

1958

Book Review. World Peace Through World Law by G. Clark and L. B. Sohn

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Recommended Citation

Wagner, Wencelas J., "Book Review. World Peace Through World Law by G. Clark and L. B. Sohn" (1958). *Articles by Maurer Faculty*. Paper 2353.

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present-day developments. Did not Goethe already complain in his *Faust* that old laws are carried on beyond their time while there are as yet no new laws to meet new conditions? To some extent any lawyer will always feel that he is living in a period of basic changes.

Moreover, reservations to treaties began to be made at a time which Kappeler considers as a period of stability of international law. I therefore doubt whether any international law of the future would be able to dispense with this institution the utility of which has been proved in a very respectable number of cases—even in periods of relative stability of international law. Therefore, even if we would accept Kappeler's view, that we are living in a period of transition I assume that reservations to international treaties would still continue to be with us as a "necessary evil" even when this period should have come to an end one way or another.

Kappeler, at the end of his book, tests the various solutions proposed, especially as to whether they could easily be applied in practice. He contends that all proposals made up to now to reform the classical rules concerning reservations fail this test. He therefore comes out in favor of a return to the classical pre-World War II rules on reservations, as laid down in the proposals made by the Harvard Law School in 1935.

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CLARK, G.—SOHN, L. B. *World Peace Through World Law*. Cambridge, Massachusetts: Harvard University Press, 1958. Pp. 540.

Hardly any problem dealing with international law and organization has received more attention in the last few years than that of the revision of the United Nations Charter. The general understanding is that it needs amendments, with doubts expressed by some whether the time is appropriate to change it now. Most criticisms have been directed to some particular supposed shortcomings of the Charter, and first of all—to the right of vetoing the decisions of the Security Council. Only a few have suggested a more comprehensive revision of the structure of the international community.

The Clark-Sohn proposals have two outstanding features. The first important feature of the mature conclusions of the authors, long keen observers of the United Nations and experts in international law and organizations, laid down in *World Peace Through World Law*, is their comprehensiveness. To achieve peaceful co-operation between nations it is insufficient to suggest making an isolated step in one direction, even if it be the right one. Thus, it is insufficient to proclaim disarmament and to forbid states to have recourse to war. "The necessary corollary of such prohibition must be the assurance that every state can get justice by peaceful proceedings."¹ Different problems which the international community is facing are interrelated, and in order to achieve the goal of having peace through law, the revamping of the pattern of relations among nations must proceed on a large scale.

In effect, the authors offer a thoroughly revised text of the Charter of the

¹ Wagner, *Is a Compulsory Adjudication of International Legal Disputes Possible?* 47 N.U. Law Rev. 21, 22 (1952).

United Nations, juxtaposed with the old one, largely glossed, explained and commented, preceded by an enlightening introduction, and followed by annexes. In spite of the scores of changes to the structure of the United Nations that the authors suggest, some of a fundamental nature and some trivial, the old text of the Charter was retained as much as possible, whenever it did not conflict with the basic assumptions of Messrs. Clark and Sohn. And at this point, the other outstanding feature of the work must be emphasized: its realism. The authors are cautious not to make idealistic proposals which, good as they may be, have no chance of being adopted at the present stage of the development of humanity. The so-called "sovereignty" of the states is recognized, and is abridged only as far as it is necessary to achieve the paramount purpose of the organization of nations: the replacement of violence in international relations by settling disputes by peaceful means.

In this respect, the authors may even appear to be too conservative. In the present Charter of the United Nations, the word "sovereign" or "sovereignty" is used just once, in Art. 2, which states that "[t]he Organization is based on the principle of sovereign equality of all its members." If taken in its literal meaning, "sovereign" denotes "supreme." Thus, it could be argued that the Charter speaks about supreme, or perfect, equality of states. The Charter does not expressly recognize that its members are "sovereign," although it does so implicitly, and nobody could contend that sovereignty was intended to be eliminated. In spite of the fact that the whole idea has been often administered severe blows by the actual practice of nations, and that all outstanding modern international law scholars have demonstrated its senselessness and dangerousness,² states cherish the idea that they are omnipotent and stick to it. Messrs. Clark and Sohn, realizing that nations are touchy on the point, state, in their text of Art. 2, that "There are reserved to all nations or their peoples all powers inherent in their sovereignty";³ they hasten to add, however, that some of these powers "are delegated to the United Nations."⁴

The authors make it clear that the scope of authority delegated to the United Nations will be very restricted: it must be limited, for the time being, to "matters directly related to the maintenance of peace."⁵ Responsibility for the maintenance of peace and the enforcement of disarmament lies in the General Assembly, according to the proposals of Messrs. Clark and Sohn. The place of the present Security Council is taken by a new body, the Executive Council, which is more comprehensive and includes seventeen representatives elected by the Assembly. Each of the four largest nations (China, India, the United States, and the U.S.S.R.) are to be represented on the Council; four of the eight next largest nations would also be represented in rotation. The right to veto its decisions would be eliminated; there would be substituted a qualified majority vote. The important organs of the organization, such as the Economic and Social Council and the Trusteeship Council would be continued, and a few others would be called into being.

² See, e.g., Scelle, *Droit International Public* (1944); Jessup, *A Modern Law of Nations* (1949).

³ P. 6.

⁴ *Id.*

⁵ Introduction, at XIII.

Peaceful settlement of international disputes, the paramount aim of the Organization, would be achieved by three important devices, strictly inter-related: disarmament, a world police force, and an international judicial system.

Annex I to the Charter lays down a plan for the complete elimination of national armed forces. Full disarmament is suggested to be achieved over a period of ten years (plus two preparatory years), by reducing each year the strength of the armed forces by ten per cent. This process would be supervised by a special Inspection Commission.

Annex II to the Charter provides for the organization and maintenance of the United Nations Peace Force, which would supervise the abidance by the nations of the pledge not to resort to violence in international relations. It would consist of volunteers, full-time career soldiers, numbering from 200,000 to 600,000, as determined by the General Assembly. A Peace Force Reserve is also provided for.

The world's judicial system would consist of one supreme tribunal, the International Court of Justice, to adjudicate cases of legal nature; of a World Equity Tribunal to pass on nonjusticiable disputes; and of a set of regional United Nations Courts as well as a World Conciliation Board.

The authors, well aware of the importance of a steady, well-balanced budget, call for a comprehensive fund-raising system and a budget amounting to two per cent of the gross world product. Although the estimated contributions of the nations may seem high, they would amount only to a fraction of their present expenses, most of which are wasted in the armament race.

A most important problem, in all international bodies, is the one of representation. The traditional absurd rule of not only legal, but also factual, equality of states, leading to the rule of one vote for each nation, must be replaced by a more reasonable one. Iceland or Luxemburg cannot be treated as entitled to the same voice in international matters as the United States or the U.S.S.R. In one of his previous publications, Professor Sohn gave a review of different proposals on how to distribute the voting power in the future world organization.⁶ Different factors could be taken into consideration, the most important being population and the national industrial potential. In the new book, Messrs. Clark and Sohn recognize the difficulty of basing the number of representatives from the several states in the world organization on any other consideration than their number of inhabitants. They would give one representative to the smallest nations, and thirty to each of the four biggest, having more than 140 million inhabitants. The authors point out the inherent reasonableness of this approach. In one respect, however, the plan seems to be deficient. It does not provide for a gradual increase of the number of representatives according to population, but it proceeds by stiff brackets; thus, a nation of from 5 to 20 million people would have 5 representatives in the General Assembly; nations in the 20 to 40 million bracket would be entitled to eight; those having up to 140 million would be represented by sixteen. There does not seem to be any necessity for such a procedure, and it is hardly conceivable that Eastern Germany, Yugoslavia or Argentina, each having

⁶ Sohn, *Cases and Other Materials on World Law* (1950).

nearly 20 million inhabitants, would consent to having the same number of representatives as Iraq or Switzerland, which barely pass the borderline of five million.

This seems to be the chief proposal of Messrs. Clark and Sohn which merits criticism. A few minor points may raise some doubt, such as, e.g., the suggestion that appeals from the regional international tribunals to the International Court of Justice should be only in cases of special importance instead of being permitted as a matter of right,⁷ and that appeals from the decisions of the Executive Council may be brought directly to the International Court of Justice, by-passing the General Assembly.⁸

The new United Nations would not make its membership mandatory on all nations; however, it would become effective only upon being accepted by a qualified majority of the states, including all the large nations, and there would be no right to withdraw or to expel a member.⁹ Thus, practically, universality would be achieved. Here again, by not providing for compulsion, the authors take national susceptibilities into consideration.

In providing for a system of control over the doings of the nations, the authors proceed on the assumption "that mankind has not yet reached the stage at which any nation can be trusted . . . to observe even the most solemn agreement to refrain from violence."¹⁰ There lies the crux of the whole problem. The nations cannot be trusted. If it can barely be expected that nations would observe their agreements, can it be hoped that they will relinquish some of their powers deriving from their "sovereignty" and agree to a plan under which they would be *forced* to abide by their agreements? The future, and probably a not-too-distant one, will answer this question.

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⁷ P. 41; p. 323, point 5.

⁸ Art. 25 at 73-74.

⁹ Art. 6 at 16.

¹⁰ Introduction, at XXI.

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