

A WORLD ORGANIZATION FOR COMPARATIVE LAW

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Paris's former Hotel Majestic provided a thoughtful setting for the "Preparatory Committee to form an international law association" as it assembled on March 21, 1949. German telephones were on many desks. Broken glass panels in the doors connecting the salons had been replaced by boards. The glass had been shot out in the closing hours of the battle for Paris as the "Resistance" had evened scores in Nazi headquarters.

Law professors invited by UNESCO from nine nations¹ were moved by the setting. From the outset the meeting was more than a good-will group hoping to broaden professional horizons. It was dedicated to the task of relating any new world organization in comparative law to the problem of furthering international understanding and peace. There were some who thought such a relationship impossible, but most of the delegates seemed determined to try to see whether they could find it.

Although UNESCO had issued the invitations, the French jurists had prepared most of the materials for the conference. The Dean of the Faculty of Law of the University of Paris, Julliot de la Morandière, was elected conference chairman, following the welcoming speech of the Director General of UNESCO, Jaime Torres Bodet, former Foreign Minister of Mexico. Vice chairmen were elected to represent other systems of law. Professor H. C. Gutteridge of Cambridge University was chosen for the common-law world, Professor Wodih Farag, of the University of Fouad I of Egypt, to represent the Islamic world, and Professor Fernandez del Castillo, Dean of the École Libre de Droit in Mexico City, to represent the civil-law world in its Latin American variant.

The working parties of the conference were organized under the chairmanships of the three vice chairmen of the conference to prepare reports on (1) comparative law and the alleviation of tensions, (2) the organizational structure of a world comparative law organization, and (3) the program of a world comparative law organization.

Comparative Law and Tensions

Tensions have been the subject of major study by UNESCO. Professor Otto Klineberg of Columbia University has been the director of the project which has been given the highest priority by the governments of the United States and the United Kingdom. The conference had been called partly to

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¹ Tullio Ascarelli (Bologna); Fernandes del Castillo (Mexico); Ernesto Cordelro Alvarez (Cordoba); Eduardo J. Couture (Montevideo); Ernesto Dihigo (Havana—not present in Paris); Wodih Farag (Cairo); H. C. Gutteridge (Cambridge); C. J. Hamson (Trinity College, Cambridge); John N. Hazard (Columbia University); I. Kisch (Amsterdam); F. A. Lawson (Merton College, Oxford); Julliot de la Morandière (Paris); Marc Ancel (Paris); J. P. Niboyet (Paris); Ernst Rabel (University of Michigan). Secretaries: René David (Paris); Arthur von Mehren (Harvard University); F. de Sola Canizares (Paris).

satisfy UNESCO's desire for aid from the lawyers of the world in the tensions project. Some of the delegates present doubted that much could be done, but Professor Gutteridge indicated his concern and that of his government by offering to assume the chairmanship of the committee on tensions. He was joined by a representative from each of the other major areas represented.

The final "Declaration" of the conference subsequently supported Professor Gutteridge's faith in the validity of an investigation of the relation of tensions and law. The conference found it possible at the end of its three days of deliberations to say, "We are in agreement not only that law reflects the conflicting philosophical, sociological, economic and political concepts pressing for recognition in the world of today but also that even the differences between the various legal systems, which are apparently of a purely technical nature, are related in ways that are detected only after prolonged comparative research to profound differences of national character and tradition and themselves contribute to the existing tensions and misunderstandings in international life."²

No one thought that the lawyer could be expected to study the underlying causes of international tension in their every facet. There was even a suggestion that the English lawyer would be cautious about any organization which even suggested that it planned to explore underlying philosophical reasons for differences in law causing tension. There was a suggestion from the Continent that continental lawyers would look with equal caution upon an organization which thought it could study effectively the sociological bases for conflicting legal forms. Nevertheless, in spite of the feeling of reservation as to the competency of the legal profession to undertake a broad field of study going beyond the technicalities of the law, the committee finally recommended and the conference adopted a declaration that its members had found themselves "to be of one mind as to the importance of research, publication and teaching in comparative law as an integral component of any program designed to further international understanding and peace."

The conference went further, to recognize more than the importance of comparative law study. It declared, "We are of the opinion that the legal profession throughout the world owes a duty to the peoples from which it springs to unite in an effort to overcome such of the tensions and misunderstandings rending the world community as lie within its special spheres of competence."

Causes of Tension

Particularization of the possible spheres of study of tensions was the work of Professor Eduardo J. Couture of the Faculty of Law of Montevideo. In his report to the subcommittee he stated the consensus of the group to be that the study of comparative law and the dissemination of such studies should not be designed to suppress differences in law nor to avoid or solve problems which fall within the fields of international public law or conflict of laws, but to explain on the basis of profound research the reasons for the solutions which have been reached in the law of each country.

² Documents of the conference are available at the office of the Director of the Social Science Section, UNESCO, 19 Avenue Kléber, Paris 16, France.

Differences in legal procedure were believed by the group to be the cause of the feeling in some countries that another country's legal system provides no justice. It was suggested that if the protective features of the civil- and common-law procedures were investigated and explained, some of the friction presently existing between nations might be avoided. It was stated that no small amount of misunderstanding had occurred between the English and French publics when a national of one of the countries was brought into the courts of the other. Frenchmen were said to believe that common-law procedures, omitting as they do the preliminary examination and judicial participation in the examination of witnesses, are unfair to a defendant. He is constantly surprised at the trial by the introduction of evidence he did not anticipate. He is also said to be at the mercy of his own attorney, since the judge cannot come to the aid of justice and examine a witness when it is obvious that an attorney is incompetent to do so adequately. Likewise, Englishmen were said to feel that French procedures are a travesty on justice in that they create a presumption of guilt before the trial begins. Professor J. P. Niboyet of the University of Paris felt that common-law lawyers and journalists, in repeating the falsehood that there is a presumption of guilt in a French court, do much to contribute to tension which has no basis in fact.

Misunderstandings were believed to have arisen also in the past in the interpretation of treaty language, which has different meanings in the municipal law of the contracting parties. It was indicated that this is not the same question as the basic differences in political concepts which have given rise to debates between the U.S.S.R. and the United States as to what is meant by "democratic governments" in the Yalta Agreement, but that the differences referred to are of a purely legal character. They have arisen over interpretation of such words as domicile, residence, corporate nationality, place of business, movables and immovables. They have arisen over the right to examine legislative history in interpreting a statute. Professor Tullio Ascarelli of the University of Bologna explained that in his long experience in the Western Hemisphere while an emigré from Mussolini's régime, he had had occasion to find many points of misunderstanding between North and South America over different concepts of law.

The subcommittee reviewed its findings with Professor Klineberg, and decided upon the preparation of a series of volumes in which these differences would be exposed. It was agreed that at the start the work should be narrowed to manageable proportions. In consequence, a first volume will concern itself with the common and civil law only, excluding the Slav, Oriental, and Islamic worlds. The University of Paris offered to accept responsibility for editing such a volume, and to cooperate with institutes in England, the United States, and Latin America.

It was appreciated that a volume on tensions and comparative law would be received by much of the world with derision if it seemed to pretend that the differences in law of a technical nature with which it dealt were to be compared in importance with the fundamental philosophical, sociological, political, and economic causes of tension in the postwar world.³ The sub-

³ Note was taken of the contribution on the philosophical side made recently by *Ideological Differences and World Order*, edited by F. S. C. Northrup (Yale Univ. Press, 1949).

committee was agreed that its effort was conceived as a modest one, yet not without importance. An introduction to the volume was planned to place the effort in the larger concept so that the readers will know that the book is not conceived as a panacea for all problems but as a scholarly study of a narrow but important field.

Professional and Student Exchange

Recommendations as to other activities of the proposed world organization ranged over several fields. Some urged UNESCO to exert efforts to obtain the adoption by the various member states of what we Americans might call a "fair practice" code. The meeting adopted the proposal of its subcommittee on program to the effect that such a fair practice code should authorize law faculties to whom foreign students are sent to give preference to students who already know the law of their own land, understand the comparative method, and are equipped with the languages necessary to follow courses in the receiving university. It was recommended, further, that each university proposing to accept foreign law students offer special survey courses designed for such persons. It was argued that foreign law students should be able to approach the law of the strange country to which they travel on a level which takes into account their general knowledge of law and emphasizes the points to which they should give special attention as offering pitfalls to the unwary student who thinks the solution the same as that of his own land.

Continental universities reported that their students often find no guidance when they study in other universities, but wander aimlessly through the university courses and the laws of the strange land. It was recommended that each university accepting foreign law students appoint one or several advisers or tutors to guide the newcomers in the selection of courses and in reading.

The problem of foreign professors invited to teach law in universities was also believed to require attention by UNESCO. It was reported that foreign professors often have no standing in the inviting faculty and are kept on the outside, to their own disappointment and to the defeat of the purpose of mutual understanding for which they have been invited to come. Some continental universities claimed that their national laws prevented acceptance of foreign professors on an equal basis in their faculties because the faculty members are in a sense state officials. No foreigner can certify a candidate as having passed an examination. In spite of these legal bars to equality, admission of foreign professors to faculties in which they are invited to teach on the same footing as the national professors was recommended. The saving words "to the extent possible" were incorporated to allow for prohibitions in national laws. It was further recommended that the courses of foreign professors be at least of six months' duration.

The lack of education in the laws of other countries among teachers and students was noted. It was recommended that all professors of national law broaden their horizons to include comprehension of some foreign system of law as it relates to the field in which they are primarily concerned. It was urged further that all graduates of law faculties, not only those planning careers where knowledge of foreign law is essential, should be conscious of the diversity of conceptions in judicial systems current in the world today.

Materials and Publications

The shortage of suitable materials in which foreign law can be found and from which it can be approached was considered. Professor René David of the Faculty of Law in Paris stated that even in Paris there is not sufficient material to study the law of the United States of America, not to mention Latin America and the U.S.S.R. UNESCO was asked to intervene with the appropriate institutions to provide materials so that the major systems of law may be studied in the principal capitals or universities of the world.

Manuals for the study of foreign law were recommended in various forms: (1) studies indicating the working materials lawyers use, such as collections of laws, court reports, text books; (2) dictionaries of the abbreviations used in the law books of various countries; (3) introductions to the history and sources of law in the various countries; (4) manuals for students providing material explaining to them on one or another question how the laws are published, what is the court procedure, how decisions are rendered, and how text writers exercise influence in criticizing court decisions and statutes in force; (5) annuals, such as those published by New York University, informing the lawyer of developments in the principal fields of law during the preceding year in the country concerned; (6) translations of fundamental legal texts. UNESCO was asked to encourage preparation and publication of such works.

UNESCO informed the meeting that it was about to launch a *Review of the Social Sciences*. It proposed to include a section on law in this new *Review*, partly to dramatize the relationship between law and the other social sciences. Some members thought that more was necessary, namely that there should be an international review of comparative law published under the auspices of UNESCO. It was argued to the satisfaction of the common-law group and some of the civil-law group by Professor Ernst Rabel, of the University of Michigan, that existing reviews of comparative law are too narrow in that they are prepared on the national level. They tend to urge unification of law from the point of view of a single system.

Professor Rabel's suggestion was supported by the subcommittee on program, which recommended the creation of an international review "to serve as coordinator of the differing legal organizations and centers of comparative law study" and "to try first of all to eliminate the international tensions and to induce better international understanding by treating a limited number of subjects chosen with care." The novel recommendation was made that articles presenting a "continental" point of view would be in English, and articles presenting the point of view of a common-law lawyer would be in French.

Strong opposition arose among some of the French to an international review under UNESCO's auspices. It was pointed out that two reviews dealing with comparative law or legislation have been published for some time in France. One has just adopted the very name proposed for a UNESCO review, and will expand its board of editors to include jurists from other lands. Even though Professor F. A. Lawson of Oxford, who is editor of the *British Journal of Comparative Legislation and International Law*, stated that he saw reason for a truly international review rising above

the problems of the British Commonwealth and Empire which his review treats, the French held to their position. When the matter was put to a vote, the Director of the Dutch Institute of Foreign Law, Professor I. Kisch, sought to save the situation by amending the resolution to provide for consideration of the matter by the Executive Committee rather than to provide for immediate adoption of the proposal for a review. His amendment carried, so that the matter was not permanently killed; but it is clear that no immediate publication of an international review can be anticipated.

A World Organization

To carry out the program which had been adopted, the subcommittee on organization recommended the creation of the following organizations: (1) A consultative commission to comprise leading comparative law experts throughout the world; (2) an executive committee of not more than twenty persons to maintain liaison between the consultative commission and UNESCO and to see to the carrying out of the program proposed. The executive committee would designate a bureau of five persons to meet periodically and to represent the major regions; (3) national associations which would have the task of coordinating in each country the various agencies currently engaged in some aspect of comparative law, and (4) a permanent section within UNESCO charged with cooperation with the executive committee.

The Preparatory Committee constituted itself as the Provisional Executive Committee, although some delegates felt that a more orderly division of seats was warranted. Professor David suggested that the ideal would be three from the British Commonwealth, three from the United States, three from Latin America, three from Western European civil law countries, one from the Islamic group, one from the Slavic group, and one from China. The Preparatory Committee acquiesced in part by deciding to reserve seats on the Executive Committee for a Canadian, an Indian, a Chinese, three Slavs and a Swede. The Bureau was chosen to represent five areas: (1) France (de la Morandière); (2) the United Kingdom (Gutteridge); (3) the United States (Hazard); (4) Egypt (Farag) and (5) Latin America (del Castillo). Professor David, on the motion of Professor Hamson of Cambridge and with the explanation that he is looked upon with confidence by the common-law world as one who understands them, was named Secretary General.⁴ Counsellor Marc Ancel was named Deputy Secretary General.

The Problem of the Future

In assessing the results, it is clear that much remains to be done. Only an outline of action was prepared in the three days of the Paris meetings. No international review was authorized. No permanent agency was brought into being, but a Provisional Executive Committee was formed and steps were taken to create a Consultative Commission. UNESCO has no comparative law section and must be induced to create one at a time when its funds are low. No subsidy is expected to become available to support the work proposed. National associations must be formed in many countries.

⁴ Professor David studied law at Cambridge and is the author of *Introduction à l'étude du droit privé de l'Angleterre* (Paris, 1948).

Even the United States has no association uniting members of the teaching profession and those members of the bar with a knowledge of foreign law.

In spite of the obvious difficulties before it, the conference adjourned with confidence in the future of its subject. Continentals felt that work stopped by the war had been resumed. It may seem surprising to some Americans that part of the confidence was inspired because the profession in the United States is beginning to have an interest in the subject. American law reviews are introducing sections on comparative law, and even those without such sections are publishing articles relating to foreign law. The bar associations have committees on comparative law. Teachers met in the summer of 1948 under the auspices of the Association of American Law Schools to discuss for a week techniques of teaching comparative law.⁵ All of the larger law schools offer or plan courses in this field. This is an interest which the Old World expects to serve as a stimulus to comparative law.

The principal immediate question before Americans interested in the world organization is the creation of a national unit to enter the world organization. What shall it be? No single American organization unites members of the teaching profession and the bar on a national basis. The American Foreign Law Association has practicing lawyers and teachers largely from the New York area among its members. The Association of the Bar of the City of New York has had an active Committee on Foreign Law which has brought town and gown together on many occasions. The Chicago Bar Association likewise has a committee which shares its interest between international and comparative law. The American Bar Association has its long established Section of International and Comparative Law. The Comparative law component has for some time been the weaker half, however, and participates little in the biennial programs of the Section. The Association of American Law Schools has its Committee on the Teaching of International and Foreign Law. The committee is not an association in itself, for its members change annually. A second limitation is that it makes no effort to bring practicing lawyers into its work. It is obvious that no agency presently existing meets the needs of the occasion. Either something new or a revitalization of something old must be brought about if the United States is to be adequately represented in the new world organization.

⁵ See Thayer, *The Teaching of International and Comparative Law*, 1 J. LEGAL ED. 449 (1949).