BOOK REVIEW

An International Peace Court: Design for a Move from State Crime toward World Law. THOMAS HOLTON. Martinus Nijhoff, The Hague, Netherlands, 1970. Pp. xv, 111. Fl. 18.

Professor George Keeton,* in his Introduction[1] stresses two fundamental premises, which prove the desirability of the precise plan to be advanced. First, the International Court of Justice is presently unable —because of its limited jurisdiction coupled with the continued assertion by signatory states of their absolute right to sovereign immunity —to resolve major disputes between governments. Second, at the international level, there is absent any realistic "mechanism of enforcement"[2] available to the ICJ or to the states. This situation, reasons Professor Keeton, and correctly so, underlies Professor Holton's premise that there is a pressing need for additional adjudicative tribunals and a rethinking of the available methods of enforcing awards against defaulting states.

It is fortunate that Professor Keeton has clearly indicated the need for the proposal for the establishment of a peace court and, likewise, several of the supporting suggestions to be discussed. They are, indeed, worthy of serious consideration; unfortunately, the title of the book can have the effect of discouraging a potential reader. Legally trained individuals will immediately ask: Why has such an "egg-head" topic been selected during this period of international turmoil? But, upon a careful reading of Professor Holton's ideas and his Model Statute[3] for a future court, it becomes evident that he is approaching the problem in a practical manner. Even though attention must first be given to the jurisprudence and philosophy underlying his ideal, the author never loses sight of his objective: "modest but concrete steps."[4] In other words, he offers an alternative to the legal norm of absolute state sovereignty, pursuant to which a state, including its high governmental and military leaders, has total immunity from retribution by either the injured state or the world community. His direct goal, as shown in the first two

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* Professor of Law, University College, London. M.A., LLD. Cambridge; LLD. (h.c.) Sheffield.

1 T. HOLTON, AN INTERNATIONAL PEACE COURT xiii-xv (1970) [hereinafter cited as HOLTON].

2 *Id.* at xv.

3 *Id.* at 98-109. The full name of the proposed statute is MODEL STATUTE FOR AN INTERNATIONAL PEACE COURT.

4 *Id.* at 4.

chapters, is to use international law to change the global community by placing responsibility on aggressor governments. Several of the suggestions offered to achieve this goal are worthy of note: for example, the amounts of money that might be expended for increased legal research. Greater support for legal education is also advocated.

The immediate legal remedy is the promulgation of multilateral treaties that will create legal responsibility, establish the peace court, and provide some means of sanction. Professor Holton argues:

> The present proposal is to change the rule, to replace the security of judicial immunity with the risks of exposure and censure, to replace indulgence with accountability. The proposal is offered in the belief that when sovereign immunity is tempered, the game of violence will be moderated by some measure of deterrence.[5]

The precedents are to be found in the treaties on the Nuclear Test Ban and the Peaceful Use of Outer Space. The validity of his thesis[6] can be seen from the recently concluded SALT negotiations and the resulting treaty limiting nuclear weaponry.[7]

Consequently, if the members of the United Nations can be persuaded to adopt Holton's proposals, the necessary legal remedies can be achieved by means of a series of multilateral treaties, initially adopted by the U.N. General Assembly and subsequently accepted by the states. Such ratification or adherence is the means of achieving the needed global consensus. Not every U.N. member would accept these conventions immediately. But this reviewer wonders how many governments would have to be persuaded before a meaningful consensus could be reached? No indication is given as to a precise number, but it is suggested that not all of the major powers would have to ratify in the first instance.[8] It is suggested that the recent practice of the United

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5 *Id.* at 5. See note 24 *infra.*

6 *Cf.* J. STARKE, AN INTRODUCTION TO THE SCIENCE OF PEACE (IRENOLOGY) 47, 70-71 (1969). Professor Starke is of the opinion that the codification of traditional international law will remove the degree of uncertainty from customary norms. Codified law will create greater respect and have a universal application if codified by the International Law Commission.

7 The subject of Disarmament and International Law was the topic of a series of lectures at The Hague Academy of International Law in 1971. These lectures are being published in the RECUEIL DES COURS. See Fisher, *Outlawry of War and Disarmament*; the discussion of the identical topic by O.V. Bogdanov; Myrdal, *Preserving the Oceans for Peaceful Purposes*; and particularly Stein, *Selected Aspects of the Impact of New Weapons Technology on International Law. Id.* The success achieved in the SALT negotiations and resulting agreements lends support to Holton's proposals because it has been shown that states will take mutual steps to eliminate the danger of nuclear war.

8 HOLTON at 5-6.

Nations in the area of human rights treaties provides some guidelines. A figure as high as 27 or 35 ratifications has been selected for the reason that a higher degree of unanimity is required to make a human rights convention meaningful. Examples are The Convention on the Elimination of All Forms of Racial Discrimination[9] and the U.N. Human Rights Covenants.[10]

After seeking a basic consensus for world peace—or, at the very least, a means of achieving a cessation of open hostilities between states—he seeks an answer to the fundamental question: Who has the duty to exercise responsibility for bringing an end to violence and beginning the move toward world law? The major powers—especially the Big Five or the Big Two—have failed to preserve the peace. Yet the alternative should be examined critically: the non-aligned nations, defined as the smaller states, should exert moral pressure. This reviewer is a firm believer in the application of moral condemnation in the legal realm,[11] although it must be conceded that moral pressure has failed in the political arena.[12] The difficulty, however, in accepting the alternative of greater responsibility by the smaller powers is that the huge majority of their governments are dictatorships of the left or the right. The present coalition of non-aligned states, for example, Asian, African, Latin American, and Socialist states led by Yugoslavia, are dictatorships. These states are not dedicated to world law. Likewise, they are not dedicated to the rule of law within their own countries and do not recognize the human dignity of their own nationals. Consequently, it is difficult to imagine how the necessary consensus can be obtained for a limitation of national sovereignty. Yet the author may be correct—and certainly he is idealistic—when he maintains:

> A move toward world law is proposed, therefore, as a realistic mission for the nations which are becoming increasingly responsive to the challenge of international violence. The mission is not to prescribe the substance of a world legal order for control of vio-

9 International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106, 20 U.N. GAOR, Supp. 14, at 47, U.N. Doc. A/6014 (1965). As of 15 June, 1971, forty-eight nations were parties to the Convention. *See* Note by the Secretary General, Review of Further Developments In Fields With Which the Sub-Commission Has Been Concerned, U.N. ECOSOC, Commission on Human Rights, U.N. Doc. E/CN 4/Sub. 3/218 (1971). See art. 19 (twenty-seven ratifications are required).

10 International Covenants on Human Rights, G.A. Res. 2200A, 21 U.N. GAOR, Supp. 16, at 49, U.N. Doc. A/6136 (1966). See art. 49, Covenant on Civil and Political Rights (thirty-five ratifications required).

11 As advocated in W. GORMLEY, THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS (1966).

12 *See, e.g.*, L. BLOOMFIELD, THE UNITED NATIONS AND U.S. FOREIGN POLICY 146 (1960). *Contra,* material cited notes 24 & 25 *infra.*

> lence, but to start the procedure which can be expected to lead to it.[13]

There is value in never losing sight of the "ought," despite the fact that the "is"—or the reality of the immediate situation, namely, the present political climate in the U.N.—does not substantiate one's ideals and goals. In this regard, the first three chapters—aside from proving the need for the establishment of a peace court—set forth the author's concept of the role that law must play in order to give effect to future "community expectations;" furthermore, his objectives and ideals sought are explained. This reviewer detects Professor Holton's basic point of departure: a struggle between good and evil. The "evil" inherent within classical international law is "absolute sovereign immunity," a norm which is an indispensable phase of state sovereignty. This evil will be confronted by the consensus of the majority of "state-governments" which will be overcome by global adjudicative machinery in the form of an international peace court; this forum, however, will be restricted to "sovereigns,"[14] as the concept is defined in the United Nations Charter. The Charter, then, expresses the consensus of the world community.[15]

An inescapable fact emerges: Holton is applying Professor McDougal's "policy approach" to the solution of contemporary problems.[16] But haunting the entire plan is the fact that states must surrender vital phases of sovereignty in the political sphere.[17] Nonetheless, some proposals are advanced in the fourth chapter concerning the specific type of resources that can be brought to bear by the inter-

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13 HOLTON at 17.

14 He is not advocating that individuals or groups be accorded locus standi; rather, he follows the traditional standard set forth in the U.N. Charter. *Contra*, J.J. LADOR-LEDERER, INTERNATIONAL GROUP PROTECTION 100 (1968); Gormley, Book Review, 43 BRIT. Y.B. INT'L L. 303 (1968-69). See W. GORMLEY, *supra* note 11.

15 Professor Holton, after citing the text of the Preamble to the U.N. Charter, concludes that its text "is a transcript of community expectations. It is formulated in norms encoded at the highest level of international organization." HOLTON at 52. Earlier he stated:

> The exercise of responsibility for the promotion of a world order of peace and security is shifting from the few major powers to the larger community of nations.
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> The immediate mission proposed for the new initiative is to find an effective legal procedure for a move toward world law.

Id at 18.

16 M. MCDOUGAL, STUDIES IN WORLD PUBLIC ORDER (1960); M. MCDOUGAL & FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER (1961); Gormley, Book Review, 55 AM. J. INT'L L. 755 (1961).

17 The surrender of sovereignty is a bit easier—though always difficult—to achieve at the military and economic levels. Examples would be NATO and the EEC.

national community. Obviously, the methods found in classical law, such as military power, diplomatic pressure, and economic sanctions, will be utilized when available. Accordingly, the insight given is that the power of mass communication can be utilized to terminate hostilities and "persuade" states to negotiate their differences. Professor Holton conceives of mass communication as "a new instrument;"[18] still, he does not distinguish between the sanction of world public opinion and the classical moral sanction. It seems as if he treats these two closely related methods as being largely identical. He does not differentiate between moral force and community consensus.

Leaving aside the doctrinal question, two methods are indicated by which the "new instrument of communication can be applied to deterrence." First, an appeal can be made to the world community or the peace court before the violence begins; second, censure can be employed after the state-sponsored violence has in fact occurred.[19] Although the basis of such condemnation arises from the community consensus—along with the community expectation of pacific settlement of disputes[20]—the fact remains that no existing multi-national forum has the competence to resolve controversies between two warring states. The General Assembly, the Security Council, and the International Court of Justice cannot resolve controversies or establish order after hostilities have commenced. The failure of Iceland to take part in the August, 1972, oral arguments at The Hague—or to comply with the order of the International Court granting interim measures[21] designed to preserve the status quo until the Court could resolve the substantive issues involving the legality of a fifty-mile contiguous zone for exclusive national fishing rights—demonstrates the weakness of contemporary international adjudication. No one can seriously question the need for, or the desirability of, adopting the International Peace Court; however, this reviewer is a bit skeptical over the reality of the proposal. First, can state-governments be persuaded to establish such a court and, second, will these same states accept its compulsory jurisdiction after they have created the tribunal?

As a lawyer, Professor Holton is more or less compelled to propose a legalistic solution to control state-sponsored violence. Thus, the latter

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18 HOLTON at 22.

19 *Id.* at 23.

20 This reviewer wonders why the measurers of pacific settlement included within U.N. CHARTER art. 33 were not considered as a possible alternative.

21 Fisheries Jurisdiction (United Kingdom v. Iceland) Interim Protection, Order of 17 August, 1972, [1972] I.C.J. 12; and Fisheries Jurisdiction (Germany v. Iceland), Interim Protection, Order of 17 August, 1972, [1972] I.C.J. 30.

portion of the book is devoted to the precise plan.[22] Aside from the implementation of the Court Statute, the author deals with the recognition and subsequent enforcement of judgments. This problem is discussed several times in slightly different contexts, but the main consideration is that the judgment itself will provide the required sanctioning power.[23] This remedy is often referred to as the juridical sanction when applied pursuant to traditional law.[24] However, the judgment will be given effect through the moral force, not only of the judgment, but, primarily, to the pressure of world public opinion.

This reviewer strongly supports the position taken by Professor Holton. It is unrealistic to advocate the use of military intervention or economic sanctions to force compliance. Although the moral sanction —as wielded by the community expectations—will not always succeed against major states, it is the only feasible measure of enforcement. No action that is likely to result in increased international tension can be employed. Therefore, a practical means of enforcement is sought, even though the USSR and its satellites will not be coerced by world opinion. Nevertheless, the perfection of one additional sanction—highly effective within the specialized sphere of the International Labour Organization and also employed by the Trusteeship Council of the United Nations—is advocated: publication in permanent form. Indeed, Holton's suggestion reminds one of the final judgment contained in the *Book of the Dead,* to wit, "Naught shall remain unpublished." Verdi, in his *Requiem,* enunciates the notion of "Liber Scriptus:"

> Now the book lies open,
> In which all has been written,
> When all shall come to trial
> The Lord Shall sit in judgment,
> Uncovering what is hidden;
> Naught shall remain unpublished.

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22 HOLTON at 28-90 (Chapters 5-9), Chapter 9 contains a discussion of the MODEL STATUTE, *supra* note 3.

> Qualified by centuries of specialization in impartial decision, the judicial tribunal emerges as the most appropriate medium for utilizing the instrument of modern communication in a strategy of public judgment directed to the deterrence of state-sponsored violence. The court brings impartiality to judgment.

Id. at 28.

23 *Id.* at 31 (legitimacy of the judgment). *See also id.* at 40, 44.

24 Gormley, *The Status of the Awards of International Tribunals: Possible Avoidance Versus Legal Enforcement,* 10 How. L.J. 33, 72-77 (1964). The application of moral force to specific contemporary problems is discussed in Gormley, *The Use of Public Opinion and Reporting Devices to Achieve World Law: Adoption of ILO Practices by the U.N.,* 32 ALBANY L. REV. 273, 288-97 (1968).

Considerable support for such publication can be obtained from recent ILO practices. Beginning in 1968, the ILO began to publish a form of "black list" of those states in default of their voluntarily assumed obligations under ILO conventions.[25] The preservation of a permanent record serves as a powerful sanction to achieve community expectations.

Largely because of a very concise style of writing, many diverse ideas are included within the scheme. For example, some consideration is given to the possibility of actions for damages. In this event, hostilities could be terminated and the injured parties compensated.[26] Admittedly, such actions would have the effect of extending the court's jurisdiction. Specific suggestions are offered for the purpose of making the judgment flexible; for example, a suspension to permit the parties to resolve the controversy through their own efforts or refer the case to the International Court of Justice.

The impact of an International Peace Court could be considerable, even if its services were not frequently used because it would incorporate that degree of moral force stemming from a global community consensus. The result would be to limit the power of the sovereign to take certain types of unilateral actions, resulting in violence and open warfare. "The power of an International Peace Court will be based on the universal demand of governments for the values of respect and reputation for doing right."[27] Here, the author speaks of the responsibility of states, once immunity has been removed, so that an injured state or the world community can file a complaint. To achieve this goal five distinctive features of the Peace Court are cited:

> 1. The claims asserted by aggrieved states would not be for reparations.
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> 2. The assertion of the claims would represent the interests not only of the aggrieved state, but of the community of states. Hence, the Court's procedure could reflect this representative char-

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25 International Labour Conference, Provisional Record, 52d Sess. Geneva, Appendices, Information and Reports on the Application of Conventions and Recommendations, Special Problems, at iv-v (1968). Report of the Committee of Experts on the Application of Conventions and Recommendations, Part 3, Forced Labour, 52d Sess., Geneva, Agenda Item No. 3, at 177-240 (1968).

The use of special listings of defaulting states and the intensive examination of specified topics is discussed in Gormley, *The Growing Protection of Human Rights and Labour Standards by the International Labour Organization*, to be published in 1973 by the BANARAS LAW REVIEW (India).

26 HOLTON at 49. *See also id.* at 47.

27 *Id.* at 72.

acter by providing an option for their assertion by an official agent of the community.

3. The purpose of the assertion of claims would be the public censure of the offender in aid of the offender's deterrent rehabilitation as well as the deterrence of others.

4. The nature of the wrong redressed by the censure would be public, being a wrong against the whole community rather than a single member thereof.

5. The moral gravity of the wrong redressed is profound, involving jeopardy to the survival of the community.[28]

We can all agree with the above-mentioned premises: the world community is an "interested party" when its collective survival is at stake. It must not be minimized, that moral force, directed by an international court, is the only realistic alternative to the use of force by major powers.

> Military, economic and diplomatic resources are not the only significant bases of influence. The international community holds a potentially significant, largely untapped, reserve of influence in the moral judgment of its people.[29]

This challenging book has a place beside others calling for the creation of international tribunals; for example those of Professors Clark and Sohn,[30] and earlier plans, such as advocated by Professor James O. Murdock.[31] The most recent proposals are those seeking the creation of an International Criminal Court.[32]

Professor Holton is conscious of the possibility of creating an international criminal tribunal and, similarly, of making more effective use of the International Court of Justice; nonetheless, he has

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28 *Id.* at 72-73 (footnotes omitted).

29 *Id.* at 78.

30 At the Helsinki meeting of the International Law Association, Professor Sohn advocated that a new body be created which would have the jurisdiction to advise in the "impartial consideration of important disputes submitted to the General Assembly or the Security Council." The new tribunal would develop effective machinery for arriving at desirable solutions. Sohn continued:

> While it might be too ambitious at this time to propose an International Equity Tribunal, we could consider at least the establishment of a permanent advisory body, composed of eminent statemen [sic] highly respected by all the nations of the world.

L. Sohn (Rapporteur), *The Changing Role of Arbitration in the Settlement of International Disputes* 287, 288-89 (ILA, Helsinki: 1966). *But see* G. CLARK & L. SOHN, WORLD PEACE THROUGH WORLD LAW (3d ed. 1966) (especially their plans for the creation of international courts).

31 Murdock, *International Judicial Organization*, 69 A.B.A. ANN. REP. 373 (1944). Under Murdock's plan, the justices would ride a circuit and sit with regional courts in all areas of the world and help guide the development of international law. Cited in Gormley (ALBANY L. REV.), *supra* note 24, at 286 n.43 and the quotation cited therein.

32 *See, e.g.*, Wortley, *Claims For Violations of Human Rights*, in TOWARD A FEASIBLE INTERNATIONAL CRIMINAL COURT 43-56 (1970).

chosen to propose a limited Model Statute. Notwithstanding the caution with which he has developed the structure and jurisdiction of the new tribunal, the limitations cannot be overlooked; states are presently unwilling to surrender their sovereignty or to limit their freedom of action. They will not even utilize the International Court of Justice or become subject to compulsory arbitration, as can be seen from the Vienna Convention on the Law of Treaties.[33] Similarly, the defeat in August, 1972, of Professor Louis Sohn's *Draft Treaty for the Peaceful Settlement of International Disputes,* which, if adopted, would have been known as the *New York Rules for the Peaceful Settlement of International Disputes,*[34] demonstrates all too clearly the existing political climate—even among those non-governmental delegates attending the International Law Association meeting. The defeat of Professor Sohn's carefully prepared *Model Rules for the Peaceful Settlement of International Disputes* makes it unlikely that an International Peace Court can be established or that its compulsory jurisdiction will ever be accepted. On the other hand, Professor Holton has shown the courage required to deal with an extremely difficult problem, discuss the underlying philosophy and then offer a reasonable solution.

World peace is man's greatest dream, and world peace is basic to other goals, such as the realization of the World Rule of Law,[35] the protection of human rights, economic advancement, monetary stability, and the preservation of the environment. The Model Statute for an International Peace Court is a first step toward the achievement of these long-range objectives.

*W. Paul Gormley***

[33] Arts. 53 & 64 (disputes that are jus cogens will be heard by the International Court of Justice), and the Annex to the Convention (providing for nonbinding conciliation as to all other disputes), Vienna Convention on the Law of Treaties (*adopted* May 22, 1969, *opened for signature* May 23, 1969), UNGA, United Nations Conference on the Law of Treaties, A/CONF. 39/27, 23 May 1969; 8 INT'L LEGAL MATERIALS 679 (1969). Discussed in Gormley, *The Codification of Pacta Sunt Servanda by the International Law Commission: The Preservation of Classical Norms of Moral Force and Good Faith*, 14 ST. LOUIS U.L.J. 367, 409-22 (1970).

[34] L. Sohn, Draft Resolution: Peaceful Settlement of International Disputes; see also Draft General Treaty for the Peaceful Settlement of International Disputes (ILA New York: 1972). See in particular Ch. 8, Judicial Settlement, arts. 25029 and Ch. 7, Arbitration, arts. 22-24. Sohn also deals with the other means of pacific settlement contained in U.N. CHARTER art. 33.

[35] The topic of Ch. 10. A similar view has been expressed in King & Gormley, *Toward International Human Rights*, 9 WAYNE L. REV. 294 (1963).

** Member of the District of Columbia and United States Supreme Court bars. A.B., San Jose State University; M.A., University of Southern California; Ph.D., University of Denver; J.D. (honors), L.L.M., George Washington University; LL.D., Victoria University of Manchester (1972). The Hague Academy of International Law. Formerly Leverhulme and Simon Fellows, University of Manchester.