Volume 48, Number 1, Winter 2007

Louis B. Sohn: Architect of the Modern International Legal System

Daniel Barstow Magraw

Professor Louis B. Sohn (1914–2006) was not only present at the creation of the modern international legal system, he was its principal architect. He participated in the 1945 drafting conference in San Francisco that created the United Nations,1 as well as in events leading up to the conference. He also played a leading role in the creation or development of many other areas of international law, including human rights, international environmental law, law of the sea, international organizations, arms control and disarmament, and international dispute settlement. Each of these areas of international law bears his creative and indelible mindprint.

In addition to contributing to the development of specific areas of international law and its institutions, Louis had systemic, cross-cutting impacts having to do with the very nature of the international legal system. As Dean Harold Koh notes in his essay in this volume, “[Louis] helped shape the exact moment in history when international law made its dramatic shift from a loose web of customary, do-no-harm, state-centric rules toward an ambitious positive law framework built around institutions and constitutions—international institutions governed by multilateral treaties that aspired to organize proactive assaults on a vast array of global problems.”2 His vision involved the recognition that international law could, and indeed should, move beyond the regulation of state-to-state activities to also govern significant aspects of the complex set of relationships among non-state actors such as individuals, transnational corporations, nongovernmental organizations, and intergovernmental organizations. His most ambitious effort in this respect was the co-authored book World Peace Through World Law, which envisioned an

---


unusually strong world government, including criminal enforcement powers.³

In that process, Louis recognized the indivisible inter-connectedness of all elements of the legal system. In Dean Koh’s words, Louis “led an intellectual revolution to break down the historic distinctions between public and private law, domestic and international law, and municipal and global governance.”⁴ Louis was keenly aware of the interrelations within the legal system as a whole, just as he came to be keenly aware of the interdependence of the biosphere, including human society, and the need to address that interdependence through international law and cooperation.⁵

Famously described as “the Brain who walks like a Man” and recipient of a staggering array of honors, Louis’s vision, knowledge, flexibility, energy, persistence, humility, extraordinary attention to detail, and dedication to the rule of law were legendary around the world. He played many roles during his career, including teacher at three law schools, scholar, author of innumerable articles and books, advisor (informal and formal) to national and state governments and intergovernmental organizations, negotiator of treaties and soft law instruments, advocate in two cases before the International Court of Justice, legal statesman, and source of inspiration to generations of international lawyers. He also was active in a wide array of important non-governmental organizations, including the American Bar Association (“ABA”), the American Law Institute (“ALI”), and the American Society of International Law (“ASIL”), the activities of which benefited measurably from his participation. He chose these activities strategically so that they led to the further development and effectiveness of international law.

In some cases Louis’s influence was direct, e.g., via participation in intergovernmental negotiations. In other instances it was indirect, e.g., through ideas he suggested to officials or through the impact of his numerous scholarly works.⁶ Similarly, sometimes his influence was open and visible, such as with respect to dispute settlement in the law of the sea negotiations; and sometimes, as it often is with lawyers who remain in the background while their clients (or others they are working with) have the public role, his influence was invisible to all but those he was advising. Partly because of this, we will never know the full extent of the impact he had on international law and institutions.

The other contributors to this tribute, Dean Harold Hongju Koh and Professors Thomas M. Franck, Detlev F. Vagts, and David Kennedy provide personal insights about Louis and his work. I highly commend these essays, as well as a set of personal tributes in the George Washington International Law Re-

⁴. Koh, supra note 2, at 15.
⁵. See infra section titled International Environmental Law.
They are testament to the significant effect Louis had on others and to how rare and wonderful he was as a human being. As one of those contributors puts it, “We will not see his like in the years to come.”

In the remainder of this Article, I first provide a brief biographical sketch of Louis Sohn’s life. I then describe samples of Louis’s contributions to five areas of the international legal system: the United Nations, human rights, international environmental law, law of the sea, and arms control and disarmament. These samples provide a sense of how broad Louis’s vision was and how comprehensive his approach was to effectuating change. Those sections are followed by comments about Louis’s impact via teaching and mentoring, and a Conclusion.

**Biographical Sketch**

Born in Lwow in what was then Austria-Hungary (now Lviv, Ukraine), Louis (Ludwig) Bruno Sohn was educated in Poland, where he received degrees in science and law in 1935 from the John Casimer University. He stayed on as a researcher, but because of religious persecution, he had to enter the library early in the morning and leave late at night. A review he wrote of Harvard Professor Joseph Beale’s *Restatement of Conflicts of Laws* led to an invitation to work as a research assistant for Professor Beale and study for an L.L.M. at Harvard Law School. He sailed from Poland on one of the last boats to leave before the Nazi invasion. He received an L.L.M. in 1940, and ultimately an S.J.D. in 1961.

Louis began teaching at Harvard Law School in 1941, was appointed to the regular faculty in 1946, and became the Bemis Professor of Law in 1961, a professorship that had been held by his mentor, Judge Manley O. Hudson. After Louis retired from the Harvard Faculty, former Secretary of State Dean Rusk persuaded him to go to the University of Georgia in 1981 to become the first holder of the Woodruff Chair of International Law. In 1991, he came to Washington, D.C., to join the U.S. Institute of Peace and the George Washington University Law faculty. His advice was widely sought, and many ambassadors throughout the world have been his students. People who have walked through the United Nations’ Delegates Dining Room with Louis could be excused for believing that being a former student was a prerequisite to an ambassadorial appointment.

Throughout his scholarly career, Louis always found time for public service. Among other positions, he served as the first Counselor on International Law at the U.S. Department of State from 1969 to 1971; delegate to the Law of the Sea Convention from 1974 to 1982; U.S. counsel in two cases before the International Court of Justice; President of ASIL from 1988 to 1990; and

---

Chairman of the International Law Section of the ABA (1992–1993). He also found time to teach, in his humble way, anyone who took the time to talk to him. He often had enduring impacts on these people, who also count themselves among his “students.” Louis’s students often speak of his impish smile and the fact that his favorite animal was the giraffe, because, he said, “it has its head in the clouds but its feet on the ground.” Louis’s legal career reflected that duality perfectly.

Several awards and fellowships are named in Louis’s honor, including those of the ABA Section of International Law (public international law), the U.N. Association-National Capital Area (human rights), and the Center for International Environmental Law (human rights and international environmental law).

Louis is survived by his wife of sixty-five years, Betty (Elizabeth Mayo Sohn), who was his loving, intelligent, and articulate partner throughout his journey.

United Nations

Louis’s work in connection with the creation of the United Nations started well before the April 25, 1945, opening of the intergovernmental conference in San Francisco that was convened to draft the U.N. Charter. Louis was a research assistant of the renowned Harvard Law School professor Manley O. Hudson, who was a judge on the Permanent Court of International Justice (PCIJ) but had returned to Harvard when the PCIJ was suspended during World War II. At that time, Reginald Heber Smith, a prominent lawyer who also was active in starting legal aid programs in the United States, recognized that the world needed new institutions to promote peace and security in order to avoid a repeat of World Wars I and II. Smith also worried that the United States would refuse to participate in any such institutions that would emerge, just as had happened after World War I with the League of Nations. He thus proposed a joint project between the American and Canadian Bar Associations to involve community leaders (particularly lawyers) in those two countries in drafting a charter for the new world institution. The two bar associations had worked together before successfully, and the inclusion of Canada, a smaller economy, avoided the charge that any resulting recommendations were simply being dictated by a major power.

As a result, Judge Hudson and Louis spent the period leading up to the San Francisco conference traveling to various cities across the United States and Canada and meeting with leading citizens, including lawyers, to both generate support for a new world institution and to elicit and compile ideas regarding what that body should be like. At each meeting, Louis would draft a problem, together with various solutions, to be discussed by the partici-
pants. Following each meeting, Louis prepared a draft article for the future U.N. Charter, based on that meeting’s discussion, together with a commentary supported by any legal precedents Louis could locate. These efforts led to a document that was very influential during preparations for and at the April 1945 drafting conference in San Francisco.\textsuperscript{10}

Louis also went with Judge Hudson to the Second Dumbarton Oaks Conference, which was held as a prior to the San Francisco conference in order to consider whether to form a world court following World War II. Demonstrating his ability to focus on the long view and the fundamental issues and interests at stake, Louis mediated a disagreement over whether there should be a new court or rather that the PCIJ should continue. Manley O. Hudson, a judge on the PCIJ, was virtually alone in pressing for the latter course. Louis resolved the impasse by suggesting an “innovative compromise.” Louis proposed that a new court be established but that the old jurisdiction of the PCIJ be transferred to the new court. This proposal met with approval and resulted in articles 36(5) and 37 of the Statute of the International Court of Justice.\textsuperscript{11}

Louis was present at the San Francisco conference with Judge Hudson (who was a member of the delegation of the PCIJ, which had Permanent Observer status), and he played several important roles at the conference. For example, he wrote the report of the negotiations of the Statute of the International Court of Justice, assisting the rapporteur in that regard. He also played a role in resolving a problem that threatened the entire conference: whether a state could use collective self-defense to assist another state that was subject to an armed attack. Existing customary international law had permitted states to use force in self-defense, but a principal goal of the new U.N. Charter was to prohibit the use of force in settling disputes. Louis, who had rapidly gained a reputation amongst the delegations as a wealth of information, was asked whether he knew of a precedent that could help resolve the situation. Louis proceeded to describe an obscure case in which Finland had been allowed to come to the aid of the Aaland Islands in an emergency but was required to notify the Council of the League of Nations immediately and remove its forces if requested to do so by the Council.\textsuperscript{12} This convinced the delegates to adopt the present version of article 51 of the Charter,\textsuperscript{13} which allows collective self-defense provided that such action is immediately reported to the Security Council and that the Council’s authority to deal with the matter, including requesting a withdrawal of the forces, is not diminished.\textsuperscript{14}

\begin{footnotesize}
\begin{enumerate}
\item Pasqualli, supra note 9, at 931. This compromise was later important in the Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1984 I.C.J. 392 (Nov. 26).
\item Pasqualli, supra note 9, at 931.
\item U.N. Charter art. 51.
\item Pasqualli, supra note 9, at 931–32.
\end{enumerate}
\end{footnotesize}
Louis’s work with human rights is frequently associated with the creation of the United Nations, just described, because one of the defining innovations of the U.N. Charter was its prominent recognition of human rights. In fact, however, Louis’s involvement with human rights antedated his work on the formation of the United Nations and began in 1942 when Judge Hudson, with Louis in attendance, was consulted in connection with a project of the ALI for guidance in drafting a statement on essential human rights that would implement President Franklin Delano Roosevelt’s Four Freedoms.

Louis’s description of his role, which is quintessential Louis, is contained in the essay by Professor Detlev Vagts in this volume. The ALI’s Statement of Essential Human Rights, finalized in 1945, was an influential precursor to the Universal Declaration of Human Rights, including with respect to whether the Universal Declaration would use the term “man” as the possessor of rights (as was in the original draft) or more sex-neutral terms (“every one” was used in the ALI Statement, and a variety of sex-neutral terms appear in the Universal Declaration).

Louis was one of the first to argue that the Universal Declaration of Human Rights had become binding on States even though it was generally viewed as being a non-binding resolution of the U.N. General Assembly. Louis and others argued that the Declaration, which had been unanimously adopted (with eight abstentions) by the General Assembly, was an authoritative interpretation of the U.N. Charter’s human rights provisions and thus that it was binding on States by virtue of their being bound to the Charter and the General Assembly’s role in interpreting the Charter.

Louis wanted an official statement of the binding force of the Universal Declaration to be adopted at the intergovernmental World Conference on Human Rights, to be held in Teheran, Iran, in 1968. To that end, he organized

15. U.N. Charter preamble, para. 2, art. 1, para. 3.
16. These were freedom of speech, freedom of religion, freedom from want, and freedom from fear. See The Annual Message to the Congress (Jan. 6, 1941), in THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT, 1940, at 663–72 (1941).
19. See Sohn, supra note 17, at 553.
20. See id. at 550–53.
22. See generally Felice D. Gaer, And Never the Twain Shall Meet? The Struggle to Establish Women’s Rights as International Human Rights, in THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE 1, 9–10 (Carol E. Lockwood et al. eds., 1998).
24. See Pasqualucci, supra note 9, at 958–39.
an unofficial Assembly of Human Rights in Montreal, Canada, to which he
invited human rights experts from around the world. The Assembly adopted
a statement that “[t]he Universal Declaration of Human Rights constitutes
an authoritative interpretation of the Charter of the highest order, and has
over the years become a part of customary international law.”25 Later at the
World Conference in Teheran, an Iranian who had been at the Assembly helped
draft the Proclamation of Teheran, which states that the “Universal Declara-
tion of Human Rights . . . constitutes an obligation for the members of
the international community.”26 The Proclamation of Teheran was adopted by the
World Conference and subsequently endorsed by the General Assembly.27 As
one author wrote, “Thus, Sohn’s vision was fulfilled.”28

Louis was also active in connection with the recognition, at the U.N. Fourth
World Conference on Women (Beijing Conference) in 1995, that women’s
rights are human rights. Despite language implying this in the U.N. Char-
ter,29 that proposition was fiercely opposed by some countries. Louis’s advice
was critical in drafting a resolution of the ABA, the world’s largest voluntary
professional organization with approximately 425,000 members, supporting
women’s human rights. These policy resolutions not only have an educa-
tional value with respect to lawyers and other people in the United States,
but they also form the basis for ABA lobbying and capacity-building efforts
and thus can have enormous impact. Louis provided ideas for the initial draft—
ideas that carried through to the version ultimately adopted by the ABA. In
addition, his involvement was significant because the very fact that Louis ap-
proved the draft turned out to be essential in overcoming resistance to it.
The resolution was adopted by the ABA in 1995, which led to an ABA delega-
tion’s participating actively in the Beijing Conference, including participa-
tion that contributed to the achievement of strong language declaring the
universality of human rights.30

International Environmental Law

Louis was among the first to recognize the important role that international
law needed to play in protecting the environment. He was active at the 1972
Stockholm Conference on the Human Environment, known as the birthplace
of international environmental law, advising delegates and responding to
inquiries from them. His article in the Harvard International Law Journal31

25. Id. at 939.
26. Id.
28. Pasqualucci, supra note 9, at 940.
30. See generally Gaer, supra note 22, at 58-59; A.B.A. Sec. Int’l L., Report to Delegates: Con-
(1973).
describing and analyzing the negotiations of the Stockholm Declaration on the Human Environment is the classic in the field and is still plumbed by international law scholars and practitioners.

Louis subsequently further developed international environmental law as an Assistant Reporter to the Restatement (Third) of the Foreign Relations Law of the United States. He was responsible for the portions on international environmental law, drafting and then shepherding them through the shoals of considerable debate. As stated by Professor Edith Brown Weiss, one of his former research assistants, "As rapporteur for the Restatement on Foreign Relations Law’s treatment of international environmental law, he left an indelible mark on the formulation of the rules in the field . . . .[Sections 601–604] still stand as the authoritative effort to set forth rules of international environmental law." 32

Louis was never satisfied with mere statements of law, however. He wanted international law to be implemented and to make a difference on the ground. For example, when Louis was Chair of the 15,000-member International Law Section of the ABA, he decided that the Section needed a committee on international environmental law. He persuaded me to take on the chairmanship of the new committee, which subsequently organized many educational and scholarly activities, including international conferences on global change (1989) and international watercourses (1987), and initiated or participated in many policy resolutions that became official positions of the ABA.

Louis’s involvement was not limited to creating the committee. As chair of the committee, I was deeply involved in the contentious process of drafting an ABA resolution endorsing the concept of sustainable development, just prior to the 1992 U.N. Conference on Environment and Development in Rio de Janeiro. Louis initially provided drafting advice, leading to a quite advanced text that nevertheless met with widespread approval. When opposition to the text arose immediately before it was to be considered by the ABA’s Board of Governors and House of Delegates (the ABA’s ultimate decision-making bodies) and a defeat appeared likely, Louis’s calm and practical advice was key to reaching a compromise text that allowed the ABA to endorse the paradigm of sustainable development. 33

Law of the Sea

Louis was one of four chief negotiators on the U.S. delegation to the Third United Nations Conference on the Law of the Sea (UNCLOS III), which even-

---

32. Edith Brown Weiss, Francis Cabell Brown Professor of International Law, Georgetown University Law Center, Remarks at the Presentation of the Center for International Environmental Law’s Award for Outstanding Contributions to the Development of International Environmental Law to Louis B. Sohn (Jan. 17, 2003), available at http://www.ciel.org/Announce/Award_Sohn03.html.

tually produced the 1982 Law of the Sea Convention. He filled myriad roles on the delegation, including representing the United States in the Informal Plenary on Dispute Settlement and playing leading roles in each of the several other groups involved in creating a dispute settlement process, including those relating to seabed-mining disputes, as well as with respect to conciliation procedures for fisheries disputes and marine scientific research. Donald Kaniaru, a member of the Kenyan Delegation to UNCLOS III who later became a high-ranking U.N. official, said that Louis was always available to provide helpful and objective advice to delegates from developing countries who were not as experienced in international negotiating or the law of the sea. Professor Thomas Franck describes the same phenomenon in broader terms: “Sohn, as a U.S. delegate, organized what amounted to a continuing seminar on peaceful dispute resolution . . . . Out of that informal seminar came Annex 7 . . . which established a model for the mandatory peaceful resolution of disputes. No one else could have invented Annex 7 or have persuaded states to adopt it.”

Elliott Richardson, the head of the U.S. delegation, and a student in the first class Louis taught at Harvard Law School, wrote this about Louis’s performance at UNCLOS III:

The Law of the Sea Conference gave ample scope to the qualities that have distinguished Professor Sohn throughout his career. His encyclopedic knowledge of international law and international organizations, his vast experience in multilateral negotiations, and his undeviating commitment to the extension of the rule of law made him an indispensable resource not only for the U.S. Delegation, but for Conference as a whole. Idealistic, tenacious, driven by the vision of a more perfect world order, he was at the same time a practical, astute, and effective advocate of U.S. interests. No one on any delegation, it is fair to say, so successfully combined the role of national representative and servant of the conference.

As indicated above, Louis had a germinal role in creating the dispute settlement provisions in the Law of the Sea Convention. According to Elliott Richardson, those provisions “are in large measure the product of his tenacity and vision.”

34. Elliott Richardson, Dispute Settlement under the Convention on the law of the sea: a flexible and comprehensive extension of the rule of the law to ocean space, in CONTEMPORARY ISSUES IN INTERNATIONAL LAW: ESSAYS IN HONOR OF LOUIS B. SOHN 149, 150 (Thomas Buergenthal, ed. 1984).
35. Personal communication with Donald Kaniaru, Director, Division of Environmental Policy Implementation, United Nations Environment Programme, June 2006.
37. Richardson, supra note 34, at 150.
38. Id. at 149.
In that regard, the “pastrami sandwich story” narrated by Dean Koh demonstrates Louis’s willingness to use unorthodox techniques. This classic story tells of the time that Louis was asked to resolve a particularly critical set of negotiations that had dragged on with no sign of progress for days. After learning that the group broke for a long (some might say civilized) lunch every day, Louis announced that henceforth the group would work through lunch and that he would provide food. Day after day he supplied pastrami sandwiches—and only pastrami sandwiches—for lunch, while at the same time leading an informed and active discussion of the merits of various dispute settlement alternatives. The negotiators soon reached agreement. As some have noted, the monotonous diet of pastrami sandwiches during the negotiations led to the veritable smorgasbord (or what Professor David Kennedy refers to as an “elegant cornucopia”) of dispute settlement choices present in the Law of the Sea Convention.

Arms Control and Disarmament

Louis also played several roles with respect to arms control and disarmament, which was of particular interest to him throughout his life. Among other things, he was active in the formation of the U.S. Arms Control and Disarmament Agency, was a consultant to it and the Office of International Security Affairs of the U.S. Department of Defense, and prepared a Draft Treaty on General and Complete Disarmament. His multi-faceted work on the peaceful settlement of international disputes can also be viewed as closely related.

Teaching

Despite the litany of extraordinary contributions he made during his lifetime to the development of modern international law, Louis Sohn’s greatest contributions to the international legal system may well lie in the future: through the actions of his students at the law schools at which he taught—Harvard, Georgia, and George Washington—and others he has influenced through his professional activities. These include not only the thousands of students in the three law schools where he was a faculty member but also the many students in classes at which he was a guest lecturer or visiting professor. It also includes the myriad lawyers, diplomats and others with whom he came into contact. Elliott Richardson has noted that there were 38 of Louis’s former students on delegations to UNCLOS III. As the experience of the Kenyan and U.N. official Donald Kaniaru, referred to above, demonstrates,
many more people were becoming “students” of Louis during that conference. The flood of e-mails circulated after Louis’s death was replete with testimonials carrying the same message and ranging far beyond UNCLOS III.

One of Louis’s students, Thomas Buergenthal, formerly a judge on the Inter-American Court of Human Rights and now a judge on the International Court of Justice, wrote that Louis’s

influence on our lives has been profound; he has affected our thinking and our professional careers in ways only truly great teachers do . . . . Like other great thinkers, he has always been able to see much further into the future than his peers and the rest of us . . . . The ties that bind all of [his students] is profound respect, admiration, and affection for our ‘guru,’ our friend and master, and above all, gratitude for what he has meant to us and for what he has taught us about the universality of international law.44

Another of Louis’s students, Columbia University Law Professor José Alvarez, described Louis’s continuing influence well: “He will be missed but will always be present, at least for those of us who care about international law and global welfare.”45

Conclusion

Louis Sohn had a profound influence on the substantive law and institutions, both intergovernmental and non-governmental, that comprise the modern international legal system. Indeed, more than any other person, he was the architect of that system. Moreover, through the future work of his students, the international legal system will feel the impact of his vision for generations to come.

---
