TOLERANCE AND GOOD NEIGHBOURLINESS

AS CONCEPTS OF INTERNATIONAL LAW

The peoples of the United Nations have proclaimed in the Charter their common determination "to practice tolerance and live together in peace with one another as good neighbours". By affirming in this solemn manner the interdependence of peace, tolerance and good-neighbourliness they have introduced a new scale of values into the assessment of the legal obligations implicit in civilized conduct, a new scale of values no less important than the renunciation of armed force save in the common interest, the principle of uniting their strength to maintain international peace and security, the reaffirmation of faith in fundamental human rights, and the promotion of social progress and better standards of life in larger freedom. The impact on the law of these other aims set forth in the Preamble to the Charter has been widely canvassed in the extensive literature relating to the renunciation of force, collective security, human rights, and international economic and social co-operation, but the extent to which the concepts of tolerance and good-neighbourliness may have any tangible legal content has been little discussed.

Here in Singapore, where the Malay, Hindu, Buddhist and Islamic cultures have interacted for centuries with those of China and of the West, it is particularly apposite to stress the contemporary importance of transforming the seminal ideas of tolerance and good neighbourliness from moral precepts into legal concepts and political realities. South-East Asia may be the decisive arena in which the nations learn to practise tolerance and live together with each other as good neighbours or destroy their common heritage of unbounded opportunity. It is, with the Eastern Mediterranean, one of the areas where, without a full measure of tolerance and good neighbourliness, intractable local problems are both insoluble as such and liable to precipitate wider dangers, but it is also the arena where a drama on an altogether bigger scale is unfolding. It will inevitably be one of the areas where the western and oriental traditions come or fail to come, to terms with each other in evolving a new synthesis of political ethics and legal principle to guide their future conduct, adjust their conflicting interests and harmonize their mutual relations.

To evolve a synthesis satisfactory for this purpose we must extend our horizon beyond a limited group of legal systems such as the civil law and common law systems, and widen our field of vision to include the varied legal cultures of all mankind. The concept that any one culture has a monopoly of legal wisdom is no less an anachronism than the concept that any one culture is the centre of the universe. The process involved is similar to that which has developed in Malaya where the *adat* law, Islamic law and the common law have all contributed to the

synthesis represented by the contemporary law.[1]

In this process we must expect the characteristic features of Chinese and Japanese jurisprudence to be important factors. How permanent an influence these features will prove to be in a rapidly changing orient is inevitably a somewhat speculative matter, but some of them may well outlive the most far-reaching political, economic and social changes. Among these are jurisprudential concepts closely related to the ideas of tolerance and good neighbourliness.

The classical jurisprudence of China rests upon the fundamental principles of *tao* and *li* and a preference for conciliation rather than adjudication as a means of settling disputes. By *tao* is meant the creative principle of natural order and harmony. By *li* is meant an ethical and ritual obligation to observe standards of good conduct which express an ideal of social harmony emphasizing the obligation of the individual to society. Conciliation is a method of adjusting disputes in the light of these principles rather than of enforcing rights. All of these concepts have a bearing on the clothing in legal form of the political aims and moral precepts set forth in the Preamble to the Charter. *Tao,* the creative principle of natural order and harmony, implies both tolerance and good neighbourliness. *Li,* the ethical equivalent of legal obligation, likewise involves both tolerance and good neighbourliness. Conciliation, which has always been a characteristic feature of Chinese[2] and likewise of Japanese[3] law, may be regarded as a procedural expression of the ideas of tolerance and good neighbourliness. It is a useful device for clarifying to the parties their factual and legal position, but is inept to enforce rights against power and authority or to reconcile the recalcitrant to social change, and is as defective in this respect internationally as on the national plane.

The *adat* law of Malaysia and Indonesia may also contribute concepts which have a significant bearing on the relevance to the law of such seminal ideas as tolerance and good neighbourliness. *Adat* is more than custom or convention as understood by the common law and civil law disciplines; it regulates the entire life of the community. A common *adat* involves a recognized pattern of close co-operation in all the important events in the life of the individual and the community. We must not strain such concepts beyond their historical content or their present relevance. The concept for an *adat* handed down from generation to generation, which, in the Minangkabau saying, "doesn't crack with the heat or rot in the rain", is ill-fitted for a world of change. The *adat* of a community is, moreover, local to itself, the distinctive intellectual legacy of its forefathers. Our need today is to develop from the tolerant acceptance of our neighbours' *adats* a common *adat* for mankind. But the limitations of such concepts do not impair their validity and relevance within proper limits.

1. *Cf.,* Shirle Gordon (ed.), *Malay Adat and Islam,* (Singapore).
2. T'ang-Tsu Ch'ii, *Law and Society in Traditional China,* (1961), pp. 226-279; S. van der Sprenkel, *Legal Institutions in Manchu, China,* (1966), pp. 112-123.
3. Dan Fenno Henderson, *Conciliation and Japanese Law,* vols. 1 and 2 (1965).

In having recourse to such concepts from the traditional legal systems of Asia we must at all times be conscious that the world in which we are called upon to apply them is changing to an extent and at a rate for which history affords no precedent. New political forces, new strategic problems, new economic and social aspirations, new cultural attitudes, new scientific and technological possibilities have completely transformed the outlook and preoccupations of human society. How much further change upon the scale to which we have now become accustomed will proceed we cannot hope to foresee. We must be content to grope, and at times to gamble, knowing that the whole future of man may depend on how enlightened a boldness we bring to the task. The law cannot remain immutable in a universe of change. We need a new approach to the problem of giving an effective practical expression in the law to such concepts as tolerance and good neighbourliness. The approach required has been well defined by the Attorney-General of Singapore in his valuable and fascinating work, *Islamic Law in Malaya.* "The Muslims of today", Dr. Ahmad Ibrahim writes, "should treat the circumstances of today as the great jurists did theirs and try to face their special problems in the light of the public good, as they did. . . . . It is altogether unrealistic to seek from the jurists of the past solutions to the problems of our own age — an age of which they could have no knowledge. . . . . While the unequivocal ordinances of the Holy *Qur'an* and the *Sunnah* must for all times remain valid as the unchangeable Muslim law, the Muslims are not only permitted but definitely encouraged to develop side by side with this unchanging law, a changeable and changing law, which would apply the spirit and the actual injunctions of the Divine Law to the social requirements of each time and place."[4] Much the same may be said of the law of nations. In the law of nations, the concepts of tolerance and good neighbourliness belong to the unchanging law, but their practical applications to the changeable and changing law.

We must increasingly expect the process of giving legal expression to new social needs and sociological trends to reflect the prevailing temper of developing societies. Law, as S. Takdir Alisjahbana, the contemporary Indonesian scholar, has said, is not just the outgrowth of a developing society. In his words:[5]

> "Its role in guiding and stimulating a society's growth in a desired direction is no less important. Law is the twin of education; each helps the other to shape the new society and its culture. And it is particularly those nations lagging behind in the technological advances of this modern age that cannot avoid the necessity of making responsible use of this second function of law."

We may expect, and should encourage, the developing societies, whose role in determining the future authority and influence of law in world affairs is now decisive,[6] to be insistent in urging such a responsible use of the

4. *Islamic Law in Malaya* , (Singapore, 1965), p. 117.

5. *Indonesia: Social and Cultural Revolution*, (1966), pp. 76-77.

6. *Cf.*, Jenks, *The Common Law of Mankind,* (1960).

corresponding function of the law of nations.

Such an approach will inevitably pose some difficult dilemmas for some of the traditional schools of legal thought. Such schools of thought still have a powerful grip on the legal mind in both the most and the least advanced of contemporary societies; they are equally prevalent in the most liberal and the most regimented of cultures. In wrestling with these dilemmas we must be guided by the essential newness of the political, economic, cultural and technological context in which the law now operates. In the new context of the world of accelerated change in which we live, the oldest and most fundamental of legal principles have new and newly-important practical applications. These cannot be dismissed as 'new law' beyond the scope of the judicial process or useful juridical speculation. They are essential to the continued vitality of any law which can be developed by legal thought and administered by the judicial process.

Let us therefore review in this spirit the status of tolerance and good neighbourliness in the law.

How far broad standards of conduct can be refined into measurable obligations is one of the crucial problems of every developing legal system. In the dissenting opinions delivered in the International Court of Justice in the *South West Africa Cases* by Judges Wellington Koo[7] and Tanaka,[8] we have impressive examples of the judicial application of broad standards to specific facts. How far can such broad standards as tolerance and good-neighbourliness be materialized into specific obligations by custom, treaty, adjudication or the practice of international organizations? We are at much too early a stage of development for any dogmatism in the matter to be wise, but there are a number of lines along which the law is at present evolving, may evolve, or should be encouraged to evolve, which appear to be worthy of fuller exploration.

Tolerance as an ethical and political principle was enshrined in the heritage of common lawyers by John Locke, but there is as little mention of it in Blackstone, who included apostasy and heresy among crimes and misdemeanours, as in Bracton or Coke. Nor do international lawyers give it any recognized place among their basic concepts.

Tolerance is nevertheless the foundation of the co-existence in freedom of differing religions, races, cultures and economic and social systems. Presupposing such fundamental axioms as the unity of mankind, the equality of man, the relativity of truth and the mutability of destiny and circumstance, it represents the indispensable social and political foundation without which no world community is practicable and no international legal order conceivable. It was the basis on which Christianity and Islam renounced the Crusades and the *jihad,* on which Europe rebuilt a common polity after the Wars of Religion and again after the French Revolution, on which Western Europe reaffirmed, after the Second World War, the unity of its common civilization, and on which the British

7. 1966,, I.C.J. at pp. 232-238.

8. 1966, I.C.J. at pp. 278-316.

Commonwealth in its pre-1947 form evolved into the present multi-racial Commonwealth. It is the basis on which the Cold War in Europe is being terminated. It is the only basis on which the peace of Asia can be restored and assured.

Tolerance implies a long view of the probable future development of apparently irreconcilable philosophies and interests. There is ample historical justification for taking such a long view. The Muslim attitude to the law of nations, originally based on the theory of a universal state, has accommodated itself to the membership in the United Nations of twenty-one Muslim states.[9] The communist attitude to the law of nations, originally based on a theory of universal revolution and a system of Soviets transcending national boundaries, has accommodated itself to the membership in the United Nations of ten communist states variously related to each other. The Chinese attitude to the law of nations, originating with the concept of China as the Celestial Empire, accommodated itself to membership of the League of Nations and participation in the creation of the United Nations.[10] Neither the *jihad* nor the Communist Manifesto of 1848 can be reconciled with the Charter of the United Nations, but this has not precluded the development of new forms and traditions of international collaboration wholly unforeseeable by Mahomet or Karl Marx. We cannot assume that this process of evolution has reached its term.

The critical dilemma of tolerance has always been how far to preserve it against the intolerant. Tolerance of intolerance may culminate in the violent suppression of tolerance; the curbing of intolerance may culminate in tolerance being untrue to itself. There is no fully satisfactory answer to what is essentially a question of good judgment. The Universal Declaration of Human Rights recognizes the dilemma by specifying that nothing therein "may be interpreted as implying for any State, group of persons or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein".[11]

How far can these general considerations of policy be materialized into specific obligations? In some respects, it is submitted, they can.

Tolerance accepts diversity. The obligation of tolerence implicit in civilized conduct by virtue of the Charter therefore includes the obligation to accept diversity. The obligation is equally binding on both sides to an ideological conflict. It includes the obligation not to withhold recognition or debar participation in the United Nations on ideological grounds. It includes the obligation to refrain from subversion or aggression alleged to be justified on ideological grounds. These obligations are more than counsels of morality or political expediency. They are the reflection in specific legal obligations of the determination to practise tolerance proclaimed by the Charter. They are necessary and complementary elements in any lasting settlement of the affairs of South-East

9. Majid Khadduri, *War and Peace in the Law of Islam,* (1955).

10. L. Tung, *China and Some Phases of International Law,* (1940).

11. Article 30.

Asia, the region which at present suffers most from the fact that the United Nations is not yet universal in effective membership and influence.

Tolerance precludes discrimination on political, racial or religious grounds. The Declaration of Philadelphia of 1944, now an integral part of the Constitution of the International Labour Organisation, and the Universal Declaration of Human Rights of 1948 enunciate the general principle that the elimination of such discrimination is a major objective of international effort. The obligation to refrain from such discrimination is increasingly finding expression in firm international obligations, typified by the I.L.O. Discrimination (Employment and Occupation) Convention, 1958, now ratified by 57 states, the Unesco Convention against Discrimination in Education of 1960, and the United Nations Convention on the Elimination of All Forms of Racial Discrimination of 1965. These declarations and conventions have a significance in the development of internation law comparable to that of the Declaration of the Rights of Man and the Citizen in the history of civil liberties. A common respect for our common humanity is passing from the realm of philosophical acceptance to that of legal obligation, formulated in international agreements and national laws and regulations and enforced where need be by appropriate procedure. The principle is of major importance for the future peace of South-East Asia, today as for centuries one of the most racially heterogeneous areas of the world.

Tolerance presupposes freedom of information and restraint from defamation. The law concerning information and defamation is at very different stages of development. The principle of freedom of information, though much discussed at United Naions Conferences on the subject, has not yet found expression in any generally accepted legal obligations. The practical elements in the problem include: freedom to seek information at its source from unreasonable restriction by either the country whose scholars, news media or public are in search of the information or the country where the information is sought; positive steps to facilitate the freer flow of news and other information, scientific knowledge and data, and cultural materials across political and ideological curtains and other boundaries; freedom from censorship, on any but reasonably interpreted security grounds, of incoming or outgoing news, periodicals and books; freedom from jamming of international broadcasts; and such like matters. Action in respect of these matters involves changes in national policies concerning freedom of access to uncontrolled information, more liberal passport and visa policies, and comprehensive cultural exchange agreements and arrangements. These are large and controversial questions of policy involving in an acute degree the problem of how to secure an effective reciprocity; progress concerning them would involve important changes of attitude on all sides and in particular on the part of those whose policies on these matters are least liberal; but it does not follow that the formulation of appropriate standards in regard to them in legal instruments cannot play a significant part in stimulating and crystallizing the necessary changes of policy. Even if draft instruments in which such standards were formulated did not become immediately operative, they would constitute a continuing offer to give by reciprocal action a firm legal basis to the practice of tolerance in the things of the mind.

While freedom of information as a legal obligation requires novel concepts and procedures, not yet clearly thought through and still to be accepted in principle and tested in practice, defamation is a recognized tort, no less important in contemporary international relations than in municipal law. The obligation of tolerance implicit in civilized conduct by virtue of the terms of the Charter includes an obligation of Members of the United Nations to refrain from making, authorizing, or permitting the use of official media for statements defamatory of each other, and to restrain by appropriate legal procedures other conduct within their jurisdiction which is defamatory of their fellow members. The general fulfilment of this obligation has an important bearing on the future peace of South-East Asia, now, alas, one of the leading cockpits of the ideological conflicts of our time.

Good-neighbourliness, like tolerance, is a principle with a potential of applications in specific legal obligations which we have only begun to explore.

Good-neighbourliness begins with respect for the territory of one's neighbour, one of the most elementary of the traditional principles of international law, now specifically restated in the provision of the Charter that all states shall refrain from the threat or use of force against the territorial integrity of any state.[12] Without this principle there can be no orderly world community. Without it there can be no stable peace, in South-East Asia or elsewhere.

Good-neighbourliness precludes the use of one's own territory in a manner which constitutes a danger for one's neighbours. Allowing one's territory to be used for armed attack upon one's neighbours has long been a recognized and grave violation of the law of nations. The principle of which this rule is an expression has, however, a much wider range of potential applications. Contemporary scientific and technological developments have made possible a whole series of new uses of one's territory, including activities in outer space, the tapping of underground resources, industrial processes involving air and water pollution and nuclear activities, which may constitute a danger or detriment to neighbouring territory and its inhabitants hardly less serious in its potential consequences than armed attack. The principle of good-neighbourliness implies both a general obligation of care in respect of these matters and, to an extent not yet clearly defined, responsibility without fault for the risks arising from such activities. We may expect the scope and modalities of these obligations to be more precisely defined in future proceedings before international courts and tribunals and other international bodies and by means of appropriate international agreements. The prohibition upon allowing one's territory to be used for armed attack upon one's neighbours has an immediate bearing on the peace and stability of South-East Asia; the principle applicable to the conduct of ultra-hazardous activities upon one's territory has become of ever wider application with the ever wider diffusion of the newest technological know-how and processes.

Good-neighbourliness includes the obligation to respect the political

12. Article 2(4).

independence and economic and social system of one's neighbour. Some elements in this obligation are well defined; others remain conjectural or imprecise. The prohibition by the Charter of the threat or use of force includes such threat or use against the political independence of any state, but leaves unanswered such questions as how much more than refraining from the threat or use of force may be involved in respecting political independence, and what obligations the mutual respect for each other of divergent economic and social systems may involve in matters of economic policy. These obligations must as a minimum include a duty to refrain from measures deliberately designed to disrupt the rival system; more positively construed they may include a duty not to discriminate in economic matters against the rival system and not to debar it from the fullest participation which the differences of system allow in mutually profitable economic intercourse. The further elaboration of this approach into a body of mutually accepted obligations may have an important bearing on the future peace and stability of South-East Asia.

Good-neighbourliness finds fuller expression in mutual aid. The general concept of mutual aid has many applications in contemporary international law. They include mutual aid for the maintenance of peace and security, mutual aid in law enforcement, mutual aid for economic stability and growth, and mutual aid for scientific and technological progress. In respect of all of these matters the principle has already been extensively translated into specific international obligations, but there remains great scope for giving it, through the Asian Development Bank, the Mekong River Project, and a wide range of possible similar schemes, a more precise application in matters vitally affecting the welfare and progress of South-East Asia.

Tolerance and good-neighbourliness are more than moral precepts or political slogans; they are seminal concepts which are a potential source of specific legal obligations. They have a recognized status in the law by reason of the Preamble to the Charter of the United Nations; they reflect the principles of *tao* and *li* which were the accepted basis of traditional Chinese law and therefore represent an appropriate framework for a renewed dialogue between western and oriental cultures; they are central to the role of law as the twin of education in developing societies; their potential implications have a direct bearing on many of the immediate problems of South-East Asia. A comprehensive and imaginative study of tolerance and good neighbourliness as concepts of international law would be a timely contribution to the revitalization of international law in response to the needs of our time.

There is great need for a solid study of the subject undertaken with scholarly detachment, but it is vital to see the question in the large. Let us with Confucius, as men have done since *The Book of Changes,* look forward to the day when the Age of Disorder gives way to the Age of Complete Peace-and-Equality. There can be no Age of Complete Peace-and-Equality without tolerance and good-neighbourliness. Tolerance and good-neighbourliness cannot be reconciled with the concept that any nation is "The Central Nation". They presuppose the no less seminal principle of the equality of all mankind. As the most cosmopolitan and utopian in outlook of Chinese political philosophers, K'ang Yu-Wei, has said in his *Ta T'ung Shu* or *One World Book,* "The coming to birth of all men

proceeds from Heaven. All are brothers. All are truly equal." [13] We find in Islam the same principle expressed in the saying of the Prophet: "People are all equal as the teeth of a comb." [14] The principle is immanent in Buddhism. It is the essence of Christianity.

Within the universal community of mankind the rights of each rest upon the rights of all and the status and dignity of each nation rests upon a common respect, founded in tolerance and practised in good-neighbourliness, for the status and dignity of all nations. To make these principles effective as the foundation of policy we must give them a recognized place and content in the common law of mankind. We must do so by the recognized methods of the law and within the acknowledged limits of legal technique, but we must not become the slaves of the technicalities which we have evolved to serve us. Legal methods and technique must be the tool of these high purposes and not the masters of our souls.

Tolerance and good-neighbourliness are attributes of freedom. In freedom alone can they flourish. Of freedom they are both the fruit and the seed. Condoning no departure from the high standards which they postulate, they are the vital principle without which those standards cannot maintain themselves. They are the basis of law, the hallmark of freedom, an essential element in welfare. Let us therefore, as free men, practise tolerance, living in peace with each other as good neighbours under a common law of mankind founded in the Charter of the United Nations, and let us bring to the current problems of the law the creative imagination without which our professional skill will be unequal to this larger destiny.

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13. *Ta T'ung Shu, The One-World Philosophy of K'ang Yu-Wei,* translated by Laurence G. Thompson, (London, 1958).

14. *Cf.,* Sayed Kotb, *Social Justice in Islam,* (1953), pp. 45-55.

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