event of surface damage the underlying state would have recourse to traditional legal principles designed to secure protection against direct or accidental injury by other states.

In this posture of probable developments and legal prescriptions, it might be appropriate for specialists in this area to devote some exploratory thought to measures which might be taken to allay fears that peaceful satellites might become harmful objects. An alternative which might be considered would be for each state about to launch such a satellite to register its intent to do so with an international agency, to file a flight plan with such agency, and to file a description of the satellite's load, weight, size, etc. It would of course be impractical and not necessary to the proposal to include details of the launching mechanism, but complete information about the load could be registered and this could be done with respect to both recoverable and non-recoverable satellites. Beyond registration it might even be desirable as a guarantee of good faith to suggest inspection by the international agency to assure that the load conforms to the description filed. A procedure of inspection need not, of course, include submission to prior approval.

It is suggested that the proposal so briefly indicated here is one that any country planning to launch a satellite might appropriately take into consideration.[8] In determining whether to advance or to adhere to such a proposal, a country might of course reasonably take into account the willingness of other countries launching satellites to adopt the recommended measures of registration and inspection.

MYRES S. MCDOUGAL

THE CHANGING LAW OF NATIONS

I

It has often been stated[1] that international law, although primitive as to structure and contents, has shown a remarkable stability, as compared with more advanced municipal legal orders. From its beginnings until

[8] Such measures might allay apprehension of harm in a manner comparable to the design of the "open skies" proposal. See Note, "The Aerial Inspection Plan and Air Space Sovereignty," 24 Geo. Wash. L. Rev. 565 (1956).

Proposals have been made to ban testing of the intercontinental ballistic missile. Testimony of Senator Flanders in Hearings, Subcommittee on Disarmament, Committee on Foreign Relations, 84th Cong., 2d Sess., p. 81 (March 7, 1956); Leghorn, "Controlling the Nuclear Threat in the Second Atomic Decade," 12 Bulletin of Atomic Scientists 189, 195 (1956); Inglis, "National Security with the Arms Race Limited," *ibid.* 196. A news story in the Washington Post, Dec. 10, 1956, stated that "administration sources disclosed" that "the White House had approved a new international disarmament plan which proposes that the use of long-range guided missiles for war be outlawed."

For suggestions with respect to international control of satellites during the International Geophysical Year, see Leghorn, *loc. cit.* 195, and Romulo, "Alphabet of the Apocalypse," 39 Saturday Review 26, 51 (Dec. 8, 1956).

[1] *Cf.* Max Huber, "Die Wandlungen des Völkerrechts," 52 Die Friedens-Warte 297–310 (1955).

1914 it presents a clear continuity of development; no revolution as to its basic structure occurred. It remained based upon the same sociological foundations—the international community of sovereign states—and upon the same axiological foundation—the values of the Greek-Christian Occidental culture.

True, international law during the nineteenth century saw an important, progressive development, including the beginnings of international organization. But the framework within which this progress developed remained essentially the same. The "classic" international law was, despite its worldwide expansion, a law based on Occidental values, it was the law of a world in which Europe dominated Asia and Africa; it was the law of a pluralism of sovereign states, including a number of "Great Powers." But these states showed a more or less ideological conformity, as being mostly national states based on the values of the liberal, constitutional, democratic "*Rechtsstaat.*" Hence, the problem of keeping the peace was predominantly the problem of balance of power.

But in these last decades international law has been in a period of flux, restlessness and profound change; recent developments are often full of contradictions. 1914 is the turning-point—a turning-point, but, as Max Huber points out, not a break. For, despite all changes, it has not been possible to "ban the spirit of sovereignty." Notwithstanding all new tendencies and changes, international law, even today, is still basically the law of a community of sovereign states.

It would, of course, be a mistake, to identify change with progress, as some are inclined to do. Change can mean progress, but can also mean retrogression. Newer developments have sometimes been strongly retrogressive. There is, further, the obvious ineffectiveness of some new rules and institutions such as the norms restricting or forbidding the use of force, the norms concerning collective security or international sanctions. Newer developments sometimes show a merely experimental character and are even ephemeral, such as mandates, international protection of minorities, the League of Nations. Hence, the changing law of nations is characterized by the uncertainty, insecurity, provisional nature of many rules or even of whole departments of that law. This present status makes any prophecy of the future of international law hazardous. Such future may lie between the extremes of an ethically higher and more effective law of one world and the possibility of a rapid fall of the whole law of nations, a return to ages of anarchy and barbarism; in the light of the terrible effect of modern weapons, even the vision of an end of civilization, of a possible suicide of humanity, cannot be wholly excluded. Only one thing is certain: a return to the shores of 1914 is impossible.

It is only natural that this changing and unsettled status of international law should have exercised a profound influence, not only on the minds of laymen, but also on the science of international law, that it should have led to often contradictory attitudes and bitter polemics between adherents of opposed opinions. That is why we see even among professional international lawyers such opposite attitudes as, on the one hand, the strong con-

servatives, passionately opposing any change in the "classic" law, or the "neo-realists," throwing that law away as "sterile," "insignificant," as a "naïve illusion," and proudly concentrating on the study of "naked power calculations"; and, on the other hand, the "wishful thinkers," confusing their dreams with reality, and the utopian preachers of the world federal state.

It is this unsettled and dynamic status of international law which, as far as methods are concerned, has led to an attack against analytical jurisprudence from two opposite sides: the adherents of "natural law," confusing, in extreme cases, law with ethics, and the pure sociologists, confusing law with fact, or, as in the case of the so-called "policy science," confusing law with politics, confusing the law with the procedure of its making.

It is clear that the correct approach as to the attitude taken and the methods applied lies in the middle: sociological and axiological considerations are indispensable for a full understanding of the law; but it is, of course, equally indispensable to recognize the essentially normative character of law.[2]

II

This changing and insecure status of international law seems to stem from two different sets of phenomena which this writer has called the "crisis" and the "transformations" of the law of nations.[3] The "transformations" are the changes resulting from the change of general conditions, even if there were no crisis, although this change of general conditions contains also elements of the crisis. On top of these transformations there is a deep crisis which has its roots in earlier developments, but has become actual since the end of the second World War. The change in the changing law of nations is, therefore, not along one line, or in one direction, but in many, sometimes contradictory, directions.

There is a transition from the law of a plurality of "Great Powers" to the law of a bi-polar world. There is the change from a law of a community of states with a certain ideological conformity to the law of two worlds, basically hostile to each other and with incompatible ideologies. Hence, the problem of peace is no longer so much a problem of balance of power, but a problem of what is now called "peaceful co-existence."

There is, further, a transition from the law of an international community of predominantly Occidental character to the law of a community embracing also the very different legal and value systems of the non-Occidental world.[4]

There is, finally, the transition from the "classic" to the "new" international law, from the law of a loose, unorganized society of sovereign states

[2] This is the approach of Charles De Visscher, Théories et Réalités en Droit International Public (Paris, 1953).

[3] See this writer's lectures in French, "La Crise et les Transformations du Droit des Gens," to be published in the Recueil des Cours of the Hague Academy of International Law.

[4] See this writer's editorial, "Pluralism of Legal and Value Systems and International Law," 49 A.J.I.L. 370–376 (1955).

to a more organized, more centralized law; the transition from the traditional international law, limited in contents, dealing exclusively with the relations between sovereign states, to what Dr. Jenks[5] conceives as "an international law, expanded in scope, an international law representing the common law of mankind in an early stage of its development."

III

The changing character of international law is, first, a consequence of a transformation of general conditions, a transformation the impact of which is equally felt in the municipal legal orders. The "classic" international law presupposed the doctrines of democracy, capitalism, economic liberalism, "laissez faire," the principles of the sanctity of private property, the strict distinction between private enterprise and economic activities by states, the strict distinction between armed forces and the civilian population. All that has fundamentally changed. The coming of total war, of ever expanding economic activities by states, the control by states of the economic life of the nation even in times of peace, and more so in times of war, the appearance of totalitarian regimes, have profoundly influenced old and well-established rules of international law and brought about far-reaching uncertainty. These transformations, while particularly prominent in totalitarian states, are nevertheless more or less universal, to be seen also in the democracies of the free world. They have shaken the basis of many rules of the laws of war and of the law of neutrality. They have changed and made insecure the rules concerning immunity from jurisdiction of states in their economic activities, of state instrumentalities, of government-owned merchant vessels, government corporations; also with regard to rules concerning state responsibility (political parties, subversive and terrorist activities, hostile propaganda), and finally with regard to rules concerning nationalization, expropriation, confiscation.[6]

There are tendencies to weaken or to question old and well-established rules of international law: there is a tendency against conquest as a title of acquisition of sovereignty; there is uncertainty as to the so-called "doctrine of contiguity"; there is much confusion as to the recognition of states and governments; there are very doubtful areas as far as the law of international treaties is concerned; a weakening of the requirement of effectivity where sovereignty is acquired by occupation of a *terra nullius;* there is a complete lack of agreement as to the acquisition of sovereignty in the Arctic and in the Antarctic.

Technological developments have led to uncertainties in the laws of war, such as aerial war, chemical and bacteriological warfare, magnetic mines and so on; or have led to completely new norms in fields which before had not been of practical importance. The coming of aviation has led in a short

[5] C. W. Jenks, "The Scope of International Law," 31 British Year Book of International Law (1954) 1–48 (London, 1956).

[6] These transformations are dealt with in the article of W. Friedmann, "Some Impacts of Social Organization on International Law," 50 A.J.I.L. 474–514 (1956).

time to the new norm of general customary international law according to which the legal status of the airspace is the same as the status of the subjacent space. We are at the threshold of a completely new "international space law."[7] The new interest in making use of the water of streams for purposes of irrigation, hydro-electric power and so on, is transforming the law of international rivers, hitherto dominated by the interests of navigation.[8]

Other changes stem from technological (geological and engineering) advances combined with economic considerations, neo-Malthusian fears of overpopulation and an upsurge of sovereignty: the new norms *in fieri,* concerning the continental shelf, the disquieting developments with regard to the limits of territorial waters, contiguous zones, the law of high-seas fishing, developments which, in extreme cases, threaten the survival of the fundamental principle *juris cogentis* of the freedom of the high seas.

There is, further, the advent and enormous expansion of international organizations, quasi-universal and regional, general and specialized. They have brought many new developments: international organizations as subjects of international law, in the field of international treaties, privileges and immunities, responsibility, capacity to claim indemnities. There is no doubt that the scope of international law, formerly restricted to relations between sovereign states, has expanded: stateless persons, refugees, indigenous populations of trusteeship territories, solution of economic, financial, social, health, cultural, educational problems on a worldwide scale, development of, and technical aid and assistance to, underdeveloped countries. There is no doubt that the law of international organizations, although based on particular international law, has also deeply influenced general international law.[9]

The new quasi-universal general international organizations have not restricted themselves to international co-operation in the so-called non-political fields. They have attempted to regulate activities which the states hitherto have regarded as their exclusive domain. Hence new ideas and experiments have appeared which would have been unthinkable prior to 1914: the attempt to restrict or even abolish the use of force in international relations, the idea of "international concern," as expressed in Article XI of the League of Nations Covenant, the ideas of collective security, of international sanctions, the attempts at an international criminal law, at international protection of human rights. True, many of these attempts have hitherto been ineffective and have made whole departments of the

[7] The strictly legal question has been asked: Who owns the universe? *Cf.* C. W. Jenks, "International Law and Activities in Space," 5 Int. and Comp. L. Q. 99–114 (1956); Proceedings, American Society of International Law, 1956, pp. 84–115. See also the attempts to frame principles of a new international law applicable to the realms of space at the International Astronautical Congress, held recently at Rome (New York Times, Sept. 20, 1956, p. 12).

[8] *Cf., e.g.,* J. J. Lador-Lederer, "Vom Wasserweg zur internationalen Gemeinschaft," 53 Die Friedens-Warte 225–244 (1956).

[9] See this writer's editorial, "General International Law and the Law of International Organizations," 47 A.J.I.L. 456–462 (1953).

law, like the laws of war and the law of neutrality, extremely insecure. These attempts have led scholars to question the whole philosophy on which the current concept of international organization is based.[10] Scholars have insisted that it is impossible to make revolutionary changes without changing the sociological foundations on which present-day international law is based. Charles De Visscher has written that any advance in this direction must start with a change in the distribution of power which, at this time, is in the hands of the sovereign states. Yet, on the other hand, it is unlikely that these new ideas, inspired by a deep concern with the consequences of modern war, will, despite their ineffectiveness so far, disappear completely.

IV

On top of all these elements of transformation there is an actual crisis, the elements of which can be only briefly enumerated here. There is, first, the decline of Europe, which prior to 1914 was the hub of international affairs, the creator of our Occidental culture and of our international law based on the values of that culture. The center of gravity of Occidental culture has definitively shifted from Europe to the United States of America.

There is, second, the emergence of the Soviet Union as the other of the only two Great Powers, a phenomenon which by itself has completely changed the power structure of the world. There is, third, the split between two antagonistic worlds, each led by one of the two Great Powers, the deep ideological abyss, the cold war. It is obvious that this split has the most far-reaching influence on general international law and the law and functions of international organizations.

There is, fourth, the "anti-colonial rebellion." The upsurge of Asia and Africa is a challenge, not only to Europe, but to the whole Occidental world of the white man.

There is, fifth, the coming of the atomic age, a technological development to which a special place must be assigned, for in the last analysis it places humanity before the dilemma of a true peace or annihilation.

But all the transformations, all the elements hitherto mentioned, of the crisis do not yet fully explain the present crisis of the law of nations. For this is only a partial phenomenon of the total crisis of our whole Occidental culture. This crisis produces many technical, including legal, problems; but, as every authentic and genuine crisis, it has its deepest and veritable roots in philosophy, ethics, and religion. It is the crisis of the ideals and values of our Occidental culture which has produced in all realms of human life the uncertainty, insecurity, provisional nature, so characteristic of this epoch since 1914. Modern man has lost faith, has lost his connection with God. He has during the last centuries put all the emphasis on natural sciences and technology—and has done so with astonishing success. But the truly fundamental problems, which are not the technological problems dealing only with means, but those dealing with the ends,

[10] See W. Schiffer, The Legal Community of Mankind (New York, 1954).

have been neglected or ignored. Man has confused technological with ethical progress. The present crisis clearly shows that these fundamental problems cannot be ignored with impunity. That is why man today finds himself unprepared for his own scientific conquests, which tend to become a mortal danger rather than a benefit. Modern life has strongly contributed to bring about and to deepen this spiritual crisis; the de-personalization of man through the machine, the struggle, haste, and overburdening of modern life, the lack of time, energy and the will to perfect oneself. There has been the emergence of the masses, dominating modern life, the serious crisis of the intellectual elites; hence the decline of great literature, art and music, the monotony of modern "entertainment" by standardized mass media, productions which so often bring out the contrast between the technologically wonderful means and the inartistic, valueless contents. Hence the indifference to everything which is not "practical" in terms of money and power, the lack of interest in the higher things; hence also the declining respect for the rule of law, the "politicization" of everything, the unwillingness of men to think, the mass indoctrination, the preference given to security over freedom, the superficiality and spiritual emptiness of the life of the majority of mankind; as the President of Georgetown University formulated it a few years ago in a speech: The majority of men in the so-called backward countries have nothing to live on and the majority of men in the so-called advanced countries have nothing to live for. A true civilization is not a technological but an ethical phenomenon; where the ethical basis disappears, a civilization is bound to disappear. Who can look without the deepest concern at the horrible persecutions and tortures, at the growing inhumanity of men toward men, as shown by total war, at the prevalence of purely materialistic doctrines which necessarily imply nihilistic consequences? That is why a truly great man, Dr. Albert Schweitzer, in his speech on the occasion of receiving the Nobel Peace Prize, could speak of the "horror and inhumanity of our present existence."

To overcome the crisis and to preserve our Occidental culture more is needed than technical means, however important and indispensable they are. Thus also for a truly progressive international law, what is needed, in the deepest sense, is a spiritual, ethical regeneration: For man does *not* live on bread alone.

JOSEF L. KUNZ

THE MEETING OF PRESIDENTS AT PANAMA

On June 22, 1826, a Congress of American States met in Panama in response to an invitation from Simon Bolívar, "The Liberator," then President of Peru. Not all of the American states were represented, Argentina and Brazil being conspicuous among those absent. The United States had not been included in Bolívar's invitation of 1824; but President Adams was willing to accept as official an invitation from the acting President of Colombia, Santander. Unfortunately, neither of the appointed delegates of the United States was present at the meeting. The four governments represented at the Congress signed a Treaty of Perpetual Union, but three