

# *Symbolae Verzijl*

PRÉSENTÉES AU PROFESSEUR J. H. W. VERZIJL  
À L'OCCASION DE  
SON LXX-IÈME ANNIVERSAIRE



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*On the Place of the Law of Nations in the  
History of Mankind*

1) One of the methods of scientific research, particularly when it is concerned with the forms of life, is the comparison between similar phenomena; firstly in order to discover their essential characteristics; secondly in order to place them in the historical perspective which will throw light on their true nature and the seeds of development they bear within them.

The Law of Nations can also be examined on these lines. By the Law of Nations we understand that system of legal principles which governs the relations between independent peoples organized into states. Up to the 19th century, those principles were fully recognized only by the nations of European Christendom; today we may say that they are regarded, in principle, as universally valid.

Evidence of legal relations between sovereign peoples or their rulers can be traced at every epoch in the history of man of which written records have come down to us. But international law as a more or less uniform system of rules of law binding on a large number of states covering one of the main divisions of the globe at a given time, such as was furnished by the idea of "Europe" up to the 19th century, is a phenomenon which first emerges in the 16th century.

2) In spite of all fluctuations of civilization and culture, the first six and a half millennia of history as known to us showed, on the whole, a remarkable stability. Not until the last five hundred years did an accelerated rhythm of change, a steeper rise in the line of development, set in, especially in the speeding-up of communications between the various parts of the human race and, more recently, in enhanced powers of destruction.

The delimitation of epochs is always, to a certain extent, arbitrary; the transition from the 15th to the 16th century, however, is marked by a profound cesura, due mainly to the following facts: the discovery of America and other unknown territories expanded men's outlook and political activity to the entire globe, the Reformation destroyed the unity of the Church and the nominal unity of the Holy Roman Empire, Roman Law acquired European influence, and the reawakening of pressure of Islam by the advance of the Turks reinforced European feeling. For the first time, efforts were made to place international law on a scientific juridical basis.

The system of European international law, connecting independent states consolidated on the principle of sovereignty, remained relatively stable up to the beginning of the 19th century, when, after the collapse of the Holy Alliance, it became an active force in the shape of countless treaties, both bi-lateral and collective. In the 20th century, as a result of two World Wars, a profound change set in: from a coexistence of sovereign states connected only by mutual legal obligations, there emerged in the League of Nations, and later in UNO, an organized community of nations equipped with methods of law enforcement. In default of a supra-national Law of Nature divine or rational, it had never been possible to incorporate the treaties and ceremonies of intercourse between individual states, of which there is evidence at all epochs, in a system of law applicable over large areas. Quite apart from such relations, however, what we call international law today is by no means the only method by which order and peace can be maintained among nations. If we compare the forms of those relations, we shall find their essential element to be that which transcends the actual region occupied by the individual nation. There were, for instance, the great empires both of antiquity and modern times. By reason of their size, such political configurations were more loosely organized than the small states, but they had not yet taken on the characteristic features of a federation. The feudal system was able to provide a framework for the peaceful association of diverse political units.

One very important form of peaceful order among independent states is the federation, which extends from loose confederations of states to the more or less firmly integrated federal state. In medieval times, confederations and leagues of public peace, of which the

Swiss Confederation, founded in 1291, is the oldest now surviving, were of great importance.

An isolated phenomenon in the world of international relations is the British Commonwealth, a loose comity of nations united by their allegiance to the British Crown, which has developed out of the multiplicity of peoples once forming the British Empire. In an indirect way, political and military alliances such as NATO play a role analogous to the medieval leagues. This kind of inter-state relationship, however, can only secure peace within a restricted area.

Mere coexistence in time and space without conflicts or relations, such as that between China and the Roman Empire, or between Europe and America prior to 1492, are of no interest in the domain of international relations.

3) The present situation has, in the main, been determined by three events. First, the rise of the Chinese Empire, the biggest and most populous state in Eastern Asia, which has, by and large, maintained that position since the latter half of the second millennium B.C. Second, the rise, in the 7th century, of Islam, which has, since the collapse of the Ottoman Empire after the first World War, been incorporated in a multiplicity of Moslem states between the Hindu Kush and the Atlas. The third, most far-reaching event, is the spread of Spanish, Portuguese, English, French and Dutch conquest and colonization to vast overseas territories, setting in with the age of discovery, and continued later by the advance of Russia straight through Northern Asia to the East. By this expansion, territories which, with the exception of India, were thinly populated or uninhabited, and in which the Europeans, in sole possession of firearms, met with little resistance, were brought under European dominion. Spanish America came into being first, and split up, after the Napoleonic Wars, into a multiplicity of Latin American states. The largest political organization created by the colonial expansion of Western Europe was, in the end, the British Empire, which, at the end of the 18th century, split up into the continental mass of the United States and the British Empire proper, which was scattered over all five continents; its parts, however, entered into closer collaboration more especially as a result of the second World War. The colonial movement was brought to an end by the opening up of the whole continent of Africa in the 19th century. About 1900, the whole habitable and



explored surface of the globe had been partitioned out among the colonial empires with mother countries in Europe (Great Britain, France, Holland and Belgium), the Russian Empire, the other European and Latin American states, and the Asiatic states (China, Persia, Japan and the Ottoman Empire).

4) In this way, the whole surface of the globe was divided up. At every point, every state touched the territory of another. Not less important was the fact that world trade, the internationalism inherent in the capitalist economy, and peaceful migration brought about an unprecedented interlocking of national interests, and with it the possibility of conflict. Distances were shortened by the technical innovations of the railway and steamship, and the telegraph brought with it the simultaneity of all events for all centres of civilization. This conquest of space has been continued in the 20th century by aviation, the radio and television.

In addition to the opening up of the whole surface of the globe and the relative shrinkage of its area by technological progress, two further factors must be noted: the alarmingly rapid increase in the population of the world, and the simultaneous devastation and erosion of once-fertile lands by reckless over-exploitation of the soil. The hope of covering these deficits by the use of atomic energy and radio-activity is still uncertain, the more so as new and grave dangers may arise from the production of radio-active substances, even for peaceful purposes.

The entire surface of the globe, therefore, has been covered by the territory of sovereign states which extend their claims to the air and the undersea shelves. Mere coexistence in space has therefore become impossible. As in the world of physics, a principle of relativity has come to dominate existence. Every relationship between one state and another is affected by its relations with yet others. The sense of solidarity among the nations is weak, the entire structure of the human race, of its various great divisions and of each individual state has become exceedingly unstable, and the settlement of existing tensions depends on factors which may escape control.

There is a last point. War, as the ultimate, always possible method of settlement by force of disputes between independent conglomerations of power has acquired, by technological development, possibilities of destruction in space, of intensity and duration,

which threaten civilization and even the very life, not only of individual nations, but of large sections of mankind. That is the root of the anxiety which is now paralyzing the world.

5) The development outlined above may serve to give some insight into the outstanding importance of justice and an effective rule of law in the relations between independent states.

Until quite recently, it was national law, and in particular in connection with the promotion of personal freedom and social justice, that took the lead in political and legal thought. International law as a subject of political interest or scientific research was relegated to a subordinate place. A typical result of this state of affairs was the scepticism, or even scorn, that greeted the first Peace Conference at The Hague. Mommsen, the great historian, coined a revealing phrase when he called the Czar's peace manifesto of 1898 and the Conference of 1899 "a misprint in world history". The first World War, and, among the defeated, the "dictated" treaties of 1920, seemed to prove the unreality of all international law. True, the League of Nations, and since 1945 UNO, have opened up new perspectives.

The possibilities inherent in a new war have revealed the dangerous dependence of every state, no matter how stable its constitution, on world peace. The *jus belli ac pacis*, i.e. the law pertaining to peace and war, can be seen today as the true key to all law. The unity of law and the dependence of all national law on international and supra-national order is not merely a systematic question in the philosophy of law. It is, first and foremost, a question of political life or death. War or peace – to be or not to be, that is the question.

By reason of the developments in all international relations which set in a century ago, and then proceeded with increasing momentum, international law, once the Cinderella of jurisprudence, and the whole complex of sociological problems connected with it has moved to the central place it never yet had, nor could have had, in the history of mankind. The regional relations of sovereign states in former times admitted mere coexistence with their *jus ad bellum*. Nobody will venture to assert that the international law of today, in spite of new directions in 1920 and 1945, is able to cope with the present world situation. The responsibility of all concerned with international law in the widest sense of the term, whether as politicians or as scientists, is all the heavier. There is only one way to a

new solution: coexistence and the idea of sovereignty, which flattered and served the sense of power in big states and the desire for independence in small ones, must make way for an efficient and active community of nations.