

Exercises

Comprehension

- 1 List as many functions of the police as you can think of.
- 2 Why do crime figures not necessarily give an accurate picture of the amount of crime in a country?
- 3 True or false?
 - a In Britain, complaints against the police are investigated by police officers themselves.
 - b American judges are elected.
 - c Most countries still retain the death penalty.
- 4 What is parole?

Discussion

"Imprisonment is revenge, but not rehabilitation."

Write a paragraph containing two arguments for and two against this statement. Then discuss your answer with other students.

20 Internationalization of the law

In the first chapter of this book we discussed the fact that most laws are the creation of individual nations. Yet it has also been argued that many countries face similar social, economic and political problems and consequently have adopted similar legal solutions. Some areas of the law, such as intellectual property and human rights, are particularly concerned with developing laws which are valid internationally. With more international business and travel and a growing awareness that many socio-economic and environment problems need global solutions, the future of the world of law appears to be one of internationalization.

There are two main kinds of international law: private and public. The former concerns the role of foreign laws within a particular country. For example, if an Englishman wants to sell property he owns in France to another Englishman, any English court must consider French law when deciding the legality of the contract of sale. Public international law, on the other hand, deals with relations between states.

Growth of international law

International law is not new. Nations have always made political and economic treaties with each other. In Medieval Europe, the Canon Law of the Catholic Church had an important role. Law Merchant regulated trade across political frontiers. In the fifteenth century, the Church mediated rivalry between Spain and Portugal by dividing the world into their respective areas of interest. The 1648 Treaty of Westphalia, which called for equal treatment everywhere of Protestants and Catholics, can be seen as an early international human rights law. Nevertheless, most international law has been created in the twentieth century. The League of Nations was set up after World War I to regulate disputes between nations. However, it failed to stop the tension that led to World War II, partly because some powerful countries did not join (U.S.) and others left when they disagreed with its decisions (Germany, Japan). But it led to important international legislation like the Geneva Convention on the treatment of prisoners of war and the 1951 Convention on the Status of Refugees.

There are some important differences between international laws and those created inside individual states. Domestic laws are passed by legislative bodies, most of which have some popular political support. International laws, on the other hand, are created by agreements among governments. As a result, it is not as clear whether they have the support of individual citizens. Enforcement of international law is also different. Many

international agreements are not binding—for example, UN General Resolutions. Even when nations agree to be bound, as in the case of the signatories of the 1966 International Convention on Civil and Political Rights, it is unclear how obligations are to be enforced. At certain times particular nations have acted like a police force. Since the 1991 Gulf War, the U.S.-dominated international peacekeeping operation has perhaps come nearer to playing this role of world police force than anyone previously, having more military power than former UN peacekeeping forces and being prepared to use it. But the operation's temporary nature and self-interested motives mean it differs from a true police force.

The end of Cold War tension and the 1991 Gulf War seem to have produced a new consensus in the world about international war. One of the basic principles of the UN Charter was that one nation should not interfere in the internal affairs of another. But Resolution 688, passed by the UN Security Council on April 5, 1991, ordered Iraq to grant access to international humanitarian organizations so that assistance could be given to refugees, and authorized military action against Iraq if access were refused. The right to interfere seems to be replacing the principle of non-intervention, but there is great debate about just when such interference is acceptable. (This is more of a political issue than a legal one.)

In the 1979 case of *Marckx*, representatives of an illegitimate Belgian obtained a ruling from the Court of the European Convention of Human Rights that laws favoring the children of married couples in Belgium were discriminatory. In the *Brogan* case of 1985 a man held in Britain for four days before being brought before a court, obtained a ruling from the same court that the Prevention of Terrorism Act under which he had been held was in violation of the European Convention. However, Britain has avoided changing this law by arguing that the Convention gives exemption where a country's vital interests are at stake.

Conflicts of national sovereignty

The European Community has provided many interesting cases in the development of international law. Starting as a series of economic agreements between six nations in the 1950s, Community Law now has direct authority in the social and economic affairs of twelve countries. In theory, each member state has agreed to be bound by EC decisions. So what happens when the laws of one country directly conflict with those of the Community?

A year before Britain joined the European Community in 1973, the respected judge Lord Denning suggested that membership would reduce

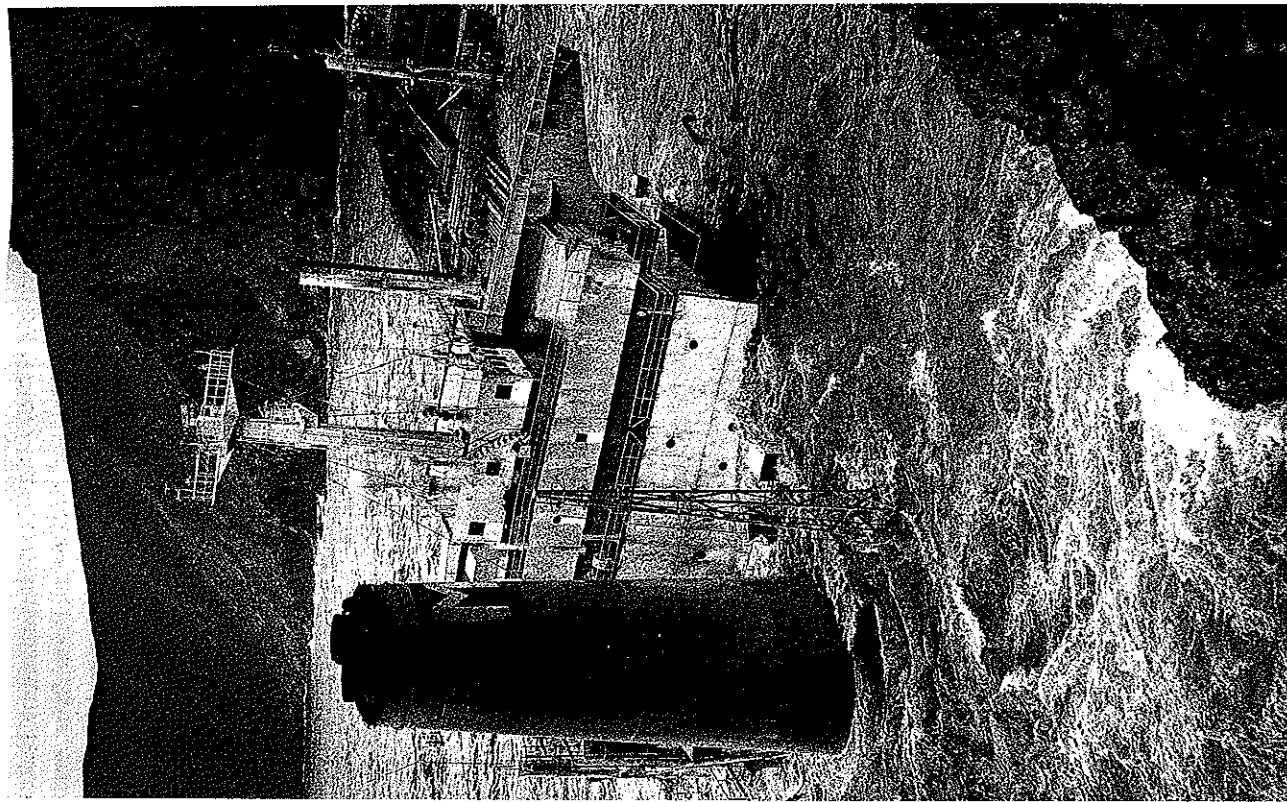


Figure 20.1 There is a growing need for international law in areas like environmental pollution.

the **sovereignty** (independent power) of the British parliament. But in 1979 he said that British courts would have to follow all British laws, even ones that conflicted with Community law. When an internal law has conflicted with European law there has usually been some modification of internal law. But what would happen if the conflict could not be resolved? Is each member country free to continue to do as it chooses or to leave the Community? Some people argue that the 1972 European Communities act (by which Britain entered the EC) is like any other law passed by the British parliament and can therefore be repealed. But others argue that by passing the 1972 act, parliament accepted a new legal order which reduced its powers. If this is so, Britain could not legally disobey a European ruling, or even leave the EC, without the consent of other member nations.

The European Community has provided a great deal of work for lawyers. The number of Europeans entering the legal profession has been increasing, but the demand for lawyers has increased even faster, especially for those who can speak another language. However, although the movement of labor among European countries has increased a great deal, there are still many restrictions upon the legal profession. An English lawyer, for example, may work in France under the title of "solicitor," but he may not do the same work as a French "conseil juridique" unless he passes French law examinations.

Internationalizing legal systems

The internationalization of the Japanese legal system has even further to go. Foreign lawyers may be employed in Japanese law companies, but they are not allowed to work on cases that involve Japanese laws, or to run law firms in partnership with Japanese lawyers. It seems there is nothing to stop them from taking the Japanese law examinations, but these are almost impossible to pass for anyone who is not a native speaker of Japanese.

Continuing differences among legal systems seem to be a major barrier to the internationalization of the legal profession. Nevertheless such barriers are breaking down. International business requires contracts that are internationally valid and lawyers who can argue cases in the courts of different countries. The number of international tort cases is increasing. For example in 1981, workers injured in an American-owned Union Carbide factory in Bhopal, India, took their case to the United States. When political circumstances allow, individuals take legal action to force their government to obey international agreements, and every year such agreements increase. The 1990s have seen old states disappear (for

example, the Soviet Union) and new ones appear (Slovenia). At the same time, civil wars, refugee crises and environmental disasters are demonstrating the need for more laws across frontiers.

Since the UN is not a world government but a conference of the world's existing national governments, the limitations of international law become clear whenever there is a dispute between a nation and an ethnic group within its borders. Without a national government, the Tibetans (ruled by China) and the Kurds (spread across Iraq, Turkey and Syria) face enormous difficulties in publicizing their social and economic problems. The admission of the Koreans and the former Soviet and Yugoslav republics to the UN has helped to make the organization more representative. However, the increasing tendency of states in Eastern Europe and the Caucasus to fragment into ethnic factions suggests that there will never be enough nations to represent all the citizens of the world. The concept of world citizens directly electing a world government still seems remote. But there are signs that the fundamental rights of national governments are being questioned. In September 1992 the UN made history by expelling a member state—Yugoslavia.

While movement toward an international government continues to be slow, international law is developing rapidly in the form of limited practical agreements to facilitate trade and protect the environment. More and more people are affected by activities in areas that are not under the exclusive control of any one nation. Pilots and air traffic controllers work within guidelines laid down by the 1944 Chicago Convention, when traffic was only a fraction of its present volume. Homeowners can turn to the 1972 Convention on International Liability for Damage Caused by Space Objects when space debris falls on their property (as happened to Canadians in 1979). Even Antarctica and outer space are subject to several pieces of legislation to prevent them becoming as dirty and dangerous as the rest of the world.

As fast as international law grows, it is not fast enough. Conventions on Environmental Protection in Geneva (1979), Vienna (1985) and Rio (1992) have managed to emphasize not only the seriousness of the problems but the political and economic difficulties of doing anything about them. The 1982 Law of the Sea builds upon some of the oldest international law in the world, covering such matters as rights of passage through straits, deep-sea mining, the rights of landlocked states, piracy and collisions. But the number of disputes, hijackings and accidents gets more, not less. The future of law, the "necessary evil," seems to be one of inevitable expansion.