

Louis B. Sohn: Present at the Creation

Harold Hongju Koh*

Louis B. Sohn was my grandfather in the law. I call him that because I first met him more than fifty years ago, when my late father, Kwang Lim Koh, wrote his S.J.D. dissertation at Harvard Law School under Professor Sohn's supervision. When my sister Jean Koh Peters—who is now my colleague at Yale Law School—and I followed suit some twenty-five years later, we became the second generation in our family to study international law under Louis's watchful eye.

My father originally came to Harvard to study not under Louis, but under Louis's great mentor, Bemis Professor of International Law and former Judge of the Permanent Court of International Justice Manley O. Hudson. But when Judge Hudson died, Professor Sohn generously took on my father as his doctoral candidate. And so it was that, under Louis's supervision, my father came to write his S.J.D. dissertation, long before the issue became timely, on the regulation of international fisheries and the continental shelf under the Law of the Sea regime. Over the next thirty-five years, my father became, and remained, one of Louis's most devoted students.

As an immigrant who spoke accented English his whole life, Louis was a magnet not just for my father, but for scores of other foreign students as well. Born in what is now Ukraine and educated in Poland, Sohn came to America when he was twenty-five, only to find a new family among the legions of foreign graduate students who came to study with him over the years. Writing for my father's *festschrift* twenty-five years ago, Louis revealed what his own student days must have been like. He recalled: "Like many foreign students—including myself—[Dr. Koh must have] found it difficult at the beginning to adjust to the hectic pace of the American law school, to the—to the non-American—unusual requirement of having to prepare for every class and to the danger of being called upon to recite a case and present his views, to be torn to shreds by the professor and the other students."¹

* Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, 1998–2001. This Essay grows out of remarks delivered at a celebration of the life and legacy of Louis B. Sohn, held at the George Washington University School of Law, Washington, D.C., on October 24, 2006, and upon receiving the 2005 Louis B. Sohn Award of the American Bar Association Section on International Law and Practice in Chicago, Illinois, on August 5, 2005.

1. Louis B. Sohn, *Dr. Koh as a Student*, in KOH KWANG LIM: ESSAYS IN HONOR OF HIS HWEGAP 46, 46 (Howard Kyongju Koh ed., 1980).

Louis remembered every one of his students and treated them graciously. I remember visiting his home with my parents, where he and Betty, his lovely wife of sixty-five years, treated us with great warmth. When my sister and I were law students, we would occasionally visit Louis's paper-flooded office in the international law library to take him out for Chinese food.² A man of steady habits, he loved his office. And at every visit, he proudly showed us a new book, article, treaty, or manuscript.

As a lecturer, Professor Sohn was incredibly calm at all times, as well as very kind. His classes sometimes seemed dry at the start, but became fascinating once the listener got onto his wavelength. In those days some students considered Louis bookish by comparison to the dashing men of action who sat alongside him on the Harvard international law faculty: Abe Chayes, Dick Baxter, and Milton Katz. But listening to Professor Sohn lecture one day, it dawned on me that his was perhaps the most spacious vision for international law.

As a research assistant to Professor Hudson from 1940 to 1946, Louis had dealt with the most momentous issues surrounding the creation of a postwar world order. He helped to write the American Bar Association's draft international law covenant that led to the adoption of the United Nations Charter. Sitting at Judge Hudson's side, he was quite literally present at the creation of the U.N. in San Francisco.³ As a passenger on one of the last boats out of Poland before the Nazi invasion, his exposure to the horrors of World War II gave him a profound appreciation for human rights. And so, working with the American Bar Association, he drafted a document that became one of the precursors to the Universal Declaration of Human Rights.⁴

In those heady days, there seemed to be nothing one could not construct with international law. Playing varied roles, Louis became nothing less than an architect of the new world order. Just as others today aspire to be architects of cyberspace or the new global economy, Louis Sohn was present at the creation of a new vision for international law. He 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—inter-

2. At lunch he invariably ordered the same thing: kung pao chicken with pignolia nuts. Indeed, we came to think that he ordered the dish simply so that he could say aloud the word "pignolia," the sound of which he very much enjoyed.

3. See Jo M. Pasqualucci, *Louis Sohn: Grandfather of International Human Rights Law in the United States*, 20 HUM. RTS. Q. 924, 931 (1998) ("Sohn played several supporting roles at the [San Francisco] Conference. One, he assisted the rapporteur of the drafting committee for the Statute of the International Court of Justice by writing the report of the negotiations. In that final report he took care to include the provision for the continuation of jurisdiction from the [Permanent Court of International Justice] to the [International Court of Justice] that he had suggested at the Second Dumbarton Oaks Conference. Two, he sorted the massive number of documents delivered to the Ethiopian Delegation in return for a complete set of the conference documents for himself. Three, he provided advice. Sohn was becoming known for his encyclopedic knowledge of international law, and he was periodically asked for legal precedent.").

4. *Id.* at 937-38.

national institutions governed by multilateral treaties aspiring to organize proactive assaults on a vast array of global problems.

In a dazzling range of areas—including arms control, the law of the sea, the law of state responsibility, the law of international organizations, international environmental law, and international dispute resolution—Louis helped draft global “constitutions” that sought both to allocate institutional responsibilities and to declare workable rules of international law. By helping construct this complex positive law framework of institutions and constitutions, Sohn re-conceptualized international law as a creative medium for organizing the activities and relations of numerous transnational players, a category that now included individuals, networks, nongovernmental organizations, and intergovernmental organizations interacting within what I have elsewhere called a “transnational legal process.”⁵ Within this global framework, Louis dreamed, international legal rules would not only reflect parochial state interests but also advance the broader goals of an enlightened international system.

And so, ironically, the traditionalist became a revolutionary. The quiet man led an intellectual revolution to break down the historic distinctions between public and private law, domestic and international law, and municipal and global governance.

Thus arose the central irony of Louis Sohn’s life. A stunningly modest man, he became the architect of a stunningly ambitious global project. To see his reach, one need only read Louis’s most ambitious work, his collaboration with Grenville Clark, *World Peace Through World Law*, which proposed a criminal law enforcement model to enforce international rules, with the great powers of the United Nations acting jointly as the world’s police.⁶ Unfortunately, almost as soon as this sweeping blueprint was drafted, the intense bipolarity of the Cold War era frustrated its ambitions.

When I met him again, as a law student during the cynical post-Vietnam era, I often heard Sohn mocked as an apologist for international law, an idealist among realists, a Wilsonian in a world of Kissinger wannabes. I remember attending one conference where international law was being sarcastically dismissed. Professor Sohn rose earnestly from the back benches to insist that the glass of international law was in fact half full.

Despite the challenges, however, the idealist adapted and became a principled pragmatist. Over time, I watched as he helped make different pieces of his world vision a reality.⁷ The mid-1980s were a particularly exciting

5. See generally OONA HATHAWAY & HAROLD HONGJU KOH, FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS 173–204 (2006); Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997).

6. See GRENVILLE CLARK & LOUIS B. SOHN, *WORLD PEACE THROUGH WORLD LAW* (2d ed. 1960).

7. See Thomas Buergerthal, *Preface to CONTEMPORARY ISSUES IN INTERNATIONAL LAW: ESSAYS IN HONOR OF LOUIS B. SOHN*, at VII (Thomas Buergerthal ed., 1984) (“When we were students, some of Louis Sohn’s ideas . . . used to strike us as unrealistic, impractical, visionary. Over the years, many of us have come to recognize that more often than not he has proved to be right in his perception of interna-

time, when as a young lawyer in Washington, I watched Louis close up as he pursued four important assignments: U.S. Representative to the Law of the Sea Convention, Counsel for the United States before the International Court of Justice in *Nicaragua v. United States*,⁸ Associate Reporter of the *Restatement (Third) of the Foreign Relations Law of the United States*,⁹ and Chair of the ABA's International Law Section. Remarkably, in his seventies, Louis went from being a man of letters to a man of action. The academic became a litigator; the professor with his head in the clouds became a politician with his feet on the ground.

Once Louis entered the world of action, he turned out to be remarkably effective, for the simple reason that his decades of mentorship, selflessness, and integrity had won him so many friends.¹⁰ His work on the law of the sea won him admirers in the most unexpected quarters: he was granted, for example, his favorite title: Honorary Admiral of the Texas Navy.¹¹ When, many years later, as Assistant Secretary of State, I was mired in several frustrating multilateral drafting exercises, I took time out for a lunch in Washington, which Louis graciously attended. I asked him how he had been so successful with complex multilateral negotiations. He quipped cryptically: "Don't forget the pastrami sandwiches." When I asked what that meant, he told me how he had negotiated the dispute-settlement provisions of the Law of the Sea Treaty.¹² Every day for two weeks, he had gathered the delegates in a conference room and ordered them the exact same lunch: pastrami sandwiches. By the end of the conference, he said with a smile, "they were very happy to settle for my preferred alternative: a 'smorgasbord approach' to law of the sea dispute-settlement."

Like the other international law giants of his generation—Lou Henkin, Myres McDougal, Oscar Schachter—Louis possessed a constancy of optimism and a graciousness and good humor that never varied over the years. He was one of the first to recognize that the post-Nuremberg growth of international human rights law and its incursions into domestic jurisdiction would challenge the very dualism of the distinction between international and domestic law. And so, over the years, his deep commitment to human dignity led him to shift his gaze from states to individuals, and his writing toward a deeper appreciation of the role of transnationalism within a complex global legal process.¹³

tional relations.”).

8. Military and Paramilitary Activities (Nicar. v. U.S.), 1984 I.C.J. 392 (Nov. 26).

9. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (1987). Especially of note are the chapters on the Law of the Sea and the Law of the Environment, on which Sohn served as principal author.

10. See Kathleen Teltsch, *Harvard Professor the "Guru" of Sea Law Talks*, N.Y. TIMES, July 16, 1977, at 4.

11. Pasqualucci, *supra* note 3, at 936.

12. United Nations Convention on the Law of the Sea Annex VII, Dec. 10, 1982, 1833 U.N.T.S. 397.

13. See Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 1-16 (1982).

And another irony: over the years, this man who loved his office became a peripatetic world traveler. I would run into him in airports well into his eighties, always looking exactly the same, a bulging briefcase in each hand, his suit off the rack, his tie a bit too short. At each of these chance meetings, he would greet me without surprise and cheerfully describe how he had just traveled thousands of miles, without visible strain.

As the decades passed, he succeeded Judge Hudson as Bemis Professor at Harvard, then went on to hold distinguished chaired professorships at Georgia and George Washington University. He was everywhere revered. In Athens, Georgia, a colleague once told me, he was held in such awe that he became known as "The Brain who walks like a Man."

Once I became an international law professor myself, Louis took me under his wing in a familial way. We would have lunch together, once at Grand Central Station, but more regularly at the annual meeting of the American Society of International Law. He was never overly generous with his praise. One year, however, shortly after my father passed away, Louis knew I was feeling low. After my presentation, he squeezed my elbow. He whispered with grandfatherly pride: "You gave a good talk. I know your father would be very pleased."

And so, although Louis had no children, he leaves behind many intellectual heirs. I am proud to say that I am one of them.

As we reflect on his life and work, what should Louis Sohn's epitaph be? Louis himself once suggested that he be called the Man Who Loved Giraffes. He believed giraffes are the best kind of creature because, like Louis himself, they keep their feet on the ground, but their heads in the clouds.¹⁴ But I prefer the image offered by Louis's friend, former Secretary of State Dean Rusk, who said: "One of [Louis Sohn's] greatest contributions has been his courage in looking into the future—to look at what international law ought to become," not just what it has been.¹⁵

And so, I believe, Louis Sohn's epitaph should not be an answer, but a question. In the twenty-first century, do we still have his courage—to look not at what international law has been, but rather, at what it ought to become?

14. Pasqualucci, *supra* note 3, at 944.

15. Dean Rusk, *Introduction*, 24 INT'L LAW. 619 (1990).