INTERNATIONAL LAW AND SOCIAL LEGISLATION

I.

The welfare of a people is judged by, among other things, the nature and coverage of Social Legislation in a State. Social Legislation, however, is never an end in itself. It is, in fact, a transitory phase of human development. The future State is envisioned, from absolute standards, as a place where there will be no Social Legislation; there will only be self-enforcing human rights. Similarly international society can be envisioned as a place where there will be no international Social Legislation and where international understanding will harmonize affairs of nations.

Possibly, such a world order is purely subjective idealism. A feasible proposition for a contented and integrated world order should be based on the harmonious co-existence of Social Legislation not only on the State level but with progressive development of Social Legislation on the international plane. Such a hypothesis envisages a change in the concept of sovereignty as well as in the existing definition of International Law. This paper seeks to redefine International Law in the context of the relationship between Social Legislation and International Law.

II.

A primary question is: Social Legislation essentially being a domestic problem of a state, has it any direct link or bearing on International Law? The starting point, of course, is that both of these belong essentially to the domain of Jurisprudence. The sources of International Law are customs, treaties, judicial decisions, general principles of law etc., of Social Legislation mainly statutory provisions, yet the element of consent is common to both. The subjects of International Law as yet are States; of Social Legislation individuals, in primary and secondary groups; common, however, to both fields of law are interests of individuals in their corporate capacity. The object of International Law is peace and order among States; of Social Legislation, the uplift of individuals socially, economically and morally; yet what is common to both is the concern for the security and happiness of mankind. Fundamentally, the juristic nature of both these human activities cannot be denied. However, leaving all these common and different traits aside, International Law is similar to and in many ways different from other kinds of Law, e. g. Natural, Conventional, Civil, Statutory, Constitutional and Customary Law etc. The differences in the personalities of International Law and Social Legislation are understandable and even desirable. Both in fact are law of a specific kind.

III.

Pertinent questions arise at this stage. Why has Social Legislation never formed a part of International Law? The answer is obvious—because of State sovereignty. What is it precisely in State sovereignty that stands out against it?—Fundamentally different social and cultural systems. Thus the task is to examine the obstruction caused by the sovereignty of States because of fundamentally different social and cultural systems. The relationship between Social Legislation and International Law can be assessed by two separate sets of questions. For Social Legislation the question is: What is the extent of supreme legislative authority recognized in the sovereignty of a State? For International Law the question is: What is the maximum area of autonomy which the law allows to States? There is obviously an auto-limitation on both. International Law, in fact, is like Social Contract Theory in Political Science. In the interest of international peace and security States which

were free and independent undertook the obligation to obey the law arising out of consent. States with fundamentally different social and cultural systems accept to obey only that aspect of international obligations which pertain to Universal Values. States with different social systems have always claimed the responsibility of making laws on social problems. Social Legislation has, therefore, always remained a domestic problem. This is precisely the reason that Social Legislation is not a part of International Law, as at present.

IV.

It is generally held that International Law represents external interests of States and Social Legislation internal ones. Such bifurcation of the interests of States into external and internal is most unreal. A casual examination will show that the internal and external interests of States do not exist autonomous of each other. The pattern of a society may have a vital effect on foreign policy of a State just as a treaty signed by a State may satisfy its domestic needs. Some aspects of Social Legislation, if not all, no longer remain domestic problems of States. Can for example Lord Beveridge's five giants on the road to reconstruction, which are want, disease, ignorance, squalour and idleness, be considered domestic issues? The Charter of the United Nations is an evidence in itself. Its Art. 56 reads: "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Art. 55." And Art. 55 proclaims "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development;
b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In view of these provisions in the Charter of the United Nations to which almost all States are parties, Social Legislation has become the responsibility of international society also. As a Cholera or a Small-pox case cannot be considered the domestic affair of an individual citizen, in just the same way the problems of social welfare are the concern of international society. In 1966 the UN General Assembly has already invited members to sign a Covenant on Economic, Social and Cultural Rights. The pledge taken by the nations under Art. 56 of the UN Charter for joint and separate action should be significant in the sense that international efforts for the achievement of social health have now been pledged by States.

The principle of "Domestic Jurisdiction" is as old as the Peace of Westphalia (1648) which states that a State is held to observe only those dictates of International Law to which it has agreed of its own free will. This bred an anarchy of States. More recently, the principle was restated by the League of Nations Covenant Art. 15, paragraph 8, which reads as follows:

"If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by International Law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement."

And in the same way Art. 2, para 7, of the UN Charter lays down:

"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 the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

There was hardly any change between the periods of the signing of the Peace of Westphalia, of the Covenant of the League of Nations and of the Charter of the United Nations. The domestic jurisdiction clause is not only a set-back to the development of the authority of International Law but the objection is that it is based on national egoism and chauvinistic reasoning. Under the domestic jurisdiction clause a State may be perfectly entitled to declare that a particular multilateral treaty concerns domestic affairs and therefore shall not be enforceable. The rigid compartmentalization of domestic and external matters is obviously wrong. As far back as in 1933, enunciating the same view, the Permanent Court of International Justice in the case of Nationality Decrees in Tunis and Marocco, held "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question, it depends on international relations." Any matter, moreover, causing a breach of, or even threatening, international peace and tranquillity needs not be judged by the domestic jurisdiction clause. There can, at least, be no claim of domestic jurisdiction beforehand by a State, in anticipation of a particular international problem; and no State should use the veto of the domestic jurisdiction clause arbitrarily for it means a State has the right of becoming a judge in its own case.

V.

It goes without saying that man is the ultimate common denominator of International Law and Social Legislation. For International Law, the individual is the end though the means, as yet, are State laws. The insistance of a State on its individuality and its personality must be moderated through the principle of sociality of States. It is a fundamental law of evolution and ethical necessity that the state of nature of States must be replaced by active sociality of States. The idea of justice for all must motivate the conduct of all States. In order to avoid the anarchy of laws caused by State sovereignty, the principle of active sociality of States must be recognized. It is possible through the formation of a World Government which is too ambitious a design in the present circumstances. The other alternative is the active sociality of States based on comparative Jurisprudence. The foundations of English law, for example in regard to unjust enrichment of people and Indian laws of divorce, are different from other corresponding State laws. Social needs—whether local or international—must become the motive of legislators, politicians, economists, sociologists and lawyers. The international lawyer has to assume the role of a social reformer. Since law must shape society, an international jurist must be a sociologist.

Another question at this stage may be answered. Is uniformity of Social Legislation necessary or even desirable? Actually, there are some problems of social welfare which belong to Universal Values like the ones mentioned by Mr. Beveridge and there are others which are of local interest, like the problem of Untouchability in India, and pertain exclusively to the sphere of Municipal Law. The universal Social Legislation, representing the vertical side of the pattern of the international fabric, when woven into the Social Legislation of the States represented by the horizontal side, will complete the pattern. Social needs being complex, the pattern of international Social Legislation thus will be varied in different States and the individuality or personality of each State can remain exclusive to itself. For

example, the common problems of humanity like those mentioned by Lord Beveridge can be solved by vertical Social Legislation through an International Social Legislation Board and the local problems of casteism, divorce or dowry etc., as in India, can be resolved by means of horizontal Social Legislation, through parliamentary statutes.

Codification of Social Legislation on the international plane is possible through the International Law Commission functioning already under the United Nations. The purpose of codification is not to make any new law, yet the process can make existing Social Legislation, if any, more certain, fully ascertainable and clear. For the progressive development of Social Legislation on the international level a separate wing like the suggested International Board of Social Legislation may be attached to the already existing International Law Commission under the United Nations.

VI.

The main function of International Law has been to cure the ills of humanity and if incidentally such Law achieves social reconstruction it was only a by-product. Social reconstruction is not as yet recognized as a direct concern of International Law. By taking up the cause of social reconstruction, International Law may add to its dimension a new purpose of its existence.

The object of Social Legislation is to secure social health through legislation for the realization of such objectives as adequate living standards, the guarantee of social justice, opportunities for cultural development through individual and group self-expressions and readjustment of human relations leading to social harmony. Social Legislation almost always lags behing the real desires and needs of the people; it is because law is essentially a conservative force and does not move along with the social needs of times. So legal lag is the natural consequence. This tendency of legal lag in the international field can be remedied by the development of Social Legislation. It can proceed not only in the shape of codification of the existing Social Legislation of all countries but also in the formation of new norms through progressive development of International Law. As already suggested codification may be performed through the already functioning International Law Commission, and the progressive development of new law may be taken up by the proposed International Board of Social Legislation under the same Commission.

The International Board of Social Legislation is a necessary and desirable development for the promotion of Universal Values of social welfare. Functions of the Board are suggested as under:

a) to collect data on existing Social Legislation of various countries;
b) to suggest social welfare laws for uniformity and reform to States for incorporation in their State laws;
c) to have a monetary fund which should be based on contributions by States according to national income, for the administration of the said Board and to provide financial assistance to States, if necessary;
d) in case social consciousness is not present in a State for a particular suggested piece of Social Legislation of Universal Values, to create the social preparedness by propaganda through lectures, leaflets, audiovisual aids or even through an army of local social reform workers;
e) to arrange for conferences of the experts of the International Board of Social Legislation with representatives of those States which have doubts and

apprehensions about laws suggested by the International Board of Social Legislation;

f) in case the States do not agree to incorporating revised laws framed after consultations or refuse to agree to the laws even in principle, to seek the help of the General Assembly of the UN to send delegations of representatives to the unwilling State with the aim of inducing its legal sovereign, the chief executive or even members of parliament to agree to the introduction of the revised laws in whole or even in instalments. Refusal to cooperate may have to be met with the disaffiliation of a member State by the family of nations.

A secondary though very useful purpose served by the proposed International Board of Social Legislation will be the elimination of production or capital from the surplus States and their redistribution to the States needing them. If aid to the underdeveloped or needy countries is given through the proposed Board (in order to eradicate the problems of want, disease, ignorance, squalour, and idleness etc.) the conditions and the links generally attached to the aid programs will be done away with. The Board can serve as a proper and desirable instrument for the flow of aid from the developed to the undeveloped countries.

A likely objection can be raised. Is the scheme for the formation of the International Board of Social Legislation timely or, in other words, is it or is it not, in practice, premature? If conservation and development are recognized as functions of the State and consequently of international society as well, Social Legislation is far from being premature. If we examine the progress States are making in regard to problems of disarmament, outer space, the test ban etc., it will be obvious that the time for International Social Legislation has come. The scheme is the direct and logical result of the law of sociality of States. The evolution of international obligations having developed to the extent of the establishment of UNESCO, ILO, and UNICEF, such a Board is certainly not ahead of the times.

VII.

The future of International Law and the rationale of the change of its purpose may be studied here. It was only once upon a time that the only function of Municipal Law was the maintenance of law and order. But during the march of time, it extended its fields and today it serves a person from birth to grave (often even before birth and after grave too!). The State law does not cover merely one aspect of the life of an individual. Actually the things that are not Caesar's are only a few. The State today, for example, runs buses and hotels or even provision shops which are only added purposes of State.

International Law, in order to adjust itself to Municipal Law, must have added purposes and must per necessity add new dimensions to its character. International Law today is designed to cure only political and juristic ills of humanity but it must include in its fold the purpose of social reconstruction. Law like science must be organic in its growth. The present definition of International Law as the body of customary and conventional rules among States has thus to be re-examined and revised. The aim and the motive of International Law may be understood in the context of changing international social needs and problems. A fairly complex structure of international rules has been created as a result of the economic and social growth and interdependence of peoples and states. Finding expression through international Social Legislation, these rules may create a new sense of purpose in International Law. The progressive development of International Law necessitates the reopening of the fundamental question of the definition of International Law. This definition, consequently, may be reconstituted as follows:

"International Law is the name of the body of principles and rules among States which regulate, and prescribe for, the juristic, social, political, and economic needs and progress of the people of States, in their corporate capacity."

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