to place before the Security Council situations threatening the peace, and the Security Council has the power to deal with such situations even to the extent of applying sanctions. The General Assembly is also competent to consider such problems.

The author's effort to define acts of psychological aggression is suggestive. He attempts to make a formula which might be acceptable to countries with a governmentalized economy as well as to those with a free enterprise economy. Consequently he ignores the rule, long recognized in international law, which forbids government propaganda libelous to a foreign state or government but does not require a government to prevent similar propaganda by private agencies. Instead, the author suggests that governments be obliged both to refrain from aggressive propaganda themselves and to prevent or counteract private propaganda of this character from their territories. In deference to constitutional guaranties of freedom of speech, the proposal qualifies the latter obligation by the phrase, "within the framework of its own constitutional relationships between citizen and state." Whether such an agreement could be steered between the Scylla of constitutional guarantees of freedom of speech and press in free enterprise countries and the Charybdis of unacceptable curbs on censorship in governmentalized countries remains to be seen, but the suggestion deserves consideration.

The book is written as a tract rather than as an analysis. The author is critical of the lethargy of the United States on the problem and convinced that psychological disarmament is no less important than military or economic disarmament. The idea of psychological disarmament was widely discussed in the League of Nations Disarmament Commission and Conference, but the experience of World War II added both to the knowledge of the subject and to definition of policies. The book deserves reading by statesmen and by lawyers with a dynamic point of view. The proper balancing of freedom of expression with legal control of dangerous propaganda is one on which much thought is necessary.

Quincy Wright*


Both these books are concerned with the international law of the future. The one that bears this title is the product of the collective labor of almost two-hundred American and Canadian lawyers, among whom are to be found most of the leading international lawyers of both countries. It is divided into three parts: Postulates, Principles, and Proposals. The Postulates deal with the premises "which are essential

4 United Nations Charter, art. 35.
5 Ibid., art. 34.
6 Ibid., arts. 39-42.
7 Ibid., art. 14.
8 P. 158.

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for the establishment and maintenance of an effective legal order in a world of states."

The Principles are intended "as a draft of a declaration concerning the international law of the future which might be adopted by a competent international authority." They formulate the minimum of legal obligations which states must recognize if peaceful, orderly relations between nations shall prevail. The Proposals, finally, constitute a draft of positive legal measures for the purpose of implementing the Principles. A comment follows each Postulate, Principle, and Proposal, tracing its history and explaining the needs of the future.

While The International Law of the Future is visibly the product of the work of cautious men who, conscious of the defects of international law as it exists, probe into the possibilities of transforming it into an effective instrument for the regulation and control of the conduct of states, Professor Lauterpacht's treatise is an original and profound attempt at rethinking and reformulating the philosophic assumptions upon which international law is founded and at constructing, on this basis, novel rules and institutions of international law. It is one of the axioms of international law that its rules are concerned only with states and not with individuals as such. Thus the individual governments are free to deal with their own citizens within the territorial limits of their states as they see fit. Jim Crowism and the extermination camp are matters of domestic jurisdiction with which international law does not allow any other government to be concerned as long as none of its citizens are affected. This situation Professor Lauterpacht wants to remedy by the formulation of an International Bill of Rights of Man which will guarantee to all human beings everywhere in the world personal freedom, freedom from slavery and from forced labor, freedom of religion, of speech, and of opinion, freedom of association and of assembly, sanctity of the home and secrecy of correspondence, equality before the law, the right to nationality, to emigration and expatriation. To the guaranty of these individual rights is added the guaranty of certain collective rights, such as the right to political independence, the right to preservation of cultural entity, economic and social rights.

Professor Lauterpacht is of course aware of the fact that it is easy to formulate such principles and that it is difficult to enforce them. He proposes mechanisms and agencies of enforcement which would preserve the basic structure of the international society. He would leave the enforcement of the International Bill of Rights, once it has been incorporated into an international treaty, to the national courts of the individual countries, which would enforce its provisions in the same manner in which they enforce other rules of international law. In case of lack of enforcement by national agencies, a High Commission, operating within the United Nations Organization, would ascertain in a semi-judicial procedure such violations and would invoke the political instrumentalities of the United Nations Organization for the purposes of enforcement.

All responsible observers will share the concern of the authors of these two books for the state of the world, and they will also share their desire to do something about it. What calls for critical comment is the philosophy of law and society in which these two proposals for reform are rooted. This philosophy is rather implicit in the collective enterprise of the practitioners; it comes forcefully to the fore in the brilliant, high-minded book of the Whewell Professor of International Law in the University of Cambridge. It starts with the assumption that the decay of international law and the

1 P. 3.  
2 Ibid.
plight of the individual result from certain defects in the machinery of international law, which therefore must be repaired and remodeled. Yet the question might be raised as to whether the relative peace and order which the world enjoyed from the end of the Napoleonic wars to the beginning of the first World War, and whether the security and protection which the Victorian Age gave to the individual, had their origin in certain legal provisions, national and international, which need only to be resurrected and expanded in order to produce the same beneficial results. Actually it was the peace reigning in the affairs of men which made the pacifying functions of the rule of law, domestic and international, possible, not vice versa. It was because of the order existing in the social fabric that the orderly processes of law could give normative directions to social activities, not vice versa. What we call “order under law” is not the creation of law but of social forces which make both for order and law.

The change which has destroyed the idyl of the Victorian Age did not occur in the domain of law but in the sphere of social forces, which have made both international peace and individual freedom precarious possessions of western civilization. More particularly, the modern development of the technology of warfare has concentrated tremendous powers in the hands of the governments, which the individual is no longer able to resist. The fact that the state has a monopoly of the most destructive weapons of warfare has made popular revolutions impossible. Yet it was this threat of popular revolutions which, together with the culminating strength of the middle classes, during the 19th century led to the recognition and protection by the governments of individual rights. On the international scene the same technological development has led to the rise of two giant empires, destroying the balance of power which since the 16th century has been the lifeblood of international law. It is therefore vain to attempt to resurrect international law without at the same time resurrecting the social conditions which have made it possible.

What is true of international law is also true of the philosophy which has inspired its founders and which Professor Lauterpacht proposes to revive. The idea of natural law may be eternal, but the particular manifestation it found in Grotius’ philosophy of the “natural system” is not. It is inseparably tied up with humanistic individualism, the belief in the completely rational nature of man, the faith in the deductive method and in the universality of the natural sciences. These intellectual convictions, nourished by a peculiar constellation of social forces, were the common possession of the 17th century. Today they are only a vague remembrance without creative powers, an intellectual ritual which is still performed but whose substance is no longer firmly believed by all members of the international society. One has only to read the discussion which took place in Committee 3 of the General Assembly of the United Nations Organization concerning the treatment of European refugees in order to become painfully aware of the disappearance of the common stock of moral and intellectual principles which has held the community of nations together since its very inception. The attempt to recreate a system of law on so crumbling a foundation is an echo of the past rather than a portent of the future.

HANS J. MORGENTHAU*

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* General Assembly, A/C.3/10 and following, 29 January 1946.
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