GROWTH AND MOVEMENT OF INTERNATIONAL LAW†

By

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I

We frequently hear it said that international law is "conservative" or "static," and that it is not observed, or only poorly observed, or that it is only a political law. To a certain extent such criticisms are true. We should not indulge in loose thinking, however, but should face all the facts of life and law in the "Society of States." The basic fact is that, in this society as a whole, there is no central government—i.e., no supreme authority responsible for the framing, application and enforcement of the law. In so far as stability and change are the two opposite poles of any legal system, there is in the international field no authority which can look upon the law as a whole, balancing the need for stability with the need for change. The absence of such a central government leaves a vacuum which is filled by national governments. It is they who chiefly perform the tasks of framing, applying and enforcing the law in the Society of States, either individually or in mutual consultation and co-operation.

We can indeed observe a good deal of development in deliberate, well-planned co-operation between governments in conferences and commissions. The complaint concerning the rigidity of international law is valid chiefly in regard to treaties (such as territorial treaties), whose purpose it is to determine power positions and power relations. Here history records many sudden, violent, and

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shocking changes, which make excellent material for big headlines in the newspapers.

Be that as it may, this is only half the picture, international law also grows "inaudibly like the paddy" (as they say in Java of their adat-law). It does so in the continuous and silent work done by national courts, foreign offices and other governmental organs, especially in technical, non-political matters. It grows also where independent persons, acting in the name of the collectivity of States, or in the name of a more limited community of nations, foster the development of international law by the decisions they take. Foremost among such persons are judges, arbitrators and the like. Here we may refer, for instance, to the impressive series of decisions of Claims Commissions, published in the Reports of International Arbitral Awards and to the decisions (approximately one hundred) of the two successive international courts in The Hague, to which must now be added the judgments of the European Courts at Luxembourg and Strasbourg. Although nearly all these decisions have been complied with, many of these instances of the observance of international law by States have unfortunately not been given the attention they deserve.

Change and movement make the field of international law an engrossing subject of study. What movement can we discern? Examining the facts carefully, one can observe that there has been a transition from a stage in which a multitude of separate States existed side by side, towards the beginnings of permanent association and unity, but it is the first beginnings only. There has been a transition from unstable and temporary forms of organisation towards the establishment of permanent institutions, and from the looseness of mainly unwritten rules towards the beginnings of a definite body of international law. One can observe further the advance from a political system based mainly on power towards the beginnings of a legal system underscored by power. The traditional individualistic law of States is now coupled with the beginnings of a social law of men. In short, one can observe the passage from a world of separate States, weakly linked together and weakly bound by an unstable State-law, towards a world in which the possibilities are being explored of establishing an order in which public authority is exercised by strong institutions under a genuine law of nations, which binds peoples and governments by its own force and authority. But the progress made differs considerably in different parts of the world and under different political systems. We are still at the stage of exploration and experiment,
finding out how we can bridge the gap between the past and the coming age, which is a grand enterprise in itself. Will such a bridge be able to resist storms and floods? This puzzling question is essentially of a sociological and political nature and lies outside the limits of this lecture.

II

The growth and movement of international law in various forms and variegated shades of colour can be aptly demonstrated by considering first the society of States and its law as these existed about the year 1860, a century ago.

In the solar system of the world of those days the sun was the sovereign national State, mostly thought of as a person, endowed with omnipotence within its frontiers and with independence vis-à-vis the outside world. According to some authors and statesmen independence even went as far as freedom from all supervision. As recently as about 50 years ago such theses were still being propounded. A telling example was furnished by the diplomatic Labour Conference of Berne, 1906, where a proposal, tending towards the institution of a certain (exceedingly mild) supervision of the application of the labour conventions there adopted, ran aground on the rocks of sovereignty. Better known is the shipwreck which proposals for compulsory arbitration suffered during the two Hague Peace Conferences of 1899 and 1907. The world was then living in a dust cloud of sovereignties. Man entered upon the stage only in his capacity as a subject or citizen of his State, being himself only an "object" of the law, without legal status; his protection abroad, according to international law, could be gracefully shouldered by his government, without, however, there being any obligation on its part so to protect him.

For their day-to-day intercourse, the multitude of individual States, referred to above, had only their reciprocal representation. In grave political situations recourse was had to the diplomatic congress, where unanimity, another expression of unlinked juxtaposition of States, was the chief rule of their decision-making. The instability of their co-existence becomes obvious when one considers that all co-operation took place ad hoc, on one matter and in respect of one interest or group of interests only. Every international congress or conference had to be organised from scratch, and had to be laboriously arranged as regards agenda, procedure and secretariat; once terminated, nothing remained of the organisation. Similarly, every settlement of a dispute between States was performed ad hoc: a tribunal had to be composed for each separate
dispute, and its procedure had to be fixed; once the award had been
given, the tribunal disappeared and its place became vacant again. All conferences, tribunals and commissions—with some rare excep-
tions, e.g., the Central Rhine Commission—were arranged ad hoc, without any framework or continuity.

Contact and intercourse between governments were maintained by diplomats, who were the “experts” in the field of foreign relations. Consultation between governments took place chiefly in respect of “foreign relations,” and only to a much less extent in respect of “international affairs.” Treaties showed a marked analogy with a private law contract rather than with a statute regulating a matter of public interest. Thus, use was made almost exclusively of the *voie diplomatique*, and in all the intercourse between States, power positions and power relations played a funda-
mental role. One is forced to recall Lafontaine’s fable of “Le pot de terre et le pot de fer.”

The world of States accordingly had only an unstable power system which changed with the ebb and flow of national power or combined power, owing to the very absence of a central author-
ity which might be both competent and powerful enough to take binding decisions and to exercise supervision. A well-ordered system of “accountability” for a State’s actions was entirely out of the question.

Frequent consultations took the place of a superior decision, such consultations being supported by pressure exerted by the most powerful States, and leading in appropriate circumstances to a hegemony. We remember the remarkable effort made after the Napoleonic wars to institute in Europe a directorate of the Great Powers, the Concert of Europe, destined to fill the vacuum. The power system manifested itself in a most telling way in the liberty of States to start a war, even without much more real justification than unadulterated national interest and advantage.

No wonder the doctrine of international law took as its starting point the State, and not the society of States, least of all man. The State and its interests, that is power and self-preservation, stood alone in the front line. Theory constantly found itself in a helpless position, forced to try to combine fire and water, to link the principle of the sovereign State to that of its subjection to inter-
national law. The efforts lacked conviction, and could give no satisfaction as long as theory started out with the principle of the omnipotence of the State, not to say the idolatry of the State. Once this starting point was accepted, it was impossible to get a clear picture of the law prevailing in the society of States. The authors who followed a divergent line of thought were few.
III

From about 1860 onward a germ of unity may be discovered in the European society of States of that time. Side by side with, or rather within, the old emphasis of independence, there was a new accent on co-operation between States. An important new phenomenon appeared: the Administrative unions, for postal and telegraphic services, copyright, railway transport and for many other interests of an economic or social character. Co-operation on river traffic may be considered as a predecessor to those unions, together with the combined action of States for the protection of public health in Europe against plague, cholera, etc. The beginnings of these unions were modest and haphazard. Together they amounted to a piecemeal organisation of some sort of an international society. At the same time, the traditional notion of independence was inconspicuously changed and somewhat mitigated. All international organisation produces, or has a tendency to produce, this effect. Looking back on the whole movement, it is now possible to see the exceedingly important role which the unions played in laying the basis for the institution, action and procedure of world-wide organisations, even including those of a political nature such as the League of Nations and the United Nations, with all their "technical" or "specialised" organisations or agencies.

What were the new forces which these unions brought into the world? It will suffice here to point out just a few of the most interesting in a very wide field.

First: intergovernmental consultation and co-operation were extended to cover international technical, economic and social affairs, and were no longer restricted to "foreign relations." Step by step, in the new conventions, a law of protection of man took shape, of protection of women and children, also of industrial and other workers and of native populations. Laws against slavery, alcohol, firearms, drugs and other evils were also developed.

Some of the new conventions were well and honestly applied. Others were badly applied due to lack of development in methods of supervision over and accountability of national States.

Secondly: consultation and co-operation took place in a general and collective framework, instead of only in bilateral dealings, thereby creating an opportunity for a generally shared opinion on higher public policy to have an influence upon national opinions and policies. This was the beginning of the ordering of human relations by the actions of an organised society.

Thirdly: the unions and other organisations extended their attention over the non-European world, with the result that the
traditional European appearance of international law took on a new look. The extension of an ever-growing "European international law" to the outer world pursued its hardly perceptible course, thanks to the new co-operation between States. The International Labour Organisation has also performed a remarkable task in the colonial field.

Fourthly: the "technical expert" has entered upon the international scene, and now stands side by side with the diplomatic expert, sometimes replacing the latter. The *voie technique* is used together with or instead of the *voie diplomatique*, according to the matters concerned, and according to the kind and extent of the collectivity of States involved. *Pari passu*, the role and function of the old Foreign Offices have undergone changes with the growing significance of the new technical ministries and the ever-increasing burden of matters under review.

Fifthly: looking at the unions, the League of Nations and the United Nations, including their agencies, we observe as new features the regular periodical conference (or assembly) of fixed composition, working according to a fixed procedure, and with a permanent secretariat, composed of independent officials. Such provisions as those of article 100 of the Charter of the United Nations and similar articles in other instruments are now taken for granted. Thirty years ago, however, they were not at all self-evident, and a battle had to be fought over them.

Sixthly: the I.L.O. brought in a special new feature: the quasi-parliamentary conference, where, from as early as 1919 onwards, social groups, employers and workmen have been represented, together with the governments of the Member States of the Organisation, and where decisions, also on substantial matters, are taken by a majority vote. This last feature initiated the *voie représentative*, as we may call it, which is now being followed by the recently founded European bodies and communities.

Summing up: the whole development has amounted to the creation of institutions having a definite status of their own, for the care and promotion of wider economic, social and cultural interests across frontiers and groups. These institutions possess a degree of firmness, whereas formerly improvisation ruled the day. The dust cloud of sovereignties seems to have settled down a little in various non-political fields. The efforts made in the unions, the League of Nations and the United Nations towards de-politicising and, as one might say, humanising international life cannot be overestimated.

It should nevertheless be strongly emphasised that, with the exception of the I.L.O., it is still national delegations, whether they are composed of officials, parliamentarians or others, that represent
States, and these delegations act on instructions issued by their governments, and are responsible to their governments. In short, it is a case of a purely intergovernmental structure—the application in world affairs of the “official principle,” to use the language of the famous Montagu-Chelmsford Report of 1918 on Indian constitutional reforms.

From about 1860 onward the world, and jurisprudence in particular, were more and more concerned with the collective multilateral regulation of interests. The collective treaty served quasi-legislative purposes in the world of States. It needed therefore to have its place defined vis-à-vis municipal law on the same subject. Should it be put on the same level or should the treaty be placed on a superior level? The battle on this point is still being fought in the world. In the Netherlands the question was settled in favour of the pre-eminence of the treaty, even over the national constitution.¹ The collective, quasi-legislative treaty raises a whole range of questions, touching on problems concerning, inter alia, the effect of such treaties on third States, revision and denunciation and the right to make reservations. More questions are dealt with by a treaty which also comprises, or functions as, the constitution of an international organisation. The society of States can no longer be content with the private law concept of the treaty as being a contract, accepted by States. It clearly needs to accept the public law idea of an organic statutory system of law.

The regulation of relations by an international body, acting as a superior authority, whose decisions are binding by virtue of their own internal force, which has once and for all been attributed to them, further emphasises the need for a definite and permanent international law to take the place of rules occasionally accepted by States voluntarily. Instances of such decisions may be found in the unions and other technical agencies,² organs which may, at least on points of secondary importance, establish rules binding on Member States without their further express acceptance, even though the State may have dissented.

Twice already an effort has been made to raise the I.L.O. conventions to the rank of an international statute, valid without ratification. These efforts have come to naught; but in the I.L.O. constitution there remained as a residue article 19, paragraphs (5) and (6), which impose an obligation on the governments of the Member States to “bring” all conventions and recommendations adopted by the International Labour Conference “before the

¹ Revision of the Constitution in 1953.
² e.g., Universal Postal Union, I.C.A.O.
competent authorities" in their own country (generally the parliament or another truly representative body). These provisions in the I.L.O. constitution cover all instruments, even those which the government itself might not be prepared to accept. Another effort in the same direction of international legislation lies in the simplification of the methods of concluding treaties, leaving unaffected, however, in several cases, national acceptance in one form or another. It is to be noted further that, side by side with the treaty, the "resolution" is gaining in importance, that is to say, the formulation, without express national acceptance, of principles or non-binding rules, e.g., the famous 1948 Universal Declaration of Human Rights adopted by the U.N. General Assembly. All these phenomena may be considered as pointing towards the emergence of an international legislation, filling perhaps only partially the vacuum referred to above. That vacuum still remains in the world society of States.

Another important new institution has obtained a footing in the modern law of nations, namely, the regulation of the duty of States to account for their actions, coupled with regular and well-defined supervision exercised over the application and execution of treaties and conventions.* Here we touch especially one of the vertebrae of Europe's spine: the principle of responsibility for one's actions. Here again we are witnessing the birth of a consciousness of the reality of an objective international order, superior to individual States, be it only in a limited collectivity of States or in a limited field of activity.

Permanent institutions have also taken the place of improvisation in the settlement of disputes. This more solid structure has been secured by the acceptance a priori of compulsory jurisdiction by some dozens of States either for all disputes, or for special categories of disputes; either in the bilateral or multilateral treaties on settlement, or on the basis of Article 86, paragraph 2, of the Statute of the World Court. Permanency is again provided for in the composition of the judicial and other organs concerned and in their rules of procedure.

As regards the accountability of States, Articles 24 and 26 of the I.L.O. Constitution contain a remarkable double extension of accountability and supervision. On the one hand, a complaint of an alleged shortcoming by a State in the application of a ratified labour convention may be made against the State concerned by any other Party to the convention, whether the shortcoming affects one

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* I have elaborated this matter in an article in the July 1959 issue of the *Netherlands International Law Review* (the issue in honour of Professor François).
of the nationals of the complaining Party or not. Such a complaint may also be put forward by a delegate to the International Labour Conference. On the other hand, an alleged shortcoming may be the subject of a "representation" made by an employers' or workmen's organisation, even if none of its members is involved. A complaint or "representation" of this kind no longer accords with the traditional idea of the responsibility of a State being exclusively towards its partners in a convention. Far from doing so, it emphasises in fact the conception of an overall responsibility for order within the new labour community in the I.L.O., a responsibility towards all its members for the proper execution of accepted obligations as the elements of an objective order, no matter what persons are involved. The same idea underlies the right of petition, conferred by Article 87 of the Charter of the United Nations (following in the steps of the Mandate system of the League of Nations) on anybody interested in the proper execution of obligations accepted by States under the trusteeship system.

But it is still with some hesitation that the doctrine and practice of international law allow the individual to occupy a place next to the State, as the second focal point in the society of States. In our time the protection of man as an individual with spiritual and material needs, has been accepted; but on an international level acceptance has been only in the general terms of a proclamation which remains so far without implementation. Europe has attained a more precise guarantee of human rights with effective implementation; here, the protection of man even against his own State, provided for in the 1950 European Convention, represents a revolutionary rejection of a die-hard doctrine. In this connection reference should also be made to the protection of refugees and emigrants, and above all to the labour conventions completed since 1919, and now numbering more than 100, purporting to regulate labour conditions on a world scale, irrespective, in the overwhelming majority of cases, of the nationality of the persons concerned. This is yet another example of a break away from the traditional juxtaposition of States towards the beginning of a superior objective order.

IV

It goes without saying that many objections may be made against the views expressed above. Some opponents concede that all the changes and reforms mentioned may lead to a reinforcement of international order, but, they say, these changes and reforms will not bring us peace. Others object that it is all fair-weather talk!

* The Universal Declaration of Human Rights, 1948.
What, they ask, is the real value of these so-called modern institutions, if governments, parliaments and peoples remain reluctant to be bound by any rules, as when they refuse to submit disputes to an impartial agency for settlement, or couple destructive reservations to their acceptance of the compulsory jurisdiction of the World Court, or use vetoes and other restrictions, or fail to apply ratified conventions and well-established unwritten rules of international law?

Certainly it would be unwise to overlook the hard facts of the inadequate or unwilling observance of conventions and rules, and of actions hostile to international order and in opposition to the substitution of law and order for anarchy and disorder. But we should not be oblivious of the fact that, even where there exists a broad divergence between the law and its application, and even where a rule remains a dead letter, it may suddenly prove, at a later stage, to have quietly reshaped the minds of men.

In this matter of establishing order in the society of States one cardinal fact stands out clearly. The ordering of the lives of peoples and States—meaning the acceptance by States of obligations—is, in the overwhelming majority of cases, dependent upon the voluntary co-operation of peoples and governments. Even so, the opponents' arguments are only half true, for the new ideas and institutions, and the "modern law of nations" as it is evolving, are operating as far as they can in respect of peoples and States who are prepared to co-operate and who prefer co-operation to isolation, order to anarchy.

But the crucial point to be observed on all sides is power and the use of power for purely national ends, as "an instrument of national policy." The ban on the national use of power, excellently elaborated in the words of Chapter VII of the Charter of the United Nations, has proved a failure in the event, since collective defence on a world-wide basis has remained a dead letter.

We are faced with the sad and shameful fact that in our day the assault on the anarchical use of power is not primarily motivated by moral conviction, but by the deadly danger of weapons of mass destruction, and by some vague feeling of sauve qui peut. In some statesmen even that feeling, it seems, is not strong enough to restrain purely national considerations of power.

International law on these points is in the making in the disarmament and nuclear test talks. Only if these lead to satisfactory results will our thinking and our discussions on an international legal order in the world acquire their true meaning and significance.

The words of the Briand-Kellogg Pact, 1928.
As long as a central authority is lacking in the world of States, we have to continue along our present arduous way. Pressure and hegemony thus remain as indispensable pillars, supporting the present structure of the world. The Republic of the United Netherlands could not manage in the seventeenth and eighteenth centuries without the hegemony of the Province of Holland; the British Commonwealth, in a former phase of its existence, could not manage without the leadership of the United Kingdom. In the early days of the League of Nations the practical hegemony of Great Britain and France proved indispensable. The collective hegemony of the Great Powers, provided for in the Charter of the United Nations, has split up, however, into two hostile hegemonies.

Yet the old doctrine developed new shoots. The accent on forms and formalities has weakened and the individualistic presentation of the State has decreased. Theory, however, has not always paid sufficient attention to new trends and institutions. The rights and duties of private individuals as subjects of international law have remained mostly in a clair obscur. Much is still to be done. On the other hand, theory has taken a more social colour, and problems relating to the ordering of superior international authority have begun to call for attention.

The overwhelmingly inter-governmental structure of a society of States, which was the main object of study in this section, will probably remain for a very long time the final stage, at least for the world viewed as a whole. This conclusion stands, whatever changes may have been brought about in the application of the traditionally rigid "official principle" inside some of the States, by greater direct participation of their peoples in international work. Examples of this are the recruitment, from wider circles than hitherto, of personnel for the foreign services and as delegates to international conferences and commissions, the strengthening of the influence of parliaments on the acceptance of treaties and on the conduct of foreign and international policies in general. During the First World War and shortly after that war the "democratisation of foreign policy" became a catchword. But where it did actually lead to concrete measures, these were confined to the internal situation in the individual State. Within the framework the society of States there was no place for this "popular principle" to be applied.

This cannot, however, be the last word on the theory and practice of international relations—at least not in the non-totalitarian world.
Stronger co-operation than is arrived at in the world-wide organisations comes to light, when we look at some of the regional ones, still in their early infancy.

A. In N.A.T.O. traditional forms are adhered to in many aspects, at least according to the letter of the basic Treaty. This Treaty opens no voie représentative, and no provision in it refers to any weakening of the unanimity rule in decision making. But how strongly political life has burst through the letter of the Treaty! In practice N.A.T.O. abounds with novelties; the unification (to an extent) of the military forces of its members and of the supreme command is new, the unified care for the infrastructure is new, as is the strict accountability of Member States in the supervision of the "annual review," a supervision akin in form to the familiar mutual supervision by members of an international organisation, but which, owing to the important role played by N.A.T.O. staff and secretariat, bears supra-national features. New, too, is the whole range of directly binding decisions made by the N.A.T.O. Council. Whoever takes cognisance of N.A.T.O.'s publications cannot fail to appreciate the work performed by the organisation in effecting a partial integration in the military field, formerly one of the most important bastions of national independence and prestige.

N.A.T.O., as it operates in practice, forms a transitional stage on the way to the post-war European organisations. It is impossible to go deeply here into these modern European organisations. This exposé must be limited to mentioning some striking features, first of the Council of Europe, and then of the three European Communities. The Council of Europe is put first, not because it comes first in chronological order, but because it represents the introductory phase to the closer integration of the "Six" States which are members of the European Communities.

B. In the Council of Europe a novelty was created in the "Consultative Assembly." Designed to approximate to a European parliament, it introduced a further application—this time for general political matters—of the representative principle, which was first given shape, for social matters, in the International Labour Conference. However, this new application goes only half the way. For the Assembly, the parliamentary arm of the Council, as is well known, is subordinate in a certain sense to the ministerial arm, the Committee of Ministers, while the link connecting the two is extremely weak. The structure of the Council is consequently very loose: the Committee is not responsible to the Assembly, and worse still the Committee, as a body, is not responsible to anybody. Each Minister can, indeed, be called to account individually by his own
parliament. But for what action or decision? Evidently only for the attitude he has adopted on the Committee—yet nothing of that attitude comes to light, owing to the private character of its meetings!

No one, however, should minimise the work which the Assembly and Committee of Ministers have devoted to the establishment of a common European law for a range of subjects, chiefly in the form of conventions. In this respect the European Convention of Human Rights, 1950, already referred to above, deserves special attention. Here it is not a question of a proclamation, such as the Universal Declaration of Human Rights of 1948, but a true convention, specifically concerned with the guaranteeing of the human rights, defined in its first section. This Convention again expresses the principle, that public order in the community as a whole, viz., the public order of Europe, has to be maintained. That intention is reflected in three features of the Convention.

First, it makes the protection of human rights a common interest and responsibility of the Contracting States. It goes very far in this respect: under Article 24 any government of a State which is a Party to the Convention, is entitled to bring a complaint before the European Commission on Human Rights on any alleged breach of the Convention by any other Party,6 irrespective of the nationality of the alleged victim. Although, as has already been pointed out, in such cases the protection of a community interest is at stake, there have been only three such governmental complaints brought forward, the most recent being that of Austria against Italy in a case involving penal procedure in Alto Adige (South Tyrol). Apparently this power of free complaint is not attractive to governments, as it smacks too much of intervention.

Secondly, and more important, is the procedure, involved in the now well-known right of petition, which is open—subject to the condition of a specific declaration of recognition of that right by governments—to persons, organisations and groups who claim to be victim(s) of a violation of the Convention by one of the Contracting Parties.7 This right of individual complaint has expanded international law, so that it has become a law for men as well as for States. It represents the consummation of a development which had already begun in the nineteenth century, in connection with the protection of Christian minorities in the Turkish Empire, but which so far had never been so clearly manifested as in this European Convention. The maintenance of respect for European public

6 Cf. Article 26 of the I.L.O. Constitution, referred to above.
7 Article 25.
order has thereby been turned into the common concern of individuals also.

The third special feature of this Convention in regard to the maintenance of European public order is to be found in its definition of the competence and the task of the two supervisory bodies, the European Commission and the European Court. These have not been set up merely for the solution of disputes and claims for the benefit of complainant States or persons, but cover a much wider field, viz. the actual observance by the High Contracting Parties of the engagements undertaken by them. In other words: the paramount concern of the Commission or the Court is not the complaint made by States or the petition submitted by individuals, but the European order itself, which forms the background.

In all three respects the European Convention opens up new paths, leading towards the recognition of the existence of a community of law, superior to the members of the Council of Europe, and comprising States and individuals acting in their own right.

C. We now come to the three European Communities (Coal and Steel, Common Market, Atomic Energy), the result of a bold endeavour to create a community of States and nations to replace a society consisting of States only.

What are the striking features of the new European Communities? I should like to stress six of them. Naturally, this expose will be limited to the juridical features and will not go into political or economic matters and considerations.

First of all, there are their institutions, with their very full equipment, most evident in their supra-national organs, the High Authority and the two Commissions, whose task it is to act purely in the interests and service of their respective communities, completely independent of the governments involved. Each of the three Communities operates under a "transnational" administration, formed by an organic combination of their supra-national body, just referred to, with their respective international Councils of Ministers and their Parliament.

Secondly: the interests of the Communities and of the persons and corporations involved are no longer regulated exclusively by treaties and the like, set up by States acting according to their own free will, but are regulated largely by rules, directives and resolutions made by the organs of each Community, of which the former two categories are directly binding on States and on private corporations as well. This is a very striking feature, namely, the recognition of private individuals as "international persons" acting in their

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* Article 19.
* A happy term coined by Professor, now Judge, Jessup.
own right and bearing direct responsibility. This is also an instructive transition from the contract-model to the statute-model in the regulation of transnational interests.

Thirdly: in the Communities the voie représentative is followed much farther than heretofore, namely in the European Parliament to which the supra-national bodies are responsible. This responsibility, according to the letter of the respective treaties, is assured by virtue of the fact that the parliamentary discussion of the High Authority’s or the Commissions’ annual report may end with the passing of a motion of censure, leading to the resignation of the organ involved. A murderous motion! Fortunately wise practice has led to the more human method of regular mutual consultation and co-operation between the bodies concerned. In these Communities the surprising situation (mentioned earlier on) prevails, whereby as regards policy-making the Councils of Ministers are, as a body, not responsible to anybody for the way they perform that task. This situation is astonishing, and also unsatisfactory, because the national parliaments of the Six are divested of their control over policy, as far as this has been transferred to the European organs, whilst no form of “community” control has filled the gap at the European level.

Fourthly: as far as further regulation in the treaties of the vital matter of responsibility is concerned, we may note:

(a) that the governments of the Member States fall under the supervision of the respective supra-national bodies as regards the observance of the treaties. At a later stage possibly (depending on the circumstances) reference may be made to the Court of the Communities in Luxembourg.

(b) This Court has been given a large measure of supervision, to be exercised in varying circumstances and in different forms, over the legality—but not over the appropriateness or wisdom—of the conduct of affairs by the three supra-national bodies and the three Councils of Ministers, and in the case of the Coal and Steel Community even over resolutions of the Assembly. This responsibility to the judge marks an important step towards a true legal order, the more so as a case may be brought before the Court by private persons or corporations; and also by the Court’s competence to give a decision à titre préjudiciel.

In general, it should be added, the Court may, by virtue of its jurisprudence, promote a healthy solidity in “community” law, with a notable efficacy, moreover, as its judgments are declared executory on the national level as well.

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10 Article 24, Coal and Steel Treaty and identical articles in the other two basic treaties.
Fifthly, the High Authority of the Coal and Steel Community may send its own officials to a Member State to verify reports or information supplied by it. Even if in practice no use were made of these powers, their conferment by treaty on the supra-national body would still be of remarkable importance from the point of view of both organisation and theory.

Finally, there is no longer any need in those new forms of organisation for the purely political, unorganised hegemony mentioned earlier, based solely on the pre-eminence of power. The former completely unstable hegemony has, in the new Communities, been replaced by weighted voting in the Councils of Ministers. In practice, however, this procedure of weighted voting, based on the relative economic importance of the States participating in the Communities, may lead to new forms of hegemony. This may be so especially in the later stages of their lives, when majority voting will occupy an important place in decision-making. This danger could be obviated by means of strict adherence to the allocation of power, as fixed in the treaties.

So far this has been a review of recent juridical developments. The question of what use is being made of these new opportunities, of how the treaties are applied and of how the organisations are working in practice, all involve elements of a chapter of international relations, into which we cannot enter here.

In contrast to the world-wide society of States, where, as was pointed out, the intergovernmental structure forms, provisionally at least, the most recent stage of development, this latest form of regional co-operation in Europe expresses itself in new, quasi-federal Communities. They comprise persons and groupings of persons, States as well as other groups. They possess their own federal organs, destined and indeed obliged to take the broad interests of their Communities as the sole criterion determining their actions and decisions, and to give effect to those interests according to their own merits. Organs, with the possible exception of working groups and other temporary, auxiliary bodies, are no longer instituted ad hoc; the old-fashioned ideas of sovereignty have been increasingly laid aside, and replaced by efforts to canalise power in order to give firm foundations to law and legal institutions. All this is the intention and the purport of the new European organisations. It is the task of all concerned to turn what has been laid down on paper into fact.

We are witnessing persistent efforts to create a legal order in Europe as a whole, resting on a hierarchy of interests and organs to protect and promote Europe's interests on a basis of solidarity. Between traditional international law and traditional municipal law,
each treated, and wrongly treated, as a separate entity, we now see a federally tinged law evolving; the law of the modern Communities which links the two systems together. The stronger the law of the Communities grows, and the wider the field it covers, pari passu, the weaker will become the role of traditional international law.

VI

The immense difference between the international law of a century ago and international law today strikes the observer. We have seen instances of all the changes and transitions which were underlined at the beginning of this lecture. Particularly since the First World War the world has witnessed the first stages of the growth of a “community” of men within the “society” of States and under its guidance. The International Labour Organisation still remains the outstanding example of this process. The “Law of Nations”—the term has regained its full meaning—no longer regulates exclusively relations between States but extends to the proper interests of men, be it for the time being in specific fields only and to a more or less limited extent. This conclusion, however, evidently has more validity with regard to the limited, regional, supra-national communities of States and men together, than for the world society of States, while it is true in any case only for the non-totalitarian world.

Nonetheless, let us keep our eyes open to the fact that, so far as concerns the progressive organisation of the non-totalitarian world, we have to do with efforts and experiments, with trial and error. We must never forget all those cases in which a treaty, which appeared to open up new avenues, failed to obtain sufficient ratification to come into effect or where a provision remained a dead letter or was inadequately applied. Neither should we forget those cases in which a promising new institution was left unused, e.g., the dozens of conventions and provisions on conciliation of which only a few were made use of by the governments concerned. In so fluid a matter as the international law of our days, we are faced time and again with rapids, alternating with barrages, when national interests and national views or preconceived or chauvinist ideas override the need carefully to foster a collective interest, or when lack of courage and vision proves an insuperable obstacle. The burden of the past can weigh heavily on the present. It is pure idealism to say, as has more than once been said, that the world, taken as a whole, lives as a “community of States” under an “international legal order.” We are still a long way from that goal. We have to be content with a rather shaky, unstable
“society of States,” joined together in a political system, weakly controlled by law. Let us not forget all the troubles of our present world. The United Nations, an organisation which strives to achieve a universal order, now involves the co-operation of more than 100 States, scattered under the four winds of heaven, existing in diverse climates (geographical and spiritual) with highly divergent systems of national law and institutions, and with divergent or conflicting interests. International co-operation finds itself still hampered, first, by the vague (and therefore dangerous) “domestic jurisdiction” clause (which nevertheless is still necessary, provided the application of the clause is put under judicial control) and secondly, by the dangerous rebus sic stantibus clause. Faced with our mosaic of States and peoples our first task is in the sphere of mutual consultation and comprehension to arrive, if possible, at an adaptation and concurrence of views and interests, eventually leading to a wider harmony.

But nations are divided by a high wall—a conflict of fundamental convictions concerning man, State, law and community, between the world of thought shaped by totalitarianism, and that shaped by Christianity and humanism. The late Max Huber, one of the greatest of our guides in the field of international law, whose legal science was illuminated by his faith, has shed full light on the importance of fundamental ethical and spiritual convictions. Faced with that fundamental conflict in convictions we reach a clearer understanding of Europe’s unique task, as defined in the Preamble of the Statute of the Council of Europe in these words: “devotion to the spiritual and moral values which are the common heritage of [Europe’s] peoples and the true source of individual freedom, political liberty and the rule of law, which form the basis of all genuine democracy.” As long as the antagonism in fundamental convictions continues to divide the world, the road to an international legal order for the world as a whole lies barred, and we have to continue to live in a political order. Let us then work all the more strenuously to achieve a real regional legal order.

VII

International law is fully involved in the struggle raging in what America’s great thinker, Reinhold Niebuhr, has called “The age between the ages,” that is, the age between the old dispensation, which is crumbling, and the new, which is painfully evolving.

12 See his article “The Christian Understanding of Law” in The Universal Church and the World of Nations (1938).
13 Discerning the Signs of the Times, Chapter III.
What then is the purpose of our study of international law and of the law of nations, and their related fields? What significance can it have? The answer seems clear. To explore how the present law has come to be what it is, how it is involved in a process of reform and extension and intensification, in order that we may be able to assist in the building, stone upon stone, in storm and rain, of a transnational legal order for States and peoples and men. All our thinking and all our efforts should be directed towards this end, towards an order which transcends power and calls for service.