancing to independence or self-government in accordance with orderly international process. Individuals can claim the redress of grievances before the Trusteeship Council, a departure from the principle that international law is purely a matter for states and between states.

In economic and social matters the United Nations and associations like the members of the Colombo Plan tacitly admit that the rule of law can survive and flourish only if mankind is adequately fed and nourished in conditions of free and enlightened social development. If man has to choose between liberty and food, he appears likely to choose food. Without liberty there is no rule of law. This inference is obvious.

The challenge to us all is great for the stakes are survival. We are each our brother's keeper. If one state usurps by violence or subver-

sion, then the rule of law disappears from one section of the world and the rest is thereby weakened. We in the free world are not so strong that we can afford its diminution. The areas now subject to the rule of law must not decrease.