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AVAILABLE LEGAL MACHINERY FOR A JURIDICAL WORLD ORDER

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"JURIDICAL" MEANS ARISING BY OPERATION OF LAW, as distinguished from that which arises by agreement or act of the parties.

"Law" as defined by St. Thomas Aquinas – a definition which has persevered – is an ordinance of reason, promulgated by a duly constituted authority, intended for the common good.

"Machinery" will be understood as the agencies whose functions relate to the establishment or maintenance of world order.

"World order" will be regarded as world-wide ordered peace between states.

Strictly speaking, therefore, one may well argue that there is no available legal machinery for a juridical world order in that there is no agency or institution with legislative, executive or judicial competency – as we understand those terms. Certainly, there is no such agency with supra-national, international or per-national authority (to coin a phrase), to restrict the scope of national or state sovereignty of any major power.

Insofar as effective sanction may be the criterion of the rule of law – the governmental authority to prevent wrongful activities and to punish their perpetration – as urged by Austin – there is, at present, no such authority.

Insofar as effective moral sanction may be the criterion – the authority of the natural, moral law and the obligations imposed thereby, as urged by St. Thomas Aquinas and the Scholastics – there is, at present, no general or effective recognition of any such authority.

While the people in control of the governments of many states are theistic in their religion and believe in and try to live by the principles of the natural, moral law, nevertheless, approximately one-half of the

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population of the world lives under Communist rule and its atheistic principles. Denying God, the Communists repudiate the existence of any such moral law and guide their state solely by the precept of what they think best for it at any particular time. Morality, as we understand it, plays no part in their human relations either between individuals or states.

Not to end this paper with that statement, let us examine the international agencies that do exist. These, by amendment or other grant of greater competency, may become legal agencies in a juridical world order.

First in order is the World Court of Justice.

The World Court was "established by the Charter of the United Nations"[1] and functions "in accordance with the provisions of the present Statute," *i.e.,* the statute or agreement organizing the Court,[2] to which all members of the United Nations are parties. Its members are elected by the General Assembly and Security Council of the United Nations.[3]

States only may be parties to litigation in the World Court[4] and no competency by way of criminal jurisdiction over human individuals is vested in it.[5]

Its jurisdiction comprises *"all cases* which the parties refer to it and *all matters* specially provided for in the Charter of the United Nations or in treaties and conventions in force."[6] Such jurisdiction of "cases" is not compulsory but voluntary. No state can compel another to respond to a complaint filed in that Court. However, states which are "parties" to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning the interpretation of treaties, any question of international law, the existence of breaches of international obligations and reparations therefor.[7]

Various states, for a period of years and upon conditions, have accepted this compulsory jurisdiction. Among them the United States accepted it on August 14, 1946, but upon conditions, one of which is the Connally Reservation. This reservation provides that the declaration of acceptance shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America. . . ."[8] Since August 14, 1946, various other states have attached the provisions of the Connally Reservation to their acceptance.[9]

The effect of this provision is to make the acceptance almost a nullity because the reserving state upon its mere *"ipse dixit"* can preclude the Court from taking jurisdiction.

It has another effect. It impliedly accords to any other state which is a party to a given dispute the same right as is reserved to the reserving state.

The Court, as an adjunct or judicial organ of the United Nations, has no com-

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[1] U. N. CHARTER art. 14.

[2] U. N. CHARTER art. 1.

[3] U. N. CHARTER arts. 3-10.

[4] *Ibid.*

[5] U. N. CHARTER arts. 34, 35.

[6] U. N. CHARTER art. 36.

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

petency to try issues which are within the domestic jurisdiction of any state. The United Nations Charter provides that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require members to submit such matters to settlement under the present Charter."[10]

The Statute of the Court provides that "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."[11]

The result is that the Court is an institution with no jurisdiction over international disputes unless conferred by the parties to the dispute. But, assuming that such jurisdiction is conferred, there is no provision in the Statute or the Charter which provides effective execution or implementation of its adjudications or decrees.

The Charter provides that each member "undertakes to comply with the decisions" of the Court "in any case to which it is a party." But, in the event of a failure to perform obligations under "a judgment rendered by the Court," the prevailing party "may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."[12] This function of the Security Council concerns a matter "other than procedural" and is subject to the veto under Article 27, Section 3.

Far from constituting a piece of currently available legal machinery for a juridical world order is concerned, it may well be argued that the World Court is or may be made a nullity. However, by abandonment of such reservations as the Connally Reservation, and amendment of the Court's Statute and of the United Nations Charter the Court may become a most effective judicial arm of a juridical world order.

As such, the Court would take precedence over the United Nations and the organs thereof primarily concerned with the maintenance of international peace and national as well as international security — the Security Council and the General Assembly. The UN's other organs, such as the Economic and Social Council, the Trusteeship Council and the Secretariat, are but ancillary in character.

The Security Council consists of eleven members, five permanent (Nationalist China, France, United Kingdom, U.S., U.S.S.R.) and six elected by the General Assembly.[13] It is charged with "primary responsibility for the maintenance of international peace and security."[14] It is authorized to call upon disputant states to settle their disputes which threaten such peace and security "by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement . . . or other peaceful means."[15] It may investigate any such disputes to determine whether they threaten such peace and security.[16]

It may determine that a threat to international peace, or a breach thereof or an act of aggression has occurred and recommend or decide what steps should be taken by the members of the United Nations by way of economic sanctions, interruption of means of communications and severance of

[10] U. N. CHARTER art. 2, para. 7.

[11] U. N. CHARTER art. 36, para. 6.

[12] U. N. CHARTER art. 94.

[13] U. N. CHARTER art. 23.

[14] U. N. CHARTER art. 24.

[15] U. N. CHARTER art. 33.

[16] U. N. CHARTER art. 35.

diplomatic relations or military, naval or air operations in the nature of "demonstrations, blockade, and other operations."[17]

The Security Council, however, is restricted in its competency by reason of the Charter provision that on all matters other than procedural – which are decided by an affirmative vote of any seven members – the decision shall be made "by an affirmative vote of seven members *including the concurring votes of the permanent members.*"[18] A negative vote or veto by a permanent member bars any such action. Such a vote has been cast on some eighty occasions.

This veto restriction also applies to the question of whether the matter under discussion is procedural or other than procedural – a double veto.

The Security Council, therefore, cannot always or ever be relied upon to solve any disputes between major powers or their allies or satellites where their vital interest or national honor is thought to be at stake. A veto of a permanent member will prevent any unwanted suggested solution being adopted.

The Security Council has no charter competency to legislate and bind the members of the United Nations or their people thereby. It is not made competent, over a veto, to adjudicate disputes between states or, over a veto, to enforce any such adjudication. It has no conferred competency to restrict in any way the absolute sovereignty of any state or the acts of any state in the exercise thereof over the veto of any permanent member.

The General Assembly consists of all member states or nations.[19] Its functions include discussion of any matters within the scope of the Charter, consideration of such matters and recommendation to its members on any such matters.[20]

The General Assembly makes its decisions "on important questions" by a majority vote of two-thirds of the members "present and voting."[21]

The "Uniting for Peace" resolution, adopted by the General Assembly in November, 1950, does not increase its competency under the Charter. It does not and cannot constitute an amendment to the Charter.[22] This resolution, which followed the outbreak of the Korean war, provided for setting up within the General Assembly a Collective Measures Committee of fourteen members to study and report on possible means of strengthening international peace and security under the Charter.

While the veto power of any one member does not apply to voting in the General Assembly, the competency of the General Assembly to affect its members is limited to recommendation. It cannot compel action by them. It has no legislative competency as we understand legislation. It has no effective executive or judicial authority.

These recommendations may be adopted or rejected by the member states. That is wholly within their discretion and volition. The fact that a member has voted in favor of a recommendation does not mean that the member is estopped to reject it thereafter, as was evidenced in the recommendations relating to the invasion of Korea as voted on by the People's Republic of China.

In the exercise of its functions to initiate studies to promote "international coopera-

[17] U. N. CHARTER arts. 39, 41, 42.

[18] U. N. CHARTER art. 27.

[19] U. N. CHARTER art. 9.

[20] U. N. CHARTER art. 11.

[21] U. N. CHARTER art. 18.

[22] U. N. CHARTER arts. 108, 109.

tion in the political field" and to encourage "the progressive development of international law and its codification," and to initiate similar studies in the economic, social, cultural, educational and health fields and to assist "in the realization of human rights and fundamental freedoms," much has been accomplished and is being achieved. However, as the "political field" and that of "human rights" more directly relate to our subject, they only will be discussed.

The General Assembly established an International Law Commission in 1947 which has produced numerous reports suggesting interpretation and codification of principles of international law, none of which have yet been adopted by the Assembly or approved by the member states. In some matters such as the definition of "aggression," the members of the Commission have not been able to agree.

The General Assembly on December 10, 1948, without a dissenting vote, adopted and proclaimed the "Universal Declaration of Human Rights," as a "common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . ."[23] This Declaration contains negative provisions — denying governmental authority in certain areas — and positive provisions — asserting governmental obligation to act in others.

It does not constitute an enforceable Bill of Rights against any state or the United Nations.[24] It does not have the force of the Bill of Rights of the Constitution of the United States.[25]

In addition the General Assembly has pending before it a "Draft Covenant of Civil and Political Rights." This Draft Covenant provides that "if it is adopted by the General Assembly and in turn submitted by it to the member states and approved by any of its member states then such states as accept it 'agree' upon the provisions thereof." Its preamble sets forth among other inducements, the consideration of "the obligation of States under the Charter of the United Nations to promote universal respect for, and observation of, human rights and freedoms."[26]

This Draft Covenant is limited to Civil and Political Rights, not only of individual human beings but of peoples gathered in national units as well. It asserts the right of self-determination of such peoples. It asserts the rights of the individual against his state in various areas. It likewise asserts the rights of the family as a unit of society against the state. It provides for a "Human Rights Committee" to which complaints may be referred by one party to the covenant against another party thereto for violation of its provisions. The Committee may "ascertain the facts" and make available its good offices to effect a friendly solution of the matter, and, in addition, shall report the facts to the disputant parties and to the Secretary General of the United Nations for publication. It may recommend that the Economic and Social Council request an advisory opinion from the World Court upon the matter.

[23] U. N. CHARTER (preamble).

[24] *Ibid.*

[25] U. S. CONST. amends. I-X.

[26] Draft Covenant of Civil and Political Rights.

The Draft Covenant further provides that if the dispute is not otherwise solved, the parties may bring the case before the World Court.

There is also pending before the General Assembly a "Draft Covenant on Economic, Social and Cultural Rights." This likewise contemplates an agreement between member states which become parties to it after it has been adopted by the General Assembly and referred to the member states. This Covenant asserts, among other rights, the right of self-determination of peoples, the rights of individuals to work, to receive adequate pay therefor, to decent living for themselves and families, to rest, reasonable limitation of working hours, to adequate food, clothing and housing, adequate standards of living, education, of protection for motherhood, children and family, and the health thereof.

In addition, the General Assembly has been considering a proposed "Declaration upon the Rights of the Child," which will probably take the same course as the "Universal Declaration of Human Rights."

There is no authority vested in the United Nations to compel any of its member states to enforce any Declaration of Human Rights. There is no such authority as is discussed hereinbefore, to compel compliance with any Multilateral Covenant of Human Rights if the General Assembly should adopt any such Covenant. There is no effective sanction inherent in the United Nations to prevent or to punish violations of any such Declaration or Covenant. Compliance depends upon the good faith of the particular states involved.

The Specialized Agencies which articulate with the United Nations through its General Assembly and Economic and Social Council[27] are ancillary in character to the principal organs of the United Nations and its primary purpose of maintaining international peace and security. Some of them antedate the United Nations Charter and even the League of Nations Covenant, such as the International Telecommunication Union (1865), the Universal Postal Union (1874), and the International Labor Organization (1919). The others postdate the Charter – the Food and Agriculture Organization, the International Bank and the International Monetary Fund (1945), UNESCO (1946), the International Civil Aviation Organization (1947), the World Health Organization (1948) and the World Meteorological Organization (1950).

The Collective Defense Pacts are not included in this discussion for two reasons. They came into existence because of the uncertainty if not the inability of the United Nations to provide a collective security. While they may relate in part to other matters, they are primarily intended for collective self-defense against aggression and are theoretically temporary in character in that they only operate "until the Security Council (United Nations) has taken the measures necessary to maintain international peace and security."[28]

Among such treaties are the Brussels Treaty (1948), covering the Benelux States plus France and the United Kingdom, the International Treaty of Reciprocal Assistance (1947-48), OAS – the Organization of American States, the North Atlantic Treaty–NATO (1949), the South East Asia Treaty – SEATO (1954), the ANZUS Pact (1952), covering Australia, New Zealand and the United States, the Baghdad

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[27] U. N. CHARTER arts. 57, 63, 64.

[28] U. N. CHARTER art. 51.

Pact—METO (1955), covering three Near East or Mid-East States and the United Kingdom, and the Warsaw Pact (1955), signed by the Soviet Union and its Eastern European satellites.

No space is given here to the Western European political organizations which are much closer to an organic integration of states into a federation than anything existing elsewhere. The scope of their activities is limited to Western Europe and do not now measure up to the standard of legal machinery for a juridical world order. Among such organizations are the European Community for Coal and Steel (1952), which includes France, West Germany and Italy; Euro-market (1957), establishing a common market for the same states plus the Benelux States; Euratom (1957), establishing among the same states an atomic energy pool; the European Common Market (1957), including the same states; and the Council of Europe (1949), which includes the same states as above plus Denmark, Greece, Ireland, Norway, Sweden, Turkey, and the United Kingdom.

The outstanding agency or organization making any effective effort toward the establishment of a juridical order is the United Nations. As stated by Goodrich and Simons in their study of *The United Nations and the Maintenance of International Peace and Security,* "The United Nations has not imposed a new order of law and justice, but it has provided a framework of established organs and procedures for subjecting international conduct to a judgment based on defined purposes and principles."[29]

The UN Charter, if it may properly be called legal machinery, establishes, in the provisions for its amendment,[30] a way and a means of equipping it with limited but adequate supra-national, trans-national, or per-national competency to prevent or to punish aggression by any state, to maintain peace, and to provide effective national security.

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[29] GOODRICH & SIMONS, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY 65 (1955).

[30] U. N. CHARTER arts. 108, 109.