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In Memoriam Ralph F. Fuchs

March 8, 1899 — February 7, 1985

Ralph F. Fuchs, Professor Emeritus of Law at Indiana University School of Law, died on February 7, 1985 at Bloomington/Indiana, USA. Present and former members and students of the Institute of International Law at the Christian-Albrechts-Universität at Kiel are deeply saddened by the loss of a distinguished legal scholar, a dedicated and demanding teacher, and a warm-hearted close friend whose forth-right, kind and caring personality has become an integral part of the fond memories of the Kiel law students studying at Indiana University School of Law as participants of the Indiana University — Kiel University exchange program.

Mr. *Fuchs* received a broad academic education in law and economics which later was clearly reflected in his scholarly work, mainly centering around administrative law, particularly the regulation of economic enterprise, but also including extensive writings on antitrust, labor, and constitutional law. He held Bachelor of Arts and Bachelor of Laws degrees from Washington University in St. Louis, Mo., a Ph.D. in economics from the Brookings Graduate School, and a J.S.D. from Yale University. Before joining the Indiana University Law School Faculty in 1945, Mr. *Fuchs* served at several governmental offices — among them the US Attorney General and the US Solicitor General —, and he also was a member of the Federal Task Force on the Administrative Procedure Act. In 1960—61 Mr. *Fuchs* shared his rich experience with the Indian Law Institute in New Delhi and on his return was a welcome guest at the Kiel Institute.

His practical experience had a significant effect on Mr. *Fuchs*' scholarly writings which excelled by candor and an impressively lucid style as well as their theoretical and practical relevance. The same characteristics marked Mr. *Fuchs*' achievements as an academic teacher. Those of us who have attended his classes and seminars have been deeply impressed by the meticulous coverage of the subjects taught, the demand for excellence and last but not least his objectivity, on the one hand, and his personal care for his students, on the other. Mr. *Fuchs*' merits as an academic teacher were publicly recognized by honoring him with the Distinguished Teaching Award of Indiana University.

Many of us will remember Mr. *Fuchs'* friendly "come in" when calling on his office, and his never ending readiness to help foreign students in adapting to the new environment at I.U. Law School. His personal care was extended from his office to his home at 1410 E. University St. where generations of exchange students enjoyed the warm hospitality of Mr. *Fuchs* and his wife *Annetta.*

After his retirement in 1969 Mr. *Fuchs* kept a keen interest in his field. He served as a Visiting Professor at his *alma mater* in St. Louis where he also received an honorary Doctor of Laws degree in 1978. Until a few months before his death Mr. *Fuchs* regularly attended his office at I.U. Law School and continued his scholarly work as well as his personal and academic guidance of the exchange students from the Kiel Institute. We shall remember *Ralph F. Fuchs* with high esteem and deep gratitude.

Jost Delbrück

ARTICLES

Patterns of Authority in International Law

Edward H. Buehrig

Politics in the twentieth century has wrought death, destruction, and flight into homelessness on a scale unsurpassed. In other respects too, the twentieth century has been unprecedented. Technology penetrates every aspect of life: health, transportation, communication, and production (for war and for peace) ever more ingenious and profuse. No less consequential than the technical applications of science are its philosophical implications. Challenged and confused, traditional ways of comprehending the human odyssey react with fundamentalist fervor. What, then, has been the effect of such tremendous flux — material, philosophical and political — on the allocation of authority in the twentieth century?

Furthered and exacerbated by two world wars, vast shifts of power and authority have radically changed the political landscape within and among nations. Since century's beginning, the number of states has more than tripled. But that is not the whole story; international upheaval bespoken by the map is further compounded by turmoil at the domestic level. Among the governments at century's turn only a few still exist unchanged. Following the first World War, a new round of governments fared no better. Nor have today's postwar plethora of governments. Many have been replaced not only once but twice or thrice.

Yet, despite all, the Western State System still constitutes the basic pattern of authority. Harbinger of an emerging secularism, the System originated in Europe and next spread to the United States and the New World. Now encompassing the non-western world as well, its triumph — at least in outward appearance — is complete.

It is a simple system. Concerned with jurisdictional prerogatives, it confines authority within territorial limits and posits equality as between territorial entities. Fundamental to classical international law, these principles are still basic to today's allocation of authority. As in the past, international law — poorly suited to deal with matters of substance — favors the separateness rather than the interdependence of states. To be sure, the traditional preference for purely jurisdictional questions has given ground to the increasing com-

plexity of international relations. Yet the skeletal framework remains unchanged; the traditional law is still point of departure for any inquiry into today's pattern of authority. Examination turns first to the inner nature of the territorial entities to which authority is attributed; second, to the challenge posed by ideology to the secularism inherent in international law's assumptions about the nature and allocation of authority; and third, to the characteristic features of international organization as the institutional response to the growing interdependence of states.

I.

That international law should cling to its initial emphasis on the separateness of authorities is not due to cultural lag alone. Sluggish movement toward the combination of authorities, or the superimposing of higher authority, reflects something more. It comports with the great diversity among the some 160 members of the international community: the vast differences, for example, between the Soviet Union and Great Britain, the United States and Mexico, or Japan and China. Paradoxically, the function of international law is not only to pull the world together but to keep unlike things apart. Too much centralization would be as hazardous as too little. At the inception of the Western State System the unity of Christendom was sacrificed to its pacification. If territorial authorities equal to each other were then a help to toleration, how much more so are they in a world that has only just crossed the threshold of a common existence.

International law has accommodated a succession of extreme differences among its units of authority. At the outset it abandoned religious conformity as a test of legitimacy. It then weathered the transition from dynastic to democratic rule. Today international law — profligate of statehood's unique privileges — encompasses regimes of every variety, outgrowths not only of Western but of all civilizations. Highly permissive, qualifications for membership in the international community — even as regards such essentials as size of population and territory and efficacy of administration — have grown less rather than more strict. To be sure, a substratum of acceptable behavior is attempted through treaty-law defining basic human rights. But, with the exception of the European Convention on the Protection of Human Rights and Fundamental Freedoms, instruments for disciplining governments in this regard are ineffectual. Indeed, sovereignty can and does shield misconduct of monstrous proportions. *Idi Amin* endangered neither Uganda's membership in the international community nor his own prerogatives as head of state.

Not surprisingly, boundaries between entities of such great diversity — even enmity — are not explicable in terms of general and uniform law. One goes, not to jurisprudence, but to history for an understanding of the political map.

True, territorial disputes for the most part admit the possibility of judicial settlement — on the basis, however, of rules not of universal but local applicability, such as terms of a treaty registering diplomatic compromise or a peace settlement. Nation-state is a notion of only limited relevance — for most states a misnomer. Moreover, where nationhood exists, the elements of cohesion are nowhere the same — encompassing American heterogeneity no less than Japanese homogeneity. Nation-state is a political, not a legal, concept. The same difficulty of juridical precision afflicts the term self-determination. So broad a license to statehood is more permissive than regulative. Its prominence as the initial provision of the United Nations Covenant of Civil and Political Rights ("All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development.") accords with the period of decolonization, whereas today's climate has changed. Expediency now favors territorial integrity. The very arbitrariness of Africa's political map, reflecting (as does the map of Latin America and the Middle East) the different sovereignties and administrative divisions of the colonial era, prompted the members of the Organization of African Unity — once they were independent — to pledge "respect for the sovereignty and territorial integrity of each member-State and for its inalienable right to independent existence."

II.

Neither term, neither nation-state nor self-determination, however undemanding of legal precision, affords rationale enough to explain even so much as the map of Western Europe. Even there, where the Western State System began — even after many wars fought over territorial questions — boundaries fall short of harmonious alignment with self-determination. Moreover, religion and politics still mingle, dramatically so in Poland. But no longer is religion critically important (Northern Ireland being an exception) to the international allocation of authority. Catholicism has, perforce, retreated before nationalism, indeed now welcomes the latter as ally against communism. Diminished in power and authority, the Church nonetheless must be counted as a member of today's international community. Sovereignty attaching to the Pope and to the Vatican City is further manifest in such immunities from territorial authority as inhere in the Church's bureaucracy and properties, and in the diplomatic status of representatives sent and received by it. Like the Church — sharing with it essentially the same privileges and immunities — the United Nations too has personality under international law, though, unlike the Church, its status is bequeathed not by history but by treaty. Yet, however unwritten the Church's sovereignty, the United Nations cannot but envy its ability to keep up the struggle with territorial authority.