

EDITORIAL COMMENT

POST-DISARMAMENT INTERNATIONAL LAW

A system of world order to follow complete and general disarmament may seem a matter of remote concern to contemporary international lawyers, yet this very subject became a focus of attention at the 52nd Conference of the International Law Association, held at Helsinki in August, 1966. Significantly it was introduced by a reporter from the Soviet Union. Dr. O. V. Bogdanov, as part of the first report of the Association's new Committee on Principles of International Security and Co-operation.¹ His report was, in part, a manifestation of the continuing concern of Soviet international lawyers with the task of convincing others of the seriousness of their desire to achieve disarmament. It was a new step in a campaign begun by Maxim Litvinov in the 1920's to win friends among the numerous individuals from all countries who are distressed with the seemingly endless character of warfare.

The issue was presented by a new committee created at the 51st Conference, held in Tokyo in 1964, but in reality it is part of a longer history. It is an heir of a continuing study of major politico-legal issues predominant in relations between the Soviet Union and the Western world. These had been discussed for nearly a decade within the Association by a committee created by resolution introduced at the Dubrovnik Conference in 1956 by a Yugoslav scholar who urged a study of the legal problems of peaceful coexistence. With this mandate the committee, under the chairmanship of Maître Henri Cochaux of Belgium, had sought through scholars from the East, the West and the non-committed world to determine the legal content of a term first incorporated in international law by a treaty concerning Tibet executed by the Governments of India and the Chinese People's Republic, and later made the major principle of international relations in Africa and Asia by declaration of the Bandoeng Conference, and finally incorporated in the Program of the Communist Party of the Soviet Union in 1961 as the cornerstone of the Soviet Union's foreign policy.

Because the Association concluded in Tokyo that its committee on peaceful coexistence had exhausted the subject of study when expressed in the generalities of "peaceful coexistence," the new committee was created with the same core personnel to explore specific problems, notably the legal aspects of disarmament. In spite of some dissent based on doubt that the Association could succeed in elucidating a subject that was eluding the experts on disarmament at Geneva, the matter was made the subject of Association concern.

¹ Report distributed at the conference as a conference document. It will appear in the Proceedings of the 52nd Conference of the International Law Association.

At Helsinki the committee's three reporters treated the duty in international law to disarm, the methods appropriate to achievement of such an aim, and the legal order to follow disarmament. The discussion led to no resolution on substance, only to a decision to continue for another two years; but some consensus was evident. There was no audible dissent to the conclusion of the first reporter, Dr. M. Radojković of Yugoslavia, that a duty to disarm has become established in international law. The issues left open were the level to which armament must be reduced in order to limit its use for all but police functions, and the manner of achieving such a level.

Professor Edward McWhinney of Canada favored in his report a step-by-step approach, taken in conjunction with a series of political solutions of problems causing international tension, and a strengthening of methods of peaceful settlement of disputes. He saw no success in an approach advocating a bold stroke outlawing arms in their resolution, from which some expect to emerge a world-wide willingness to resolve disputes by peaceful means because of the impossibility of utilizing arms.

It was to the problem of post-disarmament world order that Dr. Bogdanov directed his attention. His approach merits wide attention for two reasons: first, there are visionaries in all countries who, like Plato, enjoy devising schemes to perfect government, and, secondly, although the disarmament of the Great Powers now seems remote, these visionaries are not without influence. Their plans can have political repercussions among those throughout the world who crave peace and are willing to grasp the hand proffered in solution of public order problems which plague the world. In short, an attractive alternative to perpetual warfare can have far-reaching appeal, even if some think it impractical. Dr. Bogdanov raises some basic questions and offers solutions that bear analysis as to practicality.

First among his questions is the intriguing one: Will there be international law or some contrasting system of world law after complete and general disarmament? His answer is unequivocal. Public order can be guaranteed only "on the basis of the generally recognized principles of operating international law." The argument rests on the long-standing position of Soviet diplomats that nothing must be permitted to stand above those states having the veto power in the Security Council of the United Nations. These Powers must not be forced to accept decisions against their will. The Charter of the United Nations, as currently interpreted in the practice of Members, becomes under this approach the foundation of legal relations in a disarmed world. There can be no acceptable amendment to eliminate the Security Council veto against forceful intervention by the United Nations in the affairs of those states holding permanent seats in the Security Council.

All Charter provisions for the peaceful settlement of disputes would remain unchanged. In Dr. Bogdanov's view they would even be strengthened in practice, because no state in a disarmed world could reject them and resort to force. But if the decision is not accepted and requires en-

forcement, Dr. Bogdanov would oppose enforcement against a permanent member of the Security Council against its will. Peaceful settlement would be valuable in resolving disputes only to the extent that it proved acceptable to the Great Powers concerned.

Dr. Bogdanov hopes that in a disarmed world fear will be replaced by relations of mutual confidence and broad diverse co-operation between states. Thus will end ideological conflict, as typified by the "cold war," but he reconfirms his determination to preserve the ancient principle of sovereignty. This would permit states to continue to resist external pressures of whatever character to conform to the general will of other states, whether expressed in resolutions of the agencies of the United Nations or otherwise. Bogdanov would deny to a state or group of states the right to influence the internal decisions of other states. That is the rule of the Charter, and Dr. Bogdanov insists that it be preserved to prevent creation of any supranational authority and world law.

Dr. Bogdanov follows the familiar Marxist theory that human nature is not a constant but a reflection of man's reaction to his environment. Thus, in his argument, bellicosity will wither away in a disarmed world. Human nature will be changed, making unnecessary restraints based on creation of supranational law and a supranational organization, no matter how limited in authority. He rejects a world authority including legislature, executive and judiciary, such as has been advocated by several scholars in the United States.

Having left the permanent members of the Security Council free to resist all pressures in a disarmed world, and having supported his proposals on the basis of a prognosis that the mere fact of disarmament will effect a change in human attitudes toward the use of force, Dr. Bogdanov turns attention to the remote possibility that there might be some states that would try to cheat in their disarmament obligations in spite of the pacifying effect to be expected on bellicosity from execution of a disarmament treaty. For such recalcitrants, Dr. Bogdanov proposes non-military compulsion to implement the treaty. In very unusual cases he favors the "limited use of armed compulsion even after the process of destroying the main mass of arms is completed."

He expects such limited armed compulsion to be of two types: self-defense by means of the police forces permitted to exist under the disarmament treaty, and joint action of states on an agreed international basis, carried on with the help of a special mechanism of armed compulsion. This special mechanism cannot, in his view, be a standing international army under United Nations command, but a non-permanent armed force set up in case of necessity from the police contingents which states preserve. This force would look much like the forces presently commanded by the Secretary General in trouble areas, except that it would presumably be equipped with lesser arms, being composed of police contingents rather than units prepared for warfare at contemporary levels of armament.

The assignment of such forces could follow receipt of reports from con-

trol agencies which have detected in good time any attempt of a state to rebuild its army and armaments, but the application of sanctions of a military nature in response to such reports would remain the province of the Security Council. This would permit the permanent members to exercise the veto.

Dr. Bogdanov's hopes for the future are attractive in many aspects. In some measure they are realistic, and notably so when they concern a permanent international army assignable without limitation by veto of a permanent member of the Security Council. At the Helsinki Conference the question was raised by a delegate from a Branch in an ancient long-independent country of Asia as to the consequences to be anticipated from the changing nature of the majority of the United Nations. He asked whether established Asian states should be subjected to compulsion exercised against them by a majority vote composed largely of states recently established and as yet unfamiliar with the responsibilities of power.

Other speakers raised the now-discontinued policy of "confrontation" established by Indonesia at one time in its relations with Malaysia. The question was asked whether any state or group of states can be left free to recruit support among United Nations Members for a resolution supporting intervention in the affairs of a neighbor on the ground that the neighbor has engaged in a "neo-colonialist" partnership in the interest of economic development and military defense. Is this not a formula permissive of such flexible interpretation as to threaten many a state thinking of obtaining aid from a Great Power?

For the permanent members of the Security Council the way would remain open under present Charter provisions to block a United Nations military intervention by veto, but this solution would not be available to the non-permanent members who might be charged with embracing methods in development and defense which a majority might consider threats to the peace. Their only hope would be to interest some permanent member in their plight.

A permanent standing army under United Nations' command might, under such circumstances, provide a threat of intervention in internal affairs of non-permanent members of the Security Council. On this many will agree with Dr. Bogdanov. But what of his support for an army of national contingents? Would such an army not be an equal threat to sovereignty? On paper the two threats would appear to be identical, but in practice there may be a difference. Some of those in Helsinki thought so. In corridor conversations some delegates from Branches in states currently providing such national contingents explained that it was becoming increasingly difficult to recruit such national contingents, especially when United Nations funds are either inadequate to pay costs or are withheld. In consequence, a national-contingent army may be an unreal factor in the control process, if those with money refuse to pay assessments, and if the governments of small Powers presently contributing forces at their own expense conclude that their taxpayers will no longer support such contributions to world order at their expense.

Beyond such practical considerations supporting Dr. Bogdanov's arguments against creation of a permanent international army to maintain order in a disarmed world, there are on the other hand equally practical reasons for questioning his advocacy of the premise that disarmament can be expected to change human nature, in all but the exceptional case. The arguments can be found in Marxism-Leninism itself.

Cardinal to all thinking of Marxist-Leninists is the concept that instruments of compulsion will retain their place in society until man has been satiated by conditions of abundance and educated by experience to appreciate that performance of his duties to society is prerequisite to full enjoyment of his rights. Lenin had only scorn for those who advocated speedy withering away of the state as an instrument of compulsion before preparation of the conditions necessary to abundance and self-discipline. To abolish compulsion before achievement of the prerequisites was to put the cart before the horse. Stalin pushed the moment of withering away of the state still farther into the future, seeing no possibility of its gradual occurrence, and suggesting that it would have to wait until a time when not only the Soviet Union had achieved abundance and self-discipline but when all neighbors, if not the whole world, had achieved such a condition.

Khrushchev's efforts in 1957 to revert to the thinking of those in the 1920's who had anticipated a gradual withering away of the state as citizens learned to participate in the governing process met with short-lived favor. After his ouster in 1964, his heirs removed the accent from the withering-away concept. The state had to be kept in existence, if not strengthened as an instrument of compulsion, because the conditions of abundance and self-discipline had not yet been achieved. Manifestation of this attitude occurred in an increase in penalties for crime committed by recidivists who refused to take advantage of the opportunities offered them to reform.

In the light of such experience, it is hard to accept the proposition, attractive though it be, that a bold stroke for complete and general disarmament will infuse a pacific attitude into all but the exceptional statesman, who, like the recidivist, refuses to conform. The plan seems the more visionary when it lays no emphasis upon those very measures that might prepare the way for abundance and peaceful co-operation.

There are many way stations between recognition of nineteenth-century concepts of sovereignty, as favored by Dr. Bogdanov, and world law which he opposes. Regional organizations through which states exercise their sovereignty in limitation of their classical freedom of action to establish customs barriers, to hamper the free flow of peoples and ideas, to suppress the rights of citizens and to commit acts of aggression on neighbors are examples. These can be way stations along the road leading from classical positions to disarmament. Further way stations can be acceptance and use of arbitration tribunals and of international courts in limited, and ultimately in all, circumstances of dispute. If Dr. Bogdanov's scheme for maintenance of public order in a disarmed world calls for preservation

of international law in a form frozen into patterns of 1966, it can hardly attract the support of progressive forces. To state this fact is to suggest that Dr. Bogdanov must not be interpreted in such terms, for as a progressive he cannot stand for ossification. It would be a position of sterility.

He must favor aid to economic development as necessary to achievement of abundance. The Egyptian speaker at Helsinki made the familiar point of his Branch, that the wealthy Powers had a duty in international law to aid the poorer ones. While many would doubt that such a duty exists and that their taxpayers would support a program of the magnitude necessary to achieve abundance all over the world, at least while the population explosion continues, there were many listeners who would agree that economic aid must precede disarmament, since it is closely related to the assuagement of bellicose attitudes. There can be little doubt that the impoverished peoples of Africa and Asia and even in some measure of Latin America cannot be expected to leave more affluent neighbors in peace, if they see no hope of improvement in their own lot through aid from abroad. Consequently a disarmed world is Utopian until there is less differentiation in economic well-being.

Dr. Bogdanov's report served a useful purpose, in spite of the criticism it evoked. It, and the discussion that followed, sharpened understanding of the *desiderata* of a future world order. There can be no doubt that they must include fostering of transition to a law of regional and eventually world-wide co-operation in the alleviation of the general and specific economic and political causes of tension. Conditions necessary to the evolution of international law must be created which can serve as a strong base for complete and general disarmament. It is illusory to suggest that the world can have peace if only its statesmen will get on with the work of the Disarmament Conference at Geneva. Prognosticating a future world order for a world which has executed a treaty of complete and general disarmament is not enough. The base must be laid to establish the conditions necessary to what must be an advanced step, not a beginning.

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