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Book Review: An International Peace Court

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AN INTERNATIONAL PEACE COURT

BY THOMAS HOLTON

Martinus Nijhoff: The Hague, 1970. Pp. xii, 112.

THE prevention, regulation and control of international conflicts is a desirable objective. Aptly enshrined in the preamble and the first two articles of the United Nations Charter,[1] this objective has been repeatedly affirmed in various U.N. resolutions and declarations, including the recent "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations,"[2] which was adopted without vote in the General Assembly on October 24, 1970.

However, the almost universal condemnation and prohibition of the use of interstate violence is not reflected by state conduct. Nor has this consensus on prevention of violence, as codified in the 1928 Kellogg-Briand Pact,[3] the League of Nations Covenant,[4] and the U.N. Charter,[5] been translated into structuring authoritative institutions providing adequate pacific means of settling international disputes. The result is the prevalence of major and minor conflicts, spread over every continent and involving not only super powers but various middle and small states, and even mini states. And the goal of world peace seems as illusory as ever.

It is not that statesmen and publicists do not recognize the problem. But the fact is that notwithstanding such recognition states (which continue to be major actors in the international arena) have thus far stubbornly refused to permit third-party decisionmaking from becoming an effective dispute-settlement mechanism. Witness, for example, the discouraging record of the International Court of Justice in settling inter-

[1] *See also* U.N. CHARTER chs. VI, VII, and VIII.

[2] *See Resolutions of the General Assembly at its Twenty-Fifth Regular Session, 15 September-17 December*, 1970, U.N. Press Release GA/4355, pt. VIII, at 1 (Dec. 17, 1970).

[3] 46 Stat. 2343; 94 L.N.T.S. 57. The Kellogg-Briand "Pact of Paris" became effective July 24, 1929. Article 1 reads: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another."

[4] See especially art. 12, 13, 15, and 16 of the Covenant.

[5] See especially the preamble and chs. I, VI, VII and VIII of the Charter.

state conflicts,[6] or the total collapse of the collective security machinery and measures in the U.N. Charter,[7] which were envisioned as the mainstay of international peace and security.

It is against this background that one should analyze and evaluate Professor Holton's recommendation to establish an International Peace Court — a tribunal with compulsory jurisdiction in respect of state-sponsored transnational violence — which he believes will be a "first step toward the deterrence of violence."[8] For settling international conflicts he prefers a judicial tribunal to the presently available political forums — the Security Council and the General Assembly — because a tribunal provides "a forum of judgment which features visible safeguards against obvious partisanship, which excludes the veto, and which specializes in impartiality."[9] Among the various alternatives — a national court, the International Court of Justice, and a special tribunal — he favors a permanent peace court which would constitute a "symbol of deterrence and a standing reminder of the international community's readiness for judgment."[10]

In offering this suggestion Professor Holton challenges the traditional premise that a state's consent is a prerequisite to exercising judicial jurisdiction over its international conduct.[11] He considers "sovereign unaccountability" as an "outmoded dogma,"[12] which he would replace by compulsory jurisdiction. Similarly, he would rely more on the moral judgment of the international community to influence a state's behavior than on the traditional strategies — military, economic, and diplomatic.[13] He contends that a significant base of influence, the people, who have the power of "moral censure," should not be overlooked. "And this is a power which, if released and channeled, can reach any violator and penetrate the shield of any material defense."[14] He offers a new premise: "An international Peace Court will harness moral power to legal structure."[15]

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[6] For an excellent survey see Gross, *The International Court of Justice: Consideration of Requirements for Enhancing its Role in the International Legal Order*, 65 AM. J. INT'L L. 253 (1971).

[7] *See* U.N. CHARTER ch. VII.

[8] T. HOLTON, AN INTERNATIONAL PEACE COURT 17 (1970).

[9] *Id.* at 27.

[10] *Id.* at 30.

[11] *Id.* at 79-80.

[12] *Id.* at 83.

[13] *Id.* at 77-78.

[14] *Id.* at 78.

[15] *Id.* at 79.

In two other areas Professor Holton departs from customary thinking. First, he rejects the premise that "if the great powers fail to take the initiative against the menace of international violence, the other nations are powerless to take the initiative."[16] Arguing that "[i]nternational participatory democracy is evolving in the assembly of man,"[17] he observes that both the authority structure and the resource structure of the international community are so designed as to allow the other nations to assume and exercise communal responsibility and initiative for peace. Secondly, he surmises that the "world community's immediate need for physical enforcement" is perhaps "less clearly established than its need for authoritative procedure."[18] He anticipates that the "most compelling incentive [to governments] for compliance with the law of peace and security" might be provided by the "certainty of judgment" that the proposed Peace Court would offer.[19]

Professor Holton's new premises form a theoretical foundation for the Peace Court. The court's jurisdiction will extend to cases of "state-sponsored violence,"[20] and both the plaintiff and the defendant will be states. The court's membership would be open to all states; it would be "structured for action" and "the product of the action will be the judgment . . . [which will be] produced in the process of applying the law to a determinate set of facts."[21]

On the nature of the judgment: "the judgment will award no compensation. It will pronounce no sentence of physical punishment. But a judgment of censure will constitute an authoritative condemnation of the responsible party. And when the responsible party is the government of a sovereign state this is punishment enough."[22] Professor Holton believes that this condemnation should prove effective. In his words: "The central premise is that the governmental mind is sensitive to moral power when it is applied. In the present design moral power is applied by way of concentration through the judicial process and dissemination through the communication process. The output of this dual process will be the legal judgment of censure broadcast to the world."[23]

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[16] *Id.* at 76.
[17] *Id.* at 77.
[18] *Id.* at 82.
[19] *Id.* at 82-83.
[20] *Id.* at 39.
[21] *Id.*
[22] *Id.* at 56.
[23] *Id.* at 92.

Professor Holton models the proposed statute of the Peace Court[24] on the Statutes of the International Court of Justice and the European Court of Justice. He provides the necessary due process safeguards,[25] ensures "competence and impartiality [on the bench] combined with broad cultural and geographical representation,"[26] and suggests elaborate rules for an efficient functioning of such a court.

One could perhaps take issue with Professor Holton's restructured premises. For example, the recent Czechoslovakian, Cambodian, and Laotian invasions, all vehemently protested, demonstrate the fragility of moral censure in deterring a state from using force in its international conduct were it to perceive the issues involved to be of "vital interest." Similarly, the concept of compulsory jurisdiction without a state's consent is not only without precedent but its practical utility may also be questionable.

But there are perhaps even more substantive objections to Professor Holton's bold and innovative proposals. First, it will be exceedingly hard, if not outright impossible, to establish the facts of state-sponsored violence, especially in view of the preponderance of the indirect form of aggression through volunteers and infiltrators. Second, even if sufficient evidence were produced to show a state sponsorship of violence, the court might be hard put to pass judgment again a state, for there is no consensus on what constitutes aggression and what amounts to permissible self-defense. Third, in a majority of the current conflicts, it is hard to distinguish between its domestic and international components, for invariably both the elements might be present. If the proposed court's jurisdiction extends to merely interstate conflicts, it will not be instrumental in accomplishing Professor Holton's goal, that of preventing international violence. On the other hand, to advocate the extension of the court's jurisdiction to internal conflicts would be merely an exercise in futility. And finally, there may even be some validity in the contention that the Western fascination with the adjudicatory machinery and procedures is neither as widely nor as enthusiastically shared by other non-Western cultures and peoples in Asia and Africa.

However, the foregoing comments should not obscure the fact that Professor Holton's thesis offers an innovative and

[24] *Id.* at 98-109.
[25] *Id.* at 90.
[26] *Id.* at 87.

imaginative approach which seeks to depart from "customary nonthinking."[27] Second, his provocative ideas contain valuable insights both for the scholar and the statesman. And finally, he combines a new model[28] with a new approach and the result is an outstanding study which deserves serious consideration.

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[27] *Id.* at 75.

[28] A well known model is G. CLARK & L. SOHN, WORLD PEACE THROUGH LAW (3d. enlarged ed. 1966).

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