

UNFORTUNATE RESULTS POSSIBLE

The Court's inability to come to grips with the merits of the South West Africa case may, in the long run, have unhappy consequences from the point of view of the progressive development of the rule of law in the international field, which is so vital for the future well-being of the world community.

The Court's decision shows that the international legal system will have to evolve much farther if the rule of law in international conduct is to become the reliable instrument for regulating relations between states which it has become in governing the conduct of individuals within states.

The absence of any international legislative body, such as Parliament or Congress, with the task of prescribing universally-accepted principles and norms of behaviour for the international community, has been for a long time commonly regarded as the first obstacle which would have to be overcome before the rule of law could be relied upon to play internationally the role which it fulfils domestically.

In spite of this handicap, however, progress has been made in the last decades in the field of the progressive definition and codification of the rules and principles of international law.

One can now visualize with a greater degree of confidence the day when it will no longer be possible for countries confronted with an international problem or dispute to ask in good faith: "What is the law?" It will then be more important than ever to have adequate answers to the two closely-related questions: "Who is to apply the law?" and "Who is to enforce it?"

In answering the first of these two questions, the extension of the compulsory jurisdiction of the International Court to more countries, and to more subjects, will, of course, be all-important. The fact that the decision of the World Court in the South West Africa case may have the unfortunate effect of slowing down this progress cannot but be a matter of deep concern.

ENFORCING LAW OF NATIONS

The second question concerns law enforcement in the international field. The international community has neither found it possible nor advisable as yet to make use of the enforcement provisions contained in the Charter of the UN. We can, however, take some encouragement from the fact that a peace-keeping role has, more than once in the last ten years, been entrusted by the UN to international police forces in various regions of the world. Canada has played, and has every intention of continuing to play, a very active part in supporting, organizing and extending these peace-keeping functions of the UN as an essential step toward the peaceful settlement of international disputes....

The decision on South West Africa is an illustration of the dilemma which a judge must face - certainly in an International Court - when this happens.

The reaction of this decision in a large part of the world already has been one of anger and resentment; of charges that the World Court has now shown itself to be a white man's tribunal, dispensing white man's law at the expense of black man's justice.

Therefore, it will be argued, however wrongly, that direct political action, or even force, must now replace reliance on legal processes. This reaction will lessen the possibility of the Court being able to construct a legal foundation for international progress. In the result, law and progress will both suffer.

The reaction to domestic legal decisions which seem to many to be out of harmony with, and to ignore contemporary social and political developments can, of course, be equally damaging and dangerous - even though such decisions have not only traditional respect behind them but the force necessary to ensure their observance.

At a period when mass power, mass opinion, mass emotion and, at times, mass prejudice tend to dominate democracy, when legal procedures and traditions seem to be weakening in the face of these mass pressures which too often are directed to selfish and immediate gain rather than ultimate and general good, any widening of the gap between law and politics in the evolution of society will harm the law even more than politics. In the long run, it can lead to anarchy or tyranny by weakening the rule of law on which responsible freedom and ordered progress can alone securely be based. The demagogue or dictator can undermine peace and order internationally and nationally by exploiting political processes and popular emotions. He can also unwittingly be assisted in this evil purpose by an extreme traditionalist interpretation of the law which makes it seem remote from social, political and technological change.

There is, of course, the danger that law, wrongly influenced by political pressure, could become the plaything of politicians. On the other hand, law too far removed from political and social realities, either in its making or in its interpretation, can become lifeless and even obstructive to progress....

There must be freedom from the wrong pressures on the one hand and from domination by dead procedures and precedents on the other. Precedent may strengthen legal certainty but it can also hold back healthy social progress. It was Lord Denning who ventured to point out to the law lords in London a few years ago that "the doctrine of precedent does not compel your lordships to follow the wrong path until you fall over the edge of the cliff". Their lordships, I note, a few weeks ago decided to remove this danger by indicating their intention to depart in the future from legal precedents in the decisions they make, when they consider this desirable.

LEGAL FLEXIBILITY

As a politician, I stress the desirability of a certain legal flexibility (I recognize fully the danger in the use of that word) in order to strengthen, not to weaken, respect for the law and legal processes at a time when that respect seems to be diminishing.

Adaptation to change is often essential to directing and controlling it so that it will not explode into violence. Rigidity has often been the handmaiden of revolution and subversion.

If we fail to make necessary adjustments in our thinking about politics, economics, law and philosophy at a time when movement and change are so swift and bewildering, then we are in for serious

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