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THE IMMEDIATE TASKS OF INTERNATIONAL LAW
AND ORGANIZATION

LINDEN A. MANDER

I. THE LEGAL PROFESSION AND INTERNATIONAL AFFAIRS

Within recent years the legal profession has shown remarkable activity in the study of international relations. At Bar Association meetings, resolutions have been adopted; members of the bench and bar have associated themselves with important movements and pronouncements; and international organizations comprising lawyers and judges have borne witness to the widening sphere of interest and action on the part of those to whom law and order make a peculiarly immediate appeal in view of their training and professional activity. The few examples which will be given may serve as justification for an attempt to summarize a number of important developments which have recently taken place, and proposals which have been made in the field of international law and organization.

The Inter-American Bar Association was organized in May, 1940, at the conclusion of the Eighth American Scientific Congress. The first conference of the Association was held in Havana, Cuba, March 24-28, 1941, the proceedings of which have been published in two volumes, one in Spanish, the other in English. A meeting of the council and committees of the Inter-American Bar Association was held in Washington, D. C., November 19-21, 1942, and was attended by over 150 leaders of the bar. It received reports from commissions dealing with international and comparative law, immigration and naturalization and citizenship, industrial property, trusts and trustees, civil status of persons, taxation, administrative law and procedure, customs legislation, commercial treaties, protection of intellectual property, legal documentation, legal education; it also set up additional committees on comparative constitutional law, comparative civil and commercial law, communications, industrial, economic and social legislation, penal law and procedure, and the study of ocean fisheries. The second general conference, which was held in Rio de Janeiro on August 7-12, 1943, worked through nineteen committees and passed approximately 120 resolutions.

The third conference was held in Mexico City July 31-August 8, 1944, and was attended by 500 delegates representing 62 member associations. Important resolutions were adopted, especially in the field of legal education, communications, and post-war problems. It was agreed

that law schools should encourage the study of English in Latin America and the study of French, Spanish or Portuguese in North America in preparation for law courses, that law courses include the study of comparative American government and comparative constitutional history. The section dealing with communications recommended the implementation of the Lima conference recommendation that a permanent American Aeronautical Commission be established to study ways in which obstacles to traffic might be eliminated, also that an Inter-American tele-communication conference be held as soon as possible. It gave attention to problems of general international organization and urged that the Permanent Court of International Justice have compulsory jurisdiction over all juridical disputes between states and that the jurisdiction of the Court be broadened as much as possible.

Of great importance has been the establishment of the Inter-American Academy of Comparative and International Law which, after much preliminary work, announced that the first academic courses were to be given at Havana, January 8-15, 1945. Students were to register personally or by mail before December 31, 1944. They must be graduates of a law school or a political science school of a Latin American republic or hold an LLB, A.B., or B.S. degree in political science, public law, government, or Latin American relations from an institution of the United States or Canada. The government of Cuba has made the academy an official corporation, provided an initial appropriation of $5,000, and has promised an annual sum of $12,000. The Inter-American Bar Association intends to publicize the importance of the academy and requests assistance for its activities; it has also officially thanked the government of Cuba for its valuable help.4

We may well hope that the academy will prove a valuable instrument in broadening the basis of international legal cooperation and strengthening the bonds between members of the legal profession in the 21 countries.

The Bar Association of the United States has taken a lively interest in recent international developments.5 Its sub-committee drew up a report on post-war international judicial organization which was adopted at the meeting in Chicago in September, 1944. The Association resolved that a permanent court of international justice should be continued "as the highest tribunal of an acceptable system of inter-related permanent international courts with an obligatory jurisdiction." Of especial interest is the proposal that the court should be so organized that a member

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would be available to sit as an international circuit court with regional jurisdiction to hold regular terms in the capital of each nation. Each of these circuit courts should include one or more international commissioners to sit in an advisory capacity. Thus the Bar Association contemplated the establishment of some 60 "regularly available" international circuit courts of original jurisdiction. The significance of this resolution will be discussed later in this article.

The American and Canadian Bar Associations each created special committees to consider the questions of law and the administration of justice involved in the Dumbarton Oaks proposals. The two associations coordinated their activities and submitted a number of questions to 25 regional conferences of lawyers, 18 in the United States and 7 in Canada.

As the Canadian Bar Review puts it, a remarkable agreement of views was registered by more than 600 judges, teachers and those practicing the law. Every group agreed on the importance of an International Court of Justice and favored retaining the present statute of the Permanent Court of International Justice with certain modifications rather than attempting to introduce a new statute. The groups pointed out that the Permanent Court had already rendered important verdicts in 65 cases to the general satisfaction of the world, and that several instruments had been signed conferring jurisdiction on the court, whereas the preparation of a new statute might reopen many issues which have satisfactorily been settled. The regional groups found in favor of continuing advisory opinions and unanimously agreed that the "court should be given the power to create regional or special chambers, as need may be shown to exist." Since the court's chamber for summary procedure had given but two judgments and its chamber for labor cases and that for communications and transit have never been called upon, it would appear desirable to leave the precise type of chamber which may be needed to the power of the court itself. The groups favored the continuance of selecting a judge ad hoc when the elected judges included no person of a nationality of the party before the court.

The groups also favored a broadened jurisdiction of the court, hoping that all states parties to the charter would confer on the court jurisdiction over their legal disputes. The groups favored retaining the provision in Article 36 of the Statute of the Permanent Court of International Justice which "defines the classes of legal disputes to which the compulsory jurisdiction which may be conferred would be applicable. It was recognized that this definition furnishes no test of adjudicability. It merely delimits the conferred jurisdiction. Although the experience today has not been extensive, it has seemed to indicate that the definition is not unsatisfactory for that purpose."
The groups almost unanimously agreed that in the existing state of international law, "the determination of the existence of aggression is a political question." They unanimously agreed that the charter should contain a provision "looking toward the enforcement of judgments of the Court if compliance were refused or withheld," and that the Security Council should be given the power to take such action as it might deem desirable in such an event. Without indicating the matter in detail, the regional groups recognized the need of broadening both scope and authority of international law.

Representatives of the American Bar Association met with members of the State Department in a series of meetings to discuss the resolutions adopted by the House of Delegates on September 15, 1944. The Association urged the strengthening of the Dumbarton Oaks Proposals and was named as one of the consultant organizations entitled to representation at the San Francisco Conference.

An editorial in the *American Bar Association Journal* strongly supported Senator Wayne Morse's resolution (Senate Resolution A-160), introduced in the Senate July 28, that the United States accept the obligatory jurisdiction of the International Court of Justice provided for in the San Francisco Charter. "Faced with our present responsibility, it is not enough for us to utter platitudes . . . We have passed beyond the stage of generalities . . . Let us declare a holiday on inaction." Recent legal periodicals contain many admirable articles dealing with the question of World Organization, as well as book reviews devoted to works of international significance, sufficient indeed to indicate the widespread interest of the Bench and Bar in the most urgent question which confronts mankind today—World Order.

II. THE LEAGUE OF NATIONS AND THE UNITED NATIONS BASED UPON THE ASSOCIATIVE PRINCIPLE

At the end of World War I the victorious powers established the League of Nations in an attempt to prevent war and to build an effective world order. Its machinery comprised a Council, an Assembly, a Secretariat; closely connected with it were the Permanent Court of International Justice and the International Labor Organization. Its underlying principles may be summarized: (1) War was a matter of concern to all states—a sovereign nation, while retaining the power to make war, was to do so within a community of nations which were to decide upon the legitimacy of the action. Although member states did not renounce their sovereignty they were supposed to use that sovereignty in a restrained manner. (2) Disputes likely to lead to war must

*The Morse Revolution* (1945) 31 A. B. A. J. 466, *Pass the Morse Resolution Now*, 39 A. B. A. J. 874: "It remains to be seen how long this country will continue to take part in the setting up of the Court and the selection of the judges without itself accepting the basic jurisdiction of the Court."
be settled by peaceful means. (3) Member states would join in imposing sanctions against a nation which went to war in violation of its obligations under the Covenant. (4) Provision for peaceful change was contained in Article XIV, in Articles XI, XIV and XV, and also in (5) the establishment of social and economic conditions through appropriate international agencies which would help obviate the causes of the war.

Unfortunately, the League suffered from several weaknesses. The rule of unanimity, though somewhat modified in practice, still bore witness to the unreadiness of nations to surrender their sovereignty and helped to prevent effective action. The uncertain nature of sanctions arose from the fact that the League could only "recommend" to its members the amount of military, naval, or air forces which each should contribute. No clear definition of the word "war" existed and nations could take refuge in the traditional permission by international law of forcible measures short of war—indeed, one might say that the League prevented the word "war" but not war itself. Moreover, in the event of a dispute, the League Council or Assembly had first to make exhaustive inquiries but had no power under the Covenant to prevent a disputant from making troop movements or otherwise undertaking warlike preparations and thereby aggravating the situation. Finally, the United States refused, and some nations were uninvited, to join the League, which resulted in a lack in universality of the League and, perhaps even more important, the absence of membership of two great powers, the United States and the Soviet Union.

The attempts to strengthen the League need not be surveyed here. Suffice it to say that they took the form first of regional proposals, second of throwing the League machinery into operation before a dispute reached breaking point, and third, of imposing sanctions by two-thirds vote, which sanctions were to be employed against a country presumed to be undertaking preparations for aggressive purposes. These attempts broke down and the world moved into a second war after a period of twenty years.

The proposals set forth at Dumbarton Oaks and (in the security provisions) substantially adopted at San Francisco, mark in some respects an improvement over the League of Nations; in other ways they appear to be a retrogression. The advances include: (1) The principle of unanimity no longer holds. Major decisions can be made by two-thirds vote and procedural decisions by majority vote (except in the all-important veto power of the Big Five which, in the opinion of many people, leaves Hamlet out of the play). From the point of view of "international legislation," the new voting procedures will enable conventions dealing with social, financial, and economic questions to be dealt with much more expeditiously. (2) The Charter provides for concerted action against a country which uses "force" or "the threat
of force." The United Nations may move against a would-be aggressor before that country reaches the stage of waging war. Indeed the word "war" does not appear in the Charter and to that degree collective action takes on a preventive character not realized in the Covenant.

(3) The signatory powers agree to create an international military commission and special air contingents to be put at the disposal of the United Nations, and to act upon the call of the Security Council for other forces. (The League Council, it will be recalled, could only recommend military sanctions.) To this extent, the world community will have more force at its disposal than did the League of Nations; we shall have to await the organization of this force to see whether it will be effective or not. (4) The Charter provides for the integration of the International Court of Justice with the other United Nations agencies and thereby obviates many awkward problems raised twenty-odd years ago by the need of separate adhesions to the Statute of the Permanent Court of International Justice; (5) Social and economic machinery is more adequately provided for; (6) the Charter is not tied to the Peace Treaties as was the League of Nations.

On the other hand, in the Covenant no final right of veto existed even for the big powers, for under Article XV, which dealt with disputes of a serious character, the votes of the two disputants did not count. Thus the San Francisco Charter seems to have lost ground in the matter of the veto. Also, the member states retain their "sovereign equality." Whether this means full sovereignty or not, time alone can tell.\(^8\) (In practice, the Charter has already denied the sovereign equality of states by giving a predominant legal position to the Big Five.)

We may summarize by saying that international society today has recognized the need of having more continuous cooperation in preparing international conventions of a "quasi-legislative" character and in taking steps against a possible aggressor than after 1919; it has made more rapid action possible against the majority of the powers of the world, but at the expense of appearing to exempt the great powers who claim that, since they have the responsibility of enforcing peace, they must

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\(^8\) One may well regret the inclusion of the phrase "sovereign equality" in the United Nations Charter. Except for a reference to sovereignty over certain colonies, the term is not used in the League of Nations Covenant. The remarks of J. L. Brierly are much to the point:

"In the original theory it was not the state that was sovereign, but a person or persons within a state that were sovereign over the rest. . . .

"Unfortunately for the clearness of our thinking on political matters, the hold of sovereignty on the imagination was so strong that instead of formulating a new theory, political science merely tried to adapt the old theory to new conditions. . . . We may properly speak of states as 'independent' in the sense to be explained later; but it is meaningless to say that they are 'sovereign,' that is to say, superior, when we are speaking of their relations to one another. . . .

"The theory of sovereignty . . . is not only inconsistent with the subjection of states to any kind of law, but it is in fact an impossible theory for a world which contains more states than one." J. L. BRIELEY, THE LAW OF NATIONS, Oxford University Press (2d. ed. 1936) pp. 36-39.
have the major decisions, although it is these very major powers which constitute the great threat to world peace.

This great political contradiction does not constitute the only hazard. Underlying legal theories and practices provide another source of grave disquietude, and it is the purpose of this article to examine some questions which are involved under this heading.

III. NATIONAL SOVEREIGNTY AND THE BINDING CHARACTER OF TREATIES

The Charter of the United Nations must be examined in the light of two doctrines which cannot easily (if indeed, at all) be reconciled: The sovereignty of nations on one hand and the binding character of treaties on the other. While the Charter does not, as did the League of Nations Covenant, contain provisions for the withdrawal of members and to that degree may be regarded as a more binding instrument than the Covenant, if it is merely the expression of a number of sovereign wills, if it embodies merely the principle of association, then the nations which have signed it may exercise their sovereign will to ignore it or to refuse to carry out their duties under its provisions. If, however, the legal obligations are paramount, then, in fact if not in theory, there has been a limitation placed upon the extent of the exercise of sovereignty. Now the Charter contains explicit reference to the sovereign equality of the members of the United Nations and to this degree appears to consecrate the principle of associative action: the Charter is not a constitution for the world; and it appears to contain the two irreconcilable principles mentioned above. The question arises whether this contradiction can safely be permitted to continue.

Up to the time of the League of Nations, there was no “system of legal precedence whereby treaty obligations” might “be set into their relative order.” Consequently a treaty signed by a nation inconsistent with an earlier treaty was deemed to be non-binding to the extent of its inconsistency; and during the Ethiopian crisis in 1935 Professor Borchard argued that if the United States placed an embargo on exports of oil to Italy because of the latter’s violation of the Kellogg Pact, the embargo would violate a long standing commercial treaty between the

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*Much, of course, will depend upon the definition of sovereignty. Curiously enough, in a later volume, Brierly asserts that the “modern conception of the sovereignty or independence of states is not inconsistent with their subordination to law,” and that those who claim absolute and illimitable sovereignty for states do so by a priori reasoning and by adopting “a thoroughly unscientific method of approach” which is much like “trying to explain human nature by studying the behaviour of Robinson Crusoe before the arrival on the scene of Man Friday.” ([J. L. Briery, THE OUTLOOK FOR INTERNATIONAL LAW, Oxford University Press, 1944, pp. 3-4.](https://doi.org/10.1093/intlaw/1944.2.3)) Despite these and many similar observations which could be quoted, the situation which obtains in present-day international relations is that which is described above. Indeed, Brierly recognizes the position when he writes that “International Law is still very definitely in the laissez faire of social development.” Ibid. p. 11.*
United States and Italy. On this view a minor treaty was deemed to have as much weight as a comprehensive international instrument. This incident reveals the significance of Lauterpacht's suggestion that nations should write into a comprehensive treaty a general principle of law with explicitly expressed attributes of superiority over any other contractual obligation present or future.\(^\text{10}\) Such a step appeared to have been taken by the nations which signed the League of Nations Covenant; under Article 20 the members agreed that the Covenant was to be accepted as abrogating all obligations or understandings \textit{inter se} which were inconsistent with the terms thereof. They solemnly undertook that they would not thereafter enter into any engagements inconsistent with the Covenant and that they would take immediate steps to procure release from any existing inconsistent obligations. This undertaking did not amount to a constitutional limitation for, in addition to the provision for withdrawal from the League on the part of dissatisfied nations, if states did not take steps to abrogate inconsistent obligations presumably the obligations would still be binding; as Wild noted, no powers under Article 20 of the Covenant were given to the League "to bring about the termination of treaty commitments of this character."\(^\text{11}\) In a word, the League Covenant did not bridge the gap between the two principles—the paramountcy of legal obligations and the sovereignty of member states.

It would appear that the Charter of the United Nations has made an advance over the League of Nations Covenant in this respect. No provision is made for withdrawal from the organization, though expulsion is possible. As with the League, so under Article 102 of the Charter, member states undertake to register with the Secretariat all treaties and international agreements entered into after the Charter comes into force. Article 103 states: "In the event of a conflict between the obligations of the members of the United Nations under the present charter and any other international obligations to which they are subject, their obligations under the present Charter shall prevail." This appears to be a more binding text than Article 20 of the League Covenant and to this degree perhaps begins the creation of a system of legal precedence and of a system of world constitutionalism. But it is more than doubtful whether the Charter is sufficiently the "higher law" in the sense that a national constitution is a higher law than laws passed by a national legislature. First, the veto power of the Big Five appears to provide a big loophole, and second, no international agency is given final power to say whether a conflict of obligations exists and if so what action must be taken. This question requires further exam-

\(^{10}\) H. Lauterpacht, \textit{The Covenant as the "Higher Law"} (1936) \textit{Brit. Y. B. Int. L.} 54-65.

ination, for it involves the problem of the relation of national constitutions to international treaties.

The United States has ratified the Charter of the United Nations which thus becomes part of the supreme law of the land, but in case of a conflict between the Charter and an act of Congress, is it certain that the Charter would prevail? In the United States Circuit Court, District of Massachusetts, 1855, Mr. Justice Curtis held:

This provision of our Constitution has made treaties part of our municipal law. But it has not assigned to them any particular degree of authority in our municipal law, nor declared whether laws so enacted shall or shall not be paramount to laws otherwise enacted. No such declaration is made, even in respect to the Constitution itself. It is named in conjunction with treaties and acts of Congress, as one of the supreme laws, but no supremacy is in terms assigned to one over the other.

The learned judge then went on:

There is therefore nothing in the mere fact that a treaty is a law, which would prevent Congress from repealing it. Unless it is for some reason distinguishable from other laws, the rule which it gives may be displaced by the legislative power, at its pleasure...

To refuse to execute a treaty, for reasons which approve themselves to the conscientious judgment of the nation, is a matter of the utmost gravity and delicacy; but the power to do so is a prerogative of which no nation can be deprived without deeply affecting its independence. That the people of the United States have deprived their government of this power in any case, I do not believe. That it must reside somewhere and be applicable to all cases, I am convinced. I feel no doubt that it belongs to Congress.

Many decisions, of which one only will be noted here, confirm this doctrine that if a treaty and an act of Congress are inconsistent, the later one prevails. In U. S. v. Thompson (1919) it was held that "there is no principle of law more firmly established by the highest court of the land than that while a treaty will supersede a prior act of Congress, an act of Congress may supersede a prior treaty. The latest expression controls . . ." Ex-President Taft, writing in 1916, asserted that:

A sovereign nation, though it makes a treaty, has the power to break it, even though it be violating its plighted faith and doing an immoral thing. If it could not, it would not be sovereign. Therefore, Congress may make a law which is binding on the courts and on the people within its jurisdiction, though the

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law violate a binding treaty ... To hold otherwise would be to give a treaty, recognized as law under the Constitution, not the force of law but the force of constitutional restriction."

Similar considerations govern the judiciaries of other countries. More than that, it is uncertain how far decisions of the Permanent Court of International Justice are binding upon national judiciaries. C. W. Jenks in 1939 claimed that the assertion of an English judge that decisions of the Permanent Court of International Justice do not bind the English courts was not necessarily sound and asserted that the English courts should, under certain circumstances, hold themselves bound by a World Court decision.15 In addition, the courts have given great weight to the construction of treaties by the political or executive arm of the government, which fact makes for uncertainty in the event that two governments disagree as to the meaning of a treaty provision.

On the other hand, the Permanent Court of International Justice has laid down that treaties are sources of legal obligation and may not be interpreted restrictively by devices of municipal legislation. It upheld the Minorities Treaties and opposed Poland's arguments which would have minimized their effectiveness; it sustained the extended competence of the International Labor Organization against restrictive claims, and in the Tunis and Morocco case it decided against the right of a state to invoke the idea of domestic jurisdiction in order to nullify international law. In several cases it decided that the uncertainty of treaty obligations, owing to ambiguous wording, must be removed so as to permit an effective observance of treaty provisions. In the case of the exchange of Greek and Turkish populations, the Court held that:

A state which has contracted valid international obligations is bound to make in its legislation such modifications as may be necessary to ensure the fulfillment of the obligations undertaken.16

And in the case of Polish Nationals in Danzig, it held that a state might not:

advance as against another state its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force.17

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16 Permanent Court of International Justice, Advisory Opinion; Ser. 8, No. 10, p. 20. See also P. C. I. J., Greco-Bulgarian Communities, Advisory Opinion, July 30, 1930, Ser. B, No. 17, pp. 3-4: "It is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty."
17 P. C. I. J., The Treatment of Polish Nationals in Danzig, Advisory Opinion, Feb. 4, 1932, Ser. A/B, No. 44, p. 24. Also see the Free Zones case where the court said: "France cannot rely on her own legislation to limit the scope of her international obligations." However, the court in the S. S. Wimbledon case (P. C. I. J., Ser. A, No. 1) argued that a treaty by which a state undertook to perform or refrain from performing certain acts did not constitute an abandonment of its sovereignty, though no doubt it "places a restriction upon the exercise of the sovereign rights of the state"
We thus have the curious paradox that a national legislature may pass an act repealing a treaty without thereby being relieved of its obligations established by the treaty. Clearly much has to be done to clarify the relations of national constitutions to the new international order. Many constitutions were drawn up on days when "the major problems originated within the national boundaries ... Such a state of affairs no longer holds." Today we witness the almost continuous impact of extra-national forces upon nations. International conferences are becoming increasingly numerous, and constitutions "which make difficult the effective execution of treaties dealing with matters which vitally affect the daily welfare of national groups, are a hindrance and not a help, and they should be revised in order to increase the common national good which results from international cooperation as well as from internal effort."  

IV. POLITICAL AND LEGAL MUTATIONS IN HISTORY

It is submitted that no effective advance will be made unless nations and world society realize that by interpretation or by explicit rejection the term sovereignty must lose the meaning attached to it by Austinian jurists and by popular sentiments, and that new categories of thought must replace those now holding sway in international relations. Indeed we are at one of the turning points in history when events are outstripping the legal logic of those who confine their thinking to categories which have become outmoded and who attempt to interpret a world revolutionized by science in terms no longer adequate to encompass the far-reaching changes. Such political and legal mutations have occurred in the course of history, and they provide a valuable clue to the situation confronting the world today. A few examples will illustrate:

In feudal days, knights claimed and exercised the right of waging war and diplomacy; in some areas a vague claim to overlordship existed, but frequently it did not limit the practical independence of the knights. In the course of time a prince extended his power, often by force of arms, assumed the title of king and began to develop a law of treason, so that war against him by another knight or prince constituted not the act of an independent ruler but the disaffected behavior of a subject. A new, wider community had grown up, and the allegiance to the smaller unit of government no longer was recognized as being absolute. As one example among many, we may select the action of Henry VIII of England who asserted that the Irish chiefs who fought to defend their lands against the English monarch were not independent rulers exercising a power of making war but were rebels who must forfeit their land for taking up arms against one to whom they owed allegiance. Now this was progress per saltum; the new law of treason involved a

18 LINDEN A. MANDEr, FOUNDATIONS OF MODERN WORLD SOCIETY, Stanford University Press, 1941, p. 630.
shift to another plane of political thought and value. It involved a revolution of legal categories, a substitution of national for feudal units of government, of national for feudal frames of legal reference.

The history of the decline of Papal power in European political life illustrates the same question. For many generations the Papacy exercised a wide control over politics and claimed, *inter alia*, that treaties must have the counter signature of the Pope in order to be valid. After the treaty of Augsberg in 1555, the secular princes endeavored to free themselves from this limitation upon their freedom of action. And in the Treaties of Westphalia, 1648, they attempted by means of a long detailed clause to make ineffective any protests against treaties signed by secular princes but not countersigned by the Pope.¹⁹ Now, in strict theory, even if Prince A signed a treaty with Prince B and both agreed never again to invoke the signature of the Pope, it would have been possible for either one, in the event that he wished to disavow the treaty, to claim that the treaty was really not valid since it was logically impossible to dispense with the signature of the Pope. Theoretically, therefore, the princes could never become sovereign powers independent of the Papal sanction; logically the sovereign states could not emerge from the universal system represented by Papal control. The fact that they did so constituted a political revolution in defiance of the logical impossibility postulated by formal political theory.

We may also find examples of political mutations in more recent times: When the thirteen American states declared their independence from Great Britain, they became thirteen sovereign entities, and the history of the next sixty or seventy years is a fascinating history of the way in which these sovereign entities became one new state and how they lost their previous sovereign prerogatives, though they retained certain “sovereign” rights under the new Constitution. Readers will recall the doctrine of nullification and the writings of Calhoun, whose logic, given his premises, was difficult to refute. But life proved stronger than the old categories, and another advance was made *per saltum*, a leap involving a tragic civil war. The transition to American federalism from the Confederation carried with it a political mutation similar in principle to the change made in the transition from feudal units to the modern state.²⁰

Another illustration may be given. During the nineteenth and early twentieth centuries, several of the British colonies, Canada, Australia and New Zealand, and later South Africa and Ireland, attained dominion status. In their struggle for self-government they won from the British Parliament the right to rule themselves in many internal matters such


²⁰ There is no need to cite authorities for this section to members of the American Bar.
as land, tariffs, immigration, divorce, etc.; indeed soon after the American Revolution, the British Parliament agreed not to tax colonies without their consent. However, legally speaking, what the British Parliament had given, the British Parliament could take away. But in the course of many years, the Dominion espoused the theory as expressed by Sir Robert Borden that, while the British Parliament might have the legal power, it did not possess the constitutional right to legislate in those matters which had come within the scope of Dominion legislative capacity. Nevertheless, there was implied a position of subordination, for the Dominions had no international personality and were bound by Great Britain's declaration of war in 1914. However, in virtue of their contributions to the war effort, they asked for and obtained seats at the Peace Conference, and later membership in the League of Nations, the Permanent Court of International Justice, and the International Labor Organization. In order to give effect to the new equality of status, the Balfour Report was adopted in 1926 and was translated into legal terms by the Statute of Westminster in 1931.21

The curious problems of legal theory which were raised can be read in the debates of the Irish Dail where the members differed as to whether the Statute of Westminster passed by the British Parliament could bind a later British Parliament in view of the legal omnipotence of that body within the Empire.22 Mr. McGilligan claimed that the declaration set forth in the 1930 Report of the Commonwealth Conference, "no act of Parliament of the United Kingdom passed after the commencement of this act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressed and declared in that act that that Dominion has requested and consented to the enactment thereof," amounted to an act of renunciation by the British Parliament to legislate for the members of the Commonwealth. But Mr. Lemass argued that it did nothing of the kind; in his judgment the act had been "very carefully drafted to preserve the theoretical right of the British Parliament to legislate for the whole of the British Empire." Indeed, he went on, the legal right of


the British Parliament to legislate for the British Empire "is not destroyed." "What one British Parliament has enacted, another British Parliament can repeal, and the position will be that, at any time, by simply repealing that act, the British Parliament can reassert its right to legislate for this state or another of the Dominions without the consent of the Parliament of this state or of that Dominion." Mr. McGillicigan in reply quoted General Hertzog to the effect that if there was ever any question of a British Parliament repealing the Statute of Westminster, "the moment that repeal is concluded the whole Commonwealth of Nations would be broken up. There would be precedent for secession all over the Commonwealth if and when that happened." In other words, Mr. McGillicigan had to introduce a non-legal argument, claiming in effect that Great Britain would not dare to attempt to exercise its theoretical power. In strict logic Mr. Lemass probably had the better of the verbal exchange, since, if the British Parliament was legally omnipotent, what it could give at one time it could take back at another within the British Commonwealth. Only if it agreed to the sovereign independence of the Dominions as it had agreed to the sovereign independence of the thirteen American colonies would the control be definitely broken. Such was the dilemma posed if the discussion were kept in terms of strict sovereignties. It is interesting to note that Mr. Winston Churchill feared that if the Statute of Westminster were passed and the Dominions were given full legislative power, there would be nothing to prevent the Irish Dail from abolishing the oath to the king and abolishing the limits placed upon Ireland's freedom of action by the 1921 Articles of Agreement. As events turned out, while Mr. Lemass scored a triumph in purely logical debate, Mr. Churchill saw more clearly the general development of events, for the Irish Free State, under de Valera, did the things which Mr. Churchill had anticipated and used its new status inter alia to maintain neutrality by the Foreign Offices.

Once again we see the logic of restricted categories giving way to the logic of history, for the Dominions now are recognized as independent nations within the world community, though bound by special ties of sentiment and interests to Great Britain and to one another. Their development has played havoc with traditional theories of sovereignty and the legal omnipotence of the British Parliament. And today we are witnessing another remarkable development involving a legal mutation of a far-reaching character. It is found in the statement of Mr. Justice Jackson, chief of the counsel of the United States in the prosecution of Axis war criminals, who has enunciated a most challenging doctrine.28

28 91 CONG. RECS., June 14, 1945, A 3089-3092. Mr. Jackson, while Attorney-General of the United States, foreshadowed the philosophy contained in this report of the President in his address to the Inter-American Bar Associa-
Justice Jackson pointed out that "international law as taught in the nineteenth and the early part of the twentieth century generally declared that war-making was not illegal and is no crime at law," but went on to say that unless "we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law." Since there is no continuously sitting international legislature, innovations and revisions come about by the action of independent governments designed to meet a change in circumstances. And Mr. Justice Jackson confesses that he is "not disturbed by the lack of precedent for the inquiry we propose to conduct," since when the Nazis came to power "it was thoroughly established that launching an aggressive war or the institution of war by treachery was illegal, and that the defense of legitimate warfare was no longer available to those who engaged in such an enterprise." He concluded "it is high time that we act on the juridical principle that aggressive war making is illegal and criminal."

He then proceeds to argue that under the Kellogg Pact, states renounced war as an instrument of national policy and undertook to settle disputes only by pacific means and condemned recourse to war for the solution of international controversies. He quotes Mr. Stimson, who in 1932 argued that the Briand-Kellogg Pact meant that war had become illegal throughout practically the whole world and is no longer to be the source and subject of rights. "It is an illegal thing." Mr. Justice Jackson further cites the Geneva Protocol of 1924 in which forty-eight governments declared "that a war of aggression constitutes . . . an international crime" and the League of Nations resolution of 1927 that a war of aggression constitutes an international crime, and a similar resolution passed at the Pan-American Conference in 1928.

One need not go into an elaborate discussion here to set forth the arguments of those who may dispute Justice Jackson's interpretations or who may argue that the above-mentioned treaties did not supplant the power of national governments under their own sovereignty to wage war. Japan, and indeed several experts, disputed Mr. Stimson's interpretation of the Briand-Kellogg Pact. The Geneva Protocol of 1924 was adopted but Great Britain took the lead in rejecting it. Neither does Justice Jackson deal with the extraordinarily difficult problem of whether a Pan-American or a League resolution constituted a binding obligation; whether sovereign states, by agreeing in principle that aggression constitutes an international crime, explicitly agree to renounce
their sovereign right of waging war; or whether any war which they
might wage under a Balance of Power system could be regarded as a
war of aggression. By interpretation it was agreed that the Briand-
Kellogg Pact did not apply to wars waged in self-defense, and pre-
sumably in the coming trials the International Authority will have to
decide whether German, Italian and Japanese actions after 1939 did
constitute aggression in the light of all the evidence to be produced
by the Foreign Offices.

If the Allied powers do try the responsible authorities of Germany
and Japan for waging aggressive war on the ground that sufficient
international law exists to justify this action, even though the United
States did not join a League of Nations and even though the League of
Nations failed to take adequate action against Japan in 1931 and 1937
and Italy in 1933, they must so order the trials and systematize pro-
cedures and develop substantive law as to make it clear that this is
the newly established international order and that every future aggressor
will be regarded not as having made war as a sovereign state but as
having broken the peace of the world community. If they do less than
this, they will run the risk of merely cloaking political vengeance with
a thinly disguised veil of pseudo-legality. It will be worse than tragic
if such trials take place only to be followed by uncertainty on the
questions just raised. If this is to be nothing but legalized vengeance,
we shall be back to the seventeenth century days when the English
political statemen lost their heads as well as their political offices and
we shall approximate the unfortunate tradition of "ins and outs" in Latin
America.24

The profoundly significant question, however, is whether, if the Allied
powers have deliberately chosen to adopt new standards by which to
judge aggression, they will so organize international society that those
standards will continue to apply. Justice Jackson's statement reveals
perhaps the most potentially far-reaching political mutation of modern
history, but mankind must give long and earnest thought to the full
implications of the step and to the methods by which the new United
Nations will insure an efficient form of government to carry out the
necessary functions of rule making, rule administering, rule interpreting
and the maximum of order which may be described as a police function
on an international scale. I propose to examine these four functions and
to indicate their bearing upon the national political systems of the

24 "We must not use the forms of judicial proceedings to carry out or
rationalize previously settled political or military policy. . . . There are
certain things you cannot do under the guise of the judicial trial." Mr.
292. (The report that Justice Jackson has proposed the substitution of a
younger member of the Krupp family for another member as a defendant
in the Nuremberg trials gives occasion for profound concern that the above
statement is being thrown into the discard. The report has been denied,
however.)
members of the United Nations. But two preliminary observations of a general nature must be made if we are to estimate aright the full magnitude of the task ahead.

V. THE BREAKDOWN OF SEVERAL SYSTEMS OF INTERNATIONAL RELATIONS

In the first place we witness the breakdown of a number of systems of international relations. I have already referred to the eclipse of the Catholic medieval system25 by the modern western theory of the sovereign state with its accompanying systems of international relations. This latter system which emerged in the seventeenth century and developed to its fullest extent during the nineteenth and twentieth centuries in the course of this period came into contact with and vanquished two other systems of "international" relations based upon very different premises. I refer to the Chinese and the Moslem systems. The former had for many centuries governed the relations of China with a number of surrounding people, Manchuria, Tibet, Nepal, Burma, Annam and communities of lesser importance. It was not based upon the Western idea of the state at all, nor did it admit the doctrine of the legal equality of states. The clash between the Western system and the Chinese cannot be described at length here, although it constitutes an absorbingly interesting chapter in the history of human institutions. Suffice it to say that what Western writers call the suzerainty regime of China succumbed to the sovereignty regime of the imperialist powers of the West.26

So with the Moslem world.27 Here religion and not law based upon secular rules and power was the binding force, and it was not possible to reconcile the resultant form of society with the Western concepts.


Turkey, for example, when it became a member of the European concert, created many problems because the Sultan, a Caliph of the Moslem world, was head of the Faithful whose members lived in countries which were ruled by other political powers. The Turkish ruler could use religion in those areas to influence his position as a member of the Western political systems, and often created serious complications. But the Moslem and the Chinese political organizations, which, in addition to the philosophical or religious principles, were based on a great degree of local life of an agricultural or pastoral character, could not withstand the power of the new industrialism of the West. Consequently, after a period of resistance, both the Far East and Middle East began to "modernize" by adopting, not without opposition on the part of the conservative minded and much social and political confusion, the patterns of the victorious invaders from Great Britain, France, Germany, Holland and the United States. Democracy, industry, education, nationalism and the modern state were taken over at varying rates.

Unfortunately neither the imperialist Western powers nor the reformers in the Orient realized that the modern civilization of the Occident contained serious contradictions which became more ominous as the twentieth century proceeded. For a short time the modern national state proved to be a suitable framework for the effective organization of the new social, scientific and economic forces which were emerging; democracy and nationalism seemed to be different aspects of the same great movement towards Freedom and Welfare. But not for long. Soon the modern state (and its psychological counterpart, nationalism) conflicted with the expansive field of industry and science. The Peace Treaties of 1919-20 illustrate the great tragedy of attempting to enshrine the principles of sovereignty and nationalism in an intimately interdependent world. Sooner or later something had to give way—either men would attempt to thrust their major life forces into a national mould, or they would recognize that the modern state is a relative instrument and not something to erect into an object of political worship. The West is now in the process of clarifying its thinking and its emotions on these fundamental issues. Intellectually and from experience it is learning the costliness of persisting in the thought-and-behavior moulds of the nineteenth century and of erecting an instrument of strictly relative utility into an object of superstitious devotion. But matters of faith die hard, and nationalism and sovereignty still call for the major responses of the mass of Western people, even though most of the nations lie in ruins.

Now the Middle and Far East have accepted many of these national ideals; indeed they are in the process of encouraging and enforcing them precisely at the time when they are proving a broken reed in the
home continents of their original propounders. And this fact gives a tragic aspect to the new Orient—will it repeat the errors of the West and adopt the sovereign patterns (even though modified to suit their native environment) which are failing before its very eyes.

But the modern state idea, and its emotional accompaniment, though triumphant in the Orient, has received a triple challenge within the last generation. The Russian Revolution of 1917 introduced a new theory of international relations in which the Western theory of international law (being the rules regulating the conduct of independent sovereign states) has been superseded by a theory which subordinates political sovereignty to economic (and later, it is true, to political and military) factors. Without examining the question in detail here, one can assert that the Soviet theory of international relations does not square with that held up to now by modern Western nations. And we have still to see whether or not the Russians have not more clearly seen the nature of the modern political problem of the relation of nations to economic life and organization than have most of us.

The second challenge was the Nazi theory of international relations based upon race and geopolitics in which the superior race and not independent and legally equal sovereign powers was to be the organizing principle. The third challenge came from the Japanese doctrine of the Kingly Way and the New Order in Asia which also rejected the Western orthodox political doctrines. The last two theories have received what we hope is their deadly blow, for they were inherently unsound.

The question, the all-important question, which now confronts us is whether the Soviet and Western systems of international relations can be harmonized into a more comprehensive system, a synthesis which may embrace what some people have believed to be contradictory principles. The answer will depend upon three factors: (1) The extent to which the two systems will recognize their inadequacies and look forward to finding newer and more adequate solutions to the unprec-

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edented problems which are emerging; (2) The extent to which all nations will correctly and quickly evaluate the significance of the robot bomb, the atomic bomb, the long-range plane, the cooperative effort required in reconstruction, and the generally heightened interdependence of the modern world. These events will themselves force a realization of new methods, but whether they will do so quickly enough will depend in large measure upon the open-mindedness, the intelligence and the capacity to enlarge our concepts of national self-interest; if sentimental-ity stands in the way of seeing the new tasks ahead, nations will destroy themselves in the name of national patriotism; (3) The extent to which nations realize the need of gearing their local and national institutions to the new world requirements and of providing the effective instruments of government internationally into which the local and national institutions may fit.

VI. THE NEED OF INTERNATIONAL AGENCIES FOR MAINTAINING ORDER, MAKING, ENFORCING AND INTERPRETING RULES

The second preliminary observation of a general nature concerns the changing instruments of government which have developed during the history of human society. In England, the King was supposed to be the foundation of legislative, executive and judicial power. Indeed, in early years, these functions were all exercised by the King in Council — witness the challenging title of C. H. McIlwain's "The High Court of Parliament." Gradually the growing complexity and the pressure of business led to a differentiation of functions. The House of Lords and the House of Commons emerged; the Common Law Courts challenged the King's Courts; the King fought in Commons; Parliament enlarged its powers; the Lower House became master; the Cabinet system emerged. The police department grew, and in the nineteenth century the civil service, as we know it, began its remarkable career. It would take undue space to describe these changes in detail and to review other changes which occurred in the United States and elsewhere. But certain recent developments should be stressed in order clearly to bring out the point that change, experimentation, and uncertainty characterize the political life, institutions, and values within the nations of the victorious Allies, and from these we may draw inferences having significance for the wider field of international law and government.

Parliament and Congress have handed over a great deal of quasi-legislative power to subordinate agencies. Indeed the volume of delegated legislation far exceeds the amount of statute. Executive bodies have taken over a great deal of quasi-judicial power. Courts have become more specialized—juvenile courts, traffic courts, courts of claims being outstanding examples. Federalism has passed into a stage of peculiar complexity; no longer will the simple formula state versus federal government suffice to describe the process—for federal grants-
in-aid, inter-state conferences of governors, executive officials, and professional bodies, regional projects like TVA, CVA, etc., cooperation of civic agencies with state and federal governments have all developed as part response to the quest for more effective instruments of government. Demands have been voiced freely for a reorganization of Congress—the committee system, the seniority rule, the lack of sufficient party responsibility, and so on. Pressure groups, vocational representation, public opinion polls, radio and the movies in turn add their contributions as well as their problems.

These and other examples which might be adduced show that the simple three-fold division of legislative, executive and judiciary will no longer suffice to give an accurate picture of national governments today. We need to keep in mind a much more complex and changing and dynamic picture if we would not sacrifice accuracy to inert mental stereotypes. Similarly we should beware of over-simplifying the structure of the emerging world organization and avoid trying to apply in over-rigid fashion the categories just mentioned.

For example, treaties may or may not be regarded as international "legislation" or "quasi-legislation," but that we are in the process of evolving more intricate methods of rule-making there can be little doubt. The forms may vary considerably. The basic treaty may only see the general outlines; a commission or committee meeting periodically may adopt more detailed rules; while a small executive committee may be entrusted with the duty of legislating on a still more detailed scale, as will be illustrated later. Moreover, we are seeing the development of what may be described as functional rather than over-all or horizontal international rule-making bodies—a contrast to the national picture where, except in dictator countries, the overall legislation still makes the laws. The international society especially may be expected to create new forms of governments if the recent experience within nations and also the developments in the relations between nations furnish any reliable ground for judgment at this point.

And we should be on our guard against unduly arguing by analogy from the past as does Professor Hans Kelsen, who claims that, because

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20 Torsten Gihl, International Legislation, Oxford University Press, 1937, denies that treaties make international law. Judge Manley O. Hudson takes the opposite viewpoint in International Legislation (Vol. 1, Introduction; Carnegie Endowment for International Peace, 1931; and Vol. V, Introduction). In the seven volumes which cover the modern period up to 1937, Professor Hudson includes 505 instruments of a multipartite nature which in his judgment indicates a "broad extension of international law."

courts preceded legislation within nations, so the same general pattern should be planned internationally—that the development of international courts should precede international legislation. We have no reason to expect that international society has to go through the same steps as national societies in the past any more than the oriental countries will have to proceed from candle to gas and electricity as we have done. In modern times new methods may be adopted in different stages and at different rates; some intervening steps important to older nations may be relatively ignored by later nations facing basically different problems.

For many centuries international law grew by custom since its main scope comprised disputes arising from conflicting customs. Only when society begins to change and especially to change at a rapid rate do law-making agencies assume a great importance. Law then becomes not merely a process by which the courts declare the meaning of rules but also a process by which legislatures or other bodies make rules. Indeed, one may say that in a rapidly changing age, the most creative aspects of law are those which deal with the growing intricacy of making laws and administering them.

VII. THE TREATY PROCESS AND INTERNATIONAL “LEGISLATION”

In the absence of an international parliament, the quasi-legislative functions were first formed by bilateral treaties between sovereign states and occasionally multilateral treaties. With the coming of the twentieth century and especially of the League of Nations (and now the United Nations), however, multilateral treaties took on an ever widening scope—witness the League of Nations Treaty Series and Judge Manley Hudson’s several volumes entitled International Legislation.

The new problems which have arisen have demanded action on a wider than national scale and to that degree have borne witness to the need of international government. This international government will need adequate agencies for maintaining order, for making rules, enforcing rules and interpreting rules. Up to now, international government has been very weak in the primary sense of maintaining order, and relative to the amount of legislation passed in the constituent members of the society of nations, it has also been of limited extent. But, unless international government becomes increasingly effective, law will become less and less creative and will increasingly deal with remedial problems created in large measure by a defective legislative process. As I have attempted to point out in a previous issue of this Review, unless inter-

32 Linden A. Mander, National Law and International Law (1944) 19 WASH. L. REV. 72-84. For the need of re-examining international law, see, inter alia, H. W. Briggs, Re-examination of International Law (1942) 36 AM. J. INT. L. 637-40: “... a clarion call by American international lawyers reaffirming the principles of the sanctity of treaties, the advocacy of international self-restraint, the adjustment of international disputes by peaceful means ... would be considerably less than useless. ... There is a surfeit
national order becomes established on a more secure basis, we may expect to see a decline of national "law" and an increase in executive power. The reason is simple, namely the growth of certain problems which cannot be ignored. In the nineteenth century, the Industrial Revolution brought many problems of industrial regulation. In the twentieth century, these problems have grown in scope and complexity but they have been overshadowed by another problem, namely that of maintaining world order and preventing the outbreak of war in an age of the atomic bomb. Under these circumstances the process which created a wider area of government in past centuries—namely the modern state—has by reason of its claim to exclusive authority become a principle of anarchy. How true this judgment is we may realize by considering how impossible is the task confronting the small powers of defending their sovereignty. The age of their sovereign independence is gone, since the material instruments which science has discovered have transcended their capacity to make these instruments or to defend themselves from their operation. There exist today only three superpowers—France and China, although included in the Big Five, are relatively a second class from the point of view of armed might. Even Great Britain, one of the Big Three, trails, leaving the United States and Soviet Union the two most powerful countries in the world. But can these countries by the separate exercise of their sovereignty avert their own catastrophe? He would be a bold man who would confidently answer "yes" in the light of the scientific discoveries of even the last twelve months.

The first problem then is the maintenance of international order, the prevention of aggression. Unless men can satisfactorily resolve this question, the rest of life becomes enslaved. A detailed analysis of the San Francisco Charter and the conditions necessary to prevent a relapse into a fatal balance of power struggle does not form part of the present article which is concerned with recent developments and proposals in international organization in the "legislative," "executive" and "judicial" spheres.

We may expect that (except for possible world security arrange-
ments) international legislation will continue to be effected through treaties and conventions since there appears to be little immediate hope of any direct international legislation by a world parliament. Under the
circumstances improvements in the treaty and agreement process might and should be made.

First, we may draw attention to a valuable proposal made by C. Wilfred Jenks, legal adviser of the International Labor Office of an international legislative drafting bureau. He points out that faulty draftsmanship of treaties constitutes a serious defect in the present international setup and that the “standard of draftsmanship of most of the instruments produced by League of Nations conferences has been very uneven.” An International Parliamentary Counsel’s Office could do three main things: (1) Prepare and keep up to date “the somewhat elaborate reference books” which are necessary in the complex legal systems of the modern world. The works of reference would include “(a) a manual of rules of style, (b) a manual of common forms for standard articles, (c) a subject index of the contents of multipartite instruments, (d) a multilingual glossary of translations used in multipartite instruments consisting of versions in two or more languages, (e) an index of terms defined in multipartite instruments, and (f) a list of short titles of multipartite instruments.” 34

(2) This Office should assist in preparing drafts of multipartite instruments. Drafting, as every attorney knows, involves a high degree of specialized skill and such an office would make available to international conferences the services of those whose special training will have fitted them for this task. (3) This Office should be empowered to propose improvements in legislative technique; such a step will require attention to both general instruments and also to many small details which always exist in legal relations of an international character.

Judge Manley O. Hudson makes an important suggestion that where multilateral conventions are signed setting forth the text “of a uniform law to be incorporated in the national legislation of the states which are parties,” either a general international agency could be given competence to deal with questions of uniform interpretation or a special chamber could be created within the Permanent Court of International Justice. The problem has risen especially in the commercial field, but it has a wider application and resembles that which obtains in the United States where difficulties ensue when uniform acts are passed by the states because of the absence of a tribunal clothed with power “to reconcile divergent state interpretations of such acts.” A number of international administrative bodies exist which may give “persuasive interpretations,” (bodies such as the International Bureau of the Universal Postal Union and the International Labor Organization which deal with postal and labor matters), and the Permanent Court of International Justice may give decisions in disputes brought before it

34 C. Wilfred Jenks, The Need for an International Legislative Drafting Bureau (1945) 39 AM. J. INT. L. 174.
by two or more states, which, however, do not have binding effect upon states not parties to the dispute. These methods do not appear to be comprehensive enough, and the suggestion offered by Judge Hudson appears to be worthy of serious consideration.\footnote{86}{\textit{Manley O. Hudson}, \textit{International Tribunals: Past and Future}, Carnegie Endowment for International Peace and Brookings Institution, 1944, pp. 218-219.}

If international "government" is to keep pace with growing needs, the process will have to be speeded up by effectively dealing with the long delays now occasioned by the process of treaty ratification. All should agree that the bewildering complexity of international relations makes a certain cumbersomeness inevitable, but something is radically defective when it will take perhaps more than two years to set in motion the financial organization provided for in the Bretton Woods Agreement. The world desperately needs a rapid restoration of currency stability as well as an institution for capital investment which can get under way in a very short time. Otherwise economic chaos may spread in many parts of the world, not the least in those areas which the victorious Allies have delivered from the German and Japanese governments. It will, indeed, be grim irony if the sole effect of delivering Europe and Asia from the dictatorships should be to present the delivered peoples with a freedom of starvation and nothing more. Unless more rapid action is possible, the United Nations is threatened with something more than a breakdown of constitutional structure.

Francis O. Wilcox has pointed out the tendency for ratification of treaties to take longer in recent years than several decades ago.\footnote{87}{\textit{Francis O. Wilcox}, \textit{The Ratification of International Conventions}, George Allen and Unwin, London, 1935.} This unfortunate result has come about for the following reasons: (1) The growing amount of governmental control and regulation which of itself throws a greater burden upon government and slows it up; (2) The democratic process makes for discussion, and some cynics would say for useless talk betraying little more than organized sectional interests; (3) The necessity of national implementation, often involving considerable sums of money such as the two billion dollars (later over three billion) asked for by UNRRA from the various nations-members; (4) The growing expense involved in international "legislation" to raise social standards; unemployment and sickness insurance, medical insurance, etc., place heavy burdens upon the exchequer and naturally the national governments require time in order to adjust these demands to the national budget although, as I have pointed out elsewhere, "one must add that all the costs of the internationally proposed social and economic reforms would not approach within measurable distance the appalling expenditure at present incurred in competitive armaments."\footnote{87}{\textit{Linden A. Manuel}, \textit{Foundations of Modern World Society}, Stanford University Press, 1941, p. 634.}
Earlier in this article reference was made to the loose drafting of the international conventions. This factor, in the word of Francis Wilcox, causes states to hesitate "to assume the obligations imposed until they have a definite assurance of what they really are. Unfortunately there is no easy method of obtaining official interpretations of questionable phrases or clauses."\(^8\)

Several proposals have been made to speed up ratification. A League of Nations committee in 1930 proposed that states which had failed to ratify provide the League with the reasons for their delay; that states undertake to consider a convention providing for ratification within a stated time; and even that certain international agreements might be adopted without process of ratification.

Professor Noel Baker has suggested that ratification should automatically follow unless states specifically reject a treaty signed by the representatives, this rejection to take place within a given time limit.\(^9\) G. E. Toulmin has proposed that ratification take place in the international conference itself;\(^10\) Eagleton and others have even asked whether it would not be desirable to eliminate the ratification process altogether. Clearly these proposals would involve a material change in the center of gravity in the relation of national states to international organizations.

(To be continued)

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\(^8\) Wilcox, op. cit. supra 115-16.
