

*THE SCIENCE OF INTERNATIONAL LAW TODAY
AND TOMORROW*

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One can hardly think of another field that has been criticized, attacked, and satirized as much as law—law of every type and system. Too frequently has it been identified with what is old, outdated and obsolete. Hence it is no mere coincidence that since time immemorial it has been the favorite of the muse of satire, who has continued to visit the lawyer in his study and courtroom. Legal institutions and law studies have not been spared, either. The lawyer's manners dress and, indeed, work have been subject of continuous ridicule. Suffice it to mention Shakespeare, Cervantes (the role of Sancho Panza), Dickens (the case of Bardell versus Pickwick), Maupassant, Balzac, Anatol France, Cechov, or Capek.

Too often, by emphasizing and exaggerating the importance of form, by concentrating on analysis and speculations far removed from life, or by rigidly adhering to antiquated formulae, the lawyers have been responsible for the image which has grown up in the public mind—that of law frequently detached from life, anachronistic. Even its language has become esoteric, a jargon, frequently incomprehensible to the outsider.

This is the legacy which has come down to us in the middle of the twentieth century. But, on the other side it ought not to be forgotten that, parallel to this, great progress has taken place in legal thought. So marked has been the growth of the science of law, that it has become impressive in its breadth and development. We of Poland can look back upon an imposing gallery of great jurists who have advanced with the spirit of the times, who have been steadfast in the fight for democratic rights, and who have sturdily defended those deprived of those rights.

Today, twenty years since the foundation of our new State, we should surely be justified in claiming much credit for the development of jurisprudence in Poland, although we must not close our eyes to its short-

comings and defects, to sins committed or not committed. They concern all branches of law.

International law has been often denied the status of a legal discipline for too often has it been flouted in practice, vilified in theory. The objection is frequently made that its domain is subjected to the play of political forces only. How wrong. Today, when war is not only outlawed but when any nuclear conflict can lead to a catastrophe, the sole way to settle international problems and disputes—is by negotiation. It is here where law may and should play an important role: in the process of negotiations themselves, in the drafting of documents and their implementation. Apart from such cases, there is that wide field of international relations regulated by legal rules and principles which have developed for centuries and are being adapted to the needs of our times.

Twenty years ago Allied victory marked the beginning of a new chapter in history. A large number of international documents fixed the principles and procedure governing the conclusion of the war, and defined the status of the defeated enemy countries. At the same time, the foundations were laid for the construction of the post-war world in which the rights to independence and to peace for every State and nation were to be secured. All rules and principles, both those of a general character and those more directly concerning ourselves, called not only for proper interpretation, but also application and implementation.

These important problems confronted both the theory and practice of international law as soon as the new Poland was reborn.

One complex of problems concerned the aftermath of war. Within its framework fell the question of war crimes and the punishment of all those responsible for them. Many Polish scholars devoted their attention to these issues: it resulted in many studies of fundamental importance as well as some concerning specific issues, from the Nuremberg Trial to questions of extradition and other problems.

There were the extremely important problems concerning Germany: the peace treaty, and our western frontier. Polish literature on the subject was both rich and constructive. It was fortunate that a chair at one of our universities for many years concentrated on the problem of Poland's western frontier, and succeeded in showing it in the proper light, attacking it from many angles. A number of works were also published in foreign languages, conveying our view to readers in many countries, explaining that it was the lawful and correct view. The problem of a peace treaty with Germany was one that acquired particular importance especially since two German States have come into existence. Polish jurists had their say also on the issues of reparations and restitution of Polish property destroyed or looted during the war.

Even today, twenty years later, this chapter concerned with the aftermath of war is not closed yet. Thousands of war criminals still remain at liberty. Recent events have offered abundant evidence to this effect.

The Federal German Republic still stretches her hands to the lands on this side of the Odra and Nysa, so the struggle must still go on for recognition and respect of the law. The German question still remains to be settled in the interests of peace and European security, as well as in the interests of the German nation itself.

The jurists of Poland are simultaneously faced with the great issues of the modern world—peaceful coexistence in its diverse and numerous aspects. A considerable amount of work has been done on rules governing communication, especially sea and air transport, on agreements, treaties, and attempts at codification, on sources of law, on security and disarmament. Important contributions have been made to the history of law. The place of international organizations in the world of today has provided inspiration for a number of works on this subject. For, it may be worth recalling, that about 150 international and intergovernmental organizations are in existence and play an important part in modern diplomacy. The mechanisms by which they function are not only very complicated, but sensitive, so that to make proper use of them, and to make them effective weapons for defending the rights and interests of nations and for shaping international relations in the right direction, an adequate knowledge of the law is necessary. Polish literature in this field has thrown light on various aspects of these organizations, especially on the United Nations. It was recently enriched by attempts to produce a synthesis of the problems involved.

The interests of Polish jurists have ranged over a wide field: from the national liberation movement and the abolition of colonialism to diplomatic and consular law, from commentaries on international documents to nationalization. Yet another chapter deserves attention. We are not a power which reaches into outer space, but our science can record achievements in research in this field. For example, Poland may be proud of her part in the International Geophysical Year, and in the Years of the Quiet Sun. There is an impressive list of contributions made by Polish jurists to the law of outer space. Some may claim that all this is farfetched, that it belongs to the exotics of law, yet it is a chapter of no mean importance, of the law of tomorrow. Here then, lies the value of our contribution to its formation and further development.

Finally, one should record the great amount of work done in the field of collecting and publishing documents on international law and relations. Needless to say how important this is to both to professors and practitioners. Here we find collections of sources and documents. To these one

should add a new publication:—a collection of judgements, arbitrations, and other material concerning important international legal disputes in which Poland has been concerned. It is intended that these case-books should cover the twenty years 1945-1965, with further issues to appear periodically in the future. This is the first publication of its kind in our history.

A review of achievements in the field of international law is bound to take note not only of publications of real and lasting value, but also record that there were some of lesser value, too abstract or dogmatic. The approach to and method of scientific research are paramount importance. Some of the works have been inadequately linked with problems of today, with the practical needs of life and practice. Nevertheless a great deal was done during this period.

Poland can take pride in a no small number of professors and students of international law, who worthily represent this branch of science both at home and abroad.

The purpose of this paper, however, is not to evaluate what has been done in the past, but rather to sketch the prospects for the development of international jurisprudence in the future.

As has already been pointed out, the aftermath of war is not yet over. It is an important front, on which creative effort is still required. But the post-war world, too, offers a wide field to legal research.

The three great revolutions that have taken place in our times—the social revolution, the national liberation movement, and the scientific-technological revolution—provide us with ever new problems. Among them, the following are of particular importance to Polish jurisprudence:

1. The Council for Mutual Economic Assistance has entered a new stage of development. Co-operation and coordination between the countries belonging to it, the emergence of new enterprises, the development of joint production and services, the formation of new combines and organizations in diverse branches of industry, the expansion of international organizations in particular fields—all these developments call for legal solutions, require the aid of law. The whole process of integration is creating new theoretical and practical problems. These concern the public law, organization, and civil law. What is required, therefore, is not only analysis of existing documents, but also comparative studies, suggestions for legal constructions to assist in the achievement of the goals and to ensure the effectiveness of mutual arrangements and obligations. Law is called for to help the process to develop in the right direction.

2. Economic relations between countries with different political and social systems create ever new problems. It is obvious that these relations should be based on constructive principles of mutual exchange and ad-

vantage. This calls for the abolition of all forms of discrimination, and the creation of a proper framework for world trade. A number of concrete tasks have already been formulated by the U. N. Conference on Trade and Development held in Geneva in 1964. Commerce, transport, especially by sea and air, protection against arbitrariness in trade relations, measures to prevent trade from being used as an instrument of political pressure—all this is involved. Further studies are called for to work out the most suitable types and forms of contracts both bilateral and multilateral. Special attention should be paid to the legal aspects of trade within the framework of a future World Trade Organization. All these are chapters of a new branch international economic law, which is still in its infancy. The huge expansion of trade within the triangle: socialist—capitalist—and new countries, the growing network of treaties and other agreements, is becoming a primary factor of peaceful international relations.

3. Disarmament, both on a world scale and within regional dimensions, is today a subject of primary importance. This is no doubt a political question, yet a multitude of problems of a legal nature are involved. How interesting are the legal aspects of the two Polish plans, one for an atom-free zone and the other for the “freezing” of armaments in Central Europe. The purpose of these schemes, the methods and forms for their implementation—all are of interest to jurists. Specialists in international law, who already have considerable experience in such matters, will be able to add their valuable contribution to their further elaboration and development.

Finally, there is the all-embracing problem of co-existence. The dynamics of life, require that events be followed very closely, practical solutions adopted and theoretical generalizations sought. In the light of changes we are witnessing: the outlawry of force and of threats of force, the pressing need for disarmament and the growth international trade relations, the role of contemporary international organizations, well established institutions like sovereignty or newly recognised principles like self-determination, acquire a new meaning. Research in various aspects of co-existence, in both substance and form, and their codification, are tasks of great importance. At the same time it is essential to continue the dialogue, to analyse and review: all theoretical attempts attacking the very foundations of co-existence or deforming its meaning. Some reflecting a nihilistic or pseudo-scientific approach to international law call for special attention.

Here is a catalogue of problems confronting jurists in the field of international law.

Their efforts will bear fruit if adequate methods of research are

applied, the problems seen in their proper context, within a wider framework, beyond jurisprudence in the strict sense of that term.

Life and practice are like oxygen which theory of law must breathe if it is not to be reduced to futile or barren speculation.

Furthermore, close links between law and other fields of the social sciences are essential for the advancement of each of these fields and of the social sciences in general. This is particularly true of economics. Although the first steps in this direction have already been taken, there are still considerable difficulties to be overcome. On the one hand, there is insufficient appreciation of the role of law, on the other there is the characteristic separatism of the various disciplines. These difficulties can be solved only by a proper understanding of the profound interdependence between phenomena, in various fields of life which is bound to be reflected in scientific research. A further step, an indispensable one leads us to the recognition of the close links between social and the basic sciences. The impact of technical progress on social life, on the development of interhuman relations and international relations, cannot not be underrated. This is true of all the branches of law, and of international law not least. The mechanism of modern international trade, the sphere of co-operation and competition, the dimensions of co-operation and conflict, are today largely determined by the achievements of modern technology. Hence the need for their adequate consideration in legal research.

These great problems have been recognized as being of special importance to national interest. Though University departments are already engaged in work on some of them, the complexity of many exceeds the possibilities of their research. It is here where the Institute of Legal Sciences of the Polish Academy of Sciences can make a real contribution: as the central body, coordinating research covering many fields.

The science of international law in Poland has great achievements to its credit. But much greater tasks still await it. It could not confine itself to analysing or commenting existing principles or agreements. It should not limit its horizons to expounding the law of yesterday or today. Much more important is to help in the creative process of shaping the law of today and tomorrow. While pointing out its anachronisms, and revealing the shortcomings, it should make ever new suggestions and proposals. In propounding new theories, it may suggest concrete and detailed solutions, both as regards the wider field of international law and relations matters directly concerning our country. This is how jurists in this field can and should make a contribution towards the solution of the key problems of the contemporary world, by committing themselves to a cause which should be closest to the heart of any intellectual—the cause of progress and peace.