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The Spirit of Uppsala: Proceedings of the Joint Unitar-Uppsala University Seminar on International Law and Organization for a New World Order, Edited by Atle Grahl-Madsen and Jiri Toman

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THE SPIRIT OF UPPSALA: PROCEEDINGS OF THE JOINT UNITAR-UPPSALA UNIVERSITY SEMINAR ON INTERNATIONAL LAW AND ORGANIZATION FOR A NEW WORLD ORDER (JUS 81). Edited by Atle Grahl-Madsen and Jiri Toman. Berlin, W. Germany and New York, N.Y.: Walter de Gruyter, 1984, 601 pp.

A book published in 1984 and a review in 1985, relating to the June 9 - 18, 1981 proceedings of the joint UNITAR[1] and Uppsala University seminar on international law and organization, appear, at first sight, to be out of date. However, the spirit of Uppsala as expressed by a group of distinguished judges, lawyers, United Nations functionaries and diplomats is unaffected by time, even in this fast changing world.

The meeting represented what can be described as the neutralist center. There was no representative of the Soviet Union. The only representative from the People's Republic of China, Professor Yu Sheng, Vice-Director of the Institute of Law, of the Chinese Academy of Social Sciences, apart from presiding over the working group that dealt with mini-states, does not appear to have contributed a report or to have participated in the debates. There were no representatives from the militant countries of the Third World. There was only a limited participation from Western Europe and no representative from the United Kingdom. The United States was represented by Professor Garcia-Amador of the University of Miami, Professor Tom Farrer of Rutgers School of Law, Professor Lillich of the University of Virginia School of Law and Professor Reisman of Yale Law School. The meeting was dominated by judges of the World Court, so that in addition to a geographical neutralism the dignified and sedate atmosphere of the courtroom prevailed.

The advantage of this kind of meeting is that it manages to strike a balance between mildly conflicting views. It is thus able to erect an analytical framework useful for further research and to produce constructive suggestions coupled with a message of hope. Its disadvantage is that by avoiding a clash of extremes it is deprived of strong dialectical argument that exposes the roots of the problems. Such conflict and exposure prompt a detailed analysis in which possible alternative developments, some good and some bad, are considered and alternative solutions are explored.

The book is divided into nine parts:

I. Greetings of the King of Sweden and message from the Secretary of the United Nations, Dr. Kurt Waldheim.

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1. United Nations Institute for Training and Research.

II. A short introduction by Atle Grahl-Madsen, professor of international law at the University of Bergen in Norway.
III. The general report on the whole meeting and the main reports of the five Working Groups.
IV. General papers submitted by participants.
V. Papers of Working Group I which dealt with international law in a multicultural world.
VI. Papers of Working Group II which dealt with independence and interdependence.
VII. Papers of Working Group III which dealt with sovereignty and humanity.
VIII. Papers of Working Group IV which dealt with the Organization of a New World Order.
IX. Papers of Working Group V which dealt with the legal and organizational problems of mini-states.

The presentation of papers and of the main reports was followed by an oral debate.

Working Group I was presided over by H.E. Judge Shigeru Oda, of Japan, judge of the World Court and Professor Garcia-Amador, of the University of Miami. The main report of the group was prepared by H.E. Judge Taslim Elias, of Nigeria, president of the World Court. The group addressed three topics related to the general theme of international law in a multicultural world:

(1) First was discussed the issue of self-determination, which changed its focus from decolonization, leading to the creation of new nations, to self-determination of community groups that exist within independent nations. The United Nations has to strike a balance between justifiable support for the independence of community groups with distinct identity and the need to maintain the integrity of a nation.
(2) The second topic concerned the change from a universal customary law in a Eurocratic international system to several regional customary laws in a pluralistic world system. Could universal customs co-exist with regional customs? Could a regional custom be binding on a state situated within that region if the state had not repudiated the custom? There was general agreement that customs are created by the practice of states and *opinio necessitatis*. Regional customs should yield to peremptory rules (*jus cogens*) which are binding against everybody (*erga omnes*). There was a need to formulate jurisdictional principles allocating competence between the international community as a whole and regions.

(3) The third topic discussed was a realistic approach to international law. The report of H.E. Judge Lachs, of Poland, judge of the World Court, reflected the now generally accepted view about the reality of international law and its effectiveness. He drew useful distinctions among three types of General Assembly resolutions:

(a) Resolutions declaring a pre-existing rule or custom, *e.g.* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[2]
(b) Resolutions crystallizing an emerging rule, *e.g.*, the 1963 Declaration on Legal Principles in Outer Space.[3]
(c) *De leqe ferenda* resolutions, initiating a practice of states that could harden into a customary international rule, *e.g.* Resolution 1516 (XV) on the principle of self-determination which was attributed this effect by the World Court in the 1971 *Namibia* advisory opinion.[4]

The main report of Working Group II was prepared by H.E. Ambassador Endre Ustor, Professor at the Karl Marx University of Economic Sciences, in Budapest, Hungary. The group discussed limitations of sovereignty, the distribution of natural resources, the New International Economic Order and the protection of the environment.

In dealing with the protection of the environment, the group referred briefly to measures against pollution of the sea. But the meeting failed to emphasize the success achieved in this area. Multinational conventions have brought about considerable progress in the control of pollution of the sea and have led to the creation of funds to cover the strict liability of shipowners and ship-operators.

Although Group II dealt with independence and interdependence and limitations on the traditional concept of sovereignty, it ignored the process of integration of the European Economic Community (EEC). The creation and progress of the EEC illustrate the effective use of international treaties as a means to achieve a supranational order leading to a form of quasi-federalization. In practical terms, the success, or alternatively, the failure of European integration is bound to play an important role in the structure of

2. G.A. Res., 2625 (XXV) of 24 Oct. 1970.
3. G.A. Res., 1962 (XVIII) of 13 Dec. 1963.
4. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 31 (Advisory Opinion of June 21, 1971).

a world economic, political and social order. This omission can perhaps be explained by the meeting's emphasis on the non-aligned countries.

Working Group III dealt with sovereignty and humanity. The main report of the group by Hernan Montealegre, Director of the Institute Interamericano de Derechos Humanos, noted the consensus of the group on the existence of universal values relating to the prohibition of the use of force, the distribution of wealth in the world, ecological imperatives and personal human dignity. The group appropriately noticed the universal and regional approach to the protection of human rights and the variation in regional priorities. However, according to the main reporter's own admission, the universal and regional interaction was not fully investigated. As noted earlier, the downplaying of cultural and ideological differences among the conference participants tended to limit thorough analysis.

The report by Rup C. Hingorani, Dean of the Faculty of Law of the University of Patna, India, contributed a realistic approach to the present state of human rights protection. The report exposed the practice of political detention and torture in many countries, particularly in developing countries. Poverty in most of these countries upsets the priority of the protection of human rights. Basic necessities of life take priority over the human rights of liberty and free expression. Dean Hingorani emphasized the importance of national, regional, and international enforcement mechanisms. He observed that such regional machinery is completely lacking in Asia and Africa and that the international machinery is at present ineffective.

Working Group IV, on the international organization for a new world order, dealt with four specific items:

(1) Amendment to the Charter of the United Nations by means of interpretation and practice.

(2) Increased binding effect and implementation of General Assembly resolutions.

(3) Reform of the World Court by enabling it (a) to deliver advisory opinions at the request of a state without the need for prior approval by the General Assembly or the Security Council, and (b) to admit international organizations as parties to disputes.

(4) Division of competence between universal and regional organizations.

An interesting area for further study is the improvement in means of conflict resolution. What is needed is the establishment of a fact-finding procedure that would be flexible, preserve confidentiality and avoid publicity. Could the wider use of arbitration provide the answer? The existing Permanent Court of Arbitration has since 1932 dealt with only three cases. The International Centre for the Settlement of Investment Disputes, which is operating at the main office of the International Bank for Reconstruction

and Development in Washington D.C., is not used as much as one would like. *Ad hoc* arbitration is more widely used than institutionalized arbitration, and this is limited to investment disputes between corporations and states.

Working Group V addressed the legal and organizational problems of mini-states. The balanced approach by Professor Amoah, Head of the Law Department of University College of Swaziland and Professor Gunnar Schram of the Faculty of Law of the University of Iceland, covered the question of voting rights of mini-states in the United Nations Organization, their ability to honor obligations as members of this organization and their need for special assistance. In the debate that followed the presentation of papers and the main report, Professor Michael Reisman of Yale Law School observed that an important question that was not addressed was whether very small territorial communities should be encouraged in the future to seek full statehood. The question raises a conceptual and a practical problem. In the present phase of development of the international legal system, self-determination places a new emphasis on the capacity of a community to care for its members. If by achieving independence the members of the community cannot be assured of improved welfare, it is better to urge the community to seek self-determination either by association, autonomy, integration or merely by minority guarantees.

The shift in emphasis from security to distribution of wealth is duly reflected in the general report of the meeting which was brilliantly prepared by Professor Reisman. It appears at the beginning of the book and deserves careful study.

It is a pity that the meeting and the book avoided analyzing aggression and such important concepts as anticipatory self-defense and "strategic occupation." This kind of discussion would have introduced unwanted controversy and would have struck a pessimistic note for the future of world order. On the other hand, its futuristic relevance is now demonstrated by the talk on anticipatory strikes against terrorists.

It is surprising that JUS 81 did not address more fully the arms race and the containment of terrorism. It is on both these matters that the active involvement of non-aligned countries can contribute the most. However, it was indicated that the Uppsala meeting may be followed by subsequent meetings.

The book does not add much to what we already know. However, as intimated at the commencement of this review, the Uppsala meeting and the book were able to erect a useful analytical framework for the study of the present international order and its future development. As JUS 81 may be followed by future meetings, it is useful to add this book to an interna-

tional library and hope that more will come.

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