SHORT OUTLINE

THE NEW PLURALISM AND INTERNATIONAL LAW

The authoritative starting point for any legal system--what Kelsen identified as its Grundnorm [Basic Norm]--is a pre-legal, meta-legal fact. If it is not to be a mere exercise in abstract logic and not in life,--the Law-in-Books, but to guide and control the process of its own dynamic unfolding in terms of concrete, secondary norms and rules that do demonstrably operate as Law-in-Action, the Basic Norm must be grounded in empirical reality.

In a first Lecture within the present, UN Audiovisual Library of International Law series, I examined the post-World War II world public order system which followed on the collapse, at War's end, of the unity of purpose and objectives that had guided the ultimately victorious military alliance between the Soviet Union and the West. That lecture, "Peaceful Coexistence and Competing Legal Systems or Clashing Civilisations" [2008], identified the new basic norm or premise of world order that emerged de facto: Bipolarity and the division of the post-war World Community into the two great contending political=military blocs [with their dependent spheres of influence] led respectively by the Soviet Union and the United States, and corresponding to the objective facts-of-life of the times. After some early difficult and dangerous years of Cold War ideological confrontation, the Bipolar world order system settled into a more orderly and nuanced series of reasoned accommodations between the two rival blocs, based on mutual give-and-take and reciprocal self-interest in working towards common solutions. This form of constructive engagement, under the rubric of an International Law of Peaceful Coexistence on the Soviet side, or Friendly Relations and Cooperation among States in accordance with the UN Charter in the Western-favoured euphemism, yielded on a two-track approach,-- both the celebrated UN General Assembly Resolution of October,1970, on Friendly Relations; and also, throughout the 1960s and the 1970s, a continuing series of very concrete treaties and other international agreements, jointly drafted and sponsored by the two blocs, on banning of nuclear testing, on nuclear and general disarmament, nuclear non-proliferation, and peace and security as a whole. The cumulative body of law and legal doctrine, whose leitmotiv, in retrospect, was certainly the concept of Peaceful Coexistence, provided the passage to East-West Détente and, then, to active Cooperation across any systemic divide. It ended the Cold War, its symbolic passing in 1989 with the Fall of the Berlin Wall coinciding with the "New Thinking" and Perestroika-inspired change under a new Soviet leader, President Gorbachev.

In a second lecture within this UN series,-- "Multiculturalism and Contemporary International Law Making", I examined the impact upon the post-World War II world public order system and its Bipolar basic premise of emerging new political players who were not members of either one of the two blocs and not involved in consequence in those two blocs' inter-systemic negotiating and resulting joint consensus on the drafting and then carrying through to adoption of international legal accords on their own agreed joint

priorities. These new players in very many cases were the "succession" states to the old European Colonial empires in Asia, Africa and the Caribbean, resulting from the world-wide movement for Decolonisation and Independence that occurred outside of and hardly influenced by the East-West Détente process. The urgent priorities for the "new" countries,concretely expressed through their admission in successive waves to the United Nations, were financial aid and economic development and a postulated New International Economic Order, and also the large issues of health and welfare, and public education; but the concerns would certainly come to include freedom, in their new Sovereign status, from hostile military intervention or forms of economic coercion from outside, whether from former Colonial powers or other states.

Multiculturalism as a new legal imperative was already being advanced by the "new" countries, in the UN General Assembly and other UN arenas,in the 1960s and the 1970s, in the their drive for a numerical equity in the allocation of key UN executive posts or Committee Chair appointments; and may have achieved a signal public success, through strategic voting of the new majority in the General Assembly, in the triennial elections of judges for the International Court of Justice after the Court's bitterly contested single-vote-majority decision in South West Africa [Second Phase] in 1966. Significant changes in the substantive agenda of the UN General Assembly, and in the UN's re-thinking of its law-making priorities and its own agenda for long-range reform of International Law institutions and processes were already clear as the Cold War era and the attendant Bipolar premise of world order were consigned to the dustbin of history. In the 1990s and the first decade of the 21st century, the political impact of the Multiculturalism imperative in calling for a new, fully representative and inclusive in legal-systemic and legal cultural terms, world order system was apparent. It would, it may be suggested, require some considerable further work not merely on UN legal institutions and processes, but also on the Bretton Woods financial structures and processes involving in particular the World Bank and the International Monetary Fund, for these objectives to be attained. A new and much broader conceptual framework, going beyond Multiculturalism as such, and also drawing to the full on the constructive lessons from Peaceful Coexistence and its obvious success in its own particular space-time era now past, would be needed. This is the argument for a New Pluralism in International Law and Law-making-- the institutions and processes and, necessarily, the substantive law and legal thinking coming from them and interacting reciprocally with them.