

*“The Development of a Constitutional Framework
for International Cooperation”
Address at the University of Chicago*

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THIS ADDRESS was given at the final event of the special convocation and dedicatory celebration marking the completion and occupancy of the new law buildings of the University of Chicago Law School. It is probably Hammarskjöld's best exposition of his perspective on the United Nations, and on his own office of Secretary-General, as part of a creative evolutionary process in the development of international institutions. Most of his May 5 press conference was occupied in discussion and explanation of this speech. Hammarskjöld remarked to the reporters that “if you want to use such preposterous and ‘highfalutin’ words as ‘creed’ or ‘confession of faith,’ you might apply them to that speech” and he also called their attention to his use of the Bergsonian term “creative evolution.”

I would like tonight to share with you some observations regarding a legal problem—I use the word “legal” in its broadest sense—which so far has received but little attention. International law, in spite of the vast literature covering the subject, has on the whole been less favored by serious students than national law. And within the field of international law what might be called international constitutional law and its specific problems has attracted less interest than other parts with their far longer history in the Western world. In fact, international constitutional law is still in an embryonic stage; we are still in the transition between institutional systems of international coexistence and constitutional systems of international cooperation. It is natural that, at such a stage of transition, theory is still vague, mixed with elements of a political nature and dependent on what basically may be considered sociological theory.

Men organize themselves into families. The families join together in villages or tribes. The tribes and the villages fuse into peoples, and one day, out of the self-consciousness of a people, there develops a feeling of

difference and separateness, the positive expression of which is a feeling of nationhood. The nation organizes its life within a set of constitutional rules, evolving in practice or crystallized as law. Under the constitution the people develop national organs with different functions and a division of responsibilities representing a balance of power. Through those organs laws are given, setting the pattern for the lives and activities of the individuals and the groups which constitute the nation.

Is that the end of the road of the development of human society? Of course not. Nation borders on nation, peoples get in touch with each other, and whatever differences there may exist and whatever conflicts of interest the people may see, they are forced to live together, fighting or in peace, as neighbors with limits put by nature to their possible self-sufficiency and for that reason with a need to develop forms for international intercourse, permitting more or less highly developed degrees of cooperation. So an institutional system of coexistence is developed with its rules and practices. Still there is no international society. Still the nation remains the highest fully organized form for the life of peoples.

However primitive a basic institutional pattern may be, it carries within it seeds for the growth of higher social organisms, covering wider areas and groups of peoples. To use my terminology of a moment ago, such an institutional system for coexistence, stage by stage, may be developed and enriched until, on single points or on a broad front, it passes over into a constitutional system of cooperation. When that happens, we get in a first, necessarily rudimentary form, a form of society which, while preserving and protecting the lives of the nations, points toward an international constitutional system surmounting the nations, utilizing them to the extent that smaller units are more efficient instruments for evolution, but creating rules which limit the influence of the nations in fields where bigger units present greater possibilities for development and survival.

I believe it is useful, in the discussion of the development of human society, be it national or international, to keep in mind this sociological perspective taken over from theories of biological evolution. It is a perspective which helps us to a more realistic appraisal of what it is we have achieved and what it is we are trying to do, as well as of the scope and significance of our failures and our successes. It also gives us a broader and more organic sense of the role of law—again I use the word in its broadest sense, including not only written law but the whole social pattern of established rules of action and behavior—making us see the differ-

ences as well as the similarities between the national and international field, and warning us against false analogies.

In the light of this approach, the value of speculation about what should be the ultimate constitutional form for international cooperation is obviously limited. Those who advocate world government, and this or that special form of world federalism, often present challenging theories and ideas, but we, like our ancestors, can only press against the receding wall which hides the future. It is by such efforts, pursued to the best of our ability, more than by the construction of ideal patterns to be imposed upon society, that we lay the basis and pave the way for the society of the future.

Our century has established a rich pattern of approaches to the development of an institutional framework for coexistence, as well as for a constitutional framework for international cooperation. In this respect our time is as much in the front line of evolution as it is in the field of natural sciences. It would take me much too far if, on this occasion, I were to try to make an analysis of these various efforts. I must limit my brief comments to developments around which interest and activities have recently tended to center, such as the European efforts to tie the countries of the Continent together in new patterns, providing for intensified cooperation, and, especially, the United Nations family of international organizations.

In a galaxy of nations like the European one, there are, of course, strongly ingrained patterns and inherited sets of rules which integrate the area. The life of those nations develops within a system explained by a number of shared interests and basic concepts, which set a framework for trade, for travel and exchange of people, for movement of capital and for exchange of ideas. Within the system created by those rules we have, in a sense, a kind of "common market," which, however, does not infringe on the sovereignty of any of the nations forming part of the market and which, therefore, still lacks completely what might be called a constitutional element. It thus remains a purely institutional pattern. With the recent creation of the European Common Market of six nations, the Coal and Steel Committee, and similar bodies, a decisive step has been taken in the further development of this institutional framework. In fact, by these actions the system has been pushed beyond the border of institutional arrangements and has come to include some initial constitutional elements.

The institutional evolution in Europe has brought us a step in the direction of a true constitutional framework for cooperation which, through experimental stages of a confederal nature, may finally lead to some kind of federal system or even stronger forms of association. However, just as in the case of world federalism, I think it is wise to avoid talking of this or that kind of ultimate political target and to realize that the development is still in an early stage of institutional evolution, although a few vanguard penetrations into the constitutional area have taken place. What seems imperative is to push forward institutionally and, eventually, constitutionally all along the line, guided by current needs and experiences, without preconceived ideas of the ultimate form.

It may be worth mentioning that, according to statements made by the President of France, the present approach to the idea of a French-African community has essential elements in common with the attitude just described. If I understand the policy correctly, it works in the direction of a far-reaching development of institutional patterns without any definite stand now being taken on the constitutional element, which thus is permitted to grow out of the evolving institutional pattern, whatever the direction which the interplay of forces may later establish. When, for example, in the case of the Federation of Mali, it is said that the new federation will have full independence while, on the other hand, it will be in a close cooperation with France, provided for by a set of agreements, this seems to reflect a state of affairs characterized by a highly elaborate institutional framework which, however, does not reach into the sphere of constitutional arrangements.

It is known that Sir Winston Churchill, in his time, advocated an approach to the building of a world community through the creation of regional organizations as stepping-stones to more highly developed forms of international coexistence or cooperation. We see instead the advance being made in part only through regional arrangements, but in part—and mainly—independently of such arrangements and directly on the basis of universality. If Sir Winston's line had been followed, it would, with my terminology, have meant that regional organizations step by step would have developed a basic institutional pattern for universal coexistence by which, later on, a push forward, on the universal level, could have been tried in the direction of a constitutional pattern.

If we accept the interpretation given here to the European community and the French-African community, the United Nations could, in a similar sense, be called a "community," although of a universal character. It

represents in itself, with the methods of operation and the rules established, an elaboration of an institutional pattern of coexistence. It even has, in theory, points where it reaches into the constitutional sphere; I have, of course, in mind especially the authority given to the Security Council to act with mandatory power, provided the action is supported unanimously by the permanent members. However, as is natural with a more complex system, built up of a greater number of components, among which—to use the language of natural science—in many fields forces of repulsion tend to balance or outbalance forces of attraction, the cohesion is more unstable and the field covered by the institutional pattern less extended or more marginal than in the case of regional groupings.

Viewed in this light, the United Nations is an experimental operation on one of the lines along which men at present push forward in the direction of higher forms of an international society. It is obvious that we cannot regard the line of approach represented by the United Nations as intrinsically more valuable or more promising than other lines, in spite of the fact that, through its universality, it lies closer to or points more directly toward the ideal of a true constitutional framework for worldwide international cooperation, and notwithstanding the obvious weaknesses of regional approaches to such cooperation. However, if one cannot a priori give it higher value, it is, on the other hand, equally impermissible to regard it as less promising than experiments at present pursued on other lines. The effort carried on within and through the United Nations is an effort just as necessary as other experiments and nothing short of the pursuit of this specific experiment with all our ability, all our energy, and all our dedication can be defended. In fact, the effort seems already to have been carried so far that we have conquered essential new ground for our work for the future. This would remain true in all circumstances and even if political complications were one day to force us to a wholly new start.

When the United Nations was created, the founders had the experience of the League of Nations and also the experience of such a highly evolved constitutional pattern as that established on the American continent. A strong influence from both these experiences can be seen in the Charter of the United Nations.

We have an Assembly of state representatives with an equal voice in the deliberations and decisions, irrespective of the size of the nation for whom they speak. But the “legislative” powers of the Assembly have

been limited to recommendations which, legally, at present is likely to be the maximum attainable. We have one collective "executive" organ, formed on the pattern of the Council of the League of Nations, but with voting rules adjusted to the political realities of the world and, therefore, recognizing that mandatory authority cannot be vested in such an organ unless supported by the main powers in the world arena. We have, on the other hand, also what may be called a one-man "executive," with explicit authority in the administrative field, supplementary to, but not overlapping the authority of either the Council or the Assembly.

Further, we have two organs with elements of both "legislative" and "executive" power, of which one carries the special responsibilities of a political nature which belong to the United Nations under the trusteeship system, and the other one has broad authority in the field of economic and social development regarding questions of coordination of action toward the targets established under the Charter.

Finally, we have the International Court of Justice as a counterpart to a national judiciary. It would have possibilities to develop into a more important element in the settlement of international conflicts than it now is, were the unfortunate and self-defeating reservations against its jurisdiction made by some member countries to be withdrawn. It should be stressed that all these organs function within the framework of the Charter, a document that by its very nature and by the way in which it establishes solemn commitments to certain joint principles and purposes has a clear constitutional aspect, in the sense in which I am using this term here.

The system we find in the United Nations has its strength and its weakness. In the light of the experiences of fifteen years, undoubtedly some changes of the pattern would be made if the Charter were to be revised. These changes, however, would probably not refer to the various organs as such, but rather to their relative authority—that is to say to the division of responsibilities—and to their methods of operation.

The experiment carried on through and within the United Nations has found in the Charter a framework of sufficient flexibility to permit growth beyond what seems to have been anticipated in San Francisco. Even without formal revisions, the institutional system embodied in the Organization has undergone innovations explained by organic adaptation to needs and experiences.

On this point a word of warning may be in order. The fact that important sections of the Charter—I think especially of Chapter VII which lays

down the rules for interventions of the United Nations with military force—so far have not been implemented and still seem far from application, does not mean that on these points we are facing a dead letter, and that to the same extent the power of the Security Council, as the executive organ entrusted with authority under Chapter VII, has withered away. It is not so because, with some changes in the world situation, the clauses of the Charter to which I have referred, may come to be seen as providing the basis for an adequate response to the anticipated needs. If and when it should so happen, the activities of the Security Council would automatically show a corresponding expansion.

What I have said is not hypothetical, as may be seen from the current discussion on disarmament. Were developments now to lead the main powers to an agreement on even limited disarmament, the need for an institutional evolution in the direction foreseen in Chapter VII would at once present itself with considerable strength.

So far I have referred only to the United Nations itself. At its side stand the specialized agencies with somewhat similar organizational systems. They are autonomous, though coordinated with the United Nations within the terms of the Charter. There are provisions for cooperation among the various organizations within the United Nations family. However, this cooperation is established mainly on the Secretariat level and the group of organizations as a whole has no organ which, through a majority decision, can lay down a common line of action. A committee of the administrative heads of the various organizations, established for cooperation, functions on a basis of unanimity which is made necessary by the autonomy of the organizations.

Experience shows that neither the central role of the General Assembly of the United Nations nor the fact that, generally speaking, the same nations are members of all the organizations, provides for an effective integration among them. Thus we see at the present stage the paradox that the organizations created for the development of an institutional framework for international coexistence are themselves bound together within such a pattern only in a very loose form, which is not reinforced to any considerable extent by an integration of policies within various member countries.

This fact, which is strongly indicative of the experimental and, one might even say, embryonic character of the present efforts, is of special significance when we face a need to expand the field to be covered by international cooperation. Historically we have to register a tendency to

create new organs for each new major field of activity. Thus international cooperation in the field of the peaceful uses of atomic energy led to the establishment of the International Atomic Energy Agency, which for all practical purposes functions as a specialized agency. Similarly, in the case of control of the implementation of an agreement on nuclear tests, the creation of a new autonomous organ is anticipated. Finally, even in the field of disarmament, which under the Charter is a central task of the United Nations, suggestions have been made to the effect that activities of decisive significance should be entrusted to a new organ which might be not only administratively but also politically independent of the United Nations.

In view of the tentative stage so far reached as regards coordination of activities among the various organizations working on the basis of universality, it may be questioned whether the tendency to which I have just referred will not prove to be a deviation leading us away from the most fruitful direction for an evolution of a framework for international cooperation. At least it seems to me that, if this tendency is accepted and continued, it should be counterbalanced by an effort to evolve new forms for integration of the work of the various international agencies. I am not in a position to say in what direction such forms may be found, but unless they are developed we may come to face a situation where the very growth of the framework for international cooperation tends to lead to an ultimate weakening. If I am permitted to fall back again on a parallel with biological developments, it is as if we were to permit the growth of a tree to be weakened by the development of too many branches, finally sapping its strength so that it breaks down under its own weight.

Having spoken about the risk of disintegration of the international framework through a proliferation of organs, I should mention also the opposite risk, that by combining too many tasks too closely within one and the same organ, you break it up, as of course no organization can carry an unlimited burden because of the simple fact that no leaders of such an organization can have the capacity to give satisfactory leadership over ever-expanding areas.

The two risks indicated call for careful thought before we push much further forward. We must seek the optimum balance between a system with a large number of autonomous bodies and a system with strong concentration of tasks within a lesser number of organizations. The way will have to be found by trial and error, but planning is necessary because of the difficulty to take a step backward or to change fundamentally what

once has been established. Probably, new forms will have to be devised, not only, as already indicated, for an integration of activities among autonomous organizations, but also for the delegation of powers within this or that organization without a breaking up of its inner unity.

What is true of the United Nations family of organizations as a whole is true also of the United Nations. The developing activities over ever-wider fields, in response to the needs which we face, may serve to alert us to possible risks of a lack of integration even within the organization itself. The correctives exist. There is the unifying influence of the General Assembly itself and of other main organs. There are the coordinating activities within and through the Secretariat. But, again, the human factor comes into play, and I would in this context, in concluding, like to quote one example of interest as a comparison of constitutional problems facing an international organization with those we know from national administrations. You will excuse me if I refer to my own office.

The Secretary-General of the United Nations is the chief administrative officer of the Organization and, as such, the only elected member of the Secretariat. The founders of the United Nations may in this context have looked to the American Constitution. The chief of any government, or the Chief Executive of the United States, has the assistance of a group of close collaborators who represent the same basic approach, and to whom he therefore can delegate a considerable part of his responsibilities. On the basis of universality, especially in a divided world but generally speaking as long as nations have opposing interests, no similar arrangement is possible within the United Nations. This may have been understood in San Francisco, but I guess that it was felt that it did not matter too much as the Secretary-General had mainly administrative responsibilities. However, the position of the Office of the Secretary-General within the United Nations, explained in part by the fact that he is the only elected officer in principle representing all members, has led to increasingly widespread diplomatic and political activities. This is in response to developing needs. If negotiations are necessary, or if arrangements with a certain intended political impact are to be made, but member nations are not in a position to lay down exact terms of reference, a natural response of the Organization is to use the services of the Secretary-General for what they may be worth.

The tasks thus entrusted to the Secretary-General are mostly of such a character that, with the composition of an international Secretariat and of the group of his closest collaborators, with its naturally wide geo-

graphical distribution, he must carry out the work on a fairly personal basis. Obviously, there is no parallel to this in the field of national politics or diplomacy, and the case I have described, therefore, highlights one of those essential complications which characterize in the constitutional field the effort to work in the direction of organized international cooperation. At an experimental stage, such difficulties may be faced on a day-to-day basis, but in the long run they are likely to require imaginative and constructive constitutional innovations.

Perhaps a future generation, which knows the outcome of our present efforts, will look at them with some irony. They will see where we fumbled and they will find it difficult to understand why we did not see the direction more clearly and work more consistently toward the target it indicates. So it will always be, but let us hope that they will not find any reason to criticize us because of a lack of that combination of steadfastness of purpose and flexibility of approach which alone can guarantee that the possibilities which we are exploring will have been tested to the full. Working at the edge of the development of human society is to work on the brink of the unknown. Much of what is done will one day prove to have been of little avail. That is no excuse for the failure to act in accordance with our best understanding, in recognition of its limits but with faith in the ultimate result of the creative evolution in which it is our privilege to cooperate.