



united nations educational, scientific and cultural organization
organisation des nations unies pour l'éducation, la science et la culture

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8 November 1984

Dear Ronald,

It was good to hear from you again. I am delighted that you would be able to go to China on a joint mission with Professor Salmon. We have now received confirmation from China that May 6, 1985 would be the most suitable starting date for everyone concerned. So we shall stick to it.

It will be good to see you in one of your trips to Europe. May seems a long way from now.

In the meantime, with my very best wishes, I remain,

Yours sincerely,

D. K. Ghosh
Operational Programme Division
Science Sector

Professor R. St. J. Macdonald
Dalhousie Law School
Halifax
CANADA B3H 4H9

chi NR

CENTRE DE DROIT
INTERNATIONAL

17 septembre 1984.

Cher et éminent Collègue,

L'UNESCO m'a fait part au cours de ces dernières semaines de l'invitation qui nous est adressée par le Gouvernement de la République populaire de Chine au Professeur MAC DONALD et moi-même en vue d'y accomplir une mission sur la création à Pékin d'un Centre de recherche de droit international.

Laissez-moi vous dire tout d'abord combien je suis honoré de pouvoir ainsi rendre service à la République populaire de Chine et combien je suis heureux de pouvoir visiter ce pays si important dans les relations internationales.

Le Professeur MAC DONALD m'a téléphoné et les dates qui nous conviendraient le mieux à l'un et à l'autre sont celles de la période qui commence à courir à partir du 6 mai 1985. Il m'est difficilement possible d'envisager un voyage de 15 jours avant cette période étant donné soit mes obligations universitaires, soit les engagements que j'ai à l'égard du Gouvernement du Mali comme conseil dans le conflit qui oppose ce Gouvernement au Bourkina (anciennement Haute-Volta) devant une Chambre de la Cour internationale de Justice.

J'espère que ces dates vous conviendront et que le délai que nous mettrons avant d'accomplir cette visite ne vous sera pas préjudiciable ? Au demeurant, le Professeur MAC DONALD et moi-même serions très heureux de pouvoir profiter de ce délai pour nous préparer au mieux à la mission que vous avez l'honneur de nous confier. A cet effet, auriez-vous la grande amabilité de nous faire savoir, avec assez de détails, quels types d'informations, de conseils, ou de réflexions vous voudriez obtenir de nous afin que nous puissions nous préparer au mieux à cette visite ?

Le Professeur MAC DONALD souhaiterait être accompagné de sa sœur et moi-même de mon épouse mais il est bien entendu que nous prendrons à notre charge les frais que cela comporte.

Je saisis l'occasion du retour de Madame ZANG HONG-HONG au pays pour lui confier cette lettre et vous transmettre, avec mon meilleur souvenir, l'expression de mes sentiments de très haute considération.

Jean J.A. SALMON.

Monsieur T. WANG
Professeur de droit international et
de relations internationales
Faculté de Droit
Université de Pékin



INSTITUT
DE
SOCIOLOGIE

FONDÉ PAR
ERNEST SOLVAY
AV. JEANNE, 44
1050 BRUXELLES
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02/648.81.58

CENTRE DE DROIT
INTERNATIONAL

1050 BRUXELLES, LE 22 octobre 1984.

Cher Ronald,

Merci de votre lettre du 25 septembre.

Je vous prie de trouver ci-joint, pour votre information
copie de la lettre que j'ai adressée au Professeur WANG.

Je ne manquerai pas de vous tenir au courant dès que j'aurai
reçu une réponse. Selon Monsieur GHOSH de l'UNESCO, il ne serait
pas exclu que nous ayons à nous rencontrer, vous, lui et moi avant
notre départ à Pékin en vue de la préparation de la mission qui
nous a été confiée. Nous pourrions profiter d'un de vos séjours
à Strasbourg au printemps.

En attendant le plaisir de vous revoir à cette occasion,
je vous prie de croire, cher Ronald, à l'expression de mes senti-
ments les plus cordiaux et les meilleurs.



Professeur Jean J.A. SALMON.

UNIVERSITÉ
LIBRE
DE BRUXELLES



Monsieur Ronald St. John MACDONALD
Professor of International Law
Dalhousie University
HALIFAX
CANADA

22 November 1984

Dr. D.K. Ghosh
Operational Programme Division
United Nations Educational, Scientific
and Cultural Organization
7 Place de Fontenoy
75700 Paris
France

Dear Delip:

Is Monday, May 6, 1985 agreeable from your point of view?
I believe that it is agreeable for Professor Salmon.
Do you foresee any difficulty? Could you send me a line
to Halifax before the end of the current calendar year?
I am looking forward impatiently to seeing you and to
renewing our friendship.

With personal good wishes, I remain,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

22 October 1984

Dr. D.K. Ghosh
Operational Programme Division
United Nations Educational, Scientific
and Cultural Organization
7 Place de Fontenay
75700 Paris
France

Dear Delip:

✓ Just a line to say that I have been in touch with Professor Salmon in Belgium and also with Professor Wang in China and that the best time is either the week of May 1st or the week starting May 6, 1985. Is that convenient from your point of view?

I am looking forward with great pleasure to seeing you before long.

With personal good wishes, I remain,

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

NR

29 March 1983

Dr. D.K. Ghosh
Operational Programme Division
United Nations Educational, Scientific
and Cultural Organization
7 place de Fontenoy
75700 PARIS
FRANCE

Dear Delip:

It is almost a year since I had the pleasure of travelling with you to the PRC and although I have been through the Paris airport on a number of occasions, I have not yet been clever enough to arrange a stopover in order to visit with you and to pick up the threads of our association. Hopefully there will be an opportunity to do this before many more months pass by.

I have been excessively busy during the last few months and, as you may have surmised, I have not been able to finalize the administrative and financial arrangements with your office. However, I am now anxious to regularize the situation and particularly to recover the expenses and honorarium what are due to me. In these circumstances, would you be kind enough to direct me to the official concerned, giving me his telephone number as well as address, and indicating what I should do in order to recover the sums outstanding. As soon as I hear from you, I will communicate with the person concerned and hopefully bring things to a conclusion within the next couple of weeks.

Please do not come to the eastern part of North America without letting me know your plans and if possible, coming to visit us in Halifax. My sister joins me in sending you and your daughter every good wish

Yours sincerely,

R. St. J. Macdonald, Q.C.
Professor

28 October 1982

Dear Dr. Ghosh,

Just a line to say that I will send you a financial statement within the next few days. I remember with the greatest pleasure our trip of last summer and look forward to a good long meeting (before long) in order to reminisce it all.

With personal good wishes,

I remain,

Yours sincerely,

Ronald St. John Macdonald

Mr. D.K. Ghosh
Operational Programmes Division
United Nations Educational, Scientific
and Cultural Organisation,
7, place de Fontenoy,
75700 PARIS

Chinese Remodel Economy

Government Role In Market Is Cut By Party Leaders

By Christopher S. Wren
New York Times Service

BEIJING — China has announced plans for sweeping changes in its urban economy that will introduce capitalist-style market forces and reduce government control.

The plans were incorporated in a decision on the changes in China's economic structure that were adopted Saturday at a meeting of the Communist Party Central Committee.

The new measures will give greater independence to one million state-owned enterprises and make them compete to survive.

In addition, the program will separate government functions from purely economic functions, which will be left to plant managers operating within guidelines.

The decision will also mean that China will limit central planning, phase out extensive consumer subsidies and leave the prices of many products to be determined by supply and demand.

The document also pledged to expand foreign trade, promote younger government technical experts, retire old managers in key industries next year and make increases in urban wages contingent on greater productivity.

Some Beijing-based diplomats, who had anticipated many of the changes from hints in the Chinese press, thought they would accelerate China's repudiation of the rigid system of central planning and economic control borrowed by Mao from the Soviet Union, though not communism itself.

"This is the first step in a very exciting direction," a Western diplomat said. "If they don't trip and fall, the Soviet model is dead in China."

A Chinese official familiar with the decision called it the most important since December 1978, when the Central Committee approved a new system of incentives for China's 800 million peasants in which those who produced more were rewarded.

A sharp rise in agricultural output resulted and China's communes began to break up as individual households became the basic farming unit.

The official said the new measures, which will affect the other 200 million Chinese in cities, were designed to complete the economic transformation by doing for industry what the 1978 measures did successfully for agriculture.

The authors of the document took pains to allay fears among Chinese that the elimination of subsidies for basic necessities, housing and transportation, which by some estimates consume up to a quarter of the budget, would lead to inflation or erode incomes. The document told officials to publicize that the readjustment of prices "will never bring about a general and spiraling price rise."

[Minor incidents of panic buying have broken out in Beijing and other cities this week, revealing the anxiety over inflation in China, where state subsidies have held down prices and guaranteed wages for more than 30 years, United Press International reported from Beijing.]

The document declared that China would still adhere to Communist principles, but it conceded that they had not worked very well in China.

"The profound changes that have taken place in the 35 years since the founding of the people's republic are an initial demonstration of the superiority of the social-

(Continued on Page 2, Col. 7)

(Continued from Page 1)

ist system," it said. "But this superiority, it must be pointed out, has not been brought into full play."

On moving toward free-market economics, the document said that government departments would no longer directly manage state-run enterprises.

An enterprise should be encouraged, the document said, to plan its own production and marketing, set prices on its products "within the limits set by the state," use or remove its personnel "according to relevant regulations" and decide on wages and bonuses.

"In short, the enterprise would be truly made a relatively independent economic entity" responsible for its own profit and loss, the document said.

Competition is necessary, it said, in which "our enterprises are put to the test of direct judgment by consumers in the marketplace so that only the best survive."

On incentives, the document said urban enterprises should work out their own versions of the incentive system that made peasants work harder in the countryside but

PARIS, MONDAY, OCTOBER 22, 1984

JILIN UNIVERSITY

It is one of the key universities run directly by the Education Ministry of China. Its predecessor is administrative institute of Northeast of China, which was established in 1946 in Hakepin City, Hei Longjinny province.

In 1952 it was named Jilin University and recognized as the first university in northeast of China, then many famous professors and scholars were transferred to this university, also a physical science from Dalan Techniquical college and a mathematics department from Technique college of Northeast, were combined into Jilin university. After than there were eight departments in the university. Now there are 12 departments and 14 research institutions in the Jilin University.

The president of university is Chinese famous Chimacal Scientist Tang Aoqing

In 1984 it has 5,485 students, including 541 graduate students. The area is about 680,000 square meter. There are about 1,670,000 books both Chinese and and foreign language in university library.

Introduction to law department of Jilin University

Its history can trace back to 1948. It was first established as one of the departments, named department of justice, in administrative institute of Northeast China, run by new government of China. Northeast China was liberated by people's Arm in 1946. In 1952, the Administrative Institute of Northeast China got its new name Jilin University, so department of justice became the law department of Jilin university.

From 1948-1984 totalling 29 lots students, have registered in law department. From 1948- 1966 there were 18 lots of students enrolled in the law department, it's about 1,200 students. From 1973-1984 there were 11 lots of students, among them, 7 lots (430 students) have graduated from law department. So for to 1984, there are 41 lots of students (about 490 people) are studying in the law department including 46 graduate students.

During the culture revolution, especial from 1966-1972, most professors and staff left the law department. Law department existed in name but it is the first one to survive of all the law departments of law institutes in China. After the beginning of the Culture revolution. In 1972 still during the culture revolution it held two seminars for training under the cooperation of some agencies of legal profession. From 1973 it began to accept new students recommended from every working position. Most of them are workers, peasants and soldiers.

Now there are three specialities in law departments. They are: law in general; international law and economical law.

In 1984 there are about 70 teachers in law department among them there are 14 professors and assistant professors, 35 lecturers and some assistant lecturers.

According to teachers specially there are eight groups: jurisprudence; history of legal system and legal thoughts; constitutional law; criminal law; civil law; economical law; international law; and study on criminal detection.

In the law department there are a small institution for studying the sociology of law and legal theory (part time) and there are departments of teaching by correspondence, which is in charge of spare time study of amature.

It doesn't have special law library in the law department, all the law books stored in the university library, only a rare book and materials reading room existing in law department. There is a laborotory for criminal detection in the department.

At present the teaching by correspondence has become a popular method of spare time education in China. For legal education there are many spare time students, mostly from legal professions. They have to carry on individual study at their spare time and according to situation, either they can have two times of collective teaching every week, or have at least two times meeting lecture, which cost no more than one week every time for every four months. On legal correspondence education there are some prerequired qualifications for candidates generally speaking, the first is on their profession for giving more chances to these legal practitioners who are short of formal legal education. The candidate from legal professons is more probably to be accepted than those from other

professions. The second is on culture knowledge, the candidates have to pass the entrance examination before they can be accepted. Generally the work unit (court, police station, procuratorate and so on) of candidates would support their study giving them some preferentials, including the permit of their leave from work on working time, pay the tuition for them. Generally, after 4 or 5 years if the candidate can pass all the examinations successfully, he or she will get a diploma for spare time education from law department. They should get the equal treatment as the graduates from law department of full-time university, which have the same diploma. Their diploma should be recognized by the public. There are several regulations on spare time education of amateurs set by Education Ministry of China. To 1983 law department of Jilin University have accepted 600 spare time students from Jilin and Heilongjiang province. (Both are in northeast of China). It is prepared to accept another 800 spare time students this year.

In the past the main purpose of legal education in law department of Jilin university is for legal profession. Now it has begun to pay attention to legal theory research, has arranged some courses to try to encourage the student who has interest in legal research to survey the field broadly.

After 1980 most first year students are from high school, at the age of 18 years old. They don't have any other college degree when they go to law department, this is quite different from students here.

Now in some universities of China, to some special specialty Chinese government have tried to apply double degree system. eg,

foreign language and international culture. This probably will take a student 5-6 years for two degrees.

This is a four year education system. Generally speaking, in the first year there are some political, economical, history philosophy; jurisprudence fundamnetal courses., In the second to third year, there are a lot of compulsory law courses. In the fourth year mostly are elective courses, on some special subject of law problem and students have to submit graduation thesis for their graduation. After the end of third year, there are 40 days practical work course for students, they should to to courts and procuratorates for practice. It is organized by the law department, the students get credit for their work.

After graduation, most of them go to courts in every level, from the supreme court of China to the district court of a city. Some go to procuratorate in every level, some go to lawyer institutions, some continue study as graduate students, some go to one of the departments of government in every level and some will go to one of college of university to be a teacher.

CURRICULUM

compulsory:

history of Chinese communist party; philosophy,
political economics; history of international communist
movement; foreign language; jurisprudence, chinese legal history
foreign legal history, history of Chinese legal thought;
constitutional law, criminal law, civil law, criminal
procedure, civil procedure, criminology, public international
law, maritime law, graduation thesis, marriage law.

Elective

Economical law, study on the law of Qin Dynasty.

Seminar of jurisprudence, code Napoleon, study on the law
of Tang Dynasty, study on the Ming Dynasty, conflict of
law.

Private international law. comparative constitutional law,
modern Chinese language ancient Chinese language, logic,
physical education, diplomatic law.

Technology of criminal detection - evidence, electional law.
structure and organization of courts and procuratorate,
commercial law, history of west legal thoughts, U.S.A. political
system, administrative law, international organization, Roman
law, Japanese civil law, patent law.

Jilin university.

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from Technique College of Northeast, were combined into
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and there are department of teaching by correspondence, which is charge of spare time study of amature.

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After 1980, most first year student are from high school, at the age of 18 years old. they don't have any other college degree when they go to law department, this is quite different from students here.

Now in some university of China, to some special speciality, Chinese government have tried to apply double degree system, e.g. Foreign language and International culture, this probably will take a student 5-6 years for two degrees.

This is four years education system. generally speaking, in the first year there are some political, economical, history, philosophy, ^{jurisprudence} fundamental courses, in the second to third year, there are lots of compulsory law courses. in the fourth year, mostly are elective courses, on some special subject of law problem, and student have to submit graduation thesis for their graduation. after the end of third year, there are 40 days practical work course for student, they should go to courts and procuratorates for practice, it is organized by the law department, the student get credit for their work.

After graduation, most of them go to courts in every level, from the supreme court of China to the district court of a city. someones go to procuratorate in every level, some go to lawyer institution, some continue study as graduate student, some go to one of the department of government in every level, and some will go to one of college of university to be a teacher.

Curriculum.

⑤

compulsory:

History of Chinese Communist Party; philosophy, political economics; History of International Communist movement, Foreign language, jurisprudence, Chinese legal history, Foreign legal history, History of Chinese legal thought, Constitutional law, Criminal law, Civil law, Criminal procedure, Civil procedure, Criminology, public international law, maritime law, Graduation thesis, marriage law.

elective.

Economical law, Study on the law of Qin Dynasty, Seminar of jurisprudence, Code Napoleon, study on the law of Tang Dynasty, study on the Ming Dynasty, conflict law, private international law, comparative constitutional law, Modern Chinese language, ancient Chinese language, logic, physical education, ~~diplomatic~~ diplomatic law, technology of criminal detection, evidence, electoral law, structure and organization of courts and procuratorate, commercial law, History of west legal thoughts, U.S.A. political system, administrative law, International organization, Roman law, Japanese civil law, patent law.

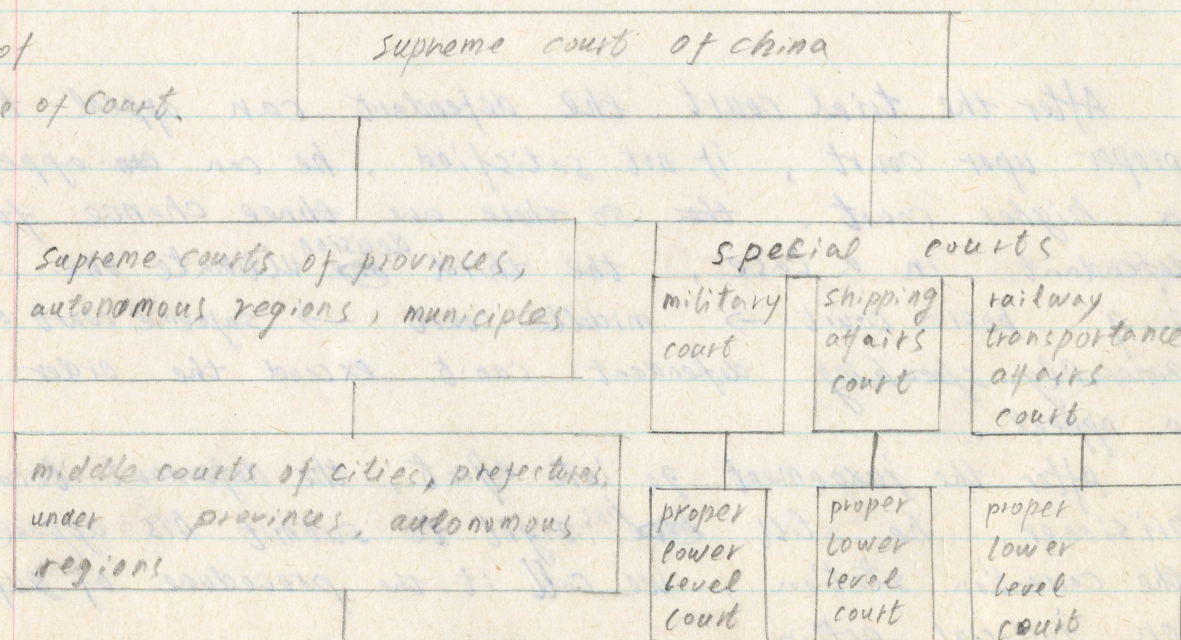
structure of court

First I want to explain that because I have not any reading materials in hand. I can only provide some simple and generally information about the problem, I hope this is for reference only.
 (according to my memory)

There are four levels of court in china legal system.
 first, The supreme court of china is the highest level.
 the second, is supreme courts of every province, autonomous region and municiple; the third is ~~the~~ middle courts of cities ^{where are} under the administration of province, autonomous region ~~and~~ governments; the last one is the basic courts of district of city, or court of county of province, (in the rural region).

Also under the supreme court of china, there are some special courts, they are; Military court; Shipping affair court; railway transportance affair court; every special court has its own independent structure of court, depending on particular situation. they can set up lower level courts in different regions.

Table of
structure of Court.



① There are three municples, Beijing, shanghai, Tianjin, in china, they are directly administered by central government of china. so in the level of municiple there exist both supreme court and middle court.

Composition inside in court.

Generally speaking, a court is ~~constit~~ composed of three subcourt, which specially deal with ~~one~~ the same nature cases, they are: criminal subcourt, civil subcourt, economical case subcourt.

No fixed size of court, including the number of judges, is regulated by law, but in the open of a court session, there should be one or three judges compose the court, according to the need of the case. If the trial court is the supreme court, there may be more judges, one of them is chief judge in this court, two

Now, there are ~~three~~ levels of judge, judge and assistant judge. We call chief judge as the head of judge court, part of his responsibility is for administration affairs, there are still head of subcourt in every subcourt, ~~they~~ ^{he is} one of the judges in that subcourt.

Jury attend the trial court, ~~according~~ jury is a part of the trial court.

After the trial court, the defendant can appeal to the proper upper court, if not satisfied, he can ~~can~~ appeal to a higher court. ~~the~~ so there are three chance for every defendant in a case, the third ^{decision} ~~one~~ ultimate one.

e.g. basic court → middle court → supreme court of province. generally speaking defendant can't exceed the order to bring a appeal.

After the judgement go into effect, the defendant became the prisoner, he still ~~has~~ ^{has} right to submit his appeal through the correction station, we call it the procedure of supervision on judicial action.

To. Professor R. St. J. Macdonald.

Prof. Y. Samizet

Macdonald & Johnston (eds.), *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*.

(The Hague, Boston, Lancaster; Martinus Nijhoff Publishers, 1983, pp. vii, 1234.)

明治大学法学部教授 住吉良人

本論文集は、世界各国の著名又は中堅である四十人の著者による三七の論文で構成されている(ソビエト、中国を含め日本から深津教授が参加されている)。編者によれば、今日は、国際社会の拡大にともない学者自身も自国の外交や企業活動へ参加が要請され、その結果、研究の細分化と技術化という傾向を生じ、それが国際法の理論的基礎の解明を弱めた一因となつていると指摘し、本書の目的は、ある意味で学問の理論的矯正作業を試みようとしたものだといふ。

本論文集は四部に分けられている。第一部は主要な法思想とその影響、第二部は五つの社会科学の分野と国際法の相互関係、第三部は国際法制度の概念の検討と再評価、第四部は今日の重要問題に関する理論上の検討と分析である(後記の標題とは一致していない)。

本書は論文集であり、そのうちのいくつかを選択して紹介する方法もあるが、ここでは各論文の主眼点を紹介する方法をとった。

国際法理論—学問の新分野 (International Legal Theory:

New Frontiers of the Discipline, R.St.J. Macdonald and Douglas M. Johnston)

第一部 法理学派 (The Schools of Jurisprudence)

——1、自然法—普遍的理性と權威の伝統 (Natural Law: The Tradition of Universal Reason and Authority, Alfred Verdross and Heribert Franz Koeck)

「法は正義の実現のためにのみ存する」という自然法のテーゼを出発点とし、自然法理の歴史的展開を試みる。そして、このような自然法の原則や規範の存在を認めることなしには、平和の維持や第三世界を含めた国際社会の現実問題は解決できないと自然法の意義を評価する。

——2、国家間制度における意思と秩序——実証主義と国際法に関する考察 (Will and Order in the Nation-State System: Observations on Positivism and International Law., Maarten Bos)

法の支配領域を三つの概念(法の一般概念、法の規範概念、法の成立過程)に分類し、三概念の相互関係を基礎に実定法を確認する。彼は法の中心と周辺を、図式を用いて、法となる過程、法の定義、分析的概念、自然法と実定法の関係を明確づけている。

——3、マルキスト・レーニン主義的アプローチ—階級的闘争理論と現代国際法 (The Marxist-Leninist Approach: The Theory of Class Struggle and Contemporary International

Law, V. Kartashkin)

現代国際社会における対立要因を、平和を指向する国とデタントに反対する国との関係に求め、平和共存はイデオロギーの撤退を意味するものではなく、異質の体制の妥協と相互依存の必要性を伝統的なソビエト国際法の立場から主張し、イデオロギー対立を国際法の枠外に追いやるという法的努力を試みる。

一四、政策指向からみた国際法 (International Law in Policy-Oriented Perspective, Myres S. McDougal and W. Michael Reisman)

政策決定へのプロセスの中で法を把握しようとする。つまり、主権国家を国際法の基礎に置きながら、個人や企業を含めた人類全体の基本目標 (共通価値の実現＝人類の尊厳の確立) を設定する。国際法研究の最も重要な問題は、一国の政策決定が何を基本目標として他国の政策決定者に提示するかであり、それを明確にすることにより共通利益、共通目標の形成が可能だといふ。

一五、学派再考 (The Schools Revisited, W.L. Morison)

トランスナショナルな法理論の分析を課題とし、マクドゥーガル、ラスウェル、チェンの Human Rights and World Public Order における人権に関する論点を中心として自然法、歴史学派、オースチン学派、現代英国の実定法学派、ケルゼン学派などを比較検討する。

方を説く。

二四、現代の会議技術—社会心理学的、人類学的洞察 (Modern Conference Techniques: Insights from Social Psychology and Anthropology, M.C.W. Pinto)

現代における立法条約の成立を中心として社会制度としての会議におけるグルーパの存在意義、通信、技術、言語を含めた組織化の問題を提示。

二五、国際法文献に与えた歴史の影響 (The Influence of History on the Literature of International Law, R.P. Anand)

アジアとヨーロッパの交流に貢献したインドの功績を述べ、さらに産業革命や帝国主義進出を歴史上のエポックと捉え、それぞれの歴史的背景が国際法の理論形成に与えたこと、とくに第二次大戦後の国際社会の変貌は共存から協力のための要請であるとして新しい法の拡大を強調する。

第三部 基本的概念 (Fundamental Concepts)

三一、主体—国際法制度における資格 (Subjects: Entitlement in the International Legal System, Bengt Broms)

国際法の急激な進歩と変化に対応した新しい法主体について、(一)国際法は他の法分野と比較して主体概念は変態的であるか、(二)国際法主体は新方式により解決されるべきか、(三)問題解決のための必要条件、などの諸点を国家、植民地、個人との関連から検討し、この問題は形而上学的なものであるとし個人の主体性を強調する。

第二部 社会科学 (The Social Sciences)

二一、国際法における政治思想の継承 (The Heritage of Political Thought in International Law, D.M. Johnston)

国際法理論が本来的に西欧に発生し、その発展に貢献した政治思想の影響を歴史的に分析し評価する。次に今日の大会議方式の外交に言及し、国際法の政治的性質を否定するよりも、それから生じる現代的意味をとり入れ、伝統的な国際法教育の再考を促す。

二二、国際経済理論と国際経済法—国際経済秩序の法理論の課題 (International Economic Theory and International Economic Law: On the Tasks of a Legal Theory of International Economic Order, Ernest-Ulrich Petersmann)

今日、包括的な国際経済理論、国際経済法理論、あるいは国際経済秩序の法理論の欠如を指摘し、その必要性和問題点を示唆する。とくに、一九一四年以降の自律的経済秩序の崩壊後における新しい経済秩序 (法的枠組) の形成を主張し、国際的社會市場経済の自由主義経済に基づいた経済秩序機能 (保護、抑制、調整、継続性、安定性) を呈示し、E.C.C.モデルを評価する。ただ東西間、南北間の関係にはほとんど触れられていない。

二三、国際法に関する社会学的展望 (A Sociological Perspective on International Law, Julius Stone)

人類の共通法 (人間生活の要請) という観点から世界の権力過程や政策を中心として地球の人類共同社会の機能秩序のあり

三一、主権と国際法 (Sovereignty and International Law, Luzius Wildhaber)

主権概念の基本問題を解明 (連邦、社会主義諸国、第三世界の主権理論の検討) し、今日の主権は、法、文化、社会、経済 (一九七四年の国家の経済的権利義務憲章) を含めたもので、国際法上、主権自身による制限が加えられてきたこと、とくに主権の相対化 (E.C.) と社会学的生態学的現象 (酸性雨や油濁) にもない主権は変動的になったといふ。

三二、平等—不平等世界における政治的正義 (Equality: Political Justice in Unequal World, Václav Pechota)

今日にかけて平等とされてきた国際社会の制度や法規に対する挑戦の時代であるという前提から、平等に対する大国と小国の反応、平等の意味 (法の前の平等、機能的平等) を探り、平等の享有主体、真の国家平等 (実質的平等) の確認方法を検討する。

三四、同意—条約制度における諸々のひずみ (Consent: Strains in the Treaty System, Bruno Simma)

条約は慣習国際法に比較してその厳格性や明確性に特徴があるとされてきた。しかし、今日では多辺条約の成立を急ぐあまり、条約内容の合意よりも起草が優先され、その結果、条約に対する潜在的な不意を示すものがみられる (ソフト・ローのマイナス面)。条約内容が不明確なため、条約成立後の効力の不安定を生じ、信義誠実原則と条約目的にそった解釈が行われにくく、それが国家の実行にも影響を与えている。条約の「脱退

条項」の存在も条約の脆弱性を高めているが、それらひずみを防止するための締約国間の相互監視機能の強化を主張する。

三一五、慣習—分裂した世界における一般的な国家の実行の将来 (Custom: The Future of General States Practice In a Divided World, Bin Cheng)

一般国際法としての慣習国際法の確認を問題とする(彼によると慣習は暗黙の合意により成立するものではなく、条約も国際法体系の一部を構成するが一般国際法の法源ではない)。慣習法は個別信念が一致した一般的法的信念に基づき成立する(インスタント国際法の肯定)。国際法は(一)自己解釈的、(二)仲裁的、(三)司法的な三段階に分かれるが、国家は自己の行動を正当化するため力(個別信念)の要素が働く傾向がある。

三一六、管轄権—行動と資源に関する権限の変りゆくパターン (Jurisdiction: Changing Patterns of Authority over Activities And Resources, D.W. Boveit)

国内管轄権の根本原則(領域、国籍、保護権)に対する国際法上の制限と、適用と管轄権に関する目的と効力(平等、不介入、領域保全)の検討を中心として、今日では管轄権の適否を決定するためのテクニックとして利益のバランス(ただし法的に固定していない)の配慮の必要と紛争解決のための方法論を展開する。

三一七、国家責任—国家間における義務の新しい理論 (State Responsibility: New Theories of Obligation In Inter-State Relations, W. Riphagen)

of International Law, Georg Schwarzenberger)

国際法を形成する概念規定を分類し、その展開、意味、現実、性格、内容、機能について幅広い分析を試み、将来への展望を示唆する。

第四部 現代の論争点について (Some Modern Controversies)

四一、国際法と国内法—法制度の補足 (International and Municipal Law: The Complementarity of Legal Systems, Luigi Ferrari-Bravo)

国際法への国内法概念の導入、国内法への国際法の影響(一九七五年のヘルシンキ宣言など)を考察し、人権分野における内政不干渉原則の変化に触れ、国際法優位の一元論から国際共同体意識へと認識の変化が生じていると示す。

四一二、国際社会における法進歩の性質と過程 (The Nature and Process of Legal Development in International Society, Oscar Schachter)

条約と慣習法以外の法的要因をとりあげ、制度としての国際法、その進歩と将来の展望、力の役割、国家の実行、調整的実証主義としての司法的役割に言及した後、立法条約、国連総会決議、法の一般原則の法的性質を解明。

四一三、国際法の進歩と適用に関する国際機関の影響 (The Impact of International Organizations on the Development and Application of Public International Law, Daniel vigne)

法体系のモデルとして P (権力)、C (行為)、O (対象) を選び、それらを分離、結合、統合方式のもとに六三項目に分けて相互関連を述べる。伝統的国際法の人格化された国家責任は、新経済秩序の導入と違法行為によらない責任概念という新しい現実に対応できない。新しい責任は上記要素の統合による国家の人格化を通して考慮すべきことを示唆する。

三一八、承認—理論と実際 (Recognition in Theory and Practice, Ian Brownlie)

承認は認識の問題ではないという前提から、チノコ仲裁事件をモデルとしてとりあげ、その解決策を探っている。

三一九、共通利益—全体と部分の間の緊張 (The Common Interest: Tension Between the Whole And the Parts, Arvid Pardo and Carl Q. Christol)

資源に関する伝統的国際法の考え方(無主物と共有物)が人類共同体意識へと変化し、今日では人類共同の遺産の原則として拡大されてきたことを指摘し(国連海洋法条約一三六条、月条約一条)、共通利益は国際制度の樹立を通してなされるべきことを、海洋法会議の論議を中心に問題点を探る。

三二〇、不均斉国際社会における地域主義の将来 (The Future of Regionalism in an Asymmetrical International Society, Sergio González Gálvez)

ラテン・アメリカに対する OAS 機構を中心として問題点を指摘する。

三二一、国際法の価値体系 (The Conceptual Apparatus

(A)新しい作業方法の設定と制度的実行、(B)新たな行動方式、(C)国際機関の紛争解決、(D)個人に適用可能な解決方法を検討し、国際機関が及ぼす影響と制度的発展方法に言及する。

四一四、立法外交における多数決規則とコンセンサス技術 (Majority Rule and Consensus Technique in Law-Making Diplomacy, Karl Zemanek)

全会一致の原則から多数決規則の採用へ、さらに「コンセンサス方式に移行した社会的背景を歴史的にたどり、コンセンサス方式は対決を避ける効果を有するが、集権化されていない国際社会の法形成には社会的条件の反映が不可欠という。また決議の内容が法として確立するための補足条約の必要性和強制的な法による解決方法は実効的でない」と指摘。

四一五、国際連合憲章—基本法か契約法か (United Nations Charter: Constitution or Contract? R.St. J. Macdonald)

憲章解釈に関するサ会議の準備作業、国連諸機関における解釈、ICJ の判決などにつき東欧圏の学説の多くを引用しながら正しい位置づけを行なっている。(本論文の邦訳について深津・渡辺共訳(日本法学第五十巻四号)を参照されたい。

四一六、国際法理論における政治革命の役割 (The Role of Political Revolution in the Theory of International Law, Theodor Schweisfurth)

フランス革命やロシア革命が国際法に与えた影響は異なるがそれぞれ現代的意義をもつ。今日におけるイデオロギーの相違は相互依存の国際法形成に対する障害ではなく、むしろニュー

へブン学派とソビエト理論の対立へ移行してきたことを指摘する。

四一七、第三世界と国際法 (The Third World and International Law, Wang Tieya)

第二次大戦後の第三世界の登場により国際法は再構築される必要があること、人民自決の原則、平和五原則、クリーン・スリート、国家責任、国有化に関する第三世界の動向とICJの管轄権についても言及する。

四一八、人権—普遍性への困難な道 (Human Rights: The Hard Road Towards Universality, Francesco Capotorti)

国連成立後の人権国際法の多様化現象を人権規約を中心に論じ、新国際経済秩序を背景とした人権問題の解決には、人権保障制度の漸進的強化と具体的履行措置(ICC人権条約を評価)の確立こそ望ましいという。

四一九、不均斉世界における最低限の基準 (The Minimum Standards in a World of Disparities, A.O. Adebo)

国際貿易と金融関係法の文脈の中に最低限の基準を探る。そのためには、NIEOに示された諸原則の実現を多数国間外交(国連総会決議による最低基準の確立)により行うべきだと説く。

四二〇、新しい世界情報と通信秩序への道 (Toward a New World Information and Communication Order: Problems of Access and Cultural Development, K. Venkata Raman)

情報を力の構成要素の一つと捉え、ユネスコを中心とする討

議を中心として、組織の統一と機能の多元化の意義を探る。

四二一、環境の国際的保護 (The International Protection of the Environment, Alexandre Kiss)

国際環境法の存在につき、伝統的国際法(越境汚染)、共通の資源概念(国際河川)、人類の共有利益の概念(ストックホルム宣言)の三つに分けて検討し、さらに環境汚染に対する国家責任の形態と補償問題に関する現状を吟味し将来のあり方を示唆する。

四二二、国家間紛争の平和的解決—歴史と展望 (Peaceful Settlement of Disputes Between States: History and Prospects, Ion Diaconu)

平和的解決に適用される原則の進展と内容、国連の現状に言及し、規範の実行は強制的な方法よりも調停的方法が望ましいと結論づける。

四二三、紛争解決の将来 (The Future of Dispute Settlement, Louis B. Sohn)

国連憲章を改正することなく、制度としての紛争解決の検討、紛争解決手続の集権化と多様化の比較のモデルとして地域機構としてのOAS、経済統合と人権に関し海洋裁判所方式を、さらに国連専門機関内部の紛争解決手続や国連の行政裁判所を検討した後、ICJの勧告的機能の拡大を主張する。

四二四、国際法発展における論争の役割 (The Role of Controversy in International Legal Development, Shabtai Rosenne)

ル(国家の安全保障、核兵器政策、武力行使の抑制)の変数と捉え、この三つの結合こそ理想主義であるとして将来の人類のあり方を示唆する。

古典的国際法理論に対するかつての南アメリカの挑戦(カルボ条項と国内救済原則)から、国際先例の意味づけ、外交機能の変化の現状から国際法主体の拡大(民族開放運動)という多彩な変遷を論述し、現代における新しい政治的経済的条件に適応できる法の必要性を説き(インスタント国際法)、法の意義は安定性か、それとも変化への対応に求めるべきかなど基本問題への取り組み方を示唆する。

四二五、国際法における強制と制裁の理論 (Coercion and the Theory of Sanctions in International Law, Eichi Fukatsu)

法による強制の効果は、第一次的には国家の解釈に、第二次的には関係諸国の力関係による(先例の検討)。外交的制裁と経済的制裁手段も必ずしも有効ではなく、軍事的強制と制裁も歴史的にその効果は乏しい(ベトナム、朝鮮戦争)。今後のあり方として、軍事的強制から外交や経済のもつ心理的強制、つまり、強制から説得の方向へ、そのための国際機構の強化こそ望ましいとする。

四二六、国際法における理想主義の将来—構造主義、人道主義、サバイバル (The Future of Idealism in International Law: Structuralism, Humanism, and Survival, Corey T. Oliver)

国際秩序の衰退の要因の一つは国際関係において理想主義が力を失ったことにありとし、秩序を構造主義(権力機構と権力の配列)、人道主義(社会正義、個人と集団の人権)、サバイバ

後記：ヨーロッパやアメリカの著名な学者のみならず、マルキストや第三世界からの寄稿者をも加えた世界的なひろがりをもつ本書の出版は、まさに時をえたものである。その編集のあり方も、今後の国際法の研究方法の一方を示すものといえてよい。本論文集を一読するだけでも大変な作業であるが、多くの論文から国際法のもつ論争の性格が読みとれるだけではなく、理論的構成の確かさや国際法の発展の歴史的論述は、研究者のみならず学生にも有意義な示唆を与えることであろう。勿論、三七篇にのぼるすべての論文が卓越したものとはいえないが、それは個々の論文を読む人の判断にまかせるとして、一、二の気づいた点を記すならば、編者が意図した東西、南北世界の共通基盤としての国際法理論に関する論文がきわめて少なかつたことである。それは、国際法の究極の目的である平和と安全保障に関する論文がほとんどみられなかった点も同様である。ただ、第一の点については、論文(一一三)や(四一七)が社会主義者の立場から述べた論旨が、問題提起としての意義をもち、第二の点については、(四二六)が部分的に言及している。

しかし、このことが本論文集のもつ価値を減ずるものでないことは勿論である。また、本書における紹介がすべての論文に

わたり、そのために単なるコメントに終ったのは、紹介論文の選択による不公平さを避けたためと、世界の法体系の中心的地位をしめる学者が、意欲的に、しかも、最大の良心をもって自己の課題に取り組んだ姿勢をみただけでもあった。多極化する国際社会の秩序の基盤であり、平和の砦としての国際法の再構築の時代が到来していることを本書は教えている。